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Federal Register
Vol. 59, No. 248
Wednesday, December 28, 1994

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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 451, 531, 550, 551, 591, and 630

RIN: 3206–AG15

Incentive Awards; Pay and Leave Administration

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to incorporate certain incentive awards and pay and leave administration rules contained in the provisionally retained Federal Personnel Manual material, which will sunset on December 31, 1994, into the Code of Federal Regulations and to remove certain recordkeeping and reporting requirements.

DATES: The interim rules are effective on January 1, 1995. Comments must be received on or before February 27, 1995.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Barbara Colchao, (202) 606–2720, concerning questions about the interim regulations for incentive awards in 5 CFR 451, and Belva MacDonald (202) 606–1413, concerning questions about the interim regulations for pay and leave administration in 5 CFR 531, 550, 551, 591, and 630.

SUPPLEMENTARY INFORMATION: On September 7, 1993, the Report of the National Performance Review recommended that the Office of Personnel Management (OPM) deregulate personnel policy by phasing out the 10,000-page Federal Personnel Manual (FPM). The FPM Sunset Document published on December 31, 1993, provided that certain FPM materials would be provisionally retained through December 31, 1994, to allow time for the development of any regulations, delegations of authority, or manuals necessary to authorize agency flexibility or, where required, to continue Governmentwide uniformity. A small number of miscellaneous incentive awards and pay and leave administration provisions in the FPM were retained for these reasons, and OPM is incorporating these provisions into the Code of Federal Regulations (CFR). These rules relate to:

(1) Incentive awards—cash award limitations, documentation of informal recognition items, and eligible award recipients;

(2) Application of the two-step promotion rule for promotions from GS–1 and GS–2 positions;

(3) Application of leave without pay towards the competition of waiting periods for within-grade increases;

(4) Counting travel time as "hours of work";

(5) Sunday premium pay for periods of paid leave and excused absence;

(6) Payments during evacuation;

(7) Back pay computations;

(8) Computing cost-of-living allowances for employees receiving pay retention; and

(9) Leave for uncommon tours of duty.

No new requirements will be established by these regulations. In addition, in an ongoing effort to reduce administrative burden, OPM has removed the recordkeeping requirements related to waiving the biweekly pay cap on premium pay and the reporting requirements for payments during evacuation. A summary of the provisions included in these regulations follows.

Incentive Awards

Cash Award Limitations

The interim regulations amend 5 CFR 451.106(b) and 451.107(a)(3) to clarify that group awards may exceed $10,000 and not require OPM approval, and may exceed $25,000 and not require Presidential approval, so long as no individual in the group is granted more than $10,000 or $25,000, respectively. In the past, agencies have sometimes found confusing the current law and regulation concerning the maximum cash awards that can be granted with and without OPM approval. These limits apply to individuals whether the contribution being recognized was provided solely by the individual or as part of a group. These interim regulations do not limit the size of group awards. (These interim regulations reflect material found in FPM Letter 451–11, Attachment 1, section 2–2, February 9, 1993.)

Documentation of Informal Recognition Items

The interim regulations amend 5 CFR 451.103 and 451.107(b) to include a new definition, *informal recognition items*, to help agencies distinguish nominal informal recognition items from other nonmonetary awards and to provide for agency flexibility with respect to documentation and approval requirements for informal recognition items. This is consistent with agencies' use of their authority under 5 U.S.C. 4503 to incur expenses for routine recognition items of extremely nominal value (e.g., pens, buttons, pins, name tags, etc.) and with the current practice in many agencies under which some routine forms of recognition, such as career service certificates, which are technically authorized under 5 U.S.C. 4503, are neither documented in the official personnel folder nor subject to formal nomination and approval procedures. (These interim regulations reflect material found in provisionally retained FPM Letter 451–11, Attachment 4, section 7–5b, February 9, 1993.)

Eligible Award Recipients

The interim regulations amend 5 CFR 451.104(f) to provide that awards may be granted to the legal heirs or estates of deceased employees. (These interim regulations reflect material found in provisionally retained FPM Chapter 451, Subchapter 3, section 3–2b, August 14, 1981.)

Application of the Two-Step Promotion Rule for Promotions from GS–1 and GS–2 Positions

The interim regulations amend 5 CFR 531.204 to provide a method for determining the dollar value of a two-step promotion when step increases above step 10 must be calculated for employees promoted from grades GS–1 and GS–2. Under the interim

regulations, at grades GS–1 and GS–2, for the purposes of promotion or transfer to a higher grade, the dollar value of each step increase above step 10 equals the dollar amount of the step increase between step 9 and step 10 of grade GS–1 and GS–2, as appropriate.

The dollar value of step increases at grades GS–1 and GS–2 varies. Consequently, the dollar amounts of the step increases above step 10 for grades GS–1 and GS–2 cannot be determined uniformly without an explicit rule. The amendment to § 531.204 provides agencies with uniform procedures for determining the amounts of the step increases above step 10 for GS–1 and GS–2 employees. (These interim regulations reflect guidance found in provisionally retained FPM Letter 531–56, February 16, 1982.)

Application of Leave Without Pay towards the Completion of Waiting Periods for Within-Grade Increases

The interim regulations amend 5 CFR 531.406 to provide uniform procedures for treating the time an employee is in a nonpay status for the purposes of determining whether the employee has completed a waiting period for a within-grade increase when the employee's scheduled tour of duty upon return to duty is different from the tour of duty at the time the leave without pay (nonpay status) began. The interim regulations require agencies to use the original tour of duty (from which the time in a nonpay status was charged) for the following purposes: (1) crediting the time in a nonpay status toward the completion of a waiting period for a within-grade increase; and (2) extending the waiting period if the time in a nonpay status exceeds the allowable amount.

Currently, the regulations provide that time in a nonpay status is creditable service in the computation of a waiting period if it does not exceed an aggregate of (1) 2 workweeks for steps 2, 3, and 4 (or comparable position in the rate range); (2) 4 workweeks for steps 5, 6, and 7 (or comparable position in the rate range); and (3) 6 workweeks for steps 8, 9, and 10 (or comparable position in the rate range). Time in a nonpay status in excess of the allowable amount extends a waiting period by the excess amount. The interim regulations ensure that employees are treated equitably by requiring agencies to compute the waiting period on the basis of the tour of duty in effect at the time the employee enters into a nonpay status and *not* on the tour of duty in effect at the end of the waiting period. These interim regulations reflect guidance found in provisionally retained FPM Letter 531–57, February 9, 1984.)

Counting Travel Time as "Hours of Work"

OPM is revising regulatory language in 5 CFR 550.112 and 551.422 regarding an agency's authority to establish a mileage radius from an employee's official duty station for determining entitlement to overtime pay for travel. The interim regulations relating to overtime entitlements under both title 5, United States Code (§ 550.112(j)), and the Fair Labor Standards Act of 1938, as amended (FLSA) (§ 551.422(d)), state that agencies may establish a mileage radius of not greater than 50 miles to determine whether an employee's travel is within or outside the limits of the employee's official duty station for overtime pay purposes. However, the interim regulations provide for one exception: An agency's definition of an employee's official duty station for determining overtime pay for travel may not be smaller than an employee's "official station and post of duty" under the Federal Travel Regulation published by the General Services Administration. (An agency may establish more than one definition of official duty station for determining overtime pay for travel to be applied in different geographic locations. for example, an agency could have a large mileage radius in a remote rural area and a smaller radius in an urban area.)

The interim regulations establish parallel regulations for travel time as hours of work under both title 5 and the FLSA. The interim regulations revise the current requirement regarding travel time as hours of work under the FLSA so that an agency's definition of an employee's official duty station (including a mileage radius) that is used to determine entitlement to overtime pay for travel no longer has to be the same as that used by the agency to determine an employee's entitlement to per diem. Similarly, the definition of an employee's official duty station for purposes of overtime pay for travel need not necessarily be the same as that used to determine an employee's entitlement to locality pay, interim geographic adjustments, or special pay adjustments for law enforcement officers. Agencies may have different definitions of official duty station for different purposes. For example, the official duty station named on a notification of personnel action and used for geographic pay determinations must be a specific city, county, and state (or county and state in rural areas) to avoid confusion about entitlement to geographic pay entitlements. (These interim regulations revise guidance for travel time as hours of work under the FLSA found in provisionally retained FPM Letter 551–11, October 14, 1977, and incorporate similar provisions for FLSA-exempt employees. See former FPM letter 550–74, December 29, 1980.)

In addition, the interim regulations (for FLSA-exempt employees) provide in § 550.112(j)(2) that travel time between home and work is not hours of work and that the normal time spent in travel between home and work will be deducted from time spent traveling between home and a temporary duty location. This is parallel to current regulations in § 551.422(b) for determining overtime pay under the FLSA.

Sunday Premium Pay for Periods of Paid Leave and Excused Absence

The interim regulations in 5 CFR 550.171 revise the Sunday premium pay regulations in accordance with the decision of the United States Court of Appeals for the Federal Circuit in *Armitage, et al.* v. *United States* that employees who are regularly scheduled to work on Sunday are entitled to Sunday premium pay for periods of paid leave taken on Sundays. The regulations also state that employees covered by compressed work schedules are entitled to Sunday premium pay for the number of hours they are scheduled to work on Sundays. (These interim regulations reflect guidance found in provisionally retained FPM Letter 550–79, August 20, 1993.)

Payments During Evacuation

The interim regulations incorporate into 5 CFR part 550, subpart D, regulations published in FPM Supplement 990–2, Book 550, Appendix A, that may be adopted by agencies for making payments during evacuation in the United States and certain nonforeign areas. Governmentwide coordination of these regulations for Federal agencies is required by Executive Order 10982 of December 25, 1961. (The Secretary of State has prescribed similar regulations for civilian employees of Federal agencies who are located in foreign areas. These regulations are found in the Standardized Regulations (Government Civilians, Foreign Areas).)

The regulations provide for payments during an evacuation to employees or their dependents, or both, who are ordered to evacuate from or within United States areas because of imminent danger to their lives, such as natural disasters, or for military or other reasons.

Currently, if an agency adopts the agency regulations published in the FPM, the agency is required to notify

OPM of the date of adoption and of the areas in which the regulations would be applied. The interim regulations delete this notification requirement. Also, the interim regulations delete requirements for agency evacuation reports; however, each agency should develop its own internal monitoring system to ensure that its payments conform to the regulations. As required by section 4(b) of E.O. 10982, an agency that proposes to follow rules that differ from these regulations must secure prior approval from OPM. (These interim regulations reflect regulations found in provisionally retained FPM Supplement 990–2, Book 550, Appendix A. OPM does not plan to continue publishing the list of agencies having approved agency regulations for advance and evacuation payments that were published in provisionally retained FPM Supplement 990–2, Book 550, Appendix B.)

Back Pay Computations

The interim regulations clarify in 5 CFR 550.805(e)(1) that outside, "moonlight" employment engaged in by the employee both while Federally employed and erroneously separated is not to be deducted when computing the amount of back pay.

The regulations also revise the back pay computation rules in § 550.805(e)(2) by identifying the erroneous payments that must be deducted from a back pay award and enumerating the order in which such payments must be recovered. When an employee separates or retires from the Federal service, the employee typically receives certain payments, such as a refund of the employee's retirement contributions, severance pay, and/or a lump-sum payment for unused annual leave, as applicable. If the employee retires, he or she may also receive an annuity, and his or her health benefits and life insurance may be continued. When an employee is separated or retired from the Federal service because of an unwarranted or unjustified personnel action, such payments must be recovered by the Federal Government upon the employee's return to service. (These interim regulations reflect guidance found in provisionally retained FPM supplement 990–2, Book 550, subchapter S8.)

Computing Cost-of-Living Allowances for Employees Receiving Pay Retention

The interim regulations in 5 CFR 591.210 incorporate OPM's policy that an employee on pay retention who is entitled to a cost-of-living allowance or post differential is entitled to an allowance or differential computed as a percentage of his or her retained rate. (These interim regulations reflect guidance found in provisionally retained FPM Letter 591–50, July 26, 1989.)

Leave for Uncommon Tours of Duty

The interim regulations include a definition of "uncommon tour of duty" in 5 CFR 630.201, remove and reserve § 630.205, and revise § 630.210 to clarify how leave is accrued and charged when an agency establishes a special leave accrual and usage methodology for employees on uncommon tours of duty, such as firefighters who have 144-hour biweekly schedules (i.e., six 24-hour shifts).

The leave accrual rates for such employees must be directly proportionate to the rates for employees who accrue and use leave on the basis of an 80-hour biweekly schedule. For example, if a firefighter's leave is accrued and used on the basis of a 144-hour biweekly schedule, then the maximum annual leave accrual rate would be 14 hours per biweekly pay period, instead of the standard rate of 8 hours per biweekly pay period. (When 8 hours is multiplied by the factor of 144/80, the product is approximately 14. A special accrual rate of 24 hours would be used for the last full pay period in the calendar year to ensure equivalence in leave accrual over the entire year.) Such a firefighter would be charged leave proportionally for any applicable period of absence during the 144-hour uncommon tour of duty.

In addition, the regulations clarify how leave balances are recomputed for employees who convert to a different tour of duty for leave purposes. Leave balances must be converted to the proper number of hours based on the proportion of hours in the new tour of duty compared to the former tour of duty. For example, if a firefighter who accrues and uses leave based on a 144-hour biweekly tour of duty converts to a position in which he or she accrues and uses leave based on an 80-hour biweekly tour of duty, the converted leave balance is computed by multiplying the former balance by the factor of 80/144. (These interim regulations reflect guidance found in provisionally retained FPM Supplement 990–2, Book 630, S2–6b.)

Removal of Recordkeeping Requirements when Biweekly Pay Caps on Premium Pay Are Waived

The interim regulations eliminate the requirement in 5 CFR 550.106(d) that agencies document each determination to pay premium pay under the annual limitation for work performed in connection with an emergency. (Final regulations allowing agencies to waive the biweekly limitation on premium pay during an emergency, as provided by section 204 of the Federal Employees Pay Comparability Act of 1990, were published at 57 FR 31630, July 17, 1992.)

Agencies have found it difficult to retrieve the data necessary to comply with this recordkeeping requirement Therefore, OPM is amending its regulations to eliminate the need to document and keep certain records related to an emergency when an agency waives the biweekly premium pay limitation and uses the maximum annual earnings limitation for premium pay in its place. (These interim regulations are part of OPM's ongoing effort to reduce administrative burdens consistent with the goals of the National Performance Review.)

Waiver of Notice of Proposed Rule Making and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking and making this rule effective in less than 30 days. These interim regulations reflect guidance found in provisionally retained FPM materials that will sunset on December 31, 1994. The delay in effective date is being waived to permit continuity in administering Governmentwide pay and leave administration rules.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866

List of Subjects in 5 CFR Parts 451, 531, 550, 551, 591, and 630

Administrative practice and procedure; Claims; Decorations, medals, awards; Government employees; Law enforcement officers; Travel and transportation expenses; Wages.

U.S. Office of Personnel Management

James B. King,

Director

Accordingly, OPM is amending parts 451, 531, 550, 591, and 630 of title 5 of the Code of Federal Regulations as follows:

PART 451—INCENTIVE AWARDS

1. The authority citation for part 451 continues to read as follows:

Authority: 5 U.S.C. 4501–4507

2. In § 451.103, a new definition, *informal recognition items*, is added to read as follows:

§ 451.103 Definitions.

* * * * *

Informal recognition items means items of extremely nominal value granted as immediate, informal recognition of employee accomplishment.

* * * * *

3. In § 451.104, paragraphs (f) through (j) are redesignated as paragraphs (g) through (k), respectively, and a new paragraph (f) is added to read as follows:

§ 451.104 Policy.

* * * * *

(f) An award under this subpart may be granted to the legal heir or estate of a deceased employee.

* * * * *

4. In § 451.106, paragraph (b) is revised to read as follows:

§ 451.106 Responsibilities of the Office of Personnel Management.

* * * * *

(b) OPM shall review and approve or disapprove all recommendations for agency awards under this subpart that would grant an individual employee an award in excess of $10,000 but not over $25,000.

5. In § 451.107, paragraph (a)(3) is revised, paragraph (b) is redesignated as paragraph (c), and new paragraph (b) is added to read as follows:

§ 451.107 Agency responsibilities.

(a) * * *

(3) Award recommendations that would grant an individual employee an award in excess of $10,000 but not over $25,000; and

* * * * *

(b) Agencies that make expenditures for informal recognition items for distribution to employees shall establish criteria and procedures for granting and, as appropriate, documenting informal recognition items and for distinguishing such items from formal nonmonetary awards granted under this part.

* * * * *

PART 531—PAY UNDER THE GENERAL SCHEDULE

6. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981, and E.O. 12748, 56 FR 4521, February 4, 1991, 3 CFR 1991 Comp., p. 316;

Subpart A also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, December 30, 1991, 3 CFR 1991 Comp., p. 376;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, November 29, 1993, 3 CFR 1993 Comp., p. 682.

Subpart B—Determining Rate of Basic Pay

7. In § 531.204, paragraph (a)(3) is added to read as follows:

§ 531.204 Special provisions.

(a) * * *

(3) When an employee at grade GS–1 or grade GS–2 is promoted or transferred to a higher grade, the amount of a step increase above step 10 of the employee's grade equals the amount of the increment between step 9 and step 10 of the grade from which promoted.

* * * * *

8. In § 531.406, the introductory text to paragraph (b)(2) is revised, paragraph (b)(3) is redesignated as paragraph (b)(4), and a new paragraph (b)(3) is added to read as follows:

§ 531.406 Creditable service.

* * * * *

(b) * * *

(2) Time in a nonpay status (based upon the tour of duty from which the time was charged) is creditable service in the computation of a waiting period for an employee with a scheduled tour of duty when it does not exceed an aggregate of:

* * * * *

(3) Except as provided in paragraph (c) of this section, time in a nonpay status (based upon the tour of duty from which the time was charged) that is in excess of the allowable amount shall extend a waiting period by the excess amount.

* * * * *

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

9. The authority citation for part 550 subpart A, is revised to read as follows.

Authority: 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5548, and 6101(c); E.O. 12748, 3 CFR 1991 Comp., p.316.

§ 550.106 Annual maximum earnings limitation for work in connection with an emergency. [Amended]

10. In § 550.106, paragraph (d) is removed, and paragraph (e) is redesignated as paragraph (d).

11. In § 550.112, paragraph (j) is added to read as follows:

§ 550.112 Computation of overtime work.

* * * * *

(j) *Official duty station.* An agency may prescribe a mileage radius of not greater than 50 miles to determine whether an employee's travel is within or outside the limits of the employee's official duty station for determining entitlement to overtime pay for travel under paragraph (g) of this section except that—

(1) An agency's definition of an employee's official duty station for determining overtime pay for travel may not be smaller than the definition of "official station and post of duty" under the Federal Travel Regulation issued by the General Services Administration (41 CFR 301–1.3(c)(4)); and

(2) Travel from home to work and vice versa is not hours of work. When an employee travels directly from home to a temporary duty location outside the limits of his or her official duty station, the time the employee would have spent in normal home to work travel shall be deducted from hours of work.

12. Section 550.171 is revised to read as follows:

§ 550.171 Authorization of pay for Sunday work.

An employee is entitled to pay at his or her rate of basic pay plus premium pay at a rate equal to 25 percent of his or her rate of basic pay for each hour of Sunday work which is not overtime work or for each hour while in a paid leave or excused absence status on Sunday and which is not in excess of 8 hours or, for an employee on a compressed work schedule, not in excess of the number of hours the employee is scheduled to work on Sunday for each regularly scheduled tour of duty which begins or ends on Sunday.

13. Subpart D of part 550, consisting of §§ 550.401 through 550.407, is revised to read as follows:

Subpart D—Payments During Evacuation

550.401 Purpose, applicability, authority, and administration.
550.402 Definitions.
550.403 Advance payments; evacuation payments; special allowances.
550.404 Computation of advance payments and evacuation payments; time periods.
550.405 Determination of special allowances.
550.406 Work assignments during evacuation; return to duty.
550.407 Termination of payments during evacuation.
550.408 Review of accounts; service credit.

Authority: 5 U.S.C. 5527; E.O. 10982, 3 CFR 1959–1963., p. 502.

Subpart D—Payments During Evacuation

§ 550.401 Purpose, applicability, authority, and administration.

(a) *Purpose.* This subpart provides regulations to administer subchapter III (except sections 5524a and 5525) of chapter 55 of title 5, United States Code. The regulations provide for Governmentwide uniformity in making payments during an evacuation to employees or their dependents, or both, who are evacuated in the United States and certain non-foreign areas because of natural disasters or for military or other reasons that create imminent danger to their lives.

(b) *Applicability.* This subpart applies to—

(1) Executive agencies, as defined in section 105 of title 5, United States Code.

(2) Employees of an agency who are U.S. citizens or who are U.S. nationals;

(3) Employees of an agency who are not citizens or nationals of the United States, but who were recruited with a transportation agreement that provides return transportation to the area from which recruited; and

(4) Alien employees of an agency hired within the United States.

(c) *Authority.* The head of an agency may make advance payments and evacuation payments and pay special allowances as provided by this subpart. If the head of an agency proposes to issue regulations that deviate from the provisions of this subpart, prior approval of the agency regulations, as required by section 4(b) of Executive Order 10982 of December 25, 1961, must be secured from the Office of Personnel Management.

(d) *Administration.* The head of an agency having employees subject to this subpart is responsible for the proper administration of this subpart. Payment of advance payments and evacuation payments and any required adjustments shall be made in accordance with procedures established by the agency.

§ 550.402 Definitions.

Agency means an Executive agency, as defined in section 105 of title 5, United States Code.

Day means a calendar day, except when otherwise specified by the head of an agency.

Dependent means a relative of the employee residing with the employee and dependent on the employee for support.

Designated representative means a person 16 years of age or over who is named by an employee for the purpose of caring for a dependent.

Evacuated employee means an employee of an agency who has received an order to evacuate.

Order to evacuate means an oral or written order to evacuate an employee from an assigned area.

Safe haven means a designated area to which an employee or dependent will be or has been evacuated.

United States area means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, and any territory or possession of the United States (excluding the Trust Territory of the Pacific Islands).

§ 550.403 Advance payments; evacuation payments; special allowances.

(a) An advance payment of pay, allowances, and differentials may be made to an employee who has received an order to evacuate, provided that, in the opinion of the agency head or designated official, payment in advance of the date on which an employee otherwise would be entitled to be paid is required to help the employee defray immediate expenses incidental to the evacuation.

(b) Evacuation payments of pay, allowances, and differentials may be made to an employee during an evacuation and shall be paid on the employee's regular pay days when feasible.

(c) Special allowances, including travel expenses and per diem, may be paid to evacuated employees to offset any direct added expenses that are incurred by the employee as a result of his or her evacuation or the evacuation of his or her dependents.

(d) An advance payment or an evacuation payment may be paid to the employee, a dependent 16 years of age or over, or a designated representative. When payment is made to someone other than the employee, prior written authorization by the employee must have been provided to the authorizing agency official.

(e) Any agency may make payments in an evacuation situation to an employee of another Federal agency (or his or her dependent(s) or personal representative) who has received an order to evacuate. When a payment is made under this subpart by an agency other than the employee's agency, the agency making the payment shall immediately report the amount and date of the payment to the employee's agency in order that prompt reimbursement may be made.

§ 550.404 Computation of advance payments and evacuation payments; time periods.

(a) Payments shall be based on the rate of pay (including allowances, differentials, or other authorized payments) to which the employee was entitled immediately before the issuance of the order of evacuation. All deductions authorized by law, such as retirement or social security deductions, authorized allotments, Federal withholding taxes, and others, when applicable, shall be made before advance payments or evacuation payments are made.

(b)(1) The amount of advance payments shall cover a time period not to exceed 30 days or a lesser number of days, as determined by the authorizing agency official.

(2) Evacuation payments shall cover the period of time during which the order to evacuate remains in effect, unless terminated earlier, but shall not exceed 180 days. When feasible, evacuation payments shall be paid on the employee's regular days.

(c) When an advance payment has been made to or for the account of an employee, the amount of the advance payment shall not diminish the amount of the evacuation payments that would otherwise be due the employee.

(d)(1) For full-time and part-time employees, the amount of an advance payment or an evacuation payment shall be computed on the basis of the number of regularly scheduled workdays for the time period covered.

(2) For intermittent employees, the amount of an advance payment or evacuation payment shall be computed on the basis of the number of days on which the employee would be expected to work during the time period covered. The number of days shall be determined, whenever possible, by approximating the number of days per week normally worked by the employee during an average 6-week period, as determined by the agency.

§ 550.405 Determination of special allowances.

In determining the direct added expenses that may be payable as special

allowances, the following shall be considered:

(a) The travel expenses and per diem for an evacuated employee and the travel expenses for his or her dependents shall be determined in accordance with the Federal Travel Regulation (FTR), whether or not the employee or dependents would actually be covered or subject to the FTR. In addition, per diem is authorized for dependents of an evacuated employee at a rate equal to the rate payable to the employee, as determined in accordance with the FTR (except that the rate for dependents under 11 years of age shall be one-half this rate), whether or not the employee or dependents would actually be covered or subject to the FTR. Per diem for an employee and his or her dependents shall be payable from the date of departure from the evacuated area through the date of arrival at the safe haven, including any period of delay en route that is beyond an evacuee's control or that may result from evacuation travel arrangements.

(b) Subsistence expenses for an evacuated employee or his or her dependents shall be determined at applicable per diem rates for the safe haven or for a station other than the safe haven that has been approved by appropriate authority. Such subsistence expenses shall begin to be paid on the date following arrival and may continue until terminated. The subsistence expenses shall be computed on a daily rate basis, as follows:

(1) The applicable maximum per diem rate shall be computed for the employee and each dependent who is 11 years of age or over. One-half of such rate shall be computed for each dependent under 11 years of age. These maximum rates may be paid for a period not to exceed the first 30 days of evacuation.

(2) If, after expiration of the 30-day period, the evacuation has not been terminated, the per diem rate shall be computed at 60 percent of the rates prescribed in paragraph (b)(1) of this section until a determination is made by the agency that subsistence expenses are no longer authorized. This rate may be paid for a period not to exceed 180 days after the effective date of the order to evacuate.

(3) The daily rate of the subsistence expense allowance actually paid an employee shall be either a rate determined in accordance with paragraphs (b) (1) and (2) of this section or a lower rate determined by the agency to be appropriate for necessary living expenses.

(c) Payment of subsistence expenses shall be decreased by the applicable per-person amount for any period during which the employee is authorized regular travel per diem in accordance with the FTR.

§ 550.406 Work assignments during evacuation; return to duty.

(a) Evacuated employees at safe havens may be assigned to perform any work considered necessary or required to be performed during the period of the evacuation without regard to the grades or titles of the employees. Failure or refusal to perform assigned work may be a basis for terminating further evacuation payments.

(b) When part-time employees are given assigned work at the safe haven, records of the number of hours worked shall be maintained so that payment may be made for any hours of work that are greater than the number of hours on which evacuation payments are computed.

(c) Not later than 180 days after the effective date of the order to evacuate, or when the emergency or evacuation situation is terminated, whichever is earlier, an employee must be returned to his or her regular duty station, or appropriate action must be taken to reassign him or her to another duty station.

§ 550.407 Termination of payments during evacuation.

Advance payments or evacuation payments terminate when the agency determines that—

(a) The employee is assigned to another duty station outside the evacuation area;

(b) The employee abandons or is otherwise separated from his or her position;

(c) The employee's employment is terminated by his or her transfer to retirement rolls or other type of annuity based on cessation of civilian employment;

(d) The employee resumes his or her duties at the duty station from which he or she was evacuated;

(e) The agency determines that payments are no longer warranted; or

(f) The date the employee is determined to be covered by the Missing Persons Act (50 App. U.S.C. 1001 et seq.), unless payment is earlier terminated under these regulations.

§ 550.408 Review of accounts; service credit.

(a) The payroll office having jurisdiction over the employee's account shall review each employee's account for the purpose of making adjustments at the earliest possible date after the evacuation is terminated (or earlier if the circumstances justify), after the employee returns to his or her assigned duty station, or when the employee is reassigned officially.

(b) The employee's pay shall be adjusted on the basis of the rates of pay, allowances, or differentials, if any, to which he or she would otherwise have been entitled under all applicable statutes other than section 5527 of title 5, United States Code. Any adjustments in the employee's account shall also reflect advance payments made to the employee under § 550.403(a) of this subpart.

(c)(1) After an employee's account is reviewed as required by paragraph (a) of this section, if it is found that the employee is indebted for any part of the advance payment made to him or her or his or her dependent(s) or designated representative, recovery of the indebtedness shall be effected by the payroll office having jurisdiction over the employee's account, unless a waiver of recovery has been approved. Repayment of the indebtedness may be made either in full or in partial payments, as determined by the head of the agency or designated official.

(2) Recovery of indebtedness for advance payment shall not be required when it is determined by the head of the agency or designated official that the recovery would be against equity or good conscience or against the public interest. Findings that formed the basis for waiver of recovery shall be filed in the employee's personnel folder on the permanent side.

(d) For the period or periods covered by any payments made under this subpart, the employee shall be considered as performing active Federal service in his or her position without a break in service.

Subpart H—Back Pay

14. The authority citation for subpart H of part 550 is revised to read as follows:

Authority: 5 U.S.C. 5596(c); Pub. L. 100–202, 101 Stat. 1329.

15. In § 550.805, paragraph (e) is revised to read as follows:

§ 550.805 Back pay computations.

* * * * *

(e) In computing the amount of back pay under section 5596 of title 5, United States Code, and this subpart, an agency shall deduct—

(1) Any amounts earned by an employee from other employment undertaken to replace the employment from which the employee had been separated by the unjustified or unwarranted personnel action during the period covered by the corrective action, but not including additional or

"moonlight" employment the employee may have engaged in both while Federally employed and erroneously separated; and

(2) Any erroneous payments received from the Government as a result of the unjustified or unwarranted personnel action, which, in the case of erroneous payments received from a Federal employee retirement system, shall be returned to the appropriate system. Such payments shall be recovered from the back pay award in the following order:

(i) Retirement annuity payments (except health benefits and life insurance premiums);

(ii) Refunds of retirement contributions;

(iii) Severance pay;

(iv) Lump-sum payment for annual leave (and the annual leave shall be recredited for the employee's use under part 630);

(v) Health benefits and life insurance premiums, if coverage continued during the period of erroneous retirement; and

(vi) Other authorized deductions.

* * * * *

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

16. The authority citation for part 551 continues to read as follows:

Authority: 5 U.S.C. 5542(c); Sec. 4(f) of the Fair Labor Standards Act of 1938, as amended by Pub. L. 93–259, 88 Stat. 55 (29 U.S.C. 204f).

Subpart D—Hours of Work

17. In § 551.422, paragraph (d) is added to read as follows:

§ 551.422 Time spent traveling

* * * * *

(d) Except as provided in paragraph (b) of this section, an agency may prescribe a mileage radius of not greater than 50 miles to determine whether an employee's travel is within or outside the limits of the employee's official duty station for determining entitlement to overtime pay for travel under this part. However, an agency's definition of an employee's official duty station for determining overtime pay for travel may not be smaller than the definition of "official station and post of duty" under the Federal Travel Regulation issued by the General Services Administration (41 CFR 301–1.3(c)(4)).

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

18. The authority citation for part 591, subpart B, is revised to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; and E.O. 12510, 3 CFR, 1985 Comp., p. 338.

19. In § 591.210, paragraph (b)(1) is revised to read as follows:

§ 591.210 Payment of allowances and differentials.

* * * * *

(b)(1) Except as provided in paragraph (b)(2) of this section, allowances and differentials shall be calculated and paid as a percentage of an employee's hourly rate of basic pay, including a retained rate of pay under 5 U.S.C. 3594(c) or 5363, for those hours for which the employee receives basic pay, including all periods of paid leave, detail, or travel status outside the allowance or differential area. Allowances and differentials shall be included in any lump-sum payment for accumulated and current accrued annual leave issued under sections 5551 or 5552 of title 5, United States Code, to an employee who separates while in a duty status in the allowance or differential area.

* * * * *

PART 630—ABSENCE AND LEAVE

20. The authority citation for part 630 is revised to read as follows:

Authority: 5 U.S.C. 6311; § 630.303 also issued under 5 U.S.C. 6133(a); § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, June 16, 1965, 3 CFR 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332 and Public Laws 100–566 (102 Stat. 2834), and 103–103 (107 Stat. 1022); subpart J also issued under 5 U.S.C. 6362 and Public Laws 100–566 and 103–103; subpart K also issued under Public Law 102–25 (105 Stat. 92); and subpart L also issued under 5 U.S.C. 6387 and Public Law 103–3 (107 Stat. 6, 23).

Subpart B—Definitions and General Provisions for Annual and Sick Leave

21. In § 630.201, paragraph (b)(7) is redesignated as paragraph (b)(8), and a new paragraph (b)(7) is added to read as follows:

§ 630.201 Definitions.

* * * * *

(b) * * *

(7) *Uncommon tour of duty* means a tour of duty that exceeds 80 hours of work in a biweekly pay period, including hours of actual work plus hours in a standby status for which the employee is compensated by annual premium pay under 5 U.S.C. 5545(c)(1) and part 550 of this chapter.

* * * * *

22. Section 630.205 is removed and reserved.

§ 630.205 [Reserved]

23. Section 630.210 is revised to read as follows:

§ 630.210 Uncommon tours of duty.

(a) An agency may require that an employee with an uncommon-tour of duty accrue and use leave on the basis of that uncommon tour of duty. The leave accrual rates for such employees shall be directly proportional (based on the number of hours in the biweekly tour of duty and the accrual rate of the corresponding leave category) to the standard leave accrual rates for employees who accrue and use leave on the basis of an 80-hour biweekly tour of duty. One hour (or appropriate fraction thereof) of leave shall be charged for each hour (or appropriate fraction thereof) of absence from the uncommon tour of duty.

(b) When an employee is converted to a different tour of duty for leave purposes, his or her leave balances shall be converted to the proper number of hours based on the proportion of hours in the new tour of duty compared to the former tour of duty.

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5 CFR Part 838

RIN: 3206–AG42

Child Abuse Accountability Act Implementation

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the Child Abuse Accountability Act. The Act requires OPM to comply with certain court orders for the enforcement of a judgment rendered against an employee or retiree for physical, sexual, or emotional abuse of a child. These regulations are necessary to establish procedures under which OPM will receive and process court orders, determine the amounts available to satisfy a court order, and make payments under the Act.

DATES: Interim rules effective October 14, 1994; comments must be received on or before February 27, 1995.

ADDRESSES: Send comments to Reginald M. Jones, Jr., Assistant Director for Retirement Policy Development; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: On October 14, 1994, the President approved the Child Abuse Accountability Act, Pub. L. 103–358. The Act requires OPM, as the administrator of the Civil Service Retirement System and basic benefits under the Federal Employees Retirement System, to comply with certain court orders for the enforcement of judgments rendered against employees or retirees for physical, sexual, or emotional abuse of a child. The Act was effective on October 14, 1994, and applies to court orders that OPM receives on or after that date. To implement the Act, we are issuing interim regulations to establish procedures for claimants to apply for benefits and for OPM to process claims under the Act.

These regulations apply only to benefits that OPM administers. The provisions of the Act relating to the Thrift Savings Plan are administered by the Federal Retirement Thrift Investment Board, an independent agency, and these regulations and the following discussion do not apply to such benefits.

1. Benefits affected by the Child Abuse Accountability Act

The statutory language places certain conditions on the availability of funds to comply with a court order. An analysis of the statutory language demonstrates that the Act covers only employee annuities and refunds of retirement contributions that are available for immediate payment.

The Act applies only to "Payments *which would otherwise be made,*" that is, payments for which the employee or retiree is immediately eligible. The statutory eligibility requirements that an employee must satisfy to be eligible for immediate payment include separation from the Federal service and application by the employee for payment, in addition to satisfaction of the specific statutory requirements that permit payment of a particular benefit. Money held by an employing agency or OPM that may be payable at some future date is not available for payment under court orders.

The Act applies only to "Payments *to an employee . . . or annuitant based on service of that individual.*" This language contains three limitations.

Only benefits to employees or annuitants are covered. Transfers of contributions between retirement systems are excluded because they are not payable to an employee or annuitant.

Only benefits based on service are covered. Payments based on voluntary contributions and refunds of excess contributions (which are deemed to be voluntary contributions at retirement) are excluded because such payments are not based on service.

Only benefits payable to the individual who performed the service that provides the basis for the benefit are covered. Death benefits are excluded by this language because, although they may be payable to an "annuitant," they are based on the service of the deceased individual, not the individual who is entitled to payment.

2. Garnishment procedures under part 581 apply

We apply the procedures established in subparts A through J of part 838 of Title 5, Code of Federal Regulations, to former spouse court orders. We apply the procedures established in part 581 of Title 5, Code of Federal Regulations, to garnishment orders for alimony and child support. Both the process that State authorities will follow and the varied form of orders that OPM will receive for child abuse judgment enforcement orders will be more like garnishment orders under part 581 than former spouse court orders under part 838.

The process applicable to child abuse judgment enforcement orders and garnishment orders for alimony and child support have several common elements. Both are dependent on enforcement procedures established by the State and subject to limitations that the State places on actions in the nature of garnishments. Both may be administrative orders, rather than court orders, if the State provides such a procedure. Former spouse court orders differ in both of these aspects.

In addition, all child abuse judgment enforcement orders are to collect amounts that have already been reduced to judgment. Although many garnishment orders are for current support obligations, many garnishment orders are to collect amounts past due. All former spouse court orders are treated as applying to current obligations. (*See* 5 CFR 838.234 requiring a temporary adjustment of the amount payable to a former spouse to satisfy an arrearage.)

Procedures applicable to actions in the nature of garnishment vary substantially among the States. Therefore, the types of documents that we will receive and procedures that we must follow for child abuse judgment enforcement orders will vary from State to State, like the documentation and procedures applicable to garnishments for alimony and child support. For example, some States require us to report the amount available for garnishment, and after we respond, they issue another order providing payment instructions. Others provide payment instructions in the first order. Therefore, our garnishment procedures are better suited to these variations than our procedures for former spouse benefits.

3. Section analysis

The amendment to section 838.101 of Title 5, Code of Federal Regulations, states that Subpart K applies to all child abuse judgment enforcement orders received on or after the effective date of the Child Abuse Accountability Act. OPM is not authorized to comply with child abuse judgment enforcement orders received before that date.

The amendment to section 838.102 of Title 5, Code of Federal Regulations, provides users of Title 5, Code of Federal Regulations, a cross reference to the regulation implementing the Child Abuse Accountability Act. This is intended to make the regulations easier to use.

The amendments to section 838.103 of Title 5, Code of Federal Regulations, adds definitions for two new terms, "child abuse debtor" and "child abuse judgment enforcement order" to describe the person entitled to benefits and the court or administrative order under the Child Abuse Accountability Act. The change in the definition of the term "net annuity" establishes that amounts already payable under a former spouse court order or a child abuse judgment enforcement order are not part of the "net annuity" that is available to satisfy additional orders that we receive later.

Subpart K establishes procedures and requirements for child abuse judgment enforcement orders. Section 838.1101 states the purpose and scope of the subpart.

Section 838.1111 restates the statutory rules concerning when funds are available for payment.

Section 838.1121 provides that the part 581 procedures apply to child

abuse judgment enforcement orders as discussed under item 2 of this supplementary information. Paragraph (b) repeats the rule under part 581 that we must comply with any order that appears valid on its face. The Supreme Court has upheld this limitation under the part 581 regulations in the case of *Morton* v. *United States*, 467 U.S. 822 (1984). Paragraph (c) provides a cross reference to the address at which OPM receives all orders affecting retirement benefits. This is the only correct address for service of process concerning child abuse judgment enforcement orders.

The table of amendments makes several conforming changes to existing regulations in Subpart A of part 838 so that the regulatory language in those sections includes references to the individuals and orders subject to the new subpart K.

4. Waiver of general notice of proposed rulemaking

Under section 553 (b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making these rules effective in less than 30 days. The regulations are effective on October 14, 1994, the effective date of the statutory change. The statute requires OPM to honor court orders received on or after the date of enactment. Delaying the processing of court orders for publication of a general notice of proposed rulemaking or the normal 30-day delay in effective date would be contrary to the public interest and the intent of the statute. Although later adjustments could be retroactive, such adjustments could seriously harm entitled persons with an immediate need for payment.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.

List of Subjects in 5 CFR Part 838

Administrative practice and procedure, Claims, Disability benefits, Government employees, Income taxes, Pensions, Retirement, Courts.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR part 838, as follows:

PART 838—COURT ORDERS AFFECTING RETIREMENT BENEFITS

1. The authority citation for part 838 is revised to read as follows:

Authority: 5 U.S.C. 8347(a) and 8461(g). Subparts B, C, D, E, J, and K also issued under 5 U.S.C. 8345(j)(2) and 8467(b). Sections 838.221, 838.422, and 838.721 also issued under 5 U.S.C. 8347(b).

Subpart A—General Provisions

2. In section 838.101, paragraph (c)(3) is added to read as follows:

§ 838.101 Purpose and scope.

* * * * *

(c) * * *

(3) Subpart K of this part applies only to court orders received by OPM on or after October 14, 1994.

* * * * *

3. In section 838.102, paragraph (a)(7) is added to read as follows:

§ 838.102 Regulatory structure.

(a) * * *

(7) Subpart K of this part contains rules applicable to court orders for the enforcement of judgments rendered against employees or annuitants for physical, sexual, or emotional abuse of a child.

4. Section 838.103 is amended by adding in alphabetical order a definition of the terms "child abuse creditor," and "child abuse judgment enforcement order," and by revising the definition of the term "net annuity" to read as follows:

§ 838.103 Definitions.

Child abuse creditor means an individual who applies for benefits under CSRS or FERS based on a child abuse judgment enforcement order.

Child abuse judgment enforcement order means a court or administrative order requiring OPM to pay a portion of an employee annuity or a refund of employee contributions to a child abuse creditor as a means of collection of a "judgment rendered for physically, sexually, or emotionally abusing a child" as defined in sections 8345(j)(3)(B) and 8467(c)(2) of title 5, United States Code.

* * * * *

Net annuity means the amount of monthly annuity payable after deducting from the gross annuity any amounts that are—

(1) Owed by the retiree to the United States;

(2) Deducted for health benefits premiums under section 8906 of title 5, United States Code, and §§ 891.401 and 891.402 of this chapter;

(3) Deducted for life insurance premiums under section 8714a(d) of title 5, United States Code;

(4) Deducted for Medicare premiums;

(5) Properly withheld for Federal income tax purposes, if the amounts withheld are not greater than they would be if the retiree claimed all dependents to which he or she was entitled;

(6) Properly withheld for State income tax purposes, if the amounts withheld are not greater than they would be if the retiree claimed all dependents to which he or she was entitled; or

(7) Already payable to another person based on a court order acceptable for processing or a child abuse judgment enforcement order.

Unless the court order expressly provides otherwise, *net annuity* also includes any lump-sum payments made to the retiree under section 8343a or section 8420a of title 5, United States Code.

* * * * *

5. Subpart K is added to read as follows:

Subpart K—Court Orders Under the Child Abuse Accountability Act

Sec.

Regulatory Structure

838.1101 Purpose and scope.

Availability of Funds

838.1111 Amounts subject to child abuse judgment enforcement orders.

Application, Processing, and Payment Procedures and Documentation Requirements

838.1121 Procedures and requirements.

Subpart K—Court Orders Under the Child Abuse Accountability Act

Regulatory Structure

§ 838.1101 Purpose and scope.

(a) This subpart regulates the procedures that the Office of Personnel Management will follow upon the receipt of claims arising out of child abuse judgment enforcement orders.

(b) This subpart prescribes—

(1) The circumstances that must occur before employee annuities or refunds of employee contributions are available to satisfy a child abuse judgment enforcement order; and

(2) The procedures that a child abuse creditor must follow when applying for a portion of an employee annuity or

refund of employee contributions based on a child abuse judgment enforcement order.

Availability of Funds

§ 838.1111 Amounts subject to child abuse judgment enforcement orders.

(a)(1) Employee annuities and refunds of employee contributions are subject to child abuse enforcement orders only if all of the conditions necessary for payment of the employee annuity or refund of employee contributions to the former employee have been met, including, but not limited to—

(i) Separation from the Federal service;

(ii) Application for payment of the employee annuity or refund of employee contributions by the former employee; and

(iii) Immediate entitlement to an employee annuity or refund of employee contributions.

(2) Money held by an employing agency or OPM that may be payable at some future date is not available for payment under child abuse judgment enforcement orders.

(3) OPM cannot pay a child abuse creditor a portion of an employee annuity before the employee annuity begins to accrue.

(b) Waivers of employee annuity payments under the terms of section 8345(d) or section 8465(a) of title 5, United States Code, exclude the waived portion of the annuity from availability for payment under a child abuse judgment enforcement order if such waivers are postmarked or received before the date that OPM receives the child abuse judgment enforcement order.

Application, Processing, and Payment Procedures and Documentation Requirements

§ 838.1121 Procedures and requirements.

(a) Except as otherwise expressly provided in this part, the procedures and requirements applicable to legal process under part 581 of this chapter apply to OPM's administration of child abuse judgment enforcement orders.

(b)(1) OPM will accept for processing any legal process under part 581 of this chapter that appears valid on its face.

(2)(i) After OPM has determined that a child abuse judgment enforcement order is valid on its face, OPM will not entertain any complaint concerning the validity of the order. Such complaints must be presented to authorities having jurisdiction to review the validity of the legal process.

(ii) OPM will not delay compliance with a child abuse judgment enforcement order based on any complaint concerning the validity of the order unless instructed to do so by an appropriate authority under the law of the jurisdiction issuing the legal process, the office of the United States Attorney for the jurisdiction issuing the legal process, or the U.S. Department of Justice.

(c)(1) The address for service of a child abuse judgment enforcement order is provided in appendix A to subpart A of this part.

(2)(i) OPM considers service of legal process by mailing or delivery of the child abuse judgment enforcement order to the designated address appropriate service notwithstanding more formal requirements imposed on creditors under State law.

(ii) OPM will execute forms required under a State procedure to waive any right to more formal procedures for service of legal process than specified in paragraph (c)(2)(i) of this section.

§§ 838.101, 838.122, 838.131, 838.134 [Amended]

7. In the list below, for each section and paragraph indicated in the left two columns, remove the material indicated in the third column where it appears in the paragraph, and add the material indicated in the fourth column:

Section	Paragraph	Remove	Add
838.101	(b)(2) ...	spouse .	spouse or child abuse creditor
838.101	(b)(3) ...	spouse .	spouse or child abuse creditor
838.122	(b)	spouses	spouses or child abuse creditors
838.122	(e)	spouse .	spouse or child abuse creditor
838.131	(b)(2) ...	spouse .	spouse or child abuse creditor
838.132	(b)	spouse .	spouse or child abuse creditor
838.134	(a)(1) ...	affect ...	relate to
838.134	(a)(1) ...	former spouses.	individuals (former spouses or child abuse creditors)
838.134	(a)(1) ...	issued ..	received by OPM
838.134	(a)(2) ...	spouse or separated spouse.	spouse, separated spouse, or child abuse creditor

[FR Doc. 94–31823 Filed 12–27–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 93–088–2]

Avocados From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the interstate movement of Hawaiian fruits and vegetables to allow avocados to be moved from Hawaii into Alaska, accompanied by a limited permit and subject to certain conditions. This action is warranted because the climatic conditions in Alaska ensure that pests of avocados will not present a threat to agriculture in that State. This action relieves some restrictions on the interstate movement of avocados from Hawaii without presenting a significant risk of introducing injurious insects into the United States. We are also amending the regulations to clarify that limited permits may be issued by inspectors or by persons operating under compliance agreements, unless the regulations specify that the limited permit must be issued by an inspector.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Victor Harabin, Head, Permit Unit, Port Operations, Plant Protection and Quarantine, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8645.

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian Fruits and Vegetables regulations (contained in 7 CFR 318.13 through 318.13–17, and referred to below as the regulations) govern, among other things, the interstate movement from Hawaii of avocados in a raw or unprocessed state. Regulation is necessary to prevent the spread of the Mediterranean fruit fly (*Ceratatis capitata* (Wied.)), the melon fly (*Dacus cucurbitae* (Coq.)), and the Oriental fruit fly (*Bactrocera dorsalis* (Hendel)(Syn. *Dacus dorsalis*)). These types of fruit flies are collectively referred to as Trifly. The regulations have allowed avocados to be moved interstate from Hawaii to any destination in the United States only if, among other things, they have been treated in accordance with a treatment specified in either § 318.13–4d or § 318.13–4e of the regulations.

On February 25, 1994, we published in the **Federal Register** (59 FR 9136–

9140, Docket No. 93–088–1) a proposal to amend the regulations by adding a new § 318.13–4g to allow untreated avocados from Hawaii to be moved interstate to Alaska only, provided that certain conditions are met to help ensure that the avocados moved to Alaska are free from Trifly. We proposed these conditions, in addition to limiting movement only to Alaska, to minimize the risk to Alaskan apples and pears and to address the slight risk that some Hawaiian avocados might eventually move from Alaska to other States.

We solicited comments concerning our proposal for 60 days ending April 26, 1994. We received seven comments by that date. They were from State departments of agriculture, fruit growers associations, an agricultural marketing and trade association, and fruit growers and shippers. One comment was in favor of the proposed rule, three comments requested specific revisions to the proposed rule, and three comments opposed the proposed rule. We carefully considered all of the comments we received. They are discussed below.

One concern raised by commenters opposed to the proposed rule was that, although we proposed to allow avocados from Hawaii to be moved to Alaska only, there remains a risk that the avocados could be transshipped to the contiguous 48 States. These commenters cited, as an example of a case which demonstrated that transshipments can occur, an interim rule concerning Unshu oranges from Japan that we published in the **Federal Register** on September 3, 1985 (50 FR 35533, Docket No. 85–354). Prior to this interim rule, Unshu oranges were allowed to be imported into the State of Alaska without restriction. The interim rule added restrictions because inspection found that Unshu oranges were being moved from Alaska to other places in the United States.

While it is true that the illegal movement did occur, it should be explained that there were factors connected with the importation of Unshu oranges at that time that gave shippers incentive to violate the regulations by shipping their fruit to the contiguous 48 States. These factors would not be applicable to the interstate movement of avocados from Hawaii.

For example, Unshu oranges were not then grown in the United States. Fresh Unshu oranges were allowed to be imported into the United States exclusively from Japan, and only into Alaska. They were, therefore, not readily available in all U.S. markets. Unshu oranges are an expensive specialty fruit, often given as a gift during winter holidays. The demand for these oranges may not have been met by the severe restrictions on their importation into the United States, providing incentives for transshipment. In contrast, avocados grown in the United States are readily available in U.S. markets and are relatively inexpensive, especially in the western and southeastern States where they are grown. Moving the avocados from Alaska to the contiguous 48 States would not benefit shippers economically, as that practice did for shippers of Unshu oranges. Reshipping would significantly increase the shippers' packaging and shipping costs, offsetting any price advantage over California growers; and, since the U.S. demand for avocados is already being met by California and Florida growers, there is no incentive for shippers to violate the regulations in this way.

We have also considered the suggestion by some commenters that Hawaiian avocados may be moved inadvertently from Alaska to the contiguous 48 States by tourists or business travellers who would carry them in their luggage, pockets, or handbags. It is our belief that this is not likely to occur. Avocados are not generally eaten in travel, like an apple or banana, because they usually require some preparation, such as for use in a salad or dip. Also, avocados are expected to be more expensive in Alaska than in California or other southwestern States, so a business traveller would not likely buy his or her avocados in Alaska if he or she is returning to one of those States.

A few commenters cited a previous program of the Animal and Plant Health Inspection Service (APHIS) that permitted the interstate movement of untreated avocados from Hawaii, and that was discontinued because a Trifly infestation was discovered in Hawaii. Commenters stated that this experience calls into question the reliability of even commercial shipments of Hawaiian avocados being pest-free.

On February 25, 1992, fruit fly larvae were discovered in a Hawaiian avocado picked by an APHIS inspector from a tree in an orchard that shipped avocados to the contiguous 48 States. Soon after, a significant fruit fly infestation was discovered in the Kona area of Hawaii. This infestation affected some avocados that could have been shipped to the contiguous 48 States. For these reasons, the program referred to by commenters, which allowed the movement of untreated avocados from Hawaii to any destination in the United States, was suspended by APHIS on February 26, 1992, and was removed completely in an interim rule published in the **Federal Register** on July 15, 1992 (57 FR 31306–31307, Docket No. 92–081–1).

The situation presented risk to U.S. agriculture only because, at the time the infestation was discovered, APHIS was allowing avocados to move untreated to the mainland United States. It would not have presented any significant risk had the fruit been moving only to the State of Alaska, as we have proposed. Before APHIS implemented the program to allow Hawaiian avocados to move untreated to the mainland, Hawaiian avocados were permitted to move untreated to Alaska only. During that time, we had no evidence of any infestations of Trifly. However, even if an infestation had been present in Hawaii, Trifly would not have become established in Alaska because of Alaska's freezing winters. Again, the basis for our proposal to allow Hawaiian avocados into Alaska is that climatic conditions in Alaska would not allow for the establishment of pests of avocado in the United States. Because Hawaiian avocados will not be distributed in the contiguous 48 States and will only move through specified ports under strict conditions en route to Alaska, our previous experience with Hawaiian avocados that were to be moved to the mainland does not alter our decision to allow avocados from Hawaii into Alaska.

Some commenters are concerned that this rule will impose too many additional inspection responsibilities on the APHIS inspection staff in Alaska, as well as in Portland and Seattle. We believe, however, that APHIS' Plant Protection and Quarantine (PPQ) staffs at these ports are currently adequate to manage the additional inspections. We do not anticipate any difficulties in inspecting the small amount of Hawaiian avocados which we expect will be moving to Alaska.

One commenter was concerned that fruit flies could escape during transloading of the avocados in Portland or Seattle, and that a population could survive in those States long enough to infest summer fruits and migrate to California before winter arrives. Our experience indicates it is highly unlikely this scenario will occur. We proposed to allow transloading only under very strict conditions and only under the supervision of an APHIS inspector. Large amounts of fruits and vegetables that are prohibited entry into any part of the continental United States are currently transshipped through Portland and Seattle, and are often transloaded at those ports under the

same conditions that we proposed for Hawaiian avocados. There has never been any incidence of a pest escaping, establishing itself temporarily in Washington or Oregon, and then moving south to California.

There were a few commenters who had suggestions to revise the proposed rule. One commenter requested that we add provisions to the proposed rule to allow the Hawaiian avocados destined for Alaska to be commingled in a single shipping container with other tropical fruits that are destined for either Portland or Seattle. We are making no changes based on this comment. The proposal states that "(t)he avocados may not be commingled in the same sealed container with articles that are intended for entry and distribution in any part of the United States other than Alaska." We believe this provision is necessary because the avocados may carry Trifly and commingling with articles not destined for Alaska would pose a pest risk if those articles became infested with Trifly. In explaining the reason for the request, the commenter states that "(o)ften shipping costs can be greatly reduced if only partial shipments of avocados are ordered, providing the shipment can be made with other fruit for the same destination." According to our proposal, as long as all articles in the sealed container are destined for entry and distribution in Alaska, the avocados may be commingled with other commodities. However, if the other articles in the sealed container are destined for Portland or Seattle with the intention of distributing them in any part of the United States other than Alaska, the shipment would be prohibited for the reasons given in the proposed rule.

The same commenter also requested that APHIS allow Hawaiian avocados destined for Alaska to be commingled in a single shipping container with other tropical fruits moving to foreign destinations. The commenter asked that APHIS allow such shipments to be broken down in Portland or Seattle, with the avocados being sent on to Alaska and the other fruits being sent to their respective foreign destinations.

Section 318.13–17 of the regulations governs the transit of fruits and vegetables from Hawaii into or through the continental United States en route to foreign destinations. Paragraph (d) of this section states that "(f)ruits and vegetables shipped into or through the continental United States from Hawaii in accordance with this section may not be commingled in the same sealed container with articles that are intended for entry and distribution in the continental United States."

"Continental United States" is defined in § 318.13–1 to include the State of Alaska. Therefore, in accordance with § 318.13–17, Hawaiian avocados moved to Alaska could not be commingled in a single shipping container with Hawaiian produce transiting the United States en route to foreign destinations. To allow such a scenario would mean that produce moving under different regulations would be commingled in a single shipping container. It would be operationally difficult to monitor the breakdown and movement of such a shipment to ensure that the avocados are actually moved to Alaska only and that the other produce is moved properly through the United States to its foreign destination. To help ensure that all produce is moved safely and in accordance with the regulations, we believe it is necessary to maintain that the Hawaiian avocados may only be commingled in a single shipping container with produce that is also moving to Alaska only. We are, therefore, making no changes based on this comment.

Another commenter suggested that we extend the proposed rule to allow avocados to be carried from Hawaii to Alaska by air passengers in their luggage under the following conditions: (1) In pit baggage on direct flights to Alaska only; (2) only during the months of October to March or April; (3) only "green ripe" avocados; and (4) only rough-skinned varieties with the stems intact. We are making no changes based on this comment, for several reasons. The proposed rule includes many provisions and safeguards to help minimize the risk that the avocados will be infested with Trifly, and to help ensure that the avocados are not diverted from their final destination in Alaska. For example, the proposal allows only commercial shipments of avocados to be moved from Hawaii to Alaska, since wild or "backyard" avocados could present a higher pest risk than commercially produced avocados. APHIS inspectors would have no way of knowing whether or not an avocado carried by an individual air passenger is commercially produced. Further, we proposed that the avocado shipments be accompanied from Hawaii to Alaska by a limited permit, as a means of documenting the movement of the shipment and ensuring it arrives at its final destination in Alaska. We would have no way of confirming whether or not avocados carried in a passenger's luggage were diverted en route to Alaska because there would be no limited permit. We also proposed strict packing requirements and that the avocados be moved in sealed containers and be transloaded only under specified conditions. These provisions further minimize the risk that Trifly would be introduced in the continental United States, should the avocados be carrying Trifly. We believe these precautions are necessary, and none of these precautions would be possible for air passenger luggage.

Finally, one commenter asked that we extend the proposal to allow all "fruits and vegetables otherwise prohibited movement into or through the continental United States" to be moved to Alaska under the same provisions as Hawaiian avocados. We are making no changes based on this comment. This rulemaking is only concerned with Hawaiian avocados. If, in the future, we determine that other fruits and vegetables prohibited movement into the continental United States can be safely moved to Alaska only, we will publish a separate proposed rule in the **Federal Register**.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule.

Miscellaneous

We are amending the phrase "Approved by the Office of Management and Budget under control number 0579–0049" that appears at the end of § 318.13–4 by removing the number "0579–0049" and replacing it with the number "0579–0088". This change corrects a prior misprint.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

This rule will allow untreated avocados to be moved interstate from Hawaii to Alaska under certain

conditions. Avocados are not presently shipped from Hawaii to Alaska because required treatments do not make it economically feasible.

In 1992, the U.S. production of avocados, not including Hawaii, was approximately 290 million pounds. California produced approximately 86 percent of this total, with the Hass variety accounting for about 85 percent of California's production. The peak harvest season of the Hass variety is April through October. California supplied approximately 90 percent of Alaska's 1992 avocado market.

In 1992, Hawaii produced approximately 700,000 pounds of avocados. Thus, Hawaii's total production was less than 0.3 percent of the total U.S. avocado production for that year. There are about 100 farms in Hawaii that produce avocados. All of these farms would be considered small entities (defined as having sales of less than $500,000 annually), as the total value in 1992 for Hawaiian avocados was only $322,000. The Sharwil variety accounts for about 75 percent of Hawaii's avocado production. The peak harvest season for Sharwil avocados is November through May.

This rule change will positively affect Hawaiian avocado producers by providing an economically feasible place for them to ship avocados when there is a surplus in production. Although almost all of Alaska's avocados are supplied by California, the addition of a Hawaiian supply is unlikely to have a significant impact on Californian avocado producers. Before a suspension of shipments in 1992, the shipment of Hawaiian avocados to the contiguous 48 States peaked at only 100,000 pounds. Further, Californian avocados (Hass variety) and Hawaiian avocados (Sharwil variety) have different peak production seasons. As a result, their importation will overlap very little. The shipment of Hawaiian avocados will allow Alaska to have a continuous and varied avocado supply.

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 inconsistent 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 approved by the Office of Management and Budget (OMB) under OMB control number 0579–0088.

List of Subjects in 7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

Accordingly, 7 CFR part 318 is amended as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, 167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 318.13–1 [Amended]

2. Section 318.13–1 is amended as follows:

a. In the definition for *Compliance agreement* the reference "§ 318.13–4(e)," and the reference "and § 318.13–4g" are removed.

b. A definition for *Commercial shipment* is added, in alphabetical order, to read as set forth below.

c. In the definition for *Limited permit*, the introductory text is amended by adding the phrase "or a person operating under a compliance agreement" immediately following "inspector", and paragraph (1) is amended by removing the phrase ", in conformity with a compliance agreement".

§ 318.13–1 Definitions.

Commercial shipment. Shipment containing fruits and vegetables that an inspector identifies as having been produced for sale or distribution in mass markets. Such identification will be based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower and packing house on the packaging, and documents consigning the shipment to a wholesaler or retailer.

* * * * *

3. In § 318.13–2, the regulatory text of paragraph (a) is redesignated as paragraph (a)(1) and a new paragraph (a)(2) is added to read as follows:

§ 318.13–2 Regulated articles.

(a) * * *

(2) Avocados which have been moved to Alaska in accordance with § 318.13–4g are prohibited movement from Alaska into or through other places in the continental United States, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

* * * * *

4. In § 318.13–3, the regulatory text of paragraph (b) is redesignated as paragraph (b)(1) and a new paragraph (b)(2) is added to read as follows:

§ 318.13–3 Conditions of movement.

* * * * *

(b) * * *

(2) Avocados may be moved interstate from Hawaii to Alaska if the provisions of § 318.13–4g are met, and if they are accompanied by a limited permit issued by an APHIS inspector in accordance with § 318.13–4(c).

* * * * *

5. Section 318.13–4 is amended as follows:

a. A new paragraph (c)(3) is added to read as set forth below.

b. Paragraph (d) is amended by adding the phrase "under paragraph (c)(3) of this section" immediately following the words "limited permit".

c. At the end of this section, the OMB control number "0579–0049" is removed and the number "0579–0088" is added in its place.

§ 318.13–4 Conditions governing the issuance of certificates or limited permits.

* * * * *

(c) * * *

(3) Except when the regulations specify an inspector must issue the limited permit, limited permits may be issued by a person operating under a compliance agreement.

* * * * *

§ 318.13–4f [Amended]

6. In § 318.13–4f, paragraph (b)(2)(iii) is amended by removing the reference "§ 318.13–4(e)" and adding "§ 318.13–4(d)" in its place.

7. Section 318.13–4g is added to read as follows:

§ 318.13–4g Administrative instructions governing movement of avocados from Hawaii to Alaska.

Avocados may be moved interstate from Hawaii to Alaska without being certified in accordance with § 318.13–4 (a) or (b) only under the following conditions:

(a) *Distribution and marking requirements.* The avocados may be moved interstate for distribution in Alaska only, the boxes of avocados must be clearly marked with the statement "Distribution limited to the State of Alaska", and the shipment must be identified in accordance with the requirements of § 318.13–6.

(b) *Commercial shipments.* The avocados may be moved in commercial shipments only.

(c) *Packing requirements.* The avocados must have been sealed in the packing house in Hawaii in boxes with a seal that will break if the box is opened.

(d) *Ports.* The avocados may enter the continental United States only at the following ports: Portland, Oregon; Seattle, Washington; or any port in Alaska.

(e) *Shipping requirements.* The avocados must be moved either by air or ship and in a sealed container. The avocados may not be commingled in the same sealed container with articles that are intended for entry and distribution in any part of the United States other than Alaska. If the avocados arrive at either Portland, Oregon or Seattle, Washington, they may be transloaded only under the following conditions:

(1) *Shipments by sea.* The avocados may be transloaded from one ship to another ship at the port of arrival, provided they remain in the original sealed container and that APHIS inspectors supervise the transloading. If the avocados are stored before reloading, they must be kept in the original sealed container and must be in an area that is either locked or guarded at all times the avocados are present.

(2) *Shipments by air.* The avocados may be transloaded from one aircraft to another aircraft at the port of arrival, provided the following conditions are met:

(i) The transloading is done into sealable containers;

(ii) The transloading is carried out within the secure area of the airport—i.e., that area of the airport that is open only to personnel authorized by the airport security authorities;

(iii) The area used for any storage of the shipment is within the secure area of the airport, and is either locked or guarded at all times the avocados are present. The avocados must be kept in a sealed container while stored in the continental United States en route to Alaska; and

(iv) APHIS inspectors supervise the transloading.

(3) *Exceptions.* No transloading other than that described in paragraphs (e) (1) and (2) of this section is allowed except under extenuating circumstances (such as equipment breakdown) and when authorized and supervised by an APHIS inspector.

(f) *Limited permit.* Shipments of avocados must be accompanied by a limited permit issued by an APHIS inspector in accordance with § 318.13–4(c) of this subpart. The limited permit will be issued only if the inspector examines the shipment and determines that the shipment has been prepared in compliance with the provisions of this section.

Done in Washington, DC, this 20th day of December 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–31893 Filed 12–27–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 94–25]

RIN 1557–AB14

Risk-Based Capital Guidelines: Collateralized Transactions

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing this final rule to amend the risk-based capital guidelines to lower the risk weight from 20 percent to zero percent for securities lending, repurchase agreement transactions, certain collateralized letters of credit, and other collateralized on- and off-balance sheet credit exposures. This final rule is needed to ensure that the risk weight assigned to transactions collateralized with cash or government securities more accurately reflects the minimal operational risk and the near absence of credit risk those transactions present. In addition, this amendment is intended to eliminate the disparity in the risk-based capital treatment of collateralized transactions in international markets, enabling national banks to compete more effectively with foreign banks, and achieves consistency with the capital rules applied to state-chartered banks that are members of the Federal Reserve System, and their holding companies.

EFFECTIVE DATE: December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Roger Tufts, Senior Economic Advisor, Office of the Chief National Bank Examiner, (202) 874–5070; Tom Rollo, National Bank Examiner, Office of the Chief National Bank Examiner, (202) 874–5070; Ronald Shimabukuro, Senior Attorney, Legislative and Regulatory Activities, (202) 874–4460; or Elizabeth Milor, Financial Economist, Economic and Regulatory Policy Analysis (202) 874–5220; Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The OCC adopted its risk-based capital guidelines in 1989 to implement the International Convergence of Capital Measurement and Capital Standards of July 1988, as reported by the Basle Committee on Banking Supervision (Basle Accord). *See* 54 FR 4168 (January 27, 1989). These guidelines, developed in cooperation with the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Board (FRB), provide minimum capital requirements that vary primarily on the basis of the credit risk profiles of the assets and off-balance sheet activities of banks.

Under the present OCC risk-based capital guidelines, all transactions collateralized by cash or government securities issued by OECD [1] countries are risk weighted at 20 percent.[2] However, some transactions collateralized with cash or near-cash assets expose banks to significantly less

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[1] Organization for Economic Cooperation and Development (OECD). Under the risk-based capital guidelines, OECD countries include countries that are full members of the OECD plus countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow. 12 CFR part 3, appendix A, section 1(c)(16).

[2] Specifically, 12 CFR part 3, appendix A, section 3(a)(2) assigns a 20 percent risk weight for:

(1) That portion of assets collateralized by the current market value of securities issued or guaranteed by the United States Government or its agencies, or the central government of an OECD country;

(2) That portion of assets collateralized by the current market value of securities issued or guaranteed by United States Government-sponsored agencies;

(3) That portion of assets collateralized by the current market value of securities issued by official multilateral lending institutions of regional development institutions in which the United States is a shareholder or contributing member; and

(4) Assets collateralized by cash held in a segregated deposit account by the reporting national bank.

credit risk than other similar transactions. The purpose of this final rule is to amend the risk-based capital guidelines to lower the risk weight from 20 percent to zero percent for certain collateralized transactions that have little or no credit risk and only minimal operational risk. This will have a beneficial effect on banks by lowering the required capital on certain low-risk transactions.

Proposal

The OCC published a notice of proposed rulemaking (NPRM) on August 18, 1993 (58 FR 43822) soliciting comment on whether to permit certain transactions collateralized by cash or OECD government securities to qualify for the zero percent risk-weight category. Specifically, the OCC proposed that securities lending and repurchase agreement transactions, and certain collateralized letters of credit be included in the zero percent risk-weight category. After carefully considering the comments received, the OCC is issuing this final rule adopting the NPRM and including additional collateralized on- and off-balance sheet exposures in the zero percent risk-weight category.

Discussion

In developing the risk-based capital guidelines, the FRB, FDIC and OCC (banking agencies) initially proposed assigning transactions collateralized by cash or OECD government securities to a 10 percent risk-weight category. *See* 53 FR 8550, 8553 (March 15, 1988). Under the Basle Accord, signatory countries have some latitude in assigning risk weights to claims collateralized by cash or OECD government securities. Specifically, paragraph 39 of the Basle Accord provides:

> In view of the varying practices among banks in different countries for taking collateral and different experiences of the stability of physical or financial collateral values, it has not been found possible to develop a basis for recognising collateral generally in the weighting system. The more limited recognition of collateral will apply only to loans secured against cash or against securities issued by OECD central governments and specified multilateral development banks. These will attract the weight given to the collateral (i.e. a zero or a low weight).

When the banking agencies adopted the final risk-based capital guidelines, they eliminated the 10 percent risk-weight category in the interest of simplicity. *See* 54 FR 4168 (January 27, 1989). To limit the types of claims qualifying for the zero percent risk-weight category, the banking agencies assigned claims collateralized by cash and OECD central government securities, including securities unconditionally guaranteed by the U.S. government, to the lowest non-zero risk weight, which is 20 percent. *See* 54 FR 4173, 4174 (January 27, 1989).

Comments

The comment period for the NPRM closed on September 17, 1993. Twenty-four comments were received. The commenters represented a diverse group of banking interests consisting of 14 banks and bank holding companies, one banking subsidiary, four bankers' associations or trade groups, one federally sponsored agency, and four other interested parties. All commenters generally supported reducing both the risk weight applied to the transactions included in the NPRM and the proposed collateral margin requirement. Most commenters also supported extending the zero percent risk weight to a broader range of transactions.

The OCC invited comment on all aspects of the NPRM and posed four specific questions. The questions and the responses follow.

Question 1: Should additional requirements be established to ensure that only very low-risk transactions are assigned to the zero percent risk-weight category? For example, should the zero percent risk weight be available only to institutions that have appropriate management and operating systems in place?

Eleven commenters addressed this question, all indicating that they consider additional regulatory requirements unnecessary. Most commenters expressed the view that operating systems are best supervised through the examination process. One commenter thought that new requirements were not needed, because of the new annual audit requirement established under the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242).

Question 2: Should the OCC establish a specific minimum positive margin required for collateralized transactions to qualify for the zero percent risk weight for those credit exposures with market values that experience normal volatility? Should the OCC require that national banks maintain margins in excess of this minimum for those exposures with more volatile market values?

A number of commenters indicated that the OCC should not establish a specific margin requirement under the risk-based capital guidelines. Eleven commenters cited the proposed daily mark-to-market and positive collateral margin requirements as sufficient for ensuring safety and soundness. The majority of these commenters stated that specific regulatory requirements could disrupt normal market operations, because the collateral margins are negotiated as part of the contract for many collateralized transactions. Two commenters stated that the Federal Financial Institutions Examination Council (FFIEC) guidelines provide adequate guidance for banks participating in the securities lending markets.[3] Four commenters suggested that, instead of establishing a collateral margin requirement, the OCC should use pro rata risk weighting, assigning only that portion of a transaction that has sufficient collateral to the zero percent risk-weight category.

Question 3: For some securities lending transactions, banks indemnify their clients against losses that could occur if the market value of the lent security exceeds that of the collateral provided. Should the OCC permit transactions with indemnification agreements that cover additional losses to qualify for the zero percent risk weight?

Four commenters supported excluding from the zero percent risk weight those collateralized transactions where a bank indemnifies a client against losses other than those arising from collateral shortages caused by changes in market values. However, most commenters suggested that indemnification agreements that cover additional losses should not exclude a collateralized transaction from the zero percent risk-weight category. Four commenters supported allowing the zero percent risk weight for transactions in which a bank indemnifies its client against all losses, if the client continuously maintains a positive collateral margin with the bank or its agent, or if a bank acts only as agent in a transaction.

Question 4: At this time, the OCC believes that this proposal would apply only to securities lending transactions, repurchase agreements, and certain collateralized financial guarantees. The OCC invites comment as to whether, in the current market place, there are other collateralized transactions that expose banks to minimal risk that have contracts structured to meet the collateral requirements of this proposal. The OCC is specifically interested in comments concerning (a) bank participation in collateralized markets for swap agreements and (b) bank issued

[3] These guidelines were issued to national banks by the OCC in Banking Circular 196, dated May 7, 1985.

collateralized letters of credit other than financial guarantees.

Eighteen commenters supported including all transactions collateralized with Treasury securities in the zero percent risk-weight category. Seven commenters supported including collateralized swap agreements, and three commenters supported extending the zero percent risk weight to all collateralized letters of credit. One commenter suggested that the OCC should assign all affiliate transactions, regardless of collateral, to the zero percent risk weight, because such transactions expose banks to the same insignificant credit risk as the collateralized transactions mentioned in the NPRM.

In addition to the questions presented in the NPRM, the commenters raised other significant issues. Two commenters mentioned that some otherwise qualifying collateralized transactions involving foreign jurisdictions would not qualify for the zero percent risk weight under the NPRM. For example, the NPRM discussed a requirement that a bank receiving collateral in the form of OECD government securities must have a perfected interest in those securities. If a bank counterparty operates in a foreign jurisdiction, these commenters noted that it may not be possible to obtain a perfected security interest for that transaction.

Two commenters recommended that transactions collateralized with either irrevocable letters of credit or government agency securities should be eligible for the zero percent risk-weight category, because these types of collateral provide the same degree of protection as government securities.

Twelve commenters urged the OCC to modify the NPRM to parallel that of the FRB, in order to maintain parity of capital treatment for collateralized transactions.

After careful consideration of all the comments received, the OCC adopts this final rule to permit national banks to assign to the zero percent risk-weight category the off-balance sheet transactions proposed in the NPRM. These off-balance sheet transactions include securities lending and repurchase agreement transactions, collateralized letters of credit that serve as financial guarantees, and certain collateralized credit exposures arising from off-balance sheet transactions. In addition, based on the comments received, the final rule allows national banks to include in the zero percent risk-weight category certain loans and other on-balance sheet credit exposures that are collateralized fully by cash or OECD government securities.

To qualify for a zero percent risk weight, the credit exposure must satisfy the following criteria:

(1) The bank's counterparty must maintain a positive collateral margin relative to the amount of the bank's exposure to that counterparty;

(2) The collateral either must be cash or securities issued or guaranteed by OECD central governments or U.S. government agencies;

(3) The bank must maintain control over the collateral. Cash collateral must be held on deposit by the bank or by a third-party for the account of the bank. OECD government securities posted by a counterparty must be held by the bank or by a third-party acting on behalf of the bank; and

(4) Where the bank is acting as agent for a customer in a transaction involving the lending or sale of securities, and the transaction is collateralized by cash or OECD government securities delivered to the bank, then (a) any bank indemnification is limited to no more than the difference between the market value of the securities and the collateral received, and (b) any reinvestment risk associated with that collateral is borne by the customer.

Collateral

Collateralized transactions differ from other types of transactions in that the bank's credit exposure is supported by a pledge of collateral. The degree of protection afforded by the collateral depends on the quality of the collateral and the legal effectiveness of the pledge.

This final rule limits the types of qualifying collateral to cash (both domestic and foreign currency) and OECD government securities. This limitation preserves the quality of the collateral because both cash and OECD government securities are liquid and readily marketable. With respect to the legal effectiveness of the pledge of collateral, this final rule requires that the bank must maintain control over the collateral. This requirement is different from the NPRM. First, this final rule does not require a bank to obtain a perfected security interest for OECD government securities pledged as collateral. This change was made in response to the comment that the perfection of a security interest may not be possible in certain transactions involving foreign jurisdictions. While the OCC believes that a perfected security interest generally should be obtained when possible, the OCC has considered this issue and shares the commenter's concern. As a result this final rule does not require the bank to obtain a perfected security interest in the collateral.

Second, the OCC believes that safe and sound banking practice requires that a bank exercise control over the collateral in order to protect the interest of the bank. If the collateral consists of cash, then the cash must be held on deposit by the bank or by a third-party for the account of the bank. To qualify for a zero percent risk weight, a third-party collateral arrangement must adequately insulate the bank from the credit exposure, and not introduce other significant risks.

Similarly, if the collateral consists of OECD government securities, then the bank must maintain control of the OECD government securities. In some instances, a bank may want to maintain actual possession over the OECD government securities. This final rule, however, makes clear that a third party, acting on behalf of the bank, may hold and administer the collateral for the bank.

A national bank may assign to the zero percent risk-weight category only those credit exposures for which the bank's counterparty maintains a positive collateral margin. In addition, if any component of a collateralized transaction is denominated in foreign exchange, then fluctuations in exchange rates also could result in changes in market value. Therefore, to qualify for the zero percent risk-weight category, a bank must ensure that its counterparty maintains a positive collateral margin with respect to fluctuations in interest rates, foreign exchange rates, or other market factors.

Bank Indemnification

This final rule clarifies an issue raised by the commenters. Where a bank is acting as agent for a customer in a securities lending transaction, the transaction qualifies for the zero percent risk-weight category provided that the bank's indemnification is limited. Under this final rule, any indemnification extended by a bank must be limited to no more than the difference between the market value of the securities lent and the market value of the collateral received, and any reinvestment risk associated with the collateral (either cash or OECD government securities) must be borne by the customer.

International Comparability of Capital Standards

In re-examining the capital treatment of transactions collateralized with cash and OECD government securities, the OCC noted that most foreign supervisors subscribing to the Basle Agreement

assign the zero percent risk weight to transactions collateralized with cash or OECD government securities. Reassigning these transactions to the zero percent risk-weight category under U.S. standards eliminates the disparate capital treatment.

Effective Date

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) (Pub. L. 103–325, 108 Stat. 2160) provides that the federal banking agencies must consider the administrative burdens and benefits of any new regulations that impose additional requirements on insured depository institutions. Section 302 also requires such a rule to take effect on the first day of the calendar quarter following final publication of the rule, unless the agency, for good cause, determines an earlier effective date is appropriate. Similarly, the Administrative Procedure Act requires a 30-day delayed effective date, unless the rule either relieves a restriction or the agency finds good cause. 5 U.S.C. 553(d)(1) and (3).

This final rule amend the risk-based capital guidelines to lower the risk weight from 20 percent to zero percent for certain transactions collateralized with cash or government securities. This final rule revises the risk weights to more accurately reflect the minimal operational risks of these transactions, corrects the disparity in the risk-based capital treatment of collateralized transactions in international markets, and provides consistency with the capital rules applied to state-chartered banks that are members of the Federal Reserve System, and their holding companies. The OCC believes that these benefits far outweigh any burden of complying with the requirements of this final rule. For these reasons, the OCC determines that, pursuant to section 302 of RCDRIA and 5 U.S.C. 553(d)(1) and (3), there is sufficient good cause to provide for an effective date of December 31, 1994. A year-end effective date allows banks to take advantage of this final rule for the first quarter of the new calendar year. Delay in implementation of this final rule, to the next calendar quarter would be unnecessary and contrary to the public interest because compliance would be more difficult and costly, and could require additional accounting adjustments and disclosures.

Regulatory Flexibility Act

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

This final rule benefits all national banks by assigning to the zero percent risk-weight category certain collateralized transactions, and by promoting competitive equality with other financial institutions. While the exact volume of collateralized transactions is unknown, the OCC believes that assigning these types of collateralized transactions to the zero percent risk-weight category will not significantly impact national banks, regardless of size.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

List of Subjects in 12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

Authority and Issuance

For the reasons set out in the preamble, appendix A of title 12, chapter I, part 3 of the Code of Federal Regulations is amended as set forth below.

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 3907, and 3909.

2. In appendix A to part 3, section 3 is amended by adding a new paragraph (a)(1)(viii), revising paragraph (a)(2)(iv), removing (a)(2)(xii), and redesignating paragraph (a)(2)(xiii) as (a)(2)(xii) to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

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Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items.

* * * * *

(a) * * *

(1) * * *

(viii) That portion of assets and off-balance sheet transactions collateralized by cash or securities issued or directly and unconditionally guaranteed by the United States Government or its agencies, or the central government of an OECD country, provided that:[9a]

(A) The bank maintains control over the collateral:

(1) If the collateral consists of cash, the cash must be held on deposit by the bank or by a third-party for the account of the bank;

(2) If the collateral consists of OECD government securities, then the OECD government securities must be held by the bank or by a third-party acting on behalf of the bank;

(B) The bank maintains a daily positive margin of collateral fully taking into account any change in the market value of the collateral held as security;

(C) Where the bank is acting as a customer's agent in a transaction involving the loan or sale of securities that is collateralized by cash or OECD government securities delivered to the bank, any obligation by the bank to indemnify the customer is limited to no more than the difference between the market value of the securities lent and the market value of the collateral received, and any reinvestment risk associated with the collateral is borne by the customer; and

(D) The transaction involves no more than minimal risk.

(2) * * *

(iv) That portion of assets collateralized by cash or by securities issued or directly and unconditionally guaranteed by the United States Government or its agencies, or the central government of an OECD country, that does not qualify for the zero percent risk-weight category.

* * * * *

Dated: December 21, 1994.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 94–31729 Filed 12–27–94; 8:45 am]

BILLING CODE 4810–33–P

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12 CFR Part 3

[Docket No. 94–24]

RIN 1557–AB14

Office of Thrift Supervision

12 CFR Part 567

[Docket No. 94–258]

RIN 1550–AA75

Risk-Based Capital Standards; Bilateral Netting Requirements

AGENCIES: Office of the Comptroller of the Currency (OCC), Department of the Treasury and the Office of Thrift

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[9a] Assets and off-balance sheet transactions collateralized by securities issued or guaranteed by the United States Government or its agencies, or the central government of an OECD country include, but are not limited to, securities lending transactions, repurchase agreements, collateralized letters of credit, such as reinsurance letters of credit, and other similar financial guarantees. Swaps, forwards, futures, and options transactions are also eligible, if they meet the collateral requirements. However, the OCC may at its discretion require that certain collateralized transactions be risk weighted at 20 percent if they involve more than minimal risk.

Supervision (OTS), Department of the Treasury.

ACTION: Final rule.

SUMMARY: The OCC and the OTS (the banking agencies) are amending their respective risk-based capital standards to recognize the risk-reducing benefits of qualifying bilateral netting contracts. On December 7, 1994, the Board of Governors of the Federal Reserve System (Board) issued a similar final rule. This final rule implements a recent revision to the Basle Accord permitting the recognition of such netting arrangements. The effect of the final rule is that banks, thrifts and savings associations (institutions or banking institutions) may net positive and negative mark-to-market values of interest and exchange rate contracts in determining the current exposure portion of the credit equivalent amount of such contracts to be included in risk-weighted assets.

EFFECTIVE DATE: December 31, 1994.

FOR FURTHER INFORMATION CONTACT:

OCC: For issues relating to netting and the calculation of risk-based capital ratios, Roger Tufts, Senior Economic Advisor (202/874–5070), Office of the Chief National Bank Examiner. For legal issues, Eugene H. Cantor, Senior Attorney, Securities & Corporate Practices (202/874–5210), or Ronald Shimabukuro, Senior Attorney, Legislative and Regulatory Activities Division (202/874–4460), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OTS: John F. Connolly, Senior Program Manager, Capital Policy (202/906–6465); Vicki Hawkins-Jones, Senior Attorney (202/906–7034), Regulations and Legislation Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

The Basle Accord [1] established a risk-based capital framework which was implemented in the United States by the banking agencies in 1989. Under this framework, off-balance-sheet interest rate and exchange rate contracts (rate contracts) are incorporated into risk weighted assets by converting each contract into a credit equivalent amount. This amount is then assigned to the appropriate credit risk weight category according to the identity of the obligor or counterparty or, if relevant, the guarantor or the nature of the collateral. The credit equivalent amount of an interest or exchange rate contract can be assigned to a maximum credit risk category of 50 percent.

The credit equivalent amount of a rate contract is determined by adding together the current replacement cost (current exposure) and an estimate of the possible increase in future replacement cost in view of the volatility of the current exposure over the remaining life of the contract (potential future exposure, also referred to as the add-on).[2]

For risk-based capital purposes, a rate contract with a positive mark-to-market value has a current exposure equal to that market value. If the mark-to-market value of a rate contract is zero or negative, then there is no replacement cost associated with the contract and the current exposure is zero. The original Basle Accord and U.S. banking agency standards provided that current exposure would be determined individually for each rate contract entered into by an institution; institutions generally were not permitted to offset, that is, net, positive and negative market values of multiple rate contracts with a single counterparty to determine one current credit exposure relative to that counterparty.[3]

In April 1993 the Basle Supervisors' Committee proposed a revision to the Basle Accord, endorsed by the G–10 Governors in July 1994, that permits institutions to net positive and negative market values of rate contracts subject to a qualifying, legally enforceable, bilateral netting arrangement. Under the revision, institutions with qualifying netting arrangements may calculate a single net current exposure for purposes of determining the credit equivalent amount for the included contracts.[4] If the net market value of the contracts included in such a netting arrangement is positive, then that market value equals the current exposure for the netting contract. If the net market value is zero or negative, then the current exposure is zero.

The Banking Agencies' Proposals

On May 20, 1994, the OCC issued a joint proposal with the Board to amend their respective risk-based capital standards (59 FR 26456) in accordance with the Basle Supervisors' Committee's April 1993 proposal. The OTS and the Federal Deposit Insurance Corporation (FDIC) issued their parallel netting proposals on June 14, 1994 (59 FR 30538) and July 25, 1994 (59 FR 37726), respectively. The banking agencies each proposed that for capital purposes the institutions under their supervision could net the positive and negative market values of interest and exchange rate contracts subject to a qualifying, legally enforceable, bilateral netting contract to calculate one current exposure for that master netting contract.

The proposals provided that the net current exposure would be determined by adding together all positive and negative market values of individual contracts subject to the netting contract. The net current exposure would equal the sum of the market values if that sum is a positive value, or zero if the sum of the market values is zero or a negative value. The proposals did not alter the calculation method for potential future exposure.[5]

Under the proposals, institutions would be able to net for risk-based capital purposes only with a written bilateral netting contract that creates a single legal obligation covering all included individual rate contracts and does not contain a walkaway clause.[6]

[1] The Basle Accord is a risk-based framework that was proposed by the Basle Accord Committee on Banking Supervison (Basle Supervisors' Committee) and endorsed by the central bank governors of the Group of Ten (G–10) countries in July 1988. The Basle Supervisors' Committee is comprised of representatives of the central banks and supervisory authorities from the G–10 countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg.

[2] This method of determining credit equivalent amounts for rate contracts is identified in the Basle Accord as the current exposure method, which is used by most international banks.

[3] It was noted in the Basle Accord that the legal enforceability of certain netting arrangements was unclear in some jurisdictions. The legal status of netting by novation, however, was determined to be settled and this limited type of netting was recognized. Netting by novation is accomplished under a written bilateral contract providing that any obligation to deliver a given currency on a given date is automatically amalgamated with all other obligations for the same currency and value date. The previously existing contracts are extinguished and a new contract for the single net amount, in effect, legally replaces the amalgamated gross obligations.

[4] The revision to the Basle Accord notes that national supervisors must be satisfied about the legal enforceability of a netting arrangement under the laws of each jurisdiction relevant to the arrangement. The Basle Accord also states that, if any supervisor is dissatisfied about enforceability under its own laws the netting arrangement does not satisfy this condition and neither counterparty may obtain supervisory benefit.

[5] Potential future exposure is estimated by multiplying the effective notional amount of a contract by a credit conversion factor which is based on the type of contract and the remaining maturity of the contract. Under the proposals, a potential future exposure amount would be calculated for each individual contract subject to the netting contract. The individual potential future exposures would then be added together to arrive at one total add-on amount.

[6] A walkaway clause is a provision in a netting contract that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all.

The proposals required an institution to obtain a written and reasoned legal opinion(s) stating that under the master netting contract the institution would have a claim to receive, or an obligation to pay, only the net amount of the sum of the positive and negative market values of included individual contracts if a counterparty failed to perform due to default, insolvency, bankruptcy, liquidation, or similar circumstances.

The proposals indicated that the legal opinion must normally cover: (i) The law of the jurisdiction in which the counterparty is chartered, or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, the law of the jurisdiction in which the branch is located; (ii) the law that governs the individual contracts covered by the netting contract; and (iii) the law that governs the netting contract.

The proposals provided that an institution must maintain in its files documentation adequate to support the bilateral netting contract. Documentation would typically include a copy of the bilateral netting contract, legal opinions and any related translations. In addition, the proposals required an institution to establish and maintain procedures to ensure that the legal characteristics of netting contracts would be kept under review.

Under the proposals, the banking agencies could disqualify any or all contracts from netting treatment for risk-based capital purposes if the requirements of the proposals were not satisfied. In the event of disqualification, the affected contracts would be treated as though they were not subject to the master netting contract. The proposals indicated that outstanding netting by novation arrangements would not be grandfathered, that is, such arrangements would have to meet all of the proposed requirements for qualifying bilateral netting contracts.

The proposals requested general comments as well as specific comments on the nature of collateral arrangements and the extent to which collateral might be recognized in conjunction with bilateral netting contracts. On December 7, 1994, the Board which worked with the banking agencies on the proposal, issued its version of the final rule in 59 FR 62987 (December 7, 1994).

Comments Received

The banking agencies together received 21 public comments on their proposed amendments. Thirteen comments were from banks, thrifts, and bank and thrift holding companies and five were from industry trade associations and organizations. In addition, there were three comments from law firms. All commenters supported the expanded recognition of bilateral netting contracts for risk-based capital purposes. Several commenters encouraged recognition of such contracts as quickly as possible. Many of the commenters concurred with one of the principal underlying tenets of the proposals, that is, that legally enforceable bilateral netting contracts can provide an efficient and desirable means for institutions to reduce or control credit exposure. A few commenters noted that, in their view, the recognition of bilateral netting contracts would create an incentive for market participants to use such arrangements and would encourage lawmakers to clarify the legal status of netting arrangements in their jurisdictions. One commenter noted that the expanded recognition of bilateral netting contracts would help keep U.S. banking institutions competitive in global derivatives markets.

While generally expressing their endorsement for the expanded recognition of bilateral netting contracts, nearly all commenters offered suggestions or requested clarification regarding details of the proposals. In particular, the commenters raised issues concerning specifics of the required legal opinions, the treatment of collateral, and the grandfathering of walkaway clauses and novation agreements.

Legal Opinions

Almost all commenters addressed the proposed requirement that institutions obtain legal opinions concluding that their bilateral netting contracts would be enforceable in all relevant jurisdictions. Commenters did not object to the general requirement that they secure legal opinions, rather they raised a number of questions about the form and substance of an acceptable opinion.

Form

Several commenters requested clarification as to the specific form of the legal opinion. Commenters wanted to know if a memorandum of law would satisfy the requirement or if a legal opinion would be required. They questioned whether a memorandum or opinion could be addressed to, or obtained by, an industry group, and whether a generic *opinion* or memorandum relating to a standardized netting contract would satisfy the legal opinion requirement.

Several commenters suggested that an opinion secured on behalf of the banking industry by an institution should be sufficient so long as the individual institution's counsel concurs with the opinion and concludes that the opinion applies directly to the institution's specific netting contract and to the individual contracts subject to it. A few commenters requested confirmation that legal opinions would not have to follow a predetermined format.

Scope

Several commenters identified two possible interpretations of the proposed language with regard to the scope of the legal opinions. They asked the banking agencies to clarify whether the opinions would be required to discuss only whether all relevant jurisdictions would recognize the contractual choice of law, or whether they must also discuss the enforceability of netting in bankruptcy or other instances of default. One commenter suggested deleting the requirement for a choice of law analysis.

A number of commenters objected to the proposed requirement that the legal opinion for a multibranch netting contract (that is, a netting contract between multinational banks that includes contracts with branches of the parties located in various jurisdictions) address the enforceability of netting under the law of the jurisdiction where each branch is located. These commenters stated that it should be sufficient for the legal opinion to conclude that netting would be enforced in the jurisdiction of the counterparty's home office if the master netting contract provides that all transactions are considered obligations of the home office and the branch jurisdictions recognize that provision.

Severability

Several commenters expressed concern about the proposed treatment for netting contracts that include contracts with branches in jurisdictions where the enforceability of netting is unclear. In such circumstances, commenters asserted, unenforceability or uncertainty in one jurisdiction should not invalidate the entire netting contract for risk-based capital netting treatment. These commenters contended that contracts with branches of a counterparty in jurisdictions that recognize netting arrangements should be netted and contracts with branches in jurisdictions where the enforceability of netting is not supported by legal opinions should, for risk-based capital

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to a defaulter or to the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the contract.

purposes, be severed, or removed from the master netting contract and treated as though they were not subject to that contract. These commenters noted that this treatment should only be available to the extent it is supported by legal opinion.

Conclusions

The proposals required a legal opinion to conclude that "relevant court and administrative authorities would find" the netting to be effective. Many commenters that discussed this aspect of the proposals expressed concern that this standard was too high. They suggested, instead, that the opinions be required to conclude that netting "should" be effective.

A few commenters requested clarification regarding the proposed requirement that the netting contract must create a single legal obligation.

Collateral

Twelve commenters addressed the proposals' specific request for comment on the nature of collateral and the extent to which collateral might be recognized in conjunction with bilateral netting contracts. All of these commenters believed collateral should be recognized as a means of reducing credit exposure. A few commenters noted that collateral arrangements are increasingly being used with derivative transactions.

Several commenters stated that for netting contracts that call for the use of collateral, the amount of required collateral is determined from the net mark-to-market value of the master netting contract. A few commenters added that mark-to-market collateral often is used in conjunction with a collateral "add-on" based on such things as the notional amount of the underlying contracts, the maturities of the contracts, the credit quality of the counterparty, and volatility levels.

A number of commenters offered their opinions as to how collateral should be recognized for risk-based capital purposes. Some suggested that the existing method of recognizing collateral for purposes of assigning credit equivalent amounts to risk categories is applicable to derivative transactions as well. Other commenters expressed the view that collateral should be recognized when assigning risk weights to the extent it is legally available to cover the total credit exposure for the bilateral netting contract in the event of default and that this availability should be addressed in the legal opinions.

Several other commenters suggested separating the net current exposure and potential future exposure of bilateral netting contracts for determining collateral coverage and appropriate risk weights. One commenter favored recognizing collateral for capital purposes by allowing an institution to offset net current exposure by the amount of the collateral to further reduce the credit equivalent amount.

Two commenters requested clarification that contracts subject to qualifying netting contracts could be eligible for a zero percent risk weight if the transaction is properly collateralized in accordance with the collateralized transactions rule proposed by the OCC in August 1993, when it is issued as a final rule. [7]

Walkaway Clauses

Several commenters addressed the proposed prohibition against walkaway clauses in contracts qualifying for netting for risk-based capital purposes. While most of these commenters agreed that, ultimately, walkaway clauses should be eliminated from master netting contracts, they favored a phase-out period, during which outstanding bilateral netting contracts containing walkaway clauses could qualify for capital netting treatment. Several commenters contended that if a defaulter is a net debtor under the contract, the existence of a walkaway clause would not affect the amount owed to the non-defaulting creditor.

Novation

A few commenters expressed concern that the banking agencies' proposals did not grandfather outstanding novation agreements. These commenters suggested a phase-in period during which novation agreements would not be required to be supported by legal opinions.

Other Issues

One commenter requested greater detail on the nature and extent of examination review procedures. Two commenters stated that in some situations obtaining translations might be burdensome. Another commenter suggested assurance that the banking agencies would not disqualify netting contracts in an unreasonable manner.

Approximately one-half of the commenters expressed concern that the banking agencies' proposals specifically were limited to interest rate and exchange rate contracts. All of these opposed limiting the range of products that could be included under qualifying netting contracts. In this regard, one commenter noted that where there is sufficient legal support confirming the enforceability of cross-product netting it should be recognized for capital purposes.

A number of commenters used the proposal as an opportunity to discuss the manner in which the add-on for potential future exposure is calculated. They suggested netting contracts should be recognized not only as a way to reduce the current exposure to a counterparty, but also the effects of such netting contracts should be taken into account to reduce the amount of capital institutions must hold against the potential future exposure to the counterparty.

Final Rule

After considering the public comments received and further deliberating the issues involved, the banking agencies are adopting a final rule recognizing, for capital purposes, qualifying bilateral netting contracts. This final rule is substantially the same as proposed.

Legal opinions

Form

The final rule affirms the usual and customary industry practice by providing that institutions obtain a written and reasoned legal opinion(s) concluding that the netting contract is enforceable in all relevant jurisdictions. The legal opinion provisions of the final rule are aimed at ensuring there is a substantial legal basis supporting the legal enforceability of a netting contract before reducing a banking institution's capital requirement based on that netting contract. A legal opinion, as that phrase is commonly understood by the legal community in the United States, can provide such a legal basis. A memorandum of law may be consistent with prudent banking practices provided it addresses all of the relevant issues in a credible manner and represents that netting is enforceable in all relevant jurisdictions.

As discussed in the proposals, legal opinions on bilateral netting contracts are prepared by either an outside law firm or an institution's in-house counsel, and need to (i) address all relevant jurisdictions, and (ii) conclude with a high degree of certainty that in

[7] In August 1993, the OCC issued a proposed amendment to its risk-based capital guidelines permitting certain collateralized transactions to qualify for a zero percent risk weight (58 FR 43822, August 18, 1993). In order to qualify for a zero percent risk weight, an institution would need to maintain a positive margin of qualifying collateral at all times. The collateral arrangement should provide for immediate liquidation of the claim in the event that a positive margin of collateral is not maintained. The Board issued a final rule with similar provisions in December 1992 (57 FR 62180, December 30, 1992).

the event of a legal challenge the banking institution's claim or obligation would be determined by the relevant court or administrative authority to be the net sum of the positive and negative mark-to-market values of all individual contracts subject to the bilateral netting contract. The subject matter and complexity of required legal opinions will vary.

Institutions sometimes use general, standardized opinions to help support the legal enforceability of their bilateral netting contracts. For example, a banking institution may have obtained a memorandum of law addressing the enforceability of netting provisions in a particular foreign jurisdiction. This opinion may be used as the basis for recognizing netting generally in that jurisdiction. However, with regard to an individual master netting contract, the memorandum of law is supplemented by an opinion that addresses issues such as the enforceability of the underlying contracts, choice of law, and severability.

For example, a generic opinion prepared for a trade association with respect to the effectiveness of netting under the standard form agreement issued by the trade association, by itself is generally inadequate to support a netting contract. Banking institutions supplement the generic opinion with a review of the terms of the specific netting contract that the institution is executing.

Scope

With regard to the scope of the legal opinions, institutions following prudent banking practices insure that legal opinions address the validity and enforceability of the entire netting contract. This generally involves a legal conclusion that under the applicable state or other jurisdictional law the netting contract is a legal, valid, and binding contract, enforceable in accordance with its terms, even in the event of insolvency, bankruptcy, or similar proceedings. Opinions provided on the law of jurisdictions outside of the U.S. should include a discussion and conclusion that netting provisions do not violate the public policy or the law of that jurisdiction.

A critical aspect of a qualified netting contract is the contract's enforceability in any jurisdiction whose law would likely be applied in an enforcement action, as well as the jurisdiction where the counterparty's assets reside. In this regard, and in light of the policy in some countries to liquidate branches of foreign banking institutions independent of the head office, prudent banking practices include ensuring that legal opinions address the netting contract's enforceability under: (i) The law of the jurisdiction in which the counterparty is chartered, or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, the law of the jurisdiction in which the branch is located; (ii) the law that governs the individual contracts subject to the bilateral netting contract; and (iii) the law that governs the netting contract.

Severability

The banking agencies recognize that for some multibranch netting contracts an institution may not be able to obtain a legal opinion(s) concluding that netting would be enforceable in every jurisdiction where branches covered under the master netting contract are located. The banking agencies concur with commenters that in such situations it may be inefficient for institutions to renegotiate netting contracts to ensure they cover only those jurisdictions where netting is clearly enforceable. In certain circumstances for capital purposes, banking institutions may use master bilateral netting contracts that include contracts with branches across all jurisdictions. Banking institutions should calculate their net current exposure for the contracts in those jurisdictions where netting clearly is enforceable as supported by legal opinion(s). The remaining contracts subject to the netting contract are severed from the netting contract and treated as though they were not subject to the netting contract for capital and credit purposes. This approach of essentially dividing contracts subject to the netting contact into two categories—those that clearly may be netted and those that may not—is consistent with prudent banking practices provided that the banking institution's legal opinions conclude that the contracts that do not qualify for netting treatment are legally severable from the master netting contract and that such severance will not undermine the enforceability of the netting contract for the remaining qualifying contracts.

Conclusions

The banking agencies have retained the proposed language concerning legal opinions, which is consistent with the prudent industry practice of obtaining legal opinions representing that netting is enforceable in all relevant jurisdictions. In response to commenters' assertions that the standard for this type of legal opinion is too high, the banking agencies note that use of the word "would" in the capital rules does not necessarily mean that the legal opinions must also use the word "would" or that enforceability must be determined to be an absolute certainty. The intent, rather, is for banking institutions to continue to secure a legal opinion indicating with a high degree of certainty that a netting contract will survive a legal challenge in any applicable jurisdiction. The degree of certainty should be apparent from the reasoning set out in the opinion.

As discussed above, a netting contract may include individual contracts that do not qualify for netting treatment, provided that these individual contracts are legally severable from the contracts to be netted for capital purposes. Legal opinions obtained by banking institutions under this final rule will address only those individual contracts that are covered by, and included under, the netting contract for capital purposes, e.g., not severed contracts.

Institutions generally must include all contracts covered by a qualifying netting contract in calculating the current exposure of that netting contract. In the event a netting contract covers transactions that are normally excluded from the risk-based ratio calculation, an institution may choose to either include or exclude all mark-to-market values of such contracts when determining net current exposure, but this choice must be followed consistently. Examples of such contracts include exchange rate contracts with an original maturity of fourteen calendar days or less or instruments traded on exchanges that require daily payment of variation margin.

Collateral

The final rule permits, subject to certain conditions, institutions to take into account qualifying collateral when assigning the credit equivalent amount of a netting contract to the appropriate risk weight category in accordance with the procedures and requirements currently set forth in each banking agencies' risk-based capital standards. The banking agencies have added language to the final rule clarifying that collateral must be legally available to cover the credit exposure of the netting contract in the event of default. For example, the collateral may not be pledged solely against one individual contract subject to the master netting contract. The legal availability of the collateral must be addressed in the legal opinions.

Walkaway Clauses

The banking agencies have considered the suggestion made by some commenters of a phase-out period for outstanding contracts with walkaway

clauses. The banking agencies continue to believe that walkaway clauses do not reduce credit risk. Accordingly, the final rule retains the provision that bilateral netting contracts with walkaway clauses are not eligible for netting treatment for risk-based capital purposes and does not provide for a phase-out period.

Novation

The proposal required all netting contracts, including netting by novation agreements, to be supported by written legal opinions. The banking agencies do not agree with commenters that a grandfathering period for outstanding novation agreements is needed. Rather, the banking agencies continue to believe that all netting contracts must be held to the same standards in order to promote certainty as to the legal enforceability of the contracts and to decrease the risks faced by counterparties in the event of default. Under the final rule, a netting by novation agreement must meet the requirements for a qualifying bilateral netting contract.

Other Issues

The banking agencies have considered all of the other issues raised by commenters. With regard to documentation, the banking agencies reiterate that, as with all provisions of risk-based capital, a banking institution must maintain in its files appropriate documentation to support any particular capital treatment including netting of rate contracts. Appropriate documentation typically would include a copy of the bilateral netting contract, supporting legal opinions, and any related translations. The documentation should be available to examiners for their review.

The banking agencies recognize commenters' concerns that the proposed rule was limited specifically to interest and exchange rate contracts. The banking agencies note that both the Basle Accord and their risk-based capital standards currently do not address derivatives contracts other than rate contracts. This final rule does not attempt to go beyond the scope of the existing risk-based capital framework and applies only to netting contracts encompassing interest rate and foreign exchange rate contracts. The banking agencies, however, note that the Basle Supervisors' Committee issued a proposal for public comment in July 1994 to amend the Basle Accord which explicitly would set forth the risk-based capital treatment for other types of derivative transactions, such as commodity, precious metal, and equity contracts. In this regard, the OCC issued a similar proposal, based on the Basle Supervisors' Committee proposal, to amend its risk-based capital standards (59 FR 45243, September 1, 1994).[8] The OTS intends to issue a similar proposal in the near future.

Until the Basle Accord has been revised and the banking agencies' risk-based capital rules have been amended to encompass commodity, precious metal, and equity derivative contracts, the banking agencies, rather than automatically disqualifying from capital netting treatment an entire netting contract that includes non-rate-related transactions, will permit institutions to apply the following treatment. In determining the current exposure of otherwise qualifying netting contracts that include non-rate-related contracts, institutions will be permitted to net the positive and negative mark-to-market values of the included interest and exchange rate contracts, while severing the non- rate-related contracts and treating them for risk-based capital purposes as individual contracts that are not subject to the master netting contract. (This treatment is similar to the treatment applied to a netting contract that includes contracts in jurisdictions where the enforceability of netting is not supported by legal opinion. With non-rate-related contracts, however, legal opinions on severability are not required.)

The banking agencies note that the regulatory language with regard to the calculation of potential future exposure remains essentially the same as that proposed. The banking agencies have clarified an underlying premise of the current exposure method for calculating credit exposure as set forth in the Basle Accord, that is, the add-on for potential future exposure must be calculated based on the effective, rather than the apparent, notional principal amount and the notional amount an institution uses will be subject to examiner review.[9]

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the banking agencies hereby certify that this final rule will not have a significant impact on a substantial number of small business entities. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

The OCC and the OTS have determined that this final rule is not a significant regulatory action as defined in Executive Order 12866.

Effective Date

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) provides that the federal banking agencies must consider the administrative burdens and benefits of any new regulations that impose additional requirements on insured depository institutions. Section 302 also requires such a rule to take effect on the first day of the calendar quarter following final publication of the rule, unless the agency, for good cause, determines an earlier effective date is appropriate. Similarly, the Administrative Procedure Act requires a 30-day delayed effective date, unless the rule either relieves a restriction or the agency finds good cause. 5 U.S.C. 553(d)(1) and (3).

This final rule imposes certain requirements on depository institutions that wish to net the current exposures of their rate contracts for purposes of calculating their risk-based capital requirements. For these institutions, any burden of complying with the requirements of netting under a legally enforceable netting contract and obtaining the necessary legal opinions should be outweighed by the benefits associated with a lower capital requirement. This final rule will not affect institutions that do not wish to net for capital purposes. For these reasons, the banking agencies have determined that there is sufficient good cause to provide for an effective date of December 31, 1994. A year-end effective date allows banking institutions to take advantage of netting in their year-end statements, if they so desire. Delay in implementation of this final rule to the next calendar quarter would be unnecessary and contrary to the public interest because compliance would be more difficult and costly, and could require additional accounting adjustments and disclosures.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks,

[8] The Board and the FDIC have issued similar proposed rules (59 FR 43508, August 24, 1994 and 59 FR 52714, October 19, 1994, respectively).

[9] The notional amount is, generally, a stated reference amount of money used to calculate payment, streams between the counterparties. In the event that the effect of the notional amount is leveraged or enhanced by the structure of the transaction, institutions must use the actual, or effective, notional amount when determining potential future exposure. For example, a stated notional amount of one million dollars with payments calculated at 2X Libor, would have an effective notional amount of two million dollars.

Reporting and recordkeeping requirements, Risk.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the preamble, part 3 of title 12, chapter I of the Code of Federal Regulations is amended as set forth below.

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 is revised to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 3907, and 3909.

2. In Appendix A to part 3, paragraph (c)(15) of section 1 is removed, paragraphs (c)(16) through (c)(29) are redesignated as paragraphs (c)(15) through (c)(28), and a new paragraph (c)(29) is added to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

Section 1. Purpose, Applicability of Guidelines, and Definitions.

* * * * *

(c) * * *

(29) *Walkaway clause* means a provision in a bilateral netting contract that permits a nondefaulting counterparty to make a lower payment than it would make otherwise under the bilateral netting contract, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the bilateral netting contract.

* * * * *

3. In appendix A, paragraph (b)(5) of section 3 is revised to read as follows:

* * * * *

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items.

* * * * *

(b) * * *

(5) *Off-balance sheet contracts—interest rate and foreign exchange rate contracts.* (i) *Calculation of credit equivalent amount.* The credit equivalent amount of an off-balance sheet interest rate or foreign exchange rate contract equals the sum of the current credit exposure (also referred to as the replacement cost) and the potential future credit exposure of the off-balance sheet rate contract. The calculation of credit equivalent amounts is measured in U.S. dollars, regardless of the currency or currencies specified in the off-balance sheet rate contract.

(A) *Current credit exposure.* The current credit exposure for a single off-balance sheet rate contract is determined by the mark-to-market value of the off-balance sheet rate contract. If the mark-to-market value is positive, then the current exposure equals that mark-to-market value. If the mark-to-market value is zero or negative, the current exposure is zero. However, in determining its current credit exposure for multiple off-balance sheet rate contracts executed with a single counterparty, a bank may net positive and negative mark-to-market values of off-balance sheet rate contracts if subject to a bilateral netting contract as provided by section 3(b)(5)(ii) of this appendix A. If the net mark-to-market value is positive, the current credit exposure equals that net mark-to-market value. If the net mark-to-market value is zero or negative, the current exposure is zero.

(B) *Potential future credit exposure.* The potential future credit exposure of an off-balance sheet rate contract, including a contract with a negative mark-to-market value, is estimated by multiplying the notional principal [19] by a credit conversion factor. Banks, subject to examiner review, should use the effective rather than the apparent or stated notional amount in this calculation. The credit conversion factors are: [20]

Remaining maturity	Interest rate contracts (percents)	Foreign exchange rate contracts (percents)
One year or less	0.0	1.0
Over one year ...	0.5	5.0

(ii) *Off-balance sheet rate contracts subject to bilateral netting contracts.* In determining its current credit exposure for multiple off-balance sheet rate contracts executed with a single counterparty, a bank may net off-balance sheet rate contracts subject to a bilateral netting contract by offsetting positive and negative mark-to-market values, provided that:

(A) The bilateral netting contract is in writing;

(B) The bilateral netting contract is not subject to a walkaway clause;

(C) The bilateral netting contract creates a single legal obligation for all individual off-balance sheet rate contracts covered by the bilateral netting contract. In effect, the bilateral netting contract provides that the bank has a single claim or obligation either to receive or pay only the net amount of the sum of the positive and negative mark-to-market values on the individual off-balance sheet contracts covered by the bilateral netting contract. The single legal obligation for the net amount is operative in the event that a counterparty, or a counterparty to whom the bilateral netting contract has been validly assigned, fails to perform due to any of the following events: default, insolvency, bankruptcy, or other similar circumstances;

(D) The bank obtains a written and reasoned legal opinion(s) representing, with a high degree of certainty, that in the event of a legal challenge, including one resulting from default, insolvency, bankruptcy, or similar circumstances, the relevant court and administrative authorities would find the bank's exposure to be the net amount under:

(I) The law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

(II) The law that governs the individual off-balance sheet rate contracts covered by the bilateral netting contract; and

(III) The law that governs the bilateral netting contract;

(E) The bank establishes and maintains procedures to monitor possible changes in relevant law and to ensure that the bilateral netting contract continues to satisfy the requirements of this section; and

(F) The bank maintains in its files documentation adequate to support the netting of an off-balance sheet rate contract.[21]

(iii) *Risk weighting.* Once the bank determines the credit equivalent amount for an off-balance sheet rate contract, it assigns that amount to the counterparty's appropriate risk weight category or, if relevant, to the nature of any collateral or guarantee. Collateral held against a netting contract is not recognized for capital purposes unless it is legally available for all contracts included in the netting contract. However, the maximum risk weight for the credit equivalent amount of such an off-balance sheet rate contract is 50 percent.

(iv) *Exceptions.* The following off-balance sheet rate contracts are not subject to the above calculation, and therefore, are not part of the denominator of a national bank's risk-based capital ratio:

(A) A foreign exchange rate contract with an original maturity of 14 calendar days or less; and

(B) Any interest rate or foreign exchange rate contract that is traded on an exchange requiring the daily payment of any variations in the market value of the contract.

* * * * *

4. The table title and the introductory text to Table 3 to appendix A are revised to read as follows:

* * * * *

Table 3—Treatment of Interest Rate and Foreign Exchange Rate Contracts

[19] For purposes of calculating potential future credit exposure for foreign exchange contracts and other similar contracts, in which notional principal is equivalent to cash flows, total notional principal is defined as the net receipts to each party falling due on each value date in each currency.

[20] No potential future credit exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indices, so-called floating/floating or basis swaps; the credit equivalent amount is measured solely on the basis of the current credit exposure.

[21] By netting individual off-balance sheet rate contracts for the purpose of calculating its credit equivalent amount, a bank represents that documentation adequate to support the netting of an off-balance sheet rate contract is in the bank's files and available for inspection by the OCC. Upon determination by the OCC that a bank's files are inadequate or that a bilateral netting contract may not be legally enforceable under any one of the bodies of law described in sections 3(b)(5)(ii)(D) (I) through (III) of this appendix A, the underlying individual off-balance sheet rate contracts may not be netted for the purpose of this section.

The current exposure method is used to calculate the credit equivalent amounts of these off-balance sheet rate contracts. These amounts are assigned a risk weight appropriate to the obligor or any collateral or guarantee. However, the maximum risk weight is limited to 50 percent. Multiple off-balance sheet rate contracts with a single counterparty may be netted if those contracts are subject to a qualifying bilateral netting contract.

* * * * *

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons set out in the preamble, part 567, of chapter V, title 12 of the Code of Federal Regulations is amended as set forth below:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.6 is amended by revising paragraph (a)(2)(v) to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) * * *

(2) * * *

(v) *Off-balance sheet contracts; interest-rate and foreign exchange rate contracts (Group E)*—(A) *Calculation of credit equivalent amounts.* The credit equivalent amount of an off-balance sheet interest rate or foreign exchange rate contract that is not subject to a qualifying bilateral netting contract in accordance with paragraph (a)(2)(v)(B) of this section is equal to the sum of the current credit exposure, *i.e.*, the replacement cost of the contract, and the potential future credit exposure of the off-balance sheet rate contract. The calculation of credit equivalent amounts is measured in U.S. dollars, regardless of the currency or currencies specified in the off-balance sheet rate contract.

(*1*) *Current credit exposure.* The current credit exposure of an off-balance sheet rate contract is determined by the mark-to-market value of the contract. If the mark-to-market value is positive, then the current credit exposure equals that mark-to-market value. If the mark-to-market value is zero or negative, then the current exposure is zero. In determining its current credit exposure for multiple off-balance sheet rate contracts executed with a single counterparty, a savings association may net positive and negative mark-to-market values of off-balance sheet rate contracts if subject to a bilateral netting contract as provided in paragraph (a)(2)(v)(B) of this section.

(*2*) *Potential future credit exposure.* The potential future credit exposure of an off-balance sheet rate contract, including a contract with a negative mark-to-market value, is estimated by multiplying the notional principal[9] by a credit conversion factor. Savings associations, subject to examiner review, should use the effective rather than the apparent or stated notional amount in this calculation. The conversion factors are:[10]

Remaining maturity	Interest rate contracts (percents)	Foreign exchange rate contracts (percents)
One year or less	0.0	1.0
Over one year ...	0.5	5.0

(B) *Off-balance sheet rate contracts subject to bilateral netting contracts.* In determining its current credit exposure for multiple off-balance sheet rate contracts executed with a single counterparty, a savings association may net off-balance sheet rate contracts subject to a bilateral netting contract by offsetting positive and negative mark-to-market values, provided that:

(*1*) The bilateral netting contract is in writing;

(*2*) The bilateral netting contract creates a single legal obligation for all individual off-balance sheet rate contracts covered by the bilateral netting contract. In effect, the bilateral netting contract provides that the savings association has a single claim or obligation either to receive or pay only the net amount of the sum of the positive and negative mark-to-market values on the individual off-balance sheet rate contracts covered by the bilateral netting contract. The single legal obligation for the net amount is operative in the event that a counterparty, or a counterparty to whom the bilateral netting contract has been validly assigned, fails to perform due to any of the following events: default, insolvency, bankruptcy, or other similar circumstances;

(*3*) The savings association obtains a written and reasoned legal opinion(s) representing, with a high degree of certainty, that in the event of a legal challenge, including one resulting from default, insolvency, bankruptcy or similar circumstances, the relevant court and administrative authorities would find the savings association's exposure to be the net amount under:

(*i*) The law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

(*ii*) The law that governs the individual off-balance sheet rate contracts covered by the bilateral netting contract; and

(*iii*) The law that governs the bilateral netting contract;

(*4*) The savings association establishes and maintains procedures to monitor possible changes in relevant law and to ensure that the bilateral netting contract continues to satisfy the requirements of this section; and

(*5*) The savings association maintains in its files documentation adequate to support the netting of an off-balance sheet rate contract.[11]

(C) *Walkaway clause.* A bilateral netting contract that contains a walkaway clause is not eligible for netting for purposes of calculating the current credit exposure amount. The term "walkaway clause" means a provision in a bilateral netting contract that permits a nondefaulting counterparty to make a lower payment than it would make otherwise under the bilateral netting contract, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the bilateral netting contract.

(D) *Risk weighting.* Once the savings association determines the credit equivalent amount for an off-balance sheet rate contract, that amount is assigned to the risk-weight category appropriate to the counterparty, or, if relevant, to the nature of any collateral or guarantee. Collateral held against a netting contract is not recognized for capital purposes unless it is legally

[9] For purposes of calculating potential future credit exposure for foreign exchange contracts and other similar contracts, in which notional principal is equivalent to cash flows, total notional principal is defined as the net receipts to each party falling due on each value date in each currency.

[10] No potential future credit exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indices, so-called floating/floating or basis swaps; the credit equivalent amount is measured solely on the basis of the current credit exposure.

[11] By netting individual off-balance sheet rate contracts for the purpose of calculating its credit equivalent amount, a savings association represents that documentation adequate to support the netting of an off-balance sheet rate contract is in the savings association's files and available for inspection by the OTS. Upon determination by the OTS that a savings association's files are inadequate or that a bilateral netting contract may not be legally enforceable under any one of the bodies of law described in paragraphs (a)(2)(v)(B)(*3*) (*i*) through (*iii*) of this section, the underlying individual off-balance sheet rate contracts may not be netted for the purposes of this section.

available for all contracts included in the netting contract. However, the maximum risk weight for the credit equivalent amount of such off-balance sheet rate contracts is 50 percent.

(E) *Exceptions.* The following off-balance sheet rate contracts are not subject to the above calculation, and therefore, are not part of the denominator of a savings association's risk-based capital ratio:

(*1*) A foreign exchange rate contract with an original maturity of 14 calendar days or less; and

(*2*) Any interest rate or foreign exchange rate contract that is traded on an exchange requiring the daily payment of any variations in the market value of the contract.

* * * * *

Dated: December 7, 1994.

Eugene A. Ludwig,

Comptroller of the Currency.

Dated: December 1, 1994.

Jonathan L. Fiechter,

Acting Director, Office of Thrift Supervision.

[FR Doc. 94–31730 Filed 12–27–94; 8:45 am]

BILLING CODE 4810-33-P AND 6720-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

RIN 3064–AA54

Applications, Requests, Submittals, Delegations of Authority, and Notices Required to be Filed by Statute or Regulation

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: This regulation amends the FDIC's requirements for publishing notice of the filing of an application for a merger transaction under the Bank Merger Act. If an emergency exists requiring expeditious action, an applicant will be required to publish only twice during the statutory 10 day period, with the second publication on the 10th day or the newspaper's publication date closest to 10 days after the first publication, instead of daily for 10 days as required by the current regulation. In non-emergency cases, the FDIC will require publication only three times at approximately two week intervals, with the last publication on the 30th day or the newspaper's publication date closest to 30 days after the first publication, instead of once a week for five consecutive weeks and, when published in a daily newspaper, on the 30th day from first publication as required by the current regulation. The regulation clarifies that the public comment period on the application begins when the first notice is published and is a minimum of 30 days for non-emergency merger transactions and a minimum of 10 days for emergency merger transactions. This regulation also brings the FDIC's notice requirements into greater conformance with those of the other federal banking agencies, gives applicants more flexibility, and lessens the regulatory burden imposed by the FDIC's current notice requirements.

EFFECTIVE DATE: December 28, 1994

FOR FURTHER INFORMATION CONTACT: Jesse G. Snyder, Assistant Director, Division of Supervision (202) 898–6915; or Ann Loikow, Counsel, Legal Division, (202) 898–3796, FDIC, 550 17th Street, N.W., Washington, D.C., 20429.

SUPPLEMENTARY INFORMATION:

Background

The Bank Merger Act (12 U.S.C. 1828(c)) (Act) prohibits any insured depository institution from merging or consolidating with, or directly or indirectly acquiring the assets or assuming the liabilities of, another insured depository institution or any noninsured bank or institution without the prior written approval of the responsible federal banking agency. The Act requires notice of a proposed merger transaction to be published prior to approval of the transaction and at appropriate intervals during a period at least as long as that allowed the Attorney General and other banking agencies to comment on the competitive factors involved (12 U.S.C. 1828(c)(3)). Except when the responsible agency finds that it must act immediately to prevent the probable failure of a depository institution, in which case no public notice is required, the statutory notice period is 30 days. If the responsible agency advises the Attorney General and other banking agencies of the existence of an emergency requiring expeditious action, the notice period is 10 days (12 U.S.C. 1828(c)(4)).

This provision of law is implemented by § 303.6(f) of the FDIC's rules and regulations (12 CFR 303.6(f)). Those regulations currently require applicants for non-emergency merger transactions to publish notice of the filing of the application at least once a week on the same day for five consecutive weeks and, when published in a daily newspaper, on the 30th day from first publication. Where the FDIC's Board of Directors (Board) determines that an emergency exists requiring expeditious action, applicants must publish daily for at least 10 days.

Proposed Rule

On June 9, 1993, the Board proposed amending § 303.6(f) by deleting the requirement that notice of non-emergency merger transactions be published on the same day each week and that, if published in a daily newspaper, notice be published on the 30th day. The Board also proposed reducing the necessary publication in emergencies requiring expeditious action to twice during a 10 day period, first as soon as possible after the Corporation notified the applicant that the merger would be processed as an emergency requiring expeditious action and, second, on the newspaper's publication date one week, or the day closest to one week, after the date of first publication. The proposal also clarified that the public comment period for merger transaction applications ran from the date of first publication and would be a minimum of 30 days for non-emergency merger transactions and a minimum of 10 days for emergency merger transactions.

The FDIC proposed these amendments in order to lessen the regulatory burden imposed on applicants, give applicants more flexibility, particularly those in small communities that do not have a daily newspaper, and bring its notice regulations into greater conformance with those of the other federal banking agencies. These purposes are consistent with Congress's direction in section 304 of the recently enacted Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160, 2215–2216 (12 U.S.C. 4804). That section directs the FDIC and the other Federal banking agencies "to harmonize, to the extent practicable, any inconsistent publication and public notice requirements."

The FDIC invited public comment on the proposal, which was published in the **Federal Register** on June 15, 1993 (58 FR 33050).

Public Comment Summary

The FDIC received eight comment letters, five from major bank holding companies and three from banking trade associations. All supported streamlining the notice requirements for merger transactions and agreed that the proposal would reduce regulatory burdens and costs, add flexibility, especially for applicants located in small communities, and reduce delays without significantly affecting the opportunity for public comment. Most commenters also encouraged the FDIC to work with the other federal banking

agencies toward achieving greater consistency in notice requirements under the Act.

Alternate Regulatory Approaches

The FDIC examined the notice requirements of the other federal banking agencies. Because some proposed merger transactions are part of transactions subject to approval by more than one agency, different notice requirements may apply. This can confuse applicants and delay action on applications, which can have a particularly adverse impact on transactions for which an emergency exists requiring expeditious action.

The Comptroller of the Currency (OCC) currently requires three publications for non-emergency merger transactions: first, the day the application is filed and then at two-week intervals with the final publication, if in a daily newspaper, on the 30th day or the closest day after that. Where there is an emergency requiring expeditious action, the OCC requires that notice be published twice, first on the day a request for emergency processing is approved and, second, on the 10th day after the first publication or the closest day after that (Comptroller's Manual for Corporate Activities, p. 112 (Jan. 1992)).

After the FDIC's notice of proposed rulemaking to revise its notice requirements for merger transactions was published, the Board of Governors of the Federal Reserve System revised its notice requirements for non-emergency merger transactions to require that notice be published on at least three occasions at appropriate intervals, with the last publication at least 30 days after the first (58 FR 47985, Sept. 14, 1993, codified as 12 CFR 262.3(b)(3)). The Board of Governors may also modify or waive compliance with these requirements when immediate action is necessary to prevent the probable failure of a bank or bank holding company or an emergency exists requiring expeditious action (12 CFR 225.14(h) and 262.3(l)).

The Office of Thrift Supervision (OTS) requires an applicant to publish notice no more than three calendar days before or after filing an application for a merger transaction and thereafter on a weekly basis during the period allowed for furnishing competitive factors reports (12 CFR 563.22(d)(2)(i)). The same rule applies regardless of whether the required statutory period is 10 or 30 days. The FDIC's proposed regulation proposed a similar once a week publication requirement.

The Final Rule

After reviewing the comment letters and the other agencies' publication requirements, the FDIC has decided to revise its proposal to provide that, in non-emergency cases, the FDIC will require publication only three times, at approximately two week intervals, with the last publication on the 30th day or the newspaper's publication date closest to 30 days after the first publication. If an emergency exists requiring expeditious action, an applicant need publish only twice during the statutory 10 day period, with the second publication on the 10th day or the newspaper's publication date closest to 10 days after the first publication. The regulation also clarifies that the public comment period on an application begins when the first notice is published and is a minimum of 30 days for non-emergency merger transactions and a minimum of 10 days for emergency merger transactions.

Responding to the tenor of the public comments, the final rule increases applicant flexibility, further reduces regulatory burden and costs and brings greater consistency with the notice requirements of the other federal banking agencies. For non-emergency merger transactions, the FDIC, like the OCC and the Board of Governors, will require only three, instead of five publications. Similarly, like the OCC and the OTS, the FDIC will require only two publications for emergency merger transactions.

The final rule also retains the flexibility in timing provided in the proposal. It requires an applicant to publish on the last day of the applicable period or on the newspaper's publication date closest to such date. This will allow banks to publish in a local weekly newspaper even though the newspaper does not publish on the 10th or 30th day if the weekly newspaper better serves a small community than the closest daily newspaper. Because the regulation decouples the length of the public comment period (a minimum of 10 or 30 days) from the publication dates, publishing in a weekly newspaper would not automatically extend the comment period. Thus, a bank publishing in a weekly newspaper could publish its final notice of a non-emergency merger transaction on the 29th day (or 8th day for an emergency transaction), even though that is prior to the expiration of the minimum comment period, since that would be the newspaper's publication date closest to the 30th (or 10th) day after the first publication.

In crafting the final regulation, the FDIC was concerned that the opportunity for public comment on an application for a merger transaction not be adversely affected. It should be noted that the final rule does not affect the length of the statutory public comment period; rather, it decreases the number of times publication is required during the statutory periods and liberalizes when notice must be published. The commenters agreed that frequency of required publication could be reduced without adversely affecting the opportunity for public comment.

Paperwork Reduction Act

No additional collections of information pursuant to § 3504 of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) are contained in this notice. The Board concluded that the notices required of depository institutions seeking approval of a merger transaction under the final regulation will not constitute a "collection of information" as defined in 5 CFR 1320.7. See also *Dole v. United Steelworkers of America*, 110 S. Ct. 929, 938 (1990). Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act Statement

The Board hereby certifies that the final rule will not have a significant adverse economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Instead, it will reduce certain regulatory burdens and costs for all depository institutions, including small depository institutions, for which the FDIC is the responsible agency under the Act and will have no particular adverse impact on other small entities. Accordingly, the Act's requirements regarding an initial and final regulatory flexibility analysis are not applicable.

Effective Date

The Board hereby finds that the 30 day delay in effective date required under the Administrative Procedure Act, 5 U.S.C. 553(d), may be waived for this final rule since the rule relieves a restriction. In particular, it decreases the number of times an applicant must publish notice of a proposed merger transaction and liberalizes when such notice must be published. As a result, the final rule will be effective upon publication in the **Federal Register** and will apply to all applications for merger transactions filed on or after that date.

Section 302 of the RCDRIA, 12 U.S.C. 4802(b), requires that all new

regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter. This provision was designed to assist institutions by establishing a consistent date for complying with new regulations so that institutions would be more regularly informed of new rules and be able to effectuate necessary training, software, and other operational modifications in an orderly manner. However, this final rule does not impose additional regulatory requirements, rather it relieves regulatory burden by decreasing previously imposed requirements. As a result, an institution that has complied with the FDIC's existing notice requirements will also have complied with these amendments to those requirements. For these reasons, the FDIC has determined that § 302 of RCDRIA does not apply and that this final regulation should become effective upon publication in the **Federal Register**.

List of Subjects in 12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

For the reasons set forth in the preamble, the Board of Directors of Federal Deposit Insurance Corporation amends part 303 of title 12 of the Code of Federal Regulations as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES REQUIRED TO BE FILED BY STATUTE OR REGULATION

1. The authority citation for Part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817(a)(2)(b), 1817(j), 1818, 1819 ("Seventh", "Eighth" and "Tenth"), 1828, 1831e, 1831o, 1831p-1(a); 15 U.S.C. 1607.

2. Section 303.6 is amended by revising paragraphs (f)(1)(i), (f)(3), and (f)(4) to read as follows:

§ 303.6 Application procedures.

* * * * *

(f)* * *

(1)* * *

(i) In the case of applications in connection with a *merger transaction* (as defined by the Bank Merger Act, 12 U.S.C. 1828(c)(3)), unless the Corporation determines it must act immediately in order to prevent the probable failure of one of the depository institutions involved, the applicant must publish notice of the proposed transaction on at least three occasions at approximately two week intervals in a newspaper of general circulation in the community or communities where the main offices of the banks or institutions involved are located, or if there is no such newspaper in the community, then in the newspaper of general circulation published nearest thereto. The last publication of the notice shall appear on the 30th day or the newspaper's publication date closest to 30 days after the first publication. The public shall have a minimum of 30 days from the date of first publication to comment on the application. Where the Corporation determines that an emergency exists which requires expeditious action, then notice shall be published twice during a 10 day period, first, as soon as possible after the Corporation notifies the applicant that the merger will be processed as an emergency requiring expeditious action and, second, on the 10th day or the newspaper's publication date closest to 10 days after the date of first publication. The public shall have a minimum of 10 days from the date of first publication to comment on the application. The published notice shall include the name and main office location of all banks or institutions involved in the transactions and the subject matter of the application. If it is contemplated that the continuing bank will operate the offices of the other depository institution(s) as branches, the following statement shall be added to the notice:

It is contemplated that all of the offices of the above named institutions will continue to be operated (with the exception of [identity and location of each office which will not be operated]).

* * * * *

(3) *Comments.* Anyone who wishes to comment on an application may do so by filing comments in writing with the appropriate regional director at any time before the Corporation has completed processing the application. Processing will be completed, for applications other than applications to move a main office, to relocate a remote service facility and to merge, not less than 15 days after the publication of the notice required by paragraph (f)(1) of this section or 15 days after the Corporation's receipt of the application, whichever is later; for applications to move a main office or relocate a remote service facility, not less than 21 days after the last publication or 21 days after the Corporation's receipt of the application, whichever is later; for merger applications for which the Corporation has not determined it must act immediately in order to prevent the probable failure of one of the depository institutions involved, not less than 30 days after the first publication or, if the Corporation has determined that an emergency exists which requires expeditious action, not less than 10 days after the first publication. This time period may be extended by the appropriate regional director for good cause. Such regional director shall report the reasons for such action to the Board of Directors.

(4) *Notice of right to comment.* In order to fully apprise the public of its rights under paragraph (f)(3) of this section, the notice described in paragraph (f)(1) of this section shall include a statement describing the right to comment upon, or protest the granting of, the application. This notice shall consist of the following statement:

Any person wishing to comment on this application may file his or her comments in writing with the regional director of the Federal Deposit Insurance Corporation at its regional office (address of the regional office) before processing of the application has been completed. Processing will be completed no earlier than the (main office moves and remote service facility relocations—21st; non-emergency mergers—30th; emergency mergers—10th; other applications described in paragraph (a) of this section—15th) day following (mergers—the first required publication; all other applications described in paragraph (a) of this section—either the date of the last required publication or the date of receipt of the application by the FDIC, whichever is later). The period may be extended by the regional director for good cause. The nonconfidential portion of the application file is available for inspection within one day following the request for such file. It may be inspected in the Corporation's regional office during regular business hours Photocopies of information in the nonconfidential portion of the application file will be made available upon request. A schedule of charges for such copies can be obtained from the regional office.

* * * *

By Order of the Board of Directors.

Dated at Washington, D.C. this 20th day of December, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary

[FR Doc. 94-31705 Filed 12-27-94; 8:45 am]

BILLING CODE 6714-01-P

12 CFR Part 325

RIN 3064–AB42

Risk-Based Capital Standards; Bilateral Netting Requirements

AGENCY: Federal Deposit Insurance Corporation (FDIC or Corporation).

ACTION: Final rule.

SUMMARY: The FDIC is amending its risk-based capital standards to recognize the risk-reducing benefits of qualifying bilateral netting contracts. This final rule implements a recent revision to the Basle Accord permitting the recognition of such netting arrangements. The effect of the final rule is that state nonmember banks (banks) may net positive and negative mark-to-market values of interest and exchange rate contracts in determining the current exposure portion of the credit equivalent amount of such contracts to be included in risk-weighted assets.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: William A. Stark, Assistant Director, (202/898–6972), Curtis Wong, Capital Markets Specialist, (202/898–7327), Division of Supervision, FDIC, 550 17th Street, N.W., Washington, D.C. 20429; Jeffrey M. Kopchik, Counsel, (202/898–3872), Christopher Curtis, Senior Counsel, (202/898–3728), FDIC, Legal Division, 550 17th Street, N.W., Washington, D.C., 20429; Linda L. Stamp, Counsel, (202/736–0161), Legal Division, 1717 H Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Background

The Basle Accord [1] established a risk-based capital framework which was implemented in the United States by the FDIC in 1989. Under this framework, off-balance-sheet interest rate and exchange rate contracts (rate contracts) are incorporated into risk weighted assets by converting each contract into a credit equivalent amount. This amount is then assigned to the appropriate credit risk category according to the identity of the obligor or counterparty or, if relevant, the guarantor or the nature of the collateral. The credit equivalent amount of an interest or exchange rate contract can be assigned to a maximum credit risk category of 50 percent.

The credit equivalent amount of a rate contract is determined by adding together the current replacement cost (current exposure) and an estimate of the possible increase in future replacement cost in view of the volatility of the current exposure over the remaining life of the contract (potential future exposure, also referred to as the add-on).[2]

For risk-based capital purposes, a rate contract with a positive mark-to-market value has a current exposure equal to that market value. If the mark-to-market value of a rate contract is zero or negative, then there is no replacement cost associated with the contract and the current exposure is zero. The original Basle Accord and FDIC standards provided that current exposure would be determined individually for each rate contract entered into by a bank; banks generally were not permitted to offset, that is, net, positive and negative market values of multiple rate contracts with a single counterparty to determine one current credit exposure relative to that counterparty.[3]

In April 1993 the Basle Supervisors' Committee proposed a revision to the Basle Accord, endorsed by the G–10 Governors in July 1994, that permits banks to net positive and negative market values of rate contracts subject to a qualifying, legally enforceable, bilateral netting arrangement. Under the revision, banks with qualifying netting arrangements are permitted to calculate a single net current exposure for purposes of determining the credit equivalent amount for the included contracts.[4] If the net market value of the contracts included in such a netting arrangement is positive, then that market value equals the current exposure for the netting contract. If the net market value is zero or negative, then the current exposure is zero.

The FDIC's Proposal

On May 20, 1994, the Board of Governors of the Federal Reserve System (Federal Reserve) and the Office of the Comptroller of the Currency (OCC) issued a joint proposal to amend their respective risk-based capital standards (59 FR 26456) in accordance with the Basle Supervisors' Committee's April 1993 proposal. The Office of Thrift Supervision (OTS) issued a similar netting proposal on June 14, 1994 (59 FR 30538) and the FDIC issued its netting proposal on July 25, 1994 (59 FR 37726). (Collectively, the FDIC, Federal Reserve, OCC and OTS are referred to as the banking agencies.) The banking agencies each proposed that for capital purposes the organizations under their supervision could net the positive and negative market values of interest and exchange rate contracts subject to a qualifying, legally enforceable, bilateral netting contract to calculate one current exposure for that master netting contract.

The banking agencies' proposals provided that the net current exposure would be determined by adding together all positive and negative market values of individual contracts subject to the netting contract. The net current exposure would equal the sum of the market values if that sum is a positive value, or zero if the sum of the market values is zero or a negative value. The proposals did not alter the calculation method for potential future exposure.[5]

Under the banking agencies' proposals, institutions would be able to net for risk-based capital purposes only with a written bilateral netting contract that creates a single legal obligation covering all included individual rate contracts and does not contain a walkaway clause.[6] The proposals required an institution to obtain a written and reasoned legal opinion(s)

[1] The Basle Accord is a risk-based framework that was proposed by the Basle Committee on Banking Supervision (Basle Supervisors' Committee) and endorsed by the central bank governors of the Group of Ten (G–10) countries in July 1988. The Basle Supervisors' Committee is comprised of representatives of the central banks and supervisory authorities from the G–10 countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg.

[2] This method of determining credit equivalent amounts for rate contracts is identified in the Basle Accord as the current exposure method, which is used by most international banks.

[3] It was noted in the Accord that the legal enforceability of certain netting arrangements was unclear in some jurisdictions. However, the legal status of netting by novation was determined to be settled and this limited type of netting was recognized. Netting by novation is accomplished under a written bilateral contract providing that any obligation to deliver a given currency on a given date is automatically amalgamated with all other obligations for the same currency and value date. The previously existing contracts are extinguished and a new contract, for the single net amount, is legally substituted for the amalgamated gross obligations.

[4] The revision to the Accord notes that national supervisors must be satisfied about the legal enforceability of a netting arrangement under the laws of each jurisdiction relevant to the arrangement. The Accord continues, if any supervisor is dissatisfied about enforceability under its laws, the netting arrangement does not satisfy this condition and neither counterparty may obtain supervisory benefit.

[5] Potential future exposure is estimated by multiplying the effective notional amount of a contract by a credit conversion factor which is based on the type of contract and the remaining maturity of the contract. Under the FDIC's proposal, a potential future exposure amount would be calculated for each individual contract subject to the netting contract. The individual potential future exposures would then be added together to arrive at one total add-on amount.

[6] A walkaway clause is a provision in a netting contract that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all, to a defaulter or to the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the contract

stating that under the master netting contract the institution would have a claim to receive, or an obligation to pay, only the net amount of the sum of the positive and negative market values of included individual contracts if a counterparty failed to perform due to default, insolvency, bankruptcy, liquidation, or similar circumstances.

The banking agencies' proposals indicated that the legal opinion must normally cover: (i) The law of the jurisdiction in which the counterparty is chartered, or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, the law of the jurisdiction in which the branch is located; (ii) the law that governs the individual contracts covered by the netting contract; and (iii) the law that governs the netting contract.

The banking agencies' proposals provided that an institution must maintain in its files documentation adequate to support the bilateral netting contract. Documentation would typically include a copy of the bilateral netting contract, legal opinions and any related translations. In addition, the proposals required an institution to establish and maintain procedures to ensure that the legal characteristics of netting contracts would be kept under review.

Under the proposals, the banking agencies could disqualify any or all contracts from netting treatment for risk-based capital purposes if the requirements of the proposals were not satisfied. In the event of disqualification, the affected contracts would be treated as though they were not subject to the master netting contract. The proposals indicated that outstanding netting by novation arrangements would not be grandfathered, that is, such arrangements would have to meet all of the proposed requirements for qualifying bilateral netting contracts.

The proposals requested general comments as well as specific comments on the nature of collateral arrangements and the extent to which collateral might be recognized in conjunction with bilateral netting contracts.

Comments Received

The banking agencies together received twenty-two public comments on their proposed amendments. Since all the comment letters were shared by the banking agencies, all of them will be discussed herein. Twelve of the commenters were banks, thrifts, and bank and thrift holding companies and five were industry trade associations and organizations. In addition, there were two comments from foreign financial institutions and three comments from law firms. All commenters supported the expanded recognition of bilateral netting contracts for risk-based capital purposes. Several commenters encouraged recognition of such contracts as quickly as possible. Many of the commenters concurred with one of the principal underlying tenets of the proposals, that is, that legally enforceable bilateral netting contracts can provide an efficient and desirable means for institutions to reduce or control credit exposure. A few commenters noted that, in their view, the recognition of bilateral netting contracts would create an incentive for market participants to use such arrangements and would encourage lawmakers to clarify the legal status of netting arrangements in their jurisdictions. One commenter noted that the expanded recognition of bilateral netting contracts would help keep U.S. banking organizations competitive in global derivatives markets.

While generally expressing their endorsement for the expanded recognition of bilateral netting contracts, nearly all commenters offered suggestions or requested clarification regarding details of the proposals. In particular, the commenters raised issues concerning specifics of the required legal opinions, the treatment of collateral, and the grandfathering of walkaway clauses and novation agreements.

Legal Opinions

Almost all commenters addressed the proposed requirement that institutions obtain legal opinions concluding that their bilateral netting contracts would be enforceable in all relevant jurisdictions. Commenters did not object to the general requirement that they secure legal opinions, rather they raised a number of questions about the form and substance of an acceptable opinion.

Form

Several commenters requested clarification as to the specific form of the legal opinion. Commenters wanted to know if a memorandum of law would satisfy the requirement or if a legal *opinion* would be required. They questioned whether a memorandum or opinion could be addressed to, or obtained by, an industry group, and whether a generic opinion or memorandum relating to a standardized netting contract would satisfy the legal opinion requirement.

Several commenters suggested that an opinion secured on behalf of the banking industry by an organization should be sufficient so long as the individual institution's counsel concurs with the opinion and concludes that the opinion applies directly to the institution's specific netting contract and to the individual contracts subject to it. A few commenters requested confirmation that legal opinions would not have to follow a predetermined format.

Scope

Several commenters identified two possible interpretations of the proposed language with regard to the scope of the legal opinions. They asked the banking agencies to clarify whether the opinions would be required to discuss only whether all relevant jurisdictions would recognize the contractual choice of law or whether they must also discuss the enforceability of netting in bankruptcy or other instances of default. One commenter suggested deleting the requirement for a choice of law analysis

A number of commenters objected to the proposed requirement that the legal opinion for a multibranch netting contract (that is, a netting contract between multinational banks that includes contracts with branches of the parties located in various jurisdictions) address the enforceability of netting under the law of the jurisdiction where each branch is located. These commenters stated that it should be sufficient for the legal opinion to conclude that netting would be enforced in the jurisdiction of the counterparty's home office if the master netting contract provides that all transactions are considered obligations of the home office and the branch jurisdictions recognize that provision.

Severability

Several commenters expressed concern about the proposed treatment for netting contracts that include contracts with branches in jurisdictions where the enforceability of netting is unclear. In such circumstances, commenters asserted, unenforceability or uncertainty in one jurisdiction should not invalidate the entire netting contract for risk-based capital netting treatment. These commenters contended that, to the extent supported by legal opinions, contracts with branches of a counterparty in jurisdictions that recognize netting arrangements should be netted and contracts with branches in jurisdictions where the enforceability of netting is not supported by legal opinions should, for risk-based capital purposes, be severed, or removed, from the master netting contract and treated as though they were not subject to that

contract. These commenters noted that this treatment should only be available to the extent it is supported by legal opinion.

Conclusions

The proposals required a legal opinion to conclude that "relevant court and administrative authorities would find" the netting to be effective. Many commenters that discussed this aspect of the proposals expressed concern that this standard was too high. They suggested, instead, that the opinions be required to conclude that netting "should" be effective.

A few commenters requested clarification regarding the proposed requirement that the netting contract must create a single legal obligation.

Collateral

Twelve commenters addressed the proposals' specific request for comment on the nature of collateral and the extent to which collateral might be recognized in conjunction with bilateral netting contracts. All of these commenters believed collateral should be recognized as a means of reducing credit exposure. A few commenters noted that collateral arrangements are increasingly being used with derivative transactions.

Several commenters stated that for netting contracts that call for the use of collateral, the amount of required collateral is determined from the net mark-to-market value of the master netting contract. A few commenters added that mark-to-market collateral often is used in conjunction with a collateral "add-on" based on such things as the notional amount of the underlying contracts, the maturities of the contracts, the credit quality of the counterparty, and volatility levels.

A number of commenters offered their opinions as to how collateral should be recognized for risk-based capital purposes. Some suggested that the existing method of recognizing collateral for purposes of assigning credit equivalent amounts to risk categories is applicable to derivative transactions as well. Other commenters expressed the view that collateral should be recognized when assigning risk weights to the extent it is legally available to cover the total credit exposure for the bilateral netting contract in the event of default and that this availability should be addressed in the legal opinions.

Several other commenters suggested separating the net current exposure and potential future exposure of bilateral netting contracts for determining collateral coverage and appropriate risk weights. One commenter favored recognizing collateral for capital purposes by allowing an institution to offset net current exposure by the amount of the collateral to further reduce the credit equivalent amount.

Two commenters requested clarification that contracts subject to qualifying netting contracts could be eligible for a zero percent risk weight if the transaction is properly collateralized in accordance with the Federal Reserve's collateralized transactions rule.[7]

Walkaway Clauses

Several commenters addressed the proposed prohibition against walkaway clauses in contracts qualifying for netting for risk-based capital purposes. While most of these commenters agreed that, ultimately, walkaway clauses should be eliminated from master netting contracts, they favored a phase-out period, during which outstanding bilateral netting contracts containing walkaway clauses could qualify for capital netting treatment. Several commenters contended that if a defaulter is a net debtor under the contract, the existence of a walkaway clause would not affect the amount owed to the non-defaulting creditor.

Novation

A few commenters expressed concern that the banking agencies' proposals did not grandfather outstanding novation agreements. These commenters suggested a phase-in period during which novation agreements would not be required to be supported by legal opinions.

Other Issues

One commenter requested greater detail on the nature and extent of examination review procedures. Two commenters stated that in some situations obtaining translations might be burdensome. Another commenter suggested assurance that the agencies would not disqualify netting contracts in an unreasonable manner.

Approximately one-half of the commenters expressed concern that the banking agencies' proposals specifically were limited to interest rate and exchange rate contracts. All of these opposed limiting the range of products that could be included under qualifying netting contracts. In this regard, one commenter noted that where there is sufficient legal support confirming the enforceability of cross-product netting it should be recognized for capital purposes.

A number of commenters used the proposal as an opportunity to discuss the manner in which the add-on for potential future exposure is calculated. They suggested netting contracts should be recognized not only as a way to reduce the current exposure to a counterparty, but also the effects of such netting contracts should be taken into account to reduce the amount of capital organizations must hold against the potential future exposure to the counterparty.

Final Rule

After considering the public comments received and further deliberating the issues involved, the FDIC has determined to adopt a final rule recognizing, for capital purposes, qualifying bilateral netting contracts. This final rule is substantially the same as proposed.

Legal opinions

Form

The final rule requires that banks obtain a written and reasoned legal opinion(s) concluding that the netting contract is enforceable in all relevant jurisdictions. This requirement is aimed at ensuring there is a substantial legal basis supporting the legal enforceability of a netting contract before reducing a bank's capital requirement based on that netting contract. A legal opinion, as that phrase is commonly understood by the legal community in the United States, can provide such a legal basis. A memorandum of law may be an acceptable alternative as long as it addresses all of the relevant issues in a credible manner.

As discussed in the proposal, the legal opinion may be prepared by either an outside law firm or a bank's in-house counsel. The salient requirements for an acceptable legal opinion are that it. (i) Addresses all relevant jurisdictions; and (ii) concludes with a high degree of certainty that in the event of a legal challenge the bank's claim or obligation would be determined by the relevant court or administrative authority to be the net sum of the positive and negative mark-to-market values of all individual contracts subject to the bilateral netting contract. The subject matter and complexity of required legal opinions will vary

[7] In December 1992, the Federal Reserve issued an amendment to its risk-based capital guidelines permitting certain collateralized transactions to qualify for a zero percent risk weight (57 FR 62180, December 30, 1992). In order to qualify for a zero percent risk weight, an institution must maintain a positive margin of qualifying collateral at all times. Thus, the collateral arrangement should provide for immediate liquidation of the claim in the event that a positive margin of collateral is not maintained. The OCC has issued a similar proposal (58 FR 43822, August 18, 1993).

To some extent, banks may use general, standardized opinions to help support the legal enforceability of their bilateral netting contracts. For example, a bank may have obtained a memorandum of law addressing the enforceability of netting provisions in a particular foreign jurisdiction. This opinion may be used as the basis for recognizing netting generally in that jurisdiction. However, with regard to an individual master netting contract, the general opinion would need to be supplemented by an opinion that addresses issues such as the enforceability of the underlying contracts, choice of law, and severability.

For example, the FDIC does not believe that a generic opinion prepared for a trade association with respect to the effectiveness of netting under the standard form agreement issued by the trade association, by itself is adequate to support a netting contract. Banks using such general opinions would need to supplement them with a review of the terms of the specific netting contract that the bank is executing.

Scope

With regard to the scope of the legal opinions, that is, what areas of analysis must be covered, the FDIC is of the opinion that legal opinions must address the validity and enforceability of the entire netting contract. The opinion must conclude that under the applicable state or other jurisdictional law the netting contract is a legal, valid, and binding contract, enforceable in accordance with its terms, even in the event of insolvency, bankruptcy, or similar proceedings. Opinions provided on the law of jurisdictions outside of the U.S. should include a discussion and conclusion that netting provisions do not violate the public policy or the law of that jurisdiction.

The FDIC has further determined that one of the most critical aspects of a qualifying netting contract is the contract's enforceability in any jurisdiction whose law would likely be applied in an enforcement action, as well as the jurisdiction where the counterparty's assets reside. In this regard, and in light of the policy in some countries to liquidate branches of foreign banking organizations independent of the head office, the FDIC is retaining its proposed requirement that legal opinions address the netting contract's enforceability under: (i) The law of the jurisdiction in which the counterparty is chartered, or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, the law of the jurisdiction in which the branch is located; (ii) the law that governs the individual contracts subject to the bilateral netting contract; and (iii) the law that governs the netting contract.

Severability

The FDIC recognizes that for some multibranch netting contracts a bank may not be able to obtain a legal opinion(s) concluding that netting would be enforceable in every jurisdiction where branches covered under the master netting contract are located. The FDIC concurs with commenters that in such situations it may be inefficient to require banks to renegotiate netting contracts to ensure they cover only those jurisdictions where netting is clearly enforceable. The FDIC has determined that, in certain circumstances for capital purposes, banks may use master bilateral netting contracts that include contracts with branches across all jurisdictions. Banks should calculate their net current exposure for the contracts in those jurisdictions where netting clearly is enforceable as supported by legal opinion(s). The remaining contracts subject to the netting contract should be severed from the netting contract and treated as though they were not subject to the netting contract for capital and credit purposes. This approach of essentially dividing contracts subject to the netting contact into two categories—those that may clearly be netted and those that may not—is acceptable provided that the bank's legal opinions conclude that the contracts that do not qualify for netting treatment are legally severable from the master netting contract and that such severance will not undermine the enforceability of the netting contract for the remaining qualifying contracts.

Conclusions

The FDIC has retained the proposed language that legal opinions must represent that netting would be enforceable in all relevant jurisdictions. In response to commenters' assertions that the standard for this type of legal opinion is too high, the FDIC notes that use of the word "would" in the capital rules does not necessarily mean that the legal opinions must also use the word "would" or that enforceability must be determined to be an absolute certainty. The intent, rather, is for banks to secure a legal opinion concluding that there is a high degree of certainty that the netting contract will survive a legal challenge in any applicable jurisdiction. The degree of certainty should be apparent from the reasoning set out in the opinion.

The FDIC notes that the requirement for legal opinions to conclude that netting contracts must create a single legal obligation applies only to those individual contracts that are covered by, and included under, the netting contract for capital purposes. As discussed above, a netting contract may include individual contracts that do not qualify for netting treatment, provided that these individual contracts are legally severable from the contracts to be netted for capital purposes.

Collateral

The final rule permits, subject to certain conditions, banks to take into account qualifying collateral when assigning the credit equivalent amount of a netting contract to the appropriate risk weight category in accordance with the procedures and requirements currently set forth in the FDIC's risk-based capital standards. The FDIC has added language to the final rule clarifying that collateral must be legally available to cover the credit exposure of the netting contract in the event of default. For example, the collateral may not be pledged solely against one individual contract subject to the master netting contract. The legal availability of the collateral must be addressed in the legal opinions.

Walkaway Clauses

The FDIC has considered the suggestion made by some commenters of a phase-out period for outstanding contracts with walkaway clauses. The FDIC continues to believe that walkaway clauses do not reduce credit risk. Accordingly, the final rule retains the provision that bilateral netting contracts with walkaway clauses are not eligible for netting treatment for risk-based capital purposes and does not provide for a phase-out period.

Novation

The proposal required all netting contracts, including netting by novation agreements, to be supported by written legal opinions. The FDIC does not agree with commenters that a grandfathering period for outstanding novation agreements is needed. Rather, the FDIC continues to believe that all netting contracts must be held to the same standards in order to promote certainty as to the legal enforceability of the contracts and to decrease the risks faced by counterparties in the event of default. Under the final rule, a netting by novation agreement must meet the requirements for a qualifying bilateral netting contract.

Other Issues

The FDIC has considered all of the other issues raised by commenters. With regard to documentation, the FDIC reiterates that, as with all provisions of risk-based capital, a bank must maintain in its files appropriate documentation to support any particular capital treatment including netting of rate contracts. Appropriate documentation typically would include a copy of the bilateral netting contract, supporting legal opinions, and any related translations. The documentation should be available to examiners for their review.

The FDIC recognizes commenters' concerns that the proposed rules were limited specifically to interest and exchange rate contracts. The FDIC notes that both the Basle Accord and its risk-based capital standards currently do not address derivatives contracts other than rate contracts. This final rule does not attempt to go beyond the scope of the existing risk-based capital framework and applies only to netting contracts encompassing interest rate and foreign exchange rate contracts. The FDIC, however, notes that the Basle Supervisors' Committee issued a proposal for public comment in July 1994 to amend the Basle Accord which explicitly would set forth the risk-based capital treatment for other types of derivative transactions, such as commodity, precious metal, and equity contracts. In this regard, the Federal Reserve, the OCC, and the FDIC issued similar proposals, based on the Basle Supervisors' Committee proposal, to amend their risk-based capital standards (59 FR 43508, August 24, 1994; 59 FR 45243, September 1, 1994; and 59 FR 52714, October 19, 1994, respectively). The OTS intends to issue a similar proposal in the near future.

Until the Basle Accord has been revised and the FDIC's risk-based capital rules have been amended to encompass commodity, precious metal, and equity derivative contracts, the FDIC will permit banks to apply the following treatment, rather than automatically disqualifying from capital netting treatment an entire netting contract that includes non-rate-related transactions. In determining the current exposure of otherwise qualifying netting contracts that include non-rate-related contracts, banks will be permitted to net the positive and negative mark-to-market values of the included interest and exchange rate contracts, while severing the non-rate-related contracts and treating them as though they were not subject to the master netting contract. (This treatment is similar to the treatment applied to a netting contract that includes contracts in jurisdictions where the enforceability of netting is not supported by legal opinion. Legal opinions are not required to support severability of non-rate-related contracts.)

The FDIC notes that the regulatory language with regard to the calculation of potential future exposure remains essentially the same as that proposed. The FDIC has clarified an underlying premise of the current exposure method for calculating credit exposure as set forth in the Basle Accord, that is, the add-on for potential future exposure must be calculated based on the effective, rather than the apparent, notional principal amount and the notional amount the bank uses will be subject to examiner review.[8]

Finally, in its Notice of Proposed Rulemaking, the FDIC described its transfer and enforcement powers with respect to "qualified financial contracts" under section 11(e) of the FDI Act. (59 FR 37229–30). Having received no comments on that subject, the FDIC reaffirms its position as stated in the Notice of Proposed Rulemaking.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC hereby certifies that this final rule will not have a significant impact on a substantial number of small business entities. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act and Regulatory Burden

The FDIC has determined that this final rule will not increase the regulatory paperwork burden of banks pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) provides that the federal banking agencies must consider the administrative burdens and benefits of any new regulation that imposes additional requirements on insured depository institutions. Section 302 also requires such a rule to take effect on the first day of the calendar quarter following final publication of the rule, unless the agency, for good cause, determines an earlier effective date is appropriate.

The new capital rule imposes certain requirements on banks that wish to net the current exposures of their rate contracts for purposes of calculating their risk-based capital requirements. However, the FDIC expects that such banks would adhere to these requirements in any event as part of prudent business practices. Any burden of complying with the requirements of netting under a legally enforceable netting contract and obtaining the necessary legal opinions should be outweighed by the benefits associated with a lower capital requirement. The new rule will not affect banks that do not wish to net for capital purposes. For these reasons, the FDIC has determined that the rule is to be effective on the date published, and banks will be permitted to take advantage of netting in their year-end statements, if they so desire.

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

For the reasons set out in the preamble, the Board of Directors of the FDIC amends 12 CFR part 325 as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 3907, 3909; Pub.L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note) Pub.L. 102–242, 105 Stat 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. Appendix A to part 325 is amended by revising section II.E.1 introductory text, Section II.E.1.(a) and (b) and the undesignated paragraph after section II.E.1.(b) preceding the table; revising the first paragraph of section II.E.2.; removing the last two sentences of the second paragraph of section II.E.2; and adding new II.E.3. to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-based Capital

* * * * *

II. * * *

E. * * *

1. *Credit Equivalent Amounts for Interest Rate and Foreign Exchange Rate Contracts* The credit equivalent amount of an off-balance sheet rate contract that is not subject to a qualifying bilateral netting contract in accordance with section II.E.3. of this appendix A is equal to the sum of (i) the

[8] The notional amount is, generally, a stated reference amount of money used to calculate payment streams between the counterparties. In the event that the effect of the notional amount is leveraged or enhanced by the structure of the transaction, banks must use the actual, or effective, notional amount when determining potential future exposure. For example, a stated notional amount of one million dollars with payments calculated at 2X Libor, would have an effective notional amount of two million dollars.

current exposure (which is equal to the mark-to-market value[39] and is sometimes referred to as the replacement cost) of the contract; and (ii) an estimate of the potential future credit exposure over the remaining life of the contract. To calculate the credit equivalent amount of its off-balance sheet interest rate and foreign exchange rate instruments, a bank should, for each contract, sum:

(a) The mark-to-market value (positive values only) of the contact (that is, its *current* credit exposure or replacement cost); and

(b) An estimate of the *potential* future increase in credit exposure over the remaining life of the instrument.

For risk based capital purposes, potential credit exposure on a contract is determined by multiplying the notional principal amount of the contract, including contracts with negative mark-to-market values, by the appropriate credit conversion factor. Banks should, subject to examiner review, use the effective rather than the apparent or stated notional amount in this calculation.[40] The conversion factors are:

* * * * *

2. *Risk Weights for Interest Rate and Foreign Exchange Rate Contracts.* Once the credit equivalent amount for an interest rate and foreign exchange rate instrument has been determined, that amount generally should be assigned to a risk weight category according to the identity of the counterparty or, if relevant, the nature of any collateral or guarantees. Collateral held against a netting contract is not recognized for capital purposes unless it is legally available for all contracts included in the netting contract. However, the *maximum* risk weight that will be applied to the credit equivalent amount of such instruments is 50 percent.

* * * * *

3. *Netting.* (1) For purposes of this appendix A, netting refers to the offsetting of positive and negative mark-to-market values when determining a current exposure to be used in the calculation of a credit equivalent amount. Any legally enforceable form of bilateral netting of rate contracts is recognized for purposes of calculating the credit equivalent amount provided that:

(a) The netting is accomplished under a written netting contract that creates a single legal obligation, covering all included individual contracts, with the effect that the bank would have a claim or obligation to receive or pay, respectively, only the net amount of the sum of the positive and negative mark-to-market values on included individual contracts in the event that a counterparty, or a counterparty to whom the contract has been validly assigned, fails to perform due to any of the following events: default, bankruptcy, liquidation, or similar circumstances.

(b) The bank obtains a written and reasoned legal opinion(s) representing that in the event of a legal challenge, including one resulting from default, insolvency, bankruptcy or similar circumstances, the relevant court and administrative authorities would find the bank's exposure to be such a net amount under:

(i) The law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities and, if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

(ii) The law that governs the individual contracts covered by the netting contract; and

(iii) The law that governs the netting contract.

(c) The bank establishes and maintains procedures to ensure that the legal characteristics of netting contracts are kept under review in the light of possible changes in relevant law.

(d) The bank maintains in its files documentation adequate to support the netting of rate contracts, including a copy of the bilateral netting contract and necessary legal opinions.

(2) A contract containing a walkaway clause is not eligible for netting for purposes of calculating the credit equivalent amount.[41]

(3) By netting individual contracts for the purpose of calculating its credit equivalent amount, a bank represents that it has met the requirements of this appendix A and all the appropriate documents are in the bank's files and available for inspection by the FDIC. Upon determination by the FDIC that a bank's files are inadequate or that a netting contract may not be legally enforceable under any one of the bodies of law described in paragraphs (b)(i) through (iii) of this section, underlying individual contracts may be treated as though they were not subject to the netting contract.

(4) The credit equivalent amount of rate contracts that are subject to a qualifying bilateral netting contract is calculated by adding (i) the current exposure of the netting contract and (ii) the sum of the estimates of the potential future credit exposures on all individual contracts subject to the netting contract.

(5) The current exposure of the netting contract is determined by summing all positive and negative mark-to-market values of the individual contracts included in the netting contract. If the net sum of the mark-to-market values is positive, then the current exposure of the netting contract is equal to that sum. If the net sum of the mark-to-market values is zero or negative, then the current exposure of the netting contract is zero.

(6) For each individual contract included in the netting contract, the potential future credit exposure is estimated in accordance with section II.E.1. of this appendix A.[42]

(7) Examples of the calculation of credit equivalent amounts for these types of contracts are contained in Table IV.

* * * * *

3. Appendix A to part 325 is amended by removing the last three sentences of the last paragraph under the heading "Credit Conversion for Interest Rate and Foreign Exchange Rate Related Contracts" in Table III and adding in their place two new sentences and by adding new Table IV to read as follows:

* * * * *

Table III.—Credit Conversion Factors for Off-Balance Sheet Items

* * * * *

Credit Conversion for Interest Rate and Foreign Exchange Rate Related Contracts

* * * * *

* * * In the event a netting contract covers transactions that are normally not included in the risk-based ratio calculation—for example, exchange rate contracts with an original maturity of fourteen calendar days or less or instruments traded on exchanges that require daily payment of variation margin—an institution may elect to consistently either include or exclude all mark-to-market values of such transactions when determining a net current exposure. Multiple contracts with the same counterparty may be netted for risk-based capital purposes pursuant to section II.E.3. of this appendix.

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[39] Mark-to-market values should be measured in dollars, regardless of the currency or currencies specified in the contract, and should reflect changes in both interest (or foreign exchange) rates and in counterparty credit quality.

[40] The notional amount is, generally, a stated reference amount of money used to calculate payment streams between the counterparties. In the event that the effect of the notional amount is leveraged or enhanced by the structure of the transaction, institutions must use the actual, or effective, notional amount when determining potential future exposure. For example, a stated notional amount of one million dollars with payments calculated at 2X Libor, would have an effective notional amount of two million dollars.

[41] For purposes of this section, a walkaway clause means a provision in a netting contract that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all, to a defaulter or to the estate of a defaulter, even if a defaulter or the estate of a defaulter is a net creditor under the contract.

[42] For purposes of calculating potential future credit exposure for foreign exchange contracts and other similar contracts in which notional principal is equivalent to cash flows, total notional principal is defined as the net receipts to each party falling due on each value date in each currency

TABLE IV—CALCULATION OF CREDIT EQUIVALENT AMOUNTS FOR INTEREST RATE AND FOREIGN EXCHANGE RATE RELATED TRANSACTIONS FOR STATE NONMEMBER BANKS

Type of contract (remaining maturity)	Potential exposure		+	Current exposure	=	Credit equivalent amount
	Notional principal (dollars)	Conversion factor	Potential exposure (dollars)	Mark-to-market value	Current exposure (dollars)	
(1) 120-day forward foreign exchange	5,000,000	.01	50,000	100,000	100,000	150,000
(2) 120-day forward foreign exchange	6,000,000	.01	60,000	−120,000	0	60,000
(3) 3-year interest rate swap	10,000,000	.005	50,000	200,000	200,000	250,000
(4) 3-year interest rate swap	10,000,000	.005	50,000	−250,000	0	50,000
(5) 7-year foreign exchange swap	20,000,000	.05	1,000,000	−1,300,000	0	1,000,000
Total			1,210,000		300,000	1,510,000

If contracts (1) through (5) above are subject to a qualifying bilateral netting contract, then the following applies:

	Potential future exposure (from above)		Net current exposure [1]		Credit equivalent amount
(1)	50,000				
(2)	60,000				
(3)	50,000				
(4)	50,000				
(5)	1,000,000				
Total	1,210,000	+	0	=	1,210,000

[1] The total of the mark-to-market values from above is −1,370,000. Since this is a negative amount, the net current exposure is zero.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 20th day of December, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–31826 Filed 12–27–94; 8:45 am]

BILLING CODE 6714–01–P

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12 CFR Part 325

RIN 3064–AB29

Capital Maintenance

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC has decided not to proceed with its proposal to include net unrealized holding gains (losses) on available-for-sale securities in Tier 1 capital. Instead, the FDIC is adopting only technical wording changes to conform the language in its leverage and risk-based capital standards with the terminology used in Statement of Financial Accounting Standards No. 115, "Accounting for Certain Investments in Debt and Equity Securities" (FASB 115). For regulatory capital purposes, this FDIC final rule requires net unrealized holding losses on available-for-sale equity securities with readily determinable fair values to be deducted in determining the amount of Tier 1 capital. All other net unrealized holding gains (losses) on available-for-sale securities are excluded from the definition of Tier 1 capital. However, for purposes of the quarterly Reports of Condition and Income (Call Reports) filed by FDIC-supervised institutions, the Federal Financial Institutions Examination Council (FFIEC) requires net unrealized gains (losses) on all available-for-sale securities to be reported as a separate component of stockholders' equity, in accordance with FASB 115.

EFFECTIVE DATE: January 27, 1995.

FOR FURTHER INFORMATION CONTACT: For supervisory purposes, Stephen G. Pfeifer, Examination Specialist (202/898–8904), or Robert F. Storch, Section Chief (202/898–8906), Accounting Section, Division of Supervision; for legal issues, Cristeena G. Naser, Attorney, Legal Division (202/898–3587).

SUPPLEMENTARY INFORMATION:

I. Background

The FDIC's leverage and risk-based capital standards (12 CFR part 325—subpart A and appendix A to part 325) set forth a definition of Tier 1 capital that includes common stockholders' equity. The capital definitions (12 CFR 325.2(d) and section 1.A.1. of appendix A) further explain that common stockholders' equity includes common stock and any related surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, and foreign currency translation adjustments, less net unrealized losses on marketable equity securities.

In May 1993, the Financial Accounting Standards Board (FASB) issued FASB 115 which, in effect, changes the composition of stockholders' equity in financial statements prepared in accordance with generally accepted accounting principles (GAAP) by including as a separate component of equity the amount of net unrealized holding gains and losses on debt and equity securities that are deemed to be available-for-sale. The FFIEC has notified all banks that they must adopt the new FASB 115 accounting standard for purposes of their Call Reports as of January 1, 1994, or the beginning of their first fiscal year thereafter, if later. Early adoption of this standard was also permitted in Call Reports to the extent allowable under FASB 115.

Prior to the adoption of FASB 115, Call Report instructions required banks to report a separate capital component for the net unrealized loss on marketable equity securities, consistent with the provisions of Statement of Financial Accounting Standards No. 12, "Accounting for Certain Marketable Securities" (FASB 12). FASB 115,

which supersedes FASB 12, broadens the scope of this separate component of stockholders' equity in that the FASB 115 capital component includes unrealized gains and losses on all securities that are available-for-sale (debt as well as equity), rather than just the net unrealized losses on marketable equity securities.

This new GAAP accounting standard and the conforming Call Report guidance raised the question of how the FASB 115 capital component for net unrealized holding gains and losses on available-for-sale securities should be treated for purposes of calculating the amount of an institution's regulatory capital under part 325.

II. December 1993 Proposal

In view of this FASB 115 issue, the FDIC issued a proposal (58 FR 68781, December 29, 1993) to amend its leverage and risk-based capital standards to explicitly recognize net unrealized holding gains and losses on available-for-sale securities in determining the amount of an institution's Tier 1 capital. Accordingly, the FDIC requested specific comments on the following:

(1) *Recognition of FASB 115 Capital Adjustments for Regulatory Capital Purposes.* Given the provisions of section 37 of the Federal Deposit Insurance Act (FDI Act) and the other issues discussed in the proposal's preamble, should the FASB 115 capital adjustments that institutions are required to reflect for GAAP and Call Report purposes also be taken into consideration for purposes of determining an institution's Tier 1 capital under the FDIC's leverage and risk-based capital standards? If not, what regulatory capital treatment should be applied?

(2) *Effect of FASB 115 Adjustments on Other Capital-Based Regulations.* If the FASB 115 capital adjustments are recognized for purposes of calculating an institution's leverage and risk-based capital ratios, these adjustments may also have an effect on certain other laws and regulations that are based, in part, on regulatory capital levels, including the prompt corrective action rules (12 CFR part 325—subpart B), the risk-related insurance premium system (12 CFR part 327), the brokered deposit restrictions (12 CFR 337.6), and the restrictions on activities and investments of insured state banks (12 CFR part 362), such as the limitations in § 362.3(d)(4) on the book value of certain equity investments as a percent of Tier 1 capital. If the FASB 115 capital adjustments are recognized in calculating an institution's compliance with the minimum leverage and risk-based capital standards, should these adjustments also be recognized for purposes of the other rules noted above that are based, in part, on an institution's regulatory capital levels? If not, what treatment should be used for these other regulations?

(3) *Appropriateness of Recognizing FASB 115 Net Appreciation for Regulatory Capital Purposes.* In determining the amount of any FASB 115 adjustment to stockholders' equity for changes in the fair value of available-for-sale securities, FASB 115 as well as the conforming Call Report guidance take into consideration all changes in the fair value of these securities, regardless of whether these changes represent net appreciation or net depreciation. Under the accounting rules that were applicable prior to the adoption of FASB 115, an institution's capital for GAAP and Call Report purposes could not be increased by the amount of any net unrealized appreciation on securities held for sale. Should the regulatory capital treatment for changes in the fair value of securities held in the FASB 115 available-for-sale category differ, depending upon whether the change represents net appreciation or net depreciation? If so, what treatment is appropriate?

III. Summary and Analysis of Comment Letters Received

The FDIC received 61 responses to its request for comment, including 41 from banks, 11 from multibank holding companies, four from financial institution trade associations, three from state banking regulators, and two from banking consultants. Nearly three-fourths of the respondents were opposed to the proposal to include net unrealized holding gains (losses) on available-for-sale securities in Tier 1 capital. Many of the 41 letters from banks were from community banks and 37 of these respondents were against the proposal. The 11 responses from multibank holding companies were generally mixed, with six appearing to favor the proposed rule and the remaining five opposed to it.

Three of the four financial institution trade associations that responded to the proposal at least cautiously supported the proposal; however, one of the associations in favor of the proposal did so partially out of a concern that, if the proposal were not adopted, an even more restrictive lower-of-cost-or-market (LOCOM) approach might be required where only net depreciation (but not net appreciation) on available-for-sale securities would be recognized for Tier 1 capital purposes. The responses from the three state banking regulators and the two banking consultants were mixed.

Common arguments raised by many of the respondents opposing the proposal included: (1) The additional capital volatility arising from marking-to-market the available-for-sale securities, which may cause banks to shorten maturities, sacrifice yield and thus realize less net income; (2) the distortive effect that the piecemeal application of market value accounting may have on a bank's financial statements, particularly when interest rates rise but offsetting changes in the value of the bank's deposit base cannot be recognized; (3) the adverse impact that these market fluctuations may have on other capital-based rules, such as prompt corrective action and risk-related insurance premiums; and (4) the potential for more banks to fail simply because of market value changes in securities that may be temporary and that may exist on available-for-sale securities which the bank does not have the current intent to sell.

The most common alternative to the FDIC's proposed treatment of the FASB 115 net unrealized gains (losses) on available-for-sale securities, which was expressed by 37 of the commenters, was to exclude the FASB 115 unrealized gains and losses from Tier 1 capital. However, if the FASB 115 adjustments were to be included in regulatory capital, 12 commenters indicated that net appreciation and depreciation on available-for-sale securities should be treated consistently (otherwise a LOCOM approach could result for regulatory capital purposes). Additionally, seven of the respondents specifically mentioned that FASB 115 net unrealized gains (losses) on available-for-sale securities should only be included in Tier 2 (or total risk-based capital) rather than in Tier 1 capital. Several respondents also indicated that, even if these net unrealized gains (losses) are recognized for purposes of calculating supervisory capital ratios, they should be ignored in determining capital for purposes of prompt corrective action, risk-related insurance premiums, applicable lending limits, Federal Reserve Board Regulation O, and section 23A of the Federal Reserve Act.

Some of the reasons given by the minority of the commenters who favored the proposal included the following: (1) The proposal to recognize net unrealized holding gains (losses) on available-for-sale securities in Tier 1 capital is consistent with the requirements under GAAP and the Call Report instructions that these

unrealized gains (losses) be recognized as a component of stockholders' equity; (2) the proposal is consistent with section 37 of the FDI Act, which generally provides that accounting principles applicable to depository institutions for regulatory reporting purposes should be no less stringent than GAAP; and (3) the proposal would minimize the reporting and systems burden that might otherwise exist if the FASB 115 capital component is treated differently for regulatory capital purposes than it is for regulatory reporting and GAAP purposes.

The FDIC has considered the comments raised by those responding to the request for comment. After carefully evaluating the merits of the proposed rule and consulting with the other federal banking agencies, the FDIC has decided not to proceed with its proposal but rather to retain the existing regulatory capital treatment. As a result, net unrealized holding losses on available-for-sale equity securities with readily determinable fair values should continue to be deducted in determining the amount of Tier 1 capital. However, all other net unrealized holding gains (losses) on available-for-sale securities will be excluded from the definition of Tier 1 capital.

In addition, for regulatory reporting (as opposed to regulatory capital) purposes, FDIC-supervised institutions will continue to reflect FASB 115 net unrealized gains (losses) on available-for-sale securities as a separate component of equity capital in the Call Reports they file with the FDIC on a quarterly basis. This reporting treatment is consistent with the provisions of section 37 of the FDI Act.

Although section 37 generally requires that accounting principles applicable to depository institutions for regulatory reporting purposes must be consistent with or no less stringent than GAAP, the FDIC believes that the requirements of section 37 do not extend to the federal banking agencies' definitions of regulatory capital. It is well established that the calculation of regulatory capital for supervisory purposes can differ from the measurement of equity capital for financial reporting purposes. For example, statutory restrictions against the recognition of goodwill for regulatory capital purposes may lead to differences between the *reported* amount of equity capital and the *regulatory capital* calculation for Tier 1 capital. Other types of intangible assets are also subject to limitations under the agencies' regulatory capital rules. In addition, subordinated debt and the allowance for loan and lease losses are examples of items where the regulatory reporting and the regulatory capital treatments differ.

The FDIC acknowledges that unrealized gains and losses on all securities, regardless of whether they are in the held-to-maturity, available-for-sale, or trading accounts, should be taken into consideration in the overall qualitative evaluation of an institution's capital adequacy. Further, if an institution has established a securities trading account in which it buys and holds securities principally for the purpose of selling those assets in the near term, it is appropriate for such an institution to reflect the amount of any net unrealized gains (losses) on these trading account assets in both net income and the calculation of Tier 1 capital. However, for debt securities that are placed in the held-to-maturity or available-for-sale categories, the FDIC does not believe that market value fluctuations should automatically be factored into the quantitative calculations for regulatory capital, but rather these unrealized gains (losses) generally should be qualitatively considered in assessing capital adequacy.

Under the final rule, FDIC-supervised institutions will continue to reflect net unrealized holding gains (losses) on available-for-sale securities as a separate capital component for regulatory reporting purposes, consistent with the Call Report instructions issued by the FFIEC. However, because unrealized holding gains (losses) on available-for-sale securities will not be included in the determination of regulatory capital (other than for net unrealized holding losses on available-for-sale equity securities with readily determinable fair values), institutions' capital levels under the FDIC's leverage and risk-based capital standards will not be adversely affected by temporary fluctuations in the fair value of these securities that may give rise to net unrealized holding losses. Similarly, if banks have net unrealized holding gains on available-for-sale securities, these gains, which also may be temporary in nature, will be excluded from the calculation of Tier 1 capital.

The FDIC is concerned that if unrealized losses on all available-for-sale securities are deducted in the Tier 1 capital calculation, but unrealized gains are not included, an inequitable treatment would exist in that institutions would reflect the full impact of any net unrealized losses in their regulatory capital calculations without receiving the benefit of net unrealized gains.

The FDIC believes that both net appreciation and net depreciation on available-for-sale debt securities should be treated consistently for regulatory capital purposes and that it is more appropriate to exclude these unrealized gains and losses from the calculation of regulatory capital than it is to include both in Tier 1 capital, particularly since Tier 1 capital generally is expected to be comprised of the most permanent forms of capital. In this regard, the FDIC considers it more appropriate to qualitatively evaluate the impact of these FASB 115 net unrealized gains (losses) on a case-by-case basis (e.g., in conjunction with the overall assessment of the institution's interest rate risk exposure), rather than to automatically incorporate these amounts into the quantitative calculation of Tier 1 capital.

This approach is deemed proper in view of the potential volatility in the amount of net unrealized gains (losses) on available-for-sale debt securities as interest rates change, particularly where these changes may be temporary in nature, and the effect that these unrealized gains and losses could otherwise have on an institution's capital category for purposes of the FDIC's prompt corrective action, risk-related insurance premiums, brokered deposit, and other capital-based rules if these unrealized gains (losses) were included in Tier 1 capital. In addition, because of the piecemeal application of market value accounting mandated by FASB 115, the FDIC believes it is inappropriate to explicitly recognize in regulatory capital all unrealized gains (losses) on available-for-sale securities when offsetting gains (losses) in the value of an institution's other assets and liabilities are not similarly recognized.

The FDIC, however, retains the authority to require institutions to maintain more capital than the minimums set forth in part 325.[1] This

[1] For example, in discussing the minimum leverage ratio requirement, § 325.3(a) of the FDIC's regulations states, in part, that

Banks must maintain at least the minimum leverage capital requirement set forth in this section. The capital standards in this part are the minimum acceptable for banks whose overall financial condition is fundamentally sound, which are well-managed and which have no material or significant financial weaknesses. Thus, the FDIC is not precluded from requiring an institution to maintain a higher capital level based on the institution's particular risk profile.

Also, in discussing the FDIC's minimum risk-based capital guidelines, the fifth paragraph in the FDIC's Statement of Policy on Risk-Based Capital (Appendix A to Part 325) states that

The risk-based capital ratio focuses principally on broad categories of credit risk; however, the ratio does not take account of many other factors that can affect a bank's financial condition. These factors

enables the FDIC to take appropriate action against an institution where, for example, the institution is deemed to have an excessive amount of net unrealized losses on available-for-sale securities in relation to the institution's overall capital structure.

With respect to the impact that FASB 115 may have on how capital is determined for purposes of legal lending limits, Federal Reserve Board Regulation O and section 23A of the Federal Reserve Act, the FDIC notes that many borrower lending limits for FDIC-supervised state-chartered banks are established by the institutions' appropriate state regulatory authorities and that the issuance of interpretive guidance pertaining to Regulation O and section 23A is generally within the purview of the Federal Reserve Board.

IV. Final Rule

After considering the comments received and consulting with the other federal banking agencies, the FDIC has decided not to proceed with its proposal to include net unrealized gains (losses) on available-for-sale securities in Tier 1 capital. Instead, the FDIC is adopting only technical wording changes to its existing capital rules. The FDIC's consultations with the other agencies included participating in the deliberations of the FFIEC's Task Force on Supervision. The regulatory capital treatment of net unrealized gains (losses) in this final rule is consistent with the treatment that the Task Force on Supervision has recommended to the agencies.

The definitions under the FDIC's leverage and risk-based capital standards indicate that Tier 1 capital includes, among other items, "common stockholders' equity." In this regard, the FDIC is revising § 325.2(d) of its regulations and section I.A.1. of Appendix A to Part 325 to indicate that, for regulatory capital purposes, common stockholders' equity includes common stock and related surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, and foreign currency translation adjustments, less net unrealized holding losses on available-for-sale equity securities with readily determinable fair values.

Thus, although FASB 115 net unrealized losses on available-for-sale equity securities are deducted in determining the amount of Tier 1 capital, all other net unrealized holding gains (losses) on available-for-sale securities generally will be excluded (i.e., ignored) in these regulatory capital calculations.

This final rule refers to deducting the "net unrealized holding losses" on "equity securities" with "readily determinable fair values". The captioned phrases are consistent with the terms defined in FASB 115 and in the Call Report guidance issued by the FFIEC. This language replaces the existing phrase in the FDIC's leverage and risk-based capital rules, "net unrealized losses on marketable equity securities", which was based on terminology included in the FASB 12 accounting standard that has now been superseded by FASB 115.

This final rule is also consistent with the interim regulatory capital guidance that was jointly issued on December 21, 1993, by the FDIC, the Federal Reserve Board, and the Office of the Comptroller of the Currency after the issuance of FASB 115.[2] Accordingly, the amortized cost rather than fair value of available-for-sale debt securities generally will continue to be used for purposes of calculating both the numerator and the denominator for the leverage and risk-based capital ratios. The amortized cost of available-for-sale debt securities will also continue to be used in determining the amount of average total assets reported on the Call Report schedule for quarterly averages and the amount of risk-weighted assets reflected on the Call Report's risk-based capital schedule.[3]

V. Regulatory Flexibility Act Statement

The Board of Directors of the FDIC hereby certifies that these amendments to part 325 will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq). These amendments will not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions nor will small institutions need to seek out the expertise of specialized accountants, lawyers or managers to comply with the regulation. In light of this certification, the Regulatory Flexibility Act requirements (at 5 U.S.C. 603, 604) to prepare initial and final regulatory flexibility analyses do not apply.

VI. Paperwork Reduction Act and Regulatory Burden

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) are contained in this notice. Consequently, no information has been submitted to the Office of Management and Budget for review.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. Law 103–325, 108 Stat. 2160) provides that the federal banking agencies must consider the administrative burdens and benefits of any new regulations that impose additional requirements on insured depository institutions. Section 302 also requires such a rule to take effect on the first day of the calendar quarter following final publication of the rule, unless the agency, for good cause, determines an earlier effective date is appropriate. The new capital rule does not impose any new requirements on depository institutions for purposes of calculating their risk-based and leverage capital ratios. The amended rule clarifies the regulatory capital treatment of a new common equity component (i.e., net unrealized holding gains (losses) on available-for-sale securities) created by FASB 115, but does not change the current treatment. For these reasons, the FDIC has determined that an effective date 30 days from the date of this rule's publication in the **Federal Register** is appropriate.

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, Banking, Capital adequacy, Reporting and recordkeeping requirements, State nonmember banks, Savings associations.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation is amending part 325 of title 12 of the Code of Federal Regulations as follows:

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include overall interest rate risk exposure; liquidity, funding and market risks; the quality and level of earnings; investment or loan portfolio concentrations; the quality of loans and investments; the effectiveness of loan and investment policies; and management's overall ability to monitor and control financial and operating risks. In addition to evaluating capital ratios, an overall assessment of capital adequacy must take account of each of these other factors, including, in particular, the level and severity of problem and adversely classified assets. For this reason, the final supervisory judgment on a bank's capital adequacy may differ significantly from the conclusions that might be drawn solely from the absolute level of the bank's risk-based capital ratio.

[2] See FIL–91–93, which is available upon request from the FDIC's Office of Corporate Communications (202/898–6996). This interim guidance had provided that, until the federal banking agencies can complete any necessary amendments to their respective capital rules, net unrealized losses on marketable equity securities should continue to be deducted when computing Tier 1 capital and that other net unrealized gains or losses on available-for-sale securities resulting from the adoption of FASB 115 should be excluded from the computation of Tier 1 capital

[3] For further information, refer to the Call Report instructions issued by the FFIEC.

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 3907, 3909; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. Section 325.2(d) is revised to read as follows:

§ 325.2 Definitions.

* * * * *

(d) *Common stockholders' equity* means the sum of common stock and related surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, and foreign currency translation adjustments, less net unrealized holding losses on available-for-sale equity securities with readily determinable fair values.

* * * * *

3. In appendix A to part 325, the definition of common stockholders' equity in the first paragraph in section I.A.1. is revised to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

I. * * *

A. * * *

1. * * *

—Common stockholders' equity capital (includes common stock and related surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, and foreign currency translation adjustments, less net unrealized holding losses on available-for-sale equity securities with readily determinable fair values);

* * * * *

By order of the Board of Directors.

Dated at Washington, D.C. this 20th day of December, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary

[FR Doc. 94–31725 Filed 12–27–94; 8:45 am]

BILLING CODE 6714–01–P

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12 CFR Part 337

RIN 3064–AB50

Unsafe and Unsound Banking Practices

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation is amending its regulations to except loans which are fully secured by certain types of collateral from the general limit on "other purpose" loans to executive officers of insured nonmember banks. The amendment parallels changes by the Board of Governors of the Federal Reserve System to that agency's regulations on insider loans.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Mark Mellon, Senior Attorney, Regulation and Legislation Section, Legal Division, (202) 898–3854, or Michael D. Jenkins, Examination Specialist, Division of Supervision, (202) 898–6896, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. The Proposed Rule

On August 16, 1994, the FDIC published for public comment a proposed revision to 12 CFR 337.3 concerning limits on extensions of credit to executive officers. 59 FR 41990 (August 16, 1994). The proposed rule sought to ease the restrictions on extensions of credit by insured nonmember banks to executive officers by creating an additional exception to the general limit on "other purpose" loans to executive officers.[1] This exception is for loans which are fully secured by the following types of collateral:

(a) A perfected security interest in bonds, notes, certificates of indebtedness, or Treasury bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States;

(b) Unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or any corporation wholly owned directly or indirectly by the United States; or

(c) A perfected security interest in a segregated deposit account in the lending bank.

This exception will be in addition to the statutory exceptions to the other purpose lending limit for home mortgage loans and education loans.

Section 337.3 currently provides that, with certain exceptions, insured nonmember banks are subject to the restrictions contained in Subpart A of 12 CFR Part 215 (Regulation O). 12 CFR 337.3(a). One of these exceptions, 12 CFR 215.5(c)(3), sets out the amount of extensions of credit which may be made to an executive officer for purposes other than those specifically authorized by section 22(g) of the Federal Reserve Act (FRA) (12 U.S.C. 375a) (other purpose loans). Section 22(g)(4) provides that the lending limit on other purpose loans must be set by the appropriate federal banking agency. With respect to insured nonmember banks, the appropriate federal banking agency is the FDIC. Section 337.3 must therefore specifically set out the limit on other purpose loans for insured nonmember banks, and any exceptions thereto.

Recently the Board of Governors of the Federal Reserve System made changes to Federal Reserve Board Regulation O. 59 FR 8831 (February 24, 1994). Most of these changes were immediately applicable to insured nonmember banks. The changes, however, to § 215.5(c)(3) which provide that a loan may be made by a member bank to one of its executive officers in any amount if it has been secured by certain types of collateral (the same types proposed by the FDIC which are described above) can only be made available to insured nonmember banks if § 337.3 is amended. As indicated above, the FDIC proposed doing so on August 16, 1994. The Board of Governors of the Federal Reserve System also concurrently redesignated the provision which sets forth the limit for other purpose loans by member banks to their executive officers as 12 CFR 215.5(c)(4). 59 FR at 8840–8841 The FDIC therefore also proposed to amend § 337.3 to cross-reference § 215.5(c)(4) as one of the provisions of Regulation O that is inapplicable to insured nonmember banks.

II. Comments on the Proposed Rule

The FDIC received a total of 31 comment letters in response to its proposal. Five letters were from state or national trade associations representing depository institutions, two letters were from bank holding companies, one letter was from a state bank regulator, and the remaining 23 letters were from insured nonmember banks. All of the commenters supported the proposed revisions.

Recommended Substantive Amendments

Thirteen commenters went beyond expressions of support for the proposed amendment to recommend that the FDIC consider and implement additional exceptions to further loosen the restrictions on extensions of credit by insured nonmember banks to their

[1] The other purpose lending limit is currently 2.5 percent of the bank's capital and unimpaired surplus but in no event more than $100,000; see 12 CFR 337.3(c)(2).

executive officers. Seven commenters recommended that, in addition to the types of secured loans which were specified by the FDIC in its proposal, other categories of secured loans should be exempted from the general limit on other purpose loans. The recommendations for exemption included loans secured by marketable securities, real estate, or cash value life insurance policies.

Two commenters recommended that the $100,000 limit on other purpose loans should be adjusted to reflect inflation. Another commenter stated that the $100,000 limit should be eliminated altogether and that banks should instead be allowed to lend up to 2.5 percent of their capital and unimpaired surplus to executive officers for other purpose loans. Two other commenters stated that the FDIC should permit loans in any amount for any purpose to an executive officer provided the loans are secured by the executive officer's principal residence. One commenter who made this recommendation also stated that home equity lines of credit which are adequately collateralized by the executive officer's primary residence should be exempted from the other purpose loan limit and should be exempted from the acceleration requirement set forth in § 215.5(d)(4) of Regulation O.[2] One commenter stated that unsecured personal loans for up to $5,000 should be excepted from the definition of "extension of credit" Another suggested that executive officers should be allowed to take out a second mortgage on their primary residence of up to $100,000.

One commenter noted that community banks have experienced problems in justifying the terms and interest rates of loans to their insiders. The commenter contended that fear of criticism by examiners frequently leads banks to charge higher rates to insiders and that problems arise for small banks when they do not have "comparable" loans within the bank to compare to their insider loans.[3] The commenter argued that in small communities where the executive officer is often the most creditworthy individual in the community and therefore likely to qualify for the most favorable terms, the bank will often have no other loans to compare to the insider loan. The commenter requested that banks be allowed in such situations to look to offers of credit to their executive officers from other depository institutions and their terms and procedures as a substitute for comparable transactions by the bank.

Two commenters stated generally that executive officers should have the same loan opportunities that insured nonmember banks provide for their non-insider customers. One requested that banks be allowed to make the same loans to an executive officer that they make for any other customer as long as the executive officer owns less than fifty percent of the bank and the institution has a return on assets of one percent or more. The other commenter suggested that regulators might rely on two independent appraisals of non-cash property pledged by executive officers and directors as security for a loan to ensure against abuse by insiders.

The FDIC welcomes suggestions that will reduce the regulatory burden on depository institutions without affecting their safety and soundness. Some of the suggested amendments, however, would require amendments to Regulation O by the Board of Governors of the Federal Reserve System. Other requested changes would require amendments by Congress to sections 22(g) and (h) of the FRA. While those suggested changes to the restrictions on insider lending requirements which are within the authority of the FDIC deserve consideration, the FDIC does not think that it would be appropriate to make such changes unilaterally.

As previously indicated, the FDIC proposed the same exceptions to the limit for other purpose loans to executive officers that the Board of Governors of the Federal Reserve System promulgated for member banks. The proposal was undertaken in order to put insured state nonmember banks on an equal footing with state member banks, thus avoiding disparity of treatment among banks based upon their membership, or lack of membership, in the Federal Reserve System. Unilateral adoption by the FDIC of any of the proposed changes would result in such disparity of treatment.

Unilateral adoption of the proposed substantive amendments might also interfere with a recent directive from Congress to the federal banking agencies. Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) provides that the federal banking agencies must streamline their regulations, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. The federal banking agencies are also directed to work jointly to make regulations uniform that implement common statutory or supervisory policies. Unilateral adoption by the FDIC of the suggested substantive amendments would be inconsistent with this statutory directive to make regulations uniform.

For these reasons, the Board of Directors of the FDIC declines to adopt any of the suggested substantive amendments at this time. Such proposed amendments are best considered through an interagency initiative to revise insider lending restrictions. As noted previously, the FDIC will be coordinating with the other federal banking agencies for purposes of streamlining its regulations and to eliminate unwarranted constraints on credit availability. Regulation O and 12 CFR 337.3 will be subject to review and possible amendment as part of that project. The FDIC will recommend at that time that the federal banking agencies consider those suggested substantive amendments which are within the regulatory authority of the federal banking agencies.

Recommended Procedural Amendment

In addition to the suggested substantive changes, one commenter recommended that the FDIC make Regulation O applicable to insured nonmember banks by cross-reference to Regulation O rather than through its own separately promulgated regulation. The commenter argued that this change would lessen confusion as to the applicability of amendments by the Board of Governors of the Federal Reserve System to Regulation O to insured nonmember banks.

The FDIC is not able to take this step, however. Under section 22(g)(4) of the FRA, the lending limit for other purpose loans to executive officers must be set by the "appropriate federal banking agency". In addition, section 7(k) of the Federal Deposit Insurance Act (12 U.S.C. 1817(k)) directs the appropriate federal banking agency to issue rules and regulations to require the reporting and public disclosure of loans made by depository institutions to their executive officers and principal shareholders. The FDIC interprets these statutory provisions to mean that each federal banking agency must independently implement these requirements for the institutions which

[2] Section 215.5(d)(4) provides that any extension of credit by a bank to an executive officer will be subject to the condition in writing that the extension of credit will, at the option of the bank, become due and payable at any time that the officer is indebted to any other bank or banks in an aggregate amount greater than $100,000.

[3] Section 215.4(a) of Regulation O states that a loan offer from a bank to its executive officer or director must be made on substantially the same terms as and follow the same procedures that prevail with comparable transactions by the bank with persons not associated with the bank.

are subject to its supervision.[4] Incorporation of insider lending requirements for insured nonmember banks by cross-reference to Regulation O therefore would not fulfill the statutory mandates which Congress has imposed upon the FDIC, particularly since any subsequent amendment by the Board of Governors of the Federal Reserve System would then have the effect of "automatically" amending the FDIC's rule.

III. The Final Rule

After considering the comments received, the Board of Directors of the FDIC has decided to adopt the proposed rule to amend 12 CFR 337.3 without change. The Board of Directors of the FDIC has decided, in agreement with the conclusion of the Board of Governors of the Federal Reserve System, that extensions of credit to an executive officer pose minimal risk of loss to a bank when they are secured by the types of collateral described above. 59 FR at 8836. The Board of Directors is of the opinion that it is consistent with safe and sound banking practices to increase the amount of credit that a bank may extend to its executive officers when the credit is secured as described above. The Board of Directors has also taken into consideration the fact that the proposed rule parallels the changes to Regulation O which have already been promulgated by the Board of Governors of the Federal Reserve System and the fact that all of the comments pertaining to the proposed rule were in favor of the proposed changes.

IV. Effective Date

The rule will become effective immediately upon publication in the **Federal Register**. The necessity for a 30-day delay in effective date has been waived since this rule relieves a restriction. 5 U.S.C. 553(d)(1).

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FDIC hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The rule will not impose burdens on depository institutions of any size and will not have the type of economic impact addressed by the Regulatory Flexibility Act.

The FDIC has reached this conclusion because the effect of the rule will be to reduce the regulatory requirements that are imposed upon small depository institutions rather than to increase them. Small depository institutions will have greater freedom of action to extend credit to executive officers as a result of the proposed rule rather than less.

VI. Paperwork Reduction Act and Regulatory Burden

No additional collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) are contained in the proposed rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Section 302 of the Regulatory Improvement Act provides that the federal banking agencies must consider the administrative burdens and benefits of any new regulations that impose additional requirements on insured depository institutions. Section 302 also requires that any regulations which impose additional reporting, disclosure, or other requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form.

The Board of Directors of the FDIC has concluded that the final amendment to 12 CFR 337.3 does not impose additional reporting, disclosure or other requirements on insured nonmember banks. This is because the effect of the amendment is to create an exception to the limits on insider loans by such institutions rather than to impose additional restrictions. We have therefore concluded that section 302 of the Regulatory Improvement Act does not require that the effective date of these amendments be on the first day of the calendar quarter which begins on or after the date of publication of the final amendments.

List of Subjects in 12 CFR Part 337

Banks, Banking, Reporting and recordkeeping requirements, Securities.

In consideration of the foregoing, the Board of Directors amends Part 337 of Chapter III of title 12 of the Code of Federal Regulations as follows:

PART 337—[AMENDED]

1. The authority citation for Part 337 continues to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1816, 1818(a), 1818(b), 1819, 1821(f), 1828(j)(2), 1831f, 1831f–1

2. Section 337.3 is amended by revising paragraphs (a) and (c)(2) to read as follows:

§ 337.3 Limits on extensions of credit to executive officers, directors, and principal shareholders of insured nonmember banks.

(a) With the exception of 12 CFR 215.5(b), 215.5(c)(3), 215.5(c)(4), and 215.11, insured nonmember banks are subject to the restrictions contained in subpart A of Federal Reserve Board Regulation O (12 CFR Part 215, subpart A) to the same extent and to the same manner as though they were member banks.

* * * * *

(c) * * *

(2) An insured nonmember bank is authorized to extend credit to any executive officer of the bank for any other purpose not specified in § 215.5(c)(1) and (2) of Federal Reserve Board Regulation O (12 CFR 215.5(c)(1) and (2)) if the aggregate amount of such other extensions of credit does not exceed at any one time the higher of 2.5 percent of the bank's capital and unimpaired surplus or $25,000 but in no event more than $100,000, provided, however, that no such extension of credit shall be subject to this limit if the extension of credit is secured by:

(i) A perfected security interest in bonds, notes, certificates of indebtedness, or Treasury bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States;

(ii) Unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or any corporation wholly owned directly or indirectly by the United States; or

(iii) A perfected security interest in a segregated deposit account in the lending bank.

* * * * *

By order of the Board of Directors.

Dated at Washington, D.C., this 20th day of December 1994

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary

[FR Doc. 94–31706 Filed 12–27–94, 8:45 am]

BILLING CODE 6714–01–P

[4] The other purpose lending limit for insured nonmember banks is established by the FDIC at § 337.3(c)(2). Regulations setting forth insider loan disclosure requirements for nonmember banks are found at part 349 of the FDIC's regulations (12 CFR Part 349)

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-NM-230-AD; Amendment 39-9106; AD 94-26-11]

Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD-11 series airplanes. This action requires inspection to detect cracking of the upper spar angles of the outboard and inboard surfaces of certain wing pylons, and repair of any cracked upper spar angles. This amendment is prompted by a report of cracking in the upper spar cap of the wing pylon. The actions specified in this AD are intended to prevent reduced structural integrity of the airplane due to cracking of the upper spar cap.

DATES: Effective January 12, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 12, 1995.

Comments for inclusion in the Rules Docket must be received on or before February 27, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-230-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801-1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2-98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627-5324; fax (310) 627-5210.

SUPPLEMENTARY INFORMATION: Recently, an operator of McDonnell Douglas Model MD-11 series airplanes reported finding a crack of the upper inboard spar cap, part number AUB7519, on the number 3 wing pylon. This crack was found on a pylon that had accumulated 10,600 total flight hours and 1,700 total flight cycles. Although the cause of this cracking has not yet been determined, there is nothing unique about the service experience of the subject airplane to indicate that the cracking would be limited to that airplane. Therefore, the FAA has concluded that this condition may exist or develop on other airplanes of this type design. Such cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airplane.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A54-49, dated December 2, 1994, which describes procedures for a one-time visual inspection to detect cracking of the upper spar angles, part numbers AUB7519-1/-2, of the outboard and inboard surfaces on the number 1 and number 3 wing pylons.

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model MD-11 series airplanes of the same type design, this AD is being issued to prevent reduced structural integrity of the airplane. This AD requires inspection to detect cracking of the upper spar angles of the outboard and inboard surfaces on the number 1 and 3 wing pylons. The inspection is required to be accomplished in accordance with the alert service bulletin described previously. Cracked upper spar angles must be repaired in accordance with a method approved by the FAA.

This AD also requires that operators report the results of the visual inspection to the FAA. Because the cause of the addressed cracking is not currently known, the intent of these required inspection reports is to enable the FAA to determine how widespread such cracking problems may be in the affected fleet. Based on the results of these reports, further corrective action may be warranted.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this requirement.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

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-230-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, Incorporation by reference, 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 adding the following new airworthiness directive:

94-26-11 McDonnell Douglas: Amendment 39-9106. Docket 94-NM-230-AD.

Applicability: Model MD-11 series airplanes having manufacturer's fuselage numbers 447 through 575 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, unless accomplished previously within the last 30 days prior to the effective date of this AD, perform a visual inspection to detect cracking of the upper spar angles, part numbers AUB7519-1/-2, of the outboard and inboard surfaces on the number 1 and number 3 wing pylons, in accordance with McDonnell Douglas Alert Service Bulletin A54-49, dated December 2, 1994.

(1) If no cracking is detected, no further action is required by this paragraph.

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) At the applicable time specified in paragraph (b)(1) or (b)(2) of this AD, submit a report of the results (both positive and negative findings) of the inspection required by paragraph (a) of this AD to the Manager, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; fax (310) 627-5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection is accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(c) 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 ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) 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.

(e) The inspection shall be done in accordance with McDonnell Douglas Alert Service Bulletin A54-49, dated December 2, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801-1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2-98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 12, 1995.

Issued in Renton, Washington, on December 20, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-31736 Filed 12-27-94; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 71

[Airspace Docket No. 92-ASW-30]

Revision of Class E Airspace; Russellville, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class E airspace at Russellville, AR. A nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) has been developed at Russellville Municipal Airport and has made this action necessary. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed for aircraft executing the approach. This action is intended to provide adequate Class E airspace for instrument flight rule (IFR) operations for aircraft executing the SIAP at Russellville Municipal Airport, Russellville, AR.

EFFECTIVE DATE: 0901 UTC, February 2, 1995.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation,

Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5591.

SUPPLEMENTARY INFORMATION:

History

On November 30, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the transition area at Russellville, AR, was published in the **Federal Register** (58 FR 63130). A SIAP, NDB–A, approach was developed for the Russellville Municipal Airport, Russellville, AR. The proposal was to revise the controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The latitude and longitude for the Russellville Municipal Airport, and the Russellville NDB, have been changed to reflect an increase of one second in each of the latitudinal and longitudinal coordinates. Except for the non-substantive changes just discussed, the rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more AGL are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class E airspace located at Russellville, AR, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the SIAP at Russellville Municipal Airport.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, *Airspace Designations and Reporting Points*, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005: Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW AR E5 Russellville, AR [Revised]

Russellville Municipal Airport, AR
(lat. 35°15′33″ N., long. 93°05′38″ W.)
Russellville NDB
(lat. 35°15′26″ N., long. 93°05′40″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Russellville Municipal Airport, and within 2.4 miles each side of the 184° bearing of the Russellville NDB extending from the 6.4-mile radius to 6.6 miles south of the airport, excluding that airspace which overlies the Morrilton, AR Class E area.

* * * * *

Issued in Fort Worth, TX, on December 12, 1994.

Larry D. Gray,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–31920 Filed 12–27–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ACE–16]

Establishment of Class E Airspace; Monticello, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface within a 6.3 mile radius of the Lewis County Regional Airport, Monticello, Missouri. The development of a standard instrument approach (SIAP) at the Lewis County Regional Airport, Monticello, Missouri, utilizing the Quincy, Illinois, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VORTAC) has made this action necessary. The intended effect of this proposal is to provide adequate Class E airspace for instrument flight rules (IFR) operators executing the recently established SIAP.

EFFECTIVE DATE: 0901 UTC, February 2, 1995.

FOR FURTHER INFORMATION CONTACT: Charles R. Raymond, Airspace Specialist, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–7289.

SUPPLEMENTARY INFORMATION:

History

On August 22, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at the Lewis County Regional Airport, Monticello, Missouri.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This establishment is the same as that proposed in the notice. Class E airspace designations for airspace areas extending upward from 700 feet or more above the ground level are published in paragraph 6005 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is inconcorporated by reference in 14 CFR 71.1. The class airspace designation listed in this document will be published subsequently in the Order

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace airspace area Monticello, MO, by

providing additional controlled airspace for aircraft executing the VOR/DME–A SIAP to the Lewis County Regional Airport.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace areas extend upward from 700 feet or more above the surface of the earth when designated in conjunction with an airport for which an approved instrument procedure has been prescribed

* * * * *

ACE MO E5 Monticello, MO [New]

Lewis County Regional Airport, MO
Lat. 40°07'47" N, long. 91°16'44" W)
Quincy VORTAC (lat 39°50'53" N long 91°16'44" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Lewis County Regional Airport.

* * * * *

Issued in Kansas City, Missouri, on November 21, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–31921 Filed 12–27–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 121

[Docket No. 25148; Amdt. No. 121–246]

Antidrug Program for Personnel Engaged in Specified Aviation Activities; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule, Antidrug Program for Personnel Engaged in Specified Aviation Activities, published in the **Federal Register** on August 19, 1994.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Julie B. Murdoch, (202) 366–6710.

Correction of Publication

In the final rule beginning on page 42922 in the issue of Friday, August 19, 1994, the following corrections are being made:

Appendix I to Part 121 [Corrected]

1. On page 42928, first column, paragraph I, fourth line, the word "complies" is corrected to read "comply".

2. On page 42932, second column, paragraph No. 6, seventh line, the word "problems" is corrected to read "programs".

Dated: December 21, 1994.

Donald P. Byrne,

Assistant Chief Counsel, Office of the Chief Counsel.

[FR Doc. 94–31914 Filed 12–27–94; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1000

Commission Organization and Functions

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising its statement of organization and functions to reflect the creation of three new organizational units and the implementation of fax-on-demand and Internet information dissemination services, and to correct an address.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, telephone 301-504-0980.

SUPPLEMENTARY INFORMATION:

Section 1000.3 has been amended to correct a telephone number and describe the Commission's fax-on-demand and Internet services.

Section 1000.4 has been amended to correct the address of the Commission's Eastern Regional Center.

Section 1000.12 has been amended to reflect the new organizational structure.

Section 1000.19 has been amended to include a new organization reporting to the Executive Director.

New sections describing the new Office of Human Resources Management, the new Office of Information Resources Management, and the new Directorate for Laboratory Sciences have been added.

The sections describing the Office of Information and Public affairs and the Directorate for Administration have been amended to reflect the transfer of certain functions from those organizations to the new Office of Information Services.

The sections describing the Directorate for Engineering Sciences and the Directorate for Health Sciences have been amended to reflect the trasfer of certain functions from those organizations to the new Directorate for Laboratory Sciences.

Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b), notice and other public procedures are not required and it is effective immediately on the specified effective date. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612 and, thus, is exempt from the provisions of the Act.

List of Subjects in 16 CFR Part 1000

Organization and functions (government agencies).

Accordingly, 16 CFR part 1000 is amended as follows:

PART 1000—[AMENDED]

1. The authority citation for part 1000 continues to read as follows:

Authority: 5 U.S.C. 552(a).

2. Section 1000.3 is amended by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 1000.3 Hotline.

* * * * *

(b) The Commission also operates a toll-free Hotline by which hearing or speech-impaired persons can communicate by teletypewriter with the Commission. The teletypewriter number for use in all states is 1-800-638-8270.

(c) The Commission also makes information available to the public product recall information, its public calendar, and other information through its Internet gopher service at Internet address cpsc.gov. The public may also report product hazards or other information to the Commission at its electronic mail address: info@cpsc.gov.

(d) The Commission also provides a fax-on-demand service from which the public can request Commission documents by calling 1-301-504-0051 from the handset of a facsimile machine.

3. Section 1000.4 is amended by revising paragraph (b)(2) to read as follows:

§ 1000.4 Commission addresses.

* * * * *

(b) * * *

(2) Eastern Regional Center, 6 World Trade Center, Vesey Street, Room 350, New York, New York 10048-0950; Connecticut, Delaware, District of Columbia, Florida, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, and Virgin Islands.

* * * * *

4. Section 1000.12 is revised to read as follows:

§ 1000.12 Organizational structure.

The Consumer Product Safety Commission is composed of the principal units listed in this section.

(a) The following units report directly to the Chairman of the Commission:

(1) Office of the General Counsel;

(2) Office of Congressional Relations;

(3) Office of the Secretary;

(4) Office of the Inspector General;

(5) Office of Equal Employment Opportunity and Minority Enterprise;

(6) Office of the Executive Director.

(b) The following units report directly to the Executive Director of the Commission:

(1) Office of the Budget;

(2) Office of Hazard Identification and Reduction;

(3) Office of Information and Public Affairs;

(4) Office of Compliance and Enforcement;

(5) Office of Planning and Evaluation;

(6) Office of Human Resources Management;

(7) Office of Information Services;

(8) Directorate for Administration;

(9) Directorate for Field Operations.

(c) The following units report directly to the Assistant Executive Director for Hazard Identification and Reduction:

(1) Directorate for Epidemiology;

(2) Directorate for Economic Analysis;

(3) Directorate for Health Sciences;

(4) Directorate for Engineering Sciences;

(5) Directorate for Laboratory Sciences.

5. Section 1000.19 is revised to read as follows:

§ 1000.19 Office of the Executive Director.

The Executive Director with the assistance of the Deputy Executive Director, under the broad direction of the Chairman and in accordance with Commission policy, acts as the chief operating manager of the agency, supporting the development of the agency's budget and operating plan before and after Commission approval, and managing the execution of those plans. The Executive Director has direct line authority over the following directorates and offices: the Directorate for Administration, the Directorate for Field Operations, the Office of the Budget, the Office of Hazard Identification and Reduction, the Office of Information and Public Affairs, the Office of Compliance and Enforcement, the Office of Planning and Evaluation, the Office of Human Resources Management, and the Office of Information Services.

6. Section 1000.23 is revised to read as follows:

§ 1000.23 Office of Information and Public Affairs.

The Office of Information and Public Affairs, which is managed by the Director of the Office, is responsible for the development, implementation, and evaluation of a comprehensive national information and public affairs program designed to promote product safety. This includes responsibility for developing and maintaining relations with a wide range of national groups such as consumer organizations; business groups; trade associations; state and local government entities; labor organizations; medical, legal, scientific and other professional associations; and other Federal health, safety and consumer agencies. The Office also is responsible for implementing the Commission's media relations program nationwide. The Office serves as the Commission's spokesperson to the national print and broadcast media, develops and disseminates the Commission's news releases, and organizes Commission news conferences.

7. Sections 1000.25, 1000.26, 1000.27, 1000.28, 1000.29, and 1000.30 are redesignated as sections 1000.27, 1000.28 1000.29, 1000.30, 1000.32, and 1000.33 respectively.

8. Section 1000.25 is added to read as follows:

§ 1000.25 Office of Human Resources Management.

The Office of Human Resources Management, which is managed by the Director of the Office, provides human resources management support to the Commission in the areas of recruitment and placement, position classification, training and executive development, employee and labor relations, employee benefits and retirement assistance, employee assistance programs, drug testing, leave administration, disciplinary and adverse actions, grievances and appeals, and performance management.

9. Section 1000.26 is added to read as follows:

§ 1000.26 Office of Information Services.

The Office of Information Services, which is managed by the Assistant Executive Director for Information Services, is responsible for general policy, controlling and conducting managerial activities and operations relating to the collection, use, and dissemination of information by the agency. The Office manages the Commission's information system that supports all its program activities. The Office provides automated data processing and operational support for data collection, information retrieval, report generation, electronic mail, and statistical and mathematical operations of the agency. The Office maintains the agency's local area networks and develops and supports other network applications. The Office develops plans for improving agency operations through the use of information technology. The Office's functional responsibilities include planning, organizing, and directing information resources management (including records management and related requirements), and the managing of the agency's management directives system. The Office manages the headquarters telecommunications including the agency's toll-free Hotline by which the public reports hazardous consumer products and receives information about

product recalls and product hazards. It also oversees operation of the Commission's Internet and fax-on-demand services.

10. Newly redesignated section 1000.29 is revised to read as follows:

§ 1000.29 Directorate for Engineering Sciences.

The Directorate for Engineering Sciences, which is managed by the Associate Executive Director for Engineering Sciences, is responsible for developing technical policy for and implementing the Commission's engineering programs. The Directorate manages hazard assessment and reduction projects as assigned by the Office of Hazard Identification and Reduction; develops and evaluates performance criteria, design specifications, and quality control standards for certain consumer products; provides scientific and technical expertise to the Commission and Commission staff; provides advice on proposed mandatory standards and industry voluntary standard efforts; performs or monitors research in the engineering sciences; and provides analytical services in support of the Commission's enforcement activities. It provides reliability engineering and quality control analysis in support of standards development, product certification, and compliance product testing; and provides engineering technical support to all Commission organizations, activities, and programs. The Directorate analyzes accident data, develops accident scenarios, and recommends solutions.

11. Newly redesignated section 1000.30 is revised to read as follows.

§ 1000.30 Directorate for Health Sciences

The Directorate for Health Sciences, which is managed by the Associate Executive Director for Health Sciences, is responsible for developing science policy and implementing the Commission's Health Sciences program. The Directorate's functional responsibilities include development and evaluation of the content of product safety standards and test methods based on the chemical, biological and medical sciences. The Directorate also provides health sciences and medical expertise to the Commission, and develops and evaluates performance criteria, design specifications, and quality control standards for certain consumer products. It provides advice on proposed standards. It collects health sciences, exposure, and medical data, reviews and evaluates toxicological, medical, and chemical hazards, and determines exposure, uptake and metabolism, including information on population segments at risk. It performs risk assessments for chemical hazards, and physical hazards based on methods such as medical injury modeling, in consumer products. It provides the Commission's primary source of technical expertise for implementation of the Poison Prevention Packaging Act. It provides the expertise on how chemical products are manufactured and provides scientific support to the Commission's regulatory development and enforcement activities. It provides health sciences and medical support to all Commission organizations, activities, and programs. It manages hazard assessment and reduction projects as assigned. The Directorate provides scientific liaison with the National Toxicological Program, the Department of Health and Human Services, the Occupational Health and Safety Administration, the Environmental Protection Agency, other federal agencies and programs, and other organizations concerned with reducing the risks to consumers from exposure to chemical hazards.

12. Section 1000.31 is added to read as follows:

§ 1000.31 Directorate for Laboratory Sciences.

The Directorate for Laboratory Sciences, which is managed by the Associate Executive Director for Laboratory Sciences, is responsible for implementing the Commission's engineering and health sciences laboratories programs. The Directorate's functional responsibilities include development and evaluation of product safety standards, and product safety tests and test methods, based on engineering and other physical sciences, chemical, and biological sciences to support general agency regulatory activities. The Directorate develops and evaluates performance criteria, design specifications and quality control standards for certain consumer products. It provides engineering, scientific, and technical expertise to the Commission, conducts engineering tests and studies of the safety of consumer products, evaluates industry voluntary standards efforts, and participates in the development of product safety standards. It performs and monitors research and conducts studies of the safety of, or improving the safety of, consumer products in engineering, other physical sciences, chemical, and biological sciences. The Directorate is composed of two divisions, the Engineering Laboratory Division and the Health Sciences Laboratory Division. The Directorate provides engineering and scientific services in support of the Commission's enforcement activities. It coordinates engineering research, testing, and evaluation activities with the National Institute of Standards and Technology and other federal agencies, private industry, and consumer interest groups. It provides the Commission's expertise and laboratory support to other laboratories and other chemical and biological testing facilities. It provides chemical and biological laboratory support to all Commission organizations, activities, and programs. The Directorate provides technical supervision and direction of engineering activities including tests and analyses conducted in the field.

13. Newly redesignated section 1000.32 is revised to read as follows:

§ 1000.32 Directorate for Administration.

The Directorate of Administration, which is managed by the Associate Executive Director for Administration, is responsible for formulating general administrative policies supporting the Commission in the areas of financial management, procurement, and general administrative support services including property and space management, physical security, printing, telecommunications, and warehousing. The Directorate is responsible for the payment, accounting, and reporting of all expenditures within the Commission and for operating and maintaining the Commission's accounting system and subsidiary Management Information System which allocates staff work time and costs to programs and projects.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94-31806 Filed 12-27-94;8:45 am]

BILLING CODE 6355-01-F

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Risk Assessment for Holding Company Systems

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: On March 1, 1994, the Commodity Futures Trading Commission ("CFTC" or "Commission") published for comment proposed rules to implement the risk assessment authority set forth in Section 4f(c) of the Commodity Exchange Act

(the "Proposal").[1] The comment period on the proposal was scheduled to expire on May 2, 1994. However, the Commission twice extended the comment period to ensure that interested parties had an adequate opportunity to submit comments. Initially, the Commission extended the comment period on the entire set of rule proposals to July 1, 1994. The comment period on the proposed provisions regarding the maintenance and filing by futures commission merchants ("FCMs") of an organizational chart delineating major affiliated persons, risk management policies, procedures and systems, consolidated and consolidating financial statements, and information concerning the occurrence of certain "trigger" events, expired at that time. Subsequently, the Commission extended the comment period on the proposed provisions regarding reporting of certain data concerning affiliate positions and noncustomer accounts carried by the FCM to September 1, 1994. As discussed herein, the Commission has adopted final rules with respect to maintenance and filing of organizational charts, risk management policies, procedures and systems, consolidated and consolidating financial statements and trigger events relating to events occurring at the FCM. Final action on the balance of the Proposal has been deferred following further review and consultation with other regulators.

EFFECTIVE DATE: December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Susan C. Ervin, Deputy Director/Chief Counsel, Lawrence B. Patent, Associate Chief Counsel, or Lawrence T. Eckert, Attorney Adviser, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street N.W., Washington D.C. 20581. Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION

I. Background

Following the failures of certain FCMs operating within holding company structures, the Commission requested and received new statutory authority, enacted as part of the Futures Trading Practices Act of 1992 ("FTPA"),[2] to obtain information concerning activities of FCM affiliates that could pose material risks to the FCM. New Section 4f(c)[3] of the Commodity Exchange Act ("CEA" or "Act") authorizes the Commission to require each registered FCM to obtain, inter alia, "such information and make and keep such records as the Commission, by rule or regulation, prescribes concerning the registered futures commission merchant's policies, procedures or systems for monitoring and controlling financial and operational risks to it resulting from the activities of any of its affiliated persons, other than a natural person."[4] Section 4f(c) provides that the required records should "describe, in the aggregate, each of the futures and other financial activities conducted by, and the customary sources of capital and funding of, those of its affiliated persons whose business activities are reasonably likely to have a material impact on the financial or operational condition of the futures commission merchant, including its adjusted net capital, its liquidity, or its ability to conduct or finance its operations."[5] The statute further grants the Commission the authority to require, by rule or regulation, summary reports of such information to be filed no more frequently than quarterly and supplemental reports if, as a result of adverse market conditions, based on reports provided pursuant to this section, or other available information, the Commission "reasonably concludes" that it has concerns regarding the financial or operational condition of any registered FCM.[6]

The Commission's statutory risk assessment authority is similar to that granted to the Securities and Exchange Commission ("SEC") in Section 4 of the Market Reform Act of 1990.[7] Pursuant to its risk assessment authority, the SEC adopted on July 21, 1992 "final temporary" rules[8] which generally require securities broker-dealers to maintain and preserve records and file quarterly reports containing information concerning the financial and securities activities of the broker-dealers' material affiliates.[9] The SEC adopted "final temporary" rules as an interim step in the adoption of final regulations to enable the agency to gain familiarity with information filed pursuant to the risk assessment rules and to evaluate the operation of the risk assessment program.[10] In formulating the proposed rules, the CFTC gave extensive consideration to the risk assessment rules adopted by the SEC and consulted extensively with the SEC and other federal financial regulators in an effort to develop, to the extent possible, a coordinated approach to implementation of its risk assessment authority.[11]

On March 1, 1994, the Commission published for comment proposed rules to implement its statutory risk assessment authority. The proposed rules generally would have required the maintenance and reporting of information concerning the activities of affiliates of registered FCMs whose activities are reasonably likely to have a material impact on the financial or operational condition of the FCM. Proposed Rule 1.14(a)(2) defined such affiliates as "Material Affiliated Persons" ("MAPs") of the FCM and set forth criteria to be considered by FCMs in determining which of their affiliates would constitute MAPs for purposes of the risk assessment requirements.[12]

The Proposal included two rules, a rule requiring that certain records be maintained (proposed Rule 1.14) and a rule requiring reporting of certain information to the Commission (proposed Rule 1.15), as well as a proposed form, proposed Form 1.15A, on which an FCM would report the majority of the information required to be reported under the reporting rule. Proposed Rule 1.14 would have required FCMs to maintain and preserve certain records and information concerning, among other things, the organizational structure of which the FCM is a part, the FCM's policies and systems for monitoring and controlling risks arising from the activities of its

[1] 59 FR 9689.

[2] Pub. L. No. 102–546, 106 Stat. 3590 (1992). The FTPA was enacted on October 28, 1992.

[3] 7 U.S.C. 6f(c)(Supp. IV 1992). For a more detailed discussion regarding the background and purpose of the Commission's statutory risk assessment authority, see 59 FR 9689–92 (March 1, 1994).

[4] 7 U.S.C. 6f(c)(2)(A)(Supp. IV 1992).

[5] 7 U.S.C. 6f(c)(2)(B)(Supp. IV 1992).

[6] 7 U.S.C. 6f(c)(3)(A) and 6f(c)(3)(B)(Supp. IV 1992).

[7] Pub. L. No. 101–432, 104 Stat. 963 (1990).

[8] *See* 57 FR 32159, 32161 (July 21, 1992).

[9] 57 FR 32159.

[10] The SEC plans to review the operation of its risk assessment regulations early next year, after the rules have been in effect for over two years. *See* 57 FR 32159 at 32161.

[11] *See* Letter from Andrea M. Corcoran, Director, Division of Trading and Markets, CFTC, to Brandon Becker, Director, Division of Market Regulation, SEC (October 11, 1994); Letter from the Honorable Barbara Pedersen Holum, Acting Chairman, CFTC, to the Honorable Arthur Levitt, Chairman, SEC (October 11, 1994); Letter from the Honorable Barbara Pedersen Holum, Acting Chairman, CFTC, to the Honorable Alan Greenspan, Chairman, Board of Governors of the Federal Reserve System (October 11, 1994); Letter from the Honorable Arthur Levitt, Chairman, SEC, to the Honorable Mary L. Schapiro, Chairman, CFTC (October 31, 1994); Letter from Brandon Becker, Director, Division of Market Regulation, SEC, to Andrea M. Corcoran, Director, Division of Trading and Markets, CFTC (December 13, 1994).

[12] The "material affiliated person" definition used in the Commission's Proposal is similar to that used in the SEC's risk assessment rules. However, for purposes of the Proposal and these rules, the Commission has used the term "affiliated person" rather than "associated person", as used in the SEC's rules, to avoid confusion with the associated person registration category described in Section 4k of the Act and Commission Rule 3.12.

affiliates, consolidated and consolidating financial statements for the FCM and its ultimate parent company, and aggregate information concerning futures, forwards and financial instruments with off-balance sheet risk and concentrations of credit risk. Proposed Rule 1.15 would have required FCMs to file with the Commission, generally on an annual basis, the information required to be maintained under proposed Rule 1.14 and to provide the Commission with notice of the occurrence of specified events, such as large decreases in the reported adjusted net capital of the FCM or the equity of its parent company.

The Proposal would have applied generally to FCMs that hold customer funds of $6,250,000 or greater, maintain adjusted net capital in excess of $5,000,000 or are clearing members of a contract market. However, the proposed rules included exemptive provisions for FCMs dually registered with the SEC as broker-dealers or operating within a holding company group that includes a broker-dealer filing reports pursuant to the SEC's risk assessment rules. Further, the proposed rules would have permitted FCMs that have affiliates subject to regulation by a federal banking agency, a state insurance commission or similar state agency, or a foreign futures authority or other relevant foreign regulatory authority with which the Commission has an information-sharing agreement to comply with certain reporting and recordkeeping requirements by filing or maintaining records that the regulated affiliate is required to file with the relevant regulator.

The Commission received twenty-three comment letters on the provisions of the Proposal relating to maintenance and filing of organizational charts, risk management policies, consolidated and consolidating financial statements, and "trigger event" reporting, for which, following extension of the comment period, comments were due by July 1, 1994.[13] The majority of the commenters either supported, or noted their understanding of, the objectives of the proposed rules. Several commenters, however, criticized the scope of the proposed rules, and a number of commenters urged the Commission to reconcile any differences between the SEC's risk assessment rules and the Commission's proposed rules. Generally, commenters requested additional time to update (if necessary) one-time filings required under the proposed rules (*i.e.*, the organizational chart and risk management policies, procedures and systems) and to file notice with the Commission upon the occurrence of the trigger events specified in the Proposal. A number of commenters requested that the Commission focus its trigger event reporting system on conditions occurring at the FCM rather than at an affiliate or parent of the FCM. Certain commenters requested that general exemptive authority be retained to permit the Commission to address on a case-by-case basis special problems of compliance for some firms in, for example, preparing consolidating financial reports or obtaining access to information concerning foreign affiliates. Comments addressed to specific provisions of the proposed rules and the Commission's resolution of the issues raised by such comments are discussed below in the context of the relevant provisions of the final rules.

Based upon its review of the comments received concerning the Proposal, consultation with other federal regulators and further consideration, the Commission has determined to bifurcate the rulemaking and to defer, pending further review and consultation with other regulators, action on the proposed provisions requiring reporting of information relating to FCMs' noncustomer accounts, financial position and other information relating to FCMs' material affiliates proposed to be required on Form 1.15A, and notice of the occurrence of certain trigger events at material affiliates. The Commission expects to continue to consult with the SEC and other regulators in the interest of maximizing harmonization, minimizing duplication and developing consensus on the information most useful to furthering effective entity-based supervision, consistent with past and continuing efforts to harmonize rules and interpretations concerning financial requirements. In particular, the Commission has indicated that it intends to work with the other financial regulators in connection with any determination on the position reporting section of the Proposal in the interest of developing common data elements to make filings more efficient and compatible.[14]

II. Summary of Rules 1.14 and 1.15

The Commission believes that Rules 1.14 and 1.15, as adopted, are responsive to the concerns of commenters, while also meeting the regulatory objectives of the risk assessment authority conferred by the Act. As adopted, and subject to the terms and conditions stated therein, Rules 1.14 and 1.15 establish two basic types of risk assessment requirements: (1) recordkeeping; and (2) reporting to the Commission of certain information on a routine basis. In addition, the Commission has amended its financial early warning rule, Rule 1.12, to require reporting to the Commission upon the occurrence of certain events at the reporting FCM that warrant further review.

Rule 1.14 will require that FCMs maintain certain records. These records include: (1) an organizational chart depicting the various entities with which the FCM is affiliated and identifying the FCM's MAPs; (2) the FCM's policies, procedures and systems to manage the risks to the FCM's financial condition or operations arising from the activities of its affiliates; and (3) consolidated and consolidating financial statements. Rule 1.15 will require reporting to the Commission of the information required to be maintained by the FCM, either on a one-time basis (absent significant changes in the reported information), with respect to the FCM's organizational chart and risk management policies, or annually with respect to consolidated and consolidating financial statements. With respect to the proposed provision requiring "trigger event" reporting of a reduction of greater than 20 percent in an FCM's adjusted net capital, the Commission has determined to include this notice requirement in its existing financial early warning system, which is set forth in Rule 1.12. Upon receipt of such a notice, the Commission may seek additional information, as warranted in the circumstances, from another regulator and/or from the FCM. By separate **Federal Register** release, the Commission is proposing to make this early warning notice requirement applicable to all FCMs. The Commission also is proposing two additional early warning notice provisions, which would require notice to the Commission in the event that: (1) a margin call that exceeds an FCM's excess adjusted net capital remains unanswered by the close of business on the day following the issuance of the call; and (2) an FCM's excess adjusted net capital falls below six percent of the maintenance margin required to be held or posted for all non-

[13] The commenters included thirteen FCMs, four self-regulatory organizations ("SROs"), three trade associations, one government agency, one bar association and one law firm representing Commission registrants. The Commission received thirteen comment letters on the balance of the proposal, on which comments were due by September 1, 1994.

[14] See correspondence cited in note 11, *supra*.

customer and proprietary positions carried by the FCM. With respect to an FCM's proprietary account positions, maintenance margin shall mean the amount of funds the FCM is required to maintain at the exchange's clearing organization or with its clearing broker, or five percent of the value of the contract, whichever is greater.

The rules being adopted will apply generally to FCMs that hold customer funds of $6,250,000 or greater, maintain adjusted net capital in excess of $5,000,000 or are clearing members of a contract market. The rules, however, include special exemptive provisions for FCMs that are dually registered with the SEC as securities broker-dealers (including government securities broker-dealers) or that are part of a holding company group that includes a securities broker-dealer filing reports pursuant to the SEC's risk assessment rules. Further, the rules allow FCMs that have affiliates subject to regulation by a federal banking agency, a state insurance commission or similar state agency to comply with certain reporting and recordkeeping requirements by filing records that the regulated affiliate is required to file with the relevant regulator. Similarly, in the case of affiliates subject to regulation by a foreign futures authority or other relevant foreign regulatory authority, the Commission will accept the maintenance or filing of records required by such authority if either there is an information-sharing agreement in effect which permits the Commission to obtain the type of information required under these rules or the FCM agrees to use its best efforts to obtain from the foreign firm and to cause the foreign firm to provide, directly or through its foreign regulator, any supplemental financial information the Commission may request and no blocking statute or other restriction precludes the communication of such information to the Commission.

The following discussion focuses principally on changes in or clarifications of the proposed rules made in the final rules. Additional background information relevant to these final rules may be found in the **Federal Register** release accompanying the Commission's Proposal.

III. Discussion

A. Definition of Material Affiliated Person

Section 4f(c) provides that FCMs shall maintain and report information as prescribed by the Commission concerning their affiliated persons [15] "whose business activities are reasonably likely to have a material impact on the financial or operational condition of the [FCM]." [16] For the purpose of determining which of an FCM's affiliated persons are engaged in business activities that are reasonably likely to have a material impact on the financial or operational condition of the FCM, proposed Rule 1.14(a)(2) defined the term "material affiliated person." Proposed Rule 1.14(a)(2) stated that the determination as to whether an affiliate is a MAP "shall involve consideration of all aspects of the activities of, and the relationship between," the FCM and the affiliate, including, without limitation, several illustrative factors relevant to the activities of, and the relationship between, the FCM and its affiliate.[17] In the **Federal Register** release accompanying the proposed rules, the Commission stated that the factors specified in the proposed rule were intended to provide guidance and not to be exhaustive.[18] Proposed Rule 1.14(a)(2) included the following list of factors which an FCM should consider in determining whether an affiliated person is a MAP: (1) the legal relationship between the FCM and the affiliated person, *i.e.*, the nature and proximity of the relationship between the FCM and the affiliated person; (2) the degree of financial dependence of the FCM on its affiliate and the nature of the FCM's financing requirements; (3) the degree to which the FCM or its customers rely upon an affiliated person for operational services or support; (4) the level of market, credit and other risk present in an affiliated entity's activities; and (5) the extent to which an affiliated person has the authority or ability to negatively impact the FCM's capital. As noted in the Proposal, the Commission's statutory risk assessment provisions generally apply to affiliates other than natural persons.[19]

Commenters who addressed the provisions of Rule 1.14(a)(2) concerning determinations as to whether an affiliated person is a MAP generally did not object to the five factors set forth in the proposed rule but sought clarification or modification of certain aspects of this provision. As a threshold matter, two commenters suggested that, although the statutory risk assessment provisions refer to affiliated persons other than natural persons, the Commission should clarify that FCMs would not be required to obtain information concerning their natural person affiliates by explicitly excluding natural persons from the MAP definition. The Commission agrees that such an exclusion is appropriate for the sake of clarity and has revised the MAP definition as suggested. The remaining comments concerning the MAP definition generally fell within one of three categories: (1) requests for clarification as to the degree of an FCM's liability for good faith errors in failing to classify an affiliate as a MAP; (2) requests that the Commission conform its MAP definition to the "material associated person" definition adopted by the SEC; and (3) requests for clarification as to the standards to be used in determining whether an affiliate is a MAP.

The issue that appeared to be of greatest concern to commenters on the MAP definition related to the Commission's position that an FCM should be responsible, in the first instance, for determining whether an affiliate is a MAP. Several commenters urged the Commission to make clear that an FCM who makes a good faith determination that an affiliate is not a MAP would not be subject to enforcement action for violation of Rule 1.14 in the event that the Commission subsequently concluded that such a determination was erroneous. The Commission believes that determinations by an FCM as to an affiliate's status made in good faith and in the exercise of reasonable diligence based upon consideration of the factors set forth in the rule, together with all other relevant facts and circumstances, would not, standing alone, be made the basis of an enforcement proceeding against the FCM.[20] The Commission

[15] Section 4f(c) (1)(i) defines "affiliated person" as "any person directly or indirectly controlling, controlled by, or under common control with a futures commission merchant, as the Commission, by rule or regulation, may determine will effectuate the purposes of this subsection."

[16] *See* Section 4f(c)(2)(B) of the Act, 7 U.S.C. 6f(c)(2)(B) (Supp. IV 1992).

[17] 59 FR at 9693.

[18] *Id.*

[19] 7 U.S.C. 6f(c) (2)(A) and (3)(A) (Supp. IV 1992); *see* 59 FR at 9693 n. 26. In this connection, the Commission staff expects to take the position that certain sole shareholder Subchapter "S" corporations will be treated as natural persons but that partnerships will not, consistent with guidance issued by the SEC. Letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, SEC to Douglas G. Preston, Esq., Securities Industry Association at 3 (September 20, 1993).

[20] A pattern of noncompliance, however, may be inconsistent with claims of reasonable diligence and provide a basis for further review and action by the Commission. On a related point, one commenter requested that the Commission apply a "best efforts and good faith" standard with respect to a United States FCM attempting to obtain information concerning its foreign MAPs. This commenter contended that an FCM located in the United States would likely have difficulty

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stresses, however, that FCMs who are uncertain as to whether an affiliate is a MAP may seek informal guidance from Commission staff in particular cases and that, in light of the statutory objective of enhancing access to information about potential risks, the FCM should give careful consideration to the potential for its affiliates to pose material risks to the FCM in various contingencies, thereby warranting their characterization as MAPs.

Other commenters on the MAP definition requested that the Commission conform its MAP definition with the SEC's definition of "material associated person." With only minor exceptions, the MAP definition set forth in the Commission's Proposal is the same as that adopted by the SEC in its risk assessment regulations. With respect to the first factor to be considered in determining which affiliates are MAPs, *i.e.*, the legal relationship between the FCM and the affiliate, the Commission noted that in the context of multi-tiered holding company structures, if the ultimate parent is engaged in activities unrelated to the futures or financial markets, the parent generally would not be required to be designated as a MAP. In the **Federal Register** release accompanying its temporary risk assessment rules, the SEC made a similar statement, noting that "absent unusual circumstances," an ultimate parent not engaged in securities-related activities would not be required to be designated a MAP. Several commenters requested that the Commission confirm that it agrees with the SEC's apparently broader language on this point. One commenter also requested that the Commission confirm that, although a parent company's maintenance of a futures account at a subsidiary FCM may be a fact or circumstance to be considered in determining whether an affiliate is a MAP, the existence of such an account does not automatically make the ultimate parent a MAP, absent a conclusion that the account creates a relationship that may significantly affect the finances or operations of the FCM.

As noted in the **Federal Register** release accompanying the Proposal, the Commission believes that if the ultimate parent in a multi-tiered holding company structure primarily is engaged in activities that are not related to the futures or financial markets, such as manufacturing or retailing, the parent generally would not be required to be designated a MAP.[21] However, an FCM in a holding company group may have substantial exposure to its parent by reason of carrying or clearing the parent's futures account and thus the parent company would be a MAP even though its line of business does not directly involve the futures or financial markets. In a typical scenario, an ultimate parent company engaged in non-financial activities might maintain a futures account at an FCM in the holding company group in order to establish futures positions to manage the risk of cash commodity positions. This relationship, although it may involve a relatively small portion of the assets of the parent, may comprise a substantial portion of the positions carried by the FCM and thus could expose the FCM to potential risks of withdrawal or modification of the parent's business with the FCM or of default on the positions carried. However, if the only relationship between the FCM and the ultimate parent is that the FCM carries the ultimate parent's futures account and that account is not material in the overall context of the FCM's operations, the ultimate parent would not become a MAP solely on the basis of its futures account at the reporting FCM. Thus, the FCM should carefully evaluate the potential risks to which it is exposed as a result of the futures accounts which it carries or clears on behalf of a parent entity in making its determination as to whether its parent is a MAP.[22] Further, as the Commission noted in the release accompanying the proposed rules, if obligations of the FCM are guaranteed by a parent or other affiliate, the FCM is financially dependent upon the guarantor to an extent that, absent unusual circumstances, would require designation of the guarantor entity as a MAP.[23]

Finally, several commenters requested that the Commission confirm that FCMs may employ a materiality standard in applying the factors enumerated for consideration in determining whether an affiliate is a MAP. As noted above, the threshold question with respect to whether an FCM should identify an affiliate as a MAP is whether the affiliate's activities are material in respect of their reasonably anticipatable impact on the FCM. However, materiality should not be determined on a factor-by-factor basis but, rather, in the aggregate, based upon the potential impact of all of the itemized factors taken together and the overall relationship between the FCM and its affiliate. Thus, an affiliate's activities may not appear likely to have a material impact on the FCM's financial or operational condition if each factor set forth in the rule is analyzed in isolation, but may nonetheless be required to be designated as a MAP when all relevant factors are cumulated.

The Commission has determined to adopt the MAP definition as proposed, with an additional provision expressly excluding natural person affiliates.[24]

B. Information Required to be Maintained and Filed on a Routine Basis

The final rules generally require two forms of risk assessment activity by FCMs: recordkeeping and reporting. FCMs subject to the rules are required to maintain specified types of information and to file this information either on a one-time basis, absent a material change in reported data, or annually. The categories of information called for are discussed below, with specific reference to the relevant recordkeeping and reporting requirements of the final rules.

1. Organizational Chart

Proposed Rule 1.14 required that an FCM maintain an organizational chart depicting the holding company structure of which the FCM is a part. As proposed, the organizational chart was required to identify those affiliated persons that are MAPs of the FCM, determined in accordance with the standards discussed above, and to indicate which MAPs file routine financial or risk exposure reports with the SEC, a federal banking agency, an insurance commissioner or other similar official or agency of a state or a foreign regulatory authority. The Commission

ascertaining and verifying from its foreign MAPs the information necessary to determine whether a trigger event has occurred because foreign companies engaging in trading and business activities in global markets regard such information as highly confidential, even with respect to their United States affiliates. Although the Commission has deferred action on the proposed trigger events relating to MAPs, the Commission believes that generally an FCM would be required to exercise reasonable diligence in obtaining information concerning its foreign MAPs or causing such MAPs to provide information to the Commission.

[21] 59 FR at 9694.

[22] For the purpose of determining whether the account is of material size, the appropriate benchmark is the size (capital) of the FCM rather than that of the parent or other affiliate. Moreover, as account sizes may change significantly over time, the FCM should periodically evaluate the need to treat such affiliates as MAPs.

[23] *See* 59 FR at 9694. Some futures exchanges require guarantees of member FCMs' proprietary and noncustomer obligations by the FCM's parent. *See* Chicago Mercantile Exchange Rules 901G and 901L; Parent Guarantee Policy Statement adopted in July 1986 under Board of Trade Clearing Corporation Bylaw 401; Commodity Clearing Corporation Rule 9; Comex Clearing Association Rule 20; and New York Mercantile Exchange Rule 9.20.

[24] Rule 1.14(a)(3).

also proposed to require that the chart indicate whether a MAP is a dealer or end-user (or both) of financial instruments with off-balance sheet risk.

Several commenters opposed, or questioned the regulatory necessity of, a requirement that FCMs identify whether an affiliate is an end-user or dealer of financial instruments with off-balance sheet risk. Two commenters also expressed concern that the definition of a dealer as set forth in the Proposal, *i.e.*, an entity prepared to make two-way markets in financial instruments,[25] is overly broad and recommended that a quantitative test be added to the dealer definition to assure that a MAP engages in a minimum number of transactions before being required to be identified as a dealer. Similarly, one commenter suggested that the terms "end-user" and "dealer" were ambiguous and requested that they be more precisely defined. The Commission did not propose a more specific definition for end-user or dealer because it recognizes that an organizational chart can provide only an outline of the organizational context in which an entity operates and highlight MAPs engaged in a broad category of transactions about which further information would be necessary in order to understand the specific nature of the entity's activities.

The Commission believes that it is appropriate, in the first instance, for the FCM to determine whether a particular MAP is a dealer or both a dealer and end-user but has eliminated the requirement to designate MAPs acting only as end-users. In cases in which the FCM is uncertain as to whether a MAP is an end-user or a dealer, it may resolve that uncertainty by using both categories since there is no penalty for such a characterization. The identification of a MAP as a dealer or as both a dealer and end-user under Rule 1.14(a)(1) is for the purpose of the risk assessment regulations only and would not establish or imply that the entity is a dealer or end-user in financial instruments for any other purpose. An affiliate that is only an end-user of financial instruments with off-balance sheet risk need not be separately identified as such.

One commenter remarked that the Commission should not require the inclusion of all affiliates on the organizational chart but, rather, should require only the inclusion of MAPs and other affiliates that are necessary to understand the FCM's corporate structure. This commenter stated that requiring all affiliates to be included in the chart would be too burdensome given the large number of affiliated companies in certain corporate structures and that many of these affiliated persons are likely to have little substance, to be inactive, or both. The Commission believes that an organizational chart containing all of an FCM's affiliates is essential to provide a comprehensive view of the corporate context in which the FCM operates.[26] Although some FCMs may have many affiliates, the Commission does not believe that FCMs would be unduly burdened by the requirement of a one-time filing (absent material changes) of a complete organizational chart. Consequently, with the modification discussed above with respect to designation of "end-user" MAPs, the Commission is adopting the provision relating to the content of the organizational chart as proposed.

Under the proposed rules, an FCM would be required to file its organizational chart within ninety calendar days after the effective date of the rule or within sixty calendar days of registration if that occurred after the rule's effective date. The proposed rules also required an updated organizational chart to be filed within five calendar days after the end of any fiscal quarter in which a material change in the information provided occurred. No comments were received with respect to the time periods for initial filing of the organizational chart. The Commission is adopting an implementation schedule under which currently registered FCMs will be required to make initial filings of their organizational charts and risk management policies by April 30, 1995. FCMs whose registration becomes effective after December 31, 1994 will be required to make such filings within 60 calendar days after the effective date of registration or by April 30, 1995, whichever comes later.

Several commenters objected to the five calendar day period for filing of updated charts reflecting material changes and recommended that the Commission modify this provision to require filing of the updated chart within sixty days after the end of the fiscal quarter in which the material change occurred in order to harmonize this timeframe with that of the SEC. In order to minimize the burdens on firms dually registered as FCMs and broker-dealers and to ease compliance burdens generally, the Commission has determined to modify these filing deadlines as suggested. Accordingly, the final rule requires that an FCM file an updated organizational chart within sixty days after the end of any fiscal quarter in which a material change in the information required to be provided has occurred. If no material change occurs, no updates are required.

2. Risk Management Policies.

Paragraph (a)(1)(ii) of proposed Rules 1.14 and 1.15, respectively, would require an FCM to maintain and file with the Commission records relating to the FCM's procedures for monitoring and controlling material financial and operational risks to it resulting from the activities of its affiliates. This provision was modeled upon the comparable provision of the SEC's risk assessment rules. However, the Commission's proposed provisions describing the types of policies, procedures and systems of which records are to be maintained and filed by the FCM, while incorporating the matters covered by the SEC's rules, also make specific reference to the FCM's internal controls with respect to the market risk, credit risk and other risks created by the FCM's proprietary and noncustomer clearing activities. This addition to the SEC's description of the written policies, procedures and systems to be maintained and filed reflects risks particular to a typical function of FCMs operating within a holding company structure.

A number of commenters requested clarification as to which entity's risk management policies, *i.e.*, the FCM's policies or those of its affiliates, would be required to be maintained by the FCM under the rule. These commenters stated generally that an FCM's risk management policies should focus on its own credit and market risk monitoring procedures as distinguished from whatever procedures an affiliate maintains. Two commenters stated that this provision of the proposed rules could be interpreted to require a report of a MAP's policies and procedures as they affect the FCM and a discussion by the FCM of the hedging and risk management strategies of its noncustomer affiliates. Three other commenters appeared concerned that the Proposal would place an affirmative duty on an FCM's affiliates to maintain, and to create if none exist, written policies for their trading activities.

As noted above and as discussed in the **Federal Register** release accompanying the proposed rules, proposed Rules 1.14(a)(1)(ii) and 1.15(a)(1)(ii) would require FCMs to maintain and file "*their* written policies,

[25] 59 FR at 9694.

[26] The SEC's risk assessment rules also require that the organizational chart indicate all affiliates. 17 CFR 240.17h-1T(a)(1)(i)(1994). However, the SEC staff indicate that they may give further guidance where the reporting firm is part of a U.S. holding company with a related offshore holding company.

procedures, or systems concerning methods for monitoring and controlling financial and operational risks *resulting from the activities of any of their affiliated persons* . "[27] The proposed rules would not require an FCM to maintain or obtain an affiliate's risk management policies, nor would an FCM be required to discuss in its written policies and procedures the hedging and risk management strategies of its affiliates. FCMs would be required only to maintain and file information concerning their own risk management policies.

Further, the proposed rules would require an FCM to maintain and to file with the Commission, but not by virtue of these rules to create, risk management policies and procedures.[28] However, the Commission's rules, like those of the SEC with respect to broker-dealers, would require that if an FCM operates under informal or oral policies or procedures, it must summarize those policies in written form and file them with the Commission.[29] For purposes of the risk assessment requirements, it is sufficient for an FCM to document, in writing, the policies in place or the absence of such policies in the unlikely event that it operates without them. This application of the rule is consistent with the SEC's approach to its risk assessment rules.[30] Two commenters expressed the view that the Commission's risk assessment rules should affirmatively require FCMs to develop and maintain written financial, operational and risk management policies. These commenters believed that regulations that would require FCMs to maintain and file but not necessarily to create risk management policies and procedures would not effectuate the objectives underlying the statutory grant of risk assessment authority.

The Commission believes that under the existing regulatory structure, FCMs are affirmatively required to maintain certain risk management procedures. For example, under Rule 166.3 and other Commission rules, FCMs are required to maintain appropriate internal controls over their operations and to diligently supervise the handling of accounts and all other activities relating to their business as a Commission registrant.[31] The Commission believes that in the interest of prudent risk management, FCMs subject to these rules should review their existing internal controls and risk management policies, procedures and systems to assure that they are sufficient in light of the potential risks created by their own and their affiliates' activities. The Commission believes that requiring FCMs to establish risk management policies was not a principal objective of the risk assessment program contemplated by Section 4f(c). However, additional guidance as to prudent risk management and internal controls may be provided outside of this rulemaking.[32]

Paragraph (a)(1)(ii) of proposed Rule 1.15 would have required an FCM to file its risk management policies within ninety calendar days after the effective date of the rule or within sixty calendar days of registration if that occurs after the rule's effective date. Proposed Rule 1.15(a)(1)(ii) further required an FCM to file an update within five calendar days after the end of any fiscal quarter in which a material change in the information provided occurred.

One self-regulatory organization commenter opposed the proposed rule's filing requirement with respect to risk management policies and procedures, stating that such a requirement would create voluminous paper filings without providing any benefit to the Commission. As an alternative, the commenter suggested that the Commission require the FCM to file such policies on an as-needed basis. Several commenters opposed the requirement that updates to the policies and procedures filed with the Commission be provided within five calendar days after the end of the fiscal quarter in which a material change occurred. These commenters stated, among other things, that such a timeframe is unrealistic for FCMs with a large number of MAPs and stressed that the SEC's risk assessment regulations allow broker-dealers to report material changes in risk management policies and procedures within sixty days after the end of the fiscal quarter in which the change occurred. Further, two commenters requested additional guidance as to what the Commission would consider to be a material change in risk management policies that would require the filing of updated information.

The Commission believes that the filing of information relating to the FCM's risk management policies and procedures, particularly in conjunction with the organizational chart required to be filed under these rules, provides basic foundational information concerning the context in which an FCM operates. This requirement should not impose any significant burden upon FCMs because it does not call for the creation of any new procedures or reports. Moreover, risk management information is required to be filed only on a one-time basis as part of the FCM's initial filing with the Commission, absent subsequent material changes. With respect to determining what changes are material for purposes of the rule, the Commission believes that the assessment of the materiality of a modification must necessarily be made by the FCM on a case-by-case basis, upon consideration of whether a given change is likely to materially affect the FCM's ability to achieve the particular risk management goal of the relevant policy, procedure or system. Uncertainty as to whether a change is material can be resolved in favor of filing without undue burden or expense.

However, for the reasons discussed above with respect to filing requirements for the FCM's organizational chart, the Commission has determined to modify proposed Rule 1.15(a)(1)(ii) with respect to the deadline for filing updated risk management policies and procedures. The Commission has determined to adopt a requirement that an FCM file revised risk management information within sixty days after the end of any fiscal quarter in which a material change of information has occurred. As is the case with respect to the rules pertaining to the filing of an organizational chart, if no material change occurs, no updates are required.

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[27] 59 FR at 9694 (emphasis added).

[28] However, as noted below and in the Proposal, other provisions of the CEA and Commission regulations may require such policies.

[29] Letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, SEC to Douglas G. Preston, Esq., Securities Industry Association at 4 (September 20, 1993).

[30] *See* 57 FR at 32165 (wherein the SEC notes that broker-dealers need not create risk management policies for purposes of the SEC risk assessment requirements if none exist).

[31] *See, e.g.*, 17 CFR 166.3 (1994)("[e]ach Commission registrant . . . must diligently supervise the handling by its partners, officers, employees and agents . . . of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees or agents relating to its business as a Commission registrant.") Other risk management requirements imposed on FCMs by the Act or Commission regulations include daily marking-to-market of positions, periodic reconciliations of key accounts, and maintenance of current books and records. *See generally* 17 CFR 1.17, 1.18, 1.32 and 1.34 (1994).

[32] Guidance in this area has been provided by the international regulatory community in "Operational and Financial Risk Management Control Mechanisms for Over-the-Counter Derivatives Activities of Regulated Securities Firms," issued by the Technical Committee of the International Organization of Securities Commissions (IOSCO) (July, 1994), which includes a compilation of other relevant sources including, *e.g.*, "Risk Management Guidelines for Derivatives," Basle Committee on Bank Supervision (July, 1994).

3. Financial Statements

Proposed Rules 1.14(a)(1)(iii) and 1.15(a)(2)(i) and (ii) would have required maintenance and filing of the following financial statements on a consolidated basis for the FCM and its ultimate parent company: (1) balance sheet; (2) statement of income; (3) statement of cash flows; and (4) explanatory notes to the financial statements. These proposed provisions also would have required a consolidating balance sheet and statement of income for the FCM and its ultimate parent company. Several commenters, including a trade association commenting on behalf of its member FCMs, pointed out that the highest level MAP within an organization may not necessarily be the ultimate parent company. Accordingly, these commenters recommended that the Commission revise the proposed rules such that financial statements would be required only for the FCM and the highest level MAP within the FCM's organizational structure. Further, a number of commenters requested that this provision be revised so as not to require consolidation on an individual MAP-by-MAP basis. These commenters noted that many firms do not currently consolidate in this manner in the course of their normal closing process and that failure to revise the Proposal as recommended would require such firms to change their financial consolidation process, causing undue burden and expense. Two commenters, a trade association representing FCMs and an FCM, noted that in some firms the consolidated balance sheet is prepared entirely by automation and requested that the Commission retain exemptive authority in order to address cases in which compliance would create special hardship, such as where consolidating balance sheets on the required basis are not routinely generated and to do so would be unduly burdensome. As noted below, the Commission has expressly retained authority to grant exemptions in order to address situations such as those raised by the commenters, which may warrant formulation of an alternate data set that is more practicable for the FCM to provide yet yields comparable information. Further, various commenters noted that SEC staff have indicated that under the SEC's risk assessment rules, broker-dealers need only provide financial statements for their ultimate holding company if such holding company is a MAP.[33] SEC staff have also stated that for the purposes of preparing consolidated financial statements, broker-dealers may combine insignificant non-MAPs in a single entry in the financial statements.[34]

The Commission has revised proposed Rules 1.14(a)(1)(iii) and (iv) and 1.15(a)(2)(i) and (ii) in light of the comments received and the approach followed by the SEC. Final Rules 1.14(a)(1)(iii) and (iv) and 1.15(a)(2)(i) and (ii) require, therefore, that consolidated and consolidating financial statements be maintained and filed for the highest level MAP within the FCM's organizational structure, and must include the FCM and its other MAPs. Further, these rules allow an FCM to maintain and submit the consolidating balance sheet and income statement which its highest level MAP prepares as part of its internal financial reporting process. The FCM would, however, be required under Rule 1.15(a)(2)(iii) to provide the Commission with additional information if such information were determined to be necessary for a complete understanding of a particular MAP's financial impact on the FCM's organizational group. Rules 1.14(a)(1)(iii) and (iv) require the FCM to maintain in accordance with those rules any additional information that the Commission may require pursuant to Rule 1.15(a)(2)(iii).

As under the Proposal, the final rules require that the consolidated and consolidating financial statements required to be filed with the Commission be prepared in accordance with United States generally accepted accounting principles, consistently applied ("U.S. GAAP"). With respect to affiliated persons that use a comprehensive set of accounting principles other than U.S. GAAP, a note to the financial statements indicating the comprehensive body of accounting principles used to prepare the financial statements and a narrative description of the items treated differently by U.S. GAAP must be included. In this regard, the Commission requested comment as to whether quantification of any material differences in the contents of the financial statements, in addition to a narrative description of items treated differently from U.S. GAAP, should be required where accounting principles other than U.S. GAAP are used. One self-regulatory organization believed that such quantification would be necessary from a regulatory perspective in order to provide for easier comparative analysis of information. Conversely, a trade association was strongly of the view that the regulations should not require anything more than disclosure of the particular non-U.S. GAAP accounting principles used by the firm, apparently concluding that both quantification of material differences between the accounting standards and a narrative description of items treated differently by U.S. GAAP are unnecessary. The Commission continues to believe that a description of the differences between U.S. GAAP and the non-U.S. GAAP method used by the FCM's affiliate will facilitate understanding and analysis of filings. However, in the interests of minimizing reporting burdens, the Commission has determined to forego requiring quantification of material differences between the U.S. GAAP and non-U.S. GAAP methods employed by an FCM's affiliate at this time. Accordingly, the Commission is adopting this aspect of the rule as proposed.

Proposed Rule 1.15(a)(2) would have required financial statements to be filed on an annual basis, within 105 days of fiscal year-end, rather than quarterly as required under SEC rules. The Commission requested comment as to whether consolidated and consolidating financial statements are customarily prepared on a quarterly basis and, if so, whether they should be required to be filed quarterly so as to provide more current financial data. One self-regulatory organization commented that financial information received 105 days after the FCM's fiscal year-end would be stale and that requiring quarterly information would not make the information more timely or useful. This commenter contended that the annual audited Form 1–FR along with quarterly statements would provide the Commission with the critical financial information it needs. While the information provided on Form 1–FR is of obvious value, Form 1–FR does not, however, provide the same degree of financial information relating to the FCM's organizational group as would be included in consolidated and consolidating financial statements for the FCM and its highest level MAP. The Commission continues to believe that annual filing of FCMs' consolidated and consolidating financial statements, in combination with other financial information currently required by the Commission, such as Form 1–FR, will strike an appropriate balance between providing the Commission with relevant financial information while imposing the lowest possible burden on the FCM required to produce such information. Accordingly, the Commission has

[33] Letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, SEC to Douglas G. Preston, Esq., Securities Industry Association at 5 (September 20, 1993).

[34] Id.

determined to adopt this provision of the rule as proposed.

Finally, in connection with the Commission's proposed annual filing requirement, one commenter noted that the FCM and its ultimate parent may have different fiscal year-ends and requested confirmation that the annual filing deadline for financial statements is 105 calendar days after the end of the fiscal year for both the FCM and its ultimate parent. As adopted, Rule 1.15(a)(2) requires an FCM to file consolidated and consolidating financial statements for the FCM and the highest level MAP within the FCM's organizational structure within 105 calendar days of the FCM's fiscal year-end. To the extent that the highest level MAP within the FCM's organizational structure has a fiscal year-end different from that of the FCM, the FCM should include both the most recent certified statements and any interim uncertified statements of the MAP Initial filings will be required to be made by May 15, 1995

C Information Required Upon the Occurrence of Certain Events

In lieu of requiring routine quarterly filing of position data for each of the FCM's material affiliates as is mandated under the SEC's risk assessment rules, the Commission's Proposal was designed to call for a combination of annual filings and ad hoc reporting in situations in which heightened financial scrutiny would be warranted. To this end, proposed Rule 1 15(b)(2) identified certain key events relative to the financial condition of the FCM and its material affiliates the occurrence of which would require notice to the Commission Proposed Rule 1 15(b)(2) set forth eight such "triggering" events: (1) a reduction of greater than 20% in an FCM's adjusted net capital, (2) an "outflow" of an FCM's assets exceeding, in any 30-day period, 20% or more of the FCM's excess adjusted net capital; (3) losses in noncustomer accounts held by the FCM exceeding the greater of (a) $50 million or 10 percent of the FCM's parent's consolidated stockholders' equity in 30 days or (b) $100 million or 20% of the FCM's parent's stockholders' equity in 12 months, (4) a net loss at a MAP exceeding 30% of the MAP's net worth or 20% of the FCM's adjusted net capital, (5) a 20% reduction in the consolidated stockholders' equity of an FCM's parent; (6) a reduction in a MAP's credit rating; (7) a MAP's filing of a notice with a banking regulator of a possible capital category adjustment; and (8) an FCM's entering into an agreement to guarantee an obligation of an affiliate. Under proposed Rule 1.15(b)(1), an FCM would be required to notify the Commission (by notice to the Director of the Division of Trading and Markets or the Director's designee)[35] within three business days of the occurrence of any trigger event unless a shorter period was specified with respect to a particular triggering event.

Comments concerning the proposed triggering events can be divided into two categories: (1) general comments that address the concept of trigger event reporting and issues generally relating to all proposed trigger events; and (2) comments relevant to specific proposed trigger events. The majority of commenters on the subject of trigger event reporting appeared to agree with the concept of a trigger event reporting system, citing, for example, the consequent reduction in routinely reported data that could result from the use of an event-driven reporting approach. However, several commenters opposed this approach, contending that this aspect of the Proposal exceeded the Commission's statutory authority to obtain supplemental data, *i.e.*, its authority to request information on an as-needed basis to augment an FCM's routine filings, and/or would require the reporting of information from entities beyond the Commission's jurisdiction. One commenter argued that the authority to obtain supplemental information provided to the Commission in the FTPA is to be used to complement risk assessment quarterly reports, not to substitute for them. One commenter opposed the trigger event structure proposed by the Commission on the grounds that the Commission's existing capital requirements and large trader reporting system are sufficient to meet the Commission's risk assessment objectives. Several commenters, however, including a trade association representing its member FCMs, recommended that trigger events relating to the activities of FCMs be included in the Commission's net capital or early warning rules and made applicable to all FCMs rather than only to those FCMs subject to the risk assessment regulations.

As discussed below, the Commission has determined to take action at this time only on the first of the proposed triggering events, *i.e.*, notice to the Commission upon a twenty percent or greater decrease in an FCM's adjusted net capital. As recommended by some commenters, this notice requirement is being adopted as an amendment to Rule 1.12, the Commission's early warning rule. However, this notice requirement will initially apply only to FCMs subject to the risk assessment regulations. The Commission is proposing by separate **Federal Register** release to make this notice requirement applicable to all FCMs.

The statutory risk assessment provisions were specifically designed to permit the Commission to obtain information concerning entities over which it does not exercise regulatory jurisdiction and which thus might present risks to regulated firms yet lie beyond the Commission's information-gathering authority. Further, the Commission is not requesting information directly from the affiliates of FCMs, but rather from the FCM itself. Moreover, the trigger reporting approach contemplated under the Proposal was designed to provide the Commission with information concerning material affiliate activity which may or may not consist of futures transactions that would be reflected in large trader reports and which is not addressed by existing minimum capital requirements.[36]

Many of the commenters, while supportive of the concept of requiring notice to the Commission upon the occurrence of triggering events, suggested that such triggering events should relate solely to events that could have a direct effect on the FCM's financial condition and that the Commission should delete any trigger events that relate to a change in a MAP's financial condition. One commenter, for example, recommended that proposed Rules 1.15(b)(2)(iv) (large net loss at a MAP), 1.15(b)(2)(v) (20% reduction in FCM's parent's consolidated stockholder's equity), 1.15(b)(2)(vi) (reduction in a MAP's credit rating) and 1.15(b)(2)(vii) (MAP's filing of a notice of a possible capital category adjustment with a banking regulator) be deleted. Finally, one commenter requested that if the Commission decides not to delete all trigger events that arise as a result of a change at a MAP, the Commission should modify the filing deadline with respect to these notices to five calendar days after the end of the month in which the event occurred.

The FTPA granted the Commission the authority to obtain information concerning affiliate activities that could pose material risks to the FCM. While certain of the proposed trigger events

[35] The Director of the Division of Trading and Markets is generally delegated the authority to act on behalf of the Commission with respect to the risk assessment regulations.

[36] For example, noncustomer futures positions do not affect an FCM's adjusted net capital level because noncustomer accounts are not required to be segregated pursuant to Rule 1.20.

would initially affect an FCM's MAP, these events were designed so as to signal conditions at a MAP that are likely to present a material potential for a direct impact upon the financial and operational condition of the FCM. However, the Commission has determined to proceed in this phase of the rulemaking only with the first of the eight proposed trigger events, *i.e.*, trigger event reporting upon a twenty percent or greater reduction in an FCM's adjusted net capital. Further, as noted above, by separate **Federal Register** release, the Commission is proposing to include certain additional notice requirements as part of its early warning notice system applicable to all FCMs.

As proposed, Rule 1.15(b)(2)(i) would have required an FCM to notify the Commission of any reduction of 20 percent or more in its adjusted net capital as last reported on its financial reports filed with the Commission pursuant to Rule 1.10.[37] As noted above, several commenters recommended that this trigger event be included in Commission Rule 1.17, the Commission's net capital rule, or in the Commission's financial early warning requirements set forth in Rule 1.12, rather than in the risk assessment rules, to ensure their applicability to all FCMs rather than only those FCMs subject to the Commission's risk assessment regulations. The Commission agrees with the view that this "net capital trigger" should apply to all FCMs and has determined to make this provision part of its financial early warning system. Accordingly, the Commission is amending its Rule 1.12 financial early warning requirements to include the notice requirement set forth in proposed Rule 1.15(b)(2)(i).[38] Initially, this new requirement will apply only to those FCMs who are subject to the Commission's risk assessment rules. However, by separate **Federal Register** release, the Commission is proposing to extend this new early warning notice requirement to all FCMs.

As the Commission is adopting this trigger event as part of its early warning system, the Commission has adopted the provision without any modification of the timeframe within which notice must be provided to the Commission. As adopted, Rule 1.12(g) requires that the FCM provide notice to the Commission within two business days of any reduction in its adjusted net capital of twenty percent or greater caused by an activity in the normal course of business, such as an operating loss, proprietary trading loss or increase in charges against net capital, or at least two business days prior to any extraordinary transactions or series of transactions that cause such a reduction, such as a dividend payment or making of a loan.

Proposed Rule 1.15(b)(1) provided that, after reviewing a notice filed by an FCM, the Commission could request additional information from the firm or a relevant regulatory agency, as determined to be necessary in the circumstances. The Commission requested comment as to whether the notice of occurrence of a triggering event should be required to be accompanied by an explanation of the circumstances giving rise to the occurrence such that supplemental inquiries might be obviated in many cases. The Commission received six responses to its request for comment on this aspect of the proposed rule, including comments by two trade associations, three FCMs and one self-regulatory organization. An FCM and a self-regulatory organization expressed the view that an explanation of the circumstances giving rise to the need for the notice would be helpful and should accompany the notice of an occurrence of a trigger event. However, the other four commenters on this issue argued that such an explanation would not be helpful, noting that given the short time period permitted in which to provide notice to the Commission, *i.e.*, generally three business days, it is unlikely that a complete and helpful explanation could be provided. Based upon the comments received and the Commission's review of the issue, the final rules do not include a requirement for explanation of the circumstances giving rise to the twenty percent or greater reduction in the FCM's adjusted net capital. As provided in proposed Rule 1.15(b) and adopted in Rule 1.12(g), however, the Commission may, if it deems it necessary, require supplemental information from the FCM regarding the notice filed with the Commission.

Proposed Rule 1.15(b)(2)(iii) would have required an FCM to notify the Commission when an FCM's aggregate cumulative losses in all non-customer accounts exceeded the greater of: (A) in any thirty-day period, ten percent of the last reported consolidated stockholders' equity of the FCM's parent or $50 million; and (B) in any twelve-month period, twenty percent of the last reported stockholders' equity of the FCM's parent or $100 million. Several commenters opposed this proposed requirement contending, for example, that this trigger event would not be an accurate indicator of potential financial problems at an FCM because it does not take into consideration the effects of offsetting cash positions that are maintained on affiliates' books. These commenters suggested, as an alternative, that the Commission adopt a requirement that an FCM notify the Commission within two business days after a margin call to a non-customer that exceeds twenty percent of the FCM's adjusted net capital remains outstanding for two business days. These commenters also suggested that the Commission adopt as an additional trigger event a reporting requirement that an FCM notify the Commission whenever the FCM's excess net capital is less than 6 percent of the maintenance margin required to be held or posted by the FCM to support the proprietary and noncustomer positions carried by the FCM. As noted by these commenters, the Chicago Mercantile Exchange currently imposes a related capital requirement on its clearing members on an informal basis. In light of these comments and recommendations, the Commission has determined not to adopt Rule 1.15(b)(2)(iii) as proposed but is proposing to amend Rule 1.12 to include new paragraphs (f)(4) and (f)(5) thereof to include these notice requirements. These proposals appear elsewhere in this edition of the **Federal Register**. Proposed Rule 1.12(f)(4) would require notice to be filed whenever an account carried by an FCM, whether customer, noncustomer or omnibus, is subject to a margin call that exceeds the FCM's excess adjusted net capital and such call is not satisfied by the close of business on the day following the issuance of the call. Proposed Rule 1.12(f)(5) would require notice from an FCM whenever its excess adjusted net capital is less than six percent of the total of: (i) maintenance margin required by the FCM on noncustomer account positions; and (ii) maintenance margin applicable to an FCM's proprietary positions. With respect to an FCM's proprietary account positions, maintenance margin shall mean the amount of funds the FCM is required to maintain at the exchange's clearing organization or with its clearing broker, or five percent of the value of the contract, whichever is greater.

The Commission has determined to defer action on the remaining six trigger

[37] Similarly, proposed Rule 1.15(b)(2)(ii) would have required an FCM to notify the Commission of any outflow of assets from the FCM which in the aggregate in any 30 calendar day period exceeds 20 percent or more of the FCM's excess adjusted net capital. The Commission has determined to defer consideration of this trigger event.

[38] This requirement is being adopted as Rule 1.12(g).

reporting events set forth in the Proposal pending further review.

D. Exemptions and Special Provisions

As proposed, the risk assessment rules would provide an exemption from all recordkeeping and reporting requirements under proposed Rules 1.14 and 1.15 for FCMs who, based on the amount of customer funds held and adjusted net capital maintained, appear to have very limited futures and commodity options activities. Further, the proposed rules would provide special provisions for entities which are subject to the regulatory oversight of other domestic and foreign regulatory bodies. With respect to FCMs that are not otherwise exempt, the rules permit an FCM, by application, to request individual exemptions from the rules which would be considered by the Commission on a case-by-case basis.

1. Exemption based on level of customer funds and net capital

Proposed Rules 1.14(d)(1) and 1 15(c)(1) would have provided an exemption from the risk assessment regulations for all FCMs, other than clearing member firms, that hold customer funds of less than $6,250,000 and maintain adjusted net capital of less than $5,000,000, calculated as of the FCM's fiscal year-end. The Commission received comment on all three conditions to applicability of the exemption.

First, two commenters stated that the rules should not require all FCMs that are clearing firms to comply with the rules. One of these commenters, a self-regulatory organization, argued that such a requirement unfairly discriminates against clearing firms, which are already subject to exchange risk management and surveillance systems. The other commenter, a bar association, expressed the view that the distinction between clearing FCMs and non-clearing FCMs is an inappropriate line of demarcation for determining which firms should be subject to the risk assessment requirements. One trade association commenter representing FCMs, however, took the opposite view and noted its support of the Commission's decision to require all clearing FCMs to comply with the rules. The Commission believes that FCMs that are clearing members of exchanges have the potential, by virtue of their clearing status, to create risks to the clearing organizations and other clearing members that differ in kind and degree from those created by non-clearing FCMs.[39]

The Commission requested comment as to the appropriateness of the adjusted net capital and customer funds[40] exemption levels set forth in the proposed rules.[41] In this regard, two commenters contended that both levels were too low and that the rules consequently might not exempt FCMs whose activities do not pose risks sufficient to warrant the imposition of risk assessment reporting burdens. One of these commenters recommended that the customer funds and adjusted net capital levels should, at a minimum, be doubled or made consistent with the levels established by the SEC in its risk assessment regulations.[42] Additionally, one commenter stated that the level of adjusted net capital maintained by an FCM should not determine whether an FCM is exempt from the risk assessment requirements because this use of adjusted net capital as an exemption benchmark might encourage potentially exempt FCMs to maintain a small capital base.

The Commission noted in the **Federal Register** release accompanying the proposed rules that it chose $6,250,000 in customer funds as an initial level for applicability of the risk assessment requirements because, based upon current Commission and National Futures Association ("NFA") requirements, that is the level whereby an increase in the amount of customer funds held by the FCM will require an increase in its adjusted net capital requirement above the minimum requirement.[43] The Commission also noted that given the relative size of securities and futures market activity, the degree of leverage in futures transactions, and the fact that the Commission proposed a materiality threshold of $20 million for determining whether an FCM would be required to report certain financial information concerning its MAPs,[44] (as compared to the SEC's $100 million materiality threshold), a $5 million adjusted net capital ceiling for exemption from these rules appeared to be an appropriate level. The adjusted net capital level criterion was included in the rule as an additional safeguard so that FCMs which do not carry customer funds and are not clearing members are not automatically exempted from the risk assessment rules.

The Commission is adopting the exemptive provision as proposed but will review the operation of the exemptive levels following implementation of the risk assessment rules and may also revisit these levels with respect to those portions of the Proposal that have been deferred for further consultation and review.

2. Special Provisions for Certain Regulated Entities

a. *Broker-Dealers.* The proposed rules were developed after extensive review of, and consultation with the SEC concerning, the SEC's risk assessment rules. Like the proposed rules, the final rules adopted herein are intended to produce a coordinated reporting structure for FCMs that either are also registered as broker-dealers and subject

[39] One commenter noted that proposed Rules 1.14(d)(1) and 1.15(c)(1) could be interpreted to exempt all non-clearing member FCMs. The text of the rule has been modified to more clearly reflect the Commission's intention in this regard.

[40] The Commission requested comment as to whether the calculation of customer funds for this purpose should be the same as that for Rule 1.17 capital computation purposes, *i.e.*, whether long option values should be deducted. One commenter responded to this request and stated that the calculation of customer funds should be the same for both Rule 1.17 and the risk assessment rules. The Commission has determined to adopt this approach for the sake of maintaining consistent treatment between the risk assessment rules and the Commission's net capital rule. Accordingly, in determining an FCM's customer funds level for purposes of these risk assessment rules, the computation should be made net of fully paid long options.

[41] The Commission notes that different exemption levels may be determined to be applicable for purposes of position reporting requirements to be addressed in the second phase of this rulemaking.

[42] The SEC's risk assessment rules generally provide an exemption for broker-dealers that: (1) maintain capital of less than $20,000,000; (2) do not hold funds or securities for, or owe money or securities to customers; and (3) do not carry customer accounts. In no case is a broker-dealer subject to the SEC's requirements if it maintains capital of less than $250,000. *See* 17 CFR 240.17h-1T(d) and 240.17h-2T(b).

[43] Rule 1.17(a)(1)(i) requires an FCM to calculate its minimum adjusted net capital requirement by multiplying the amount it is required to segregate and set aside in special accounts for the benefit of its customers by four percent, subject to a minimum dollar requirement of $50,000. However, Commission Rule 170.15 provides that "[e]ach person required to register as a futures commission merchant must become and remain a member of at least one futures association which is registered under section 17 of the Act and which provides for the membership therein of such futures commission merchant, unless no such futures association is so registered." The Commission approved an increase in the minimum dollar requirement for member FCMs of the NFA, currently the only registered futures association, from $50,000 to $250,000, effective December 31, 1990. This increase effectively requires all FCMs to maintain adjusted net capital of at least $250,000. Thus, based upon the NFA's minimum dollar requirement and the Commission's capital requirement of four percent of segregated funds, an FCM holding any amount greater than $6,250,000 in customer funds is required to increase its adjusted net capital level above NFA's $250,000.

[44] *See* proposed Rule 1.14(a)(4) setting the level of a MAP's financial activity at which an FCM would have been required under the Proposal to separately list financial information concerning that MAP.

to the SEC's risk assessment rules or are part of a holding company group that includes a broker-dealer reporting pursuant to the SEC's rules. Proposed Rules 1.14(b)(1) and 1.15(d)(1) and these same provisions of the final rules permit FCMs that are, or that have affiliates that are, registered broker-dealers or registered government securities broker-dealers to file SEC Form 17–H, the SEC's risk assessment information form, in partial compliance with the Commission's proposed rules. Generally, under proposed Rule 1.15(d)(1), an FCM that is registered as a broker-dealer or that has an affiliate registered as a broker-dealer would be deemed to be in compliance with all of the routine reporting requirements of proposed Rule 1.15,[45] except the filing of risk management policies pursuant to paragraph (a)(1)(ii) of proposed Rule 1.15, if the FCM files SEC Form 17–H with the Commission. However, if the SEC filing does not include as MAPs all of the entities that would be MAPs of the FCM under the CFTC's rules, the SEC filing would be required to be supplemented to include those MAPs. Similar relief is provided in Rule 1.14 with respect to recordkeeping requirements.

Commenters addressing this provision generally stated that the Commission should accept Form 17–H from dually registered entities in full compliance with Commission requirements. As the Commission has determined to defer adoption of final rules regarding position reporting and trigger reporting concerning FCM affiliates, FCMs that report, or have affiliates who report, under the SEC's risk assessment rules will have few, if any, additional requirements under the final rules adopted herein. FCMs filing SEC Form 17–H have the option under Rule 1.15(d)(1) of filing Form 17–H with the Commission in its entirety or without the information required under Part II of the Form 17–H. Such FCMs will be required to file with the Commission on a one-time basis (absent material changes) copies of their risk management policies, procedures and systems in accordance with Commission requirements. The relief provided does not extend to filing of risk management policies because although the SEC's rules require filing of most of the same types of written policies and procedures as the Commission's rules, the Commission's requirements relating to records of policies, procedures and systems with respect to trading activity include specific reference to the FCM's internal controls with respect to the market risks, credit risks and other risks created by the FCM's proprietary and noncustomer clearing activities, reflecting risks entailed in the performance of the clearing function typical of FCMs operating within a holding company structure. These include, for example, as specified in Rule 1 14(a)(1)(ii), systems and policies for supervising, monitoring, reporting and reviewing trading activities in securities, futures contracts, commodity options, forward contracts or financial instruments such as swaps, and policies for hedging or managing risks created by its proprietary trading activities and with respect to supervision of noncustomer accounts. In addition, the relief provided under Rules 1.14(b)(1) and 1 15(d)(1) does not extend to trigger reporting requirements under the rule. Accordingly, the FCM would remain responsible for notifying the Commission of the occurrence of a twenty percent or greater decrease in adjusted net capital as set forth in new paragraph (g) of Rule 1.12 and providing supplemental information, if requested.[46] Finally, an FCM that is also registered as a broker-dealer, and plans to file Form 17–H pursuant to Rule 1.15(d)(1), is required to supplement its organizational chart to include those MAPs, if any, that would be MAPs for purposes of the Commission's rules but not for purposes of its SEC filing.

b. *Banks.* With respect to an FCM with a MAP that is subject to supervision by a federal banking agency, the Proposal provided that an FCM would be deemed to be in compliance with all of the routine reporting requirements of proposed Rule 1.15(a)(2) with respect to such MAP, if the FCM maintains in accordance with Rule 1.14 copies of all reports filed by the MAP with the relevant bank regulator.[47] Paragraph (b)(2) of proposed Rule 1.14 provided similar treatment with respect to recordkeeping requirements. Those commenters who addressed this aspect of the Proposal overwhelmingly favored the Commission's approach of providing relief from the regulations where a MAP is subject to the supervision of a federal banking regulator The comments received in this area generally requested an expansion of the relief proposed and/or requested clarification regarding particular provisions of the Proposal. One commenter requested that the Commission conform proposed Rules 1 14(b)(2) and 1.15(d)(2), such that a bank would not be required to file an organizational chart with the Commission. In this regard, the Commission understands that Form FR Y–6 ("Annual Report of Bank Holding Companies") includes, among other things, a corporate organizational chart. All FCMs must file an organizational chart but if one has been prepared for banking regulators that will provide the information required under these rules, such a chart can be used for this purpose, provided that the additional information required under these rules, *e.g.*, designation of MAPs, is included.

Further, one commenter expressed the view that the Proposal was unclear as to whether the FCM or its MAP must maintain copies of those reports submitted by the MAP with its federal banking regulator. Proposed Rule 1.14(b)(2) would require the FCM to maintain and make available "copies of all reports submitted by [a MAP to] the Federal banking agency. . . ." Proposed Rule 1.15(d)(2) stated that the FCM or its MAP may maintain such reports in order to be eligible for the exemption. The Commission intends this exemption to be available with respect to FCMs that have MAPs that are subject to the supervision of a federal banking agency provided that either the FCM or its MAP, as the FCM and the relevant MAP determine to be appropriate, maintains the reports specified in the rule. The final rules have been modified to clarify this point. Of course, if the MAP is the repository for reports required to be maintained, the Commission must be afforded access to such reports on the same terms and to the same extent as it would if the FCM held such records directly and the FCM will remain responsible for assuring that the Commission has access to the required records.

The **Federal Register** release accompanying the Commission's proposed rules also stated that, generally, foreign banking organizations that are subject to U.S. banking regulation will be treated in the same fashion as domestic banks for purposes of the application of the Commission's

[45] These requirements included all reporting requirements of proposed Rule 1.15 except the trigger reporting requirements set forth in proposed Rule 1.15(b). Part I of Form 17–H includes an organizational chart and consolidated and consolidating financial statements.

[46] Certain exchanges have a similar requirement. *See* Chicago Mercantile Exchange Rule 972A; Chicago Board of Trade Rule 285.03; New York Mercantile Exchange Rule 2.14(d) and Clearing Rule 9.22(c)(i) and (ii); Commodity Exchange, Inc. Rule 7.08(a); Coffee, Sugar and Cocoa Exchange, Inc. Clearing Rule 302(c)(i); Kansas City Board of Trade Rule 1311.00; Kansas City Board of Trade Clearing Corporation Rule 8.01(c); and Minneapolis Grain Exchange Rule 2088.00.

[47] With respect to Form FR 2068, the Confidential Form of Operations required to be filed with the Board of Governors of the Federal Reserve System by foreign banking organizations, Commission staff are exploring with Federal Reserve officials procedures by which access to Form 2068 may be obtained on an as-needed basis.

rules.[48] One commenter requested that the Commission codify this similarity of treatment by providing in its regulations that a United States regulated foreign banking organization will be treated in the same manner as United States banks and United States bank holding companies, that is, that it would only be required to make available to the Commission what it files with the relevant U.S. banking regulator.[49] The Commission agrees that such clarification is helpful and has modified the language of the Proposal in this regard. Accordingly, under Rule 1.15(d)(2) an FCM that has a MAP that is either a foreign banking organization or a domestic banking organization, subject to examination by, or the reporting requirements of, a federal banking agency will be deemed to be in compliance with the reporting requirements of Rule 1.15(a)(2) (i.e., filing of annual consolidated and consolidating financial statements) with respect to such MAP, if the FCM maintains in accordance with Rule 1.14 copies of all reports filed by the MAP with bank regulators. Rule 1.14(b)(2) provides similar treatment with respect to recordkeeping requirements. With respect to foreign banks, FCMs (or the MAP) may either maintain what the foreign bank files with the U.S. banking authorities or, if the foreign bank has no U.S. nexus, the reports that would be required to be maintained or filed would be determined as if the bank were a non-bank foreign firm.[50]

c. *Firms Subject to Foreign Regulatory Supervision.* With respect to foreign MAPs that are regulated in a foreign jurisdiction, proposed Rules 1.14(c) and 1.15(e) permitted an FCM to maintain and file any financial or risk exposure reports filed by a MAP with a foreign futures authority, as that term is defined in Section 1a(10) of the Commodity Exchange Act,[51] or other foreign regulatory authority, with which the Commission has an information-sharing agreement in effect. Several commenters pointed out that proposed Rules 1.14 and 1.15 appear to differ in their treatment of this subject. Proposed Rule 1.14(c) states that in order for an FCM to take advantage of the exemption provided therein from recordkeeping requirements the FCM is required to maintain copies of any financial or risk disclosure report filed by the FCM's MAP "with a foreign futures authority or other relevant foreign authority." Proposed Rule 1.15(e), however, requires an FCM to maintain copies of such reports filed "with a foreign futures authority or other foreign regulatory authority with which the Commission has entered into an information sharing agreement which remains in effect as of the [FCM's] fiscal year end." The Commission notes that the different language in Proposed Rules 1.14(c) and 1.15(e) was deliberate and was intended to provide a broader exemption with respect to recordkeeping than reporting. This discrepancy is, in any event, eliminated under the revised provisions as adopted, as discussed below.

Three commenters requested that the Commission accept information the FCM's MAP files with any home country regulator in compliance with the Commission's risk assessment regulations rather than limiting exemptions to foreign MAPs that file information with a foreign futures authority with which the Commission has an information-sharing agreement. These commenters stated that this treatment would be consistent with the SEC's practice of accepting information which the foreign MAP files with its home country regulator even though such information may not conform in content or frequency of filing with the SEC's regulations.

Recognizing that the Commission does not yet have information-sharing agreements with all jurisdictions in which FCM MAPs may be reporting to foreign regulators but that such reports may nonetheless be accessible from the FCM for risk assessment purposes, the Commission has modified proposed Rule 1.15(e), the exemptive provision for MAPs subject to the supervision of a foreign regulatory authority. As adopted, Rule 1.15(e) provides that an FCM shall be deemed to be in compliance with the routine reporting requirements of the risk assessment regulations if the FCM files with the Commission copies of any financial or risk exposure reports filed with a foreign regulator, provided that: (1) the FCM agrees to use its best efforts to obtain from the foreign firm and to cause the foreign firm to provide, directly or through its foreign regulator, any supplemental information the Commission may request and the foreign jurisdiction in which the MAP is located does not have a blocking statute or other restriction that would preclude the provision of such supplemental information; or (2) the foreign regulator with whom the MAP files such reports has a current information-sharing agreement with the Commission which would permit the Commission to obtain the type of information called for under the risk assessment rules.

4. Reporting FCMs

Proposed Rules 1.14(d)(2) and 1.15(c)(2) provided a mechanism whereby only one FCM within an organizational structure would be required to comply with the Commission's risk assessment regulations. These proposed provisions stated generally that the Commission could, upon written application, exempt an FCM affiliated with a "Reporting Futures Commission Merchant" from the recordkeeping and reporting requirements of the rules. Proposed Rules 1.14(d)(2) and 1.15(c)(2) defined a Reporting Futures Commission Merchant as the FCM which maintains the greater amount of adjusted net capital as compared to any other FCM(s) within the same holding company structure that is subject to the risk assessment reporting requirements. A trade association responding on behalf of its members noted that there may be exceptions to the general rule that the FCM with the greatest amount of adjusted net capital should be the Reporting Futures Commission Merchant. This commenter noted, for example, that a broker-dealer/FCM that files reports under the SEC's risk assessment rules may have an affiliate that would be the Reporting Futures Commission Merchant under the definition set forth in the Proposal. In this case the commenter noted that it would be appropriate to allow the broker-dealer/FCM to be the Reporting Futures Commission Merchant. The commenter also urged that the Commission would likely be overburdened with initial exemption requests and that the Commission should permit FCMs to rely upon an exemption provided under Rules 1.14(d)(2) and 1 15(c)(2) upon filing of their requests, pending a response from the Commission.

In order to accommodate circumstances where it is more appropriate for an FCM other than the FCM with the greater amount of adjusted net capital to be deemed the

[48] 59 FR at 9701.

[49] Commission staff have discussed the risk assessment proposals with the domestic banking regulators, and they have confirmed that they will cooperate with the Commission in developing mechanisms for sharing information from such reports to assist the Commission in discharging its supervisory responsibilities.

[50] This analysis is more relevant to the deferred part of these proposals relating to position information although it may also be relevant to "consolidating" decisions.

[51] Section 1a(10) defines the term "foreign futures authority" as "any foreign government, or any department, agency, governmental body, or regulatory organization empowered by a foreign government to administer or enforce a law, rule, or regulation as it relates to a futures or options matter, or any department or agency of a political subdivision of a foreign government empowered to administer or enforce a law, rule, or regulation as it relates to a futures or options matter."

reporting FCM and in order to minimize administrative burdens on Commission staff, the final rules permit an FCM to file a self-executing notice with the Commission identifying as the Reporting FCM an FCM other than the FCM within the organizational structure with the greater amount of adjusted net capital and explaining the basis for the designation of the reporting FCM. The rule provides that the Commission has thirty days from receipt of the notice to object to the designation of a particular FCM as the Reporting FCM. After this period of time, the notice is deemed effective. Additionally, the definition of Reporting Futures Commission Merchant has been modified to include either the FCM within an affiliated group with the greatest amount of adjusted net capital or an FCM acting as the Reporting Broker or Dealer pursuant to the SEC's risk assessment rules. Accordingly, an FCM acting as the Reporting Broker or Dealer under the SEC's risk assessment rules need not file a notice of exemption with the Commission in order to be deemed the Reporting Futures Commission Merchant under Rules 1.14(d)(2) and 1.15(c)(2) as adopted.

The exemptions provided under Rules 1.14(d)(2) and 1.15(c)(2) do not extend to the maintenance and filing of risk management policies, procedures and systems by FCMs affiliated with the Reporting Futures Commission Merchant. Consequently, such affiliate FCMs must maintain their risk management policies, procedures and systems in accordance with Rule 1.14(a)(1)(ii), and the Reporting Futures Commission Merchant must file, in accordance with Rule 1.15(a)(1)(ii), a copy of its own risk management policies, procedures and systems as well as those of its affiliated FCMs. However, if such policies, procedures and systems are identical in all respects, the Reporting Futures Commission Merchant may so indicate when it makes it filing under Rule 1.15(a)(1)(ii).

5. General Exemptive Authority

In response to requests from certain commenters, the Commission has reserved, in Rules 1.14(d)(3) and 1.15(c)(3), authority to exempt any FCM from any of the provisions of either Rule 1.14 or Rule 1.15 if the Commission finds that the exemption is not contrary to the public interest and the purposes of the provisions from which the exemption is sought. The Commission may grant the exemption subject to such terms and conditions as it may find appropriate. This exemptive authority is similar to that set forth in Commission Rule 4.12(a) with respect to provisions of the Part 4 rules governing commodity pool operators and commodity trading advisors. The Commission envisions that it may entertain requests for exemption from FCMs that are particularly concerned about consolidating financial reports or the availability of information concerning foreign MAPs, for example.

IV. Effective Date

The Commission has determined to require the initial filings and reports herein based on an "as of" date of December 31, 1994. The Commission has further determined, however, that with respect to the filing of an organizational chart and risk management policies, procedures and systems, an FCM shall have an additional thirty days to make such filing beyond the ninety days originally proposed. Accordingly, such filings must be made initially by April 30, 1995 instead of March 31, 1995 as proposed. Similarly, with respect to consolidating and consolidated financial statements, the first such reports for fiscal years ending December 31, 1994 must be filed no later than May 15, 1995, which is 135 days following the fiscal year-end rather than the 105 days proposed.

V. Confidentiality

Several commenters expressed concerns about the confidentiality protection afforded to the information prepared and submitted pursuant to the Commission's regulations. Specifically, these commenters, while recognizing that the information received under these rules will be treated as confidential for purposes of Section 8 of the Act, nonetheless were concerned about the rules of certain SROs which require their members to file with them copies of any financial reports required to be filed with any other regulatory or self-regulatory authority. One commenter recommended, however, that notices provided to the Commission upon the occurrence of a trigger event should be provided to all SROs to alert them to any potential problems. The Commission recognizes the sensitivity of certain information required to be reported under these rules. In this regard, the Commission plans to make the information reported to it available only on an as-needed basis, as determined in its sole discretion.

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rules discussed herein will affect FCMs. The Commission already has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.[52] FCMs have been determined not to be small entities under the RFA. Additionally, smaller FCMs generally will not be affected by the final rules because the rules exempt from their requirements certain smaller entities. The Commission believes that these rules will not have a significant economic impact on smaller entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA the Commission has submitted these rules and their associated information collection requirements to the Office of Management and Budget ("OMB"). The burden associated with this entire collection, including these rules, is as follows:

Average Burden Hours Per Response: 18.00
Number of Respondents: 1,782
Frequency of Response: annually and on occasion

The burden associated with these specific rules, is as follows:

Average Burden Hours Per Response: 2.50
Number of Respondents: 412
Frequency of Response: annually and on occasion

Persons wishing to comment on the estimated paperwork burden associated with these rules should contact Jeff Hill, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503 (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F Mink, CFTC Clearance Office, 2033 K Street, NW., Washington, DC 20581, (202) 254–9735.

C. Electronic Filing

Any person filing information under these rules who wishes to explore electronic filing with the Commission may contact Charles E. Tanner, Director of the Office of Information Resources Management, on 202–653–7495. The Commission will work with the reporting entities to define and

[52] 47 FR 18618–18621 (April 30, 1982).

implement a secure, cost-effective reporting method.

List of Subjects in 17 CFR Part 1

Financial reporting, Recordkeeping requirements, Risk assessment.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 4f(b), 4f(c) 4g and 8a, 7 U.S.C. 6f(b), 6f(c), 6g and 12a, the Commission is amending part 1 of chapter 1 of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

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

2. Section 1.12 is amended by redesignating paragraph (g) as paragraph (h) and by adding new paragraph (g) to read as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

* * * * *

(g) A futures commission merchant required to file reports under § 1.15 and any futures commission merchant affiliated with such a futures commission merchant shall provide written notice of any reduction in adjusted net capital in excess of 20 percent of the futures commission merchant's adjusted net capital as last reported in financial reports filed with the Commission pursuant to § 1.10. This notice shall be provided as follows:

(1) With respect to activities in the normal course of business (e.g., operating losses, proprietary trading losses, increased charges against net capital) that cause reduction, written notification must be received within two business days of such reduction; and

(2) With respect to any extraordinary transaction or series of transactions that will cause such reduction, written notification must be received at least two business days in advance of the transaction or the first in the series of transactions.

(3) Upon receipt of such notice from a futures commission merchant, the Director of the Division of Trading and Markets or the Director's designee may require that the futures commission merchant provide or cause a Material Affiliated Person (as that term is defined in § 1.14(a)(2)) to provide, within three business days from the date of request or such shorter period as the Division Director or designee may specify, such other information as the Division Director or designee determines to be necessary based upon market conditions, reports provided by the futures commission merchant, or other available information.

* * * * *

3. Section 1.12 is further amended by revising the references in the first sentences of paragraphs (a)(1) and (b)(3) and in paragraph (e) to "paragraph (g) of this section" to read "paragraph (h) of this section" and by revising the reference in the last sentence of newly designated paragraph (h)(2) to "this paragraph (g)" to read "this paragraph (h)."

4. Section 1.14 is added to read as follows:

§ 1.14 Risk assessment recordkeeping requirements for futures commission merchants.

(a) *Requirement to maintain and preserve information.*

(1) Each futures commission merchant registered with the Commission pursuant to Section 4d of the Act, unless exempt pursuant to paragraph (d) of this section, shall prepare, maintain and preserve the following information:

(i) An organizational chart which includes the futures commission merchant and each of its affiliated persons. Included in the organizational chart shall be a designation of which affiliated persons are "Material Affiliated Persons" as that term is used in paragraph (a)(2) of this section, which Material Affiliated Persons file routine financial or risk exposure reports with the Securities and Exchange Commission, a federal banking agency, an insurance commissioner or other similar official or agency of a state, or a foreign regulatory authority, and which Material Affiliated Persons are dealers in financial instruments with off-balance sheet risk and, if a Material Affiliated Person is such a dealer, whether it is also an end-user of such instruments;

(ii) Written policies, procedures, or systems concerning the futures commission merchant's:

(A) Method(s) for monitoring and controlling financial and operational risks to it resulting from the activities of any of its affiliated persons;

(B) Financing and capital adequacy, including information regarding sources of funding, together with a narrative discussion by management of the liquidity of the material assets of the futures commission merchant, the structure of debt capital, and sources of alternative funding;

(C) Establishing and maintaining internal controls with respect to market risk, credit risk, and other risks created by the futures commission merchant's proprietary and noncustomer clearing activities, including systems and policies for supervising, monitoring, reporting and reviewing trading activities in securities, futures contracts, commodity options, forward contracts and financial instruments; policies for hedging or managing risks created by trading activities or supervising accounts carried for noncustomer affiliates, including a description of the types of reviews conducted to monitor positions; and policies relating to restrictions or limitations on trading activities: *Provided, however,* that if the futures commission merchant has no such written policies, procedures or systems, it must so state in writing;

(iii) Fiscal year-end consolidated and consolidating balance sheets for the highest level Material Affiliated Person within the futures commission merchant's organizational structure, which shall include the futures commission merchant and its other Material Affiliated Persons, prepared in accordance with generally accepted accounting principles, which consolidated balance sheets shall be audited by an independent certified public accountant if an annual audit is performed in the ordinary course of business, but which otherwise may be unaudited, and which shall include appropriate explanatory notes. The consolidating balance sheets may be those prepared by the futures commission merchant's highest level Material Affiliated Person as part of its internal financial reporting process. Any additional information required to be filed under § 1.15(a)(2)(iii) shall also be maintained and preserved; and

(iv) Fiscal year-end consolidated and consolidating income statements and consolidated cash flow statements for the highest level Material Affiliated Person within the futures commission merchant's organizational structure, which shall include the futures commission merchant and its other Material Affiliated Persons, prepared in accordance with generally accepted accounting principles, which consolidated statements shall be audited by an independent certified public accountant if an annual audit is performed in the ordinary course of business, but which otherwise may be unaudited, and which shall include appropriate explanatory notes. The consolidating statements may be those prepared by the futures commission

merchant's highest level Material Affiliated Person as part of its internal financial reporting process. Any additional information required to be filed under § 1.15(a)(2)(iii) shall also be maintained and preserved.

(2) The determination of whether an affiliated person of a futures commission merchant is a Material Affiliated Person shall involve consideration of all aspects of the activities of, and the relationship between, both entities, including without limitation, the following factors:

(i) The legal relationship between the futures commission merchant and the affiliated person;

(ii) The overall financing requirements of the futures commission merchant and the affiliated person, and the degree, if any, to which the futures commission merchant and the affiliated person are financially dependent on each other;

(iii) The degree, if any, to which the futures commission merchant or its customers rely on the affiliated person for operational support or services in connection with the futures commission merchant's business;

(iv) The level of market, credit or other risk present in the activities of the affiliated person; and

(v) The extent to which the affiliated person has the authority or the ability to cause a withdrawal of capital from the futures commission merchant.

(3) For purposes of this section and § 1.15, the term Material Affiliated Person does not include a natural person.

(4) The information, reports and records required by this section shall be maintained and preserved, and made readily available for inspection, in accordance with the provisions of § 1.31.

(b) *Special provisions with respect to Material Affiliated Persons subject to the supervision of certain domestic regulators.* A futures commission merchant shall be deemed to be in compliance with the recordkeeping requirements of paragraphs (a)(1)(i), (a)(1)(iii) and (a)(1)(iv) of this section with respect to a Material Affiliated Person if:

(1) The futures commission merchant is required, or that Material Affiliated Person is required, to maintain and preserve information, or such information is maintained and preserved by the futures commission merchant on behalf of the Material Affiliated Person, pursuant to § 240.17h–1T of this title, or such other risk assessment regulations as the Securities and Exchange Commission may adopt, and maintains and makes available for inspection by the Commission in accordance with the provisions of this section copies of the records and reports maintained and filed on Form 17–H (or such other forms or reports as may be required) by such futures commission merchant or its Material Affiliated Person with the Securities and Exchange Commission pursuant to §§ 240.17h–1T and 240.17h–2T of this title, or such other risk assessment regulations as the Securities and Exchange Commission may adopt;

(2) In the case of a Material Affiliated Person (including a foreign banking organization) that is subject to examination by, or the reporting requirements of, a Federal banking agency, the futures commission merchant or such Material Affiliated Person maintains and makes available for inspection by the Commission in accordance with the provisions of this section copies of all reports submitted by such Material Associated Person to the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 5 of the Bank Holding Company Act of 1956; or

(3) In the case of a Material Affiliated Person that is subject to the supervision of an insurance commissioner or other similar official or agency of a state, the futures commission merchant or such Material Affiliated Person maintains and makes available for inspection by the Commission in accordance with the provisions of this section copies of the annual statements with schedules and exhibits prepared by the Material Affiliated Person on forms prescribed by the National Association of Insurance Commissioners or by a state insurance commissioner.

(c) *Special provisions with respect to Material Affiliated Persons subject to the supervision of a Foreign Regulatory Authority.* A futures commission merchant shall be deemed to be in compliance with the recordkeeping requirements of paragraphs (a)(1)(iii) and (a)(1)(iv) of this section with respect to a Material Affiliated Person if such futures commission merchant maintains and makes available, or causes such Material Affiliated Person to make available, for inspection by the Commission in accordance with the provisions of this section copies of any financial or risk exposure reports filed by such Material Affiliated Person with a foreign futures authority or other foreign regulatory authority, provided that: (1) the futures commission merchant agrees to use its best efforts to obtain from the Material Affiliated Person and to cause the Material Affiliated Person to provide, directly or through its foreign futures authority or other foreign regulatory authority, any supplemental information the Commission may request and there is no statute or other bar in the foreign jurisdiction that would preclude the futures commission merchant, the Material Affiliated Person, the foreign futures authority or other foreign regulatory authority from providing such information to the Commission; or (2) the foreign futures authority or other foreign regulatory authority with whom the Material Affiliated Person files such reports has entered into an information-sharing agreement with the Commission which is in effect as of the futures commission merchant's fiscal year-end and which will allow the Commission to obtain the type of information required herein. The futures commission merchant shall maintain a copy of the original report and a copy translated into the English language. For the purposes of this section, the term "Foreign Futures Authority" shall have the meaning set forth in section 1a(10) of the Act.

(d) *Exemptions.* (1) The provisions of this section shall not apply to any futures commission merchant which holds funds or property of or for futures customers of less than $6,250,000 and has less than $5,000,000 in adjusted net capital as of the futures commission merchant's current fiscal year-end; provided, however, that such futures commission merchant is not a clearing member of an exchange.

(2) The Commission may, upon written application by a Reporting Futures Commission Merchant, exempt from the provisions of this section, other than paragraph (a)(1)(ii) of this section, either unconditionally or on specified terms and conditions, any futures commission merchant affiliated with such Reporting Futures Commission Merchant. The term "Reporting Futures Commission Merchant" shall mean, in the case of a futures commission merchant that is affiliated with another registered futures commission merchant, the futures commission merchant which maintains the greater amount of adjusted net capital as last reported on financial reports filed with the Commission pursuant to § 1.10 unless another futures commission merchant is acting as the Reporting Broker or Dealer under § 240.17h–2T of this title, or the Commission permits another futures commission merchant to act as the Reporting Futures

Commission Merchant. In granting exemptions under this section, the Commission shall consider, among other factors, whether the records required by this section concerning the Material Affiliated Persons of the futures commission merchant affiliated with the Reporting Futures Commission Merchant will be available to the Commission pursuant to this section or § 1.15. A request for exemption filed under this paragraph (d)(2) shall explain the basis for the designation of a particular futures commission merchant as the Reporting Futures Commission Merchant and will become effective on the thirtieth day after receipt of such request by the Commission unless the Commission objects to the request by that date.

(3) The Commission may exempt any futures commission merchant from any provision of this section if it finds that the exemption is not contrary to the public interest and the purposes of the provisions from which the exemption is sought. The Commission may grant the exemption subject to such terms and conditions as it may find appropriate.

(e) *Location of records* A futures commission merchant required to maintain records concerning Material Affiliated Persons pursuant to this section may maintain those records either at the principal office of the Material Affiliated Person or at a records storage facility, provided that, except as set forth in paragraph (c) of this section, the records are located within the boundaries of the United States and the records are kept and available for inspection in accordance with § 1.31 If such records are maintained at a place other than the futures commission merchant's principal place of business, the Material Affiliated Person or other entity maintaining the records shall file with the Commission a written undertaking, in a form acceptable to the Commission, signed by a duly authorized person, to the effect that the records will be treated as if the futures commission merchant were maintaining the records pursuant to this section and that the entity maintaining the records will permit examination of such records at any time, or from time to time during business hours, by representatives or designees of the Commission and promptly furnish the Commission representative or its designee true, correct, complete and current hard copy of all or any part of such records. The election to maintain records at the principal place of business of the Material Affiliated Person or at a records storage facility pursuant to the provisions of this paragraph shall not relieve the futures commission merchant required to maintain and preserve such records from any of its responsibilities under this section or § 1.15.

(f) *Confidentiality* All information obtained by the Commission pursuant to the provisions of this section from a futures commission merchant concerning a Material Affiliated Person shall be deemed confidential information for the purposes of section 8 of the Act.

(g) *Implementation schedule* (1) Each futures commission merchant registered as of December 31, 1994 and subject to the requirements of this section shall maintain and preserve the information required by paragraphs (a)(1)(i) and (a)(1)(ii) of this section commencing April 30, 1995 and the information required by paragraphs (a)(1)(iii) and (a)(1)(iv) of this section commencing May 15, 1995 or, if December 31, 1994 is not the futures commission merchant's fiscal year-end, 135 calendar days following the first fiscal year-end occurring after December 31, 1994.

(2) Each futures commission merchant whose registration becomes effective after December 31, 1994 and is subject to the requirements of this section shall maintain and preserve the information required by paragraphs (a)(1)(i) and (a)(1)(ii) of this section commencing 60 calendar days after registration become effective and the information required by paragraphs (a)(1)(iii) and (a)(1)(iv) of this section commencing 105 calendar days following the first fiscal year-end occurring after registration becomes effective.

5. Section 1.15 is added to read as follows:

§ 1.15 Risk assessment reporting requirements for futures commission merchants.

(a) *Reporting requirements with respect to information required to be maintained by § 1.14.* (1) Each futures commission merchant registered with the Commission pursuant to Section 4d of the Act, unless exempt pursuant to paragraph (c) of this section, shall file the following with the regional office with which it files periodic financial reports and with its designated self-regulatory organization by no later than April 30, 1995, provided that in the case of a futures commission merchant whose registration becomes effective after December 31, 1994, such futures commission merchant shall file the following within 60 calendar days after the effective date of such registration, or by April 30, 1995, whichever comes later:

(i) A copy of the organizational chart maintained by the futures commission merchant pursuant to paragraph (a)(1)(i) of § 1.14. Where there is a material change in information provided, an updated organizational chart shall be filed within sixty calendar days after the end of the fiscal quarter in which the change has occurred; and

(ii) Copies of the financial, operational, and risk management policies, procedures and systems maintained by the futures commission merchant pursuant to paragraph (a)(1)(ii) of § 1.14. If the futures commission merchant has no such written policies, procedures or systems, it must file a statement so indicating. Where there is a material change in information provided, such change shall be reported within sixty calendar days after the end of the fiscal quarter in which the change has occurred.

(2) Each futures commission merchant registered with the Commission pursuant to Section 4d of the Act, unless exempt pursuant to paragraph (c) of this section, shall file the following with the regional office with which it files periodic financial reports within 105 calendar days after the end of each fiscal year or, if a filing is made pursuant to a written notice issued under paragraph (a)(2)(iii) of this section, within the time period specified in the written notice:

(i) Fiscal year-end consolidated and consolidating balance sheets for the highest level Material Affiliated Person within the futures commission merchant's organizational structure, which shall include the futures commission merchant and its other Material Affiliated Persons, prepared in accordance with generally accepted accounting principles, which consolidated balance sheets shall be audited by an independent certified public accountant if an annual audit is performed in the ordinary course of business, but which otherwise may be unaudited, and which consolidated balance sheets shall include appropriate explanatory notes. The consolidating balance sheets may be those prepared by the futures commission merchant's highest level Material Affiliated Person as part of its internal financial reporting process;

(ii) Fiscal year-end annual consolidated and consolidating income statements and consolidated cash flow statements for the highest level Material Affiliated Person within the futures commission merchant's organizational structure, which shall include the futures commission merchant and its other Material Affiliated Persons, prepared in accordance with generally accepted accounting principles, which consolidated statements shall be audited

by an independent certified public accountant if an annual audit is performed in the ordinary course of business, but which otherwise may be unaudited, and which consolidated statements shall include appropriate explanatory notes. The consolidating statements may be those prepared by the futures commission merchant's highest level Material Affiliated Person as part of its internal financial reporting process; and

(iii) Upon receiving written notice from any representative of the Commission and within the time period specified in the written notice, such additional information which the Commission determines is necessary for a complete understanding of a particular affiliate's financial impact on the futures commission merchant's organizational structure.

(3) For the purposes of this section, the term Material Affiliated Person shall have the meaning used in § 1.14.

(4) The reports required to be filed pursuant to paragraph (a)(1) of this section shall be considered filed when received by the regional office of the Commission with whom the futures commission merchant files financial reports pursuant to § 1.10 and by the designated self-regulatory organization, and the reports required to be filed pursuant to paragraph (a)(2) of this section shall be considered filed when received by the regional office of the Commission with whom the futures commission merchant files financial reports pursuant to § 1.10.

(b) [Reserved]

(c) *Exemptions.* (1) The provisions of this section shall not apply to any futures commission merchant which holds funds or property of or for futures customers of less than $6,250,000 and has less than $5,000,000 in adjusted net capital as of the futures commission merchant's fiscal year-end; provided, however, that such futures commission merchant is not a clearing member of an exchange.

(2) The Commission may, upon written application by a Reporting Futures Commission Merchant, exempt from the provisions of this section, other than paragraph (a)(1)(ii) of this section, either unconditionally or on specified terms and conditions, any futures commission merchant affiliated with such Reporting Futures Commission Merchant. The term "Reporting Futures Commission Merchant" shall mean, in the case of a futures commission merchant that is affiliated with another registered futures commission merchant, the futures commission merchant which maintains the greater amount of net capital as last reported on its financial reports filed with the Commission pursuant to § 1.10 unless another futures commission merchant is acting as the Reporting Broker or Dealer under § 240.17h–2T of this title or the Commission permits another futures commission merchant to act as the Reporting Futures Commission Merchant. In granting exemptions under this section, the Commission shall consider, among other factors, whether the records and other information required to be maintained pursuant to § 1.14 concerning the Material Affiliated Persons of the futures commission merchant affiliated with the Reporting Futures Commission Merchant will be available to the Commission pursuant to the provisions of this section. A request for exemption filed under this paragraph (c)(2) shall explain the basis for the designation of a particular futures commission merchant as the Reporting Futures Commission Merchant and will become effective on the thirtieth day after receipt of such request by the Commission unless the Commission objects to the request by that date. The Reporting Futures Commission Merchant must submit the information required by paragraph (a)(1)(ii) of this section on behalf of its affiliated futures commission merchants.

(3) The Commission may exempt any futures commission merchant from any provision of this section if it finds that the exemption is not contrary to the public interest and the purposes of the provisions from which the exemption is sought. The Commission may grant the exemption subject to such terms and conditions as it may find appropriate.

(d) *Special provisions with respect to Material Affiliated Persons subject to the supervision of certain domestic regulators.* (1) In the case of a futures commission merchant which is required to file, or has a Material Affiliated Person which is required to file, Form 17–H (or such other forms or reports as may be required) with the Securities and Exchange Commission pursuant to § 240.17h–2T of this title, or such other risk assessment regulations as the Securities and Exchange Commission may adopt, such futures commission merchant shall be deemed to be in compliance with the reporting requirements of paragraphs (a)(1)(i) and (a)(2) of this section if the futures commission merchant furnishes, in accordance with paragraph (a)(2) of this section, a copy of the most recent Form 17–H filed by the futures commission merchant or its Material Affiliated Person with the Securities and Exchange Commission, provided however, that if the futures commission merchant has designated any of its affiliated persons as Material Affiliated Persons for purposes of this section and § 1.14 which are not designated as Material Associated Persons for purposes of the Form 17–H filed pursuant to §§ 240.17h–1T and 240.17h–2T of this title, the futures commission must also designate any such affiliated person as a Material Affiliated Person on the organizational chart required as Item 1 of Part I of Form 17–H. To comply with paragraphs (a)(1)(i) and (a)(2) of this section, such futures commission merchant may, at its option, file Form 17–H in its entirety or file such form without the information required under Part II of Form 17–H.

(2) In the case of a Material Affiliated Person (including a foreign banking organization) that is subject to examination by, or the reporting requirements of, a Federal banking agency, the futures commission merchant shall be deemed to be in compliance with the reporting requirements of paragraph (a)(2) of this section with respect to such Material Affiliated Person if the futures commission merchant or such Material Affiliated Person maintains in accordance with § 1.14 copies of all reports filed by the Material Affiliated Person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 5 of the Bank Holding Company Act of 1956.

(3) In the case of a futures commission merchant that has a Material Affiliated Person that is subject to the supervision of an insurance commissioner or other similar official or agency of a state, such futures commission merchant shall be deemed to be in compliance with the reporting requirements of paragraph (a)(2) of this section with respect to the Material Affiliated Person if:

(i) With respect to a Material Affiliated Person organized as a mutual insurance company or a non-public stock company, the futures commission merchant or such Material Affiliated Person maintains in accordance with § 1.14 copies of the annual statements with schedules and exhibits prepared by the Material Affiliated Person on forms prescribed by the National Association of Insurance Commissioners or by a state insurance commissioner; and

(ii) With respect to a Material Affiliated Person organized as a public stock company, the futures commission merchant or such Material Affiliated Person maintains, in addition to the annual statements with schedules and

exhibits required to be maintained pursuant to § 1.14, copies of the filings made by the Material Affiliated Person pursuant to sections 13 or 15 of the Securities Exchange Act of 1934 and the Investment Company Act of 1940.

(4) No futures commission merchant shall be required to furnish to the Commission any examination report of any Federal banking agency or any supervisory recommendations or analyses contained therein with respect to a Material Affiliated Person that is subject to the regulation of a Federal banking agency. All information received by the Commission pursuant to this section concerning a Material Affiliated Person that is subject to examination by or the reporting requirements of a Federal banking agency shall be deemed confidential for the purposes of section 8 of the Act.

(5) The furnishing of any information or documents by a futures commission merchant pursuant to this section shall not constitute an admission for any purpose that a Material Affiliated Person is otherwise subject to the Act.

(e) *Special provisions with respect to Material Affiliated Persons subject to the supervision of a Foreign Regulatory Authority.* A futures commission merchant shall be deemed to be in compliance with the reporting requirements of paragraph (a)(2) of this section with respect to a Material Affiliated Person if such futures commission merchant furnishes, or causes such Material Affiliated Person to make available, in accordance with the provisions of this section, copies of any financial or risk exposure reports filed by such Material Affiliated Person with a foreign futures authority or other foreign regulatory authority, provided that: (1) the futures commission merchant agrees to use its best efforts to obtain from the Material Affiliated Person and to cause the Material Affiliated Person to provide, directly or through its foreign futures authority or other foreign regulatory authority, any supplemental information the Commission may request and there is no statute or other bar in the foreign jurisdiction that would preclude the futures commission merchant, the Material Affiliated Person, the foreign futures authority or other foreign regulatory authority from providing such information to the Commission; or (2) the foreign futures authority or other foreign regulatory authority with whom the Material Affiliated Person files such reports has entered into an information sharing agreement with the Commission which is in effect as of the futures commission merchant's fiscal year-end and which will allow the Commission to obtain the type of information required herein. The futures commission merchant shall file a copy of the original report and a copy translated into the English language. For the purposes of this section, the term "Foreign Futures Authority" shall have the meaning set forth in section 1a(10) of the Act.

(f) *Confidentiality.* All information obtained by the Commission pursuant to the provisions of this section from a futures commission merchant concerning a Material Associated Person shall be deemed confidential information for the purposes of section 8 of the Act.

(g) *Implementation schedule.* Each futures commission merchant registered as of December 31, 1994 and subject to the requirements of this section shall file the information required by paragraph (a)(1) of this section no later than April 30, 1995 and the information required by paragraph (a)(2) of this section no later than May 15, 1995. Each futures commission merchant whose registration becomes effective after December 31, 1994 and is subject to the requirements of this section shall file the information required by paragraph (a)(1) of this section within 60 calendar days after registration is granted, or by April 30, 1995, whichever comes later and the information required by paragraph (a)(2) of this section within 105 calendar days after registration is granted or by May 15, 1995, whichever comes later.

Issued in Washington, DC on December 21, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–31828 Filed 12–27–94; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 240, and 249

[Release No. 34–35123; File No. S7–17–94]

RIN: 3235–AG15

Proposed Rule Changes of Self Regulatory Organizations; Annual Filing of Amendments to Registration Statements of National Securities Exchanges, Securities Associations, and Reports of the Municipal Securities Rulemaking Board

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting amendments to Rule 19b–4 and Form 19b–4 under the Securities Exchange Act of 1934 to expand the scope of proposed rule changes filed by self-regulatory organizations that may become effective immediately. The Commission also is amending its rules to delegate to the Director of the Division of Market Regulation certain related functions. The amendments implement recommendations contained in the Market 2000 report and are designed to expedite and streamline the process by which proposed rule changes of self-regulatory organizations are filed and become effective. In addition, the Commission is streamlining and conforming the requirements for national securities exchanges and securities associations to file annual amendments to their registration statements, and for the Municipal Securities Rulemaking Board to file annual reports.

EFFECTIVE DATE: January 27, 1995.

FOR FURTHER INFORMATION CONTACT: (prior to the effective date) Catherine McGuire, Chief Counsel, or Andrew S. Margolin, Senior Counsel, Office of Chief Counsel, at (202) 942–0073; (after the effective date) for exchange rules, Sharon Lawson, Assistant Director, at (202) 942–0182, or Ivette Lopez, Senior Special Counsel, at (202) 942–0765; for National Association of Securities Dealers and Municipal Securities Rulemaking Board rules, Katherine A. England, Assistant Director, at (202) 942–0154; for clearing agency rules, Jerry Carpenter, Assistant Director, at (202) 942–4187, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 1, 1994, the Commission proposed for public comment amendments to Rule 19b–4 [1] and Form 19b–4 [2] under the Securities Exchange Act of 1934 [3] ("Exchange Act" or "Act"), the rule and form applicable to the process by which self-regulatory organizations ("SROs") file proposed rule changes with the Commission.[4] The proposal was intended to expedite the rule filing process by expanding the categories of proposed rule changes that may become effective upon filing pursuant to Section 19(b)(3)(A) [5] of the

[1] 17 CFR 240.19b–4.

[2] 17 CFR 249.819.

[3] 15 U.S.C. 78a, *et seq.*

[4] Securities Exchange Act Release No. 34140 (June 1, 1994), 59 FR 29393 ("Proposing Release").

[5] 15 U.S.C. 78s(b)(3)(A).

Act to include certain systems changes and other noncontroversial filings. The Commission also proposed amendments to Rules 6a–2,[6] 15Aj–1,[7] 17a–21,[8] and Form X–15AJ–2[9] under the Act, to streamline and conform the annual filing requirements of amendments to registration statements of national securities exchanges and securities associations, and annual reports of the Municipal Securities Rulemaking Board ("MSRB").

The proposals implement recommendations contained in the Division of Market Regulation's ("Division") *Market 2000* report.[10] The report recommended that the rule filing process be expedited for routine procedural and administrative modifications to existing order-entry and trading systems. The Division also agreed to consider other types of SRO proposals that could be subject to an expedited review process.

The Commission received nine comment letters in response to its request for comments.[11] Commenters expressed general support for these proposals, and also suggested other ways to improve the SRO rule filing process. The Commission has determined to adopt the amendments substantially as proposed with some modifications designed to address the comments received.[12] The Commission also is providing further clarification on the application of amended Rule 19b–4.

II. Amendments to Rule 19b–4

Under Section 19(b) of the Act, an SRO is required to file with the Commission its proposed rule changes.[13] Once a proposed rule change is filed, the Commission is required to publish notice of it and provide an opportunity for public comment. The proposed rule change may not take effect unless approved by the Commission or unless the rule change is within the class of rule changes effective upon filing pursuant to Section 19(b)(3)(A).[14]

Under Section 19(b)(3)(A) of the Act and Rule 19b–4(e) thereunder, a proposed rule change may take effect upon filing without the notice and approval procedures required by Section 19(b)(2) if the proposed rule change comes within prescribed statutory categories,[15] including matters which the Commission may, consistent with the public interest and the purposes of this subsection, specify by rule. Accordingly, the Commission is amending Rule 19b–4 to add two new categories of proposed rule changes that can become effective in this manner: (1) Routine procedural and administrative modifications to existing order-entry and trading systems (the "existing systems category"); and (2) certain other noncontroversial filings (the "noncontroversial category").[16] The Commission believes that these amendments are consistent with the general principles of the Exchange Act applicable to the approval of SRO rule changes that ensure that meaningful public comment is reflected where necessary. All rule changes that become effective under Section 19(b)(3)(A) will continue to be subject to abrogation by the Commission within 60 days of the filing.[17]

A. Systems Changes

In the Proposing Release, the Commission proposed to allow SRO rule changes dealing with routine procedural and administrative modifications to existing order-entry and trading systems to become effective upon filing pursuant to Section 19(b)(3)(A) of the Act. Historically, it has been required that these modifications be filed under Section 19(b)(2).[18] The proposed amendments limit the scope of the existing systems category to those systems changes that: (1) Do not significantly affect the protection of investors or the public interest; (2) do not impose any significant burden on competition; and (3) do not have the effect of limiting the access to or availability of the system.

Commenters supported this proposal because it would address concerns that the filing process with respect to these types of rule changes can be too lengthy, and hampers the ability of SROs to provide prompt, flexible, and innovative systems changes. Several commenters, however, requested further clarification of when a systems change requires a filing, and whether such filings would be eligible to become effective upon filing under the existing systems category.

1. Systems Changes that Require Rule Change Filings

The NASD commented that certain changes related to order-entry and trading systems should not be considered proposed rule changes at all and should be exempt from the filing process. The NASD cited changes involving the format and appearance of screens, keystroke commands, underlying hardware and software changes, and the user manuals and technical guides to system operation. The NASD stated that these filings rarely would pose significant concerns in the areas of investor protection, public interest, or fair competition.

While changes to the format and appearance of screens, or changes involving the underlying hardware and software may not need to be filed pursuant to Section 19(b)(2) in many instances, the Commission cannot state as a general matter that these changes are never required to be filed. For example, if an SRO decided to alter the format and appearance of a system providing quotation information by excluding the market maker or market specialist identifier, thus making it virtually impossible for a system user to

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[6] 17 CFR 240.6a–2.

[7] 17 CFR 240.15Aj–1.

[8] 17 CFR 240.17a–21.

[9] 17 CFR 249.803.

[10] Division of Market Regulation, *Market 2000: An Examination of Current Equity Market Developments* (January, 1994).

[11] *See* Letters to Jonathan G. Katz, Secretary, Securities and Exchange Commission, from: James E. Buck, Senior Vice President and Secretary, New York Stock Exchange ("NYSE"), dated August 12, 1994; Richard G. Ketchum, Chief Operating Officer and Executive Vice President, National Association of Securities Dealers ("NASD"), dated August 16, 1994; James F. Duffy, Executive Vice President and General Counsel, American Stock Exchange ("Amex"), dated August 18, 1994; Michael L. Myers, Schiff Hardin & Waite [on behalf of the Chicago Board Options Exchange ("CBOE") and the Options Clearing Corporation ("OCC")], dated August 12, 1994; J. Craig Long, Secretary, Chicago Stock Exchange ("CHX"), dated August 8, 1994; Larry R. Shotwell, Executive Vice President, Pacific Stock Exchange ("PSE"), dated August 12, 1994; David C. Clapp, Chairman, Municipal Securities Rulemaking Board ("MSRB"), dated August 3, 1994; William W. Uchimoto, First Vice President and General Counsel, Philadelphia Stock Exchange ("Phlx"), dated August 19, 1994; and John I. Fitzgerald, Executive Vice President, Boston Stock Exchange ("BSE"), dated August 8, 1994. The comment letters and a summary of comments are contained in Public File No. S7–17–94.

[12] These amendments may affect clearing agencies for which the Commission is not the appropriate regulatory agency as defined in Exchange Act § 3(a)(34), 15 U.S.C. 78c(a)(34). Therefore, in accordance with Exchange Act § 17A(d)(3)(A)(i), 15 U.S.C. 78q–1(d)(3)(A)(i), at least 15 days before this announcement, the Commission consulted and requested the views of the Board of Governors of the Federal Reserve System.

[13] 15 U.S.C. 78s(b)

[14] *See* Proposing Release for a more complete discussion of this process.

[15] These include rule changes that (1) Constitute a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the SRO, (2) establish or change a due, fee, or other charge imposed by the SRO, or (3) that are concerned solely with the administration of the SRO. 15 U.S.C. 78s(b)(3)(A).

[16] These categories will be established by amending Rule 19b–4 to add paragraph (e)(5) for the systems category and paragraph (e)(6) for the noncontroversial category, and by making conforming changes to Form 19b–4.

[17] 15 U.S.C. 78s(b)(3)(C).

[18] *See, e.g.*, Letter from Richard T. Chase, Assistant Director, SEC, to Frank Wilson, Executive Vice President, NASD (February 4, 1983).

determine the origination of a quote, the SRO would then be required to file a proposed rule change with the Commission. The Exchange Act requires SROs to have rules designed, among other things, to remove impediments to and perfect the mechanism of a free and open market and a national market system.[19] Thus, any change to a system providing quotation information that would affect the maintenance of a free and open market or a national market system would be required to be filed with the Commission.

Similarly, changes to keystroke commands would generally not require a filing. If such a change, however, would have the effect of prohibiting entry of certain types of orders, such as a series of keystrokes so cumbersome that it has the effect of prohibiting the entry of orders priced outside the current inside market, that change would require a filing pursuant to Section 19(b)(2).[20] While software or hardware changes generally do not require a filing pursuant to Section 19(b)(2), the Commission has suggested that significant hardware and software changes be reported to the Commission on an annual and an as-needed basis, as stated in its most recent Automation Review Policy.[21]

User manuals and technical guides for a particular system, as a general matter, need not be filed with the Commission. It has been the Commission's experience, however, that at times, a clear understanding of how the system functions may be achieved only by reviewing the rules of the SRO in conjunction with the user manual or technical guide. The Commission believes that it is more appropriate to have the relevant information in the SRO's rules so that it may be available to anyone seeking an understanding of the system's operation.[22] It is the SRO's responsibility to make the initial determination of whether an action an SRO is contemplating will require a filing, including whether to file user manuals and technical guides. Whether any particular guide needs to be filed must be determined on a case by case basis.[23]

2. Scope of Filings Eligible for the Existing Systems Category

In the Proposing Release, the Commission cited examples of the type of proposed rule change that would be within the existing systems category. For example, a proposed rule change that would increase marginally the maximum number of shares per order that could be executed through an SRO's small order routing and execution system, or a proposed rule change that would expand the number of series or classes eligible for options routing and execution systems generally could be filed pursuant to Section 19(b)(3)(A).

In addition, the Commission believes that the following recent filings also exemplify the type that would qualify for the existing systems category: a rule change requiring the use of a special indicator for average-priced trade reports,[24] and one requiring OTC Bulletin Board ("OTCBB") market makers to append a fifth character to their market maker identifier as a geographic indicator when trading away from primary offices.[25]

The NASD suggested that the term "trading system" should be clarified to include automated services that support trading, trade reporting, and clearance and settlement, such as the OTCBB and the Automated Confirmation Transaction service ("ACT"). The NASD recommended that changes to these systems should be eligible under either the existing systems category, or the noncontroversial category discussed below.

The Amex requested that the Commission make clear that changes to automatic equity order execution systems that could interfere with providing best execution would be precluded from filing under Section 19(b)(3)(A). The Amex also requested that the Commission not limit the availability of the existing systems category to only marginal increases in the number of shares per order that can be entered and executed through a small order routing and execution system, as stated in the Proposing Release, but also include significant increases in certain circumstances.

While the Commission generally believes that it may be reasonable to interpret broadly the term "trading system," to include related automated services such as the OTCBB or ACT, such that changes to those services could be eligible for filing under the existing systems category, the Commission also believes, for example, that a proposal to expand the category of eligible securities in connection with a system to include foreign securities would raise investor protection and competitive concerns, and would thus be subject to review pursuant to Section 19(b)(2).

The Commission recognizes, as noted by the Amex, that a proposed rule change that interferes with best execution obligations would significantly affect the protection of investors and thus would not satisfy the conditions for expedited treatment set forth in the rule. The Commission also believes that a proposed rule change that substantially increases the number of shares per order routed or executed through a small order execution system may in some circumstances be eligible for expedited treatment. Such a proposed rule change, however, generally would not be eligible to

[19] 15 U.S.C. 78f(b)(5) and 78o-3(b)(6).

[20] In fact, the Commission recently was presented with a situation which raised this very issue and demonstrated the need for filing pursuant to Section 19(b)(2). On October 25, 1993, the NASD filed with the Commission a proposed rule change to modify the SelectNet service by prohibiting entry of orders in SelectNet priced outside the inside Nasdaq market. Securities Exchange Act Release No. 33101 (Oct. 25, 1993), 58 FR 58363 (File No. SR-NASD-93-60). The NASD filed that rule change pursuant to Section 19(b)(3)(A) of the Act which became effective immediately. On October 29, 1993, pursuant to Section 19(b)(3)(C) of the Act, the Commission abrogated the rule change on the basis that it should have been filed pursuant to Section 19(b)(2) and thus, subject to notice and comment. Securities Exchange Act Release No. 33116 (Oct. 29, 1993), 58 FR 58883. On November 1, 1993, the NASD refiled with the Commission the proposed rule change pursuant to Section 19(b)(2) of the Act. Securities Exchange Act Release No. 33141 (Nov. 3, 1993), 58 FR 59504 (File No. SR-NASD-93-61). Due to concerns about whether the NASD's proposal was consistent with the Act, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be disapproved. Securities Exchange Act Release No. 34000 (May 3, 1994), 59 FR 23909. Subsequently, the NASD modified the SelectNet keystroke procedures for entering and accepting orders outside the inside Nasdaq market. The modification provided a warning to SelectNet participants that the order is priced outside the inside market but allows participants to override the warning. Because this modification neither significantly altered SelectNet nor denied access to SelectNet, the change was not considered a proposed rule change and thus did not require filing with the Commission. As a result, the NASD withdrew its proposed rule change and the Commission terminated the proceedings to determine whether to disapprove the proposal. Securities Exchange Act Release No. 34486 (Aug. 4, 1994), 59 FR 40933.

[21] Securities Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490.

[22] The SRO's rules should indicate, for example, the types and size of orders, and with specificity, the manner in which orders will be processed in the system. Specifically, with respect to a system such as SelectNet, it is important to know how the different types of orders are displayed and to whom they are displayed. *See* Letter from David Humphreville and Caroline B. Austin, Co-Chairs, National Specialist Association to Jonathan G. Katz, Secretary, SEC, dated November 6, 1992 (commenting on File No. SR-NASD-92-16). Information explaining the combination of keystrokes that must be used to accept an order may be more appropriate for a user manual or technical guide.

[23] If an SRO has failed to explain clearly in its rules how a particular system functions, including who has access to the system, it should consider submitting a proposed rule change comprising the relevant information contained in the guide or manual.

[24] File No. SR-NASD-93-20.

[25] File No. SR-NASD-93-74.

become effective upon filing under the existing systems category because a change in the order size of substantial magnitude would not qualify as a modification of an existing system, but in effect establishes a new system. Thus, it generally will be more appropriate to file significant increases in order size under the noncontroversial category discussed below.

The Commission is adopting the amendments concerning existing systems changes as originally proposed. The Commission believes that, because these types of proposed rule changes deal with operational details of existing systems and are subject to certain limitations in the rule, they do not require the full notice and review procedures of Section 19(b)(2). The amendments bring the filing procedures for this type of proposed rule change in line with procedures that have been in effect for clearing agencies since 1980.[26]

B. Noncontroversial Filings

As proposed, the amendments to Rule 19b-4 also would expand the scope of proposed rule changes that may become effective upon filing under Section 19(b)(3)(A) to include certain noncontroversial filings. For these filings, SROs would be required to provide written notice to the Commission five business days prior to the filing.[27] This notice would provide Commission staff an opportunity to discuss with the SRO whether there exists an adequate basis upon which the proposed rule change may properly qualify under Section 19(b)(3)(A), and could elicit guidance from Commission staff to help the SRO identify those aspects of a proposed rule change that the Commission deems important.[28] Proposed rule changes in the noncontroversial category, by their terms, would become operative 30 days after the date of publication of the notice, or such shorter time as the Commission may designate.

The proposal of the noncontroversial category elicited significant comment. The comments focused on the timing of the effectiveness of these noncontroversial filings, and the scope of proposed rule changes that may be filed under this category. Commenters also voiced concerns relating to the publication of notices of proposed rule changes generally.

1. Timing of Effectiveness

Commenters indicated that the 30-day delayed operational date was too lengthy for noncontroversial rule filings and that, in any case, the operational date was not predictable.[29] Commenters offered a variety of suggestions about how to address this issue. While some suggested that the period be shortened,[30] others suggested eliminating the period altogether or granting authority to delay the operation of the rule only in specific circumstances.[31] Several recommended that the 30-day period run from the date of the filing rather than the date of publication.[32] The Amex requested that the Commission clarify procedures applicable to the filing of amendments to proposed rule changes under the noncontroversial category, and requested that there be an explicit mechanism for requesting that the 30-day period be shortened. The Amex also recommended that the five-day period for submitting a pre-filing notice be a maximum, and not a minimum period, so as not to preclude submission of the subsequent filing less than five days later, in the event that the Commission determines in a shorter time that the filing is appropriately filed under this category.

Related to the timing of effectiveness is the matter of publishing notices of proposed rule changes. Several commenters were critical of the length of time between the filing of a proposed rule change and its publication in the **Federal Register**. The CBOE, for example, argued that in some cases the publication of the notice has been inordinately delayed. The Phlx stated that the delay results from a lengthy pre-publication review by the Commission. The NYSE and the NASD suggested that the Commission adopt an internal guideline on publishing notices to address this perceived problem.

The Commission believes that a 30-day delayed operational date for noncontroversial filings is necessary and appropriate. If, as a result of either subsequent Commission review or public comment, it is determined that a proposed rule change was not properly filed as within the noncontroversial category, the 30-day period would allow the Commission to abrogate the rule change without a significant disruption in existing operations.

To address concerns of commenters, however, the Commission has determined to commence the 30-day period with the filing date of the proposed rule change, instead of the publication date as originally proposed. This will enable SROs to implement a proposed rule change more quickly, while preserving the opportunity for meaningful public comment. A 30-day period triggered by the filing date provides predictability while assuring that the filing is reviewed not only by the staff but also by commenters.

With respect to amendments to filings in the noncontroversial category, the Commission believes that any substantive amendment would trigger a new 30-day period, assuming that the changes do not render the filing ineligible for this category. The staff would, however, have discretion to accept editorial changes without triggering a new 30-day period. The Commission notes that this procedure was designed to expedite those SRO filings that are inherently simple and concise, and that would otherwise require little in the way of extended review or analysis by the Commission. A filing requiring further substantive amendments may indicate that it is not appropriate for the expedited treatment afforded by the noncontroversial category.

Form 19b–4 also has been amended to state that an SRO requesting the Commission to shorten the 30-day period should provide a statement explaining why the Commission should do so. With respect to the five-day pre-filing period, the Commission is amending the rule to permit the Commission to designate a shorter period if appropriate.

As the Commission has stated in the past, its intent is to publish all notices

[26] A proposed rule change of a registered clearing agency can become effective upon filing pursuant to Rule 19b-4 if it effects a change in an existing service that (1) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (2) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. See Securities Exchange Act Release No. 17258 (October 30, 1980), 45 FR 73906.

[27] As stated in the Proposing Release, the Commission expects that such notices will be informal and often transmitted by facsimile. The notice should be directed to the appropriate Division staff responsible for reviewing that SRO's filings of proposed rule changes. The Commission intends to place this notice in a public file. *See* Exchange Act § 23(a)(3), 15 U.S.C. 78w(a)(3).

For every clearing agency for which the Commission is not the appropriate regulatory agency, the notice also must be filed with the appropriate regulatory agency for the clearing agency as required by Exchange Act § 17(c)(1), 15 U.S.C. 78q(c)(1). Consistent with the requirements of that section, the Commission also would expect the MSRB to file such notices with each agency enumerated in Exchange Act § 3(a)(34)(A), 15 U.S.C. 78c(a)(34)(A).

[28] This also should help the SRO articulate in its subsequent filing the purpose and effects of the proposed rule change, which in turn should further facilitate and expedite the filing process.

[29] *See, e.g.*, Letter from NYSE.

[30] *See, e.g.*, Letter from Amex.

[31] Letter from NYSE.

[32] Letters from CBOE, CHX, Phlx.

of proposed rule changes promptly.[33] In light of comments received, the Commission will redouble its efforts to do so in the future. The Commission notes, however, that notices of proposed rule changes need to be clear in order to elicit meaningful public comment. Although a proposed rule change may be accepted as filed, the Commission believes that it should not be published until it has reached an adequate level of clarity regarding the issues raised by the filing. For complex filings, this can require more extensive review. Filings of rule changes also need to include information necessary to enable the Commission's staff to conduct a complete review. Any filings that fail to comply with the requirements of Form 19b–4 may be returned to the SRO and will be deemed not to have been filed with the Commission.

2. Scope of Filings Eligible for the Noncontroversial Category

Many commenters requested further clarification of the scope of this proposal. While it would be impossible to identify with certainty in advance every type of proposed rule change that may qualify for the noncontroversial category, the discussion below should assist SROs in assessing its availability.

The noncontroversial category applies only to those proposed rule changes that are properly designated by the SRO as not significantly affecting the protection of investors or the public interest and not imposing any significant burden on competition. As indicated in the Proposing Release, proposed rule changes meeting these criteria generally are less likely to engender adverse comments or require the degree of review attendant with more controversial filings.

In the Proposing Release, the Commission cited examples of proposed rule changes that would be eligible for the noncontroversial category, such as certain proposed rule changes that would add an existing rule to an SRO's minor rule violation plan, and proposed rule changes that permit the transmission of data to or from the SRO by computer interface or other electronic means. The Proposing Release also made clear, however, that for policy reasons, a proposed rule change that would reduce public representation in the administration of the affairs of an SRO or that would amend the procedures for arbitration or disciplinary proceedings would not be a proper candidate to become effective under Section 19(b)(3)(A).

[33] Securities Exchange Act Release No. 17258 (October 30, 1980), 45 FR 73906.

In its comment letter, the NYSE stated that the scope of the proposal for noncontroversial filings would depend on the interpretation of the term "significant" as it is used in the amendments. In requesting that the Commission provide further guidance on the scope of this proposal, the NYSE indicated that, based on a survey of its filings for 1993 and the first half of 1994, its staff believed that the overwhelming majority of its rule changes would not have been eligible for expedited treatment. The NASD and the Amex suggested that the Commission apply an expedited approach to proposed rule changes that "clone" or are virtually identical to other rule changes filed by another SRO that already have been approved by the Commission. The NASD also questioned the general utility of the noncontroversial category to the extent that a competitor could unjustifiably impede the expedited treatment of an SRO's proposed rule change simply by filing a perfunctory adverse comment letter.

The Commission would like to make clear that although it intends to expedite the rule filing process, it is doing so only with respect to the universe of proposed rule changes that are not likely to engender adverse comments or otherwise warrant the type of review required by Section 19(b)(2) of the Act. With respect to the NYSE's survey of its filings, the Commission staff has determined that, of 72 NYSE proposed rule changes identified as being filed during the period surveyed by the NYSE, at least seventeen, in retrospect, would have qualified for expedited treatment under the noncontroversial category. These include filings that: (1) conformed the NYSE pre-opening application to the Intermarket Trading System by clarifying the use of a cancellation notification sent after a pre-opening notification;[34] (2) similar to other proposals approved for the Amex and CBOE, provided for the listing and trading of quarterly index expiration options;[35] (3) amended floor conduct and safety guidelines not dealing with procedural rights of offender (two filings);[36] (4) rescinded two NYSE rules, Rules 391 and 392, which served little purpose in light of the Commission's rescission of its Rule 10b–2;[37] (5) extended until January 31, 1994, off-hours trading and the matched market-on-close pilot program;[38] (6) added to the exchange's minor rule violation plan NYSE Rule 410B, which requires members and member organizations to report trades in exchange listed stocks not otherwise reported to the Consolidated Tape;[39] (7) related to registration and fingerprinting of floor members and employees;[40] (8) amended the exchange's minor rule violation plan to include exchange procedures with respect to entry and cancellation of market-at-the-close orders on expiration days, and other rules for which determinations of violations can be made objectively (two filings);[41] (9) extended for one year the NYSE's pilot program for position limit exemptions for certain hedged equity and stock index option positions;[42] (10) increased insubstantially the exchange's continuing listing fees;[43] (11) extended Rule 103A relating to specialist stock reallocation;[44] (12) amended NYSE Rule 321 by clarifying the term "control" and substituting the word "subsidiary" for the word "affiliate" in Rules 113 and 122;[45] (13) authorized the NYSE to provide to the Central Registration Depository information concerning pending formal disciplinary proceedings;[46] (14) for audit trail reporting purposes, added identification codes for short sales exempt from Commission or exchange rules;[47] and (15) extended the exchange's circuit breaker pilot program.[48]

In addition, the staff of the Commission has identified other filings that are representative of the types of filings that could qualify for the noncontroversial category. These include filings that: (1) deleted that part of Schedule D to NASD by-laws concerning publication and dissemination of quotations to the news media, to reflect current NASD practice;[49] (2) deleted the section of NASD by-laws regarding a local quotations program that had been phased out;[50] (3) required members to adjust certain orders when securities are quoted ex-dividend, ex-rights, and ex-

[34] File No. SR–NYSE–93–01.

[35] File No. SR–NYSE–93–04.

[36] File Nos. SR–NYSE–93–14 and SR–NYSE–93–25.

[37] File No. SR–NYSE–93–20.

[38] File No. SR–NYSE–93–23.

[39] File No. SR–NYSE–93–24.

[40] File No. SR–NYSE–93–28.

[41] File Nos. SR–NYSE–93–35 and SR–NYSE–93–38.

[42] File No. SR–NYSE–93–42.

[43] File No. SR–NYSE–93–46. *See* discussion on fee-related filings in this section, *infra*.

[44] File No. SR–NYSE–94–07

[45] File No. SR–NYSE–94–09.

[46] File No. SR–NYSE–94–11.

[47] File No. SR–NYSE–94–16.

[48] File No. SR–NYSE–94–34.

[49] File No. SR-NASD–93–14.

[50] File No. SR–NASD–93–40.

interest;[51] (4) eliminated existing regulatory requirements for non-Nasdaq OTC securities once real-time reporting of those securities had been approved by the Commission;[52] (5) extended previously approved pilot linkages between Nasdaq and foreign exchanges;[53] (6) mandated market maker use of registered clearing agencies;[54] and (7) provided a procedure for the immediate publication of final disciplinary sanctions.[55] Moreover, it is the Commission's view that mechanical or simple editorial changes to existing rules, such as when a change in an SRO's rule numbering system results in incorrect cross-references in other rules, may be filed within the noncontroversial category.

As noted above, under Section 19(b)(3)(A)(ii) of the Act, rule changes that establish or change a due, fee, or other charge imposed by the SRO may become effective upon filing.[56] The Commission notes that the filing of a proposed fee applicable to members may nonetheless raise significant regulatory issues and thus be required, consistent with current Commission policy, to be submitted pursuant to Section 19(b)(2).[57] In addition, the Commission continues to believe that, as a matter of general policy, an SRO proposed rule change that establishes or changes a due, fee or other charge applicable to a non-member or non-participant must be filed under Section 19(b)(2) for full notice and comment.[58] While filings concerning fees applicable to non-members have not been eligible to become effective upon filing under Section 19(b)(3)(A)(ii), some such filings now may qualify for expedited treatment under the noncontroversial category.[59]

Furthermore, the Commission will retain a flexible approach in applying amended Rule 19b-4. For example, absent unusual circumstances, filings that are virtually identical to an SRO filing already approved by the Commission will be eligible for expedited treatment under the noncontroversial category. While the Commission generally requires that proposals for exchange listing of new hybrid securities be submitted to the Commission for full review pursuant to Section 19(b)(2) of the Act to ensure that all significant regulatory concerns have been addressed, the Commission also believes that new proposals relating to these products that only change certain characteristics of the products could be eligible for expedited treatment under the noncontroversial category. Once the staff has completed the review process for a particular new product, the need for a full review of subsequent similar proposals is significantly reduced. For example, the Commission has required exchanges to submit for full review under Section 19(b)(2) proposals to list and trade MITTS and SUNS, which are products linked to various baskets of securities.[60] Because the review of new proposals that seek to change, for example, only the composition of the underlying baskets generally will be limited to the composition of those baskets, and because the Commission is now familiar with the basic structure for MITTS and SUNS, subsequent proposals should be eligible for the noncontroversial category.[61] This will expedite the approval of the listing of these products.

The Commission notes, however, that an expedited approach would not necessarily apply, as the Amex suggested, to a proposal to trade index warrants on a stock index previously approved by the Commission for options trading. While use of the procedure could be considered on a case by case basis, as a general rule different types of derivative products, albeit based on the same underlying index, may not be sufficiently identical to be eligible for this treatment.

With respect to the concern that a competitor may cause a proposed rule change of an SRO to be deemed improperly filed under the noncontroversial category merely by submitting a comment letter critical of the filing, the Commission expects that a comment letter would have to raise issues that legitimately suggest that the proposed rule change is inconsistent with the requirements of the Exchange Act or regulations thereunder applicable to that SRO in order for the rule change to be abrogated and refiled under Section 19(b)(2).

The CBOE commented that it is unclear whether the notice published by the Commission indicating that a rule change has become effective upon filing would be sufficient to prevent a collateral attack based on the assertion that the rule change was improperly filed under the Act. The Commission concurs with the CBOE's interpretation that a rule change filed under Rule 19b-4(e) is deemed to have been properly filed thereunder if the Commission fails to abrogate it within the 60 day period for such action.

Finally, the CHX urged the Commission to interpret all corporate governance changes that do not decrease the number of public governors as being within the provision of Section 19(b)(3)(A) that permits a proposed rule change to take effect upon filing if it is "concerned solely with the administration of the SRO." The governance structure of the SROs is the subject of specific statutory standards. Because a change in the overall makeup of the governance structure of an SRO could be effected without necessarily decreasing the number of public governors, the Commission does not concur in this interpretation.

In sum, the Commission is adopting amendments to Rule 19b-4 for the noncontroversial category with the following modifications: (1) the 30-day period after which a noncontroversial filing may become effective will begin with the filing date; (2) Form 19b-4 will state that an SRO requesting the Commission to shorten the 30-day period should provide a statement explaining its reasons for so requesting; and (3) Rule 19b-4 will permit the Commission to shorten the 5-day period in which SROs are required to file a notice of their intent to file, if appropriate.[62]

[51] File No. SR-NASD-93-52.

[52] File No. SR-NASD-93-68.

[53] File Nos. SR-NASD-94-23, SR-NASD-94-25, and SR-NASD-94-30.

[54] File No. SR-NASD-94-28.

[55] File No. SR-NASD-94-59.

[56] *See* note 15, *supra*.

[57] See, *e.g.*, Securities Exchange Act Release No. 32377 (May 27, 1993), 58 FR 31568 (File No. SR-NYSE-93-08) (approving NYSE proposal to grant an additional system credit to member and member organizations for all individual and agency orders of a certain size, except orders for the account of a non-member competing market maker, routed through the NYSE's SuperDot system for execution); Securities Exchange Act Release No. 27286 (September 21, 1989), 54 FR 40224 (File No. SR-NASD-88-55) (approving NASD proposal relating to the imposition on certain member firms of an assessment on annual gross income from transactions in U.S. Government Securities).

[58] Securities Exchange Act Release No. 17258 (October 30, 1980), 45 FR 73906, at 73910 n.40. *See, e.g.*, Securities Exchange Act Release Nos. 33123 (October 29, 1993), 58 FR 59083 (File No. SR-NASD-93-49) (approving NASD proposal to extend Bond Quotation Data Service fees to non-member subscribers); 34272 (June 28, 1994), 59 FR 34701 (File No. SR-Amex-94-12) (approving Amex proposal to reduce maximum fees for original stock listings by domestic and foreign issuers).

[59] For example, if an SRO proposes a reasonable and relatively minor increase in an existing fee, or a proposal that is virtually identical to fees of other SROs, provided that the proposal does not raise other regulatory issues, such proposal would qualify under the noncontroversial category.

[60] *See* Securities Exchange Act Release No. 32840 (September 2, 1993), 58 FR 47485 (order approving Global Telecommunications MITTS portfolio).

[61] *See, e.g.*, Securities Exchange Act Release No. 34655 (September 12, 1994), 59 FR 47966 (order approving the listing of REIT Portfolio MITTS); Securities Exchange Act Release No. 33495 (January 19, 1994), 59 FR 03883 (order approving the listing of Telecommunications Basket SUNS).

[62] The Commission is delegating to the Director of the Division of Market Regulation the functions of

Continued

C. Delegation of Authority to the Director of the Division of Market Regulation

The Commission currently has the authority under Section 19(b)(3)(C) of the Exchange Act to abrogate summarily within 60 days of filing any proposed rule change that becomes effective under Section 19(b)(3)(A) if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.[63] The Proposing Release indicated that if the proposals to expand the scope of Section 19(b)(3)(A) are adopted, the Commission will revise its rules to delegate this abrogation authority to the Director of the Division of Market Regulation.

As indicated in the Proposing Release, this would be necessary to facilitate an expected increase in the volume of proposed rule changes that would be filed under Section 19(b)(3)(A). In particular, the Commission expects that the staff will abrogate filings if it becomes aware of issues that would warrant further consideration under the procedures set forth in Section 19(b)(2), such as those involving possible burdens on competition or effects on investor protection. Accordingly, the Commission is delegating this function, as well as the related functions of shortening the 30 and five-day periods under paragraph (e)(6) of Rule 19b-4, to the Director of the Division.

In addition, the Commission is delegating to the Director of the Division the authority under Section 19(b)(2)(B) of the Exchange Act to institute proceedings to determine whether a proposed rule change should be disapproved.[64] It is the Commission's view at this time that filings that are not resolved within six months of submission generally should be withdrawn or, in the alternative, subject to disapproval proceedings. Although the Commission has directed its staff to request that SROs withdraw a number of filings of proposed rule changes not approved within that period, this delegation of authority is necessary to enable the Division to implement these internal guidelines.

The Commission does not intend to prevent SROs from moving forward with their rule changes. The Commission suggests, however, that when it becomes obvious that a resolution of issues for a particular filing is not forthcoming, it may be more appropriate for the SRO to advance the initiative outside of the rule filing mechanism until such time as it is in form for approval. The staff of the Commission will be available to assist SROs in this regard.[65] The Commission believes that this will maintain accountability on the part of both Commission staff and SROs by assuring that complex filings are not abandoned and allowed to stagnate within the rule filing process. These amendments add new paragraphs (a)(57), (a)(58), and (a)(59) to Rule 30–3 of the Commission's rules of Organization and Program Management.

D. Submission of Form 19b–4 on Computer Diskette and Miscellaneous Amendments

The Commission noted in the Proposing Release that significant staff resources are devoted to processing proposed rule changes and preparing them for publication, and encouraged SROs to submit Form 19b–4 and the notice for publication (Exhibit 1 to the form) on computer diskette in an appropriate wordprocessing format.[66] The paper version of these documents would continue to be required, but the electronic version would provide a more efficient way for Commission staff to review and prepare the initial notice for publication in the **Federal Register**.

The Commission also is adopting amendments as proposed that will reduce the number of copies of Form 19b–4 and Exhibit 1 that SROs must submit from twelve to nine, including the manually signed original. Although the Commission originally proposed reducing the number of copies to eight, it has determined that nine copies would be optimal based on current staff distribution requirements. In addition, the Commission is correcting miscellaneous outdated references contained in the form with respect to the Commission's address and appropriate offices within the Division to which filings of proposed rule changes should be directed.

III. Amendments to the Annual Filing Requirements for SROs and the MSRB

A registered or exempted securities exchange generally must file annual amendments to its registration statement with the Commission pursuant to Rule 6a–2 under the Exchange Act.[67] The information contained in these annual filings includes, among other things, lists of officers, governors, and committee members, as well as various forms used by the exchange, listing applications, listing fee schedules, membership lists, and securities listed on the exchange.[68] Exchange Act rules also contain similar annual filing requirements for national securities associations[69] and the MSRB.[70]

In the Proposing Release, the Commission stated that some of this information is either publicly available, becomes available to the Commission through other means, or is not useful enough to justify the burden placed on the exchanges in collecting and filing it with the Commission each year. The Commission thus proposed amendments to streamline and conform the annual filing requirements for SROs.

A. Rule 6a–2: Annual Filing Requirements of Exchanges

The proposed amendments would eliminate or reduce the annual filing requirement for certain information, and give exchanges flexibility in making their filings. Commenters supported this proposal. The NYSE suggested that the Commission adopt more extensive amendments that would relieve SROs of the need to file any information annually that is made available to the Commission throughout the year in periodic publications, such as an exchange's bulletins and information memos.

The Commission has determined to adopt the amendments to Rule 6a–2 as proposed, with the exception of one minor modification concerning the proposal to add the date of election to membership for each member, discussed below at Section III.B. The amendments to Rule 6a–2 will eliminate or reduce the information required to be filed annually in the following exhibits to exchange registration: Exhibit *B* (forms pertaining to application for membership and approval as a person associated with a member); Exhibit *C* (forms of financial statements, reports, or questionnaires relating to financial

shortening the 30 and five-day periods. *See* Section II.C. below

[63] 15 U.S.C. 78s(b)(3)(C).

[64] 15 U.S.C. 78s(b)(2)(B).

[65] The Commission recognizes that in certain instances there will be differences in opinion between the staff and SROs regarding the handling of a rule filing. In such instances, the SROs are always free to inform the Commission so that it may help expedite the processing of the filing in an appropriate manner.

[66] Currently, the staff of the Commission uses Wordperfect 5.0.

[67] Exchange Act Rule 6a–2, 17 CFR 240.6a–2. These filings are submitted on Exchange Act Form 1–A, 17 CFR 249.1a.

[68] Rule 6a–2(b) also requires the filing of complete sets of the constitution, by-laws, rules, and related documents of the exchange, but only once every three years.

[69] *See* Exchange Act Rule 15Aj–1, 17 CFR 240.15Aj–1; Form X–15AJ–2, 17 CFR 249.803. Currently, the NASD is the only national securities association registered with the Commission.

[70] *See* Exchange Act Rule 17a–21, 17 CFR 240.17a–21.

responsibility); Exhibit *D* (documents comprising listing applications including agreements required in connection therewith, and a schedule of listing fees); Exhibit *I* (list of all individual members and related information); Exhibit *J* (certain information related to a list of all member organizations of the exchange); and Exhibit *K* (schedule of securities listed on the exchange).

In addition, the amendments to Rule 6a–2 would provide the following alternatives to the annual filing requirement for the remaining exhibits to exchange registration other than Exhibits *E* and *F* (i.e., Exhibits *A(1)*, *A(2)*, *A(3)*, *G*, *H*, *J*, *L*, and *M*).[71] Exchanges would have the option, in lieu of the annual filing, to publish or cooperate in the publication of this information on an annual or more frequent basis, and to certify to the accuracy of the information. Exchanges would have the additional option of keeping the information in Exhibits *A(1)*, *A(2)*, *A(3)*, *L*, and *M* up to date, and certifying that the information is up to date and available to the Commission and the public upon request.

In response to the recommendation that SROs be relieved of the need to file altogether any information that may be available to the Commission, the Commission believes that it would be inconsistent with the requirements of Section 6 of the Exchange Act to rely upon informal, piecemeal publications as a surrogate for a comprehensive filing that is a component of an exchange's registration with the Commission. Furthermore, some of the required exhibits deal with financial information of the exchange that enable the Commission to comply with its obligations to provide Congress with a statement and analysis of the expenses and operations of each SRO.[72]

B. Rule 15Aj–1 and Form X–15AJ–2, Rule 17a–21: Annual Filing Requirements for Securities Associations and Reports of the Municipal Securities Rulemaking Board

Both the NASD and the MSRB endorsed the proposal to streamline their annual filing requirements and conform them to the requirements now applicable to exchanges.[73] The Commission is adopting amendments to Rules 15Aj–1, 17a–21, and Form X–15AJ–2 under the Exchange Act to streamline the annual filing requirements for the NASD and MSRB and make them more uniform. Like exchanges, these SROs will have similar alternative options for the filing of comparable information.

With respect to the proposal to add the date of election to membership for each member, the NASD commented that in some cases this date is not readily available and may be difficult to report. While the Commission is adopting the requirement to add the date of election to membership for each member, this information will be required only for those members elected to membership after December 31, 1994. A conforming modification also has been made to Rule 6a–2 for exchanges, thus applying the same standard to all SROs. This information serves an important purpose by enabling Commission staff to monitor the obligation of broker-dealers to become members of an SRO,[74] and designate an appropriate designated examining authority for member broker-dealers.[75]

IV. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a)[76] of the Act requires the Commission, in adopting rules under the Act, to consider the impact on competition of those rules, if any, and to balance that impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The amendments to Rule 19b–4 apply to all SROs. Furthermore, the amendments are intended to expedite for all SROs a process to which they already are subject under the Act. Similarly, the amendments to the annual filing requirements for SROs are designed to streamline and make uniform those requirements. The Commission is of the view, therefore, that adoption of the proposed amendments to Rules 19b–4, 6a–2, 15Aj–1, 17a–21, and Forms 19b–4 and X–15AJ–2 would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In addition, Section 3(a) of the Regulatory Flexibility Act[77] requires the Commission to undertake an initial regulatory flexibility analysis of the proposed amendments on small entities unless the Chairman certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[78] Rule 19b–4 and Form 19b–4 apply only to SROs. Rule 6a–2 applies only to national securities exchanges. Rule 15Aj–1 and Form X–15AJ–2 apply only to national securities associations. Rule 17a–21 applies only to the MSRB. Furthermore, the proposed amendments are intended to streamline a process to which these SROs already are subject. In the Proposing Release, the Commission indicated that the Chairman has certified that the amendments to Rule 19b–4, Form 19b–4, and Rule 6a–2 would not have a significant economic impact on a substantial number of small entities. The Commission did not receive any comments on the regulatory flexibility certification. The Chairman also has certified that the amendments to Rules 15Aj–1 and 17a–21, and Form X–15AJ–2 would not have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefore, is attached as Appendix A to this release.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organizations and functions (Government organizations).

17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

Statutory Basis and Text of Proposed Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of

[71] Exhibit *A(1)* contains the constitution, articles of incorporation, by-laws, and rules of the exchange; Exhibit *A(2)* contains written rulings, settled practices, and interpretations not contained in A(1); Exhibit *A(3)* contains the constitution, articles of incorporation, by-laws, and rules of each affiliate or subsidiary of the exchange; Exhibit *G* contains a list of officers and committee members; Exhibit *H* contains similar information for affiliates or subsidiaries; Exhibit *L* contains a schedule of securities admitted to unlisted trading practices; and Exhibit *M* contains a schedule of unregistered securities admitted to trading on the exchange that are exempt from registration.

[72] *See* Exchange Act § 23(b), 15 U.S.C. 78w(b).

[73] In its comment letter, the NASD also recommended that the Commission review the filing requirements applicable to exclusive securities information processors ("SIPs"), similarly to eliminate obsolete or duplicate filing requirements. This suggestion is outside the scope of the original proposal. Nevertheless, the Commission intends to review and streamline the annual filing requirements applicable to exclusive SIPs.

[74] Exchange Act § 15(b)(8), 15 U.S.C. 78o(b)(8). The importance of this information is also highlighted by Exchange Act § 15(b)(1)(B), 15 U.S.C. 78o(b)(1)(B), as amended by the Government Securities Act Amendments of 1993, Pub. L. No. 103–202, 107 Stat. 2345 (1993), which conditions the effectiveness of broker-dealer registration with the Commission on such SRO membership.

[75] Where a broker-dealer is a member of more than one SRO, the Commission has authority to designate to one SRO the responsibility for examining the member for compliance with applicable financial responsibility rules. Exchange Act § 17(d)(1), 15 U.S.C. 78q(d)(1); 17 CFR 240.17d–1.

[76] 15 U.S.C. 78w(a)(2).

[77] 5 U.S.C. 603(a).

[78] 5 U.S.C. 605(b).

Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200, subpart A continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–3 is amended by adding paragraphs (a)(57), (a)(58), and (a)(59) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(57) Pursuant to Section 19(b)(2)(B) of the Act, 15 U.S.C. 78s(b)(2)(B), to institute proceedings to determine whether a proposed rule change of a self-regulatory organization should be disapproved.

(58) Pursuant to Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C), to abrogate a change in the rules of a self-regulatory organization and require that it be refiled in accordance with Section 19(b)(1), 15 U.S.C. 78s(b)(1), and reviewed in accordance with Section 19(b)(2), 15 U.S.C. 78s(b)(2), of the Act.

(59) Pursuant to paragraph (e)(6)(iii) of Rule 19b–4 (§ 240.19b–4 of this chapter), to reduce the period before which a proposed rule change can become operative, and to reduce the period between an SRO submission of a filing and a pre-filing notification.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

§ 2640.6a–2 [Amended]

4. Paragraph (a)(1) of § 240.6a–2 is amended by removing ", or in Exhibits B, C and D," and "and Exhibits B, C and D".

5. Revise paragraph (a)(3) of § 240.6a–2 to read as follows:

§ 240.6a–2 Periodic amendments to registration statements or exemption statements of exchanges.

(a) * * *

(3) Complete Exhibits G, H, J, L and M, which shall be up to date as of the latest practicable date within 3 months of the date on which the annual amendment is filed, except that:

(i) Exhibit J need only contain the name and principal place of business of each member organization, and for each member organization elected to membership after December 31, 1994, the date of election to membership;

(ii) If a national securities exchange publishes or cooperates in the publication of the information required in these exhibits on an annual or more frequent basis, in lieu of filing such an exhibit a national securities exchange may:

(A) Identify the publication in which such information is available, the name, address, and telephone number of the person from whom such publication may be obtained, and the price thereof; and

(B) Certify to the accuracy of such information as of its date;

(iii) If a national securities exchange keeps the information required in Exhibits L and M up to date and makes it available to the Commission and the public on request, in lieu of filing such an exhibit, a national securities exchange may certify that the information is kept up to date and is available to the Commission and the public upon request.

* * * * *

6. Section 240.6a–2 is amended by revising paragraph (b) to read as follows:

§ 240.6a–2 Periodic amendments to registration statements or exemption statements of exchanges.

* * * * *

(b) Unless exempted pursuant to paragraph (c) of this section, on or before June 30, 1983, and every three years thereafter each exchange registered as a national securities exchange shall file complete Exhibits A(1), A(2) and A(3) to its registration statement, which shall be up to date as of the latest practicable date within 3 months of the date on which these exhibits are filed, except that:

(1) If a national securities exchange publishes or cooperates in the publication of the information required in these exhibits on an annual or more frequent basis, in lieu of filing such an exhibit a national securities exchange may:

(i) Identify the publication in which such information is available, the name, address, and telephone number of the person from whom such publication may be obtained, and the price thereof; and

(ii) Certify to the accuracy of such information as of its date;

(2) If a national securities exchange keeps the information required in these exhibits up to date and makes it available to the Commission and the public on request, in lieu of filing such an exhibit, a national securities exchange may certify that the information is kept up to date and is available to the Commission and the public upon request.

* * * * *

7. Paragraph (c)(1) of § 240.15Aj–1 is revised to read as follows:

§ 240.15Aj–1 Amendments and supplements to registration statements of securities associations.

* * * * *

(c) *Annual supplements.* (1) Promptly after March 1 of each year, the association shall file with the Commission an annual consolidated supplement as of such date on Form X–15AJ–2 (§ 249.803) except that:

(i) If the securities association publishes or cooperates in the publication of the information required in Items 6(a) and 6(b) of Form X–15AJ–2 on an annual or more frequent basis, in lieu of filing such an item the securities association may:

(A) Identify the publication in which such information is available, the name, address, and telephone number of the person from whom such publication may be obtained, and the price thereof; and

(B) Certify to the accuracy of such information as of its date.

(ii) Promptly after March 1, 1995, and every three years thereafter each association shall file complete Exhibit A to Form X–15AJ–2. The information contained in this exhibit shall be up to date as of the latest practicable date within 3 months of the date on which these exhibits are filed. If the association publishes or cooperates in the publication of the information required in this exhibit on an annual or more frequent basis, in lieu of filing such exhibit the association may:

(A) Identify the publication in which such information is available, the name, address, and telephone number of the person from whom such publication may be obtained, and the price thereof; and

(B) Certify to the accuracy of such information as of its date. If a securities association keeps the information required in this exhibit up to date and makes it available to the Commission and the public upon request, in lieu of filing such an exhibit a securities association may certify that the information is kept up to date and is

available to the Commission and the public upon request.

* * * * *

8. By revising paragraph (a)(4) of § 240.17a–21 to read as follows:

§ 240.17a–21 Reports of the Municipal Securities Rulemaking Board.

(a) * * *

(4) The Municipal Securities Rulemaking Board shall include in its annual report a statement and an analysis of its expenses and operations including:

(i) A balance sheet as of the end of the period covered by the report and a statement of revenues and expenses for the Board for that period;

(ii) The rules of the Board including any written interpretations of the rules or staff interpretive letters, except that this information may be included in the annual report once every three years and shall be up to date as of the latest practicable date within 3 months of the date on which this information is filed. If the Board publishes or cooperates in the publication of this information on an annual or more frequent basis, in lieu of including such information in the annual report the Board may:

(A) Identify the publication in which such information is available, the name, address, and telephone number of the person from whom such publication may be obtained, and the price thereof; and

(B) Certify to the accuracy of such information as of its date. If the Board keeps this information up to date and makes it available to the Commission and the public upon request, in lieu of filing such information the Board may certify that the information is kept up to date and is available to the Commission and the public upon request;

(iii) The following information concerning members of the Board:

(A) Name;

(B) Dates of commencement and termination of present term of office;

(C) Length of time each member has held such office;

(D) Name of principal organization with which connected;

(E) Title; and

(F) City wherein the principal office of such organization is located;

(iv) Address of the Board, the name and address of each person authorized to receive notices on behalf of the Board from the Commission, and the name and address of counsel to the Board, if any; and

(v) A list, including addresses, as of the latest practicable date, alphabetically arranged, of all municipal securities brokers and municipal securities dealers which have paid to the Board fees and charges to defray the costs and expenses of operating the Board.

* * * * *

9. Paragraph (e) of § 240.19b-4 is revised to read as follows:

§ 240.19b–4 Filings with respect to proposed rule changes by self-regulatory organizations.

* * * * *

(e) A proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A), if properly designated by the self-regulatory organization as:

(1) Constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule;

(2) Establishing or changing a due, fee, or other charge;

(3) Concerned solely with the administration of the self-regulatory organization;

(4) Effecting a change in an existing service of a registered clearing agency that:

(i) Does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible; and

(ii) Does not significantly affect the respective rights or obligations of the clearing agency or persons using the service;

(5) Effecting a change in an existing order-entry or trading system of a self-regulatory organization that:

(i) Does not significantly affect the protection of investors or the public interest;

(ii) Does not impose any significant burden on competition; and

(iii) Does not have the effect of limiting the access to or availability of the system; or

(6) Effecting a change that:

(i) Does not significantly affect the protection of investors or the public interest;

(ii) Does not impose any significant burden on competition; and

(iii) By its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

* * * * *

PART 249—FORM, SECURITIES EXCHANGE ACT OF 1934

10. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

§ 249.803 [Amended]

11. Form X–15AJ–2 (referenced in § 249.803) is amended by removing items numbered 7 through 28 and redesignating item 29 as number 7.

Note: Form X–15AJ–2 does not and these amendments will not appear in the Code of Federal Regulations.

§ 249.803 [Amended]

12. Form X–15AJ–2 (referenced in § 249.803) is amended by revising Exhibit C to reads as follows:

Note: Form X–15AJ–2 does not and these amendments will not appear in the Code of Federal Regulations.

Form X–15AJ–2

* * * * *

Exhibits to be Furnished With This Supplement

* * * * *

Exhibit C. A list, as of latest practicable date, alphabetically arranged, of all members of the association indicating for each—

(1) the name;

(2) the principal place of business; and

(3) the date of election to membership for each member elected to membership after December 31, 1994.

§ 249.819 [Amended]

13. By revising the first sentence of instruction F of the general instructions of Form 19b–4 (referenced in § 249.819) to read as follows, and by removing the asterisk contained therein along with its accompanying footnote:

Note: Form 19b–4 does not and these amendments will not appear in the Code of Federal Regulations.

Form 19b–4

* * * * *

General Instructions

* * * * *

F. Signature and Filing of the Completed Form

Nine copies of Form 19b–4, nine copies of Exhibit 1, four copies of Exhibits 2 and 3, and two copies of Exhibit 4 shall be filed with, in the case of filings by securities exchanges, the Assistant Director for Derivatives and Exchange Oversight, in the case of filings by securities associations or the Municipal Securities Rulemaking Board, the Assistant Director for NMS and OTC, and in the case of filings by clearing agencies, the Assistant

Director for Securities Processing, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. * * *

* * * * *

§ 249.819 [Amended]

14. Item 7 of the Information to Be Included in the Completed Form of Form 19b–4 (referenced in § 249.819) is amended by removing the word "or" from the end of paragraph (b)(iii) and adding paragraphs (b)(v) and (b)(vi) to read as follows:

Note: Form 19b–4 does not and these amendments will not appear in the Code of Federal Regulations.

Form 19b–4

* * * * *

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2).

* * * * *

(b) * * *

(v) effects a change in an existing order-entry or trading system of a self-regulatory organization that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) does not have the effect of limiting the access to or availability of the system, or

(vi) effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. If it is requested that the proposed rule change become operative in less than 30 days, provide a statement explaining why the Commission should shorten this time period.

* * * * *

§ 249.819 [Amended]

15. Section IV of Exhibit 1 of Form 19b–4 (referenced in § 249.819) is amended by removing "500 North Capitol Street," and adding in its place "450 Fifth Street, N.W.," and removing "Public Reference Section, 1100 L Street N.W.," and adding in its place "Public Reference Room in".

Note: Form 19b–4 does not and these amendments will not appear in the Code of Federal Regulations.

By the Commission.

Dated: December 20, 1994.

Margaret H. McFarland,

Deputy Secretary.

Note: This Appendix to the Preamble will not appear in the Code of Federal Regulations

Appendix A

Securities and Exchange Commission Regulatory Flexibility Act Certification

I Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that proposed amendments to Rules 15Aj–1 and 17a–21, and Form X–15AJ–2 under the Securities Exchange Act of 1934 set forth in Securities Exchange Act Release No. 35123, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the rules and form apply only to the National Association of Securities Dealers and the Municipal Securities Rulemaking Board, and consequently would not impose any significant economic impact on a substantial number of small entities, as that term is defined under the Regulatory Flexibility Act. Furthermore, the proposed amendments are intended to streamline a process to which these self-regulatory organizations already are subject.

Dated: December 20, 1994.

Arthur Levitt,

Chairman.

[FR Doc. 94–31657 Filed 12–27–94; 8:45 am]

BILLING CODE 8010–01–P

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17 CFR Parts 240 and 249

[Release No. 34–35124; File No. S7–3–94]

RIN 3235–AG03

Recordkeeping and Reporting Requirements for Trading Systems Operated by Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting Rule 17a–23 ("Rule") and Form 17A–23 under the Securities Exchange Act of 1934 to establish recordkeeping and reporting requirements for brokers and dealers that operate automated trading systems. Under the Rule, registered broker-dealers that sponsor these systems would be required to maintain participant, volume, and transaction records, and to report system activity to the Commission and, in certain circumstances, to an appropriate self-regulatory organization.

EFFECTIVE DATE: June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Kristen N. Geyer, Senior Counsel, 202/942–0799, Office of Automation and International Markets, Division of Market Regulation, Securities and Exchange Commission (Mail Stop 5–1), 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction and Summary

On February 9, 1994, the Securities and Exchange Commission ("Commission") proposed for comment Rule 17a–23 ("Proposed Rule")[1] and Form 17A–23 ("Proposed Form")[2] under the Securities Exchange Act of 1934 ("Act").[3] The Proposed Rule would have required specific recordkeeping and reporting by registered broker-dealer sponsors of certain automated trading systems (as defined in the Rule, "Broker-Dealer Trading System," or "BDTS"). The Proposed Form specified the information to be included in each filing required by the Proposed Rule.

The Commission received ten comment letters in response to the Proposing Release. Commenters generally supported the Proposed Rule's goal of standardizing recordkeeping and reporting for BDTSs.[4] The majority of

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[1] 17 CFR 240.17a–23.

[2] 17 CFR 249.636.

[3] 15 U.S.C. 78a *et seq.* *See* Securities Exchange Act Release No. 33605 (Feb. 9, 1994), 59 FR 8368 ("Proposing Release").

[4] The comment letters and a summary of comments prepared by the Division of Market Regulation have been placed in Public File No. S7–3–94, which is available for inspection in the Commission's Public Reference Room. Commenters consisted of two industry associations, two self-regulatory organizations, four sponsors of automated proprietary trading systems, and two automated broker-dealers. *See* letters from: John F Olson, Chair, Committee on Federal Regulation of Securities, and Roger D. Blanc, Chair, Subcommittee on Market Regulation, the Business Law Section of the American Bar Association, dated May 10, 1994 ("ABA"); Robert A. McTamaney, Attorney, Carter, Ledyard & Milburn (representing RMJ Securities Corporation, RMJ Options Trading Corporation, and RMJ Special Brokerage, Inc.), dated April 15, 1994 ("CLM/RMJ"); John E. Herzog, Chairman & CEO, Herzog, Heine, Geduld, dated April 12, 1994 ("HHG"); Charles R. Hood, Senior Vice President & General Counsel, Instinet Corporation, dated April 25, 1994 ("Instinet"); Alan D. Rudolph, Vice President, Intervest Financial Services, Inc. and President, CrossCom Trading Network, Inc., dated March 15, 1994 ("Intervest"); Raymond L. Killian, Jr., President & CEO, Investment Technology Group, Inc. (sponsor of Portfolio System for Institutional Trading ("POSIT")), dated May 18, 1994 ("ITG"); Leonard Mayer, Vice President, Mayer & Schweitzer, Inc., dated July 11, 1994 ("M&S"); Joseph R. Hardiman, President, National Association of Securities Dealers, Inc., dated May 27, 1994 ("NASD"); John E. Buck, Senior Vice President & Secretary, New York Stock Exchange, dated June 30, 1994 ("NYSE"); and Mark T Commander, Chairman of

commenters recommended specific modifications to the Proposed Rule. Two commenters, the National Association of Securities Dealers ("NASD") and the New York Stock Exchange ("NYSE"), objected to the Commission's overall regulatory treatment of certain BDTSs and the competitive implications of such regulatory treatment.[5]

After considering the comments, the Commission is adopting the Rule and Form, with certain modifications. The Commission does not believe that these modifications materially alter the scope of the Proposed Rule or the entities to which it applies. The recordkeeping and reporting approach adopted in the Rule will provide the Commission with information necessary to effectively monitor, evaluate, and examine such systems.

II. Basis and Purpose of the Rule

In January 1994, the Commission's Division of Market Regulation ("Division") published its *Market 2000 Study*,[6] which reviewed, among other things, the Commission's existing oversight of automated trading systems. The Study recognized that the activities of such systems differ from the activities of traditional broker-dealers, and recommended that the Commission closely monitor the effects of proliferation of such systems.[7] The Commission proposed Rule 17a–23 immediately following publication of the *Market 2000 Study*.[8]

The majority of commenters supported the concept of a recordkeeping and reporting rule and recognized the importance of ongoing monitoring and evaluation of technological advances in the securities industry.[9] Several commenters, however, questioned the necessity for applying the Proposed Rule to specific types of systems. In particular, two commenters suggested that the Proposed Rule should not apply to systems that allow a dealer's customers and other dealers to execute orders against the sponsoring dealer's bid or offer (*i.e.*, "hit" the sponsor's quotations) through automated means ("automated dealer systems").[10] Another commenter objected to application of the Proposed Rule to non-equity systems.[11]

In the Proposing Release, the Commission noted that, although automated systems have proliferated in the securities industry, the Commission receives little information about such systems.[12] The Commission concluded that its efforts to gauge the effect of automation on the U.S. markets and to regulate broker-dealers that operate such systems appropriately are being hindered by a lack of critical information regarding the activity of BDTSs.

The Commission identified three ways in which additional information about BDTSs would assist in evaluating, monitoring, and examining such systems. First, the Rule will allow the Commission to evaluate BDTSs with regard to national market system goals.[13] The Commission noted in the Proposing Release that BDTSs have the potential to significantly affect trading patterns, market transparency, and the distribution of trading activity among different markets; consequently, access to uniform, reliable information about BDTSs is critical to the Commission's evaluation of these issues.[14] This is true regardless of whether such systems automate the market-making function, automate an order-interaction function, or automate trading of illiquid or non-equity securities.

Second, the information will help the Commission to monitor the competitive effects of these systems and to ascertain whether broker-dealer regulation remains appropriate for the operation of BDTSs.[15] As is clear from the comments, the ongoing debate regarding the competitive consequences of the Commission's regulation of BDTSs remains vigorous.[16] Finally, the Rule will help the Commission identify areas where monitoring of such systems may be improved and where self-regulatory organization ("SRO") surveillance may be more appropriately tailored to the detection of fraudulent, deceptive, and manipulative practices in an automated environment.[17]

Notwithstanding the views of commenters that the risks posed by automated market-maker systems are sufficiently addressed by existing broker-dealer regulations[18] or that automated systems are less susceptible to manipulation than traditional broker-dealers,[19] the Commission believes that the evolution of both automated broker systems and automated dealer systems present new challenges in maintaining

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Self-Regulation & Supervisory Practices Committee, Securities Industry Association, dated June 17, 1994 ("SIA").

[5] *See* letters from NASD and NYSE. The NASD expressly opposed adoption of the Proposed Rule.

[6] Division of Market Regulation, *Market 2000: An Examination of Current Equity Market Developments* (January 1994) ("*Market 2000 Study*").

[7] *Id.* at 26–27

[8] *See* Proposing Release, *supra* note 3. Concurrently with the publication of the Proposed Rule, the Commission withdrew a previous rule proposal (Rule 15c2–10) which would have required certain BDTSs to seek Commission approval prior to operation of a proprietary trading system and imposed additional conditions on the operation of such systems. The Commission concluded that, based on its experience since 1989 in overseeing BDTSs, including the proposal of Rule 17a–23, a separate regulatory structure governing proprietary trading systems was not necessary at this time. *See* Securities Exchange Act Release No. 33621 (Feb. 14, 1994), 59 FR 8379.

[9] *See, e.g.*, Letter of ABA, at 1; Letter of HHG, at 1; Letter of ITG, at 1; and Letter of M&S, at 2.

[10] *See* Letter of ABA, at 3; Letter of NASD, at 6.

[11] *See* Letter of CLM/RMJ, at 3.

[12] The extent of information currently accessible to the Commission, the history of the Commission's oversight of such systems, and other background information can be found in the Proposing Release. *See* Proposing Release, *supra* note 3, 59 FR at 8369–71. Currently, BDTSs are subject to Commission oversight through broker-dealer registration, recordkeeping, and reporting requirements in the Act. In addition, sponsors of a number of BDTSs have obtained no-action assurances from the Division that it will not recommend enforcement action if the systems operate without registering as exchanges. These staff no-action letters require supplemental recordkeeping and reporting by the sponsor as a condition of the no-action position. *See* Proposing Release, *supra* note 3, 59 FR at 8369. The Rule does not address the issue of whether a particular trading system may be required to register as a national securities exchange, clearing agency, or other self-regulatory organization. Sponsors of BDTSs seeking relief from exchange, clearing agency, and other registration requirements may continue to request no-action positions from the Division.

[13] *See* Proposing Release, *supra* note 3, 59 FR at 8369–70.

[14] For example, in its *Market 2000 Study*, the Division advocated improving transparency for limit orders and after-hours trading, order-exposure rules, disclosure of broker-dealer order-handling practices, assessment of market quality by users of automated routing systems, and surveillance of third market trading. *Market 2000 Study*, *supra*, note 6, at 16–32. The Commission's consideration of each of these issues is directly affected by its understanding of different trading mechanisms, including BDTSs. In particular, the Commission must examine how, and the extent to which, order flow is directed to different trading mechanisms, the extent to which orders entered into different trading mechanisms are integrated into national quotation and trade reporting systems, the extent to which various trading mechanisms offer price improvement, and the order handling and execution practices of different trading mechanisms. Information reported pursuant to the Rule will assist the Commission in understanding how BDTSs operate and how they interact, and are integrated, with other market participants and mechanisms, and consequently will assist the Commission in evaluating these issues.

[15] *See* Proposing Release, *supra* note 3, 59 FR at 8370.

[16] Three commenters discussed the competitive implications of the Commission's adoption of a recordkeeping and reporting rule applicable to BDTSs. *See* Letter of ABA, at 2; Letter of NASD, at 5; and Letter of NYSE, at 2–4. Two of these commenters, the NASD and NYSE, opposed the Commission's determination not to adopt previously proposed Rule 15c2–10, which would have subjected sponsors to a number of procedural and substantive requirements. *Cf.* Securities Exchange Act Release No. 26708 (April 13, 1989), 54 FR 15429; Proposing Release, *supra* note 3, 59 FR at 8369.

[17] *See* Proposing Release, *supra* note 3, 59 FR at 8370–71.

[18] See Letter of ABA, at 2; Letter of NASD, at 5.

[19] See Letter of Instinet, at 2–4.

market quality and customer protection. BDTSs contribute to the concentration of order flow among a few, large, automated broker-dealers, execute trades at a more rapid rate than traditional services, and make execution of the customers' orders dependent on the reliability of the automated system rather than individual traders.

The Commission believes that the Rule as adopted will provide important information to assist it in accomplishing these goals, without imposing unnecessary or overly burdensome requirements that do not relate to the purposes of the Rule.

III. Discussion

As adopted, the Rule requires a registered broker-dealer who acts as the sponsor [20] of a "broker-dealer trading system" to make and keep current specified records, and file reports with the Commission (and, in certain circumstances, with the appropriate SRO) on Form 17A–23.

A. Scope of the Rule and Application to Specific Types of Systems

The Rule as proposed and adopted would apply to registered brokers or dealers [21] that sponsor a "broker-dealer trading system." Commenters requested clarification of which automated systems would be considered "broker-dealer trading systems" as defined in the Proposed Rule.[22] Several commenters suggested narrowing the definition of BDTS to exempt certain systems. In particular, two commenters questioned the inclusion of automated dealer systems that allow a dealer's customers and other dealers to execute against the sponsoring dealer's bids and offers.[23] One commenter also recommended that the Commission exempt non-equity trading systems from application of the Proposed Rule.[24] In view of the comments, the Commission has simplified the definition of BDTS and clarified the Rule's application to various systems, as discussed below, but has not materially altered the scope of the Rule.

The definition of "broker-dealer trading system" has been modified in the Rule to mean any system that meets the following criteria: the system must provide a mechanism, automated in full or in part, for (1) collecting or disseminating system orders and (2) matching, crossing, or executing system orders, or otherwise facilitating agreement to the basic terms of a purchase or sale of a security between system participants, or between a system participant and the system sponsor, through use of the system. As made clear in the Rule, the term "broker-dealer trading system" does not include any system that does not meet both of these requirements.

The modified definition of BDTS captures the essential features of the types of systems that the Proposed Rule was intended to encompass. The Proposed Rule also described several types of systems that were excluded from the definition of BDTS.[25] As discussed below, the Commission believes that those systems continue to be excluded from the Rule as adopted, because they do not meet the required characteristics of a BDTS as defined.[26]

1. System Automation

As adopted, the Rule applies to systems that may be only partially automated, as well as to fully automated systems. Some systems may automate the collection and dissemination of orders through a screen available for viewing by participants, but require participants to contact the sponsor by telephone in order to finalize a trade based on such orders. Other systems may collect orders via telephone contact with customers, and enter those orders into a system that automates the matching of such orders. Although neither of these systems are "fully" automated, both are BDTSs under the Rule as adopted. The lack of complete automation does not alter the potential market effects of automated execution systems, nor does it alter the need to tailor oversight of the sponsor to reflect the distinctive characteristics of automated systems. The Commission notes in particular that it is not necessary for participants to have the ability to enter orders electronically through a system terminal or screen in order for the system to be subject to the Rule. Some systems permit customers to participate in the system's matching, crossing, or other features by communicating orders to the sponsor by telephone, to be entered into the system by the sponsor's trading personnel.[27]

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[20] The Rule defines a sponsor as "any entity that organizes, operates, administers, or otherwise directly controls a broker-dealer trading system." In addition, the Rule includes within this term any registered broker-dealer that regularly executes transactions on behalf of participants of a system operated by a non-registered entity. See Proposing Release, supra note 3, 59 FR at 8371.

[21] As noted in the Proposing Release, absent an exemption from or exception to the broker-dealer registration provisions of the Act, the types of activities conducted by BDTSs can be lawfully conducted only by a broker-dealer registered with the Commission pursuant to the Act. See Proposing Release, supra note 3, 59 FR at 8371. The Commission notes that the term "registered broker or dealer" is defined in Section 3(a)(48) of the Act, and includes the majority of broker-dealers. The term does not include government securities brokers or government securities dealers registered under Section 15C of the Act, which are required to comply with the recordkeeping and reporting requirements promulgated by the Department of the Treasury, 17 CFR 400 et seq., under the Government Securities Act of 1986, 15 U.S.C. 78o-5. Accordingly, the Rule would not apply to systems sponsored by broker-dealers registered solely under Section 15C of the Act. In addition, the Rule would not apply to operators of systems that do not involve activities requiring broker-dealer registration. See Letters regarding Farmland Industries, Inc. (Aug. 26, 1991); Troy Capital Services, Inc. (May 1, 1990); Real Estate Financing Partnership (May 1, 1990); Ivestex Investment Exchange, Inc. (April 9, 1990); and Petroleum Information Corporation (Nov. 28, 1989). Cf. Securities Exchange Act Release No. 27017 (July 11, 1989), 54 FR 30013, text accompanying n.66.

[22] See, e.g., Letter of NASD, at 7. The Proposed Rule defined "broker-dealer trading system" as:

(i) any system that automates the execution of orders to buy or sell securities based on quotations of the system sponsor or its affiliates (whether such quotations are disseminated through the system, a quotation consolidation system operated pursuant to a plan approved by the Commission under Section 11A of the Act, an electronic interdealer quotation system operated by a registered national securities association, or otherwise); or

(ii) any system that both automates the dissemination or collection of quotations, orders to buy or sell securities, or indications by any person announcing a general interest in buying or selling a security, submitted by entities other than the system sponsor and its affiliates, and provides a mechanism for matching or crossing, or for otherwise facilitating agreement between participants to the basic terms of a purchase or sale of a security through use of the system.

See Proposing Release, *supra* note 3, 59 FR at 8374.

[23] *See* Letter of ABA, at 3; Letter of NASD, at 6.

[24] See Letter of CLM/RMJ, at 3.

[25] One commenter noted that the Proposing Release discussed other systems that the Proposed Rule would not encompass, but that were not expressly excluded from the definition of BDTS. The commenter requested that the Commission reconcile the Rule with the excluded systems described in the Proposing Release. *See* Letter of ABA, at 3–4. Given the ongoing evolution of automated trading systems, however, the Commission believes it would be impractical to attempt to enumerate all types of systems that would not be considered "broker-dealer trading systems" under the Rule. In view of this, the Rule as adopted does not contain express exclusions.

[26] The Proposed Rule excluded certain order routing systems. *See* Proposing Release, *supra* note 3, 59 FR at 8372 (Sections (b)(2)(ii)(A) and (B) of the Proposed Rule). These systems do not meet the requirements of the Rule as adopted, and therefore are not subject to the Rule. Specifically, systems that only allow participants to post trading interest, or only route orders to the execution facilities of established markets or other broker-dealers do not effect the purchase or sale of a security between system participants or between a system participant and the system sponsor through the system.

[27] The Commission also notes in this context that transactions resulting from orders entered into the system through the sponsor's trading personnel would be considered to be executed through the system to the same extent as trades entered directly by system participants. One commenter noted that certain systems may permit the system sponsor to execute trades manually and to enter the matched trade into the system for reporting and other execution related activities. *See* Letter of M&S, at 2. The commenter suggested that system sponsors should not be required to segregate out such trades

This lack of automated access to a system does not exempt such a system from application of the Rule.

2. System Execution Mechanism

The Rule applies only to those automated trading systems that offer users the ability to effect securities transactions through their use of the system, either with other participants or with the system sponsor. Numerous automated systems have developed that facilitate securities trading, but do not create opportunities to effect transactions apart from the facilities of established markets. These systems range from purely informational "bulletin board" systems that allow participants to announce their trading interest (typically by posting quotation or order information and participant telephone numbers on the system's screen)[28] to "routing" systems that direct order flow to an exchange or other established market or dealer but do not otherwise interact with such order flow. Bulletin boards, routing systems, and other similar systems essentially disperse information; they do not allow users to effect securities transactions with other system participants or with the system sponsor through the system. Accordingly, such systems are not subject to the Rule. In the Commission's view, these "non-execution" systems do not create the same potential for market effects and correspondingly create less need for ongoing monitoring and evaluation by the Commission than systems that fall within the definition of broker-dealer trading system.[29]

3. Application of the Rule to Automated Dealer Systems

Two commenters argued that the Proposed Rule only should apply to systems that offer a "locked-in trade" between or among customers or other dealers as part of an interactive system.[30] These commenters questioned the Commission's rationale for applying the Proposed Rule to automated dealer systems, arguing that automated dealer systems "do no more than what any market-maker has done since the enactment of the 1934 Act," other than providing fuller automation of the market-maker function.[31] One commenter supported inclusion of automated dealer systems in the Proposed Rule.[32]

The Commission has concluded that the Rule should apply to automated dealer systems as well as other BDTSs. Systems that automate execution functions make it possible for a broker-dealer to concentrate a significant volume of securities transactions. This is true whether such an "execution" system allows participants to interact directly with each other, or whether the system allows participants to interact with a single dealer. As discussed above and in the Proposing Release, this potential concentration of volume outside of national market systems may have significant market effects. The Commission believes that in today's highly complex, integrated trading environment, it must fully consider the effect of technological advances on the broker-dealer's role in both auction market and dealer market trading.[33]

4. Application of Rule to Non-Equity Systems

The Rule as adopted applies both to systems trading equity and systems trading non-equity securities. One commenter objected to application of the Proposed Rule to systems that deal exclusively with non-equity instruments.[34] That commenter noted that "[t]he nature of and detail imposed by these recordkeeping and reporting requirements suggest that the real intention behind the Proposed Rule is to enable the SEC to gather and evaluate information on BDTSs dealing in equity instruments only."[35]

The need for uniform, reliable information as discussed above and in the Proposing Release is equally applicable to systems trading non-equity securities. It is probable that sponsors will continue to create BDTSs to facilitate transactions in products that do not trade in organized markets, including various debt and derivative products. Systems that trade these non-equity, and typically less liquid, securities are especially opaque under existing regulations; they are not integrated into market quotation and reporting mechanisms to the same degree as systems that trade equity products. Some of these "niche" systems may provide the only readily identifiable source of trading in a particular instrument. The Rule will help alleviate the difficulty of obtaining accurate information on a regular basis about trading in these instruments.

The Commission recognizes that information that is relevant to equity security trading may not be relevant to non-equity security trading. Accordingly, the Rule and Form direct the sponsor of a non-equity trading system to provide information relevant to such non-equity securities (such as number of bonds, contracts, etc.).[36]

B. Regulation of Certain BDTSs

Three commenters urged the Commission to reconsider its regulatory approach to BDTSs, or in the alternative to reconsider its regulation of traditional markets.[37] Specifically, both the NYSE and the NASD identified concerns regarding the competitive implications of the Commission's adoption of a recordkeeping and reporting rule governing BDTSs in light of the regulatory structures that apply to registered exchanges and interdealer

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for purposes of the recordkeeping and reporting requirements of the Rule. Neither the Rule nor Form 17A–23 requires a system sponsor to segregate transaction records or reports based on the method by which the order was accepted into the system (*i.e.*, telephone, computer terminal, etc.). System sponsors would not be required, therefore, to segregate out manually handled trades. The Commission expects, however, that a system's ability to process manually handled orders would be described in the system sponsor's filings pursuant to Part I of Form 17A–23.

[28] The Commission uses the term "bulletin board systems" in this context to mean only those systems that allow participants to announce their trading interest, but do not provide further opportunity to interact with the system or the system sponsor to execute transactions. Such systems do not allow participants to agree to the terms of a transaction "through use of the system"; participants must contact each other outside of system facilities or the system sponsor to conclude a transaction. Therefore, such systems do not meet the definition of a BDTS under the Rule, and the Rule would not apply to these systems.

[29] Although the Commission requested comment on whether the Proposed Rule should apply to "non-execution" systems, no commenter suggested that such systems be subject to the Rule. *See* Proposing Release, *supra* note 3, at 8373.

[30] *See* Letter of ABA, at 3; Letter of NASD, at 5–6.

[31] *See* Letter of NASD, at 6.

[32] *See* Letter of NYSE, at 2.

[33] The NASD in its comment letter suggested that market-maker execution systems should be distinguished from other BDTSs because the executions provided by a market-maker are based on the market-maker's own quotes, subject to its best execution obligations and affect the market-maker's own inventory. According to the NASD, other BDTSs permit the direct interaction of customer orders or provide for the quotations of multiple market-makers and are thus more akin to the functions performed by traditional markets. *See* Letter from NASD, at 6. The Commission is not persuaded that this difference in operation is a sufficient basis on which to exclude market-maker systems from the Rule. A broker-dealer firm sometimes trades for its own account as dealer and sometimes for the account of its customers as broker; in either case, the broker-dealer uses its facilities to bring together buyers and sellers with the intent of effecting a securities transaction. *See* Securities Exchange Act Release No. 27611 (Jan. 12, 1990), 55 FR 1890, 1898.

[34] *See* Letter of CML/RMJ, at 3–5.

[35] *Id.* In addition to CML/RMJ, one other sponsor of a system trading non-equity securities commented on the Proposed Rule. *See* Letter of Intervest.

[36] *See* 17 CFR 240.17a23(c)(1)(ii)(B) and 249.636, Form 17A–23, Part II, 1.

[37] *See* Letter of ABA, at 5–6; Letter of NASD, at 1–7; Letter of NYSE, at 1–2, 4.

quotation systems.[38] The Commission does not believe it is necessary at this time to adopt regulations governing BDTSs beyond those existing requirements applicable to the broker-dealer sponsors of such systems and the enhanced recordkeeping and reporting that will be provided pursuant to the Rule. The Commission is not precluded from reconsidering the issues raised by the commenters concerning the Commission's regulatory approach to BDTSs at a later time, should circumstances warrant such reconsideration.

These commenters also urged the Commission to reconsider its regulation of trading services provided by registered exchanges and securities associations. In particular, commenters recommended that the Commission streamline its requirements governing the filing of SRO rule proposals, and that SROs be allowed to develop trading systems under the same regulatory requirements applicable to BDTSs.[39] In that regard, the Commission notes that today it has adopted amendments to the Commission's rules governing the SRO rule filing process.[40] The Commission also notes that the regulation of SRO trading services is largely dictated by statutory requirements. Consequently, SRO operation of trading systems outside of existing SRO regulations would require a careful, case-by-case analysis under the Act. BDTSs are governed by the regulatory structure applicable to other registered broker-dealers. The Commission has not created a separate regulatory structure for BDTS trading; it has adopted enhanced recordkeeping and reporting for such systems.

C. Recordkeeping Requirements

Under the Rule, system sponsors are required to keep and make available to the Commission, upon request, records of: (1) daily summaries of trading in the system; (2) the identities of system participants (including any affiliations between those participants and the sponsor); and (3) time-sequenced records of each transaction effected through the system. The sponsor is required to keep these records, as well as any notices provided by the sponsor to participants, for three years (the first two years in an easily accessible place). The Commission has modified some of the proposed recordkeeping requirements in response to comments as discussed below.

1. Duplicative Recordkeeping

The Commission requested comment on whether the Proposed Rule's requirements would be duplicative or burdensome. Commenters suggested that the recordkeeping requirements appear to be duplicative of those already required under other rules promulgated under Section 17, and questioned the justification for such duplication.[41] Two commenters expressed reservations that the Proposed Rule would penalize broker-dealers that use automation to become more efficient, and would thus deter further automation.[42] Only one commenter stated that the Proposed Rule would impose undue financial burden on BDTS sponsors.[43] No commenter provided information sufficient to quantify the extent to which BDTSs would be financially burdened by the Proposed Rule.

While existing regulations require registered broker-dealers to maintain much of the information required under the Rule, they do not require broker-dealers to keep records that present BDTS activity separately from other brokerage activity.[44] Consequently, the Commission does not have ready access to system-specific information. The Commission's ability, and the ability of SROs,[45] to adequately evaluate, monitor, and examine these systems is correspondingly limited.[46] Although the Rule may result in changes to some existing BDTS sponsors' recordkeeping practices, the Commission believes that it has made sufficient provision in the Rule to minimize the need for BDTS sponsors to keep duplicative records. The Rule does not dictate a format for maintaining information and does not require BDTS sponsors to maintain such information separately from its other records, so long as the sponsor can promptly retrieve such information upon request in the format, and for the time periods, specified in the Rule.

2. Records Regarding Applicants Denied Participation on the System.

Commenters questioned the need to retain information regarding specific applicants denied participation in the system, and indicated that quantifying such information would be difficult.[47] In view of the comments, the Commission has deleted this requirement from the Rule. Sponsors, however, are required to describe, in filings under Part I and IA of Form 17A-23, the factors relied upon by the sponsor in granting participation in the system.

3. Daily Trading Summaries

The Proposed Rule required sponsors to retain daily summaries of, among other things, securities trading in the system. The Proposed Rule also would have required sponsors to retain daily summaries identifying the number of "quotations" and "orders" placed in the system, expressed separately for limit and market orders and other relevant order specifications. This requirement was intended to provide the Commission with a basis for comparing potential system trading interest with trading volume. Commenters expressed concern that the configuration of specific systems would make it difficult to determine what would constitute a single "quotation" or "order."[48] Commenters also noted that, depending upon system configuration, identifying the number of quotations or orders may not provide the Commission with useful information regarding system trading interest.[49]

The Commission has modified the Rule in view of these commenter concerns regarding the terms "quotations" and "orders."[50] As adopted, the Rule requires sponsors to identify the number of "system

[38] *See* Letter of NASD, at 1–4; Letter of NYSE, at 1–2, 4. *See also*, Letter of ABA, at 5–6.

[39] *See* Letter of ABA, at 5–6; Letter of NASD, at 5; Letter of NYSE, at 4.

[40] *See* Securities Exchange Act Release No. 35123 (December 20, 1994). The amendments expand the category of proposed rule changes that may become effective upon filing under Section 19(b)(3)(A) of the Act to include certain changes to existing systems and other noncontroversial filings.

[41] *See* Letter of NASD, at 7 *Cf* Letter of SIA, at 2.

[42] *See* Letter of ABA, at 3 and Letter of NASD, at 6.

[43] *See* Letter of CLM/RMJ, at 3–4.

[44] *See* Proposing Release, *supra* note 3, 59 FR at 8368–69.

[45] Staff of the Division met with representatives of the NASD to discuss its use of the information provided by the records maintained pursuant to the Rule and the reports filed pursuant to Form 17A-23. The Commission expects that the NASD and other SROs that have the responsibility to examine and otherwise oversee BDTSs will use such information to tailor their oversight of BDTSs to reflect the distinctive features of automated broker-dealers.

[46] *See* Proposing Release, supra note 3, 59 FR at 8370–71.

[47] *See* Letter of ABA, at 5; Letter of CLM/RMJ, at 5; Letter of HHG, at 3–4; Letter of Instinet, at 6–7; Letter of ITG, at 2; Letter of NASD, at 7–8; and Letter of SIA, at 3.

[48] *See* Letter of ABA, at 4; Letter of HHG, at 3; and Letter of Instinet, at 8–9.

[49] *See* Letter of ABA, at 4 and Letter of Instinet, at 8–9. One commenter questioned the use of the term "quotations" in the Proposed Rule to refer to trading interest entered into an automated system, noting that its system users place "orders," not "quotations." *See* Letter of Instinet, at 8. The Commission does not believe that such distinctions between the terms "order" and "quotation" are relevant for purposes of this Rule.

[50] A corresponding requirement in Form 17A-23, Part II, has been modified as well, for the reasons discussed above with regard to modification of the recordkeeping requirement in the Rule.

orders,"[51] or any other identifiable indicator that accurately reflects participant trading interest, as appropriate in light of system configuration. If applicable in light of system configuration, sponsors must express such number separately for priced and unpriced orders. In modifying this requirement, the Commission relies on the sponsor's knowledge of its system configuration to determine which statistics would provide the most accurate assessment of participant trading interest, and to retain those statistics accordingly.[52]

The Commission also has modified the Rule, in response to one commenter's concern, to clarify that a sponsor must be able to identify on a daily basis only those securities for which transactions have been executed through the system.[53]

4. Participant Notices

Three commenters requested clarification of the extent to which communications to individual participants or non-written communications must be preserved as notices to participants under paragraph (c)(2)(ii) of the Proposed Rule.[54] The Rule as adopted requires sponsors to preserve only those notices that are disseminated (whether through written or other means) generally to all participants, or to one or more classes of participants. The Rule does not require the sponsor to preserve communications directed solely to an individual participant.

D. Reporting Requirements

Under the Rule as adopted, a BDTS sponsor is required to file reports with the Commission (and, in certain circumstances, with the appropriate SRO), in accordance with Form 17A–23. Form 17A–23 contains three parts: (1) operation reports, including initial operation reports filed at least 20 calendar days prior to the operation of the system and subsequent operation reports filed as necessary prior to implementing material system changes; (2) quarterly reports filed within 30 calendar days after the end of the calendar quarter;[55] and (3) a final report filed within 10 calendar days after a sponsor ceases to operate the trading system. The operation reports would describe the system, its procedures for reviewing capacity, security and contingency planning, and protecting participant funds and securities (if an entity other than the sponsor will hold or safeguard participant funds or securities on a regular basis). It also would identify an appropriate system contact. The quarterly reports would contain summary trading information. The report notifying the Commission of cessation of operations would contain, in addition to the notification, a final transaction summary.

1. Filing Reports Prior to Operation or Implementation of a Material Change

The Rule requires initial operation reports to be filed at least 20 days prior to operation, and subsequent operation reports regarding material changes to be filed at least 20 days prior to implementing such material change, or, where it is commercially impracticable to do so, as soon as possible after the sponsor determines that it will implement such material change and in any event no later than 10 days following the implementation of such change.

The Commission notes that the Rule does not require system sponsors that alter the operation of their BDTS subsequent to filing an initial operation report to file additional or amended operation reports prior to beginning operation. In the Commission's experience, it is not uncommon for automated systems to be altered routinely to respond to participant comments or concerns, incorporate technological advances, or otherwise upgrade a system's operation. Accordingly, sponsors that file initial operation reports with the Commission might alter the operation of their BDTS subsequent to such filing, but prior to beginning operation. If a sponsor materially changes system operation subsequent to filing an initial operation report, but prior to beginning operation, the sponsor should contact the Division to apprise them of such material change.

The Commission also notes that currently, material changes to automated systems generally require significant planning and development prior to implementation. Accordingly, the Commission believes that most sponsors will be able to notify the Commission at least 20 days prior to implementing a material change. Nonetheless, if a sponsor is able to implement a material system change on a greatly expedited basis, the Commission recognizes that it may not be commercially feasible to notify the Commission 20 days prior to implementation without delaying implementation. In such circumstances, the Rule allows a sponsor to notify the Commission as soon as possible after it determines to implement a material change, but in any event no later than 10 days following the implementation of such change.

2. Availability of Reports to SROs

As adopted, the Rule requires sponsors to file Parts I and III of Form 17A–23 with both the Commission and the SRO that is its designated examining authority. The quarterly reports covered by Part II of Form 17A–23 are required to be filed only with the Commission; however, the sponsor must make such reports available to the appropriate SRO upon request.[56] Two commenters expressed concern that SRO access to information contained in reports filed pursuant to the Proposed Rule might adversely affect a BDTS's competitive position.[57] One commenter recommended that the Commission require SROs to adopt procedures to restrict access to BDTS reports to the SRO's surveillance personnel, or, in the alternative, dispense with the reporting obligation.[58]

The Commission recognizes that the activities of SROs as both market operators and market regulators may create tension between the SROs and SRO members. For example, documents obtained in the conduct of an SRO's regulatory duties may contain competitively sensitive information. Notwithstanding this, SROs must have access to relevant member information in order to fulfill their self-regulatory

[51] The Rule defines "system order" as any order or other communication or indication submitted by any system participant for entry into the system announcing an interest in purchasing or selling a security. The Rule also clarifies that the term "system order" does not include inquiries or indications of interest that are not entered into the system. 17 CFR 240.17a23(b)(4).

[52] The Commission expects sponsors that intend to fulfill this requirement by retaining and reporting statistics other than system orders will contact staff of the Division to discuss which statistics the sponsor wishes to retain and report instead.

[53] *See* Letter of ITG, at 2.

[54] See Letter of ABA, at 4; Letter of Instinet, at 10; and Letter of ITG, at 2.

[55] In the Proposing Release, the Commission solicited comments on the appropriate interval at which sponsors should file reports. See Proposing Release, supra note 3, 59 FR at 8373. No commenter addressed this issue. One commenter, however, requested that the Commission extend the time period for filing quarterly reports from 20 calendar days to 30 calendar days after the calendar quarter. See Letter of Instinet, at 11. The Rule has been modified accordingly.

[56] The Commission has determined that summary trading information filed pursuant to Part II of Form 17A–23 are not critical to the SROs' routine oversight of BDTSs, although such information is useful for the Commission for the reasons discussed herein and may be useful to SROs for non-routine oversight of BDTS sponsors. Accordingly, the Commission has revised the Rule to require BDTS sponsors to file reports pursuant to Part II of Form 17A–23 routinely with the Commission and to make such reports available to the appropriate SRO upon request.

[57] See Letter of ABA, at 4–5 and Letter of Instinet, at 12–13.

[58] See Letter of ABA, at 4–5.

obligations.[59] The Commission believes that information contained in reports filed pursuant to the Rule will be critical to appropriately tailoring SRO examination and oversight of BDTS sponsors to reflect the distinctive characteristics and concerns of automated trading systems. Accordingly, the Rule continues to make such information available to SROs designated as a BDTS's examining authority. In order to address potential competitive issues, the Rule provides for filing of Rule 17a–23 reports directly with surveillance personnel designated by the examining SRO. The Commission notes that access to information made available to an SRO in its regulatory capacity should be rigorously restricted to those personnel who require it for surveillance and regulatory oversight purposes only. The Commission strongly urges SROs to carefully assess, and revise where necessary, their internal policies and procedures for protecting the confidentiality of sensitive information obtained in the course of fulfilling SRO regulatory responsibilities.

3. Confidentiality of Reports

Two commenters requested that the Commission discuss whether reports filed pursuant to the Proposed Rule may be exempt from public disclosure under the Freedom of Information Act.[60] The Commission notes that reports filed pursuant to the Rule will be deemed to be confidential. The Commission considers such reports to be exempt from disclosure under the Freedom of Information Act ("FOIA").[61] The Commission will protect the confidentiality of reports filed pursuant to the Rule accordingly.[62]

E. Form 17A–23

Proposed Form 17A–23 would have required sponsors to report "lists of securities trading in the system," and to state whether it offers services that allow system participants to trade with entities outside of the United States. Commenters requested clarification that sponsors may comply with the Form by identifying the categories of securities that have actually traded in the system during the period covered by the report.[63] After reviewing the comments, the Commission believes that the information required pursuant to Part I of Form 17A–23 is sufficient to provide summary information regarding the categories of securities trading, and that submission of lists identifying individual securities in the quarterly filings under Part II of Form 17A–23 would not be useful. Accordingly, the Commission has deleted this requirement from the Form. The Commission also has modified Parts I and II of Form 17A–23 to clarify that sponsors must report whether entities located outside of the United States have access to the system, and describe the nature of such access and foreign participation in the system in reports filed pursuant to Part I of the Form. Finally, the Commission has modified Part I of the Form and paragraph (d)(1) of the Rule to require system sponsors to update the information filed in Part I of the Form at least 20 days prior to implementing a material change to system operation, or, where it is commercially impracticable to do so, as soon as possible thereafter when the sponsor determines that it will implement such material change (and in any event no later than 10 calendar days following the implementation of such change).

IV. Implementation Date

The Rule will become effective on June 1, 1995. The Commission has modified the Rule to allow sponsors of systems currently operating to submit the information required by Part I of Form 17A–23 no later than July 1, 1995 (one month following the effective date), to provide sponsors of existing systems adequate time to prepare this filing.[64]

As discussed above, certain BDTS sponsors are subject to staff no-action letters that require those sponsors to provide operation and trading information to the Division that is comparable to that required in Form 17A–23.[65] These staff no-action letters do not affect the obligation of any BDTS sponsor to comply with the Rule. Prior to effectiveness of the Rule, the Division will revise the conditions of no-action in each letter granted to a sponsor of an operating system that would be subject to the Rule, to eliminate duplicative reporting requirements. Sponsors of BDTSs subject to no-action letters that have further questions on complying with the Rule and conditions of no-action should contact the Division.

V. Competition Findings

Section 23(a)(2) of the Act[66] requires the Commission, in adopting rules under the Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. As discussed above, several commenters raised concerns regarding the competitive implications of the Proposed Rule. The Commission has considered the Rule in light of the comments and the standard cited in Section 23(a)(2). The Rule's establishment of reporting and recordkeeping requirements will not impose a significant burden on competition. All BDTSs will be subject to the same requirements, and the reporting and recordkeeping requirements, which are similar to those currently imposed on registered brokers and dealers, should not be unduly burdensome. In addition, the Commission has specifically considered competitive concerns relating to SRO access to such information.[67] For the reasons discussed above, the Commission believes that adoption of the Rule will not impose any burden on competition not necessary or appropriate in furtherance of the Act.

VI. Summary of Final Regulatory Flexibility Analysis and Paperwork Reduction Act

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") regarding Rule 17a–23, in accordance with 5 U.S.C. § 604. No public comment was received in response to the initial regulatory flexibility analysis. The FRFA notes the potential costs of operation and procedural changes that may be necessary to comply with the Rule. As more fully explained above, however, the Commission has determined that the proliferation of broker-dealer automated trading systems requires increased oversight to promote investor protection and to assess the impact of these systems on the securities markets. The Commission finds that the benefits of Rule 17a–23 outweigh the costs incurred by industry participants in complying with the Rule. A copy of the FRFA may be obtained by contacting Elaine M. Darroch, Attorney-Advisor, Office of Automation and International

[59] See, e.g., Exchange Act Section 15A(b), 15 U.S.C. 78o–3(b).

[60] See Letter of ABA, at 4; Letter of M&S, at 3.

[61] Such reports constitute examination, operating or condition reports of a financial institution, and, as such, are exempt from disclosure under FOIA pursuant to 5 U.S.C. § 552(b)(8).

[62] In addition, other exemptions from FOIA may be available, including the exemption provided by Section 552(b)(4) for trade secrets and commercial or financial information obtained from a person and privileged or confidential. The availability of this exemption depends upon a factual analysis which may require substantiation by the sponsor of the reporting BDTS.

[63] See Letter of Instinet, at 11 and Letter of ITG, at 2.

[64] Sponsors of existing BDTSs must submit a system description that is current as of the date of filing.

[65] See note 12, *supra*.

[66] 15 U.S.C. 78w(a)(2).

[67] See Availability of Reports to SROs, *supra*.

Markets, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W. (Mail Stop 5–1), Washington, D.C. 20549.

No public comment was received in response to proposed Rule 17a–23 with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501 et seq.

VII. Statutory Basis

The rules and regulations of the Commission are amended as follows, pursuant to the Securities Exchange Act of 1934 and particularly Sections 2, 3, 11A, 15(c), 17, and 23(a) thereof, 15 U.S.C. §§ 78b, 78c, 78k–1, 78o(c), 78q, and 78w(a).

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

Section 240.17a–23 also issued under 15 U.S.C. 78b, 78c, 78o, 78q, and 78w(a);

* * * * *

2. Section 240.17a–23 is added to read as follows:

§ 240.17a–23 Recordkeeping and Reporting Requirements relating to Broker-Dealer Trading Systems.

(a) *Scope of section.* This section shall apply to any registered broker or dealer that acts as the sponsor of a broker-dealer trading system.

(b) *Definitions.* For purposes of this section:

(1) The term *registered broker or dealer* shall have the meaning ascribed to it in Section 3(a)(48) of the Act.

(2) The term *broker-dealer trading system* means any facility that provides a mechanism, automated in full or in part, for:

(i) Collecting, receiving, disseminating, or displaying system orders; and

(ii) Matching, crossing, or executing system orders, or otherwise facilitating agreement to the basic terms of a purchase or sale of a security between system participants, or between a system participant and the system sponsor, through use of the system or through the system sponsor.

(3) The term *sponsor* means any entity that organizes, operates, administers, or otherwise directly controls a broker-dealer trading system; and, if the system operator of such broker-dealer trading system is not a registered broker or dealer, any registered broker or dealer that, pursuant to contract, affiliation, or other agreement with the system operator, is involved materially on a regular basis with executing transactions in connection with use of the broker-dealer trading system, other than solely for its own account or as a participant in the broker-dealer trading system.

(4) The term *system order* means any order or other communication or indication submitted by any system participant for entry into a trading system announcing an interest in purchasing or selling a security. The term "system order" does not include inquiries or indications of interest that are not entered into a trading system.

(5) The term *system participant* means any person that is provided access to a trading system (whether through computer terminal, access codes, or other means) by a system sponsor for the purpose of effecting the purchase or sale of securities through use of such system.

(c) *Recordkeeping.* Every registered broker or dealer subject to this section pursuant to paragraph (a) of this section shall:

(1) Make and keep current the following records relating to the broker-dealer trading system:

(i) A record of participants in the broker-dealer trading system (identifying any affiliations between system participants and the system sponsor);

(ii) Daily summaries of trading in the broker-dealer trading system, including:

(A) Securities for which transactions have been executed through use of such system;

(B) Transaction volume (separately stated for trading occurring during hours when consolidated trade reporting facilities are and are not in operation), expressed with respect to stock in trades, shares and in dollar value, and expressed with respect to other securities in trades, number of units of securities and in par value, dollar value, or other appropriate commonly used measure of value of such securities; and

(C) Number of system orders, or other identifiable indicator that accurately reflects participant trading interest, as appropriate in light of configuration of the broker-dealer trading system (expressed separately for priced and unpriced orders, if applicable in light of system configuration);

(iii) Time-sequenced records of each transaction effected through the broker-dealer trading system, including date and time executed, price, size, security traded, counterparty identification information, and method of execution (if broker-dealer trading system allows alternative means or locations for execution, such as routing to another market, matching with limit orders, or executing against the system sponsor's quotations); and

(2) Preserve, for a period of not less than three years, the first two years in an easily accessible place, the following records relating to the broker-dealer trading system:

(i) All records required to be made pursuant to paragraph (c)(1) of this section; and

(ii) All notices provided by the system sponsor to system participants generally (or to one or more classes of system participant), whether written or communicated through the broker-dealer trading system or other automated means, including, but not limited to, notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, instructions pertaining to access to the broker-dealer trading system.

(d) *Reporting.* (1) Every registered broker or dealer subject to this section pursuant to paragraph (a) of this section shall:

(i) File the information required by Part I of Form 17A–23 (§ 249.636 of this chapter) at least 20 calendar days prior to operating a broker-dealer trading system, or, if the sponsor is operating the broker-dealer trading system on June 1, 1995, no later than July 1, 1995;

(ii) During the operation of a broker-dealer trading system of which the broker or dealer is the sponsor, file the information described in Part IA of Form 17A–23 (§ 249.636 of this chapter) regarding a material change to operation of the broker-dealer trading system as described in any filing previously made with the Commission pursuant to paragraph (d)(1)(i) of this section, at least 20 calendar days prior to implementing such material change, or, where it is commercially impracticable to do so, as soon as possible thereafter when the sponsor determines that it will implement such material change, and in any event no later than 10 calendar days

following the implementation of such change;

(iii) During the operation of a broker-dealer trading system of which the broker or dealer is the sponsor, file the information described in Part II of Form 17A–23 (§ 249.636 of this chapter) within 30 calendar days after the end of each calendar quarter in which the broker-dealer trading system has operated after July 1, 1995; and

(iv) Within 10 calendar days after a broker-dealer trading system of which the broker or dealer is the sponsor ceases to operate, file the notice described in Part III of Form 17A–23 (§ 249.636 of this chapter).

(2) The reports provided for in paragraph (d) of this section shall be considered filed upon receipt at the Commission's principal office in Washington, DC. Duplicate originals of the reports provided for in paragraphs (d)(1)(i), (ii), and (iv) of this section must be filed with surveillance personnel designated as such by the self-regulatory organization that is the designated examining authority for the broker or dealer pursuant to § 240.17d-1 simultaneously with filing with the Commission. Duplicates of the reports required by paragraphs (d)(1)(iii) of this section must be provided to such surveillance personnel of such self-regulatory authority upon request. All reports filed pursuant to this paragraph (d) shall be deemed to be confidential.

(e) *Maintenance of records in alternative form.* The records required to be maintained and preserved pursuant to this section may be produced, reproduced and maintained pursuant to the provisions of § 240.17a-4(f).

(f) *Compliance with other recordkeeping and reporting rules.* Nothing in this section obviates the need for any broker or dealer to comply with any other applicable recordkeeping or reporting requirement in the Act and the rules and regulations thereunder. If the information in a record required to be made pursuant to this section is preserved in a record made pursuant to § 240.17a-3 or § 240.17a-4, or otherwise preserved by the sponsor (whether in summary or other form), paragraph (c) of this section shall not require the sponsor to maintain such information in a separate file, provided that the sponsor can promptly sort and retrieve the information as if it had been kept in a separate file as a record made pursuant to this section, and preserves the information in accordance with the time periods specified in paragraph (c)(2) of this section.

(g) *Maintenance of records by others.* The records required to be maintained and preserved pursuant to this section may be prepared or maintained by a service bureau, depository, or other recordkeeping service on behalf of the sponsor of a broker-dealer trading system, provided such entity complies with the provisions of § 240.17a-4(i). Agreement with such an entity shall not relieve the sponsor of a broker-dealer trading system from the responsibility to prepare and maintain records as specified in this section.

(h) *Furnishing copies of records.* Every broker or dealer subject to this section pursuant to paragraph (a) of this section shall furnish to any representative of the Commission promptly upon request, legible, true and complete copies of those records of the sponsor that are required to be preserved under this section.

(i) *Exemption from this section.* The Commission, by rule or order, may exempt any sponsor of a broker-dealer trading system from all or any of the provisions of this section, either unconditionally or on specified terms and conditions, if the Commission determines that such exemption is consistent with the public interest or the protection of investors.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

4. Section 249.636 and Form 17A–23 are added to read as follows:

Note: The text of Form 17A–23 appears as Appendix A to this document and will not appear in the Code of Federal Regulations.

§ 249.636 Form 17A–23, information required of certain broker and dealer sponsors of broker-dealer trading systems pursuant to section 17 of the Securities Exchange Act of 1934 and § 240.17a–23 of this chapter.

This form shall be used by every registered broker and dealer that is required to file reports under § 240.17a–23 of this chapter.

By the Commission.

Dated: December 20, 1994.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 8010–01–P

Official Use Only

APPENDIX A

OMB Approval
OMB No.: 3235-0442
Expires: 4-30-97

U.S. SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 17A-23

Information Required of Registered Broker or Dealer Sponsor of Broker-Dealer Trading System Pursuant to Section 17 of the Securities Exchange Act of 1934 and Rule 17a-23 Thereunder

READ ALL INSTRUCTIONS PRIOR TO COMPLETING FORM

FORM 17A-23 Page 1	Indicate if this Report is submitted pursuant to: Part I _____ Part IA _____ Part II _____ Part III _____ If submitted pursuant to Part II or Part III, state period covered by Report: _____ through _____ mm/dd/yy mm/dd/yy

SPONSOR INFORMATION

NAME OF BROKER-DEALER TRADING SYSTEM:

NAME OF REGISTERED BROKER OR DEALER SPONSOR OF SYSTEM:

FIRM CRD NO. _____

NAME OF SYSTEM OPERATOR:
(If different from Registered Broker or Dealer Sponsor of System)

ADDRESS OF PRINCIPAL PLACE OF BUSINESS OF REGISTERED BROKER OR DEALER SPONSOR:
(Do not use P.O. Box No.)

(No. and Street)

(City) (State) (Zip Code)

NAME AND TELEPHONE NUMBER OF PERSON TO CONTACT WITH REGARD TO THIS REPORT:

EXECUTION

The registered broker or dealer sponsor submitting this form and the executing official hereby represent that all the information contained herein is true, correct and complete.

Manual signature of Official responsible for form:	Title:
Name of Official responsible for form:	Date executed (Month/Day/Year):

FORM 17A-23 Page 2	READ ALL INSTRUCTIONS PRIOR TO COMPLETING FORM

PART I: INITIAL OPERATION REPORT
(To be filed at least 20 calender days prior to operation)

Provide the following information:

1. State the date the sponsor (or system operator, if other than sponsor) intends to begin operating the system.

2. State the securities or types of securities eligible for trading on or through the facilities of the system, including whether securities of foreign private issuers will be eligible for trading on or through the system.

3. State the name and address of any entity that will be involved in the operation of the system, or will execute, clear or settle transactions on behalf of the sponsor or system participants in connection with operation of the system (other than system sponsor). Briefly describe the nature of such involvement and the responsibilities of such entity with respect to operation of the system and/or execution, clearance, or settlement of transactions in connection with operation of the system.

4. Briefly describe the sponsor's criteria for granting access to the system, and the manner of operation of the system, including the procedures governing entry of quotations and orders into the system; access to the system; execution, reporting, clearance and settlement of transactions in connection with the system; and procedures for ensuring participant compliance with system usage guidelines. Attach copy of system user's manual, if available.

5. Briefly describe the sponsor's procedures for reviewing system capacity, and security and contingency planning procedures.

6. If any entity other than the sponsor will hold or safeguard participant funds or securities on a regular basis, briefly describe the controls that will be implemented to ensure the safety of those funds and securities.

7. State whether entities located outside the United States will have access to the system. If so, describe the nature of such access and the extent to which such entities may participate in the system.

PART IA: MATERIAL CHANGE TO OPERATION OF SYSTEM
(To be filed at least 20 calendar days prior to implementation of a material change to system operation, if commercially practicable

Describe any material changes to the information previously filed by sponsor with the Commission pursuant to Part I of this Form.

PART II: QUARTERLY REPORT
(To be filed within 30 calendar days after end of calendar quarter)

Provide the following information:

1. Total volume and average daily volume of transactions effected through the system during the period covered by this report and year-to-date aggregates of these numbers, expressed in (a) number of units of securities (for transactions in stock, number of shares); (b) number of transactions; and (c) monetary value (for transactions in stock, dollar value; for transactions in securities other than stock, dollar value or other appropriate commonly used measure of value of such securities). Provide separate unit, transaction, and monetary volume and average daily volume information for the period covered by the report reflecting: (a) system activity in securities listed on a registered national securities exchange, if applicable; (b) system activity in securities quoted on the National Association of Securities Dealers' Nasdaq service, if applicable; (c) system activity occuring during regular trading hours of the primary market for type of securities trading on system (for stock, the New York Stock Exchange), and (d) system activity occurring outside regular trading hours of the primary market for type of securities trading on system (for stock, the New York Stock Exchange). Identify the primary market and hours for items (c) and (d).

2. Total number of system orders, or other identifiable indicator that accurately reflects participant trading interest, as appropriate in light of system configuration (expressed separately for priced and unpriced orders, if applicable in light of system configuration).

PART III: REPORT OF CEASING TO OPERATE OR SPONSOR SYSTEM
(To be filed within 10 calendar days after sponsor ceases to operate or sponsor System)

Provide the following information:

1. State the date the sponsor ceased to operate or sponsor the system. State whether another entity will continue to operate or sponsor the system, and provide the name, address, and telephone number of such entity, if available.

2. Provide information requested in Part II for the period beginning on the day after the period covered by the most recent Form 17A-23, Part II filing, and ending on the date stated in item 1 of this Part (date sponsor ceased to operate or sponsor the system).

U.S. SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

INSTRUCTIONS FOR COMPLETING FORM 17A-23

I. Terms

Unless the context clearly indicates otherwise, terms used in this Form have the meaning ascribed to them in the Securities Exchange Act of 1934 and Rule 17a-23 thereunder.

II. Who Must File; When to File

Rule 17a-23 requires that every registered broker or dealer that acts as the sponsor of a broker-dealer trading system: file Part I of Form 17A-23 at least 20 calendar days prior to operating or sponsoring a broker-dealer trading system; file Part IA of Form 17A-23 regarding regarding a material change to operation of the system as described in any filing previously made with the Commission pursuant to Part I of Form 17A-23 at least 20 calendar days prior to implementing such material change, or, where it is commercially impracticable, as soon as possible thereafter when the sponsor determines that it will implement such material change (but in any event, no later than 10 calendar days following the implementation of such change); file Part II of Form 17A-23 within 20 calendar days after the end of each calendar quarter during which the sponsor operates or sponsors a broker-dealer trading system; and file Part III of Form 17A-23 within 10 calendar days after the sponsor ceases to operate or sponsor a broker-dealer trading system.

III. Number of Copies; How and Where to File

File the original and one copy of each Form 17A-23 filing with the SEC at Office of Automation and International Markets, Division of Market Regulation, 450 5th Street, N.W., Washington, DC 20549. Simultaneously with the filing of the original with the SEC, file one duplicate copy of each Part I, Part IA, and Part III Form 17A-23 filing with surveillance personnel designated by the self-regulatory organization that is the designated examining authority for the sponsor pursuant to Rule 17d-1. The sponsor must keep an exact copy of the filing for its records. All copies must be legible. The filing date of any Form 17A-23 filing is the date of its actual receipt by the SEC, provided that the filing complies with applicable requirements.

IV. Format of Filing

A sponsor may use the printed Form 17A-23 or a reproduction of it. In either case, complete page 1 of Form 17A-23 in the format provided. Number each page following page 1 consecutively, give the name of the broker-dealer trading system and the date at the top of each page, and identify the Part to which the information on that page relates.

V. Completing Form

If the sponsor of a broker-dealer trading system has not previously filed a Form 17A-23 with respect to the system, complete page 1 and Part I. If the sponsor has previously completed Part I in a Form 17A-23 filed with respect to the system, and continues to operate or sponsor the system: complete page 1 and Part IA only, if filing Form 17A-23 as required prior to implementing a material change to system operation; complete page 1 and Part II only, if filing Form 17A-23 as required quarterly. If the sponsor has ceased to operate or sponsor the system, complete page 1 and Part III only. Provide information required by each Part of the Form by typing or printing the text of each item followed by the response thereto. Numerical information required by Parts II and III (item 2) may be provided in chart form. For numerical responses, clearly indicate the information each number represents and the item number in the Form which requests such information. Print or type all items and responses. If sponsor intends to provide a number other than the number of system orders in response to item 2, Part II, contact the Office of Automation and International Markets, Division of Market Regulation, prior to filing. If the information requested by any item is available in printed form, the printed material may be attached as an exhibit and referenced in the response to the item.

VI. Sponsors that Operate More Than One Broker-Dealer Trading System

Sponsors that operate more that one broker-dealer trading system may file reports on Form 17A-23 relating to one or more systems. In each filing of Form 17A-23 that relates to more than one system operated by the sponsor, provide the required information separately for each system.

[FR Doc. 94-31656 Filed 12-27-94; 8:45 am]
BILLING CODE 8010-01-C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM93–25–000]

Use of Reserved Authority in Hydropower Licenses to Ameliorate Cumulative Impacts; Policy Statement

Issued December 14, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Policy Statement.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is adopting a policy statement with respect to the use of reserved authority in licenses for hydropower projects to ameliorate cumulative impacts of such projects in the same river basin. The policy statement says that if it is not possible to explore all aspects of the cumulative environmental impact of a project at relicensing, the Commission will reserve the right to address them at a later date. The Commission will define the reserved authority as narrowly and precisely as possible. Licensees will be provided notice of any proposed use of the reserved authority and an opportunity for a hearing before the Commission acts.

EFFECTIVE DATE: January 27, 1995.

FOR FURTHER INFORMATION CONTACT: Barry Smoler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 10426, (202) 208–1269.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this documents during normal business hours in Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200 or 300bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is adopting a policy statement with respect to the use of reserved authority in licenses for hydropower projects to ameliorate cumulative impacts of such projects in the same river basin.

II. Background

On September 15, 1993, the Commission issued a Notice of Proposed Policy Statement (NOPPS).[1] The NOPPS referred to a roundtable discussion held by the Commission on June 17, 1993, with a broad spectrum of organizations interested in the process for considering applications for new licenses for existing hydropower projects, the original or prior licenses for which are expiring. A number of the participants at the roundtable discussion expressed concern over cumulative impacts on the environment of multiple hydropower projects located in the same river basin.

The NOPPS noted that the Commission includes a set of standard articles, known as L-Forms, in each license that it issues. The L-Forms contain broad reservations of the Commission's authority to require alterations in the public interest to project works and operations, after notice and opportunity for hearing.[2]

In the NOPPS, the Commission recognized the importance of analyzing the potential cumulative impacts of multiple projects in the same river basin. The Commission noted, however, that the issue had now arisen in an unusual context in that, in one year (1993) 167 original licenses would expire, and the vast majority of those licensees had filed applications for a new license. The Commission thus perceived a need "to strike a reasonable balance that maximizes, to the extent feasible, taking a meaningful hard look at the cumulative impacts in a river basin without allowing the relicensing program to bog down in unacceptable delay."[3] The Commission noted in this regard that such delays could in themselves be damaging to the environment, as they would delay mitigation of adverse impacts at individual project sites.

The Commission noted in the NOPPS that it will in any event be examining cumulative impacts in its environmental assessments (EA) and environmental impact statements (EIS), and that it intended to prepare a number of multi-project EA's and EIS's that examine the cumulative impacts of related projects whose original licenses expire reasonably contemporaneously with each other. The Commission further noted that it will also include consideration of potential cumulative impacts in its environmental analysis of individual projects.

In the NOPPS, the Commission proposed several potential means of striking a reasonable balance when individual projects in the same river basin are subject to original or prior licenses that expire at fairly disparate points in time. The first option involved the project whose license does not expire for a number of years. If that project's license contained reserved authority of the kind set forth in the L-Form license articles described above, then, in coordination with the relicensing proceedings of other projects in the basin, the Commission would consider the appropriateness of using its reserved authority to reopen that project's license to address the cumulative impact issue.

The second option involved the project or projects being relicensed. The Commission might add to a new license a special article reserving the Commission's authority to address specific types of potential cumulative impacts in the future, in connection either with the relicense proceedings for other licensed projects in the basin or with any reopener proceedings that might be initiated prior to the expiration of the licenses for such other projects. The purpose of such an article would not be to narrow the Commission's ability to address an impact issue in the context of the new license, but to put the licensee on notice of the substantial likelihood that a particular issue or issues would be revisited in connection with the analysis of other specified projects in the basin.[4]

The Commission recognized the importance of providing project

[1] IV FERC Stats. & Regs. ¶ 32,501. The NOPPS was published in the **Federal Register** on September 21, 1993 (58 FR 48,994).

[2] See § 2.9 of the regulations, 18 CFR 2.9.

[3] IV FERC Stats. & Regs. at p. 32,799.

[4] The Commission noted that, although reopener clauses have been used in the past, they have not routinely been used to address cumulative impact concerns.

developers and financiers as much certainty as possible when it issues a license, and stated its intent to strive to do so. The Commission also stressed that, as is the case with any reservation of authority in a hydroelectric license, use of the reopener authority would be subject to the statutory standards of comprehensive development set forth in section 10(a)(1) of the Federal Power Act (FPA).[5] Finally, the Commission stated that it would use the reopener authority under discussion to adopt only such modifications to licenses as may be reasonably necessary to ameliorate cumulative impacts. The Commission would consider a variety of factors, including the sources and causes of the cumulative impacts, the costs of ameliorating them, and the ability of the various licensed projects to bear those costs.

The Commission invited comment on these policy proposals.

III. Comments

In response to the NOPPS, the Commission received comments and reply comments from a great many commenters, including municipal and non-municipal licensees; federal, state, and local governmental organizations; national, regional, and local environmental, trade, or other organizations and associations; and private citizens. The more substantial comments are identified in Appendix A. In addition, there was a large volume of comments in the nature of short letters. Many were from individuals (including operators of small hydro projects), and many were from local or regional organizations or local branches of national organizations.

A. General Comments

In general, environmental groups and licensees oppose the Commission's proposals, but for very different reasons. State and federal agencies generally support the proposals.

Environmental groups and government agencies applaud the goals of the NOPPS, but contend that it errs in perpetuating case-by-case analysis. Instead, they prefer systematic cumulative analysis of all rivers and projects in the same watershed basin, and want to have that analysis performed now, at relicensing, rather than later through reopeners.[6] Many commenters of all persuasions agree that the Commission ought to coordinate the terms of licenses for projects located in the same river basin so that in the future these licenses all will expire in the same year.[7]

The Hydropower Reform Coalition (Reform) urges the Commission to "adopt a schedule for performing watershed (basin-wide) environmental review, including impact analysis, for all watersheds that have at least one Class of 1993 relicensing and that have more than one hydro project."[8] Reform urges the Commission to commence such studies expeditiously, and to seek additional funding from Congress if necessary. Reform believes that its proposals are consistent with current federal environmental policy,[9] and that there are "sound scientific reasons to conduct cumulative impacts analyses that are based on watersheds or ecosystems, and to conduct them in a one-time, comprehensive fashion, rather than incrementally over a period of years as additional projects come up for relicensing."[10]

Reform agrees with the licensees that a system of reopening previously-issued licenses every time another project in the same river basin comes up for relicensing would be onerous and unfair to the licensees. Therefore, Reform opposes *seriatim* consideration and reconsideration of cumulative impact as each license comes up for renewal.[11]

Reform emphasizes "comprehensive" rather than "incremental" analysis of cumulative impacts. Reform advocates scoping at the outset to determine the "ecosystem boundaries" in the affected watershed, including "all past, present, and reasonably foreseeable future projects in an area, regardless of license status."[12] Reform contends that both NEPA[13] and the FPA[14] require consideration at relicensing of the cumulative impacts of a project "in the context of the relevant watershed."

The National Hydropower Association (NHA) suggests that "the Proposed Policy runs the risk of being merely a solution in search of a problem."[15] NHA questions the Commission's legal authority to require the licensee to conduct costly studies based on unforeseen or hypothetical cumulative impacts.[16] NHA emphasizes its view that while it is appropriate to examine cumulative impacts at the time of licensing it is not appropriate to reopen that matter after the license has been issued and while it is still in effect.

NHA expresses concern that the proposed policy on reopeners changes "the fundamental economic and operational assumptions on which licensees relied" in such a manner as to threaten the continued and future viability of hydro projects.[17] NHA and the Edison Electric Institute (EEI) contend that Congress crafted the FPA to provide security of investment so as to encourage investment in hydro projects, and that the generic use of reopener clauses is inconsistent with that Congressional purpose. In this regard, they and numerous other licensee commenters contend that the license is a "contract" between the federal government and the licensee, and that the proposed policy on reopeners would violate the "contractual expectations" and "contractual reliance" created and intended by Congress.[18] In relation to this thesis, NHA, EEI, and the American Public Power Association (APPA) discuss sections 6, 10, 13, 14, 15, 21 and 28 of the FPA,[19] the legislative history of the FPA,[20] court cases,[21] and past Commission practice.[22]

NHA points out that many of the dams that cumulatively affect a river basin are beyond the Commission's jurisdiction to license. NHA contends that the proposed policy could

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[5] Section 10(a)(1), 16 U.S.C. § 803(a)(1), provides that all licenses issued by the Commission under Part I of the FPA shall be for projects which:

In the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public purposes, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 4(e).

Section 4(e) of the FPA, 16 U.S.C. § 797(e), states, in pertinent part:

In deciding whether to issue any license under this Part for any project, the Commission, in addition to the power and development purposes for which licenses are issued, shall give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality.

[6] *See, e.g.*, the Hydropower Reform Coalition (Reform) at 5–7.

[7] *See, e.g.*, Reform at 7; National Hydropower Association (NHA) at 13–21, NHA reply comments at 3.

[8] Reform at 12–13.

[9] *Id.* at 14–17.

[10] *Id.* at 18–22.

[11] *Id.* at 23–24.

[12] *Id.* at 24.

[13] *Id.* at 28–32.

[14] *Id.* at 32–33.

[15] NHA at 4, 12–13.

[16] *Id.* at 6.

[17] *Id.* at 25.

[18] NHA at 25–31; EEI at 5–6, 16, 18–19.

[19] NHA at 26–29; EEI at 19–22, 26–29, 32; APPA at 11–14, 18–20. APPA's comments were submitted jointly by APPA and Certain Public Systems.

[20] NHA at 26–31; EEI at 19–22, 24–29, 33–35; APPA at 5–7.

[21] NHA at 29–30; EEI at 22–24, 32, 35–38; APPA at 9–11.

[22] NHA at 31–34; EEI at 29–32.

disproportionately shift the cost of mitigating cumulative impacts onto those projects that are licensed by the Commission.[23]

EEI questions the need for a policy statement on reopeners, contending that the Commission has not demonstrated the existence of a problem requiring a solution. EEI contends, thus, that the proposal is too broadly drawn.[24]

EEI contends that NEPA does not require the Commission to exercise reopener authority in this manner.[25] EEI contends that reopener clauses may drive up the cost of operation, discourage settlements, discourage willingness to voluntarily participate in environmental mitigation programs, impede availability of financing, and disrupt long-term system planning.[26]

APPA advocates an alternative policy consisting of voluntary coordinated activities by licensees and agencies, with appropriate incentives for licensees and applicants. APPA would hold licensees accountable for their environmental stewardship at relicensing. APPA also stresses the importance of notice and an opportunity for a hearing in reopener proceedings.[27]

The National Marine Fisheries Service (NMFS) of the U.S. Department of Commerce believes that "working discussions" would be more fruitful than notice and comment procedures. NMFS contends that "[t]he impacts of hydroelectric development cannot be accurately assessed on a project-by-project basis, but must be evaluated for an entire river basin."[28] NMFS welcomes the use of reopener clauses to conduct such inquiries on a river-wide basis. NMFS seeks clarification that the Commission will reopen licenses at the request of state and federal agencies, and wants the Commission to state its reasons in writing (i.e., in each individual case) if it declines to mandate such reopening. NMFS concludes with various suggestions for specific changes in the wording of the proposed policy statement.

The U.S. Department of the Interior (Interior) supports the Commission's efforts. Interior encourages the Commission to seek new legislative authority to reopen extant licenses that do not contain reopener clauses. Interior urges caution on inclusion of special reopener articles, stating that they may be drafted too narrowly to achieve the desired objective.

[23] NHA at 34.

[24] EEI at 3–4, 6–10, 15–16.

[25] *Id.* at 10–14.

[26] *Id.* at 39–45.

[27] APPA at 3.

[28] NMFS at 1

The U.S. Department of Energy (DOE) commends the Commission on its initiative. DOE suggests that the costs of mitigation be allocated in proportion to each project's impact and not be routinely divided up equally among all projects in a river basin. DOE urges the Commission to carefully balance the costs and benefits of energy production and environmental mitigation, so as to reach the most appropriate balance. DOE urges the Commission to require licensees to provide data only from their own projects and not from other licensees' projects.

The U.S. Environmental Protection Agency (EPA) supports the Commission's inclusion of reopener clauses and encourages greater use of them. EPA seeks clarification as to the circumstances that would justify reopening a license; the "avenues" available to the public to encourage the Commission to exercise reopener options; when the Commission intends to start reopening licenses; whether the reopener clauses will address water quality and aquatic habitat; and whether states will have an opportunity to issue new water quality certifications when licenses are reopened.

The Council on Environmental Quality urges the Commission to impose a moratorium on all hydropower licensing for a 10 to 15-year period, during which the Commission would prepare programmatic environmental impact statements on each watershed within the Commission's jurisdiction

The Arizona Department of Environmental Quality, the California Department of Fish and Game, the Michigan Department of Natural Resources, the State of Vermont, and the Washington Department of Fisheries and Wildlife support the Commission's proposals. The Kentucky Department for Environmental Protection and the Wisconsin Department of Natural Resources urge basin-wide review of impacts. The California Water Resources Control Board urges the Commission to include in its cumulative impact analysis all water development projects in a river basin regardless of whether such projects fall within the scope of the Commission's licensing and exemption jurisdiction. The Maine State Planning Office supports the proposals but inquires as to how the reopening process will be coordinated with the state water quality certification program so as to ensure that the states' current standards are met when licenses are reopened.

The Adirondack Park Agency suggests use of very short-term licenses to synchronize the expiration dates of all licenses in the same river basin, but does not explain how that proposal would be consistent with the FPA.

The Columbia River Inter-Tribal Fish Commission contends that NEPA and the FPA require a comprehensive cumulative impacts analysis prior to licensing, and that this analysis can only be performed by a basin-wide approach. The Izaak Walton League contends that "biology and the law" require watershed-based cumulative effect analysis.[29]

Northrop, Devine and Tarbell, Inc., analyzed the Commission's database to determine how many different licensees hold licenses within individual river basins, how the licensed capacity within individual river basins is distributed among the licensees, and how the expiration dates of existing licenses are distributed through time within individual river basins. They report the following results:

With regard to project ownership, in 66% of the river basins, 70% or greater of the licenses are held by either a single licensee or collectively by two licensees.

With regard to project capacity, in 92% of the river basins, 70% or greater of the existing capacity is controlled by either a single licensee or collectively by two licensees; in 74% of the basins, 90% or greater of existing capacity is controlled by either a single licensee or collectively by two licensees.

With regard to license expiration time frames for projects with expiration dates between 1998 and 2015 (476 projects in 101 river basins), in 69% of the basins, all of the project licenses expire within seven years of each other; in 81% of the basins, 66% of the licenses expire within three years of each other.

From this they conclude that "over the next twenty years, on a river basin basis, the vast majority of relicensing activity will occur within a relatively short time-frame and involve at most two significant licensees."[30]

The City of Seattle contends that the expanded use of reopeners "will discourage virtually all multi-party settlement agreements." The Seattle Audubon Society contends that reliance on reopener clauses to examine cumulative impacts would improperly shift the burden of proof from the license applicants to the resource agencies, Indian tribes, and the public.[31]

Several western commenters stress the importance of considering the need to protect municipal water supplies in

[29] Izaak Walton League at 1–2.

[30] Northrop, Devine and Tarbell, Inc. at 2.

[31] Seattle Audubon Society at 3.

any reopening or cumulative impact analysis.[32]

One commenter suggested limiting potential reopenings to only one reopening during the term of a license, and no earlier than ten years after its issuance.[33]

Many municipal and non-municipal operators of major projects filed extensive comments. Generally, however, those comments emphasize, elaborate, or reiterate positions articulated by NHA, EEI, and APPA which were summarized above. Some commenters relate the Commission's proposals to the facts of their particular projects.

Many environmental groups and individuals filed shorter comments. These generally reiterate and emphasize the importance of analyzing cumulative impacts on a basin-wide scale.

In its reply comments, Reform suggests that the licensees' fears are premised on the false assumption that the Commission would implement its policy in an extreme and unreasonable manner.

In its reply comments, NHA contends that no commenter has provided a methodology for implementing its proposed "watershed" or "ecosystem" approach to cumulative impact, and that those proposals would substantially delay the relicense process. NHA also contends that no commenter has demonstrated a need for the Commission's proposed policy statement, nor a legal basis in support of it.

In its reply comments, EEI suggests that the proposals to study watersheds and ecosystems go far beyond the scope of the NOPPS, and should be considered in a separate proceeding.

B. Invoking Existing Reopeners in Licenses Already Issued

NHA advocates reopening existing licenses only on a case-by-case basis, and not generically. NHA contends that excessive reliance on standard reopener clauses would discourage future investment in hydropower facilities by increasing uncertainty over project costs. Future cumulative impacts ought to be identified at relicensing, and not deferred.[34]

EEI believes licenses should be reopened only pursuant to the mutual agreement of the Commission and the licensee. The licensee should have notice and an opportunity for a hearing. The proponent of reopening should demonstrate its appropriateness. The license amendment must be reasonably necessary to address the impacts, and must be consistent with the licensee's reasonable expectations.[35]

APPA also stresses voluntary cooperation, with the focus at relicensing rather than during the term of the license.[36]

The Industrial Licensees Group (like EEI, NHA, and other licensees) contends that the Commission's legal authority to reopen a license during its term is sharply limited.[37]

C. Including Special Reopeners in New Licenses

Environmental groups express concern that inclusion of reopener reservation articles will be used as a substitute for meaningful cumulative impact analysis at relicensing, thus postponing the "hard look" required by NEPA until after the license has been issued, in derogation of both NEPA and the FPA.[38] Reform is concerned that consideration of cumulative impacts pursuant to a reopener proceeding would shift the burden of proof away from the licensee, who would have that burden if cumulative impacts were considered at relicensing.[39]

NHA does not object to the use of special reopeners as long as that use is limited to situations in which the Commission, after appropriate analysis under FPA sections 4 and 10 in the context of the first project's relicense proceeding, is genuinely unable to ascertain what mitigatory measures may be required at that first project in light of the future relicensing proceeding for the cumulatively-related second project. The first project's licensee should be given notice and an opportunity for hearing, with the issues limited to the matters raised by the second project, and with the burden of proof on the proponent of reopening. NHA prefers such specialized reopeners to more generalized reopeners because they provide better notice to the licensee and interested government agencies as to what future changes in the license the Commission might be contemplating, and when. NHA would have the Commission synchronize future license expiration dates to the extent possible so as to minimize the future need for special reopeners.[40]

As noted above, Interior is concerned that inclusion of special reopeners might narrow what it perceives to be the Commission's broad powers to reopen licenses.

IV. Discussion

The extensive comments received in response to the NOPPS have given the Commission a deeper understanding of the complexities inherent in this matter, and we have expanded and modified our policy statement accordingly.

It is beyond dispute that the Commission must deal with cumulative impacts of multiple projects in a river basin. In issuing licenses for new projects, and in issuing licenses for relicensed projects, the Commission will examine cumulative impacts carefully.

A number of commenters suggested that the Commission consider cumulative impacts in the factual context of specific cases instead of trying to establish generic rules. The point is well taken, in that decisions on cumulative impacts must necessarily consider the particular facts and circumstances in which the issues arise, and the Commission's determinations in each such individual case will necessarily be strongly shaped by the facts and circumstances presented. There are, however, several broad principles that we can state as a starting point and touchstone for the case-specific inquiries.

Our most fundamental principle is that issues of cumulative impacts ought to be examined at the time of relicensing to the fullest extent that such examination is feasible. Reservations of authority to reopen licenses at a later date for the purpose of considering cumulative impacts should be resorted to only if it is not possible to examine all such impacts during the relicensing process. Thus, the Commission will deal with cumulative impact issues as comprehensively as possible at the licensing stage. Specific license articles will be fashioned as necessary.

There will be circumstances, however, in which comprehensive analysis of all potential cumulative impacts could entail unacceptably long delays in the relicensing process. Such delays could in themselves generate harm to the environment by delaying the implementation of necessary environmentally ameliorative construction or operation pursuant to a new license. Thus, if it is not possible to fully explore all of the cumulative impacts on a timely basis, the Commission will reserve the authority necessary to revisit those issues at a later date. If the Commission foresees the need to deal with a cumulative impact issue at a future date it will

[32] *See, e.g.*, Western Urban Water Coalition, City and County of San Francisco, and East Bay Municipal District.

[33] Pend Oreille County Public Utility District, Washington at 1.

[34] NHA at 21–24.

[35] EEI at 45–57.

[36] APPA at 18–21.

[37] Industrial Licensees Group at 6–10.

[38] *See, e.g.*, Reform at 9.

[39] Reform at 10.

[40] NHA at 13–21.

fashion specific, tailor-made license conditions to do so to the maximum extent possible. Such "reopener" authority will be defined as narrowly and specifically as possible, particularly with respect to the purpose of the reservation of such authority.

Many commenters stressed the importance of providing notice and an opportunity for hearing before exercising any reserved authority. We agree completely, and will do so. Any use of a reopener provision will have adequate procedural safeguards to protect the licensee. This will include notice and an opportunity for a hearing. Any conditioning of the license will be prospective, although it may address prior impacts.

Finally, as noted above, commenters of many persuasions urged us to coordinate the expiration dates of licenses to the maximum extent feasible. We will endeavor to do so in the licenses that come before us in the future.[41] This is consistent with, and will considerably facilitate implementation of, our overriding principle—that the cumulative impacts of projects in the same river basin ought to be considered collectively at relicensing.

Several commenters discussed the Commission's legal authority to use reservation articles in licenses. As discussed in the NOPPS, pursuant to sections 10(a)(1) and 4(e) of the FPA, all licenses issued by the Commission under Part I of the FPA shall be for projects which are best adapted to a comprehensive plan for improving or developing the waterway for beneficial public purposes, consistent with the comprehensive development standard of section 10(a)(1). The section 10(a)(1) mandate continues throughout the term of a license, and is the standard by which license amendments, whether initiated by the licensee or the Commission, are judged.[42] Under this standard, all public interest considerations, including the impact on project viability, are relevant to the Commission's decisionmaking.

As discussed in the NOPPS, the use of reopener license articles has been sustained as an appropriate means for the Commission to pursue the broad public policy objectives of section 10(a)(1) of the FPA.[43] In *Platte River Whooping Crane Critical Habitat Maintenance Trust v. FERC*,[44] the Court of Appeals quoted from the legislative history of the Electric Consumers Protection Act of 1986 (ECPA)[45] in concluding that "Congress expected FERC to exercise whatever authority it might have to introduce into existing licenses environmental protective conditions that in its judgment appear necessary."

List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission amends Part 2, Chapter I, Title 18 of the Code of Federal Regulations as set forth below.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

2. Part 2 is amended by adding § 2.23, to read as follows:

§ 2.23 Use of Reserved Authority in Hydropower Licenses to Ameliorate Cumulative Impacts.

The Commission will address and consider cumulative impact issues at original licensing and relicensing to the fullest extent possible consistent with the Commission's statutory responsibility to avoid undue delay in the relicensing process and to avoid undue delay in the amelioration of individual project impacts at relicensing. To the extent, if any, that it is not possible to explore and address all cumulative impacts at relicensing, the Commission will reserve authority to examine and address such impacts after the new license has been issued, but will define that reserved authority as narrowly and with as much specificity as possible, particularly with respect to the purpose of reserving that authority. The Commission intends that such articles will describe, to the maximum extent possible, reasonably foreseeable future resource concerns that may warrant modifications of the licensed project. Before taking any action pursuant to such reserved authority, the Commission will publish notice of its proposed action and will provide an opportunity for hearing by the licensee and all interested parties. Hydropower licenses also contain standard "reopener" articles (see § 2.9 of this part) which reserve authority to the Commission to require, among other things, licensees of projects located in the same river basin to mitigate the cumulative impacts of those projects on the river basin. In light of the policy described above, the Commission will use the standard "reopener" articles to explore and address cumulative impacts only (except in extraordinary circumstances) where such impacts were not known at the time of licensing or are the result of changed circumstances. The Commission has authority under the Federal Power Act to require licensees, during the term of the license, to develop and provide data to the Commission on the cumulative impacts of licensed projects located in the same river basin. In issuing both new and original licenses, the Commission will coordinate the expiration dates of the licenses to the maximum extent possible, to maximize future consideration of cumulative impacts at the same time in contemporaneous proceedings at relicensing. The Commission's intention is to consider to the extent practicable cumulative impacts at the time of licensing and relicensing, and to eliminate the need to resort to the use of reserved authority.

Note: This Appendix will not be published in the Code of Federal Regulations.

Appendix A—List of Commenters

A large number of interested persons and organizations expressed their views in comments ranging in length and style from extensive analysis in a formal pleading to a brief statement of position in a letter. All of the comments were read and considered. This list includes all commenters who are governments, or agencies of governments, including states, counties, cities, and municipalities, and federal, state, and local government agencies. In addition, the list includes those commenters who filed the more comprehensive or extended comments.

Federal Agencies

Bonneville Power Administration
Council on Environmental Quality

[41] We note, in this regard, that the FPA requires that new licenses be issued for a minimum of 30 years, and that the economics of hydropower projects are frequently dependent on long-term licenses. This can be particularly significant if the new license requires the licensee to construct new project facilities (e.g., fish ladders or screens) to ameliorate environmental impacts.

[42] *See, e.g.*, Trinity River Authority of Texas, 41 FERC ¶ 61,300 (1987); Pacific Gas & Electric Co., 46 FERC ¶ 61,249 (1989); Oroville-Wyandotte Irrigation District, 53 FERC ¶ 61,439 (1990).

[43] See Dept. of the Interior v. FERC, 952 F.2d 538, 546–48 (D.C. Cir. 1992); LaFlamme v. FERC, 945 F.2d 1124, 1130 (9th Cir. 1991); Pacific Gas & Electric Co. v FERC, 720 F.2d 78, 83–84 (D.C. Cir. 1983); State of California v Federal Power Commission, 345 F.2d 917, 921–25 (9th Cir. 1965).

[44] 876 F.2d 109, 118 (D.C. Cir. 1989).

[45] Pub. L. No. 99–495, 100 Stat. 1243 (Oct. 16, 1986) (codified at 16 USC 791a et seq.).

National Marine Fisheries Service (NMFS)
U.S. Department of Energy (DOE)
U.S. Department of the Interior (Interior)
U.S. Environmental Protection Agency (EPA)
U.S. Forest Service, Huron-Manistee National Forests

State Agencies

Arizona Department of Environmental Quality
California Department of Fish and Game
California Water Resources Board
Kentucky Department for Environmental Protection
Maine Department of Inland Fisheries and Wildlife
Maine State Planning Office
Michigan Department of Natural Resources
State of Vermont
Washington Departments of Fisheries and Wildlife
Wisconsin Department of Natural Resources
State of Wyoming [46]

Associations

Adirondack Park Agency
American Forest and Paper Association
American Public Power Association and Certain Public Systems (APPA) [47]
American Rivers
Appalachian Mountain Club
California Urban Water Agencies
Columbia River Inter-Tribal Fish Council
Edison Electric Institute (EEI) [46]
Friends of the Cowlitz
Hydropower Reform Coalition (Reform) [46]
Industrial Licensee Group
Izaak Walton League
National Hydropower Association (NHA) [46]
New York Rivers United
Northrop, Devine & Tarbell, Inc.
Northwest Hydroelectric Association
Public Generating Pool
Seattle Audubon Society
Trout Unlimited
The Tulalip Tribes
Western Urban Water Coalition

Municipal Licensees

Bountiful City Light and Power
Central Nebraska Public Power and Irrigation District
Central Oregon Irrigation District
City and County of San Francisco
City of New Martinsville, West Virginia
City of Oswego, New York
City of Rocky Mount, North Carolina
City of Saint Cloud, Minnesota
City of Seattle, Washington
City of Spokane, Washington
County of Amador, California
East Bay Municipal District
El Dorado Irrigation District
Lewis County Public Utility District, Washington
Merced Irrigation District
Nebraska Public Power District
Nevada Irrigation District
Oroville-Wyandotte Irrigation District, and Tri-Dam Project
Pend Oreille County Public Utility District, Washington
Power Authority of the State of New York
Public Utility District No. 1 of Chelan County, Washington
Public Utility District No. 1 of Douglas County, Washington
Public Utility District No. 2 of Grant County, Washington
Sacramento Municipal Utility District
Tacoma Public Utilities
Turlock Irrigation District
Village of Morrisville, Vermont
Yuba County Water Agency

Non-Municipal Licensees

Adirondack Hydro Development Corporation
Alabama Power Company and Georgia Power Company
Consolidated Hydro, Inc.
Consolidated Hydro, Inc., HYDRA-CO Enterprises, Inc., Hydro Development Group, STS Hydropower, Ltd., and Synergics
Duke Power Company
Great Northern Paper, Inc.
Idaho Power Company
James River-New Hampshire Electric, Inc.
Montana Power Company
New England Power Company Niagara Mohawk Power Corporation
Northern States Power Company
Pacific Gas and Electric Company
Pacificorp
Portland General Electric Company
Public Service Company of Colorado
Puget Sound Power & Light Company
Simpson Paper Company
Southern California Edison Company
Summit Hydropower
United Energy Corporation, Mt. Hope Hydro Inc., and Liberty Power Corporation
Upper Peninsula Power Company
Washington Water Power Company [46]
Wisconsin Valley Improvement Company
Wisconsin Valley, Wisconsin Public Service Corporation, Weyerhaeuser Company, Consolidated Water Power Company, Neekosa Papers Inc., and Wisconsin River Power Company

[46] Almost all of the commenters filed initial comments. Commenters identified by this footnote filed only reply comments.

[47] Commenters identified by this footnote filed both initial and reply comments.

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INTERNATIONAL TRADE COMMISSION

19 CFR Parts 201 and 207

Rules of General Application; Investigations of Whether Injury to Domestic Industries Results From Imports Sold at Less Than Fair Value or From Subsidized Exports to the United States

AGENCY: U.S. International Trade Commission.

ACTION: Notice of final rulemaking.

SUMMARY: The Commission is amending the rules to address concerns which have arisen relating to Commission practice. The amendments provide, in particular, for changes relating to sanctions and other actions in response to administrative protective order (APO) breaches, the procedures for conducting APO breach investigations, the filing of prehearing briefs, closed sessions of Commission hearings in title VII and other investigations, and the procedures for considering requests for exemption from disclosure under APO of business proprietary information in title VII investigations.

EFFECTIVE DATE: January 27, 1995.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3102. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–225–1810.

SUPPLEMENTARY INFORMATION: Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties.

Commission rules ordinarily are promulgated in accordance with the rulemaking provisions of section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA), which entails the following steps: (1) publication of a notice of proposed rulemaking; (2) solicitation of public comment on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of the final rules thirty days prior to their effective date. *See* 5 U.S.C. 553. Notice of proposed rulemaking was published in the **Federal Register** of April 15, 1993 (58 Fed. Reg. 19,638) and interested persons were given until May 17, 1993, to submit comments. Comments were received from the Customs and International Trade Bar Association

(CITBA); Adduci, Mastriani, Schaumberg & Schill (AMS&S); Grunfeld, Desiderio, Lebowitz & Silverman (GDL&B); Stewart & Stewart (S&S); and Columbia Impex Corp.

On April 21, 1994, the Commission published an advance notice of proposed rulemaking (59 FR 18982) concerning Parts 201 and 207. The rulemaking proceeding of which the present notice is a part is distinct from that effort.

The Commission has determined that these rules amendments do not meet the criteria described in section 3(f) of Executive Order 12866, Sep. 30, 1993 (58 F.R. 51735 (Oct. 4, 1993)) and do not constitute a significant regulatory action for the purposes of the EO. Moreover, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 note), the Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the amendments set forth in this notice are not likely to have a significant economic impact on a substantial number of small business entities. This is because the rules amendments constitute merely clarifications and streamlining of the procedures of the Commission.

Explanation of the Amendments to 19 CFR Parts 201 and 207

Section 201.13 and 207.23

Sections 201.13 and 207.23 are amended as described in the notice of proposed rulemaking to modify the procedure for closing to the public a portion of Commission hearings to permit the discussion of confidential or proprietary information.

CITBA commented that it understood that the closed sessions are also intended to apply to the conduct of staff conferences, since section 207.15, governing those conferences, incorporates by reference the procedures in section 201.13. CITBA suggested that the Commission consider shortening the period for requesting a closed session in a preliminary conference, in view of the short time period in preliminary title VII investigations. CITBA suggested that three days would be appropriate. CITBA also suggested that, as a cosmetic change to improve clarity, the Commission should make the provisions governing closed sessions of hearings separate subsections, rather than including them within subsection (a) of rules 201.13 and 207.23. S&S expressed general support for the closed session amendment, but stated a concern that increasingly large closed portions would make hearings less understandable to clients and reduce their opportunity to respond.

The Commission agrees with CITBA that the provisions for closing hearing should be applied to conferences in preliminary title VII investigations, with a shorter time period as suggested by CITBA. The final version of rule 201.13 incorporates that change. The Commission has also adopted CITBA's proposed cosmetic change. The final version of the rules establishes separate subsections of rules 201.13 and 207.23 providing for closed sessions.

Section 207.7(a)(3)(ii)

Rule 207.7(a)(3)(ii) is amended to clarify the definition of "competitive decisionmaking." CITBA and AMS&S recommended including examples or additional guidelines on the factual circumstances constituting "competitive decision making." AMS&S also suggested that the Commission clarify whether "involvement" includes past, present, or future continuing relationships. The Commission has adopted the suggestion of AMS&S. The Commission finds it inappropriate to put examples or guidelines in the rules, in order to avoid limiting the Commission's flexibility in assessing specific factual situations to determine whether access to BPI by in-house counsel is appropriate. However, the Commission is willing to give parties additional guidance on this issue by providing the following examples in this preamble.

In *A Hirsh, Inc. v. United States*, 11 CIT 208, 657 F. Supp. 1297 (1987), during judicial review of a Commission title VII determination, the U.S. Court of International Trade (CIT) denied the request of an in-house counsel for access to the BPI in the Commission's investigation record. During the Commission's investigation, this individual, the petitioner's general counsel and chief legal officer, had not had access to BPI, and the petitioner had been represented by outside counsel. The CIT concluded that the interest in guaranteeing a high degree of confidentiality in the information outweighed the individual's need for access, particularly since petitioner was represented by outside counsel. The court noted, among other circumstances, that petitioner was a family-owned and -operated company, and that the individual himself had been empowered to act as president in the absence or disability of the company president, his father The court also noted that the individual was an officer of the company, and had familial ties with the company's operating officers, who included his father and brother, suggesting a lack of isolation from the commercial activities of the company Although the case did not directly involve a Commission decision on whether to grant access to BPI to in-house counsel, it illustrates the sort of factors that might prompt denial of access to BPI.

With respect to a Commission determination on the status of in-house counsel in a title VII investigation, the U.S. Court of Appeals for the Federal Circuit affirmed the Commission's decision to grant access to BPI to an in-house counsel. The Commission had granted access based on the individual's certification that, in his position as general counsel for the respondent company, he was not involved in competitive decision-making. The individual had provided the Commission with a description of his duties as general counsel, senior vice president, and secretary. Those duties included supervising the company's legal staff, instituting and defending lawsuits on behalf of the company, preparing contracts, and handling securities and labor matters. He stated that he was not involved in decisions of pricing and the technical design of products. In a further submission to the Commission, he stated that he reviewed securities filings, employee benefit plans and stock purchase plans, kept the minutes of the Board of Directors, attended staff meetings where the results of the company's operations and financial reports were reviewed, attended meetings where the current state of affairs of retail outlets was examined, but that at none of these meetings were issues of pricing or product design discussed. Petitioners in the investigation sought an injunction against the grant of access. The CIT granted an injunction denying the individual access, finding that his responsibilities constituted involvement in competitive decisionmaking, but the Federal Circuit reversed. *Matsushita Electric Industrial Co., Ltd. v. United States*, 14 CIT 674, 746 F. Supp. 1103, 1106 (1990), *rev'd.*, 929 F.2d 1577 (1990).

Section 207.7(b)(10) and (d)

Paragraphs (b)(10) and (d) of section 207.7 are amended to specify that the Commission may take actions other than sanctions in response to APO breaches. AMS&S recommended that the Commission provide examples of "other actions" that would fall within the scope of the provision. The final version of the rule specifies that a "warning letter" is one of the possible actions the Commission may take. The rule also makes clear, however, that the one example is not exclusive. The Commission may take other actions as it

determines to be appropriate even if they are not listed in the rule. Paragraph (d) of section 207.7 is further amended to reflect Commission practice by specifying that available sanctions include public and private letters of reprimand.

Section 207.7(e)

Section 207.7(e) is amended to establish a deadline for commencing APO breach investigations. Further, it had been proposed to amend section 207.7(e) to streamline the process of investigating alleged breaches of APOs by replacing with a one-step procedure the existing two-step process, whereby an alleged breacher is first asked for views on whether a breach occurred and is only asked for views on mitigating circumstances and the appropriate sanction after a finding of breach has been made.

CITBA expressed concern at the proposed single-step procedure. CITBA commented that the proposed procedure may, in some cases, significantly diminish a party's right to have a reasonable opportunity to present its arguments on the three issues of whether a breach occurred, whether mitigating circumstances exist, and what sanction if any is appropriate. CITBA suggested that where there are serious factual questions concerning whether the alleged breach actually occurred, a party may not be in a position to present the strongest possible case on mitigation and sanctions in the same response that addresses the alleged breach. Moreover, CITBA commented that where it can be established that the breach did not occur, it would be an unnecessary burden to require submission of comments on mitigation and sanctions. CITBA proposed that the single-step procedure should be available as an alternative, at the option of the accused party, to the existing procedure.

CITBA also proposed that the Commission establish time limits for the phases of a breach investigation, paralleling existing Commerce procedures. CITBA commented that the two year period (following all appeals, remands, and subsequent appeals) allowed for commencement of a breach investigation may be too long in some cases, prejudicing a party's ability to mitigate harm and defend him- or herself. On the other hand, CITBA suggested that two years may be insufficient in cases of intentional breach, where discovery of the breach is difficult. CITBA suggested that the Commission should adopt time limits similar to those employed by Commerce, limiting the period for commencing a breach investigation to 30 days after the alleged violation occurred, or could have been discovered through the exercise of reasonable and ordinary care, as determined by the Commission.

CITBA also suggested that the Commission adopt a time limit for issuance of a charging letter, as Commerce has done. Finally, CITBA proposed that it would be useful for the Commission to identify deadlines for the various stages of a breach investigation. CITBA suggested Commerce's procedures as examples for consideration.

AMS&S expressed concern with the two year time limit, noting that appeals of Commission determinations can take several years to reach a final conclusion, during which time a party's memory of actions involving an alleged breach dims, making defense against a charge of alleged breach of an APO an onerous burden. AMS&S noted that the Commission's rules require return or destruction of material released under APO within 60 days of publication of a final determination, unless judicial review is commenced. If the determination is appealed, a judicial protective order (JPO) is usually entered, which may contain different provisions from the Commission's APO. AMS&S suggested that actions allowed under the JPO may be alleged to violate the APO. AMS&S noted that it may be argued that once a JPO issues, the Commission no longer has jurisdiction over the parties to consider and sanction breaches of the APO occurring during the appellate process.

AMS&S also expressed concern over the one-step procedure investigation proposed in the rules. AMS&S suggested that this procedure could deny a party a reasonable opportunity to present views about whether the alleged breach actually occurred, requiring submission of potentially contradictory arguments concerning whether the breach occurred, mitigating circumstances, and appropriate sanctions, prior to a determination that there was a breach. AMS&S suggested that a two-step procedure addressing the questions of breach and sanctions separately would be preferable.

S&S expressed concern over the proposed two year time limit for investigating breaches. S&S commented that such a long period is prejudicial to the accused party's ability to defend him- or herself, creates uncertainty, and is unnecessary to protect the confidentiality of information. S&S suggested that the Commission conform its practice to Commerce practice, as discussed above under CITBA's comments. Moreover, S&S took issue with the one-step inquiry, opining that the new procedure would jeopardize the accused person's defense, and proposed that the new procedure be made available as an option that the accused could choose.

S&S also noted that the proposed language suggests that the Commission may investigate breaches occurring during the pendency of judicial review. S&S assumed this was unintentional, noting that JPOs generally cover BPI during the appellate process. S&S suggested that the Commission may wish to clarify that it does not view its authority as extending to sanctioning breaches of JPOs, or allow a period for comment on this issue.

CITBA and S&S both suggested that the Commission address in a future notice and request for comments the agency's APO practice in general.

In view of the comments received on the point, the Commission has determined not to institute the one-step process set out in the proposed rules. However, as it has in the past and as reflected in the amended version of the rule, the Commission may conclude a proceeding in one step if it finds that a breach has occurred but that under the circumstances no further investigation is warranted.

The Commission is sympathetic to the concerns expressed by the commenters concerning the time limit for commencing investigations of alleged APO breaches. Accordingly, that deadline is shortened from the time limit set in the proposed rules. A breach investigation is to be commenced no later than sixty days after the later of the occurrence of the alleged breach (or the date on which the alleged breach could have been discovered through the exercise of reasonable and ordinary care) or the end of the underlying antidumping or countervailing duty investigation. If a breach is alleged to occur during a preliminary or final investigation, the time limit is sixty days after the end of that investigation. If a breach is alleged to occur after such an investigation, for example during remand proceedings, an investigation into the alleged breach would need to be commenced sixty days after the alleged breach occurred or could have been discovered.

The deadline is intended to provide the Commission sufficient time to commence an investigation into an alleged breached while minimizing any harm to the defense a person might mount in a breach inquiry begun so long after the event that memories have dimmed. The time limit allows for the completion of the underlying

investigation so that the Commission need not conduct both that investigation and a breach investigation at the same time, and allows an additional sixty days for the Commission to resolve any matters preliminary to the breach investigation, such as the issue of whether the information in question is business proprietary.

The Commission finds that it would be neither appropriate nor necessary to establish time limits on the various phases of a breach investigation by rule. Specific time limits in the rules could restrict the Commission's ability to seek additional information concerning an alleged breach if deemed necessary Moreover, the press of other Commission business may hamper compliance with such time limits, necessitating Commission action to extend the deadlines. However, it remains the Commission's intention to expeditiously process APO violation investigations.

The Commission also finds that it would be inappropriate to state that in all instances the Commission will not investigate an alleged APO breach after a JPO has been entered. In some circumstances, the Commission may need to take action even though a JPO is in place.

Section 207.7 (f) and (g)

Paragraphs (f)(2) and (g) of section 207.7 are amended to improve the procedure for requesting exemption from disclosure of business proprietary information under APO.

CITBA generally agreed with the proposed procedures for exemption from disclosure under APO. CITBA expressed concern, however, that the proposed rule does not adequately explain how the procedure for seeking exemption from disclosure coordinates with time limits for filing briefs. CITBA proposed that the rule expressly require that exemption be sought sufficiently in advance that the request may be acted upon in time for the party to prepare and file its brief in a timely manner. CITBA also noted that the rule does not clarify how much time the Secretary may need to act on the request, merely that she will "promptly notify" the requestor of the disposition of the request. As a cosmetic change, CITBA also proposed an alternative arrangement of section 207.7(g), with specific subsections dealing sequentially with the procedure. AMS&S and S&S supported the Commission's proposed procedure for requesting exemption from disclosure under APO and service.

The Commission is sympathetic to CITBA's desire for clearer guidelines on timing of requests for exemption prior to filing and the Secretary's response time, but considers that a "pre-clearance" procedure would be unworkable in view of the already short time limits for filing most party submissions in title VII investigations. To shorten them even further by, in effect, requiring parties to file early in order to obtain exemption from disclosure under APO would in the Commission's view work a substantial hardship on the parties and limit their ability to fully present their arguments. A provision is being added to the final rules indicating that requests for exemption from disclosure under APO should be filed two business days prior to the deadline for filing the document in which the information is proposed to be included, although no strict requirement to that effect is imposed.

The Commission is not imposing a strict time limit for the Secretary's decision on granting the request, but it is the Commission's policy that such requests take precedence over other, more routine matters, and should be expedited so as to be decided within two business days.

The final version of section 207.7(g) largely reflects CITBA's suggested cosmetic changes. Paragraph (f)(1) is amended to make a technical correction to remove a discrepancy between section 207.7 and 207.3, and indicates no change in Commission practice.

Section 207.22

Section 207.22 is amended to require the filing of prehearing briefs four business days prior to the hearing. CITBA suggested that the clause "The prehearing brief should present a party's case in brief" sounds tautological, and that the word "concisely" replace the phrase "in brief." The Commission has made that change in the final version of the rules. The Commission has also determined to require the filing of prehearing briefs only of interested parties who are parties to the investigation, *i.e.*, those parties with standing to challenge Commission determinations in court. Other persons may but are not required to file prehearing statements.

Section 207.23(b)

Section 207.23(b) was proposed to be amended to require the filing of witness statements two business days prior to the hearing. GDL&S expressed concern with the proposed change requiring, rather than permitting, filing of witness statements. GDL&S commented that, given the logistics of travel, and the need to prepare witness statements face to face, rather than by long-distance communication, this requirement will impose substantial hardships on foreign witnesses, particularly from the Far East. GDL&S suggested that the requirement will dissuade witnesses from testifying, will make participation much more costly, and will tend to diminish, rather than enhance, the quality of evidence presented. GDL&S urged the Commission to reconsider this proposed change. The Commission has determined to leave the existing rule on witness statements unchanged.

List of Subjects in 19 CFR Parts 201 and 207

Administrative practice and procedure, investigations, imports.

19 CFR Parts 201 and 207 are amended as follows:

PART 201—[AMENDED]

1 The authority citation for part 201 continues to read as follows:

Authority: Sec. 335 of the Tariff Act of 1930 (19 U.S.C. 1335), and sec. 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

2. Paragraph (m) of section 201.13 is added to read as follows:

§ 201.13 Conduct of nonadjudicative hearings.

* * * * *

(m) *Closed sessions.* Upon a request filed by a party to the investigation no later than seven (7) days prior to the date of the hearing (or three (3) days prior to the date of a conference conducted under § 207.15 of this chapter) that identifies the subjects to be discussed, specifies the amount of time requested, and justifies the need for a closed session with respect to each subject to be discussed, the Commission (or the Director, as defined in § 207.2(c) of this chapter, for a conference under § 207.15 of this chapter) may close a portion of a hearing (or conference under section 207.15 of this chapter) held in any investigation in order to allow such party to address confidential business information, as defined in § 201.6, during the course of its presentation. In addition, during each hearing held in an investigation conducted under section 202 of the Trade Act , as amended, or in an investigation under title VII of the Tariff Act as provided in § 207.23 of this chapter, following the public presentation of the petitioner(s) and that of each panel of respondents, the Commission will, if it deems it appropriate, close the hearing in order to allow Commissioners to question parties and/or their representatives

concerning matters involving confidential business information.

PART 207—[AMENDED]

3. The authority citation for part 207 continues to read as follows:

Authority: 19 U.S.C. 1303, 1335, 1671–1677k, and 2482, unless otherwise noted.

4. Paragraphs (a)(3)(ii), (b)(10), (d), the heading for paragraph (e), (e)(1), (f)(1), (f)(2), and (g) of § 207.7 are revised to read as follows:

§ 207.7 Limited disclosure of certain business proprietary information under administrative protection order.

* * * * *

(a) * * *

(3) *Authorized applicant.*

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(ii) In addition, an authorized applicant must not be involved in competitive decisionmaking for an interested party which is a party to the investigation. Involvement in "competitive decisionmaking" includes past, present, or likely future activities, associations, and relationships with an interested party which is a party to the investigation that involve the prospective authorized applicant's advise or participation in any of such party's decisions made in light of similar or corresponding information about a competitor (pricing, product design, etc.).

* * * * *

(b) *Administrative protection order.*

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(10) Acknowledge that breach of the administrative protective order may subject the authorized applicant to such sanctions or other actions as the Commission deems appropriate.

* * * * *

(d) *Commission responses to a breach of administrative protective order.* A breach of an administrative protective order may subject an offender to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, the offender or the party represented by the offender, denial of further access to business proprietary information in the current or any future investigations before the Commission, and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

* * * * *

(e) *Breach investigation procedure.* (1) The Commission shall determine whether any person has violated an administrative protective order, and may impose sanctions or other actions in accordance with paragraph (d) of this section. At any time within sixty (60) days of the later of the date on which the alleged violation occurred or, as determined by the Commission, could have been discovered through the exercise of reasonable and ordinary care, or the completion of an investigation conducted under subpart B or C of this part, the Commission may commence an investigation of any breach of an administrative protective order alleged to have occurred at any time during the pendency of the investigation, including all appeals, remands, and subsequent appeals. Whenever the Commission has reason to believe that a person may have breached an administrative protective order issued pursuant to this section, the Secretary shall issue a letter informing such person that the Commission has reason to believe a breach has occurred and that the person has a reasonable opportunity to present his views on whether a breach has occurred. If subsequently the Commission determines that a breach has occurred and that further investigation is warranted, the Secretary shall issue a letter informing such person of that determination and that the person has a reasonable opportunity to present his views on whether mitigating circumstances exist and on the appropriate sanction to be imposed, but no longer on whether a breach has occurred. Once such person has been afforded a reasonable opportunity to present his views, the Commission shall determine what sanction if any to impose.

* * * * *

(f) *Service.* (1) Any party filing written submissions which include business proprietary information to the Commission during an investigation shall at the same time serve complete copies of such submissions upon all authorized applicants specified on the list established by the Secretary pursuant to paragraph (a)(4) of this section, and, except as provided in § 207.3, a nonbusiness proprietary version on all other parties. All such submissions must be accompanied by a certificate attesting that complete copies of the submission have been properly served. In the event that a submission is filed before the Secretary's list is established, the document need not be accompanied by a certificate of service, but the submission shall be served within two (2) days of the establishment of the list and a certificate of service shall then be filed.

(2) A party may seek an exemption from the service requirement of paragraph (f)(1) of this section for particular business proprietary information by filing a request for exemption from disclosure in accordance with paragraph (g) of this section. The Secretary shall promptly respond to the request. If a request is granted, the Secretary shall accept the information into the record. The party shall file three versions of the submission containing the information in accordance with paragraph (g) of this section, and serve the submission in accordance with the requirements of § 207.3(b) and paragraph (f)(1) of this section, with the specific information as to which exemption from disclosure under administrative protective order has been granted redacted from the copies served. If a request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester.

* * * * *

(g) *Exemption from disclosure.* (1) *In general.* Any person may request exemption from the disclosure of business proprietary information under administrative protective order, whether the person desires to include such information in a petition filed under § 207.10, or any other submission to the Commission during the course of an investigation. Such a request shall only be granted if the Secretary finds that such information is privileged information, classified information, or specific information of a type for which there is a clear and compelling need to withhold from disclosure.

(2) *Request for exemption.* A request for exemption from disclosure must be filed with the Secretary in writing with the reasons therefor. At the same time as the request is filed, one copy of the business proprietary information in question must be lodged with the Secretary solely for the purpose of obtaining a determination as to the request. The business proprietary information for which exemption from

disclosure is sought shall remain the property of the requester, and shall not become or be incorporated into any agency record until such time as the request is granted. A request should, when possible, be filed two business days prior to the deadline, if any, for filing the document in which the information for which exemption from disclosure is sought is proposed to be included. The Secretary shall promptly notify the requester as to whether the request has been approved or denied.

(3) *Procedure if request is approved.* If the request is approved, the person shall file three versions of the submission containing the business proprietary information in question. One version shall contain all business proprietary information, bracketed in accordance with § 207.3(c), with the specific information as to which exemption from disclosure was granted enclosed in double brackets. This version shall have the following warning marked on every page: "BPI exempted from disclosure under APO enclosed in double brackets." The other two versions shall conform to and be filed in accordance with the requirements of § 207.3, except that the specific information as to which exemption from disclosure was granted shall be redacted from those versions of the submission.

(4) *Procedure if request is denied.* If the request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester.

5. Section 207.22 is revised to read as follows:

§ 207.22 Prehearing brief.

Each party who is an interested party shall submit to the Commission, no later than four (4) business days prior to the date of the hearings specified in the notice of investigation, a prehearing brief. Prehearing briefs shall be signed and shall include a table of contents. The prehearing brief should present a party's case concisely and shall, to the extent possible, refer to the record and include information and arguments which the party believes relevant to the subject matter of the Commission's determination under section 303, 705(b) or 735(b) of the Act. Any person not an interested party may submit a brief written statement of information pertinent to the investigation within the time specified for filing of prehearing briefs.

6. In § 207.23, paragraphs (a) and (b) are revised and paragraph (d) is added to read as follows:

§ 207.23 Hearing.

(a) *In general.* The Commission shall hold a hearing concerning an investigation before making a final determination under section 303, 705(b) of 735(b) of the Act.

(b) *Procedures.* Any hearing shall be conducted after notice published in the **Federal Register**. The hearing shall not be subject to the provisions of 5 U.S.C. chapter 5, subchapter II, or to section 702 of that title. Each party shall limit its presentation at the hearing to a summary of the information and arguments contained in its prehearing brief, an analysis of the information and arguments contained in the prehearing briefs described in § 207.22, and information not available at the time its prehearing brief was filed. Unless a portion of the hearing is closed, presentations at the hearing shall not include business proprietary information. Notwithstanding § 201.13(f) of this chapter, in connection with its presentation a party may file witness testimony with the Secretary no later than three (3) business days before the hearing. In the case of testimony to be presented at a closed session held in response to a request under § 207.23(a), confidential and non-confidential versions shall be filed in accordance with § 207.3. Any person not a party may make a brief oral statement of information pertinent to the investigation.

* * * * *

(d) *Closed sessions.* Upon a request filed by a party to the investigation no later than seven (7) days prior to the date of the hearing that identifies the subjects to be discussed, specifies the amount of time requested, and justifies the need for a closed session with respect to each subject to be discussed, the Commission may close a portion of a hearing to persons not authorized under § 207.7 to have access to business proprietary information in order to allow such party to address business proprietary information during the course of its presentation. In addition, during each hearing held in an investigation conducted under section 303, 705(b) or 735(b) of the Act, following the public presentation of the petitioner(s) and that of each panel of respondents, the Commission will, if it deems it appropriate, close the hearing to persons not authorized under § 207.7 to have access to business proprietary information in order to allow Commissioners to question parties and/or their representatives concerning matters involving business proprietary information.

By order of the Commission.

Issued: December 19, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–31511 Filed 12–27–94; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8585]

RIN 1545–AS00

Allocations Reflecting Built-in Gain or Loss on Property Contributed to a Partnership

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 704 of the Internal Revenue Code relating to the remedial allocation method with respect to property contributed by a partner to a partnership and to allocations with respect to securities and similar investments owned by a partnership. Changes to the applicable law were made by the Tax Reform Act of 1984 (the 1984 Act) and the Revenue Reconciliation Act of 1989 (the 1989 Act). The final regulations affect partnerships and their partners and provide guidance needed to comply with the applicable tax law.

EFFECTIVE DATE: These regulations are effective December 21, 1993.

FOR FURTHER INFORMATION CONTACT: Deborah Harrington at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

This document adds §§ 1.704–3(d), 1.704–3(e)(3) and 1.704–3(e)(4) to the Income Tax Regulations (26 CFR part 1) under sections 704(c)(1)(A) and 704(c)(3), removes existing §§ 1.704–3(e)(2)(iv) and 1.704–3(e)(2)(v), revises existing §§ 1.704–1(b)(1)(vi), 1.704–1(b)(2)(iv)(d)(3), 1.704–1(c), 1.704–3(a)(1), 1.704–3(a)(3)(i), and 1.704–3(e)(2)(iii), and removes § 1.704–3T of the Temporary Income Tax Regulations.

Background

On December 22, 1993, final regulations (TD 8500, 58 FR 67676) (the 1993 regulations) under section 704 relating to allocations with respect to property contributed by a partner to a partnership were published in the **Federal Register**. The 1993 regulations

implement section 704(c) as amended by the 1984 Act and the 1989 Act. The portions of the 1993 regulations relating to the remedial allocation method and allocations with respect to securities and similar investments owned by a partnership were reserved. The IRS and Treasury contemporaneously issued temporary regulations (TD 8501, 58 FR 67684) (the temporary regulations) addressing the issues reserved in the final regulations. A notice of proposed rulemaking (58 FR 67744) cross-referencing the temporary regulations was published in the **Federal Register** on the same day. Comments responding to the notice were received, and a public hearing was held on April 4, 1994. After considering the comments and the statements made at the hearing, the IRS and Treasury adopt the proposed regulations as revised by this Treasury decision and withdraw the temporary regulations. The IRS and Treasury also amend the 1993 regulations as described by this Treasury decision.

Explanation of Provisions

Remedial Allocation Method

The final regulations generally adopt the provisions of the proposed regulations with respect to the remedial allocation method of making allocations under section 704(c). Accordingly, under the final regulations, a partnership may eliminate ceiling rule distortions by making remedial allocations of income, gain, loss, or deduction to the noncontributing partners equal to the full amount of the limitation caused by the ceiling rule, and offsetting those allocations with remedial allocations of deduction, loss, gain, or income to the contributing partner. In response to comments, the final regulations emphasize that the remedial allocation method involves the creation of notional tax items by the partnership and is not dependent upon the actual tax items recognized by the partnership.

One comment questioned the Secretary's authority to issue regulations allowing partnerships to create notional tax items in order to make allocations under section 704(c). In enacting section 704(c), Congress gave the Secretary broad authority to permit allocations that correct ceiling rule distortions. See H.R. Rep. No. 98–432 (Part 2), 98th Cong., 2d Sess. 1209 (1984). Offering partnerships a voluntary method of correcting ceiling rule distortions by creating notional tax items is consistent with this congressional grant of authority.

One comment suggested that the final regulations adopt the remedial allocation method as a safe harbor method for making section 704(c) allocations. Another comment suggested that the remedial allocation method be a baseline for measuring whether the section 704(c) method used by a partnership has the effect of substantially reducing the present value of the aggregate tax liabilities of the partners for purposes of the anti-abuse rule set forth in § 1.704–3(a)(10).

The IRS and Treasury continue to believe it is appropriate to require that all allocation methods, including the remedial allocation method, be subject to the anti-abuse rule. There may be circumstances under which contributions of property could be made and the remedial allocation method adopted with a view to shifting tax consequences impermissibly. It would be inconsistent with the general scope of these regulations to prescribe a method of allocation that is always reasonable regardless of the facts and circumstances. Furthermore, the IRS and Treasury believe that it would be inappropriate to adopt the remedial allocation method as a baseline for measuring whether the partners' aggregate tax liability has been reduced. Such a baseline would make the remedial allocation method preeminent, undercutting its elective nature.

One comment suggested that the regulations require partnerships to elect the remedial allocation method in their partnership agreements. The comment did not specify any reason for imposing this requirement on partnerships.

The section 704(c) regulations generally allow partnerships to choose a reasonable section 704(c) method. The regulations only require adoption of an allocation method in the partnership agreement for those section 704(c) methods that have a significant potential for abuse. See §§ 1.704–3(c)(3)(ii) and 1.704–3(c)(3)(iii)(B) of the 1993 regulations. The use of the remedial allocation method can generally be determined from the partnership's books and records. Therefore, the final regulations do not require that the method be adopted in the partnership agreement.

The temporary and proposed regulations require that a partnership using the remedial allocation method recover the portion of its book basis in the property equal to its tax basis in the property at the time of contribution in the same manner as the tax basis is recovered. The remainder of the partnership's book basis in the property (the amount by which book basis exceeds adjusted tax basis) is recovered using any applicable recovery period and depreciation (or other cost recovery) method available to the partnership for newly purchased property placed in service at the time of contribution. The final regulations clarify that the recovery period and depreciation (or other cost recovery) method adopted by the partnership for this purpose must be one that is available for newly purchased property of the type contributed, including any applicable first-year conventions.

Under the temporary and proposed regulations, remedial allocations are reasonable only if they have the same effect on each partner's tax liability as the item limited by the ceiling rule. Some comments requested clarification of this provision.

In response to these comments, the final regulations provide that the tax attributes of remedial allocations of income, gain, loss, or deduction to noncontributing partners must be the same as the tax attributes of the items limited by the ceiling rule. The tax attributes of offsetting remedial allocations of income, gain, loss, or deduction to the contributing partner are determined by reference to the items limited by the ceiling rule. Thus, for example, if the ceiling rule limited item is loss from the sale of contributed property, the offsetting remedial allocation to the contributing partner must be gain from the sale of that property. If the ceiling rule limited item is depreciation or other cost recovery from the contributed property, the offsetting remedial allocation to the contributing partner must be income of the type produced (directly or indirectly) by that property.

Any partner level attributes are determined at the partner level. The tax attributes of a remedial allocation at the partner level are determined by treating the remedial allocation as if it were related to the same activity, investment, or business as the item limited by the ceiling rule. For instance, a remedial allocation of depreciation to a noncontributing partner will not be subject to section 469 (passive activity loss) limitations if the noncontributing partner materially participates in the activity in which the contributed property is used. However, the offsetting remedial allocation of income to the contributing partner will be treated as income from a passive activity if the contributing partner does not materially participate in the activity in which the contributed property is used. See section 469.

Several comments requested that the regulations clarify the effect of remedial allocations on other tax computations, such as the partnership's basis in the section 704(c) property to which the

allocation relates and the basis of the partner's partnership interest. The final regulations clarify that remedial allocations have the same effect on a partner's tax liability as other tax items actually recognized by the partnership and have the same effect on the adjusted tax basis of the partner's partnership interest.

The final regulations also clarify that, because remedial allocations to noncontributing partners and offsetting remedial allocations to the contributing partner net to zero at the partnership level, remedial allocations do not affect the partnership's computation of its taxable income under section 703. Remedial allocations also do not affect the partnership's adjusted tax basis in partnership property (and, consequently, do not affect the aggregate amount of depreciation recapture income recognized by the partnership on the sale of the property).

Some comments requested that the final regulations address the allocation of gain from section 704(c) property that is treated as ordinary income under sections 1245 or 1250 (depreciation recapture). One comment suggested that the regulations require partnerships to allocate depreciation recapture from section 704(c) property based on the partners' relative shares of depreciation or amortization from the property, rather than on their shares of gain or loss from the property. See §§ 1.1245–1(e)(2) and 1.1250–1(f).

The IRS and Treasury do not believe this issue is appropriately addressed in regulations issued under section 704(c); however, this issue is under review and consideration is being given to amending the regulations under sections 1245 and 1250 to incorporate the rule suggested by these comments. Additional comments on the proper allocation of depreciation recapture income by a partnership, both inside and outside of the section 704(c) context, are welcomed.

The temporary and proposed regulations provide that the IRS will not require a partnership to use the remedial allocation method described in § 1.704–3T(d). In response to a comment, the final regulations clarify that the IRS may not force a partnership to use any other method involving the creation of notional tax items.

Several comments requested that the final regulations clarify the interaction between the remedial allocation method and other Code provisions, notably sections 743, 752, and 754. The IRS and Treasury have determined that these issues would be better addressed in other guidance. To give the IRS and Treasury flexibility in addressing these issues in the future, the final regulations provide that the Commissioner may, by published guidance, prescribe adjustments to the remedial allocation method as necessary or appropriate. This guidance may, for example, prescribe adjustments to the remedial allocation method to prevent the duplication or omission of items of income or deduction or to reflect more clearly the partners' income or the income of a transferee of a partner.

Securities Aggregation

The frequency of capital account restatements under § 1.704–1(b)(2)(iv)(f) and the number of partnership assets may make it impractical for certain securities partnerships to make reverse section 704(c) allocations on an asset-by-asset basis. Therefore, the temporary and proposed regulations permit certain securities partnerships to aggregate gains and losses from securities or similar instruments when making reverse section 704(c) allocations. The temporary and proposed regulations define a securities partnership as one that: (1) is diversified as defined in section 851(b)(4), (2) has at least 90 percent of its non-cash assets in stock, securities, commodities, options, warrants, futures, or similar investments that are readily tradeable on an established securities market, (3) either is registered as a management company with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended (15 U.S.C. 80a) (the 1940 Act), or does not have 50 percent or more of its capital interests held at any time during the current partnership year by five or fewer unrelated persons, and (4) makes all of its allocations in proportion to the partners' relative book capital accounts (except for reasonable special allocations to a partner that provides management services).

The IRS and Treasury requested and received comments suggesting other definitions of securities partnerships. After considering these comments, the IRS and Treasury have determined that a more flexible definition of securities partnership should be adopted. Accordingly, under the final regulations, a securities partnership is a partnership that is either a management company or an investment partnership, and that makes all of its book allocations in proportion to the partners' relative book capital accounts (except for reasonable special allocations to a partner providing management services or investment advisory services). The final regulations define a management company as a partnership that is registered as a management company under the 1940 Act. The final regulations define an investment partnership as a partnership that, on the date of each capital account restatement, holds qualified financial assets constituting at least 90 percent of the fair market value of its non-cash assets and that reasonably expects, as of the end of the first taxable year in which the partnership adopts an aggregate approach for reverse section 704(c) allocations, to make revaluations of its qualified financial assets at least annually.

Some comments suggested that the regulations allow a securities partnership to aggregate gains and losses from all of its assets. The IRS and Treasury believe that it is not generally appropriate to allow a partnership to aggregate gains and losses from financial assets with gains and losses from other types of assets. The IRS and Treasury also believe that aggregation should generally be limited to financial assets that are easily valued.

Nevertheless, the IRS and Treasury recognize that some financial assets that are not readily tradeable on an established securities market may be easily valued. These financial assets are included in § 1.1092(d)–1 (defining actively traded property for purposes of the straddle rules). Accordingly, the final regulations permit securities partnerships to aggregate gains and losses from qualified financial assets, defined as any personal property (including stock) that is actively traded as defined in § 1.1092(d)–1, even if it is not readily tradeable on an established securities market.

There is less reason to limit aggregation to easily valued assets when the partnership is registered as a management company under the 1940 Act, because a management company's valuation of its assets is closely regulated by the Securities and Exchange Commission. Accordingly, the final regulations allow partnerships registered as management companies to aggregate gains and losses from stock, evidences of indebtedness, notional principal contracts, derivative financial instruments, options, forward or futures contracts, short positions, and similar financial instruments, whether or not actively traded.

In response to comments, the final regulations also clarify the treatment of tiered partnerships. Under the final regulations, a partnership interest is not a qualified financial asset. However, if a partnership (upper-tier partnership) holds an interest in a securities partnership (lower-tier partnership), the upper-tier partnership must treat its proportionate share of the lower-tier

partnership's assets as assets of the upper-tier partnership in determining whether the upper-tier partnership qualifies as an investment partnership. The final regulations also provide that, if the upper-tier partnership adopts an aggregate approach under the special rule for securities partnerships, the upper-tier partnership must aggregate the gains and losses from its directly held qualified financial assets with its distributive share of the gains and losses from the qualified financial assets of the lower-tier partnership.

The temporary and proposed regulations require that a securities partnership aggregate its gains separately from its losses. In response to comments, this requirement has been eliminated in the final regulations. Under the final regulations, partnerships may net book gains with book losses and may also net tax gains with tax losses when making reverse section 704(c) allocations so long as the partnership's aggregate approach is reasonable and does not violate the anti-abuse rule set forth in § 1.704–3(a)(10). This rule accords more with the overall flexibility of the section 704(c) regulations than does an outright prohibition of netting.

Two examples of aggregate approaches have been added to the regulations for purposes of illustrating the operation of the aggregation rules. Other aggregate approaches were suggested. Although those approaches may be reasonable in appropriate situations, they are not specifically described in the final regulations because they appear to be less common than those aggregate approaches that are described in the regulations.

Under the final regulations, the character and other tax attributes of gain or loss allocated to the partners must: (1) preserve the tax attributes of each item of gain or loss realized by the partnership; (2) be determined under an approach that is consistently applied; and (3) not be determined with a view to reducing substantially the present value of the partners' aggregate tax liability.

In response to a comment, the IRS and Treasury have added in the final regulations a transitional rule that allows securities partnerships to use any reasonable approach to coordinate revaluations occurring on or after the effective date of these regulations with revaluations occurring before the effective date of these regulations. This provision allows securities partnerships to net book gains and book losses from revaluations occurring before the effective date of these regulations with book gains and book losses from revaluations occurring on or after the effective date of these regulations in making allocations under these regulations.

The IRS and Treasury recognize that a partnership may, at some point, no longer qualify as a securities partnership. The final regulations make it clear that a securities partnership that adopts an aggregate approach and subsequently fails to qualify as a securities partnership is not required to disaggregate the book gain or book loss from qualified asset revaluations before the date of disqualification when making reverse section 704(c) allocations on or after the date of disqualification. Additional guidance relating to this issue may be issued in the future. The final regulations authorize the Commissioner to permit, by published guidance or by letter ruling, aggregation of gain and loss from qualified financial assets by partnerships not qualifying as securities partnerships. The IRS and Treasury welcome comments on whether and under what circumstances waivers of the qualification requirements should be granted.

Aggregation of Section 704(c) and Reverse Section 704(c) Allocations

Several comments requested that the final regulations allow partnerships that restate capital accounts pursuant to § 1.704–1(b)(2)(iv)(*f*) to aggregate their built-in gains and losses from contributed property with their built-in gains and losses from capital account restatements. Because this type of aggregation could lead to substantial distortions in the character and timing of the income or loss recognized by contributing partners, the final regulations do not specifically authorize this type of aggregation. The IRS and Treasury recognize, however, that there may be instances in which the likelihood of character and timing distortions is minimal and the burden of making section 704(c) allocations separate from reverse section 704(c) allocations is great. Accordingly, the final regulations authorize the Commissioner to permit, by letter ruling or in published guidance, aggregation of section 704(c) gains and losses with reverse section 704(c) gains and losses.

In response to another comment, the final regulations also authorize the Commissioner to permit, by letter ruling or in published guidance, aggregation of section 704(c) gains and losses from properties other than those specifically authorized in the regulations or from properties contributed by more than one partner.

Effective date

The provisions added by this Treasury decision apply to property contributed to a partnership and to restatements pursuant to § 1.704–1(b)(2)(iv)(*f*) on or after December 21, 1993. However, taxpayers may rely on the provisions of § 1.704–3T when making allocations with respect to properties contributed to a partnership and to restatements pursuant to § 1.704–1(b)(2)(iv)(*f*) on or after December 21, 1993 and before December 28, 1994.

General tax principles continue to apply to all transactions involving section 704(c) entered into before and after the effective date of the regulations under section 704(c). The IRS and Treasury are aware of certain transactions entered into after the proposed section 704(c) regulations were issued under § 1.704–3, but before the regulations were finalized, that were similar to the anti-abuse examples contained in the proposed regulations and that would violate the anti-abuse rule contained in the final section 704(c) regulations under § 1.704–3(a)(10) but for the effective date of those regulations. The IRS and Treasury believe that the validity of these transactions is subject to challenge under general tax principles and will apply these principles in reviewing such transactions.

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 final regulations is Deborah Harrington of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 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 as follows:

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

Section 1.704–3 also issued under 26 U.S.C. 704(c). * * *

§ 1.704 [Amended]

Par. 2. Section 1.704–1 is amended as follows:

1. Paragraph (b)(1)(vi) is amended by removing the reference "§ 1.704–3T(d)(2)" and adding "§ 1.704–3(d)(2)" in its place.

2. Paragraph (b)(2)(iv)(*d*)(*3*) is amended by removing the reference "§ 1.704–3T(d)(2)" and adding "§ 1.704–3(d)(2)" in its place.

3. Paragraph (c) is amended by removing the reference "See §§ 1.704–3 and 1.704–3T" and adding "See § 1.704–3" in its place.

* * * * *

Par. 3. Section 1.704–3 is amended as follows:

1. Paragraph (a)(1) is amended by removing the reference "§ 1.704–3T(d)" and adding "§ 1.704–3(d)" in its place.

2. Paragraph (a)(3)(i) is amended by removing the reference "§ 1.704–3T(d)(2)" and adding "§ 1.704–3(d)(2)" in its place.

3. Paragraph (d) is revised.

4. Paragraph (e)(2)(iii) is revised.

5. Paragraphs (e)(2)(iv) and (e)(2)(v) are removed.

6. Paragraph (e)(3) is revised and paragraph (e)(4) is added.

7. The additions and revisions read as follows:

§ 1.704–3 Contributed property.

* * * * *

(d) *Remedial allocation method*—(1) *In general.* A partnership may adopt the remedial allocation method described in this paragraph to eliminate distortions caused by the ceiling rule. A partnership adopting the remedial allocation method eliminates those distortions by creating remedial items and allocating those items to its partners. Under the remedial allocation method, the partnership first determines the amount of book items under paragraph (d)(2) of this section and the partners' distributive shares of these items under section 704(b). The partnership then allocates the corresponding tax items recognized by the partnership, if any, using the traditional method described in paragraph (b)(1) of this section. If the ceiling rule (as defined in paragraph (b)(1) of this section) causes the book allocation of an item to a noncontributing partner to differ from the tax allocation of the same item to the noncontributing partner, the partnership creates a remedial item of income, gain, loss, or deduction equal to the full amount of the difference and allocates it to the noncontributing partner. The partnership simultaneously creates an offsetting remedial item in an identical amount and allocates it to the contributing partner.

(2) *Determining the amount of book items.* Under the remedial allocation method, a partnership determines the amount of book items attributable to contributed property in the following manner rather than under the rules of § 1.704–1(b)(2)(iv)(*g*)(*3*). The portion of the partnership's book basis in the property equal to the adjusted tax basis in the property at the time of contribution is recovered in the same manner as the adjusted tax basis in the property is recovered (generally, over the property's remaining recovery period under section 168(i)(7) or other applicable Internal Revenue Code section). The remainder of the partnership's book basis in the property (the amount by which book basis exceeds adjusted tax basis) is recovered using any recovery period and depreciation (or other cost recovery) method (including first-year conventions) available to the partnership for newly purchased property (of the same type as the contributed property) that is placed in service at the time of contribution.

(3) *Type.* Remedial allocations of income, gain, loss, or deduction to the noncontributing partner have the same tax attributes as the tax item limited by the ceiling rule. The tax attributes of offsetting remedial allocations of income, gain, loss, or deduction to the contributing partner are determined by reference to the item limited by the ceiling rule. Thus, for example, if the ceiling rule limited item is loss from the sale of contributed property, the offsetting remedial allocation to the contributing partner must be gain from the sale of that property. Conversely, if the ceiling rule limited item is gain from the sale of contributed property, the offsetting remedial allocation to the contributing partner must be loss from the sale of that property. If the ceiling rule limited item is depreciation or other cost recovery from the contributed property, the offsetting remedial allocation to the contributing partner must be income of the type produced (directly or indirectly) by that property. Any partner level tax attributes are determined at the partner level. For example, if the ceiling rule limited item is depreciation from property used in a rental activity, the remedial allocation to the noncontributing partner is depreciation from property used in a rental activity and the offsetting remedial allocation to the contributing partner is ordinary income from that rental activity. Each partner then applies section 469 to the allocations as appropriate.

(4) *Effect of remedial items*—(i) *Effect on partnership.* Remedial items do not affect the partnership's computation of its taxable income under section 703 and do not affect the partnership's adjusted tax basis in partnership property.

(ii) *Effect on partners.* Remedial items are notional tax items created by the partnership solely for tax purposes and do not affect the partners' book capital accounts. Remedial items have the same effect as actual tax items on a partner's tax liability and on the partner's adjusted tax basis in the partnership interest.

(5) *Limitations on use of methods involving remedial allocations*—(i) *Limitation on taxpayers.* In the absence of published guidance, the remedial allocation method described in this paragraph (d) is the only reasonable section 704(c) method permitting the creation of notional tax items.

(ii) *Limitation on Internal Revenue Service.* In exercising its authority under paragraph (a)(10) of this section to make adjustments if a partnership's allocation method is not reasonable, the Internal Revenue Service will not require a partnership to use the remedial allocation method described in this paragraph (d) or any other method involving the creation of notional tax items.

(6) *Adjustments to application of method.* The Commissioner may, by published guidance, prescribe adjustments to the remedial allocation method under this paragraph (d) as necessary or appropriate. This guidance may, for example, prescribe adjustments to the remedial allocation method to prevent the duplication or omission of items of income or deduction or to reflect more clearly the partners' income or the income of a transferee of a partner.

(7) *Examples.* The following examples illustrate the principles of this paragraph (d).

Example 1. Remedial allocation method—(i) *Facts.* On January 1, L and M form partnership LM and agree that each will be allocated a 50 percent share of all partnership items. The partnership agreement provides

that LM will make allocations under section 704(c) using the remedial allocation method under this paragraph (d) and that the straight-line method will be used to recover excess book basis. L contributes depreciable property with an adjusted tax basis of $4,000 and a fair market value of $10,000. The property is depreciated using the straight-line method with a 10-year recovery period and has 4 years remaining on its recovery period. M contributes $10,000, which the partnership uses to purchase land. Except for the depreciation deductions, LM's expenses equal its income in each year of the 10 years commencing with the year the partnership is formed.

(ii) *Years 1 through 4.* Under the remedial allocation method of this paragraph (d), LM has book depreciation for each of its first 4 years of $1,600 [$1,000 ($4,000 adjusted tax basis divided by the 4-year remaining recovery period) plus $600 ($6,000 excess of book value over tax basis, divided by the *new* 10-year recovery period)]. (For the purpose of simplifying the example, the partnership's book depreciation is determined without regard to any first-year depreciation conventions.) Under the partnership agreement, L and M are each allocated 50 percent ($800) of the book depreciation. M is allocated $800 of tax depreciation and L is allocated the remaining $200 of tax depreciation ($1,000–$800). See paragraph (d)(1) of this section. No remedial allocations are made because the ceiling rule does not result in a book allocation of depreciation to M different from the tax allocation. The allocations result in capital accounts at the end of LM's first 4 years as follows:

	L		M	
	Book	Tax	Book	Tax
Initial contribution	$10,000	$4,000	$10,000	$10,000
Depreciation	<3,200>	<800>	<3,200>	<3,200>
	$6,800	$3,200	$6,800	$6,800

(iii) *Subsequent Years.* (A) For each of years 5 through 10, LM has $600 of book depreciation ($6,000 excess of initial book value over adjusted tax basis divided by the 10-year recovery period that commended in year 1), but no tax depreciation. Under the partnership agreement, the $600 of book depreciation is allocated equally to L and M. Because of the application of the ceiling rule in year 5, M would be allotted $300 of book depreciation, but no tax depreciation. Thus, at the end of LM's fifth year L's and M's book and tax capital accounts would be as follows:

	L		M	
	Book	Tax	Book	Tax
End of year 4	$6,800	$3,200	$6,800	$6,800
Depreciation	<300>		<300>	
	$6,500	$3,200	$6,500	$6,800

(B) Because the ceiling rule would cause an annual disparity of $300 between M's allocations of book and tax depreciation, LM must make remedial allocations of $300 of tax depreciation deductions to M under the remedial allocation method for each of years 5 through 10. LM must also make an offsetting remedial allocation to L of $300 of taxable income, which must be of the same type as income produced by the property. At the end of year 5, LM's capital accounts are as follows:

	L		M	
	Book	Tax	Book	Tax
End of year 4	$6,800	$3,200	$6,800	$6,800
Depreciation	<300>		<300>	
Remedial allocations		300		<300>
	$6,500	$3,500	$6,500	$6,500

(C) At the end of year 10, LM's capital accounts are as follows:

	L		M	
	Book	Tax	Book	Tax
End of year 5	$6,500	$3,500	$6,500	$6,500
Depreciation	<1,500>		<1,500>	
Remedial allocations		<1,500>		<1,500>
	$5,000	$5,000	$5,000	$5,000

Example 2. Remedial allocations on sale—(i) *Facts.* N and P form partnership NP and agree that each will be allocated a 50 percent share of all partnership items. The partnership agreement provides that NP will make allocations under section 704(c) using the remedial allocation method under this paragraph (d). N contributes Blackacre (land) with an adjusted tax basis of $4,000 and a fair market value of $10,000. Because N has a built-in gain of $6,000, Blackacre is section 704(c) property. P contributes Whiteacre (land) with an adjusted tax basis and fair market value of $10,000. At the end of NP's first year, NP sells Blackacre to Q for $9,000

and recognizes a capital gain of $5,000 ($9,000 amount realized less $4,000 adjusted tax basis) and a book loss of $1,000 ($9,000 amount realized less $10,000 book basis). NP has no other items of income, gain, loss, or deduction. If the ceiling rule were applied, N would be allocated the entire $5,000 of tax gain and N and P would each be allocated $500 of book loss. Thus, at the end of NP's first year N's and P's book and tax capital accounts would be as follows:

	N		P	
	Book	Tax	Book	Tax
Initial contribution	$10,000	$4,000	$10,000	$10,000
Sale of Blackacre	<500>	5,000	<500>	.....
	$9,500	$9,000	$9,500	$10,000

(ii) *Remedial allocation.* Because the ceiling rule would cause a disparity of $500 between P's allocation of book and tax loss, NP must make a remedial allocation of $500 of capital loss to P and an offsetting remedial allocation to N of an additional $500 of capital gain. These allocations result in capital accounts at the end of NP's first year as follows:

	N		P	
	Book	Tax	Book	Tax
Initial contribution	$10,000	$4,000	$10,000	$10,000
Sale of Blackacre	<500>	5,000	<500>	.....
Remedial allocations	.....	500	.....	<500>
	$9,500	$9,500	$9,500	$9,500

Example 3. Remedial allocation where built-in gain property sold for book and tax loss—(i) *Facts.* The facts are the same as in Example 2, except that at the end of NP's first year, NP sells Blackacre to Q for $3,000 and recognizes a capital loss of $1,000 ($3,000 amount realized less $4,000 adjusted tax basis) and a book loss of $7,000 ($3,000 amount realized less $10,000 book basis). If the ceiling rule were applied, P would be allocated the entire $1,000 of tax loss and N and P would each be allocated $3,500 of book loss. Thus, at the end of NP's first year, N's and P's book and tax capital accounts would be as follows:

	N		P	
	Book	Tax	Book	Tax
Initial contribution	$10,000	$4,000	$10,000	$10,000
Sale of Blackacre	<3,500>	0	<3,500>	<1,000>
	$6,500	$4,000	$6,500	$9,000

(ii) *Remedial allocation.* Because the ceiling rule would cause a disparity of $2,500 between P's allocation of book and tax loss on the sale of Blackacre, NP must make a remedial allocation of $2,500 of capital loss to P and an offsetting remedial allocation to N of $2,500 of capital gain. These allocations result in capital accounts at the end of NP's first year as follows:

	N		P	
	Book	Tax	Book	Tax
Initial contribution	$10,000	$4,000	$10,000	$10,000
Sale of Blackacre	<3,500>	0	<3,500>	<1,000>
Remedial Allocations	.....	2,500	.....	<2,500>
	$6,500	$6,500	$6,500	$6,500

(iii) *Subsequent Years.* (A) For each of years 5 through 10, LM has $600 of book depreciation ($6,000 excess of initial book value over adjusted tax basis divided by the 10-year recovery period that commenced in year 1), but no tax depreciation. Under the partnership agreement, the $600 of book depreciation is allocated equally to L and M. Because of the application of the ceiling rule in year 5, M would be allocated $300 of book depreciation, but no tax depreciation. Thus, at the end of LM's fifth year L's and M's book and tax capital accounts would be as follows:

(e) * * *

(2) * * *

(iii) *Inventory.* For partnerships that do not use a specific identification method of accounting, each item of inventory, other than qualified financial assets (as defined in paragraph (e)(3)(ii) of this section).

(3) *Special aggregation rule for securities partnerships*—(i) *General rule.* For purposes of making reverse section 704(c) allocations, a securities partnership may aggregate gains and losses from qualified financial assets using any reasonable approach that is consistent with the purpose of section 704(c). Notwithstanding paragraphs (a)(2) and (a)(6)(i) of this section, once a partnership adopts an aggregate approach, that partnership must apply the same aggregate approach to all of its qualified financial assets for all taxable years in which the partnership qualifies as a securities partnership. Paragraphs

(e)(3)(iv) and (e)(3)(v) of this section describe approaches for aggregating reverse section 704(c) gains and losses that are generally reasonable. Other approaches may be reasonable in appropriate circumstances. See, however, paragraph (a)(10) of this section, which describes the circumstances under which section 704(c) methods, including the aggregate approaches described in this paragraph (e)(3), are not reasonable. A partnership using an aggregate approach must separately account for any built-in gain or loss from contributed property.

(ii) *Qualified financial assets*—(A) *In general.* A qualified financial asset is any personal property (including stock) that is actively traded. Actively traded means actively traded as defined in § 1.1092(d)–1 (defining actively traded property for purposes of the straddle rules).

(B) *Management companies.* For a management company, qualified financial assets also include the following, even if not actively traded: shares of stock in a corporation; notes, bonds, debentures, or other evidences of indebtedness; interest rate, currency, or equity notional principal contracts; evidences of an interest in, or derivative financial instruments in, any security, currency, or commodity, including any option, forward or futures contract, or short position; or any similar financial instrument.

(C) *Partnership interests.* An interest in a partnership is not a qualified financial asset for purposes of this paragraph (e)(3)(ii). However, for purposes of this paragraph (e)(3), a partnership (upper-tier partnership) that holds an interest in a securities partnership (lower-tier partnership) must take into account the lower-tier partnership's assets and qualified financial assets as follows:

(*1*) In determining whether the upper-tier partnership qualifies as an investment partnership, the upper-tier partnership must treat its proportionate share of the lower-tier securities partnership's assets as assets of the upper-tier partnership; and

(*2*) If the upper-tier partnership adopts an aggregate approach under this paragraph (e)(3), the upper-tier partnership must aggregate the gains and losses from its directly held qualified financial assets with its distributive share of the gains and losses from the qualified financial assets of the lower-tier securities partnership.

(iii) *Securities partnership*—(A) *In general.* A partnership is a securities partnership if the partnership is either a management company or an investment partnership, and the partnership makes all of its book allocations in proportion to the partners' relative book capital accounts (except for reasonable special allocations to a partner that provides management services or investment advisory services to the partnership).

(B) *Definitions*—(*1*) *Management company.* A partnership is a management company if it is registered with the Securities and Exchange Commission as a management company under the Investment Company Act of 1940, as amended (15 U.S.C. 80a).

(*2*) *Investment partnership.* A partnership is an investment partnership if:

(*i*) On the date of each capital account restatement, the partnership holds qualified financial assets that constitute at least 90 percent of the fair market value of the partnership's non-cash assets; and

(*ii*) The partnership reasonably expects, as of the end of the first taxable year in which the partnership adopts an aggregate approach under this paragraph (e)(3), to make revaluations at least annually.

(iv) *Partial netting approach.* This paragraph (e)(3)(iv) describes the partial netting approach of making reverse section 704(c) allocations. See Example 1 of paragraph (e)(3)(ix) of this section for an illustration of the partial netting approach. To use the partial netting approach, the partnership must establish appropriate accounts for each partner for the purpose of taking into account each partner's share of the book gains and losses and determining each partner's share of the tax gains and losses. Under the partial netting approach, on the date of each capital account restatement, the partnership:

(A) Nets its book gains and book losses from qualified financial assets since the last capital account restatement and allocates the net amount to its partners;

(B) Separately aggregates all tax gains and all tax losses from qualified financial assets since the last capital account restatement; and

(C) Separately allocates the aggregate tax gain and aggregate tax loss to the partners in a manner that reduces the disparity between the book capital account balances and the tax capital account balances (book-tax disparities) of the individual partners.

(v) *Full netting approach.* This paragraph (e)(3)(v) describes the full netting approach of making reverse section 704(c) allocations on an aggregate basis. See Example 2 of paragraph (e)(3)(ix) of this section for an illustration of the full netting approach. To use the full netting approach, the partnership must establish appropriate accounts for each partner for the purpose of taking into account each partner's share of the book gains and losses and determining each partner's share of the tax gains and losses. Under the full netting approach, on the date of each capital account restatement, the partnership:

(A) Nets its book gains and book losses from qualified financial assets since the last capital account restatement and allocates the net amount to its partners;

(B) Nets tax gains and tax losses from qualified financial assets since the last capital account restatement; and

(C) Allocates the net tax gain (or net tax loss) to the partners in a manner that reduces the book-tax disparities of the individual partners.

(vi) *Type of tax gain or loss.* The character and other tax attributes of gain or loss allocated to the partners under this paragraph (e)(3) must:

(A) Preserve the tax attributes of each item of gain or loss realized by the partnership;

(B) Be determined under an approach that is consistently applied; and

(C) Not be determined with a view to reducing substantially the present value of the partners' aggregate tax liability.

(vii) *Disqualified securities partnerships.* A securities partnership that adopts an aggregate approach under this paragraph (e)(3) and subsequently fails to qualify as a securities partnership must make reverse section 704(c) allocations on an asset-by-asset basis after the date of disqualification. The partnership, however, is not required to disaggregate the book gain or book loss from qualified asset revaluations before the date of disqualification when making reverse section 704(c) allocations on or after the date of disqualification.

(viii) *Transitional rule for qualified financial assets revalued after effective date.* A securities partnership revaluing its qualified financial assets pursuant to § 1.704–1(b)(2)(iv)(*f*) on or after the effective date of this section may use any reasonable approach to coordinate with revaluations that occurred prior to the effective date of this section.

(ix) *Examples.* The following examples illustrate the principles of this paragraph (e)(3).

Example 1. Operation of the partial netting approach—(i) *Facts.* Two regulated investment companies, X and Y, each contribute $150,000 in cash to form PRS, a partnership that registers as a management company. The partnership agreement provides that book items will be allocated in accordance with the partners' relative book capital accounts, that book capital accounts

will be adjusted to reflect daily revaluations of property pursuant to § 1.704–1(b)(2)(iv)(*f*)(5)(*iii*), and that reverse section 704(c) allocations will be made using the partial netting approach described in paragraph (e)(3)(iv) of this section. X and Y each have an initial book capital account of $150,000. In addition, the partnership establishes for each of X and Y a revaluation account with a beginning balance of $0. On Day 1, PRS buys Stock 1, Stock 2, and Stock 3 for $100,000 each. On Day 2, Stock 1 increases in value from $100,000 to $102,000, Stock 2 increases in value from $100,000 to $105,000, and Stock 3 declines in value from $100,000 to $98,000. At the end of Day 2, Z, a regulated investment company, joins PRS by contributing $152,500 in cash for a one-third interest in the partnership [$152,500 divided by $300,000 (initial values of stock) + $5,000 (net gain at end of Day 2)+ $152,500]. PRS uses this cash to purchase Stock 4. PRS establishes a revaluation account for Z with a $0 beginning balance. As of the close of Day 3, Stock 1 increases in value from $102,000 to $105,000, and Stocks 2, 3, and 4 decrease in value from $105,000 to $102,000, from $98,000 to $96,000, and from $152,500 to $151,500, respectively. At the end of Day 3, PRS sells Stocks 2 and 3.

(ii) *Book allocations—Day 2.* At the end of Day 2, PRS revalues the partnership's qualified financial assets and increases X's and Y's book capital accounts by each partner's 50 percent share of the $5,000 ($2,000 + $5,000 − $2,000) net increase in the value of the partnership's assets during Day 2. PRS increases X's and Y's respective revaluation account balances by $2,500 each to reflect the amount by which each partner's book capital account increased on Day 2. Z's capital account is not affected because Z did not join PRS until the end of Day 2. At the beginning of Day 3, the partnership's accounts are as follows:

	Stock 1	Stock 2	Stock 3	Stock 4
Opening Balance	$100,000	$100,000	$100,000	.....
Day 2 Adjustment	2,000	5,000	(2,000)	.....
Total	$102,000	$105,000	$98,000	$152,500

	X		
	Book	Tax	Revaluation account
Opening Balance	$150,000	$150,000	0
Day 2 Adjustment	2,500	0	$2,500
Closing Balance	$152,500	$150,000	$2,500

	Y		
	Book	Tax	Revaluation account
Opening Balance	$150,000	$150,000	0
Day 2 Adjustment	2,500	0	$2,500
Closing balance	$152,500	$150,000	$2,500

	Z		
	Book	Tax	Revaluation account
Opening Balance	.....	.....	.....
Day 2 Adjustment	.....	.....	.....
Closing Balance	$152,500	$152,500	$0

(iii) *Book and tax allocations—Day 3.* At the end of Day 3, PRS decresases the book capital accounts of X, Y, and Z by $1,000 to reflect each partner's share of the $3,000 ($3,000—$3,000—$2,000—$1,000) net decrease in the value of the partnership's qualified financial assets. PRS also reduces each partner's revaluation account balance by $1,000. Accordingly, X's and Y's revaluation account balances are reduced to $1,500 each and Z's revaulation account balance is ($1,000). PRS then separately allocates the tax gain from the sale of Stock 2 and the loss from the sale of Stock 3. The $2,000 of tax gain recognized on the sale of Stock 2 ($102,000—$100,000) is allocated among the partners with positive revaluation account balances in accordance with the relative balances of those revaluation accounts. X's and Y's revaluation accounts have equal positive balances; thus, PRS allocates $1,000 of the gain from the sale of Stock 2 to X and $1,000 of that gain to Y. PRS allocates none of the gain from the sale to Z because Z's revaluation account balance is negative. The $4,000 of tax loss recognized from the sale of Stock 3 ($96,000—$100,000) is allocated first to the partners with negative revaluation account balances to the extent of those balances. Because Z is the only partner with a negative revaluation account balance, the tax loss is allocated first to Z to the extent of Z's ($1,000) balance. The remaining $3,000 of tax loss is allocated among the partners in accordance with their distributive shares of the loss. Accordingly, PRS allocates $1,000 of tax loss from the sale of Stock 3 to each of X and Y. PRS also allocates an additional $1,000 of the tax loss to Z, so that Z's total share of the tax loss from the sale of Stock 3 is $2,000. PRS then reduces each partner's revaluation account balance by the amount of any tax gain allocated to that partner and increases each partner's revaluation account balance by the amount of any tax loss allocated to that partner. At the beginning of Day 4, the partnership's accounts are as follows:

	Stock 1	Stock 2	Stock 3	Stock 4
Opening Balance	$100,000	$100,000	$100,000	$152,500
Day 2 Adjustment	2,000	5,000	(2,000)	.....
Day 3 Adjustment	$3,000	(3,000)	(2,000)	(1,000)
Total	$105,000	$102,000	$96,000	$151,500

	X and Y		
	Book	Tax	Revaluation account
Opening Balance	$150,000	$150,000	0
Day 2 Adjustment	2,500	0	$2,500
Day 3 Adjustment	(1,000)	0	(1,000)

	X and Y		
	Book	Tax	Revaluation account
Total	$151,500	$150,000	$1,500
Gain from Stock 2	0	$1,000	(1,000)
Loss from Stock 3	0	($1,000)	1,000
Closing Balance	$151,500	$150,000	$1,500

	Z		
	Book	Tax	Revaluation account
Opening Balance	$151,500	$152,500	0
Day 3 Adjustment	(1,000)	0	($1,000)
Total	$151,500	$152,500	($1,000)
Gain from Stock 2	0	0	0
Loss from Stock 3	0	(2,000)	2,000
Closing Balance	$151,500	$150,500	$1,000

Example 2. Operation of the full netting approach—(i) *Facts.* The facts are the same as in Example 1, except that the partnership agreement provides that PRS will make reverse section 704(c) allocations using the full netting approach described in paragraph (e)(3)(v) of this section.

(ii) *Book allocations—Days 2 and 3.* PRS allocates its book gains and losses in the manner described in paragraphs (ii) and (iii) of Example 1 (the partial netting approach). Thus, at the end of Day 2, PRS increases the book capital accounts of X and Y by $2,500 to reflect the appreciation in the parntership's assets from the close of Day 1 to the close of Day 2 and records that increase in the revaluation account created for each partner. At the end of Day 3, PRS decreases the book capital accounts of X, Y, and Z by $1,000 to reflect each partner's share of the decline in value of the partnership's assets from Day 2 to Day 3 and reduces each partner's revaluation account by a corresponding amount.

(iii) *Tax allocations—Day 3.* After making the book adjustments described in the previous paragraph, PRS allocates its net tax gain (or net tax loss) from its sales of qualified financial assets during Day 3. To do so, PRS first determines its net tax gain (or net tax loss) recognized from its sales of qualified financial assets for the day. There is a $2,000 net tax loss ($2,000 gain from the sale of Stock 2 less $4,000 loss from the sale of Stock 3) on the sale of PRS's qualified financial assets. Because Z is the only partner with a negative revaluation account balance, the partnership's net tax loss is allocated first to Z to the extent of Z's ($1,000) revaluation account balance. The remaining net tax loss is allocated among the partners in accoradnce with their distributive shares of loss. Thus, PRS allocates $333.33 of the $2,000 net tax loss to each of X and Y. PRS also allocates an additional $333.33 of the net tax loss to Z, so that the total net tax loss allocation to Z is $1,333.33. PRS then increases each partner's revaluation account balance by the amount of net tax loss allocated to that partner. At the beginning of Day 4, the partnership's accounts are as follows:

	Stock 1	Stock 2	Stock 3	Stock 4
Opening Balance	$100,000	$100,000	$100,000	$152,500
Day 2 Adjustment	2,000	5,000	(2,000)	
Day 3 Adjustment	3,000	(3,000)	(2,000)	($1,000)
Total	$105,000	$102,000	$96,000	$151,500

	Z and Y		
	Book	Tax	Revaluation account
Opening Balance	$150,000	$150,500	0
Day 2 Adjustment	$2,500	0	$2,500
Day 3 Adjustment	(1,000)	0	(1,000)
Total	$151,500	$150,000	$1,500
Net Tax Loss-Stocks 2 & 3	0	(333)	333
Closing Balance	$151,500	$149,667	$1,833

	Z		
	Book	Tax	Revaluation account
Opening Balance	$152,500	$152,500	0
Day 3 Adjustment	(1,000)	0	($1,000)

	Z		
	Book	Tax	Revaluation account
Total	$151,500	$152,500	($1,000)
Net Tax Loss-Stocks 2 & 3	0	(1,333)	1,333
Closing Balance	$151,500	$151,167	$333

(4) *Aggregation as permitted by the Commissioner.* The Commissioner may, by published guidance or by letter ruling, permit:

(i) Aggregation of properties other than those described in paragraphs (e)(2) and (e)(3) of this section;

(ii) Partnerships and partners not described in paragraph (e)(3) of this section to aggregate gain and loss from qualified financial assets; and

(iii) Aggregation of qualified financial assets for purposes of making section 704(c) allocations in the same manner as that described in paragraph (e)(3) of this section.

* * * * *

§ 1.704–3T [Removed]

Par. 4. Section 1.704–3T is removed.

Dated: December 13, 1994.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved:

Leslie Samuels,

Assistant Secretary of the Treasury.

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DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Controlling Drug Abuse by Federal Parolees

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending its regulations in order to implement a statutory amendment to 18 U.S.C. 4209 (1976) contained in the Violent Crime and Law Enforcement Act of 1994, Public Law 103–322 (September 13, 1994). Congress added new provisions that require mandatory drug testing for parolees and that prohibit parolees from using controlled substances. The new provisions also require confirmation of a positive drug test before parole can be revoked, and permit the Parole Commission to refrain from instituting parole revocation proceedings when a parolee fails a drug test so long as other appropriate measures, such as treatment programs, are available. These statutory provisions are not expected to require a substantial change in current Parole Commission policy and practice.

EFFECTIVE DATE: January 27, 1995.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: In Section 20414(d) of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322 (September 13, 1994), Congress added new language to 18 U.S.C. § 4209(a). This language pertains exclusively to offenders who are (or will be) serving sentences for crimes committed prior to November 1, 1987. 18 U.S.C. 4209 (1976) pertains to the conditions and limitations which the Parole Commission is authorized to impose on prisoners who are released to complete their sentences on parole.

The amendment to 18 U.S.C. 4209(a) which appears in the VCCLEA reads as follows:

> In every case, the Commission shall also impose as a condition of parole that the parolee pass a drug test prior to release and refrain from any unlawful use of a controlled substance and submit to at least 2 periodic drug tests (as determined by the Commission) for use of a controlled substance. The condition stated in the preceding sentence may be ameliorated or suspended by the Commission for any individual parolee if it determines that there is good cause for doing so. The results of a drug test administered in accordance with the provisions of the preceding sentence shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The Commission shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 4214(f) when considering any action against a defendant who fails a drug test.

The net effect of the statutory amendment is:

(a) To require mandatory drug testing for every parolee unless the Commission finds good cause to suspend that requirement;

(b) To require the Commission to prohibit the use of controlled substances by parolees;

(c) To require confirmation of a positive drug test before parole can be revoked; and

(d) To require the Commission to institute a revocation proceeding against a parolee who fails a drug test unless (1) other appropriate measures are available, and (2) the Sentencing Commission's guidelines do not provide otherwise.

After a review of its current regulations and practices with regard to drug testing for parolees, and its parole revocation policy in the case of parolees who abuse drugs, the Commission has concluded that the VCCLEA will not require any significant changes in the way federal parolees are supervised and sanctioned for controlled substance abuse. The Parole Commission currently follows a "zero tolerance" policy that prohibits drug use, and emphasizes the need for drug-addicted parolees to modify their behavior through appropriate treatment or face revocation of parole and return to prison under 18 U.S.C. 4214. The following amendments to 28 CFR 2.40 are ordered, however, for the purpose of conforming the Commission's regulations to the requirements and language of the VCCLEA. The amended version of 28 CFR 2.40 will apply to all parolees who presently are, or will be, under parole supervision pursuant to 18 U.S.C. 4209.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a significant regulatory action for the

purposes of Executive Order 12866, and the rule has therefore not been reviewed by the Office of Management and Budget. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, probation and parole, prisoners.

The Final Rule

Accordingly, the U.S. Parole Commission makes the following amendments to 28 CFR Part 2:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.40 is amended by adding the following language to paragraph (R):

§ 2.40 Conditions of release.

* * * * *

(R)* * * When considering what action to take with regard to a parolee who fails a drug test, the Commission shall consider appropriate alternatives to revocation pursuant to 18 U.S.C. 4209(a). In no case shall parole be revoked upon the basis of a single, unconfirmed positive drug test that is challenged by the parolee, without other violations having been found to justify such revocation.

* * * * *

3. Section 2.40 is amended at paragraph (l)(2) by substituting the words "which shall include at least two periodic tests" for the words "which may include testing", and by adding the following language:

§ 2.40 Conditions of release.

* * * * *

(l)(1) * * *

(2) * * * A decision by the Commission not to impose this special condition shall constitute good cause for suspension of the drug testing requirements of 18 U.S.C. 4209(a). In the event such condition is imposed prior to an eligible prisoner's release from prison, any grant of parole or reparole shall be contingent upon the prisoner passing all pre-release drug tests administered by the U.S. Bureau of Prisons.

Dated: December 19, 1994.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 94–31976 Filed 12–27–94; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2509

[Interpretive Bulletin 94–3]

Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Interpretive Bulletin.

SUMMARY: This document provides guidance on in-kind contributions to employee benefit plans under the Employee Retirement Income Security Act of 1974 (ERISA) and plans under section 4975 of the Internal Revenue Code (the Code). The Supreme Court addressed certain in-kind contributions to defined benefit pensions plans in *Commissioner of Internal Revenue v. Keystone Consolidated Industries, Inc.*, ____ U.S. ____, 113 S. Ct. 2006 (1993). The Court in *Keystone* held that an employer's contribution of unencumbered real properties to a tax-qualified defined benefit pension plan in satisfaction of the employer's funding obligation is a "sale or exchange" prohibited by section 4975(c)(1)(A) of the Code Section 406(a)(1)(A) of ERISA is a parallel provision to section 4975(c)(1)(A) of the Code but applies to a different group of plans. This document sets forth the Department's view that in-kind contributions (i.e., contributions of any property other than cash) that reduce an obligation to the plan constitute prohibited transactions under section 4975(c)(1)(A) of the Code and section 406(a)(1)(A) of ERISA.

EFFECTIVE DATE: The guidance announced in this bulletin is effective January 1, 1975.

FOR FURTHER INFORMATION CONTACT: Cary L. Gilbert, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Rm N–5669, 200 Constitution Ave., N.W., Washington, D.C. 20210, telephone (202) 219–8671. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In order to provide a concise and ready reference to its interpretation of ERISA, the Department of Labor publishes its interpretive bulletins in the Rules and Regulations sections of the **Federal Register**.

Published in this issue of **Federal Register** is ERISA Interpretive Bulletin 94–3, which provides guidance related to in-kind contributions to employee benefit plans under ERISA and plans under section 4975 of the Code. The Department is publishing this Interpretive Bulletin because it believes there is a need for further guidance on this subject.

(Sec. 505, Pub.L. 93–406, 88 Stat. 894 (29 U.S.C. 1135)).

Background

Prior to the enactment of ERISA, transactions between plans and their sponsors were governed by an "arms-length" standard of conduct. The arms-length standard required substantial enforcement efforts and resulted in sporadic and uncertain effectiveness. As the Court noted in *Keystone*, the arms-length standard permitted abuses such as the sponsor's sale of property to the plan at an inflated price or the sponsor's satisfaction of a funding obligation by contribution of property that was overvalued or nonliquid.

Congress' response to these abuses included the enactment of section 406(a)(1)(A) of ERISA, which prohibits a fiduciary of an employee benefit plan covered by part 4 of Title I of ERISA from causing the plan to engage in any transaction that the fiduciary knows or should know constitutes a direct or indirect sale or exchange of any property between the plan and a "party in interest," including the sponsoring employer. To further discourage such transactions, Congress also enacted section 4975(c)(1)(A) of the Code. Section 4975 imposes a two-tier excise tax on "disqualified persons," including plan sponsors, who engage, *inter alia*, in any direct or indirect sale to, or exchange of any property with, a plan.[1]

In *Keystone*, the Supreme Court resolved a conflict between two federal courts of appeals as to whether in-kind contributions to a tax-qualified defined benefit pension plan are considered prohibited transactions under section 4975(c)(1)(A) of the Code. The Court held that an employer's contribution of unencumbered real properties to a tax-qualified defined benefit pension plan made to satisfy the employer's funding obligation is a "sale or exchange"

[1] The term "plan" for purposes of section 4975 of the Code, as defined in section 2975(e)(1), is essentially restricted to plans qualified under section 401(a) or described in section 403(a) of the Code or an individual retirement account or annuity described in sections 408(a) or 408(b) of the Code. ERISA section 406 applies to employee pension benefit plans as defined by section 3(2) of ERISA, as well as employee welfare benefit plans as defined by section 3(1) of ERISA. In addition, section 401(a) of ERISA, and section 4975(g) of the Code specifically exclude certain types of plans from the application of ERISA section 406 and Code section 4975, respectively.

prohibited by section 4975(c)(1)(A) of the Code.

The Court in *Keystone* did not expressly address in-knd contributions to plans other than defined benefit pension plans or in-kind contributions to defined benefit pension plans in excess of amounts necessary to reduce the sponsor's funding obligation for the year in which the in-kind contribution is made.[2] Thus, in addition to explaining the Department's view of the holding of the Court in *Keystone*, this interpretive bulletin sets forth the Department's position with regard to in-kind contributions to plans other than defined benefit pension plans and to in-kind contributions that are in excess of the statutory minimum funding obligations of section 302 of ERISA and section 412 of the Code.

Consistent with existing Departmental guidance,[3] the interpretive bulletin provides that in-kind contributions to defined contribution pension plans and to welfare benefit plans are prohibited under section 406(a)(1)(A) of ERISA (and with respect to defined contribution pension plans under section 4975(c)(1)(A) of the code) if they reduce an obligation to make a contribution that is measured in terms of cash amounts, unless a statutory or administrative exemption under section 408 of ERISA (or section 4975(c)(2) or (d) of the Code) applies. As an illustration, the interpretive bulletin provides an example of a profit sharing plan under which the employer is required to make annual contributions "in cash or in kind" equal to a given percentage of the employer's net profit for the year. In this example an in-kind contribution would constitute a prohibited transaction in the absence of an exemption because the amount of the contribution obligation is measured in terms of cash amounts (a percentage of profits) even through the terms of the plan purport to permit in-kind contributions.

Although this general rule also applies to defined benefit pension plans under both ERISA and the Code, the special nature of the funding requirements of such plans has led the Department to conclude that additional guidance would be useful especially with respect to in-kind contributions that are in excess of amounts needed to satisfy the plan's funding requirements for the plan year in which the contribution is made. The amount of an employer's contribution to a defined benefit pension plan is credited to the plan's funding standard account under section 302(b) of ERISA and section 412(b) of the Code. A credit not needed to reduce the plan's accumulated funding deficiency (as defined in section 302(a) of ERISA and section 412(a) of the Code) to zero in the plan year in which the contribution is made is carried over for use in the following year. The amount of the credit is fixed at the time of the contribution. Thus, as explained in the interpretive bulletin, it is the Department's position that because an in-kind contribution is credited to the plan's funding standard account, it would be a prohibited transaction in the absence of an applicable exemption.

Finally, the interpretive bulletin affirms that the decision whether or not to accept a contribution is a fiduciary decision subject to the fiduciary standards of section 404 of ERISA.

List of Subjects in 29 CFR Part 2509

Employment benefit plans, Pension and Welfare Plans.

For the reasons set forth in the preamble, Part 2509 of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2509—INTERPRETIVE BULLETINS RELATING TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

1. The authority citation for Part 2509 continues to read as follows:

Authority: 29 U.S.C. 1135. Section 2509.75–1 is also issued under 29 U.S.C. 1114. Sections 2509.75–1 and 2509.75–2 are also issued under 29 U.S.C. 1052, 1053, 1054. Secretary of Labor's Order No. 1–87 (52 FR 13139).

2. Part 2509 is amended by adding a new § 2509.94–3 to read as follows:

§ 2509.94–3 Interpretive Bulletin relating to in-kind contributions to employee benefit plans.

(a) *General.* This bulletin sets forth the views of the Department of Labor (the Department) concerning in-kind contributions (*i.e.*, contributions of property other than cash) in satisfaction of an obligation to contribute to an employee benefit plan to which part 4 of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) or a plan to which section 4975 of the Internal Revenue Code (the Code) applies. (For purposes of this document the term "plan" shall refer to either or both types of such entities as appropriate). Section 406(a)(1)(A) of ERISA provides that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction if the fiduciary knows or should know that the transaction constitutes a direct or indirect sale or exchange of any property between a plan and a "party in interest" as defined in section 3(14) of ERISA. The Code imposes a two-tier excise tax under section 4975(c)(1)(A) an any direct or indirect sale or exchange of any property between a plan and a "disqualified person" as defined in section 4975(e)(2) of the Code. An employer or employee organization that maintains a plan is included within the definitions of "party in interest" and "disqualified person."[1]

In *Commissioner of Internal Revenue v. Keystone Consolidated Industries, Inc.*, ____ U.S. ____, 113 S. Ct. 2006 (1993), the Supreme Court held that an employer's contribution of unencumbered real property to a tax-qualified defined benefit pension plan was a sale or exchange prohibited under section 4975 of the Code where the stated fair market value of the property was credited against the employer's obligation to the defined benefit pension plan. The parties stipulated that the property was contributed to the plan free of encumbrances and the stated fair market value of the property was not challenged. 113 S. Ct. at 2009. In reaching its holding the Court construed section 4975(f)(3) of the Code (and therefore section 406(c) of ERISA), regarding transfers of encumbered property, not as a limitation but rather as extending the reach of section 4975(c)(1)(A) of the Code (and thus section 406(a)(1)(A) of ERISA) to include contributions of encumbered property that do not satisfy funding obligations. *Id.* at 2013. Accordingly, the Court concluded that the contribution of unencumbered property was prohibited under section 4975(c)(1)(A) of the Code (and thus section 406(a)(1)(A) of ERISA) as "at least both an indirect type of sale and a form of exchange, since the property is exchanged for diminution of

[2] In footnote 2 of the *Keystone* opinion, the Court posited an example of property being contributed by an employer with no outstanding funding obligation to a pension plan to reward its employees for an especially productive year of service. In the Department's view, the dicta in footnote 2 of the Court's opinion should be read as a reference to in-kind contributions to a defined contribution pension plan that is not subject to the minimum funding requirements of section 302 of ERISA or section 412 of the Code.

[3] DOL Advisory Opinion No. 90–05A (Mar. 29, 1990) (in-kind contribution to an employee stock ownership plan).

[1] Under Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), the authority of the Secretary of the Treasury to issue rulings under the prohibited transactions provisions of section 4975 of the Code has been transferred, with certain exceptions not here relevant, to the Secretary of Labor. Except with respect to the types of plans covered, the prohibited transaction provisions of section 406 of ERISA generally parallel the prohibited transaction of provisions of section 4975 of the Code.

the employer's funding obligation." 113 S. Ct. at 2012.

(b) *Defined benefit plans.* Consistent with the reasoning of the Supreme Court in *Keystone,* because an employer's or plan sponsor's in-kind contribution to a defined benefit pension plan is credited to the plan's funding standard account it would constitute a transfer to reduce an obligation of the sponsor or employer to the plan. Therefore, in the absence of an applicable exemption, such a contribution would be prohibited under section 406(a)(1)(A) of ERISA and section 4975(c)(1)(A) of the Code. Such an in-kind contribution would constitute a prohibited transaction even if the value of the contribution is in excess of the sponsor's or employer's funding obligation for the plan year in which the contribution is made and thus is not used to reduce the plan's accumulated funding deficiency for that plan year because the contribution would result in a credit against funding obligations which might arise in the future.

(c) *Defined contribution and welfare plans.* In the context of defined contribution pension plans and welfare plans, it is the view of the Department that an in-kind contribution to a plan that reduces an obligation of a plan sponsor or employer to make a contribution measured in terms of cash amounts would constitute a prohibited transaction under section 406(a)(1)(A) of ERISA (and section 4975(c)(1)(A) of the Code) unless a statutory or administrative exemption under section 408 of ERISA (or sections 4975(c)(2) or (d) of the Code) applies. For example, if a profit sharing plan required the employer to make annual contributions "in cash or in kind" equal to a given percentage of the employer's net profits for the year, an in-kind contribution used to reduce this obligation would constitute a prohibited transaction in the absence of an exemption because the amount of the contribution obligation is measured in terms of cash amounts (a percentage of profits) even though the terms of the plan purport to permit in-kind contributions.

Conversely, a transfer of unencumbered property to a welfare benefit plan that does not relieve the sponsor or employer of any present or future obligation to make a contribution that is measured in terms of cash amounts would not constitute a prohibited transaction under section 406(a)(1)(A) of ERISA or section 4975(c)(1)(A) of the Code. The same principles apply to defined contribution plans that are not subject to the minimum funding requirements of section 302 of ERISA or section 412 of the Code. For example, where a profit sharing or stock bonus plan, by its terms, is funded solely at the discretion of the sponsoring employer, and the employer is not otherwise obligated to make a contribution measured in terms of cash amounts, a contribution of unencumbered real property would not be a prohibited sale or exchange between the plan and the employer. If, however, the same employer had made an enforceable promise to make a contribution measured in terms of cash amounts to the plan, a subsequent contribution of unencumbered real property made to offset such an obligation would be a prohibited sale or exchange.

(d) *Fiduciary standards.* Independent of the application of the prohibited transaction provisions, fiduciaries of plans covered by part 4 of Title I of ERISA must determine that acceptance of an in-kind contribution is consistent with ERISA's general standards of fiduciary conduct. It is the view of the Department that acceptance of an in-kind contribution is a fiduciary act subject to section 404 of ERISA. In this regard, sections 406(a)(1)(A) and (B) of ERISA require that fiduciaries discharge their duties to a plan solely in the interests of the participants and beneficiaries, for the exclusive purpose of providing benefits and defraying reasonable administrative expenses, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. In addition, section 406(a)(1)(C) requires generally that fiduciaries diversify plan assets so as to minimize the risk of large losses. Accordingly, the fiduciaries of a plan must act "prudently," "solely in the interest" of the plan's participants and beneficiaries and with a view to the need to diversify plan assets when deciding whether to accept in-kind contributions. If accepting an in-kind contribution is not "prudent," not "solely in the interest" of the participants and beneficiaries of the plan, or would result in an improper lack of diversification of plan assets, the responsible fiduciaries of the plan would be liable for any losses resulting from such a breach of fiduciary responsibility, even if a contribution in kind does not constitute a prohibited transaction under section 406 of ERISA. In this regard, a fiduciary should consider any liabilities appurtenant to the in-kind contribution to which the plan would be exposed as a result of acceptance of the contribution.

Signed at Washington, DC, this 21st day of December, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor

[FR Doc. 94–31845 Filed 12–27–94; 8:45 am]

BILLING CODE 4510–29–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[MS01; FRL–5082–8]

Clean Air Act Final Full Approval Of 40 CFR Part 70 Operating Permits Program; State of Mississippi

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final Full Approval.

SUMMARY: The EPA is promulgatring full approval of the Operating Permits Program submitted by the State of Mississippi for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: January 27, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE, Atlanta, GA 30365, 3rd floor, Tower Building. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Title V Program Development Team, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, GA 30365, (404) 347–2864.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")), and implementing regulations at 40 Code of Federal Regulations (CFR) Part 70 require that States develop and submit operating permits programs to EPA by

November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On October 3, 1994, EPA proposed full approval of the operating permits program for the State of Mississippi. See 59 FR 50214. The EPA received public comment on the proposal, and compiled a Technical Support Document (TSD) which describes the operating permits program in greater detail. EPA received seven comments on the proposed full approval of the Mississippi program. Generally, these comments addressed the issues of what changes at a source constitute a "title I modification" under the State's regulations and the requirement that Mississippi make 112(g) determinations prior to EPA promulgating final rules implementing section 112(g) of the Act. In this notice EPA is taking final action to promulgate full approval of the operating permits program for the State of Mississippi.

II. Final Action and Implications

A. Analysis of State Submission and Response to Public Comments

On October 3, 1994, EPA proposed full approval of the State of Mississippi's Title V Operating Permit Program. See 59 FR 50214. The program elements discussed in the proposed notice are unchanged from the original analysis in the proposed notice and continue to fully meet the requirements of 40 CFR part 70.

1. Definition of Title I Modification

The proposal discussed the State's definition of the phrase "modification under any provision of Title I of the Act." At the time of the proposal, EPA believed that for a State's program to be fully approvable, it would be necessary for the State's definition of "modification under any provision of Title I of the Act" to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under Title I of the Act. This would include State preconstruction review programs approved into the State Implementation Plan (SIP) under section 110(a)(2)(C) and regulations addressing source changes that trigger National Emission Standards for Hazardous Air Pollutants (NESHAPs) established pursuant to section 112 of the Act prior to the 1990 amendments. Mississippi adopted the more encompassing definition of what constitutes a "title I modification" into its program regulations as discussed above in order to obtain full approval of its operating permits program. Two commenters, the National Environmental Development Association/Clean Air Regulatory Project (NEDA/CARP) and the American Forest and Paper Association (AFPA), contended that neither EPA nor Mississippi have any authority to include as "title I modifications" those changes made pursuant to a preconstruction permitting program approved under the SIP. Furthermore, the commenters believe that requiring Mississippi's program regulations to include the more encompassing definition of "title I modification" would reverse the Agency's current operating permits rule.

On August 29, 1994, EPA proposed revisions to the interim approval criteria in 40 CFR 70.4(d) to, among other things, allow state programs with a more narrow definition of "title I modification" to receive interim approval (59 FR 44572). EPA intended to finalize its revisions to the interim approval criteria under 40 CFR 70.4(d) before taking action on part 70 programs submitted by the states. However, that is no longer possible. Publication of the proposed revisions was delayed until August 29, 1994, and EPA received several requests to extend the public comment period.[1] Given the importance of the issues in that rulemaking to States, sources and the public, but mindful of the need to take action quickly, EPA agreed to extend the comment period until October 28, 1994 (see 59 FR 52122 (October 14, 1994)). Consequently, final action to revise the interim approval criteria will not occur before the deadline for EPA action on State programs such as Mississippi's that were submitted on or before November 15, 1993.[2] EPA believes it would be inappropriate to delay action on Mississippi's program, perhaps for several months, until final action is taken on the interim approval revisions. EPA also believes it would be inappropriate to grant interim approval to Mississippi on this issue before final action is taken to revise the current interim approval criteria of 40 CFR 70.4(b) to provide a legal basis for such an interim approval. In lieu of EPA's final promulgation of interim approval criteria, the State has decided that it will implement the narrower definition of what constitutes a "title I modification." Upon EPA's final decision of what constitutes a "title I modification," the State has committed to revise its definition of what constitutes a "title I modification".

EPA is allowing this approach to "title I modification" for a number of reasons. First, EPA has not yet conclusively determined that a narrower definition of "title I modification" is incorrect and thus a basis for disapproval (or even interim approval). The Agency has received numerous comments on this issue as a result of the August 29, 1994, **Federal Register** notice, and EPA cannot and will not make a final decision on this issue until it has evaluated all of the comments. Second, EPA believes that the Mississippi program should not be disapproved because EPA itself has not yet been able to resolve this issue through rulemaking. Moreover, disapproving programs from states such as Mississippi that submitted their programs to EPA on or before the November 15, 1993, statutory deadline could lead to the perverse result that these states would receive disapprovals, while states which were late in submitting programs could take advantage of revised interim approval criteria if and when these criteria become final. In effect, States would be severely penalized for having made timely program submissions to EPA. Finally, disapproval of a State program for a potential problem that primarily affects permit revision procedures would delay the issuance of part 70 permits, hampering state/federal efforts to improve environmental protection through the operating permits system.

For the reasons mentioned above, EPA is approving the Mississippi program's use of a narrower definition of "title I modification" at this time.[3] However, should EPA in the interim approval criteria rulemaking make a final determination that such a narrow

[1] EPA originally established a 30-day public comment period for the August 29, 1994 proposal. In response to several requests for extension, however, EPA agreed to allow an additional thirty days for public comments. (See 59 FR 52122 (October 14, 1994).

[2] Section 502(d) requires, in relevant part, that "[n]ot later than 1 year after receiving a program, and after notice and opportunity for public comment, the Administrator shall approve or disapprove such program, in whole or in part."

[3] For similar reasons, the EPA will not construe 40 CFR 70.7(e)(2)(i)(A)(3) to prohibit Mississippi from allowing minor NSR changes to be processed as minor permit modifications. See 59 FR 44573–44574.

definition of "title I modification" is incorrect and that a revision of the interim approval criteria is warranted, the Agency will propose further action on Mississippi's program so that the State's definition of "title I modification" could become grounds for interim approval.[4] A State program like Mississippi's that receives full approval of its narrower definition pending completion of EPA's rulemaking must ultimately be placed on an equal footing with states that receive interim approval in later months under any revised interim approval criteria because of the same issue. Converting the full approval on this issue to an interim approval after EPA completes its rulemaking will avoid this inequity. EPA anticipates that an action to convert the full approval on the "title I modification" issue to an interim approval would be effected through an additional rulemaking, so as to ensure that there is adequate notice of the change in approval status.

2. Section 112(g) Modifications

EPA received a comment regarding the proposed approval of Mississippi's preconstruction permitting program for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. The commenter argued that Mississippi should not, and cannot, implement section 112(g) until: 1) EPA has promulgated a section 112(g) regulation, and 2) the State has a section 112(g) program in place. The commenter also argued that Mississippi's preconstruction review program can not serve as a means to implement section 112(g) because it was not designed for that purpose.

EPA disagrees with the commenter's contention that section 112(g) does not take effect until after EPA has promulgated implementing regulations. The statutory language in section 112(g)(2) prohibits the modification, construction, or reconstruction of a source after the effective date of a title V program unless MACT (determined on a case-by-case basis, if necessary) is met. The unambiguous meaning of this provision is that the prohibition takes effect on the effective date of program approval regardless of whether EPA or a state has promulgated implementing regulations.

The EPA has acknowledged that states may encounter difficulties implementing section 112(g) prior to the promulgation of final EPA regulations (See June 28, 1994 memorandum entitled, "Guidance for Initial Implementation of Section 112(g)," signed by John Seitz, Director of the Office of Air Quality Planning and Standards). EPA has issued guidance, in the form of a proposed rule, which may be used to determine whether a physical or operational change at a source is not a modification either because it is below *de minimis* levels or because it has been offset by a decrease of more hazardous emissions. See 59 FR 15004 (April 1, 1994). EPA believes the proposed rule provides sufficient guidance to Mississippi and sources until such time as EPA's section 112(g) rulemaking is finalized.

EPA is aware that Mississippi lacks a program designed specifically to implement section 112(g). However, Mississippi does have a preconstruction review program that can serve as a procedural vehicle for rendering federally enforceable a case-by-case MACT or offset determination. EPA's approval of Mississippi's preconstruction review program clarifies that it may be used for this purpose during the transition period to meet the requirements of section 112(g).

EPA believes Mississippi's preconstruction review program will be adequate in most if not all cases because it will allow Mississippi to select control measures that would meet MACT, as defined in section 112, and incorporate these measures into a federally enforceable preconstruction permit. While it is true that Mississippi's preconstruction review authority extends only to criteria pollutants, Mississippi should nevertheless be able to impose federally enforceable measures reflecting MACT for most if not all changes qualifying as modification, construction, or reconstruction under section 112(g). This is because most section 112(b) HAPs are also criteria pollutants, and moreover because measures designed to limit criteria pollutant emissions will often have the incidental effect of limiting non-criteria pollutant HAPs. In the event of a situation where Mississippi's preconstruction permit program cannot be used, the State may utilize its title V permitting program to do any required MACT determinations as a result of 112(g).

Another consequence of the fact that Mississippi lacks a program designed specifically to implement section 112(g) is that the applicability criteria found in its preconstruction review program may differ from those in section 112(g). However, whether a particular source change qualifies as a modification, construction, or reconstruction for section 112(g) purposes will be determined according to the statutory provisions of section 112(g), using the proposed rule as guidance. As noted in the June 28, 1994 guidance, EPA intends to defer wherever possible to a State's judgment regarding applicability determinations. This deference must be subject to obvious limitations. For instance, a physical or operational change resulting in a net increase in HAP emissions above 10 tons per year could not be viewed as a *de minimis* increase under any interpretation of the CAA. The EPA would expect Mississippi to be able to issue a preconstruction permit containing a case-by-case determination of MACT in such a case even if review under its own preconstruction review program would not be triggered.

3. "Prompt" Reporting of Deviations From Permit Limits

In the proposed full approval notice EPA stated that Mississippi's regulations should define the meaning of "prompt" as used in the requirement found at 40 CFR 70.6(a)(3)(iii)(B) which require "prompt" reporting of deviations from applicable requirements. The Agency indicated that an acceptable alternative to defining what constitutes "prompt" reporting of deviations from applicable requirements is to define "prompt" in each individual permit.

One commenter supports this approach and asserts that it is necessary for EPA to revise several of its earlier interim approval notices, in which the Agency conditioned final approval on including a definition of "prompt" in the state operating permits program, in order to provide a consistent application of the appropriate interpretation of its rules. EPA has consistently asserted that this is an acceptable alternative to defining prompt in the body of the permitting regulations and sees no need to revisit past interim approval actions to clarify this interpretation of the definition of what constitutes "prompt" reporting of deviations from applicable requirements.

4. Full Approval Under Current Part 70 Regulations

One commenter submitted comments previously submitted on the proposed part 70 operating permits rule, and objected to the full approval of Mississippi on the same grounds that it objected to the promulgation of the part 70 rule itself. The EPA believes the

[4] State programs with a narrower "title I modification" definition that are acted upon by EPA after an Agency decision that such narrower definition is inappropriate would be considered deficient, but would be eligible for interim approval under revised 40 CFR 70.4(b).

appropriate forum for pursuing objections to the legal validity of the Part 70 rule is through a petition for review of the rule in the D.C. Circuit Court of Appeals. The EPA notes that this commenter has filed such a petition. However, unless and until the part 70 rule is revised, EPA must evaluate programs according to the rule that is in effect.

B. Final Action

The EPA is promulgating full approval of the operating permits program submitted to EPA by the State of Mississippi program on November 12, 1993. Mississippi has demonstrated that the program will be adequate to meet the minimum elements of a State operating permits program as specified in 40 CFR part 70.

The scope of the State's part 70 program approved in this notice applies to all 70 sources (as defined in the approved program) within the State, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(1)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(1)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating full approval under section 112(1)(5) and 40 CFR part 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. This program for delegations applies to sources covered by the part 70 program as well as nonpart 70 sources.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final full approval, including the seven public comments received and reviewed by EPA on the proposal, are contained in docket number [*insert docket number*] maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final full approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental Protection, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: December 15, 1994

John H. Hankinson, Jr.,

Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for Mississippi in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Mississippi

(a) Department of Environmental Quality: submitted on November 15, 1993; full approval effective on January 27, 1995.

(b) Reserved

* * * * *

[FR Doc. 94–31941 Filed 12–27–94; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 4F4387/R2092; FRL–4923–4]

RIN 2070–AB78

Pasteuria Penetrans; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of the biological pesticide *Pasteuria penetrans* in or on all raw agricultural commodities when used as a nematicide in producing fruits and vegetables, except roots and tubers in greenhouses. Walt Disney World Co. requested this exemption.

EFFECTIVE DATE: This regulation becomes effective December 28, 1994.

ADDRESSES: Written objections, identified by the document control number, [PP 4F4387/R2092], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Leonard S. Cole, Acting Product Manager (PM 21), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 2, 1994 (59 FR 54871), EPA issued a proposed rule that gave notice that Walt Disney World Co., P.O. Box 10000, Lake Buena Vista, FL 32830, had submitted pesticide petition (PP) 4F4387 requesting that the Administrator, pursuant to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA),

21 U.S.C. 346a, propose to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of the biological pesticide *Pasteuria penetrans* in or on all raw agricultural commodities when used as a nematicide in producing fruits and vegetables (other than vegetables whose roots or tubers are considered to be food items) in greenhouses at The Land in EPCOT Center at Walt Disney World. This petition is not associated with an application for pesticide registration. The establishment of this tolerance exemption does not relieve manufacturers, distributors, or sellers of this pesticide of any obligation they may have under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 et seq.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 15, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1135, to read as follows:

§ 180.1135 Pasteuria penetrans; exemption from the requirement of a tolerance.

The biological nematicide *Pasteuria penetrans* is exempted from the requirement of a tolerance in or on all raw agricultural commodities, except roots and tubers, when used as a nematicide in the production of fruits and vegetables in greenhouses.

[FR Doc. 94-31926 Filed 12-27-94; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 180

[PP 3F4193/R2097; FRL-4926-9]

RIN 2070-AB78

Pesticide Tolerances for Halosulfuron

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide halosulfuron in or on the raw agricultural commodities corn, field grain at 0.1 part per million (ppm); corn, field forage at 0.3 ppm; corn, field fodder at 1.5 ppm; grain sorghum (milo) grain at 0.1 ppm; grain sorghum (milo) forage at 0.1 ppm; grain sorghum (milo) fodder/stover at 0.1 ppm; and meat and meat byproducts (cattle, goats, hogs, horses, and sheep) at 0.1 ppm. The regulation also establishes tolerances to permit indirect or inadvertent residues when present as a result of application to field corn and/or grain sorghum (milo) in or on soybean seed at 0.5 ppm; soybean forage at 0.5 ppm; soybean hay at 0.5 ppm; wheat grain at 0.1 ppm; wheat forage at 0.1 ppm; and wheat straw at 0.2 ppm. Monsanto Co. requested these regulations to establish maximum permissible levels for residues of the herbicide.

EFFECTIVE DATE: This regulation becomes effective December 28, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 3F4193/R2097], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401

M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM-23), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7830.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of November 2, 1994 (59 FR 54910), which announced that Monsanto Co. had submitted pesticide petition (PP) 3F4193 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish tolerances for residues of the herbicide halosulfuron (methyl 5-[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl-3-chloro-1-methyl-1*H*-pyrazole-4-carboxylate, and its metabolites determined as 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid and expressed as parent equivalents), in or on the raw agricultural commodities corn, field grain at 0.1 part per million (ppm); corn, field forage at 0.3 ppm; corn, field fodder at 1.5 ppm; grain sorghum (milo) grain at 0.1 ppm; grain sorghum (milo) forage at 0.1 ppm; grain sorghum (milo) fodder/stover at 0.1 ppm; and meat and meat byproducts (cattle, goats, hogs, horses, and sheep) at 0.1 ppm. The petition also requested that EPA establish tolerances to permit indirect or inadvertent residues when present as a result of application to field corn and/or grain sorghum (milo) in or on soybean seed at 0.5 ppm; soybean forage at 0.5 ppm; soybean hay at 0.5 ppm; wheat grain at 0.1 ppm; wheat forage at 0.1 ppm; and wheat straw at 0.2 ppm. This notice was published as an amendment to the original notice that was published in the **Federal Register** of October 21, 1993 (58 FR 54354).

There were no comments received in response to the notices of filing. The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. Acute toxicological studies placing the technical-grade halosulfuron in Toxicity Category III.

2. A 90-day feeding study in rats resulted in a lowest-observed-effect level (LOEL) of 497 mg/kg/day in males and 640 mg/kg/day in females, and a no-observed-effect level (NOEL) of 116 mg/kg/day in males and 147 mg/kg/day in females.

3. A 21-day dermal toxicity study in rats resulted in a NOEL of 100 mg/kg/day in males and greater than 1,000 mg/kg/day in females. The only treatment-related effect was a decrease in body weight gain of the 1,000 mg/kg/day group in males.

4. A 1-year chronic oral study in dogs resulted in a LOEL of 40 mg/kg/day based on decreased weight gain and a NOEL of 10 mg/kg/day for systemic toxicity.

5. A 78-week carcinogenicity study was performed on mice. Males in the 971.6 mg/kg/day group had decreased body weight gains and an increased incidence of microconcretion/mineralization in the testis and epididymis. No treatment-related effects were noted in females. Based on these results, a LOEL of 971.9 mg/kg/day was established in males and NOEL's of 410 mg/kg/day in males and 1,214.6 mg/kg/day in females were established. The study showed no evidence of carcinogenicity.

6. A combined chronic toxicity/carcinogenicity study in rats resulted in a LOEL of 225.2 mg/kg/day in males and 138.6 mg/kg/day in females based on decreased body weight gains, and a NOEL of 108.3 mg/kg/day in males and 56.3 mg/kg/day in females. The study showed no evidence of carcinogenicity.

7. A developmental toxicity study in rats resulted in a developmental LOEL of 750 mg/kg/day, based on decreases in mean litter size and fetal body weight, and increases in resorptions, resorptions/dam, postimplantation loss and in fetal and litter incidences of soft tissue and skeletal variations, and a developmental NOEL of 250 mg/kg/day. Maternal LOEL was 750 mg/kg/day based on increased incidence of clinical observations, reduced body weight gains, and reduced food consumption and food efficiency. The maternal NOEL was 250 mg/kg/day.

8. A developmental toxicity study in rabbits resulted in a developmental LOEL of 150 mg/kg/day, based on decreased mean litter size and increases in resorptions, resorptions/dam and postimplantation loss, and a developmental NOEL of 50 mg/kg/day. The maternal LOEL was 150 mg/kg/day based on reduced body weight gain and reduced food consumption and food efficiency. The maternal NOEL was 50 mg/kg/day.

9. A dietary two-generation reproduction study in rats resulted in parental toxicity at 223.2 mg/kg/day in males and 261.4 mg/kg/day in females in the form of decreased body weights, decreased body weight gains, and reduced food consumption during the premating period. Very slight effects were noted in body weight of the offspring at this dose. This effect was considered to be developmental toxicity (developmental delay) rather than a reproductive effect. No effects were noted on reproductive or other developmental toxicity parameters. The systemic/developmental toxicity LOEL was 223.2 mg/kg/day in males and 261.4 mg/kg/day in females; the systemic/developmental toxicity NOEL was 50.4 mg/kg/day in males and 58.7 mg/kg/day in females. The reproductive LOEL was greater than 223.2 mg/kg/day in males and 261.4 mg/kg/day in females; the reproductive NOEL was equal to or greater than 223.2 mg/kg/day in males and 261.4 mg/kg/day in females.

10. Bacterial/mammalian microsomal mutagenicity assays were performed and found not to be mutagenic.

11. Two mutagenicity studies were performed to test gene mutation and found to produce no chromosal aberrations or gene mutations in cultured Chinese hamster ovary cells.

12. An *in vivo* mouse micronucleus assay did not cause a significant increase in the frequency of micronucleated polychromatic erythrocytes in bone marrow cells.

13. A mutagenicity study was performed on rats and found not to induce unscheduled DNA synthesis in primary rat hepatocytes.

14. A metabolism study in rats resulted in the administered dose being absorbed rapidly and incompletely. Most of the test article was eliminated by urine and feces within 72 hours, and appeared to be independent of dose and sex.

The Office of Pesticide Programs' Health Effects Division's Carcinogenicity Peer Review Committee (CPRC) has classified halosulfuron in Group E (no evidence of carcinogenicity) under the Agency's "Guidelines for Carcinogen Risk Assessment" published in the **Federal Register** of September 24, 1986 (51 FR 33992). In its evaluation, CPRC gave consideration to body weight gain changes and changes in hematological and blood chemistry parameters in the 1-year feeding study in dogs.

The Reference Dose (RfD) is established at 0.1 mg/kg/day, based on a NOEL of 10 mg/kg/day from the 1-year

feeding study in dogs and an uncertainty factor of 100. The Theoretical Maximum Residue Contribution (TMRC) from the current action is estimated at 0.00051 mg/kg of body weight/day for the general population, and utilizes less than 1% of the RfD for the U.S. population. The TMRC for the most exposed subgroups is 0.00117 mg/kg body weight/day for nonnursing infants (less than 1 year old) and 0.00101 mg/kg body weight/day for children (1 to 6 years old), or 1 percent of the RfD for both groups. Therefore, no appreciable risk is expected from chronic dietary intake since the RfD is not exceeded for either the general population or any subgroup.

The nature of the residue is adequately understood for the purposes of the tolerance.

An adequate analytical method, gas chromatography with an electron-capture detector, is available for enforcement purposes.

The field corn and grain sorghum (milo) enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Vol. II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

Any secondary residues occurring in meat byproducts will fall within existing tolerances for these commodities. Tolerances were not deemed necessary on milk, eggs, meat, or fat.

The pesticide is considered useful for the purpose for which the tolerances are sought and capable of achieving the intended physical or technical effect. There are currently no actions pending against the registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 15, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.479, to read as follows:

§ 180.479 Halosulfuron; tolerances for residues.

(a) *Tolerances.* Tolerances are established for residues of the herbicide halosulfuron, methyl 5-[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl-3-chloro-1-methyl-1*H*-pyrazole-4-carboxylate, and its metabolites determined as 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid and expressed as parent equivalents, in or on the raw agricultural commodities listed below.

Commodity	Parts per million
Cattle, mbyp	0.1
Corn, field, fodder	1.5
Corn, field, forage	0.3
Corn, field, grain	0.1
Goats, mbyp	0.1
Hogs, mbyp	0.1
Horses, mbyp	0.1
Sheep, mbyp	0.1
Sorghum, grain, fodder/stover	0.1
Sorghum, grain, forage	0.1
Sorghum, grain, grain	0.1

(b) *Indirect or inadvertent tolerances.* Tolerances are established for indirect or inadvertent residues of the herbicide halosulfuron, methyl 5-[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl-3-chloro-1-methyl-1*H*-pyrazole-4-carboxylate, and its metabolites determined as 3-chloro-1-methyl-5-sulfamoylpyrazole-4-

carboxylic acid and expressed as parent equivalents, in or on the following raw agricultural commodities when present therein as a result of the application of halosulfuron to growing crops:

Commodity	Parts per million
Soybean, forage	0.5
Soybean, hay	0.5
Soybean, seed	0.5
Wheat, forage	0.1
Wheat, grain	0.1
Wheat, straw	0.2

[FR Doc. 94–31927 Filed 12–27–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 1F4005/R2096; FRL–4925–6]

RIN 2070–AB78

Pesticide Tolerances for Rimsulfuron

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide rimsulfuron (*N*-((4,6-dimethoxypyridin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide) in or on various raw agricultural commodities (RACs). E. I. duPonte de Nemours & Co., Inc., requested this regulation to establish the maximum permissible level for residues of the herbicide on the RACs.

EFFECTIVE DATE: December 28, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [1F4005/R2096], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington DC 20460. A copy of objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By Mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6800.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 8, 1994 (59 FR 55478), EPA issued a notice that announced that Dupont Agricultural Products, P.O. Box 80038, Walkers Mill, Barley Mill Plaza, Wilmington, DE 19880-0038, had proposed pursuant to section 408 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a, to amend 40 CFR part 180 by establishing a regulation for tolerances to permit residues of the herbicide rimsulfuron in or on corn, field, fodder at 0.1 part per million (ppm); corn, field, forage at 0.1 ppm; corn, field, grain at 0.1 ppm; and potatoes, tubers at 0.1 ppm.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of the tolerances.

1. Several acute toxicology studies placing technical rimsulfuron in toxicity category III for acute dermal toxicity and primary eye irritation and toxicity category IV for acute oral toxicity, acute inhalation toxicity, and primary dermal irritation.

2. A subchronic feeding study with rats fed dosages of 0, 3.35, 102, 495, or 1,311 mg/kg/day (males) and 0, 4.11, 120, 615, or 1,622 mg/kg/day (females) with no-observable-effect levels (NOELs) of 102 mg/kg/day (males) and 120 mg/kg/day (females) based on reduced body weight gains at 495 mg/kg/day (males) and 615 mg/kg/day (females).

3. A subchronic feeding study with dogs fed dosages of 0, 9.63, 193, or 793 mg/kg/day (males) and 0, 10.6, 189, or 677 mg/kg/day (females) with NOELs of 9.63 mg/kg/day (males) and 10.6 mg/kg/day (females) based on urinary volume and osmolarity at 193 mg/kg/day (males) and 189 mg/kg/day.

4. A 1-year feeding study with dogs fed dosages of 0, 1.6, 81.8, and 342.4, mg/kg/day for males and 0, 1.6, 86.5, and 358.5 mg/kg/day for females. The NOEL for males was 1.6 mg/kg/day based on increased absolute liver and kidney weights and increased incidence of seminiferous tubule degeneration and increased numbers of spermatid giant cells present in epididymides at 81.8 mg/kg/day. The NOEL for females was 86.5 mg/kg/day based on decreased mean body weight and body weight gain, increased serum cholesterol levels and alkaline phosphatase activity, increased absolute liver weight, and increased relative liver and kidney weights at 358.5 mg/kg/day (highest dose tested (HDT)).

5. An 18-month feeding/carcinogenicity study in mice fed dosages of 0, 3.47, 35.5, 351, or 1,127 mg/kg/day for males and 0, 4.99, 50.5, 488, or 1,505 mg/kg/day for females with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 1,127 mg/kg/day for males (HDT) and 1,505 mg/kg/day for females (HDT). The systemic NOEL for females was 488 mg/kg/day and 351 mg/kg/day for males based on decreased mean body weights in females at 1,505 mg/kg/day (HDT) and decreased mean body weights, increased incidence of dilation and cysts in the grandular stomach, and degeneration of the testicular artery and tunica albuginea in males at 1,127 mg/kg/day (HDT).

6. A 2-year chronic feeding/carcinogenicity study with rats fed dosages of 1.00, 11.8, 121, or 414 mg/kg/day for males and 0, 1.38, 17.1, 163, or 569 mg/kg/day for females with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 414 mg/kg/day (males) (HDT) and 569 mg/kg/day (females) (HDT). The systemic NOELs are 11.8 and 163 mg/kg/day, for males and females, respectively, based on decreased body weight gain and increased relative liver weights at 121 and 569 mg/kg/day (HDT) for males and females, respectively.

7. A two-generation reproduction study with rats fed dosages of 0, 2.76, 165, or 830 (F_0 males); 0, 3.38, 204, or 1,021 (F_0 females); 0, 3.66, 217, or 1,316 (F_1 males) and 0, 4.29, 264, or 1,316 (F_1 females) mg/kg/day with a reproductive NOEL of 165 to 264 mg/kg/day based on a significant increase in the incidence of small body size and a decrease in the mean body weight of F_1 pups at 830 to 1,316 mg/kg/day (HDT) and a systemic NOEL of 165 to 264 mg/kg/day based on a decreased mean body weight of F_1 males, decreased body weight gain by F_0 males, and F_0 and F_1 females, and decreased mean daily food consumption by F_1 males at 830 to 1,316 mg/kg/day (HDT).

8. A developmental study in rats fed dosages of 0, 200, 700, 2,000 and 6,000 mg/kg/day with no developmental effects or systemic toxicity under the conditions of the study up to and including 6,000 mg/kg/day (HDT).

9. A developmental study in rabbits fed dosages of 0, 25, 170, 500, or 1,500

mg/kg/day with a developmental NOEL of 500 mg/kg/day based on production of only two viable fetuses at 1,500 mg/kg/day (HDT). The maternal NOEL was 170 mg/kg/day based on death and reduced body weight gain at 500 mg/kg/day.

10. Mutagenicity studies included an in vitro gene mutation assay (CHO/HGPRT) (no evidence of mutagenicity with and without activation at 10 to 1,300 ug/plate); an in vitro unscheduled DNA synthesis in primary rat hepatocytes (no DNA damage or induced repair evident from 0.0008 to 1.1 mg/ml); a mammalian cell cytogenetics (Human Lymphocytes) assay (not clastogenic in human lymphocytes at 100-1,300 ug/ml with or without activation); an in vivo micronucleus assay in mice (did not induce micronucleated polychromatic erythrocytes at doses from 500 to 5,000 mg/kg; and an in vivo micronucleus test in mice (no significant differences in the frequency of micronucleated cells were noted in bone marrow cells).

The RfD based on a NOEL of 1.6 mg/kg/day established in the 1-year feeding study with dogs and an uncertainy factor of 100 is calculated to be 0.016 mg/kg/day. The theoretical maximum residue contribution (TMRC) for these tolerances for the overall U.S. population is 1.47×10^{-4} mg/kg/day or 0.92% of the RfD. The TMRC for the most exposed subgroups, children (1 to 6 years old) and nonnursing infants (less than one-year old) were 3.12×10^{-4} and 2.37×10^{-4} mg/kg/day, respectively, or 1.95% and 1.48% of the RfD, respectively, assuming the residues are at established tolerance level and that 100 percent of the crop is treated. There are no published tolerances for rimsulfuron.

The pesticide is useful for the purposes for which the tolerances are sought. The nature of the residues is adequately understood for the purposes of establishing these tolerances. The residue of concern is rimsulfuron per se. Adequate analytical methodology, high-pressure liquid chromatography with UV detection, is available for enforcement purposes. Because of the long lead time between establishing these tolerances and publication of the enforcement method in the Pesticide Analytical Manual (PAM), the enforcement methodolgy is being made available to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1130A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

There are currently no actions pending against the registration of this chemical. There is no reasonable expectation of residues occurring in meat, milk, poultry, or eggs from these tolerances. Based on the data and information submitted above, the Agency has determined that the establishment of tolerances by amending 40 CFR part 180 will protect the public health. Therefore, EPA is establishing the tolerances as described below.

Any person adversely affected by this regulation may, within 30 days of publication of this document in the **Federal Register**, file written objections with the Hearing Clerk at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims of facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (Oct. 4, 1993; 58 FR 51735), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and therefore not subject to OMB review. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Lists of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 14, 1994.

Daniel M. Barolo,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

Part 180—[Amended]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.478, to read as follows:

§ 180.478 Rimsulfuron; tolerances for residues.

Tolerances are established for residues of the herbicide rimsulfuron, *N*-((4,6-dimethoxypyridin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide, in or on the following raw agricultural commodities:

Commodity	Parts per million
Corn, field, fodder	0.1
Corn, field, forage	0.1
Corn, field, grain	0.1
Potatoes, tubers	0.1

[FR Doc. 94–31928 Filed 12–27–94; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 721

[OPPTS–50584C; FRL–4738–2]

RIN 2070–AB27

Pyridines; Modification of Significant New Use Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is modifying the significant new use rules (SNURs) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 16 pyridine chemical substances based on a modification to the 5(e) consent order regulating those substances. The original consent order and SNURs were developed in response to premanufacture notices (PMNs) for these substances.

EFFECTIVE DATE: The effective date of this rule is January 27, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 23, 1991 (56 FR 23766), EPA issued SNURs establishing significant new uses for 16 pyridine substances. Because of the June 16, 1992, modification to the consent order for these substances, which was the basis for the original SNURs, EPA is proposing to modify those SNURs.

The CFR cites which appeared in the final rule (56 FR 23766, May 23, 1991) have been redesignated (58 FR 29946, May 24, 1993). The following table, which is provided for the convenience of the reader, lists the substances by PMN number and provides the redesignated cite as well as the cite which appeared in the final rule.

TABLE 1.—CHEMICALS SUBJECT TO THIS SIGNIFICANT NEW USE RULE

[Publication History]

Chemical	Original CFR Cite	FR ref., Pub. date	Redesignated
P–83–237	40 CFR 721.1858	56 FR 23766, 5/23/91	40 CFR 721.8700
P–83–1162	40 CFR 721.1858	56 FR 23766, 5/23/91	40 CFR 721.8700
P–83–1163	40 CFR 721.1835	56 FR 23766, 5/23/91	40 CFR 721.8675
P–84–1219	40 CFR 721.1845	56 FR 23766, 5/23/91	40 CFR 721.8775
P–85–36	40 CFR 721.1845	56 FR 23766, 5/23/91	40 CFR 721.8775
P–85–216	40 CFR 721.1835	56 FR 23766, 5/23/91	40 CFR 721.8675
P–85–236	40 CFR 721.1845	56 FR 23766, 5/23/91	40 CFR 721.8775
P–85–535	40 CFR 721.1835	56 FR 23766, 5/23/91	40 CFR 721.8675
P–85–536	40 CFR 721.1835	56 FR 23766, 5/23/91	40 CFR 721.8675
P–85–706	40 CFR 721.1845	56 FR 23766, 5/23/91	40 CFR 721.8775
P–85–1184	40 CFR 721.1845	56 FR 23766, 5/23/91	40 CFR 721.8775
P–86–838	40 CFR 721.1840	56 FR 23766, 5/23/91	40 CFR 721.8750
P–88–1271	40 CFR 721.1886	56 FR 23766, 5/23/91	40 CFR 721.8900
P–88–1272	40 CFR 721.1886	56 FR 23766, 5/23/91	40 CFR 721.8900
P–88–1273	40 CFR 721.1883	56 FR 23766, 5/23/91	40 CFR 721.8875
P–88–1274	40 CFR 721.1880	56 FR 23766, 5/23/91	40 CFR 721.8850

I. Background

The Agency proposed the modification of the SNUR for these substances in the **Federal Register** of June 8, 1993 (58 FR 32222). The background and reasons for the modification of the SNUR are set forth in the preamble to the proposed modification. The Agency received no public comment concerning the proposed modification. As a result EPA is modifying this SNUR.

II. Objectives and Rationale of Modifying Rule

During review of the PMNs submitted for the chemical substances that are the subjects of this modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health and environmental effects of the substances, and that the substances may present an unreasonable risk of injury to human health and the environment. EPA identified the tests necessary to evaluate the risks of the substances. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and SNURs were promulgated for the substances at that time. One provision of the original section 5(e) order and SNUR required treatment of the substances only at the site of manufacture or processing.

In light of the exposure control requirements in the section 5(e) order and these SNURs, the PMN submitter petitioned and EPA determined that this restriction was not necessary to protect human health and the environment. The modified section 5(e) order no longer requires only on-site wastewater treatment. The modification of SNUR provisions for these substances designated herein is consistent with the modification of the section 5(e) order.

III. Rulemaking Record

The record for these rules which EPA is modifying was established at OPPTS–50584. This record includes information considered by the Agency in developing these rules and includes the modification to the consent order to which the Agency has responded with this final rule.

IV. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically

significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this proposed rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule would not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2131, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: December 1, 1994.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. In § 721.8675 by revising paragraphs (a)(1)(i)(D) and (a)(2)(i)(D) to read as follows:

§ 721.8675 Halogenated pyridines.

(a) * * *

(1) * * *

(i) * * *

(D) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 0.2 ppb). Where primary, secondary, and tertiary waste treatment will occur, or treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance, the number of kilograms per day per site is calculated after wastewater treatment.

* * * * *

(2) * * *

(i) * * *

(D) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 0.2 ppb). Where primary, secondary, and tertiary waste treatment will occur, or treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance, the number of kilograms per day per site is calculated after wastewater treatment.

* * * * *

3. In § 721.8700 by revising paragraphs (a)(1)(i)(D) and (a)(2)(i)(D) to read as follows:

§ 721.8700 Halogenated alkyl pyridine.

(a) * * *

(1) * * *

(i) * * *

(D) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 10 ppb). Where primary, secondary, and tertiary waste treatment will occur, or treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance, the number of kilograms per day per site is calculated after wastewater treatment.

* * * * *

(2) * * *

(i) * * *

(D) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 0.2 ppb). Where primary, secondary, and tertiary waste treatment will occur, or treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance, the number of kilograms per day per site is calculated after wastewater treatment.

* * * * *

4. In § 721.8750 by revising paragraph (a)(2)(iv) to read as follows:

721.8750 Halogenated substituted pyridines.

(a) * * *

(2) * * *

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 1 ppb). Where primary, secondary, and tertiary waste treatment will occur, or treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance, the number of kilograms per day per site is calculated after wastewater treatment.

* * * * *

5. In § 721.8775 by revising paragraphs (a)(1)(i)(D), (a)(2)(i)(D), (a)(3)(i)(D), and (a)(4)(i)(D) to read as follows:

§ 721.8775 Substituted pyridines.

(a) * * *

(1) * * *

(i) * * *

(D) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 10 ppb). Where primary, secondary, and tertiary waste treatment will occur, or treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance, the number of kilograms per day per site is calculated after wastewater treatment.

* * * * *

(2) * * *

(i) * * *

(D) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 0.2 ppb). Where primary, secondary, and tertiary waste treatment will occur, or treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance, the number of kilograms per day per site is calculated after wastewater treatment.

* * * * *

(3) * * *

(i) * * *

(D) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 10 ppb). Where primary, secondary, and tertiary waste treatment will occur, or treatment in a lined, self-contained solar

evaporation pond where UV light will degrade the substance, the number of kilograms per day per site is calculated after wastewater treatment.

* * * * *

(4) * * *

(i) * * *

(D) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 1.3 ppb). Where primary, secondary, and tertiary waste treatment will occur or treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance, the number of kilograms per day per site is calculated after wastewater treatment.

* * * * *

6. In § 721.8850 by revising paragraph (a)(2)(iv) to read as follows:

§ 721.8850 Disubstituted halogenated pyridinol.

(a) * * *

(2) * * *

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 44 ppb). Where primary, secondary, and tertiary waste treatment will occur, or treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance, the number of kilograms per day per site is calculated after wastewater treatment.

* * * * *

7. In § 721.8875 by revising paragraph (a)(2)(iv) to read as follows:

§ 721.8875 Substituted halogenated pyridinol.

(a) * * *

(2) * * *

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 44 ppb). Where primary, secondary, and tertiary waste treatment will occur, or treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance, the number of kilograms per day per site is calculated after wastewater treatment.

* * * * *

8. In § 721.8900 by revising paragraphs (a)(2)(iv) to read as follows:

§ 721.8900 Substituted halogenated pyridinol, alkali salt.

(a) * * *

(2) * * *

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 44 ppb). Where primary, secondary, and tertiary waste treatment will occur, or treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance, the number of kilograms per day per site is calculated after wastewater treatment.

* * * * *

[FR Doc. 94–31929 Filed 12–27–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–98; RM–8433]

Radio Broadcasting Services; Addison, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 289A to Addison, Alabama, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of Dorsey Eugene Newman. *See* 59 FR 47111, September 14, 1994. Coordinates used for Channel 289A at Addison are 34–16–00 and 87–04–00. With this action, the proceeding is terminated.

DATES: Effective: February 6, 1995. The window period for filing applications on Channel 289A at Addison, Alabama, will open on February 6, 1995, and close on March 9, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process for Channel 289A at Addison, Alabama, should be addressed to the Audio Services Division, FM Branch, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 94–98, adopted December 13, 1994, and released December 22, 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, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW, Room 246, or 2100 M Street, NW, Suite 140, Washington, D.C. 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.

Section 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Addison, Channel 289A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–31874 Filed 12–27–94; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 93–272; RM–8361]

Radio Broadcasting Services; Madrid, Iowa

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Madrid Broadcasting Company, allots Channel 241A to Madrid, Iowa. *See* 58 FR 58533, November 2, 1993. Channel 241A can be allotted to Madrid, Iowa, in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.5 kilometers (8.4 miles) north to avoid short-spacings to Station KCOB-FM, Channel 240A, Newton, Iowa, and Station KEFM(FM), Channel 241C, Omaha, Nebraska. The coordinates for Channel 241A at Madrid are 41–59–47 and 93–48–52. With this action, this proceeding is terminated.

DATES: Effective: February 6, 1995. The window period for filing applications will open on February 6, 1995, and close on March 9, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 93–272, adopted December 14, 1994, and released December 22, 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.

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 Iowa, is amended by adding Madrid, Channel 241A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–31873 Filed 12–27–94; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 94–14; RM–8426; 8471]

Radio Broadcasting Services; Van Wert and Richwood, Ohio

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Van Wert Radio, allots Channel 230A to Van Wert, Ohio, as the community's second local FM broadcast service. *See* 59 FR 10606, March 7, 1994. At the request of Janice M. Scantland, the Commission also substitutes Channel 282B1 for Channel 282A at Richwood, Ohio, and modifies her outstanding construction permit (BPH-920113MC) to specify the higher class channel. Channel 230A can be allotted to Van Wert with a site restriction of 12.0 kilometers (7.5 miles) east, at coordinates 40–50–54; 84–26–36, to avoid a short-spacing to Station WGLF-FM, Channel 231A, Roanoke, Indiana. Channel 282B1 can be allotted to Richwood with a site restriction of 20.8 kilometers (12.9 miles) west, at coordinates 40–24–41; 83–32–41, to avoid short-spacings to vacant but applied-for Channel 280A, Westerville, Ohio, Station WPAY-FM, Channel 281C, Portsmouth, Ohio, and Station WQKT, Channel 283B, Wooster, Ohio. The Canadian Government has concurred in the allotment of both channels. With this action, this proceeding is terminated.

DATES: Effective: February 6, 1995. The window period for filing applications for Channel 230A at Van Wert, Ohio, will open on February 6, 1995, and close on March 9, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–14, adopted December 13, 1994, and released December 22, 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, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 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 Ohio, is amended by removing Channel 282A and adding Channel 282B1 at Richwood, and by adding Channel 230A at Van Wert.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–31876 Filed 12–27–94; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF STATE

Office of the Procurement Executive

48 CFR Parts 601, 602, 603, 604, 605, 606, 608, 609, 610, 613, 614, 615, 616, 617, 619, 622, 623, 625, 627, 628, 631, 632, 633, 634, 636, 637, 639, 642, 643, 647, 649, 651, 652, 653, and 670

[Public Notice 2120]

RIN 1400–AA31

Department of State Acquisition Regulation (DOSAR)

AGENCY: Office of the Procurement Executive, Department of State.

ACTION: Final rule.

SUMMARY: This rule makes final a proposed rule published for comment on September 16, 1994 (59 FR 47584) amending the Department of State Acquisition Regulation (DOSAR). The final rule also contains miscellaneous amendments and corrections not proposed on September 16, 1994, as outlined below.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Gladys Gines, Senior Procurement Analyst, Department of State, Office of the Procurement Executive, 2201 C Street NW, Suite 603, State Annex Number 6, Washington, DC 20522–0602, telephone (703) 516–1691. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

On September 16, 1994 (59 FR 47584), the Department of State (DOS) proposed amendments to the DOSAR to reflect numerous miscellaneous changes, additions, and deletions dealing with internal or administrative matters. The proposed rule also set forth policies and procedures for implementing procurement integrity requirements, the DOS standardization program, the metric system for DOS procurements, the Governmentwide commercial purchase card, an affirmative procurement program for recovered materials, Defense Base Act insurance requirements, and alternative dispute resolution. Finally, it raised the threshold for major systems acquisitions from $10,000,000 to $30,000,000.

Comments were received from an association during the public comment period, which ended on November 15, 1994. The comments were primarily editorial in nature, and most of the comments were incorporated. This rule makes final the amendments, as revised, proposed on September 16.

II. Disposition of Comments

Comments received which were not editorial in nature dealt with the Department's determination to establish a threshold of $10 million for the public announcement of contract awards by the Office of Legislative Affairs and section 615.413 of the DOSAR authorizing the release of proposals outside the Government for evaluation purposes.

With respect to the first comment, FAR 5.303(a) establishes a threshold of $3 million for public announcement unless agency regulations specify another dollar threshold. DOSAR 605.303(a) specified a threshold of $10 million. The commenter stated that the Department's $10 million threshold defeats a purpose of public announcement of contract awards, i.e., making information available to the taxpayer, Congress, and the companies interested in doing business with the winning contractor. However, we believe that companies interested in doing business with the winning contractor receive most of their information on contract awards through

the *Commerce Business Daily* award synopsis. Since the Department's most visible contracts exceed $10 million, we believe that the threshold is appropriate.

The commenter questioned the inclusion of DOSAR 615.413 in light of the recently enacted Federal Acquisition Streamlining Act, section 6002, which places restrictions on the use of paying non-Government personnel to evaluate proposals. The commenter is correct; the Act states that the Government must determine that Government personnel with adequate training are not readily available. The commenter suggested that this section of the DOSAR be deferred until the proposed regulations implementing section 6002 are published. The DOSAR, as well as all other agency procurement regulations, will need to be revised when the regulations implementing the Federal Acquisition Streamlining Act are published. In light of this, we prefer to proceed with the implementation of this section, which will be revised, if necessary, along with other sections of the DOSAR to implement the requirements of the Act.

III. Amendments Not Contained in Proposed Rule

The final rule also contains amendments or corrections to the proposed rule. These amendments are a result of several internal changes which have taken place during the comment period. They are as follows: 601.602–3–70(e) (to add language distinguishing ratifications under $1,000, which was inadvertently omitted from the proposed rule); 601.603–70(a)(1) (to add language allowing the Procurement Executive, or designee, to delegate to a contracting officer, on a case-by-case basis, the authority to award a contract which exceeds the contracting officer's warrant authority); 601.603–70(a)(8) (to add the words "as the HCA" which were inadvertently omitted from the proposed rule); 604.7002(a) (to clarify when options are to be reviewed by A/OPE); 606.101–70 (to add language clarifying that a *Commerce Business Daily* synopsis is not required for domestic leases); 606.302–1 (to delete the language in paragraph (b)(1) of the proposed rule); 606.302–4 (to add language that clarifies that when guard services can only be obtained from the host government, the exemption under FAR 6.302–4, International Agreement, applies); 606.302–6 (to change the language to reflect current clearance points); 606.304(a)(2) (to clarify that the Department Competition Advocate must approve proposed contracts over $100,000 but not exceeding $1,000,000 for domestic contracting activities that do not have a competition advocate. This section also removes the requirement for approvals above the contracting officer for contracts under $100,000); 610.002–70(c) (to re-arrange the definitions in alphabetical order); 613.505–2 (to allow the use of the OF–206 and OF–206A for overseas contracting activities); 614.201–7–70(c), 615.106–70 and 652.214–71 (to add DOSAR provision 614.214–71, Authorization to Perform. This was a previous DOSAR clause which had been deleted in the proposed rule. It has been decided to re-instate it as a solicitation provision as opposed to a contract clause); 623.302–70 (to clarify that only work which affects the safety/health of post personnel shall be required to comply with the Department's safety/health guidelines); 623.480 (b), (d), (e), (f), (g), (h), and (i) (to add the words "solicitations and" preceding the word "contract"); 628.305, 628.306, and 628.307 (to add the words "or residents" after the words "United States citizens", which was inadvertently omitted from the proposed rule. Section 628.305(d) is also revised to add language pertaining to a recent waiver received from the Department of Labor for certain contract employees); 634.001(c) (to change the $10,000,000 amount to $30,000,000 which was inadvertently omitted from the proposed rule); 652.228–71(c) (to clarify that the Department has obtained a waiver from the Department of Labor); 652.232–70 and 652.232–71 (to correct the introductory text as stated in the prescriptions); and, 652.237–71 (to add language as to where contractors may submit packages when overseas). These amendments and corrections do not affect the public, and therefore good cause exists to publish the amendments for effect without first soliciting public comment because prior public comment is unnecessary. The amendments are for the purpose of implementing internal changes.

IV. Impact

The Department of State certifies that this regulation 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.).

V. Paperwork Reduction Act

The information collection requirements contained in this rule were approved under the Paperwork Reduction Act of 1980 by OMB, and were assigned control number 1405–0050.

List of Subjects in 48 CFR Parts 601, 602, 603, 604, 605, 606, 608, 609, 610, 613, 614, 615, 616, 617, 619, 622, 623, 625, 627, 628, 631, 632, 633, 634, 636, 637, 639, 642, 643, 647, 649, 651, 652, 653, 670

Government procurement, Department of State Acquisition Regulation (DOSAR).

Accordingly, title 48, chapter 6 of the Code of Federal Regulations is amended as follows:

1. The authority citation for 48 CFR Parts 601, 602, 603, 604, 605, 606, 608, 609, 613, 614, 615, 616, 617, 619, 622, 623, 625, 628, 632, 633, 634, 636, 637, 642, 643, 652, and 653 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SUBCHAPTER A—GENERAL

PART 601—DEPARTMENT OF STATE ACQUISITION REGULATIONS

601.000 [Amended]

2. Section 601.000 is amended by removing the last sentence.

3. A new subpart 601.1, consisting of sections 601.101 and 601.105 is added to read as follows:

Subpart 601.1—Purpose, Authority, Issuance

Sec.
601.101 Purpose.
601.105 OMB approval under the Paperwork Reduction Act.

Subpart 601.1—Purpose, Authority, Issuance

The DOSAR is issued to provide Department guidance in accordance with the policy cited in FAR 1.301(a)(2). The portions of this regulation that affects the relationship between a Department of State organization and a contractor or potential contractor are published in this Chapter 6 of title 48 of the Code of Federal Regulations, in accordance with FAR 1.301(b).

601.105 OMB Approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that Federal agencies obtain approval from the Office of Management and Budget (OMB) before collecting information from ten (10) or more members of the public. The information and recordkeeping requirements contained in this regulation have been approved by OMB under OMB Control Number 1405–0050.

4. Section 601.201–1 is amended by inserting the parenthetical "(A/OPE)" after the phrase "The Office of the Procurement Executive" in the first

sentence; by removing the word "said" and inserting "a" in its place in the second sentence; and by removing the words "The Office of Procurement Executive" and inserting the acronym "A/OPE" in their place in the third sentence.

5. Section 601.301 is revised to read as follows:

601.301 Policy.

(a)(1) The Assistant Secretary of State for Administration is the agency head for the purposes of FAR 1.301 (see Delegation of Authority No. 120 (34 FR 18095, October 30, 1969), as amended by Delegation of Authority No. 120–4 (59 FR 38022, July 26, 1994)). Under Delegation of Authority No. 120–5 (59 FR 62771, December 6, 1994), the Assistant Secretary of State for Administration redelegated to the Procurement Executive the authority to prescribe, promulgate, and amend DOS acquisition policies, rules, and regulations.

(2) The Department's procurement directives system consists of the following components:

(i) The DOSAR;

(ii) Procurement Policy Directives (PPDs), which provide basic policy or procedural guidance and direction. PPDs are issued on an interim basis, and are subsequently incorporated into the next revision of the DOSAR; and

(iii) Procurement Information Bulletins, which provide general information on topics of interest to contracting personnel.

(b) The Department of State Acquisition Regulation (DOSAR) is prescribed under the authority of 22 U.S.C. 2658 and 40 U.S.C. 486(c).

(c) The DOSAR implements and supplements the FAR.

6. Section 601.302 is amended in paragraph (a) by adding the phrase "and leases of real and personal property," after the words "including construction"; removing the comma after the word "construction"; and adding the following phrase to the end of the paragraph:", or the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 292 *et seq.*)."

7. Section 601.303 is amended by revising paragraph (c) to read as follows:

601.303 Publication and codification.

* * * * *

(c) The DOSAR shall be referenced in the same manner as described at FAR 1.104–2(c).

601.403 [Amended]

8. Section 601.403 is amended by removing the second sentence.

601.404 [Amended]

9. Section 601.404 is amended by removing the second sentence.

601.405 [Amended]

10. Section 601.405 is amended by removing the second sentence.

601.470 [Amended]

11. Section 601.470 is amended by removing the second sentence.

601.471 [Amended]

12. Section 601.471 is amended by removing the parenthetical "(see 601.603–70)" in the first sentence of paragraph (a) introductory text; and by revising paragraphs (a)(1) and (b) to read as follows:

601.471 Procedures.

(a) * * *

(1) The nature of the deviation requested, including whether it is an individual or class deviation;

* * * * *

(b) The head of the contracting activity shall also submit all pertinent documentation supporting the request.

* * * * *

13. Section 601.570 is revised to read as follows:

601.570 Rulemaking.

(a) The DOSAR is promulgated and may be revised, as necessary, in accordance with FAR part 1.

(b) The Procurement Executive shall issue all DOS acquisition regulations.

14. Section 601.602–1 is amended in paragraph (a) by removing the word "let" and inserting the word "awarded" in its place; by removing the words "including interagency agreements" and inserting in their place the words "including FAR-covered interagency acquisition agreements" in the first sentence in paragraph (b); and by adding the words "real and" preceding "personal property" in paragraph (b) in the first instance of appearance.

15. Section 601.602–3 is amended by adding at the end of paragraph (b)(1) the words ", e.g., withdrawal of a contracting officer's warrant or a Contracting Officer's Representative delegation or collection action."

16. Section 601.602–3 is further amended by revising paragraph (b)(2) to read as follows; and by adding the following sentence to the end of paragraph (c) as follows:

601.602–3 Ratification of unauthorized commitments.

* * * * *

(b) * * *

(2) The head of the contracting activity is delegated the authority to serve as the ratifying official for unauthorized contractual commitments not exceeding $1,000. The head of the contracting activity may refer such actions to the Procurement Executive for ratification if he/she so chooses. All unauthorized commitments in excess of $1,000 shall be ratified by the Procurement Executive.

* * * * *

(c) * * * However, the contracting officer is encouraged to obtain legal concurrence if there is a question of proprietary or a legal issue.

17. Section 601.602–3–70 is revised to read as follows:

601.602–3–70 Procedures.

(a)(1) The person who made the unauthorized commitment shall submit all records and documents concerning the unauthorized commitment to the contracting officer assigned the ratification action. That person shall provide a complete written, signed statement of the facts, including why normal acquisition procedures were not followed, why and how the vendor was selected, a list of other sources considered, a description of work or products, a statement regarding the status of performance, an estimated or agreed price, certified funding citations, and a statement as to why he/she should not be personally liable for the cost, e.g. a public purpose was served and no personal benefit was received.

(2) When the person who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, an officer from the responsible office shall accomplish the requirements of this paragraph; the statement shall identify the individual responsible for the unauthorized commitment.

(3) In addition, a cognizant management official from the office which employed the individual who made the unauthorized commitment at the time the unauthorized commitment was made shall provide a statement detailing actions that he/she will take to ensure that such commitments will not occur again under the same or similar circumstances.

(b) The contracting officer assigned the ratification action shall prepare and execute a recommendation to the ratifying official. The contracting officer shall either recommend that the ratifying official approve and ratify the unauthorized commitment; or, disapprove the ratification of the unauthorized commitment.

(1) The recommendation shall include the facts and circumstances of the unauthorized commitment; the information prescribed in FAR 1.602–

3(c)(1) and (c)(3) through (c)(6); and a recommendation to the ratifying official as to whether the unauthorized commitment should be ratified.

(2) Following the signature of the contracting officer, the recommendation shall include a statement that the ratifying official could have granted authority to enter into a contractual commitment at the time it was made and still has the authority to do so; that the ratifying official hereby ratifies (or disapproves) the unauthorized commitment in the amount specified; and a date and signature block for the ratifying official.

(c) The information required in paragraph (b)(1) of this section shall be supported by factual findings included or referenced in the recommendation.

(d) The contracting officer shall submit the complete file to the ratifying official. For actions exceeding $1,000, the file shall be submitted through the head of the contracting activity to the Procurement Executive.

(e) Upon receipt and review of the complete file, if the ratifying official ratifies the unauthorized commitment, the file shall be returned, through the head of the contracting activity if the action exceeds $1,000, to the contracting officer for issuance of the appropriate contractual document(s). If the request for ratification is not justified, the ratifying official shall return the request to the head of the contracting activity (if over $1,000) or to the contracting officer if under $1,000) with a written explanation for the decision and a recommendation for disposition of the action.

(f)(1) When a ratification is approved, the ratifying official shall prepare a letter to the contractor involved in the ratification. The letter shall state the reason(s) why the ratification was approved and provide cautionary language to the contractor regarding future instances of ratification actions.

(2) When a ratification is not approved, the head of the contracting activity shall prepare a letter to the contractor advising that the ratification was not approved. The letter shall cite the reasons for the disapproval.

18. Section 601.603–3 is revised to read as follows:

601.603–3 Appointment.

(a) There is no contracting officer authority conferred upon any DOS employee by virtue of position. The Procurement Executive appoints all DOS contracting officers, in conformance with FAR 1.603–3. The contracting officer shall retain the original copy of the Standard Form 1402, Certificate of Appointment, signed by the Procurement Executive. Only qualified employees shall be appointed as contracting officers. A/OPE is responsible for providing guidance and oversight in managing such appointments.

(b) Contracting officers shall be appointed in accordance with the Procurement Career Management Guidebook, available from A/OPE.

(c) *Non-Federal employees.* Only United States Government direct-hire employees who are U.S. citizens shall be appointed as contracting officers. Personal services contractors, Foreign Service Nationals, and Third Country Nationals are not eligible for appointment as DOS contracting officers.

19. Section 601.603–70 is revised to read as follows:

601.603–70 Delegations of authority.

(a) *Delegations.* As stated in 601.603–3(a), there is no contracting officer authority conferred by virtue of position. Pursuant to 601.602–1(b), the Procurement Executive has designated the following as contracting activities as defined in FAR 2.101. These authorities are not redelegable. In addition, specific individuals are designated as heads of contracting activities (HCAs) (see FAR 2.101):

(1) *Overseas posts.* Each overseas post shall be regarded as a contracting activity to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, and services; to sell personal property; and to lease real property. The Principal Officer, the Administrative Officer, or the Supervisory General Services Officer are designated as HCAs; provided, that he/she has a contracting officer's warrant issued by the Procurement Executive. The Procurement Executive (or authorized A/OPE staff) may delegate to a contracting officer, on a case-by-case basis, the authority to award a contract or modification which exceeds the contracting officer's warrant level.

(i) No authority is delegated to enter into cost-reimbursement, fixed-price incentive, or fixed-price redeterminable contracts.

(ii) When expressly authorized by a U.S. Government agency which does not have a contracting officer at the post, the officers named in paragraph (a)(1) introductory text of this section may enter into contracts for that agency. Use of this authority is subject to the statutory authority of that agency and any special contract terms or other requirements necessary for compliance with any conditions or limitations applicable to the funds of that agency. The agency's authorization shall cite the statute(s) and state any special contract terms or other requirements with which the acquisition so authorized must comply. In view of the contracting officer's responsibility for the legal, technical, and administrative sufficiency of contracts, questions regarding the propriety of contracting actions that the post is required to take pursuant to this authority may be referred to the Department for resolution with the headquarters of the agency concerned.

(2) *Office of Foreign Buildings.* The authority to enter into and administer contracts pursuant to the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 292 *et seq.*), is delegated to the Deputy Assistant Secretary of State for Foreign Buildings and to the Director for Acquisitions as the HCA.

(3) *Office of Acquisition.* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies and nonpersonal services is delegated to the Director and Deputy Director as the HCA.

(4) *Foreign Service Institute.* The authority to enter into and administer contracts pursuant to Chapter 7, Title I, of the Foreign Service Act of 1980, as amended (22 U.S.C. 4021 *et seq.*), is delegated to the Director of the Foreign Service Institute, the Executive Director, the Deputy Executive Director, and the Supervisory Contracting Officer as the HCA.

(5) *Office of Foreign Missions.* The authority to enter into and administer contracts pursuant to Title II of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4301 *et seq.*), is delegated to the Director, Office of Foreign Missions, and the Administrative Officer as the HCA.

(6) *U.S. Mission to the United Nations.* The authority to enter into and administer contracts pursuant to the United Nations Participation Act of 1945, as amended (22 U.S.C. 287), is delegated to the Counselor for Administration as the HCA.

(7) *Moscow Embassy Building Control Office.* The authority to enter into and administer contracts for the planning, design, and construction of the embassy office building in Moscow is delegated to the Director, Moscow Embassy Building Control Office as the HCA.

(8) *Diplomatic Telecommunication Service—Program Office.* The authority to enter into and administer contracts for the leasing or purchase of telecommunications services, circuits, subsystems, and associated professional

services is delegated to the Chief, Acquisition Branch as the HCA.

(9) *Regional Procurement Support Offices.* (i) The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, services, execute leases for real property, and to sell personal property on behalf of overseas posts is delegated to each Director, Regional Procurement Support Office (RPSO) as the HCA at the following locations:

(A) RPSO Bonn in conjunction with Embassy Bonn;

(B) RPSO Tokyo in conjunction with Embassy Tokyo;

(C) RPSO Singapore in conjunction with Embassy Singapore; and,

(D) RPSO Miami in conjunction with the Miami Regional Center.

(ii) The RPSOs are under the purview and guidance of A/OPE.

(b) *Other delegations.* Several DOS offices have been delegated limited procurement authority, although they have not been designated as HCAs. Matters requiring HCA resolution are referred to the Office of Acquisition. These delegations are provided only to warranted contracting officers in the respective offices. They are as follows:

(1) *Office of Language Services.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against schedule contracts for interpreting, translating, conference reporting, and related language support and escort services.

(2) *Office of Overseas Schools.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against schedule contracts pursuant to section 29 of the State Department Basic Authorities Act of 1956, as amended.

(3) *Library.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against schedule contracts pursuant to the provisions of the Public Printing and Documents Act of 1968, as amended, and for the acquisition of newspapers, books, maps, and periodicals.

(4) *Office of International Conferences.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against schedule contracts pursuant to section 5, Title I, of the Department of State Basic Authorities Act of 1956, as amended.

(5) *Bureau for Refugee Programs.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against schedule contracts pursuant to the Migration and Refugee Assistance Act of 1962, as amended, and Executive Order 11077, dated January 22, 1963.

(6) *Bureau of International Narcotics Matters.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13, orders against schedule contracts and personal services contracts pursuant to the Foreign Assistance Act of 1961, as amended; and, 48 CFR Chapter 7, Agency for International Development Acquisition Regulation, including any amendments thereto.

20. Section 601.670 is added to read as follows:

601.670 Procurement Career Management Program.

(a) *Policy.* The Department's Procurement Career Management Program is designed to improve the quality of contracting in the Department through the development and maintenance of professional contracting skills in accordance with the Federal Acquisition Institute's Contract Specialist Workbook and related guidance.

(b) *Procedures.* Details of the Department's Procurement Career Management Program are described in the Department of State Procurement Career Management Guidebook. A/OPE shall provide guidance and oversight.

PART 602—DEFINITIONS OF WORDS AND TERMS

602.101–70 [Amended]

21. In section 602.101–70, the definition of "Consolidated Receiving Point" is amended in the first sentence by removing the words "packing firm employed by" and inserting the words "contractor under contract to" in their place, and by removing the second sentence; the definition of "Despatch Agency" is amended by removing the words "Office of Supply, Transportation and Procurement" and inserting the words "Office of Supply and Transportation" in their place, by removing the word "and" preceding "San Francisco, California", and by adding the words "; and, Seattle, Washington." to the end of the second sentence; and, the definition of "Third Country Procurement" is removed.

Subpart 602.2 (602.201 and 602.201–70) [Removed]

22. Subpart 602.2, consisting of sections 602.201 and 602.201–70, is removed.

PART 603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

23. Subpart 603.1 is added to read as follows:

Subpart 603.1—Safeguards

Sec.
603.104 Procurement integrity.
603.104–5 Disclosure, protection, and marking of proprietary and source selection information.
603.104–9–70 Certification requirements.
603.104–11 Processing violations or possible violations.

Subpart 603.1—Safeguards

603.104 Procurement integrity.

603.104–5 Disclosure, protection, and marking of proprietary and source selection information

(d)(1) The head of the contracting activity is the agency head's designee for the purposes of FAR 3.104–5(d)(1).

(2) The following classes of persons may be authorized access to proprietary or source selection information by the contracting officer or head of the contracting activity when such access is necessary to the conduct of a procurement:

(i) Clerical personnel directly involved in the procurement;

(ii) Supervisors in the contracting officer's chain of command;

(iii) Contracting personnel involved in reviewing or approving the solicitation, contract, or contract modification; and

(iv) Personnel in the following offices: Office of Small and Disadvantaged Business Utilization (A/SDBU), Office of the Legal Adviser (L/BA), Office of Legislative Affairs, Office of the Inspector General, the Small Business Administration, and the Office of Federal Contract Compliance Programs (Department of Labor).

603.104–9–70 Certification requirements.

(b) Competing contractors are required to complete the "Certificate of Procurement Integrity" and submit it with their bids under IFBs. For RFPs, the apparent successful offeror only need submit the certification. For RFPs, the contracting officer shall contact the apparent successful offeror before award and request that the certificate be submitted within five (5) working days if the certificate was not submitted with the initial proposal. A bid submitted under an IFB that lacks a signed certificate is nonresponsive, and an apparent successful offeror under an RFP who does not submit the required certificate is ineligible for award.

603.104–11 Processing violations or possible violations.

(a) The contract specialist shall report any violation or possible violation of the procurement integrity requirements immediately to the contracting officer and the Office of the Inspector General. The contracting officer shall follow the procedures in FAR 3.104–11 regarding such violations.

603.203 [Amended]

24. Section 603.203 is amended by removing the parenthetical "(see 601.603–70)" in the last sentence.

603.303 [Amended]

25. Section 603.303 is amended by removing the parenthetical "(see 601.603–70)" from the first sentence of paragraph (c).

26. Section 603.601 is added to read as follows:

603.601 Policy.

(a) It is Department policy not to award contracts to Federal employees, or businesses substantially owned or controlled by Federal employees.

27. Section 603.670 is added to read as follows:

603.670 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 652.203–70, Prohibition Against the Use of Federal Employees, in all solicitations and contracts, and the provision at 652.203–71, Certification Regarding Federal Employment, in all solicitations.

28. Subpart 603.7 is added to read as follows:

Subpart 603.7—Voiding and Rescinding Contracts

Sec.
603.704 Policy.
603.705 Procedures.

Subpart 603.7—Voiding and Rescinding Contracts

603.704 Policy.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.704.

603.705 Procedures.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.705.

PART 604—ADMINISTRATIVE MATTERS

29. Section 603.202 is amended in the first sentence by revising the words "Despatch Office" to read "Despatch Agent"; and, by adding the following sentence to the end of the section:

604.202 Agency distribution requirements.

* * * Copies of contracts and modifications awarded as small business or 8(a) set-asides shall be sent to A/SDBU.

30. Section 604.7002 is amended by revising paragraphs (a) and (b) to read as follows; and, by removing the words "the Office of the Procurement Executive" in paragraph (c) and substituting "A/OPE" in their place:

604.7002 Procedures.

(a) Prior to issuance of a solicitation or a solicitation amendment which constitutes a substantive change, award of a contract, or execution of a contract modification, any of which is estimated to exceed the thresholds indicated below, the contracting officer shall forward the proposed contractual action to A/OPE for review. For contract modifications, the contracting officer shall submit such actions in accordance with 643.102–70(b). Modifications exercising contract options, where the options were part of the original solicitation/contract which was reviewed and approved by A/OPE, are exempt from this review requirement:

(1) For domestic contracting activities, all actions over $5,000,000. There is no review threshold when the contracting activity's quality assurance plan has been approved by A/OPE;

(2) For overseas posts with contracting officers who have been issued standard name warrants, all actions over $250,000, with the exception of those actions for local guard services, which require review at $100,000 and above; and

(3) For overseas posts with contracting officers who have been issued provisional name warrants, all actions over $100,000.

(4) When calculating the threshold for application of paragraphs (a)(1) through (3) of this section, include the value of the base year plus all option years.

(b) A/OPE shall document the scope and extent of the review and shall submit written recommendations to the contracting officer on each proposed contract action reviewed. In the event the contracting officer and the reviewer cannot reach agreement on the recommendation(s), the contracting officer shall prepare an appeal file to be transmitted to the Procurement Executive. The appeal shall be approved by an individual one management level above the contracting officer prior to its transmission to the Procurement Executive. A resolution shall be worked out between the contracting activity and the Procurement Executive. For purposes of this section, the officer who may transmit the appeal file to the Procurement Executive shall not be the same individual who will sign the contractual document. For overseas posts, where the contracting officer is the head of the contracting activity, the approval authority shall be the Principal Officer.

* * * * *

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 605—PUBLICIZING CONTRACT ACTIONS

31. Section 605.202–70 is amended to add the phrase ", and work is performed outside" preceding the words "the United States" in the second sentence of paragraph (a); by revising paragraph (b); by amending paragraph (c)(1) to add the phrase "or other agency" after the words "the requirements office" in the first sentence; by amending paragraph (c)(2) introductory text to remove the parenthetical "(see 601.603–70)"; revising paragraphs (c)(2) (i) and (ii); by revising paragraph (d); and by adding new paragraph (e) to read as follows:

605.202–70 Foreign acquisitions.

* * * * *

(b) *Policy.* Under certain conditions, waiver of the requirement to publish in the CBD notices of proposed procurement actions is necessary for acquisitions by overseas posts when these acquisitions are made from sources outside, and work is performed outside the United States, its possessions and Puerto Rico. This policy is pursuant to 41 U.S.C. 416 *et seq.* and 15 U.S.C. 637 *et seq.* This policy applies only to DOS contracts and any contracts awarded in behalf of other Federal agencies using appropriated funds.

(c) * * *

(2) * * * (i) If the head of the contracting activity determines that publication of a CBD notice is appropriate and reasonable, the notice shall be published in accordance with FAR 5.2.

(ii) If the head of the contracting activity determines that publication of a CBD notice is inappropriate or unreasonable, that official may waive the CBD notice requirements of FAR Subpart 5.1. Delay, due to poor acquisition planning, is not a sufficient reason to waive the CBD notice. This determination shall be in writing and made in consideration of such factors as overseas delivery, installation, maintenance or replacement requirements, special product of performance specifications, and security clearance requirements. The determination and findings shall be

included in the contract file. Competition in such acquisitions, including the use of written solicitations, shall be obtained in all cases to the extent feasible and consistent with FAR Part 6 and DOSAR Part 606. If there are known U.S. firms or firms with U.S. affiliations in local residence capable of supplying the required supplies or services, the contracting activity shall ensure that those firms are included in the source list for the acquisition.

* * * * *

(d) *Policy exclusions.* CBD waiver authority does not apply to guard service contracts that exceed $250,000. Guard service contracts that exceed $250,000 shall be synopsized in the CBD. Option year prices shall be included when computing the applicability of this threshold.

(e) *Limitations.* If the head of the contracting activity waives the CBD synopsis on the basis of urgent or compelling reasons, the acquisition may only fulfill the immediate requirements. Therefore, option periods of performance, or quantities which exceed immediate needs, are not allowable.

32. Section 605.207 is amended by adding a new paragraph (a)(1) to read as follows:

605.207 Preparation and transmittal of synopsis.

(a)(1) Contracting officers at overseas posts shall submit synopses of proposed contract actions to A/OPE for electronic transmittal to the CBD.

33. Subpart 605.3 is added to read as follows:

Subpart 605.3—Synopses of Contract Awards

605.303 Announcement of contract awards.

(a) Contracting officers shall make information available on awards over $10 million to the Office of Legislative Affairs in sufficient time for an announcement by 5:00 p.m. Washington, DC time on the day of the award. This requirement applies only to awards made by domestic contracting activities where performance will take place within the United States or its possessions.

34. Section 605.403 is added to read as follows:

605.403 Requests from members of Congress.

(a) The Procurement Executive is the agency head for the purposes of FAR 5.403(a).

35. Section 605.502 is revised to read as follows:

605.502 Authority.

(a) For paid advertisements in newspapers within the United States, the head of the contracting activity is the agency head's designee for the purposes of FAR 5.502(a). For acquisitions by overseas posts necessitating paid advertisements in newspapers outside the United States, the head of the contracting activity is the agency's head's designee for the purposes of FAR 5.502(a). When the head of the contracting activity is the contracting officer for the acquisition, no further approvals are necessary.

PART 606—COMPETITION REQUIREMENTS

36. Section 606.101–70 is amended by revising the second sentence to read as follows:

606.101–70 Foreign acquisitions not synopsized.

* * * A Commerce Business Daily synopsis is not required for domestic leases, pursuant to 48 CFR 505.202 and 570.202(a).

37. Section 606.302–1 is added to read as follows:

606.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(b)(4) The Procurement Executive is the agency head for the purposes of FAR 6.302–1(b)(4).

38. Section 606.302–4 is added to read as follows:

606.302–4 International agreement.

(b)(2) In accordance with FAR 6.302–4, guard services shall be acquired from the host government only when it is the sole available source.

39. Section 606.302–6 is added to read as follows:

606.302–6 National security.

(b) This subsection applies to all acquisitions involving national security information, regardless of dollar amount. In no case shall information be classified in order to restrict competition. Information may be classified only when its authorized disclosure could be expected to cause damage to national security.

(c) (1) The Chief, Controls Division, Office of Intelligence Liaison, Directorate for Coordination, Bureau of Intelligence and Research, is responsible for reviewing and certifying on any proposed acquisitions derived from or funded or administered by intelligence community agencies that involve sensitive compartmented information and ensuring that the provisions of E.O. 12356 and FAR 6.302–6 have been met. The Chief, Information Security Programs Division, Office of Information Security Technology, Bureau of Diplomatic Security, is responsible for reviewing and certifying on all other proposed acquisitions funded by the Department of State that involve national security information and ensuring that the provisions of E.O. 12356 and FAR 6.302–6 have been met. When disclosure of the Department's needs through full and open competition would compromise national security, the Justification for Other than Full and Open Competition shall include the following specific information:

(i) How national security would be compromised if the Department of State's (or other agencies') needs were disclosed in the Commerce Business Daily;

(ii) Why the CBD synopsis cannot be worded in such a manner that national security would not be compromised;

(iii) Necessity for access to classified information to prepare technical and/or cost proposal and level of security clearance required;

(iv) Necessity for access to classified information to perform the proposed contract and level of security clearance required;

(v) Number and value of contracts that the justification covers; and

(vi) A statement as follows: "I hereby certify that the national security concerns of the referenced acquisition(s) meet the criteria set forth in Executive Order 12356 and FAR 6.302–6".

(2) Any acquisition involving national security information shall be publicized in the Commerce Business Daily unless disclosure of the agency's needs would compromise national security.

(3) The contracting officer is responsible for soliciting offers from as many potential sources as is practicable under the circumstances. However, given the sensitivity required for acquisitions involving national security information, it is expected that requirements offices will work closely with the contracting officer in maximizing competition.

606.303–1 [Amended]

40. Section 606.303–1 is amended by removing the words "the Office of the Procurement Executive" and inserting the acronym "A/OPE" in their place.

41. Section 606.304 is amended by adding new paragraphs (a)(2) and (d) to read as follows:

606.304 Approval of the justification.

(a) (2) The approval authority for a proposed contract over $100,000 but not exceeding $1,000,000 for domestic

contracting activities that do not have a competition advocate is the Department Competition Advocate.

(d) The estimated dollar value of all options shall be included in determining the approval level of a justification.

42. Section 606.304–70 is revised to read as follows:

606.304–70 Acquisitions by overseas posts.

The Departmental Competition Advocate is the approval authority for the purposes of FAR 6.304(a)(3). This authority is not redelegable. Any such justification must be transmitted through the Principal Officer at the overseas post.

43. Section 606.370 is added to read as follows:

606.370 Department of State standardization program.

(a) It is the Department's policy to promote full and open competition in all procurement actions. The authority at 41 U.S.C. 253(c)(1) shall be used with respect to standardization when only specified makes and models of equipment will satisfy the Department's needs and only one source is available. This policy applies to all acquisitions involving standardization, regardless of dollar amount.

(b) Contracts awarded under the authority at 41 U.S.C. 253(c)(1) shall be supported by the written justification described in FAR 6.303. The contracting officer, requirements office, procuring activity competition advocate, and the Procurement Executive shall approve all Justifications for Other than Full and Open Competition that cite standardization of technical equipment as justification to restrict competition. The Administrative Officer at each post is the procuring activity competition advocate for that post and the requirements office at post is the embassy functional office responsible for identifying the need to contract.

(c) Procurement of specified makes and models of technical equipment and systems, for which there is only one source of supply, is considered other than full and open competition. Such procurements shall be supported by an approved Justification for Other than Full and Open Competition. The justification shall include the content requirements of FAR 6.303–2. The justification shall also address potential cost savings in areas such as inventory, operations, training, maintenance, repairs, and administrative and management support. Areas of consideration for potential cost savings shall be supported by detailed estimates as attachments to the justification. Justifications shall specify an effective period, which shall bear a reasonable relationship to the life of the technical equipment. The effective period shall not exceed six years with a review at the end of the first three years. Periodic reviews shall be made during the standardization period to determine whether the standardization should be continued, revised or canceled.

44. Section 606.501 is revised to read as follows:

606.501 Requirement.

(a) The Procurement Executive is the head of the agency for the purposes of FAR 6.501 and designates the Department Competition Advocate.

(b) Contracting activity competition advocates have been designated for A/FBO and A/OPR/ACQ. The Department Competition Advocate is the activity competition advocate for all other domestic contracting activities.

45. Section 606.570 is added to read as follows:

606.570 Solicitation provision.

The contracting officer shall insert the provision at 652.206–70, Competition Advocacy/Ombudsman, in all solicitations over the simplified acquisition limitation.

PART 608—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 608.4 (608.402, 608.402–70)—[Removed]

46. Subpart 608.4, consisting of sections 608.402 and 608.402–70, is removed.

PART 609—CONTRACTOR QUALIFICATIONS

609.202 [Amended]

47. Section 609.202 is amended by removing the parenthetical "(see 601.603–70)".

609.404 [Amended]

48. Section 609.404 is amended by removing the words "The Office of the Procurement Executive" and inserting the acronym "A/OPE" in their place in the first sentence.

49. Section 609.405 is revised to read as follows:

609.405 Effect of listing.

(a) The Procurement Executive is the agency head's designee for the purposes of FAR 9.405(a).

(d) In accordance with a FAR class deviation granted by the Procurement Executive, the following actions apply to actions awarded by DOS contracting activities:

(1) (i) Contracting officers at overseas contracting activities may rely on the debarment certification submitted by bidders/offerors (FAR 52.209–5) as proof of eligibility for award when access to the current "Lists of Parties Excluded from Procurement Programs" is not reasonably available. For contracts which require A/OPE review and approval, the contracting officer should request that A/OPE perform the required review if the list is not available.

(4) (i) For procurement actions (both domestic and overseas) that do not exceed the simplified acquisition limitation, contracting officers need not consult the "List of Parties Excluded from Procurement Programs" prior to award. The list should be consulted whenever the contracting officer has reason to believe that a proposed contractor may appear on the list.

(ii) Contracting officers at domestic contracting activities shall review the "List of Parties Excluded from Procurement Programs", either in hard copy or electronic form, prior to award.

50. Section 609.405–70 is amended by removing paragraph (c); by designating paragraphs (a) and (b) as (b) and (c), respectively; and by designating the introductory paragraph as paragraph (a) and revising it to read as follows:

609.405–70 Termination action decision.

(a) Prior to making a decision to terminate, based on the consideration listed below, the contracting officer shall have the proposed action reviewed and approved by:

(1) The Office of the Legal Adviser;

(2) An individual one level above the contracting officer; and

(3) For overseas posts, A/OPE.

* * * * *

51. Part 610 is added to subchapter B to read as follows:

PART 610—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.
610.002 Policy
610.002–70 Metric system implementation.

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

610.002 Policy.

610.002–70 Metric system implementation.

(a) *Policy.* The Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418) requires Federal agencies to establish implementing guidelines pursuant to metric policy established under Sec. 5164 of the Act to adopt the metric system as the preferred system of weights and measurements for United

States trade and commerce. This subsection establishes the Department of State metric conversión guidelines for transition from the traditional system to the metric system of weights and measurements.

(b) *Applicability.* This subsection applies to all DOS procurements, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

(c) *Definitions.*

Dual systems means the use of both traditional and metric systems. For example, an item is designated, produced and described in inch-pound values with soft metric values also shown for information or comparison.

Hard metric means the use of only standard metric (SI) measurements in specifications, standards, supplies and services.

Hybrid systems means the use of both traditional and hard metric values in specifications, standards, supplies and services. For example, an engine with internal parts in metric dimensions and external fittings or attachments in inch-pound dimensions.

Measurement sensitive means any item whose application or meaning depends substantially on some measured quantity. For example, measurement sensitive items include product or performance criteria and standards binding on others, such as emission levels, size and weight limitations on items in commerce.

Metrication means any act that increases metric system use, including metric training and initiation or conversion of measurement-sensitive processes and systems to the metric system.

Metric system means the International System of Units (Le System International d'Unites (SI)) of the International Bureau of Weights and Measures. The units are listed in Federal Standard 376A, Preferred Metric Units for General Use by the Federal Government.

Soft metric means the result of mathematical conversion of inch-pound measurements to metric equivalents in specifications, standards, supplies and services. The physical dimensions, however, are not changed.

Traditional system of weights and measurements means the predominant weight and measurement system currently used in the United States, also referred to as the "inch-pound system". The traditional system includes such commonly used units as inch, foot, yard, mile, pint, quart, gallon, bushel, ounce (fluid and avoirdupois), pound, degree Fahrenheit, ampere, candela, and second.

(d) *Procedures.* (1) DOS contracting activities shall implement the metric system in a manner consistent with Pub. L. 100–418.

(2) All DOS contracting activities shall use the metric system in procurement consistent with security, operations, economic, technical, logistical, training and safety requirements.

(3) The Department shall encourage industry to adopt the metric system, by acquiring commercially available metric products and services that meet the Department's needs whenever practical. Toward this end, solicitations for DOS acquisitions shall:

(i) State all measurement sensitive requirements in metric terms whenever possible. Alternatives to hard metric are soft, dual and hybrid metric terms. The Metric Handbook for Federal Officials regarding the selection of proper metric units and symbols is available for the National Technical Information Service (#PB89–226922); and

(ii) Contracting officers shall return all statements of work/specifications that are not expressed in some form of metric terms to the requirements office that prepared the documents, if the contract is expected to exceed $500,000, unless the requirements office has forwarded to the contracting activity for approval, in a waiver format prescribed by the head of the contracting activity, a justification for the use of non-metric specifications/statements of work. Option year prices shall be considered when computing the $500,000 threshold.

(4) Waivers are not required when ordering from Federal Supply Schedules, or if the contract is not expected to exceed $500,000.

(5) Valid justifications for non-metric specifications/word statements include, but are not limited to:

(i) Existing specifications and standards in inch-pound units, unless conversions is necessary or advantageous to the Government. Unnecessary retrofit of existing systems with new metric components shall be avoided if the total cost of the retrofit, including redesign costs, exceeds $25,000;

(ii) When metric is not the accepted industry system with respect to a business-related activity, soft metric, hybrid or dual system may be used during transition to hard metric; and

(iii) When the use of metric is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

(6) The contracting officer shall review and, if acceptable, approve the waiver prepared by the requirements office prior to the release of a solicitation that incorporates a specification that is not written in some form of metric, if the resultant contract is expected to exceed $500,000. The waiver shall be placed in the contract file. If the waiver is not approved, the contracting officer shall return it to the requirements office with an explanation.

(7) The Department's direct in-house operating metric conversion costs shall be handled as normal operating expenses rather than as special one time costs or included as a budget line item. However, these costs are to be identified. Identification includes, but is not limited to, the cost of metric aids, tools, equipment, training and increased cost to develop metric specifications. All contracting activities and requirements offices shall maintain a record of any costs and/or savings brought about by metric conversion.

(8) Bulk (loose, unpacked) materials shall be specified and purchased in metric or dual units.

(9) Measuring devices, shop and laboratory equipment shall be purchased in metric or dual units.

(10) Shipping allowances, bills of lading and other shipping documents shall be expressed in metric or dual units.

SUBCHAPTER C—SUBCONTRACTING METHODS AND CONTRACT TYPES

PART 613—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

613.103–70 [Amended]

52. Section 613.103–70 is amended by removing paragraph (a) and removing the paragraph "(b)" designation from paragraph (b).

53. Section 613.505–1 is added to read as follows:

613.505–1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services—Continuation.

The OF–347 and OF–348 shall be mandatory for use by domestic contracting activities for issuing simplified acquisitions and delivery orders, unless ordering against another Federal agency contract which stipulates a different form (e.g., DD–1155, Order for Supplies or Services). The OF–347 and OF–348 are the preferred forms for issuing simplified acquisitions and delivery orders by overseas contracting activities; however, use of the OF–206 is authorized until such time that electronic commerce

requires use of the OF–347 or related form. The OF–347 may also be used as a voucher.

54. Section 613.502–2 is revised to read as follows:

613.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

(a) In lieu of the OF–347 and OF–348, DOS overseas contracting activities may use the Optional Form 206, Purchase Order, Receiving Report and Voucher, and Optional Form 206A, Continuation Sheet (illustrated at 653.303–206 and 653.303–206A, respectively).

(b) When using the OF–206, contracting activities may use Optional Form 127, Receiving and Inspection Report (illustrated at 653.303–127), for that purpose.

55. Section 613.505–70 is added to read as follows:

613.505–70 File folders for simplified acquisitions, delivery orders, and blanket purchase agreements.

Contracting officers shall use Forms DST–1918, Purchase Order File; DST–1919, Delivery Order File; and, DST–1920, Blanket Purchase Agreement (BPA) File, to record relevant data and document those purchases, respectively.

56. Section 613.507–70 is amended by adding the following sentence at the end to read as follows:

613.507–70 DOSAR clauses.

* * * The DOSAR clauses may be incorporated without setting out full text.

57. Subpart 613.6–70 is added to read as follows:

Subpart 613.6–70—Governmentwide Commercial Purchase Card Program

613.601–70 Policy.

(a) *Scope.* This subsection sets forth policy for use of the Government purchase card when making small purchases.

(b) *Policy.* It is the Department's policy that:

(1) The purchase card shall be used in preference to other methods of procurement (particularly BPAs) for purchases up to $2,500;

(2) The purchase card shall be issued primarily to personnel outside of procurement offices to purchase products and services up to ten percent of the small purchase threshold quickly with a minimum of paperwork and without having to send an individual requisition to a procurement office;

(3) The purchase card may be used in procurement offices for purchases up to the small purchase limitation; and,

(4) Open market purchases made with the purchase card shall be from small business, unless otherwise exempted by the FAR.

(c) *Procedures.* Specific procedures for implementation shall be developed by each contracting activity that wishes to participate in the program. These procedures shall be approved by A/OPE prior to implementation.

Subpart 614—Sealed Bidding

614.201–7–70 [Amended]

58. Section 614.201–7–70 is amended by removing paragraph (a)(1); by redesignating paragraph (a)(2) as paragraph (a); by deleting the clause number "652.214–71" and inserting "652.214.–70" in its place paragraph (b); by revising paragraph (c) to read as follows; and by removing paragraph (d):

614.201–7–70 DOSAR contract clauses.

(a) * * *

(b) * * *

(c) When contracting by sealed bidding, the contracting officer shall insert the provision at 652.214–71, Authorization to Perform, in all solicitations for contracts to be awarded or performed overseas.

614.404–1 [Amended]

59. Section 614.404–1 is amended by removing the parenthetical "(see 601.603–70)".

PART 615—CONTRACTING BY NEGOTIATION

615.106–70 [Amended]

60. Section 615.106–70 is amended by removing the phrase "652.214–70, Language Version,"; and by redesignating clause numbers "652.214.71" and "652.214–72" to read "652.214–70" and "652.214–71", respectively.

61. Subparts 615.4 and 615.5 are added to read as follows:

Subpart 615.4—Solicitation and Receipt of Proposals and Quotations

Sec.
615.403 Solicitation mailing lists.
615.404 Presolicitation notices and conferences.
615.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).
615.406–1 Uniform contract format.
615.413 Disclosure and use of information before award.
615.413–2 Alternate II.

Subpart 615.4—Solicitation and Receipt of Proposals and Quotations

615.403 Solicitation mailing lists.

Contracting officers shall release copies of solicitation mailing lists in accordance with FAR 14.205–5(a). However, the list of those firms which actually submitted proposals is not releasable. Requests for information other than solicitation mailing lists shall be handled by the Department's Office of Freedom of Information.

615.404 Presolicitation notices and conferences.

(c)(1) The Procurement Executive has approved a class deviation from the requirements of FAR 15.404(c)(1). Approval for presolicitation conferences at one level above the contracting officer is not required.

615.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

615.406–1 Uniform contract format.

(a) The uniform contract format shall be mandatory for all acquisitions outside the United States, its possessions, its territories, and Puerto Rico, with the exception of those contracts listed in FAR 15.406–1(a) (1) through (8), unless a waiver is granted by the Procurement Executive. The Procurement Executive is the agency head's designee for the purposes of FAR 15.406–1(a)(7).

615.413 Disclosure and use of information before award.

615.413–2 Alternate II.

Contracting officers may determine to use the alternate procedures listed in FAR 15.413–2 in cases deemed appropriate. These procedures must be used when releasing proposals outside the Government for evaluation purposes.

(e) Contracting officers shall place the notice specified in FAR 15.413–2(e) on all proposals when using these alternate procedures.

(f) Release of proposals outside the Government is authorized.

(1) The Procurement Executive is the agency head's designee for the purposes of FAR 15.413–2(f)(1).

Subpart 615.5—Unsolicited Proposals

Sec.
615.504 Advance guidance.
615.506 Agency procedures.

Subpart 615.5—Unsolicited Proposals

615.504 Advance guidance.

(a) The contact points for unsolicited proposals are the heads of the contracting activities.

615.506 Agency procedures.

(a) The contact points shall ensure that unsolicited proposals are controlled, evaluated, safeguarded, and disposed of in accordance with FAR Subpart 15.5.

62. Section 615.604 is added to read as follows:

615.604 Responsibilities.

(a) The head of the contracting activity is the agency head's designee for the purposes of FAR 15.604(a).

615.607 [Amended]

63. Section 615.607 is amended by removing the parenthetical "(see 601.603–70)" in the first sentence, and by removing the words "a legal review from" and inserting "the concurrence of" in their place in the second sentence.

615.608 [Amended]

64. Section 615.608 is amended by removing the parenthetical "(see 601.603–70)" in the first sentence.

PART 616—TYPES OF CONTRACTS

65. Section 616.102–70 is revised to read as follows:

616.102–70 Overseas posts.

Pursuant to 601.603–70(a)(1)(i), no authority is delegated to overseas posts to enter into cost-reimbursement, fixed-price incentive, or fixed-price redeterminable contracts, unless the Procurement Executive's approval is obtained. Such requests shall be submitted by the head of the contracting activity on a case-by-case basis.

66. Section 616.203–4 is amended by removing the words "The contracting officer" and inserting "Contracting officers at domestic contracting activities" in their place in the first sentence; and by adding the following sentences:

616.203–4 Contract clauses.

* * * Overseas posts may use the clause at 652.216–71, Price Adjustment, when procuring continuing services (*e.g.*, guard, janitorial, building maintenance, and gardening). Posts shall obtain A/OPE approval for any price adjustment clause that differs from the clause at 652.216–71.

616.301–3 [Amended]

67 Section 616.301–3 is amended by removing the words "and approved at a level above the contracting officer"

68. Section 616.306 is amended by removing the words ", without power of redelegation," and by adding the following sentence:

616.306 Cost-plus-fixed-fee contracts.

* * * This authority may be redelegated.

69. Section 616.603–2 is amended by adding the following sentence:

616.603–2 Application.

* * * For cases where the contracting officer is also the head of the contracting activity, the Procurement Executive shall approve the determination and findings.

PART 617—SPECIAL CONTRACTING METHODS

617.102–2 [Amended]

70. Section 617.102–2 is amended by adding the words ", unless approved by the Procurement Executive in accordance with DOSAR 617.204(e)." to paragraph (d).

71. Section 617.102–3 is added to read as follows:

617.102–3 Objectives.

(d)(3) The head of the contracting activity is the agency head's designee for the purposes of FAR 17.102–3(d)(3). For those cases where the contracting officer is also the head of the contracting activity, the Procurement Executive shall be the agency head's designee.

72. Section 617.201–70 is amended by revising the definition of "Priced option" to read as follows:

617.201–70 DOSAR definitions.

* * * * *

Price option means an option where the amount for the option is specified in or is reasonably determinable from the terms of the basic contract, as described in FAR 17.207(f) (1) through (5).

* * * * *

73. Section 617.204 is added to read as follows:

617.204 Contracts.

(e) The Procurement Executive shall approve any solicitations or contracts which exceed the five (5) year maximum length for supplies or services.

617.207, 617.207–70 [Removed]

74. Sections 617.207 and 617.207–70 are removed.

617.502 [Amended]

75. Section 617.502 is amended by removing the parenthetical "(see 601.603–70)".

76. Section 617.504–70 is added to read as follows:

617.504–70 Ordering procedures.

(a) Department deputy assistant secretaries are authorized to execute Economy Act IAAs. Department contracting officers also are authorized to execute Economy Act IAAs, as prescribed in FAR 17.504(a).

(b) Department of State form DS–1921, Award/Modification of Interagency Acquisition Agreement (illustrated in part 653), shall be used for all Economy Act IAAs where the Department is the requesting agency It shall also be used for Economy Act IAAs where the Department is the servicing agency if the requesting agency does not have a similar form that provides the same information.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 619—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

77. Part 619 is amended by revising the word "Director" to read "Operations Director" wherever it appears in the text; and revising the acronym "OSDBU" to read "A/SDBU" wherever it appears in the text.

619.201 [Amended]

78. Section 619.201 is amended by removing "The Under Secretary for Management" and inserting "The Assistant Secretary of State for Administration" in its place in paragraph (c); by removing "$25,000" and inserting "the simplified acquisition limitation" in its place in paragraph (d)(5); by removing the semicolon at the end of paragraph (d)(5) after the word "set-asides" and inserting a period in its place; and by adding the following sentences to paragraph (d)(5):

619.201 General policy.

* * * * *

(d) * * * (5) * * * This includes proposed contract modifications for new or additional requirements which do not fall within the original scope of the contract and which exceed the simplified acquisition limitation. This does not include the exercising of contract options;

79. Section 619.501 is added to read as follows:

619.501 General.

(c) Contracting officers shall use Department of State Form DS–1910, Small Business/Labor Surplus Area Review—Actions Above the Small Purchase Limitation, to document set-aside decisions.

80. Section 619.506 is added to read as follows:

619.506 Withdrawing or modifying set asides.

(b) The Procurement Executive shall resolve disagreements between the A/SDBU Operations Director and the contracting officer.

81. Section 619.705–1 is added to read as follows:

619.705–1 General support of the program.

It is the Department's policy to incorporate its current fiscal year goals as negotiated with the SBA into all pertinent Department solicitations, in addition to the standard subcontract clauses. Incorporation of the goals does not require that large business prime contractors must subcontract, but does require that to the extent they plan to subcontract, specific goals be established for doing business with small, small disadvantaged, and women-owned firms. Where funds are available, an incentive clause such as that found in FAR 52.219–10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns, is encouraged.

82. Section 619.705–3 is amended by adding the following sentence:

619.705–3 Preparing the solicitation.

* * * To further promote the use of small, disadvantaged, and women-owned firms by large prime contractors, contracting officers are encouraged to consider the adequacy of the subcontracting plans, and/or past performance in achieving negotiated subcontract goals, as part of the overall evaluation of the technical proposals.

619.705–6–70 [Amended]

83. Section 619.705–6–70 is amended by removing the word "quarterly" wherever it appears in paragraph (b) and inserting the words "annually" and "annual" in its place, respectively.

84. Section 619.708–70 is added to read as follows:

619.708–70 Solicitation provisions and contract clauses.

The contracting officer shall insert a provision substantially the same as the provision at 652.219–70, Department of State Subcontracting Goals, in solicitations whenever the clause at FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan, is used.

85. Section 619.801 is revised to read as follows:

619.801 Definitions.

National buy requirements includes all 8(a) contracts performed outside the United States and processed by the Small Business Administration.

86. Sections 619.810 and 619.812 are added to read as follows:

619.810 SBA appeals.

The Procurement Executive is the agency head for the purposes of FAR 19.810.

619.812 Contract administration.

(d) The Procurement Executive is the agency head for the purposes of FAR 19.812(d).

87. Section 619.870 is amended in paragraph (b) by revising the first sentence and by adding a new second sentence to read as follows:

619.870 Acquisition of technical requirements.

(a) * * *

(b) The contracting officer has greater latitude in holding discussions with the concerns solicited under an 8(a) program acquisition if under the $3 million competitive threshold for 8(a) competition than under a non-8(a) program acquisition. Informal assessments of 8(a) concerns shall be within the parameters of 13 CFR 124.308(g). * * *

PART 622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

88. Section 622.401 is added to read as follows:

622.401 Definitions.

(b) Apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen and guards. The terms "apprentice" and "trainee" are defined as follows:

(1) *Apprentice* has the same definition as in FAR 22.401(b)(1).

(2) *Trainee* has the same definition as in FAR 22.401(b)(2).

(3) The definition for *helper* as described in FAR 22.401 paragraph (b)(3) of the definition of *Laborers* or *mechanics* is reserved.

89. Section 622.404–6 is amended by adding a new paragraph (b)(6) to read as follows:

622.404–6 Modifications of wage determinations.

* * * * *

(b)(6) The head of the contracting activity is the agency head's designee for the purposes of FAR 22.404–6(b)(6).

90. Section 622.406–3 is added to read as follows:

622.406–3 Additional Classifications.

(b)(4) FAR 22.406–3 paragraph (b)(4) is reserved.

PART 623—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

91. Subparts 623.3 and 623.4 are added to read as follows:

Subpart 623.3—Hazardous Material Identification and Material Safety Data

623.302–70 Policy.

Any work which affects the safety and/or health of post personnel, including the handling of hazardous materials, shall comply with the applicable requirements of the Department of State Safety/Health and Environmental Management Resource Guide (6 FAM 606.7). Requirements offices shall ensure that any contractor operations and activities, whether sponsored by the post or other Department organization, are closely coordinated with the Post Occupational Safety and Health Officer during both planning and implementation phases.

Subpart 623.4—Use of Recovered Materials

Sec.

623.470 Affirmative procurement program for recovered materials.
623.471 Purpose.
623.472 Applicability.
623.473 Definitions.
623.474 EPA guidelines.
623.475 Responsibilities.
623.476 Preference programs for guideline items.
623.476–1 Preference program for the purchase of cement and concrete containing fly ash.
623.476–2 Preference program for building insulation products containing recovered materials.
623.476–3 Preference program for lubricating oils containing recovered materials.
623.476–4 Preference program for retread tires.
623.476–5 Preference program for paper and paper products containing recovered materials.
623.477 Promotion program.
623.478 Evaluation and certification.
623.479 Annual review and monitoring.
623.480 Solicitation provisions and contract clauses.

Subpart 623.4—Use of Recovered Materials

623.470 Affirmative procurement program for recovered materials.

623.471 Purpose.

This section establishes the Department of State's Affirmative Procurement Program for Recovered Materials in accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962, Pub. L. 94–580). Section 6002 requires that each agency develop an affirmative procurement plan to assure that items composed of recovered materials will be purchased to the maximum extent practical and which is consistent with Federal procurement law. It requires that preference be given in procurement programs to the purchase of items

containing recycled materials identified in guidelines promulgated by the Environmental Protection Agency (EPA). Executive Order 12780, Federal Agency Recycling and the Council on Federal Recycling and Procurement Policy, directed implementation of cost effective affirmative procurement programs for recycled items.

623.472 Applicability.

The affirmative procurement program is applicable to all domestic acquisition of items currently designated by an EPA guideline or by future guidelines promulgated by EPA. The requirements of this section are not applicable to acquisitions made and/or performed outside the United States or its possessions.

623.473 Definitions.

Affirmative procurement program is a program which ensures that items composed of recovered materials will be purchased to the maximum extent practicable, consistent with Federal procurement law. There are four components to an affirmative procurement program: (1) A preference program; (2) a promotion program; (3) procedures for requiring, obtaining and verifying estimates and certifications of recovered materials content; and, (4) an annual review and monitoring.

Designated item is an item that has been designated in an EPA procurement guideline as an item that is or can be produced using recovered materials whose procurement will advance the purpose of RCRA.

Minimum-content standard is the minimum content of recovered materials that a designated item must contain pursuant to specifications implementing the Department's preference program.

Postconsumer recovered materials are waste materials recovered from retail stores, office buildings, homes, and so forth after they have passed through their end usage as a consumer item. Waste paper includes all items from the first two categories above in addition to forest residues, and manufacturing and other wastes.

Procurement guidelines are guidelines issued by the EPA pursuant to Section 6002 of RCRA: (1) Identifying items that are or can be produced with recovered materials and where procurement will advance the objectives of the Act; and, (2) providing recommended practices for the procurement of such items.

Recovered materials are waste materials and by-products that have been recovered or diverted from solid waste, not including those materials and by-products generated from, and commonly reused within, an original manufacturing process.

Unreasonable price is the price for products containing recovered materials which exceeds alternatives made with virgin materials by 10 percent or more, and which the requirements office initiating the acquisition substantiates as exorbitant.

623.474 EPA guidelines.

(a) The EPA has published five guidelines that designate the following items that are or can be produced using recovered materials. Accordingly, contracting activities shall procure items produced using recovered materials to the maximum extent possible when procuring these designated items:

(1) Cement and concrete containing fly ash, 40 CFR part 249;

(2) Paper and paper products, 40 CFR part 250;

(3) Lubricating oils, 40 CFR part 252;

(4) Retread tires, 40 CFR part 253; and,

(5) Building insulation products, 40 CFR part 248.

(b) Copies of these guidelines, as well as future guidelines promulgated by EPA, may be obtained by calling EPA's Recycled Products Information Clearinghouse at (703) 941–4452.

(c) These guidelines are applicable when the Department purchases more than $10,000 worth of a designated item, or if the cost of all such items purchased by the Department during the preceding Fiscal Year was $10,000 or more.

§ 623.475 Responsibilities.

(a) The requirements office initiating an acquisition is responsible for determining whether recovered materials should be included in the specifications. Requirements offices may purchase items subject to the guidelines containing other than recovered materials only if:

(1) The price of items with recovered materials is unreasonable;

(2) The requirement for items produced with recovered materials results in inadequate competition or adversely affects small business or the Department's metrication program;

(3) Obtaining items with recovered materials results in unusual and unreasonable delays; or

(4) Items produced with recovered materials do not meet all reasonable performance specifications.

(b) If the requirements office chooses to procure designated items that do not contain recovered materials, a written justification must be submitted to the contracting officer.

623.476 Preference programs for guideline items.

623.476–1 Preference program for the purchase of cement and concrete containing fly ash.

Domestic contracts requiring the purchase of cement and concrete shall specify the performance requirements of the products required under the contract using appropriate standards/specifications when available. Consistent with such performance specifications, such contracts shall allow the contractor to deliver cement and concrete products that contain fly ash, a component of coal resulting from its combustion in electrical generating plants. Architects/Engineers shall specify performance requirements for the concrete to be supplied.

623.476–2 Preference program for building insulation products containing recovered materials.

Minimum content standards for building insulation products have been established by EPA guidelines. Domestic contracts for the design of structures that will utilize building insulation products shall require that the Architect/Engineer include, as a design consideration, the Department preference for the use of building insulation produced with recovered materials. Such contracts shall require that the Architect/Engineer specify the type of building insulation products to be supplied and shall require the Architect/Engineer to justify, in writing, the basis of the selected product type if it is not in accordance with the EPA guideline.

623.476–3 Preference program for lubricating oils containing recovered materials.

Contracts requiring the supply of lubricating oils, hydraulic fluids and gear oils shall require that products conform to the EPA guideline.

623.476–4 Preference program for retread tires.

Contracts requiring replacement tires for automobiles, light and heavy trucks and trailers, and off-road tires shall specify that retreading services shall be obtained if the carcass is retreadable. If such retreading services are not practicable, replacement tires shall be procured in accordance with the EPA guideline.

623.476–5 Preference program for paper and paper products containing recovered materials.

(a) All contracts requiring the purchase of paper and paper products shall require that paper and paper products delivered to the Department

meet the EPA guideline for recycled paper.

(b) Contracting officers shall require contractors to use recycled paper when submitting reports and other deliverables to the Department, when feasible.

(c) Contracting officers shall require offerors/bidders to submit proposals/bids on recycled paper, double-sided copying to the maximum extent possible.

623.477 Promotion program.

Items composed of recovered materials shall be purchased under all new domestic contracts to the maximum extent practicable. Contracting officers shall promote the fact that the Department is seeking to buy items containing recovered materials at pre-proposal and pre-bid conferences when appropriate.

623.478 Evaluation and certification.

(a) Contracting officers shall ensure that vendors estimate in their offers/bids the percentage of recovered material of the total content of designated items to be used under the contract.

(b) Contracting officers shall ensure that contractors certify the percentage of recovered materials contained in designated items actually supplied under the contract.

623.479 Annual review and monitoring.

The effectiveness of the preference program shall be reviewed annually by A/OPE. An assessment will be made to determine if greater use of recovered material is possible for the existing requirements or if recovered materials are causing undue delay, lack of competition, unreasonable prices or an unacceptable level of performance.

623.480 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 652.223–70, Estimates of the Total Percentage of Recovered Materials to be Utilized in the Performance of the Contract, in all domestic contracting activity solicitations using recovered materials in the performance of the work.

(b) The contracting officer shall insert the clause at 652.223–71, Certification of Minimum Content Actually Utilized in the Performance of the Contract, in all domestic solicitations and contracts requiring the use of recovered materials.

(c) The contracting officer shall insert the provision at 652.223–72, Use of Double-Sided Copying in the Submission of Bids or Proposals, in all domestic solicitations for supplies or services.

(d) The contracting officer shall insert the clause at 652.223–73, Use of Double-Sided Copying in the Submission of Reports, in all domestic solicitations and contracts for supplies or services.

(e) The contracting officer shall insert the clause at 652.233–74, Use of Fly Ash as a Partial Replacement for Cement and Concrete, in all domestic solicitations and contracts for Architect/Engineer services for the design of structures or works that will use cement and concrete products, unless the requirements office provides a written justification for using virgin materials.

(f) The contracting officer shall insert the clause at 652.223–75, Use of Recovered Materials in Building Insulation Products, in all domestic solicitations and contracts for Architect/Engineer services for the design of structures or works that will utilize or incorporate building insulation products containing recovered materials, unless the program office provides a written justification for using virgin materials.

(g) The contracting officer shall insert the clause at 652.223–76, Use of Lubricating Oils Containing Re-Refined Oils, in all domestic solicitations and contracts that require the delivery of lubricating oils, unless the program office provides a written justification for using virgin materials.

(h) The contracting officer shall insert the clause at 652.223–77, Use of Retread Tires, in all domestic solicitations and contracts that require the replacement of tires for automobiles, light and heavy trucks and trailers, and off-road vehicles, unless the program office provides a written justification for not using retread tires. This clause does not apply to the purchase of original equipment tires.

(i) The contracting officer shall insert the clause at 652.233–78, Use of Recovered Materials in Paper and Paper Products, in all domestic solicitations and contracts that require the delivery of reports or other paper products, unless the program office provides a written justification for the use of virgin materials.

PART 625—FOREIGN ACQUISITION

92. Section 625.102 is revised to read as follows:

625.102 Policy.

(a)(3) The authority to make the determination prescribed in FAR 25.102(a)(3) is delegated, without power of redelegation, to the head of the contracting activity.

(b)(2) The authority to make the determination prescribed in FAR 25.102(b)(2) is delegated, without power of redelegation, to the head of the contracting activity.

625.108 [Amended]

93. Section 625.108 is amended by removing the words "The Office of the Procurement Executive" and inserting the acronym "A/OPE" in their place.

94. Section 625.202 is revised to read as follows:

625.202 Policy.

(a)(2) The authority to make the determination prescribed in FAR 25.202(a)(2) is delegated, without power of redelegation, to the head of the contracting activity.

(b) The authority to make the determination prescribed in FAR 25.202(b) is delegated, without power of redelegation, to the head of the contracting activity.

95. Section 625.203 is added to read as follows:

625.203 Evaluating offers.

The head of the contracting activity is the agency head for the purposes of FAR 25.203 (a) and (b).

625.304 [Amended]

96. Section 625.304 is amended by adding after "activity" the words "without power of redelegation."

97. Section 625.901 is revised to read as follows:

625.901 Omission of examination of records clause.

(a) The Procurement Executive is the agency head for the purposes of FAR 25.901.

(b) Each determination and findings to omit FAR clause 52.215–1, Examination of Records by Comptroller General, shall be prepared in writing by the contracting officer and submitted to the Procurement Executive for approval.

(c) The Procurement Executive shall forward the approved determination and findings to the requesting contracting activity for inclusion in the contract file, or inform the contracting activity in writing if the determination and findings is not approved, as appropriate.

(1)(ii) The report required by FAR 25.901(c)(1)(ii) shall be prepared and forwarded to the Assistant Secretary of State for Administration by the Procurement Executive.

Subpart 625.10 (625.1003)—[Removed]

98. Subpart 625.10, consisting of section 625.1003, is removed.

PART 627—PATENTS, DATA, AND COPYRIGHTS

99. Part 627 is added, to read as follows:

PART 627—PATENTS, DATA, AND COPYRIGHTS

Subpart 627.2—Patents

Sec.
627.203 Patent indemnification of Government by contractor
627.203–6 Clause for Government waiver of indemnity

Subpart 627.3—Patent Rights Under Government Contracts

627.303 Contract clauses.
627.304 Procedures.
627.304–1 General.
627.304–5 Appeals.

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subpart 627.2—Patents

627.203 Patent indemnification of Government by contractor.

627.203–6 Clause for Government waiver of indemnity.

The Procurement Executive is the agency head's designee for the purposes of FAR 27.203–6.

Subpart 627.3—Patent Rights Under Government Contracts

627.303 Contract clauses.

The Procurement Executive is the agency head's designee for the purposes of FAR 27.303. Determinations issued by the Procurement Executive shall be reviewed by the Office of the Legal Adviser.

627.304 Procedures.

627.304–1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 27.304–1. Questions regarding fact-finding procedures as specified in FAR 27.304–1(a)(4) shall be referred to A/OPE. Determinations issued by the Procurement Executive shall be reviewed by the Office of the Legal Adviser.

627.304–5 Appeals.

The Procurement Executive is the agency head's designee for the purposes of FAR 27.304–5. Questions regarding the appeals procedure as specified in FAR 27.304–5(b) shall be referred to A/OPE.

PART 628—BONDS AND INSURANCE

100. Part 628 is amended by adding Subparts 628.1, 628.2, and 628.3 to read as follows:

Subpart 628.1—Bonds

628.101 Bid guarantees.
628.101–1 Policy on use.
628.106–6 Furnishing information.

Subpart 628.2—Sureties

628.203 Acceptability of individual surety
628.203–7 Exclusion of individual sureties.

Subpart 628.3—Insurance

628.305 Overseas workers' compensation and war-hazard insurance.
628.306 Insurance under fixed-price contracts.
628.307 Insurance under cost-reimbursement contracts.
628.307–70 Insurance under labor-hour and time-and-materials contracts.

Subpart 628.1—Bonds

628.101 Bid guarantees.

628.101–1 Policy on use.

(c) The Procurement Executive is the agency head's designee for the purposes of FAR 28.101–1(c).

628.106–6 Furnishing information.

(c) The head of the contracting activity is the agency head's designee for the purposes of FAR 28.106–6(c).

Subpart 628.2—Sureties

628.203 Acceptability of individual surety.

(g) Evidence of possible criminal or fraudulent activities by an individual surety shall be referred to the Office of the Inspector General.

628.203–7 Exclusion of individual sureties.

The Procurement Executive is the agency head's designee for the purposes of FAR 28.203–7.

Subpart 628.3—Insurance

628.305 Overseas workers' compensation and war-hazard insurance.

(a) It is the Department's policy that acquisitions for services, including construction but excluding personal services contracts, which require contractor personnel to perform work outside of the United States, shall include the contractual obligation for coverage under the Defense Base Act (42 U.S.C. Sections 1651–1654, as amended). For the purpose of this section only, "contractor personnel" includes individuals who are either:

(1) United States citizens or residents, or

(2) Hired in the United States or its possessions.

(b) The Department of State has entered into a contract with an insurance broker and carrier to provide Defense Base Act insurance, at a fixed rate for services and construction, to cover DOS contracts which will require performance overseas by United States citizens, residents, or those employed in the United States. In countries where local nationals and/or third country nationals will be employed to perform the contract, such countries may be waived by the Secretary of Labor. Whenever such insurance is required under the contract, the contracting officer shall insert:

(1) The clause at 652.228–71, Worker's Compensation Insurance (Defense Base Act)—Services;

(2) The clause at 652.228–72, Worker's Compensation Insurance (Defense Base Act)—Construction; and,

(3) The clause at 652.228–73, Waiver of Defense Base Act.

(c) Upon award of a contract which requires Defense Base Act insurance, the contracting officer shall notify the successful offeror of the name of the insurance broker from which the contractor should acquire insurance.

(d) The authority to request a waiver from the Secretary of Labor of a particular country, as set forth in FAR 28.305(d), is reserved to the Secretary of State. The Department has obtained blanket waivers from the Secretary of Labor for all contracts for services, including construction, awarded and/or performed overseas. The waivers apply to all individuals who are not employees hired in the United States, or who are not United States citizens or residents.

628.306 Insurance under fixed-price contracts.

(a) The contracting officer shall insert the provision at:

(1) 652.228–74, Defense Base Act Insurance Rates—Limitation—Services, in solicitations for fixed-price service contracts to be performed outside the United States by United States citizens or residents and/or those hired in the United States; or

(2) 652.228–75, Defense Base Act Insurance Rates—Limitation—Construction, in solicitations for fixed-price construction contracts to be performed outside the United States by United States citizens or residents and/or those hired in the United States.

628.307 Insurance under cost-reimbursement contracts.

The contracting officer shall insert the provision at 652.228–76, Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement, in solicitations for cost-reimbursement type contracts to be performed outside the United States by

United States citizens or residents and/or those hired in the United States.

628.307–70 Insurance under labor-hour and time-and-materials contracts.

The contracting officer shall insert the provision at 652.228–77, Defense Base Act Insurance Rates—Limitation—Labor-Hour and Time-and-Material, in solicitations for labor-hour or time-and-material type contracts to be performed outside the United States by United States citizens or residents and/or those hired in the United States.

PART 631—CONTRACT COST PRINCIPLES AND PROCEDURES

101. Part 631 is added to read as follows:

PART 631—CONTRACT COST PRINCIPLES AND PROCEDURES

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subpart 631.1—Applicability

631.101 Objectives.

The Procurement Executive is the agency head's designee for the purposes of FAR 31.101.

PART 632—CONTRACT FINANCING

Subpart 632.1 (632.111, 632.111–70)—[Removed]

102. Subpart 632.1, consisting of sections 632.111 and 632.111–70, is removed.

103. Section 632.402 is amended by designating the existing text as paragraph (c)(1)(iii), and by adding a new paragraph (b) to read as follows:

632.402 General.

(b) Advance payments shall be authorized sparingly. Contracting officers should consider the use of partial payments, fast payments, or more frequent payments as alternatives to advance payments.

* * * * *

104. Section 632.407 is added to read as follows:

632.407 Interest.

(d) The Procurement Executive is the agency head's designee for the purposes of FAR 32.407(d).

105. Subparts 632.7 and 632.8 are added to read as follows:

Subpart 632.7—Contract Funding

632.703 Contract funding requirements.

632.703–3 Contracts crossing fiscal years.

(a) The State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2696(e)), allows funds from annual appropriations to extend beyond the fiscal year in which the acquisition was funded. This authority may be used for acquisitions of supplies or services, regardless of dollar amount or contract type. Use of this authority requires that:

(1) The acquisition normally would be considered severable (i.e., the services are repetitive and can be started or stopped any time; would normally be funded and performed within a fiscal year; and are not services integral to the creation of an end product. An example is janitorial services);

(2) The base performance period is twelve months, begins in the current fiscal year, and crosses into the next fiscal year; and,

(3) Full funding for twelve months is available in the current year.

(b) If the acquisition involves more than one source of funds, the contract shall be priced to identify the source of funds (by allotment) with the relevant portion of the total supplies or services. For current Department contracts, bilateral modifications are authorized where necessary to convert to a performance period that crosses fiscal years, as long as the requisite funding is available as described in paragraph (a), and provided that the total contract length does not increase.

(c) Use of this authority shall be documented in the contract file and be included as part of the Advance Acquisition Plan and Price Negotiation Memorandum. If neither document is relevant to the acquisition, the contracting officer shall prepare a written document to the file indicating compliance with this subsection.

(d) For acquisitions conducted by overseas posts that are funded by another agency, the contracting officer shall ensure that funding for the full twelve-month period is available at time of award if the authority in 22 U.S.C. 2696(e) will be used.

Subpart 632.8—Assignment of Claims

632.803 Policies.

(b) The assignment of claims shall be prohibited for all personal services contracts. The assignment of claims shall also be prohibited for all contracts awarded and performed overseas, unless approval is received from the Procurement Executive.

Subpart 632.9—Prompt Payment

106. Section 632.908 is added to read a follows:

632.908 Contract clauses.

(a) The contracting officer may insert a clause substantially the same as the clause at 652.232–70, Payment Schedule and Invoice Submission (Fixed-Price), in fixed-price type solicitations and contracts.

(b) The contracting officer may insert a clause substantially the same as the clause at 652.232–71, Voucher Submission (cost-Reimbursement), in cost-reimbursement type solicitations and contracts.

PART 633—PROTESTS, DISPUTES AND APPEALS

633.104 [Amended]

107 Section 633.104 is amended by removing the introductory text and the parenthetical "(see 601.603–70" in the first sentence of paragraph (a)(1); and by revising the phrase "Deputy Assistant Secretary for Information Systems" to read "Deputy Assistant Secretary for Information Management" in the second sentence of paragraph (a)(1).

633.105 [Amended]

108. Section 633.105 is amended by removing the introductory text and by revising the phrase "Deputy Assistant Secretary for Information Systems" to read "Deputy Assistant Secretary for Information Management" in the first sentence of paragraph (a) and the second sentence of paragraph (c).

109. Section 633.214–70 is added to read as follows:

633.214–70 Alternative dispute resolution.

(a) *Policy.* The Department's goal is to resolve contract disputes before the issuance of a contracting officer's final decision under the Contract Disputes Act. Contracting officers shall consider all possible means of reaching a negotiated settlement, consistent with the Government's best interests, before issuing a final decision on a contractor claim under the process outlined in FAR 33.206 through 33.211.

(b) *When to use ADR.* (1) *Factors favoring ADR.* Contracting officers should consider using ADR in those cases where:

(i) Only facts are in dispute;

(ii) The facts are clearly not favorable to the Government;

(iii) The anticipated costs (in time and money) are less than the anticipated costs of litigation;

(iv) Settlement attempts have reached an impasse;

(v) ADR techniques have been used successfully in similar situations;

(vi) There is a need for independent expert analysis; or,

(vii) The claim has merit but its value is overstated.

(2) *Factors disfavoring ADR.* The following circumstances do not favor use of ADR:

(i) Cases involving disputes controlled by clear legal precedent, making compromise difficult;

(ii) The resolution will have a significant impact on other pending cases or on the future conduct of Department business;

(iii) The dispute is primarily over issues of law;

(iv) A decision of precedential value is needed;

(v) A significant policy question is involved;

(vi) A full public record of the proceeding is important;

(vii) The outcome could significantly involve persons who are not parties to the contract;

(viii) The costs of pursuing an ADR procedure (in time and money) exceed the cost of litigation;

(ix) The nature of the case may cause ADR to be used merely for delay or discovery; or,

(x) The case involves criminal violations.

(3) *Initial action.* Immediately upon receipt of a claim, the contracting officer shall send a letter acknowledging receipt of the claim and soliciting the contractor's views on submitting this claim for ADR. In every dispute, the first step toward resolution shall be unassisted negotiations, in which the parties try to work out the disagreement among themselves. If this fails, before issuing a final decision, the contracting officer shall consult first with the head of the contracting activity, and contact the Office of the Legal Adviser and A/OPE to determine whether the disagreement appears susceptible to resolution by ADR. Consideration shall be given to pursuing additional fact-finding or designating a neutral expert in the disputed issue to provide an advisory opinion.

(c) *Methods of ADR.* If the initial action to resolve the dispute fails, and the contracting officer issues a final decision which is appealed, ADR may still be feasible. The ASBCA issues a notice regarding ADR to all contractors who file appeals under the Contract Disputes Act. This notice describes the following ADR techniques, which contracting officers are urged to discuss with contractors at any time:

(1) *Settlement judge.* A settlement judge is either an administrative judge or hearing examiner who is appointed by the parties in dispute for the purpose of facilitating settlement. The agenda is flexible and based on the specifics of the individual dispute. By holding a frank, in-depth discussion of the strengths and weaknesses of each party's position, the settlement judge may be able to foster a settlement of the dispute. The settlement judge may meet with the parties jointly or individually, and the settlement judge's recommendations are not binding. Typically, the settlement judge's opinions, based on his or her experience in handling prior disputes, will help the parties realize whether their arguments have merit or not.

(2) *Minitrial.* A minitrial is not an actual trial but rather a flexible, expedited, but structured procedure in which each party presents an abbreviated version of its position both to a neutral advisor (who may be appointed by the ASBCA) and to principals of the parties who have full contractual authority to conclude a settlement. The parties mutually decide on the form of presentation without regard to traditional judicial proceedings or rules of evidence. An advance agreement by the parties specifies the procedure to be followed in making presentations, as well as the role of the neutral advisor. Upon conclusion of the presentations, settlement negotiations are conducted. The neutral advisor may assist the parties in negotiating settlement, including making non-binding recommendations.

(3) *Summary trial with binding decision.* A summary trial with binding decision is a procedure in which the scheduling of an appeal is expedited and the parties try their appeal informally before an administrative judge or panel of judges. The length of the trial and the time for presentation and decision are tailored to the needs of the particular case. Trial procedures and rules applicable to appeals are modified or eliminated to expedite resolution of the appeal. The parties must agree, however, that all decisions, rulings, and orders by the judge(s) are final, conclusive, and not appealable, and may not be set aside, except for fraud. A summary "bench" decision is issued at the conclusion of the trial or a summary written decision will be issued within ten (10) days of either the trial's conclusion or receipt of a trial transcript.

(4) *Mediation.* Mediation is a process in which a neutral and impartial third party assists the Government and the contractor in conflict to negotiate an acceptable settlement of contested issues. The mediator is jointly selected and is asked by the disputing parties to assist them to reach a voluntary agreement. The mediator has no decisionmaking authority and cannot impose a decision. Mediation assistance involves working with the parties to improve their communications, clarify or interpret data, identify key issues to be discussed, design an effective negotiation process, generate settlement options, or help to identify or formulate areas of agreement. Additional information is available in Army Corps of Engineers IWR Pamphlet 91–ADR–P–3, Mediation, September 1991; and Administrative Conference of the U.S., Mediation: A Primer for Federal Agencies, available from A/OPE.

(5) *Arbitration.* Non-binding arbitration is a process in which a dispute is jointly submitted by the Government and a contractor to an impartial and neutral person or panel who provides a written, non-binding opinion used as a guide for negotiations toward a settlement. Although the Administrative Dispute Resolution Act of 1990 (Pub. L. 101–552) allows agencies to use binding arbitration, the law provides that the agency head may vacate any arbitration award within 30 days after it is served on all parties. For this reason, non-binding arbitration is preferable. Additional information is available in Army Corps of Engineers IWR Pamphlet 91–ADR–P–2, Non-Binding Arbitration, September 1990, available from A/OPE.

(6) *Partnering.* Partnering involves an agreement in principle to share the risks involved in completing a project, and to establish and promote a partnership environment. Partnering itself is not a contractual agreement and it does not create any legally enforceable rights, but instead partnering seeks to create a new cooperative attitude in completing Government contracts. The three basic steps in partnering are:

(i) Establish the new relationship through personal contact among the principals for the Government and the contractor before the work begins;

(ii) Prepare a joint statement of goals establishing common objectives in specific detail for reaching the goals; and,

(iii) Identify specific dispute prevention processes designed to head off problems, evaluate performance, and promote cooperation. Additional information is available in Army Corps of Engineers IWR Pamphlet 91–ADR–P–4, Partnering, December 1991, available from A/OPE.

(d) *ADR procedures.* The ADR method shall be selected voluntarily by both the Government and the contractor. Both parties shall agree on the procedures to be followed, including the agenda and amount of time allowed for each party to present its case. The parties may choose not to have a written transcript or hearing on the record, as this might inhibit settlement. Also, the decision rendered, if any, should not be considered to establish any precedent for future litigation unless the parties

agree otherwise. In cases where the parties agree to pay jointly for a third-party neutral advisor, it is recommended that the parties and the advisor agree on a fair and reasonable price. The Government would then issue a simplified acquisition (if the dollar amount does not exceed the simplified acquisition limitation) for 50% of the agreed price, and the advisor would submit separate invoices (each for 50% of the price) to the Government and the contractor.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 634—MAJOR SYSTEMS ACQUISITION

634.001 [Amended]

110. Section 634.001 is amended by removing "$10,000,000" and inserting "$30,000,000" in its place in paragraphs (b) and (c); and by removing the words "agency head" and inserting "Under Secretary for Management" in their place in the first sentence of paragraph (c).

111. Section 634.001–70 is amended by adding the following definition:

634.001–70 Supplemental definitions.

* * * * *

Major Acquisition Program Office (A/IM/MAPO) is located within the Office of Information Management. It has managerial and operational responsibilities relative to all major information resource acquisitions.

112. Section 634.003 is amended by revising paragraph (a) to read as follows; and, by removing the words "The Deputy Assistant Secretary for Operations" and inserting "The Under Secretary for Management" in their place in paragraph (b):

634.003 Responsibilities.

(a) The Procurement Executive is the agency head's designee for the purposes of FAR 34.003(a). Written procedures for acquiring Federal Information Processing (FIP) resources by A/IM/MAPO are contained in the "Source Selection Procedures Guide", issued by that Office.

* * * * *

113. Sections 634.005 and 634.005–6 are added to read as follows:

634.005 General requirements.

634.005–6 Full production.

The Deputy Secretary is the agency head for the purposes of FAR 34.005–6.

PART 636—CONSTRUCTION AND ARCHITECT–ENGINEER CONTRACTS

636.101–70 [Amended]

114. Section 636.101–70 is amended by removing the words "are excepted" and inserting the words "may be excepted" in their place.

115. Section 636.602 is revised to read as follows:

636.602 Selection of firms for architect-engineer contracts.

636.602–4 Selection authority.

(a) The final selection decision shall be made as designated by the Deputy Assistant Secretary for Foreign Buildings Operations for acquisitions issued by that office; the Director, Moscow Embassy Buildings Control Office, for Moscow chancery building(s) only; and, the appropriate head of the contracting activity for all other actions.

636.602–5 Short selection processes for contracts not to exceed the simplified acquisition limitation.

The short selection process described in FAR 36.602–5 is authorized for use for contracts not expected to exceed the simplified acquisition limitation.

PART 637—SERVICE CONTRACTING

637.104 [Amended]

116. Section 637.104–70 is amended by adding the words "and the Moscow Embassy Control Office" after "For the Office of Foreign Buildings" in paragraph (f).

117. Section 637.106 is added to read as follows:

637.106 Funding and term of service contracts.

The Department's statutory authority for authorizing contracts for services funded by annual appropriations to be performed in two fiscal years, if the total amount for such contracts is obligated in the earlier fiscal year, is 22 U.S.C. 2696(e). See DOSAR 632.703–3.

118. Section 637.110 is revised to read as follows:

637.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 652.237–70, Compensatory Time Off, in personal services contracts awarded in support of International Narcotics Control programs overseas, if the contracting officer determines its use appropriate.

(b) The contracting officer shall insert the clause at 652.237–71, Identification/Building Pass, in all solicitations and contracts where contractor personnel require frequent and continuing access to Department of State facilities.

(c) The contracting officer shall insert a clause substantially the same as the clause at 652.237–72, Observance of Legal Holidays and Administrative Leave, in all solicitations and contracts where contractor personnel will be working on-site in any Department of State facility.

Subpart 637.2 (637.204, 637.204–70, 637.270)—[Removed]

119. Subpart 637.2, consisting of sections 637.204, 637.204–70, and 637.270, is removed.

PART 639—ACQUISITION OF INFORMATION RESOURCES

120. Part 639 is added to read as follows:

PART 639—ACQUISITION OF INFORMATION RESOURCES

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

639.001–70 Policy.

(a) The Assistant Secretary of State for Administration is the Department's Designated Senior Official as defined in the Federal Information Resources Management Regulation (FIRMR) 201–39.201.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 642—CONTRACT ADMINISTRATION

121. Section 642.270 is revised to read as follows:

642.270 Contracting Officer's Representative (COR).

(a) *Scope.* Contracting officers may designate technically qualified personnel as their authorized representatives to assist in the administration of contracts. This section is mandatory for domestic contracting activities and recommended for overseas contracting activities.

(b) *Policy.* It is Department policy that only Department of State employees who have completed adequate training and have the necessary experience and judgment shall be appointed as CORs. This policy shall be reinforced by contracting officers and administered jointly by A/OPE and FSI. Required training shall be funded by the COR's office.

642.271 [amended]

122. Section 642.271 is amended to add the words "a clause substantially the same as" after the word "insert".

PART 643—CONTRACT MODIFICATIONS

123. Section 643.102–70 is amended by revising paragraph (b) to read as follows:

643.102–70 Contract compliance and review.

(a) * * *

(b) Subpart 604.70 prescribes the review requirements for modifying contracts for supplies and services, including construction. The contracting officer shall submit such contract modifications to A/OPE when:

(i) The modification itself exceeds the thresholds established in 604.7002(a);

(ii) The modification will cause the contract to exceed the thresholds established in 604.7002(a); or,

(iii) Any proposed change under the modification results in an increase or decrease exceeding the thresholds in 604.7002(a) in any of the individual cost elements of the existing contract.

PART 647—TRANSPORTATION

124. Part 647 is added to read as follows:

PART 647—TRANSPORTATION

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

647.000 Scope of part.

The FAR and DOSAR do not apply to the acquisition of transportation services via Government bill of lading (GBL) or other similar forms.

PART 649—TERMINATION OF CONTRACTS

125. Part 649 is added to read as follows:

PART 649—TERMINATION OF CONTRACTS

Subpart 649.1—General Principles

649.106 Fraud or other criminal conduct.

649.111 Review of proposed settlements.

Authority: 40 U.S.C. 485(c); 22 U.S.C. 2658.

Subpart 649.1—General Principles.

649.106 Fraud or other criminal conduct.

If the Termination Contracting Officer (TCO) suspects fraud or other criminal conduct related to the settlement of a terminated contract, the TCO shall discontinue negotiations and report the facts to the Office of the Inspector General.

649.111 Review of proposed settlements.

All proposed termination settlements shall be reviewed and approved by the Office of the Legal Adviser for legal sufficiency. In addition,

(a) All proposed termination settlements from domestic contracting activities shall be approved by the head of the contracting activity; and,

(b) All proposed termination settlements from overseas contracting activities shall be approved by the Procurement Executive.

PART 651—USE OF GOVERNMENT SOURCES BY CONTRACTORS

126. Part 651 is added to read as follows:

PART 651—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subpart 651.70—Contractor Use of Travel Advances, Official Travel Orders, and Government Travel Requisitions

651.701 Policy.

(a) It is the Department's policy that contractors shall not:

(1) Receive travel advances from the Department for contract-related travel;

(2) Travel under official travel orders; or,

(3) Receive Government Travel Requisitions (GTRs) for transportation.

(b) All contract-related travel shall be performed on the contractor's account with reimbursement provided after submission of a proper voucher.

(c) This policy does not apply to personal services contractor; *provided*, that such contractors are paid through the Department's payroll system and they are subject to the standard payroll deductions of Federal Withholding Tax and FICA. It also does not apply to contracts awarded by the Office of Language Services (A/OPR/LS).

SUBCHAPTER H—CLAUSES AND FORMS

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

652.202–70 [Removed]

127. Section 652.202–70 is removed.

128. Section 652.203–70 is added to read as follows:

652.203–70 Prohibition Against the Use of Federal Employees.

As prescribed in 603.670, insert the following clause:

Prohibition Against the Use of Federal Employees (Dec 1994)

In accordance with Federal Acquisition Regulation 3.601, contracts are not to be awarded to Federal employees or a business concern or other organization owned or substantially owned or controlled by one or more Federal employees. For the purposes of this contract, this prohibition against the use of Federal employees includes any work performed by the contractor or any of its employees, subcontractors, or consultants.

(End of clause)

129. Section 652.203–71 is added to read as follows:

652.203–71 Certification Regarding Federal Employment.

As prescribed in 603.670, insert the following provision:

Certification Regarding Federal Employment (Dec 1994)

By submitting an offer, the offeror hereby certifies that it is not owned or substantially owned or controlled by one or more Federal employees.

(End of provision)

130. Section 652.206–70 is added to read as follows:

652.206–70 Competition Advocacy/Ombudsman.

As prescribed in 606.570, insert the following provision:

Competition Advocacy/Ombudsman (Dec 1994)

The Department of State's Competition Advocate is responsible for assisting industry in removing restrictive requirements from Department of State solicitations and removing barriers to full and open competition. If such a solicitation is considered competitively restrictive or does not appear properly conducive to competition and contracting practices, potential offerors are encouraged to first contact the contracting office for the respective solicitation identified elsewhere in this solicitation. If concerns are not adequately addressed, contact the Department of State Competition Advocate on (703) 516–1680, or write to: U.S. Department of State, Competition Advocate, Office of the Procurement Executive, A/OPE/CA, Suite 603, SA–6, Washington, DC 20522–0602.

(End of provision)

614.214–70 [Removed]

652.214–71 [Redesignated as 652.214–70]

131. Section 652.214–70 is removed; section 652.214–71 is redesignated as 652.214–70, and the date for the clause at redesignated 652.214–70 is revised from "(JUL 1988)" to "(DEC 1994)"

652.214–72 [Redesignated as 652.214–71]

132. Section 652.214–72 is redesignated as 652.214–71; the date for the provision at redesignated 652.214–71 is revised from "(JUL 1988)" to '(DEC 1994)"; the prescription is

revised to read as follows; and, the parenthetical "(End of clause)" is revised to read "(End of provision)":

652.214–71 Authorization to Perform

As prescribed in 614.201–7–70(c), insert the following provisions:

* * * * *

133. Section 652.216–70 is amended by revising the clause to read as follows:

652.216–70 Ordering—Indefinite-Delivery Contracts.

* * * * *

Ordering—Indefinite-Delivery Contracts (Dec 1994)

The Government shall use one of the following forms to issue orders under this contract:

(a) The Optional Form 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule—Continuation; or,

(b) The Optional Form 206, Purchase Order, Receiving Report and Voucher, and Optional Form 206A, Continuation Sheet.

(End of clause)

134. Section 652.216–71 is added to read as follows:

652.216–71 Price Adjustment.

As prescribed in 616.203–4, insert a clause substantially the same as follows:

Price Adjustment (Dec 1994)

(a) The contract cost may be adjusted based on increases or decreases in actual costs of direct service labor which result directly from laws enacted and effective during the term of this contract by the [*insert name of country*] Government.

(b) For the contracting officer to consider any request for adjustment, the contractor shall demonstrate in writing:

(1) That the change in the law occurred subsequent to the award date of the contract; and,

(2) That the change in the law could not have been reasonably anticipated prior to contract award; and,

(3) How the change in the law directly affects the direct cost of direct service labor under the contract.

(c) The contractor shall present documentation that clearly supports any request for adjustment, including the calculation of the amount of adjustment requested. This documentation must identify and provide the appropriate portions of the text of the particular law from which the request is derived.

(d) Any request for adjustment shall be certified by signature by an officer or general partner of the contractor having overall responsibility for the conduct of the contractor's affairs.

(e) No adjustment shall be made to the contract price that relates to any overhead, fixed costs, profit or fee for the contractor Only the amount charged to direct service labor cost shall be considered by the Government as basis for contract price adjustments.

(f) No request by the contractor for an adjustment under this clause shall be allowed if asserted after final payment under this contract has been made.

(g) This clause shall only apply to laws enacted by the [*insert name of country*] Government meeting the criteria set forth above in paragraph (a). No adjustments shall be made due to currency devaluations fluctuations in exchange rates.

(End of clause)

135. Section 652.219–70 is added to read as follows:

652.219–70 Department of State Subcontracting Goals.

As prescribed in 619.708–70, insert a provision substantially the same as follows:

Department of State Subcontracting Goals (Dec 1994)

(a) The offeror shall provide a Small, Small Disadvantaged and Woman-Owned Enterprise Subcontracting Plan that details its approach to selecting and using Small, Small Disadvantaged, and Woman-Owned Business Enterprises as requested by the contracting officer.

(b) For the fiscal year [*insert appropriate fiscal year*], the Department's subcontracting goals are as follows:

(1) Goal for subcontracting to SB: _____

(2) Goal for subcontracting to SDB: _____

(3) Goal for subcontracting to SWB: _____

(4) Omnibus goals (if applicable):

(i) 10% to minority business

(ii) 10% to small business

(End of provision)

136. Section 652.223–70 is added to read as follows:

652.223–70 Estimates of the Total Percentage of Recovered Materials to be Utilized in the Performance of the Contract.

As prescribed in 623.480(a), insert the following provision:

Estimates of the Total Percentage of Recovered Materials to be Utilized in the Performance of the Contract (Dec 1994)

(a) As required under Section 6002 of the Resource Conservation and Recovery Act, an officer or employee of the offeror shall estimate the total percentage of recovered material to be utilized in the performance of the contract.

(b) I, (*insert name of certifier*) am an officer employee responsible for the preparation of this offer and hereby estimate the total percentage of recovered material to be utilized in the performance of the contract as follows:

Product	Estimate of total percent of recovered material to be utilized

(End of provision)

137. Section 652.223–71 is added to read as follows:

652.223–71 Certification of Minimum Content Actually Utilized in the Performance of the Contract.

As prescribed in 623.480(b), insert the following clause:

Certification of Minimum Content Actually Utilized in the Performance of the Contract (Dec 1994)

(a) As required under Section 6002 of the Resource Conservation and Recovery Act, an officer or employee of the contractor shall execute the following certification:

I, (*insert name of certifier*) am an officer or employee responsible for the performance of this contract and hereby certify the following minimum recovered material content was actually utilized in the performance of this contract:

Product	Percent of minimum recovered material actually utilized

(b) The contractor shall submit this certification by January 31 in each year during the period of performance of this contract. The period of the certification shall cover the preceding calendar year.

_____
Signature of the officer or employee

_____
Typed name of officer or employee

_____
Title

_____
Name of company, firm, or organization

_____
Date

(End of clause)

138. Section 652.223–72 is added to read as follows:

652.223–72 Use of Double-Sided Copying in the Submissions of Bids or Proposals.

As prescribed in 623.480(c), insert the following provision:

Use of Double-Sided Copying in the Submissions of Bids or Proposals (Dec 1994)

(a) For the purposes of this provision, "double-sided copying" means copying two one-sided originals on to the front and back side of one sheet of paper.

(b) Unless otherwise stated in the solicitation, offerors shall use double-sided copying to reproduce all bids or proposals in response to this solicitation.

(End of provision)

139. Section 652.223–73 is added to read as follows:

652.223–73 Use of Double-Sided Copying in the Submission of Reports.

As prescribed in 623.480(d), insert the following clause:

Use of Double-Sided Copying in the Submission of Reports (Dec 1994)

(a) For the purposes of this clause, "double-sided copying" means copying two one-sided originals on to the front and back side of one sheet of paper.

(b) Unless otherwise stated in this contract or otherwise directed by the contracting officer, the contractor shall use double-sided copying to reproduce any progress report, draft report, of final report produced under this contract.

(End of clause)

140. Section 652.223–74 is added to read as follows:

652.223–74 Use of Fly Ash as a Partial Replacement for Cement and Concrete.

As prescribed in 623.480(e), insert the following clause:

Use of Fly Ash as a Partial Replacement for Cement and Concrete (Dec 1994)

The Architect/Engineer shall specify the performance requirements of the cement and concrete products required under the contract using standard specifications when available. Consistent with such performance specifications, the Architect/Engineer shall specify the use of fly ash, a finely divided residue resulting from the combustion of coal, as a partial replacement for cement and concrete to the maximum extent practicable in accordance with ANSI/ASTM Standards and all applicable codes.

(End of clause)

141. Section 652.223–75 is added to read as follows:

652.223–75 Use of Recovered Materials in Building Insulation Products.

As prescribed in 623.480(f), insert the following clause:

Use of Recovered Materials in Building Insulation Products (Dec 1994)

(a) This clause applies to building insulation products used in the construction of ceilings, floors, foundations, and walls, and includes blanket, board, spray-in place and loose-fill insulations.

(b) The Department's minimum content standard for recovered material in building insulation products is set forth below.

Material type	Percent by weight
Cellulose loose-fill and spray on	75% post-consumer recovered material.
Perlite composition board	23% post-consumer recovered paper.
Plastic Rigid Foams—polyisocyanurate/polyurethane:	
Rigid foam	9% recovered material.
Foam-in-place	5% recovered material.
Glass fiber reinforced	6% recovered material.
Phenolic rigid foam	5% recovered material.
Rock Wool	75% recovered material.

Note: The minimum content standards are based on the weight of the material (not volume) in the insulating core only.

(c) The Architect/Engineer shall include as a design consideration the Department's preference for the use of building insulation produced with recovered materials. The Architect/Engineer shall specify the type of building insulation products to be supplied, and shall justify in writing the basis of the selected product type if it is listed above, or if any product listed above has a higher minimum content standard than the selected product.

(End of clause)

142. Section 652.223–76 is added to read as follows:

652.223–76 Use of Lubricating Oils Containing Re-Refined Oils.

As prescribed in 623.480(g), insert the following clause:

Use of Lubricating Oils Containing Re-Refined Oils (Dec 1994)

(a) If the contractor is required to supply lubricating oils, hydraulic fluids, or gear oils under this contract, the contractor shall supply products conforming to the listed military specifications as set forth below unless the contracting officer determines that the listed products will not satisfy the Department's needs.

EPA Lubricating Oils Containing Re-Refined Oil

(1) Engine Lubricating Oils

(i) MIL–L–46152 (or current version)—Lubricating Oil Internal Combustion Engine, Administrative Service

(ii) API Engine Service Category SF–1980 Gasoline Engine Warranty Maintenance Service

(iii) API Engine Service Category CC-Diesel Engine Service

(iv) MIL–L–2104D (or current version)—Lubricating Oil Internal Combustion Engine, Tactical Service

(v) API Engine Service Category CD-Diesel Engine Service

(vi) MIL–L–21260D (or current version)—Lubricating Oil Internal Combustion Engine, Preservative and Break-In

(vii) MIL–L–4617 (or current version)—Lubricating Oil, Internal Combustion Engine, Arctic

(2) Hydraulic Fluids

(i) MIL–H–5606 (or current version)—Hydraulic Fluid, Petroleum Base: Aircraft, Missile, and Ordnance

(ii) MIL–H–6083 (or current version)—Hydraulic Fluid, Petroleum Base: Preservation and Operation

(3) Gear Oils

(i) MIL–L–2105d (or current version)—Lubricating Oil, Gear, Multipurpose

(b) Copies of the above specifications may be obtained from: Standardization Document Order Desk, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111–5094.

(c) Any lubricating oils, hydraulic fluids, or gear oils delivered under this contract that conform to the above listed military specifications shall contain a minimum of 25% re-refined oils.

(End of clause)

143. Section 653.223–77 is added to read as follows:

652.223–77 Use of Retread Tires.

As prescribed in 623.480(h), insert the following clause:

Use of Retread Tires (Dec 1994)

(a) If the contractor is required to maintain or replace Government tires under this contract, the contractor shall to the maximum extent practicable obtain retreading services for existing tires, if the carcass is retreadable, from firms identified in the U.S. General Services Administration's Federal Supply Schedule 26 II, Pneumatic Tires.

(b) If such retreading services are not practicable, replacement retread tires shall be procured in accordance with GSA specification ZZ–T–381 for replacement tires.

(End of clause)

144. Section 652.223–78 is added to read as follows:

652.223–78 Use of Recovered Materials in Paper and Paper Products.

As prescribed in 623.480(i), insert the following clause:

Use of Recovered Materials in Paper and Paper Products (Dec 1994)

(a) If the contractor is required under this contract to deliver any of the paper and paper products listed below, all such items delivered shall meet the minimum content standards for recovered materials,

postconsumer recovered materials, or waste paper set forth in paragraph (b).

(1) Recovered materials are defined as waste material and by-products that have been recovered or diverted from solid waste, not including those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(2) Postconsumer recovered materials are defined as waste materials recovered from retail stores, office buildings, homes and so forth after they passed through their end usage as a consumer item.

(3) Waste paper is defined as all items from the first two categories above in addition to forest residues, and manufacturing and other wastes.

(b) Unless otherwise stated in this contract or otherwise directed by the contracting officer, the contractor shall use "High Grade Bleached Printing and Writing Papers" as defined in this clause to produce all progress reports, final reports, and any other products required to be delivered to the Government under this contract.

Minimum Content Standards for Selected Paper and Paper Products

Newsprint

40% minimum postconsumer recovered materials

High Grade Bleached Printing and Writing Papers

Offset printing—50% minimum waste paper
Mimeo and duplicator paper—50% minimum waste paper
Writing (stationery)—50% minimum waste paper
Office paper (e.g., note pads)—50% minimum waste paper
Paper for high speed copiers—50% minimum waste paper
Envelopes—50% minimum waste paper
Form bond including computer paper and carbonless—50% minimum waste paper
Book papers—50% minimum waste paper
Bond papers—50% minimum waste paper
Ledger—50% minimum waste paper
Cover stock—50% minimum waste paper
Cotton fiber papers—25% minimum recovered materials and 50% minimum waste paper

Tissue Products

Toilet tissue—20% minimum postconsumer recovered materials
Paper towels—40% minimum postconsumer recovered materials
Paper napkins—30% minimum postconsumer recovered materials
Facial tissue—5% minimum postconsumer recovered materials
Doilies—40% minimum postconsumer recovered materials
Industrial wipes—0% minimum postconsumer recovered materials

Unbleached Packaging

Corrugated boxes—35% minimum postconsumer recovered materials
Fiber boxes—35% minimum postconsumer recovered materials
Brown papers (e.g., bags)—5% minimum postconsumer recovered materials

Recycled Paperboard

Reclycled paperboard products—80% minimum postconsumer recovered materials
Pad backing—90% minimum postconsumer recovered materials

(End of clause)

145. Section 652.228–71 is added to read as follows:

652.228–71 Worker's Compensation Insurance (Defense Base Act)—Services.

As prescribed in 628.305(b)(1), insert the following clause:

Worker's Compensation Insurance (Defense Base Act)—Services (Dec 1994)

(a) This clause supplements FAR 52.228–3.

(b) The contractor agrees to procure Defense Base Act (DBA) insurance pursuant to the terms of the contract between the Department of State and the Department's DBA insurance carrier unless the contractor has a DBA self-insurance program approved by the Department of Labor. The contractor shall submit a copy of the Department of Labor's approval to the contracting officer upon contract award.

(c) Since the Department of State has secured a waiver of DBA coverage for contractor's employees who are not citizens of, residents of, or hired in the United States, the contractor agrees to provide such employees with worker's compensation benefits as required by the laws of the country in which the employees are working, or by the laws of the employee's native country, whichever offers greater benefits.

(d) The contractor agrees to insert a clause substantially the same as this one in all subcontracts to which the DBA is applicable. Subcontractors shall be required to insert a similar clause in any of their subcontracts subject to the DBA.

(e) The cost of DBA insurance is paid on an annual basis. If the period of performance of this contract extends beyond one year, the Department shall reimburse the contractor for any additional insurance cost on a reimbursable basis through a contract modification.

(f) Should the rates for DBA insurance coverage increase during the performance of this contract, the Department shall reimburse the contractor for the increased cost through a contract modification. In the event the DBA insurance rates decrease during contract performance, the contractor shall reduce the reimbursable cost proportionately.

(End of clause)

146. Section 652.228–72 is added to read as follows:

652.228–72 Worker's Compensation Insurance (Defense Base Act)—Construction

As prescribed in 628.305(b)(2), insert the following clause:

Worker's Compensation Insurance (Defense Base Act)—Construction (Dec. 1994)

(a) This clause supplements FAR 52.228–4.

(b) The contractor agrees to procure Defense Base Act (DBA) insurance pursuant to the terms of the contract between the Department of State and the Department's DBA insurance carrier unless the contractor has a DBA self-insurance program approved by the Department of Labor. The contractor shall submit a copy of the Department of Labor's approval to the contracting officer upon contract award. The current rate under the Department of State contract is *[contracting officer insert current rate]* of compensation for construction.

(c) Since the Department of State has secured a waiver of DBA coverage for contractor's employees who are not citizens of, residents of, or hired in the United States, the contractor agrees to provide such employees with worker's compensation benefits as required by the laws of the country in which the employees are working, or by the laws of the employee's native country, whichever offers greater benefits.

(d) The contractor agrees to insert a clause substantially the same as this one in all subcontracts to which the DBA is applicable. Subcontractors shall be required to insert a similar clause in any of their subcontracts subject to the DBA.

(e) Should the rates for DBA insurance coverage increase or decrease during the performance of this contract, the Department shall modify this contract accordingly.

(f) The contractor shall demonstrate to the satisfaction of the contracting officer that the equitable adjustment as a result of the insurance increase or decrease does not include any reserve for such insurance. Adjustment shall not include any overhead, profit, general and administrative expense, etc.

(End of clause)

147. Section 652.228–73 is added to read as follows:

652.228–73 Waiver of the Defense Base Act.

As prescribed in 628.305(b)(3), insert the following clause:

Waiver of the Defense Base Act (Dec 1994)

(a) Upon recommendation of the Secretary of State, the Secretary of Labor may waive the applicability of the Defense Base Act with respect to any contract, subcontract, or subordinate contract; work location; or classification of employees.

(b) Either the contractor or the Department of State may request a waiver from coverage. Such a waiver may apply to any employees who are not U.S. citizens, not residents of, or are not hired in the United States. Waivers requested by the contractor shall be submitted to the contracting officer for approval and further submission to the contracting officer for approval and further submission to the Department of Labor. Application for a waiver shall be submitted on Department of Labor Form BEC–565. Where such waivers are granted from coverage under the DBA, the waiver is conditioned on providing other worker's compensation coverage to employees to which the waiver applies. Usually this takes the form of securing worker's compensation

coverage of the country where work will be performed or of the employee's native country, whichever offers greater benefits. Information as to whether a DBA waiver has been obtained by the Department for a particular country may be obtained from the contracting officer.

(End of clause)

148. Section 652.228–74 is added to read as follows:

652.228–74 Defense Base Act Insurance Rates—Limitation—Services.

As prescribed in 628.306(a)(1), insert the following provision:

Defense Base Act Insurance Rates—Limitation—Services (Dec 1994)

(a) The Department of State has entered into a contract with an insurance carrier to provide DBA insurance to Department of State contractors at a contracted rate. The rates for this insurance are as follows:

Services @ *[contracting officer insert current rate]* of compensation.

(b) Bidders/Offerors should compute the total compensation (direct salary plus differential, but excluding per diem, housing allowance and other miscellaneous post allowances) to be paid to employees who will be covered by DBA insurance and the cost of DBA insurance in their bid/proposal using the foregoing rate, and insert the totals in the spaces provided. The DBA insurance cost shall be included in the total fixed price. The DBA insurance costs shall be reimbursed directly to the contractor.

(1) Compensation of Covered Employees: _____

(2) Defense Base Act Insurance Costs: _____

(3) Total Cost: _____

(c) Bidders/Offerors shall include a statement as to whether or not local nationals or third country nationals will be employed on the resultant contract.

(End of provision)

149. Section 652.228–75 is added to read as follows:

652.228–75 Defense Base Act Insurance Rates—Limitation—Construction.

As prescribed in 628.306(a)(2), insert the following provision:

Defense Base Act Insurance Rates—Limitation—Construction (Dec 1994)

(a) The Department of State has entered into a contract with an insurance carrier to provide DBA insurance to Department of State contractors at a contracted rate. The rates for this insurance are as follows:

Construction @ *[contracting officer insert current rate]* of compensation.

(b) Bidders/Offerors should compute the total compensation (direct salary plus differential, but excluding per diem, housing allowance and other miscellaneous post allowances) to be paid to employees who will be covered by DBA insurance and the cost of DBA insurance in their bid/proposal using the foregoing rate, and insert the totals in the spaces provided for the base year and each year thereafter, if applicable The DBA insurance cost shall be included in the total fixed price. The DBA insurance costs shall be reimbursed directly to the contractor.

(1) Compensation of Covered Employees: _____

(2) Defense Base Act Insurance Costs: _____

(3) Total Cost: _____

(End of provision)

150. Section 652.228–76 is added to read as follows:

652.228–76 Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement.

As prescribed in 628.307, insert the following provision:

Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement (Dec 1994)

(a) The Department of State has entered into a contract with an insurance carrier for Defense Base Act (DBA) insurance which applies to all contracts entered into by the Department which requires DBA insurance coverage. In preparing the cost proposal, the offeror shall use the following rates in computing the cost for such insurance:

Services—*[contracting officer insert current rate]* of compensation (direct salary plus differential but excluding per diem, housing allowance, education allowance, and miscellaneous allowances); and

(2) Construction—*[contracting officer insert current rate]* of compensation.

(b) These rates apply to all job classifications in those particular categories. The successful offeror shall be advised of the name and address of the insurance broker who will process the DBA insurance coverage.

(c) Should an offeror compute or include higher DBA insurance rates, the rates shall be disallowed.

(d) Offerors shall include in their proposals a statement as to whether or not local nationals or third country nationals are proposed on this contract.

(End of provision)

151. Section 652.228–77 is added to read as follows:

652.228–77 Defense Base Act Insurance Rates—Limitation—Labor-Hour and Time-and-Materials.

As prescribed in 628.307–70, insert the following provision:

Defense Base Act Insurance Rates—Limitation—Labor-Hour and Time-and-Materials (Dec 1994)

(a) The Department of State has entered into a contract with an insurance carrier for Defense Base Act (DBA) insurance which applies to all contracts entered into by the Department which requires DBA insurance coverage. In preparing the cost proposal, the offeror shall use the following rates in computing the cost for such insurance:

(1) Services—*[contracting officer insert current rate]* of compensation (direct salary plus differential but excluding per diem, housing allowance, education allowance, and miscellaneous allowances); and

(2) Construction—*[contracting officer insert current rate]* of compensation.

(b) These rates apply to all job classifications in those particular categories. The successful offeror shall be advised of the name and address of the insurance broker who will process the DBA insurance coverage.

(c) Offerors shall include in their proposals a statement as to whether or not local nationals or third country nationals are proposed on this contract.

(End of provision)

152. Section 652.232–70 is revised to read as follows:

652.232–70 Payment Schedule and Invoice Submission (Fixed-Price).

As prescribed in 632.908(a), the contracting officer may insert a clause substantially the same as follows:

Payment Schedule and Invoice Submission (Fixed-Price) (Dec 1994)

(a) *General.* The Government shall pay the contractor as full compensation for all work required, performed and accepted under this contract, inclusive of all costs and expenses, the firm fixed-price stated in Section B of this contract.

[Use paragraph (b) only if partial payments apply. Otherwise, paragraph (a) above assumes the contractor will be paid in full amount upon completion of all contractural requirements].

(b) *Payment Schedule.* Payments will be made in accordance with the following partial payment schedule:

Partial payment No.	Specific deliver-able	Delivery date	Payment amount
1			
2			
3			

[Continue as necessary]

(c) *Invoice Submission.* Invoices shall be submitted in an original and *[contracting officer insert appropriate number of copies]* copies to the Office identified in Block 5 of the SF–26 or Block 7 of the SF–33. To constitute a proper invoice, the invoice must include all items per FAR 52.232–25, "Prompt Payment".

(d) *Contractor Remittance Address.* Payment shall be made to the contractor's address as specified on the cover page of this contract, unless a separate remittance address is specified below:

_____

_____

_____

_____

(End of clause)

153. Section 652.232–71 is revised to read as follows:

652.232–71 Voucher Submission (Cost-Reimbursement).

As prescribed in 632.908(b), the contracting officer may insert a clause substantially the same as follows:

Voucher Submission (Cost-Reimbursement) (Dec 1994)

(a) *General.* The contractor shall submit, on a monthly basis *[contracting officer may substitute a different time frame, if appropriate]*, an original and *[contracting officer insert appropriate number]* copies of each voucher. In addition to the items necessary per FAR 52.232–25, "Prompt Payment", the voucher shall show the elements of cost for the billing period and the cumulative costs to date. All vouchers shall be submitted to the office identified in Block 5 of the SF–26 or Block 7 of the SF–33.

(b) *Contractor Remittance Address.* Payment shall be made to the contractor's address as specified on the cover page of this contract, unless a separate remittance address is specified below:

_____

_____

_____

_____

(End of clause)

154. Section 652.237–70 is revised to read as follows:

652.237–70 Compensatory time off.

As prescribed in 637.110(a), insert the following clause:

Compensatory Time Off (Dec 1994)

(a) Compensatory time off means time from work during the personal service contract employee's basic work week in exchange for performing an equal amount of irregular of occasional overtime work which is officially ordered or approved.

(b) At the discretion of the Contracting Officer's Representative (COR), the contractor may earn compensatory time off in accordance with 3 FAM Section 232.6—Compensatory Time Off. Compensation time off remaining to the credit of a personal services contract employee at the end of a 16-week period and/or at the end of the contract period shall be forfeited.

(c) Compensatory time may not be converted to overtime.

(End of clause)

155. Section 652.237–71 is added to read as follows:

652.237–71 Identification/Building Pass.

As prescribed in 637.110(b), insert the following clause.

Identification/Building Pass (Dec 1994)

(a) The contractor shall obtain a Department of State building pass for all employees performing under this contract who require frequent and continuing access to Department of State facilities. Passes shall be issued only to contractor employees who are United States citizens. Passes will be issued by the Bureau of Diplomatic Security, Office of Procedural Security, Domestic Facilities Division. They shall be used for the purpose of contractor performance only, and shall not be used for any other purpose.

(b) The contractor shall submit an application in the form prescribed by the COR. The contractor shall also provide a letter on company letterhead to accompany the application containing the following information:

(1) The purpose for which the pass is being requested;

(2) The type of access the applicant requires;

(3) Whether or not the applicant has a valid security clearance; and,

(4) The contract number and period of performance of the contract.

(c) The complete package, including the COR's approval memorandum, shall be delivered to the Building Pass Application Unit, Room 309, State Annex Number 1, Columbia Plaza, 2401 E Street, NW., Washington, DC; or, the post security officer, if the contract is performed at a U.S. owned or leased building overseas. The employee(s) for whom the pass(es) is/are being requested may be required to personally submit the application and to provide evidence of identity and United States citizenship.

(d) All contractor employees shall wear the passes in plain sight at all times while in Department of State buildings. All contractor employees shall show their passes when entering these buildings and upon request.

(e) All passes shall be returned to the COR upon separation of the employee, or expiration or termination of the contract. Final payment under this contract shall not be made until all passes are returned to the COR.

(End of clause)

156. Section 652.237–72 is added to read as follows:

652.237–72 Observance of Legal Holidays and Administrative Leave.

As prescribed in 637.110(c), insert the following clause:

Observance of Legal Holidays and Administrative Leave (Dec 1994)

(a) The Department of State observes the following days as holidays:

New Year's Day
Martin Luther King's Birthday
Presidents' Day
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans Day
Thanksgiving Day
Christmas Day

Any other day designated by Federal law, Executive Order, or Presidential Proclamation.

(b) When any such day falls on a Saturday, the preceding Friday is observed; when any such day falls on a Sunday, the following Monday is observed. Observance of such days by Government personnel shall not be cause for additional period of performance or entitlement to compensation except as set forth in the contract. If the contractor's personnel work on a holiday, no form of holiday or other premium compensation will be reimbursed either as a direct or indirect cost, unless authorized pursuant to an overtime clause elsewhere in this contract.

(c) When the Department of State grants administrative leave to its Government employees, assigned contractor personnel in Government facilities shall also be dismissed. However, the contractor agrees to continue to provide sufficient personnel to perform round-the-clock requirements of critical tasks already in operation or scheduled, and shall be guided by the instructions issued by the contracting officer or his/her duly authorized representative.

(d) For fixed-price contracts, if services are not required or provided because the building is closed due to inclement weather, unanticipated holidays declared by the President, failure of Congress to appropriate funds, or similar reasons, deductions will be computed as follows:

(1) The deduction rate in dollars per day will be equal to the per month contract price divided by 21 days per month.

(2) The deduction rate in dollars per day will be multiplied by the number of days services are not required or provided. If services are provided for portions of days, appropriate adjustment will be made by the contracting officer to ensure that the contractor is compensated for services provided.

(e) If administrative leave is granted to contractor personnel as a result of conditions stipulated in any "Excusable Delays" clause of this contract, it will be without loss to the contractor. The cost of salaries and wages to the contractor for the period of any such excused absence shall be a reimbursable item of direct cost hereunder for employees whose regular time is normally charged, and a reimbursable item of indirect cost for employees whose time is normally charged indirectly in accordance with the contractor's accounting policy.

(End of clause)

157. Section 652.242–70 is amended by revising the introductory text; by revising the date from "(JUL 1988)" to "(DEC 1994)"; by designating the existing clause text as paragraph (a); and, by adding a new paragraph (b) to read as follows:

652.242–70 Contracting Officer's Representative (COR).

As prescribed in 642.271, insert a clause substantially the same as follows:

Contracting Officer's Representative (COR) (Dec 1994)

(a) * * *

(b) the COR is [insert name of COR].

(End of clause)

158. Section 652.242–72 is amended by revising the clause date from "(JUL 1988)" to "(DEC 1994)"; by revising the chart in paragraph (a) to read as set forth below; by removing the designation "¾"" and inserting "19.05mm" in its place in paragraph (b); by removing the words "1000 pounds" and inserting the

words "453.5kg" in their place in the first sentence of paragraph (c); by removing the words "2×6-inch", "2×4-inch", and "10-inch" and inserting the words "50.8 × 152.4mm", "50.8 × 101.6mm", and "254mm" in their place, respectively, in the second sentence in paragraph (c); by removing the words "pounds and" in the third sentence of paragraph (c); by removing the words "pounds and" from the second sentence in paragraph (d); and, by removing the parenthetical "(One kilogram equals 2.2046 pounds avoirdupois.)" from paragraph (d);

652.242–72 Shipping instructions.

* * * * *

Shipping Instructions (Dec 1994)

(a) * * *

Weight of box and contents	Minimum dimensions of lumber for struts, frame members, and single diagonal braces
Up to 45 kg	19.05 × 57.15mm
46 to 113 kg	22.23 × 73.03mm
114 to 181 kg	22.23 × 98.43mm
182 to 272 kg	22.23 × 123.83mm or 25.4 × 98.43 mm

* * * * *

PART 653—FORMS

159. Section 653.213–70 is revised to read as follows:

653.213–70 DOS forms (OF–206, OF–206A, DST–1918, DST–1919, DST–1920).

As provided in 613.505–2 and 613.505–70,the following forms are prescribed for use in simplified acquisitions, delivery orders, and blanket purchase agreements:

(a) Optional Form (OF) 206, Purchase Order, Receiving Report and Voucher, and Optional Form (OF) 206A, Continuation Sheet. OF–206 and OF–206A are prescribed for use by overseas contracting activities in lieu of the OF–347 and OF–348, as specified in 613.505–2(a).

(b) Optional Form (OF) 127, Receiving and Inspection Report. OF/127 is prescribed for use by overseas contracting activities as a receiving report when using the OF–206, as specified in 613.505–2(b).

(c) DST–1918, Purchase Order File DST–1918 is prescribed for use in recording and documenting relevant data pertaining to open market simplified acquisitions, as specified in 613.505–70.

(d) DST–1919, Deliver Order File. DST–1919 is prescribed for use in recording and documenting relevant data pertaining to delivery orders issued against GSA mandatory and nonmandatory schedule contracts, as well as Department of State and other agency contracts, as specified in 613.505–70.

(e) DST–1920, Blanket Purchase Agreement (BPA) File. DST–1920 is prescribed for use in recording and documenting relevant data pertaining to Blanket Purchase Agreements, as specified in 613.505–70.

160. Sections 653.217 and 653.217–70 are added to read as follows:

653.217 Special contracting methods.

653.217–70 DOS form DS–1921, Award/Modification of Interagency Acquisition Agreement.

As prescribed in 617.504–70(b)(5)(i), DS–1921 is prescribed for use when awarding or modifying Economy Act Interagency Acquisition Agreements where the Department is the requesting agency.

161. Sections 653.219 and 653.219–70 are added to read as follows:

653.219 Small business and small disadvantaged business concerns.

653.219–70 DOS form DS–1910, Small Business/Labor Surplus Agency Review—Actions Above the Small Purchase Limitation.

As prescribed in 619.501(c), DS–1910 is prescribed for use in documenting set-aside decisions.

653.302 [Removed]

162. Section 653.302 is removed.

SUBCHAPTER I—DOS SUPPLEMENTATIONS

PART 670—[REMOVED]

163. Subchapter I, consisting of Part 670, is removed.

Dated: December 14, 1994.

Lloyd W. Pratsch,

Procurement Executive.

[FR Doc. 94–31211 Filed 12–27–94; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–02; Notice 08]

RIN [2127–AF47]

Federal Motor Vehicle Safety Standards; Compressed Natural Gas Fuel Container Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; response to Petitions for reconsideration.

SUMMARY: This rule provides a partial response to petitions for reconsideration of the final rule that established performance requirements applicable to compressed natural gas (CNG) fuel containers. The final rule specified a safety factor of 3.33 for use in evaluating the strength of carbon fiber containers. This rule takes the intermediate step of specifying a 2.25 safety factor for carbon fiber containers and makes several minor changes to the final rule. After thoroughly analyzing the large number of petitions for reconsideration, the agency plans to issue another final rule establishing a permanent safety factor for carbon fiber containers and addressing the other issues raised in the petitions for reconsideration. If the safety factor is increased, a two year lead time will be given.

DATES: *Effective Date:* The amendments in today's final rule become effective March 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Gary R. Woodford, NRM–01.01, Special Projects Staff, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202–366–4931).

SUPPLEMENTARY INFORMATION:

I. Final Rule Establishing FMVSS No. 304

On September 26, 1994, NHTSA published a final rule addressing the safe performance of compressed natural gas (CNG) containers [1] (59 FR 49010). The final rule established a new Federal motor vehicle safety standard, FMVSS No. 304, *Compressed Natural Gas Fuel Containers*, that specifies pressure cycling, burst, and bonfire tests for the purpose of ensuring the durability, initial strength, and venting of CNG containers. The pressure cycling test evaluates a container's durability by requiring a container to withstand, without any leakage, 18,000 cycles of pressurization and depressurization. This requirement helps to ensure that a CNG container is capable of sustaining the cycling loads imposed on the container during refuelings over its entire service life. The burst test evaluates a container's initial strength and resistance to degradation over time. This requirement helps to ensure that a container's design and material are

[1] When used as a motor fuel, natural gas is stored on-board a vehicle in cylindrical containers at a pressure of approximately 20,684 kPa (3,000 psi). Among the terms used to describe CNG fuel containers are tanks, containers, cylinders, and high pressure vessels. The agency will refer to them as "containers" throughout this document.

appropriately strong over the container's life. The bonfire test evaluates a container's pressure relief characteristics when pressure builds in a container, primarily due to temperature rise. In addition, the final rule specifies labeling requirements for CNG fuel containers. FMVSS No. 304 becomes effective on March 27, 1995.

The new FMVSS is patterned after the American National Standards Institute's (ANSI's) voluntary industry standard known as ANSI/NGV2 (ANSI/NGV2). ANSI/NGV2 and FMVSS No. 304 specify detailed material and design requirements for four different types of containers. A Type 1 container is a metallic noncomposite container. A Type 2 container is a metallic liner over which an overwrap such as carbon fiber or fiberglass is applied in a hoop wrapped pattern over the liner's cylinder sidewall. A Type 3 container is a metallic liner over which an overwrap such as carbon fiber or fiberglass is applied in a full wrapped pattern over the entire liner, including the domes. A Type 4 container is non-metallic liner over which an overwrap such as carbon fiber or fiberglass is applied in a full wrapped pattern over the entire liner, including the domes.

For each type of container, ANSI/NGV2 and FMVSS No. 304 specify a unique safety factor for calculating the internal hydrostatic pressure that the container must withstand during the burst test. The safety factors range from 2.25 to 3.50, depending on the material and design involved. The higher the safety factor, the more material is needed to comply with the requirement. To satisfy this aspect of ANSI/NGV2 and FMVSS No. 304, a container must meet both the applicable material and design requirements as well as the burst test.

While FMVSS No. 304 follows ANSI/NGV2 in most respects, NHTSA departed from ANSI/NGV2 in deciding to require that carbon fiber containers comply with a higher safety factor for the burst tests. Specifically, FMVSS No. 304 specifies a safety factor of 2.50 for Type 2 containers and 3.33 for Type 3 and Type 4 containers. In contrast, ANSI/NGV2 specifies a safety factor of 2.25 for carbon fiber containers.

II. Petitions for Reconsideration

NHTSA received 133 petitions for reconsideration of the final rule that established FMVSS No. 304. The petitions were submitted by CNG container manufacturers, vehicle manufacturers, natural gas utilities, research and testing laboratories, and Canada and several of its provincial governments. Most of the petitioners addressed the carbon fiber safety factor. Many of these petitioners stated that the levels specified by the agency in the final rule are unnecessarily high from a safety standpoint. They further stated that the higher safety factors will unduly increase the cost of carbon fiber containers, thereby making them noncompetitive with other technologies. Some petitioners stated that NHTSA's safety factors are not harmonized with the Canadian Standards Association standard or the draft International Standards Organization standard, both of which specify a 2.25 safety factor for carbon fiber. On the other hand, at least one commenter supported the 3.33 safety factor.

While the carbon fiber safety factor was the most controversial issue raised by petitioners, some petitioners commented about other issues in the final rule. For example, some petitioners commented that FMVSS No. 304 prohibits certain materials, such as new or different aluminum and steel. Some petitioners wanted FMVSS No. 304 to include additional safety requirements found in ANSI/NGV2. A number of petitioners requested the agency to delay or withdraw FMVSS No. 304 until the revision, currently underway, of ANSI/NGV2 is completed. Petitioners also raised questions about the need for a variety of technical amendments to FMVSS No. 304.

III. Agency Decision

As explained below, NHTSA has decided to respond to the petitions for reconsideration in two stages. In today's final rule, the agency provides an initial, partial response to the issue of the appropriate safety factor for carbon fiber containers, pending completion of the reconsideration process. Today's notice also responds to several other technical issues whose resolution did not necessitate extensive review or consideration. Subsequently, the agency will issue a second notice finally resolving the issue of the safety factor for carbon fiber containers and responding to the balance of the issues in the petitions for reconsideration.

Today's decision regarding the safety factor for carbon fiber containers will provide NHTSA with an opportunity to review and analyze all the information presented in the petitions for reconsideration on this issue, while allowing the manufacture of carbon fiber containers, subject to a safety factor of 2.25. After NHSTA has completed its analysis, the agency will then make a final decision on the appropriate safety factor for carbon fiber containers. The agency anticipates issuing this notice in the Spring of 1995. Depending on the conclusions arising from its review, the agency may take one of three actions: reaffirm its decision in this notice that the safety factor for carbon fiber containers should be 2.25; adopt the safety factors specified in the original final rule; or adopt a safety factor somewhere in between those two alternatives. If the agency decides at the conclusion of the reconsideration process to set safety factors at values higher than 2.25, it will set an effective date of two years from the date on which the decision is published in the **Federal Register** to provide the industry with adequate lead time to manufacture such containers.

NHTSA's two step approach to responding to the petitions will provide it with the time it needs to review and analyze the voluminous information submitted by the petitioners. That information includes, among other things, Brunswick's data on how the higher carbon fiber safety factor increases costs; Brunswick's test data on the long term durability of carbon fiber containers (these tests include tests relating to high pressure cycling, severe damage abuse, and acidic environment); EDO's test data on the long term performance of carbon fiber fuel containers, including high impact damage, severe abuse, corrosion resistance, accelerated aging, and exposure to chemicals; information from EDO and Brunswick about the number of carbon fiber CNG containers currently in use; Dynetek's information on the resistance of carbon fiber containers to acidic environments; Thomas Built's information on the safety record of carbon fiber CNG containers currently in-use; and NGVC's and AGA's information on the cost increase of carbon fiber containers due to the higher safety factor.

The necessity for providing an initial, expedited response on the issue of the 2.5 and 3.33 safety factors for carbon fiber containers arises from several factors. First, the effective date for FMVSS No. 304, i.e., March 27, 1995, is very near. Second, manufacturers have typically been building CNG carbon fiber containers to comply with a much lower safety factor, the 2.25 safety factor specified in ANSI/NGV2. Third, the container manufacturers would incur significant cost in switching from the production of carbon fiber containers complying with a 3.33 safety factor. Today's notice will avoid the necessity of carbon fiber container manufacturers having to incur costs and make design adjustments in order to comply with requirements that may ultimately be found to be more stringent than necessary.

Given its decision to defer resolution of the issue of whether to impose safety factors of 2.5 and 3.33 for carbon fiber containers, NHTSA was faced with making the further decision whether to specify any safety factor so that the burst test can be implemented pending completion of the reconsideration process. The choice was between not specifying any safety factor or specifying a 2.25 safety factor, the factor with which carbon fiber container manufacturers currently comply. Not specifying any safety factor at all would have permitted the manufacture of weaker, less safe carbon fiber containers. The agency has concluded that, pending a final decision on this matter, a 2.25 safety factor should be adopted. NHTSA believes that this decision is appropriate for several reasons. First, this decision will assure that there is a minimum level of strength for CNG carbon fiber containers. Second, 2.25 is the value specified in ANSI/NGV2 and in the Canadian Standards Association standard. Third, manufacturers have been building CNG carbon fiber containers to this safety factor. Accordingly, adopting a 2.25 safety factor will promote safety, be consistent with current practice and not impose any additional costs. However, after thoroughly analyzing the data provided by the petitioners, the agency may decide to increase the safety factor to 3.33 or some intermediate level. If this occurs, a two year lead time will be given.

In today's final rule, NHTSA has decided also to amend two other aspects of the September 1994 final rule. In response to Norris Cylinder Company (Norris), section S6.2 is amended to state "Each CNG fuel container manufactured on or after *March 27, 1994*, shall meet the requirements of S7 through S7.4." (Emphasis added). This change is necessary to reflect the actual effective date. Norris correctly stated that the final rule had incorrectly referred to containers manufactured on or after March 27, 1994.

In response to several petitioners, including Ford and NGV Systems, section S5.5.1 is amended to include the phrase "or its equivalent." These commenters correctly stated that the National Aeronautics and Space Administration (NASA) computer program referenced in ANSI/NGV2 and FMVSS No. 304 is outdated. Therefore, including the phrase "or its equivalent" as ANSI/NGV2 does will assist manufacturers in their efforts to establish compliance with FMVSS No. 304.

NHTSA notes that several petitioners criticized the agency for not establishing additional performance requirements to ensure the safety of CNG containers. For instance, Brunswick stated that "The final rule does not incorporate critical safety tests and requirements that are part of the current ANSI/AGA NGV2 Standard and are necessary to insure safety."

As explained in the September 1994 final rule, NHTSA anticipated issuing additional performance requirements, consistent with ANSI/NGV2, after the final rule was issued. The agency's decision regarding this sequence of notices was made to accommodate requests by Brunswick and other CNG container manufacturers for NHTSA initially to issue requirements to ensure a CNG container's durability, strength, and pressure relief. In keeping with that decision, NHTSA followed the final rule with a supplemental notice of proposed rulemaking (SNPRM) that proposes additional performance requirements, consistent with those in ANSI/NGV2, to evaluate a CNG fuel container's internal and external resistance to corrosion, brittle fracture, fragmentation, and external damage caused by incidental contact with road debris or mechanical damage during the vehicle's operation. (59 FR 65299, December 19, 1994). As the agency stated in the SNPRM, the agency tentatively concludes that these additional performance requirements are critical for determining a CNG container's safety. In addition, the agency proposed additional labeling requirements that should provide important safety information about a CNG container's service life. Accordingly, NHTSA believes that the agency has already responded to the petitioners' suggestion that the agency was not adequately addressing other aspects of CNG container safety.

IV. Rulemaking Analyses

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered this rulemaking action in connection with Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be "nonsignificant" under the Department of Transportation's regulatory policies and procedures. In the final rule, the agency concluded that most of the performance requirements in the standard are already being met by CNG fuel container manufacturers, who produce and test containers in accordance with ANSI/NGV2. CNG container manufacturers would not incur a cost increase for meeting the requirements in the bonfire test and the pressure cycling test. However, the agency concluded that the decision to increase the safety factor for carbon fiber containers would have an impact on CNG container manufacturers. The agency estimated that increasing the burst test safety factor from 2.25 to 3.33 would result in a direct cost increase of 37.1 percent and weight increase of 35.1 percent for containers that meet the 2.25 safety factor. These estimated cost and weight increases were arrived at through analysis and interpolation of information provided by Brunswick. The agency refers interested parties to the "Final Regulatory Evaluation", FMVSS No. 304, *Fuel System Integrity, Compressed Natural Gas Containers*, September 1994, for details on the additional cost incurred for a 3.33 safety factor. The agency's decision to specify a 2.25 safety factor for carbon fiber containers would negate this cost increase to container manufacturers, as they currently manufacture containers to this value. Since the agency is taking this intermediate step to lower the factor to the value which is currently met by container manufacturers, the agency does not see a need to perform a new regulatory evaluation, at this time.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. Based upon the agency's evaluation, I certify that this rule will not have a significant economic impact on a substantial number of small entities. Information available to the agency indicates that businesses manufacturing CNG fuel containers are not small businesses.

C. Executive Order 12612 (Federalism)

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. No state has adopted requirements regulating CNG containers.

D. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this rule. The agency has determined that this rule will have no adverse impact on the quality of the human environment. On the contrary, because NHTSA

anticipates that ensuring the safety of CNG vehicles will encourage their use, NHTSA believes that the rule will have positive environmental impacts. CNG vehicles are expected to have near-zero evaporative emissions and the potential to produce very low exhaust emissions as well.

E. Civil Justice Reform

This final rule does 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.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50. (inches).

§ 571.304 [Amended]

2. Section 571.304 is amended by revising S5.5.1, S6.2, and S7.2.2, as follows:

* * * * *

S5.5.1 Compute stresses in the liner and composite reinforcement using National Aeronautics and Space Administration (NASA) NAS 3–6292, *Computer Program for the Analysis of Filament Reinforced Metal-Shell Pressure Vessels,* (May 1966), or its equivalent.

* * * * *

S6.2 Each CNG fuel container manufactured on or after March 27, 1995 shall meet the requirements of S7 through S7.4.

* * * * *

S7.2.2 Each Type 2, Type 3, or Type 4 CNG fuel container shall not leak when subjected to burst pressure and tested in accordance with S8.2. Burst pressure shall be no less than the value necessary to meet the stress ratio requirements of Table 3, when analyzed in accordance with the requirements of S5.5.1. Burst pressure is calculated by multiplying the service pressure by the applicable stress ratio set forth in Table Three.

TABLE THREE—STRESS RATIOS

Material	Type 2	Type 3	Type 4
E-Glass	2.65	3.5	3.5
S-Glass	2.65	3.5	3.5
Aramid	2.25	3.0	3.0
Carbon	2.25	2.25	2.25

* * * * *

Issued on December 21, 1994.

Ricardo Martinez,

Administrator.

[FR Doc. 94–31847 Filed 12–22–94; 10:49 am]

BILLING CODE 4910–59–P–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 204 and 638

[Docket No. 940973–4352; I.D. 082394A]

RIN 0648–AF85

Coral and Coral Reefs of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; notice of OMB control numbers.

SUMMARY: NMFS issues this final rule to implement Amendment 2 to the Fishery Management Plan (FMP) for Coral and Coral Reefs of the Gulf of Mexico and South Atlantic. Amendment 2: Prohibits the taking of wild live rock in the exclusive economic zone (EEZ) off the southern Atlantic states (South Atlantic) from the North Carolina/Virginia boundary to the Dade/Broward County line in Florida and in the EEZ of the Gulf of Mexico (Gulf), except off Florida north of Monroe County; phases out wild live rock harvests in the South Atlantic EEZ south of the Dade/Broward County line by 1996; phases out wild live rock harvests in the Gulf EEZ off Florida north of Monroe County by 1997; establishes restrictions on live rock harvesting and possession and requires permits and reporting during the phase-out periods; and allows and facilitates live rock aquaculture. In addition, NMFS amends the regulations to correct and conform them to current standards, informs the public of the approval by the Office of Management and Budget (OMB) of new collection-of-information requirements contained in this rule, and publishes the OMB control number for those collections.

EFFECTIVE DATE: December 22, 1994, except that § 638.25(c)(3) is effective December 22, 1994, through December 31, 1994, and §§ 638.4(a)(1)(iv)(A) and (h)(2) and 638.7(a)(4) are effective March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–570–5305.

SUPPLEMENTARY INFORMATION: The FMP for Coral and Coral Reefs of the Gulf of Mexico and South Atlantic was prepared by the South Atlantic Fishery Management Council (South Atlantic Council) and the Gulf of Mexico Fishery Management Council (Gulf Council) and is implemented through regulations at 50 CFR part 638 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). With implementation of Amendment 2, the single FMP is separated into two FMPS—the FMP for Coral and Coral Reefs off the Southern Atlantic States under the purview of the South Atlantic Council and the FMP for Coral and Coral Reefs of the Gulf of Mexico under the purview of the Gulf Council. Regulations implementing both FMPs remain in 50 CFR part 638.

At the request of the Gulf Council, NMFS published an emergency interim rule on May 16, 1994 (59 FR 25344), effective May 16 through August 14, 1994, and extended the rule, with modifications, through November 12, 1994 (59 FR 42533; August 18, 1994). At the request of the South Atlantic Council, NMFS published an emergency interim rule on June 27, 1994 (59 FR 32938), effective through September 26, 1994, and extended the rule through December 25, 1994 (59 FR 47563; September 16, 1994). When the 1994 quota was reached, the live rock fishery in the South Atlantic EEZ was closed November 1, 1994, through December 25, 1994 (59 FR 54841; November 2, 1994). These rules were intended to slow the rate of harvest, prevent serious damage to habitat, and prevent geographical extension of harvest until long-term measures could be implemented through Amendment 2. This final rule implements the measures contained in Amendment 2, which include the basic measures in the emergency interim rules.

The rationale for the measures in Amendment 2 and for additional measures proposed by NMFS were contained in the proposed rule (59 FR

49377, September 28, 1994) and are not repeated here.

Comments and Responses

Comments on the proposed rule were received through November 7, 1994, and are summarized below, according to subject, followed by NMFS' response:

Harvests off the Florida Panhandle

Comment: The Florida Marine Fisheries Commission (Florida), Georgia Department of Natural Resources (Georgia), the Professional Association of Diving Instructors (PADI), and the Center for Marine Conservation (CMC) recommend that NMFS close the EEZ off the Florida Panhandle to live rock harvesting during the harvest phase-out period The following local groups also requested an immediate ban on harvesting: Okaloosa County Board of Commissioners; City of Destin, Destin Charter Boat Association, Destin Fisherman's Cooperative Association, Inc., Okaloosa County Economic Development Council, Destin Fishing Fleet, Inc., Emerald Coast Convention and Visitors Bureau, South Walton Tourist Development Council, 16 local businesses, including nine dive shops, and 24 private citizens. These commenters requested closure of the EEZ off the Panhandle because hard bottom areas in the northern Gulf are scarce, and thus more vulnerable to overfishing. They indicated that similar environments off Alabama, Louisiana, Mississippi, and Texas will be closed to live rock harvesting under Amendment 2 and that closures in the South Atlantic will result in shifting of harvesting effort to the Gulf area where harvesting is still allowed. They also indicated there will be adverse economic impacts on sport fishing, diving, and tourism in the Florida Panhandle due to destruction of valuable reef habitats.

Response. At its November meeting, the Gulf Council decided to include among options being considered in FMP Amendment 3 a management measure to close the EEZ off the Panhandle area. Amendment 3 is on the agenda for the next Gulf Council meeting in January 1995. NMFS' options were, however, to approve, disapprove, or partially disapprove the Council's recommendations in Amendment 2; disapproval of Amendment 2 would not have resulted in an immediate prohibition on harvests.

National Standard 4 of the Magnuson Act

Comment: Florida and PADI claim that the Gulf Council has violated national standard 4 of the Magnuson Act by treating Florida residents differently from residents of Texas, Alabama, Mississippi, and Louisiana. They assert that only in the Gulf off Florida, and especially in the Panhandle area, is the harvest of wild live rock allowed to continue during a phase-out period. These commenters believe that Florida fishermen and citizens are being denied the protections that are being extended to the other states.

Response. NMFS disagrees. National standard 4 states:

Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The Gulf Council's recommendation, and NMFS' decision, to allow wild live rock harvests off Florida merely continues existing fishing practices and has no discriminatory effect. Citizens of other states may participate in the fishery off Florida, however, the only known landings of live rock from this area have been made by Florida citizens. Amendment 2 does not violate national standard 4 by allowing live rock harvesting off Florida during the phase-out period, especially since it also establishes mitigating or restrictive measures limiting the extent and effects of this harvest, such as gear limitations and a daily vessel limit.

Live Rock Quota in the Gulf

Comment Florida, Georgia, CMC, and PADI urged NMFS to impose a quota in the Gulf to prevent serious depletion of resources during the harvest phase-out period. They are especially concerned that when South Atlantic quotas are met the Gulf will become the sole domestic source of wild live rock.

Response: NMFS cannot use Amendment 2 to impose measures not recommended (or rejected) by the Councils. The Gulf Council is preparing Amendment 3 to the FMP specifically to address live rock quotas. Amendment 3 will be under consideration at the Gulf Council's meeting in January 1995.

Octocorals

Comment: Florida asked NMFS not to approve the provision that allows the harvest in the Gulf of Mexico off Florida of rock substrate within 3 inches (7.6 cm) of the base of an allowable octocoral. At recent State public hearings on the issue, live rock harvesters testified that, especially in the Florida Keys, it would be easy to pick up 6-inch (15.2-cm) rocks with small octocorals attached and that this provision will allow the harvest of wild live rock to continue under the octocoral quota. Under recently published State rules, only the substrate within 1 inch (2.5 cm) of the holdfast will be allowed to be landed anywhere in Florida under the octocoral quota.

Response: Individuals harvesting octocorals for the aquarium industry testified that they need some attached substrate to anchor the octocoral in the aquarium. This rule defines "allowable octocorals" to include the substrate within 1 inch (2 5 cm) of the octocoral in the EEZ off the southern Atlantic states and the substrate within 3 inches (7.6 cm) of the octocoral in the Gulf EEZ. However, according to a long-standing policy on octocoral regulations, the more restrictive state or Federal rule applies. (See old § 638.4(a)(2)(ii) or new § 638.3(c)). In this case, since Florida now has a 1-inch (2.5-cm) rule, § 638.3(c) would require a person landing allowable octocorals in Florida (on both the east and Gulf coasts) to comply with the more restrictive State regulation. Individuals harvesting allowable octocorals in the Gulf EEZ and landing outside Florida would still be able to take attached substrate up to 3 inches (7.6 cm) from the octocoral.

Separation of the FMP into Two Jurisdictions

Comment: The U.S. Fish and Wildlife Service and the State of Georgia recommended that NMFS approve the separation of the FMP into two fishery management plans, one covering coral and coral reef resources in the Gulf EEZ and one for such resources in the EEZ of the South Atlantic. Florida does not oppose separation but is concerned that it will result in management objectives and regulations that are inconsistent between Florida's east and west coasts. One live rock harvester asked for consistent rules in both jurisdictions and two harvesters claimed that the inconsistent regulations give Florida west coast firms an unfair commercial advantage over the southeast commercial interests.

Response: NMFS approved the separation of the FMP into two fishery management plans because: both Councils have requested it; the resource is sessile and will not move between adjacent Council jurisdictions; and the public may benefit due to decreased travel costs for attending Council meetings—members of the public who use the resource under the jurisdiction

of only one or the other Council will only need to attend the meetings of one Council. It does appear that there may be an increasing divergence between the management regimes of the two Councils. Any economic advantage accruing to the west coast dealers in live rock will be short-lived since the harvest of wild live rock in the Gulf will end on January 1, 1997. The Gulf Council is considering adopting harvest quotas for wild live rock for 1995 and 1996.

Accuracy of Scientific Data

Comment: Two live rock harvesters questioned the accuracy of scientific data in Amendment 2, specifically the relationship between live rock harvest and reef fish habitat availability and the nonrenewable nature of the live rock resource.

Response: The NMFS Southeast Fisheries Science Center has certified that the management measures contained in Amendment 2 are based on the best scientific information available.

Phase-out Dates

Comment: The Pet Industry Joint Advisory Council (PIJAC), American Aquarist Society (AAS), Marine Aquarium Societies of North America (MASNA), six pet shops, and five individuals objected to the January 1, 1996, termination date for wild live rock harvests in the South Atlantic area These commenters believe that there may not be enough time to develop aquaculture to replace these wild harvests. On the other hand, PADI asked NMFS to move up the phase-out dates to 1995 in the South Atlantic and 1996 in the Gulf EEZ. The Environmental Defense Fund (EDF) said that waiting to ban live rock collection, in certain areas off Florida, until an aquaculture industry is in place creates no incentives for the development of the industry. EDF believes that it is not NMFS' responsibility to ensure that an aquaculture industry exists to replace fisheries that must be shut down because they are unsustainable.

Response: NMFS has approved the phase-out dates requested by the Councils as part of Amendment 2. Approval of these dates by NMFS was based on an agency determination that these dates represent a reasonable balancing of concerns for the live rock resource and concerns for the effect of immediate closures on the aquarium industry. Following a series of public hearings and discussions beginning in 1993, the South Atlantic Council weighed the requests of live rock harvesters for time to produce a marketable aquaculture product against the continuing loss of fisheries habitat and the potential degradation of the Florida Reef Tract from wild live rock harvests in the South Atlantic area. The Council decided that January 1, 1996, or approximately a 1-year delay in a ban on commercial harvests was reasonable, especially since testimony indicated that a marketable product could be produced from base rock in about one year. Eliminating or reducing the phase-out periods, as some commenters suggested, were options rejected by the Councils because of the unacceptable adverse economic impacts on live rock harvesters.

Personal-Use Harvests

Comment: PIJAC, AAS, MASNA, six pet shops, and five individuals asked for a personal-use allowance of a 5-gal bucket (19–L) container of live rock per person per day. EDF believes that this allowance is an excessive amount to maintain one aquarium and is concerned about enforcement problems and the potential for abuse. EDF requests that the potential impacts of such a provision be closely examined.

Response: In developing Amendment 2, the Council and NMFS rejected a personal-use harvest that could result in a total of up to 1,825 gal (6,908 L) of live rock per person per year. The harvest of wild live rock is a take of an essentially nonrenewable resource and results in a net loss of fishery habitat. While NMFS agreed with the Councils' final recommendation to delay the ban on commercial harvests in order to mitigate adverse economic impacts on the industry and allow a transition to live rock aquaculture, this justification is not applicable to the recreational sector. Further, live rock is likely to contain prohibited corals. Commercial harvesters testified that they must carefully choose pieces to avoid taking prohibited corals. Occasional recreational divers are less likely to be able to make these distinctions and any allowable recreational take of live rock could result in increased takes of prohibited corals. Finally, the State of Florida banned both commercial and recreational harvest of live rock from State waters in 1989. A personal-use harvest from the EEZ off Florida could seriously complicate State enforcement efforts. The Gulf Council intends to reconsider this issue during development of FMP Amendment 3

Aquaculture Permits

Comment: Florida, Georgia, and the CMC support the live rock aquaculture provisions. Pet industry groups and two commercial harvesters are concerned about delays in development of permit systems for aquaculture. PADI believes that aquaculture development should occur away from the natural environment so as to provide supervisory agencies the ability to monitor aquaculture activities without ambiguity between what may be harvesting aquacultured versus wild live rock. The South Atlantic Council forwarded the minutes of its Coral Advisory Panel (AP) meeting that resulted in recommended changes to the draft aquacultured live rock permit criteria. The AP was particularly concerned that any required site evaluation report be prepared by an independent source to eliminate bias and that placement of rocks used for aquaculture be conducted in an environmentally sound manner.

Response: NMFS and the U.S. Army Corps of Engineers (COE) are developing a coordinated permit system for live rock aquaculture that will expedite applications. Rather than requiring application to both agencies, one to COE for deposition of materials in Federal waters and one to NMFS for harvest and possession of live rock in the EEZ, permits will be issued by NMFS that will, among other things, authorize individuals to deposit materials under a COE general permit. Several individuals will be "grandfathered" into the COE permit because they already hold COE individual permits under the authority of the Rivers and Harbors Act, and have placed rocks in designated sites for the purpose of live rock aquaculture. These individuals will still need to apply for a NMFS harvest and possession permit and abide by NMFS' reporting and other regulatory requirements. The COE general permit is expected to be available in January 1995 Land-based aquaculture, as suggested by PADI, was opposed by the live rock harvesting industry representatives that attended State of Florida and Council public hearings on this issue because it is costly and technically more difficult than open-water aquaculture.

As a result of the Coral AP's recommendations, NMFS has made certain changes from the proposed rule. The site survey, which is required to be submitted with an application for an aquacultured live rock permit, must be prepared pursuant to generally accepted industry standards. Additionally, clarifications have been made to the deposition procedures for live rock aquaculture to further the intent of the permit criteria, namely, the protection of natural hardbottom areas. Thus, this final rule explains that the rocks must be placed by hand or lowered completely to the bottom under restraint, that is, not allowed to fall

freely, and must be placed from a vessel that is anchored to help ensure that the deposited materials do not drift onto natural hardbottom or vegetated areas.

Concerns of the South Atlantic Council

Comment: The South Atlantic Council expressed its concern about certain proposed measures. It reiterated that allowable octocorals in the South Atlantic include only the substrate covered by and within 1 inch (2.5 cm) of the holdfast and noted that Florida intended to establish this definition in its waters. Also, the Council reiterated its request for a separate FMP for coral and coral reef resources in the area of its jurisdiction and noted its intent to prohibit chipping under aquaculture permits through a subsequent FMP amendment.

Response: NMFS refers the Council to discussions above regarding the amount of substrate that can be landed with an allowable octocoral. In light of Florida's recent publication of a rule allowing the landing of only 1 inch (2.5 cm) of substrate surrounding the octocoral, individuals landing allowable octocorals in Florida will have to abide by the more restrictive State rule. NMFS has agreed to the South Atlantic Council's request and divided the single, joint Council FMP into two FMPs, each under the respective jurisdiction of the Gulf and South Atlantic Councils. Regarding chipping, the final rule prohibits this practice in areas of the South Atlantic where wild live rock harvesting is allowed, i.e., south of the Dade/Broward County line in Florida. Amendment 2 does not give NMFS the authority to address aquaculture permits in the South Atlantic. However, the Council is free to include a chipping prohibition in the aquaculture measures it intends to forward for NMFS approval early next year.

Approval of Amendment 2

On November 25, 1994, the Director, Southeast Region, NMFS (Regional Director), approved Amendment 2.

Changes from the Proposed Rule

As discussed above, § 638.4(b)(4) is revised to require that the site survey, which is required to be submitted with an application for an aquacultured live rock permit, be prepared pursuant to generally accepted industry standards.

By emergency interim rule, a quota for wild live rock from the EEZ off the southern Atlantic states was established for the current fishing year. That quota was reached and the fishery was closed effective November 1, 1994. Accordingly, the quota for the current fishing year is removed from § 638.25(c)(1) and provisions for continuing the closure through December 31, 1994, are temporarily added at § 638.25(c)(3).

As noted above, § 638.27(b)(2) is revised to require that material deposited on an aquaculture site must be placed on the site by hand or lowered completely to the bottom under restraint (that is, not allowed to fall freely) and must be placed from a vessel that is anchored.

Classification

The Regional Director determined that Amendment 2 is necessary for the conservation and management of coral and coral reefs off the southern Atlantic states and in the Gulf of Mexico and that it is consistent with the Magnuson Act and other applicable law.

This action has been determined to be not significant for purposes of E.O. 12866.

The Councils prepared a final supplemental environmental impact statement (FSEIS) for Amendment 2; a notice of availability was published on August 29, 1994 (59 FR 44398). According to the FSEIS, the measures contained in Amendment 2 will benefit the natural environment by phasing out activities that result in damage to live bottom habitat areas. Potential adverse economic impacts on fishermen will be mitigated by the harvest of aquacultured live rock.

The Councils prepared an initial regulatory flexibility analysis (RFA) for this action. The initial RFA has been adopted as final without change. The initial and final RFAs conclude that this action may have a significant economic impact on a substantial number of small entities. The specifics of that conclusion are summarized in the proposed rule and are not repeated here. Copies of the document may be obtained from the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609–2486, FAX 813–225–7015, or from the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407–4699, FAX 803–769–4520.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act—specifically, applications for permits to take wild live rock, applications for permits to take aquacultured live rock, site evaluation reports for aquacultured live rock, reports of live rock harvests, and notification of intent to harvest aquacultured live rock. These collections of information have been approved by OMB under OMB control numbers 0648–0205, and 0648–0016. The public reporting burdens for these collections of information are estimated to average 15, 15, 45, 15, and 2 minutes per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This rule also revises a collection-of-information requirement subject to the Paperwork Reduction Act—namely, applications for prohibited coral, allowable chemical, and allowable octocoral permits. This collection of information is estimated to average 15 minutes per response and was previously approved by OMB under OMB control number 0648–0205. Send comments regarding these burden estimates or any other aspect of the collections of information, including suggestions for reducing the burdens, to Edward E. Burgess, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702 and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

In the EEZ off the southern Atlantic states, the substantive measures in this final rule, that is, non-administrative measures that affect the conservation of coral and coral reefs, are currently in effect under an emergency interim rule. In the EEZ of the Gulf of Mexico, the substantive measures were in effect through November 12, 1994, under an emergency interim rule. It is in the public interest to continue the effectiveness of these measures off the southern Atlantic states without hiatus and to minimize the period of time that these measures are not in effect in the Gulf of Mexico. The other measures in this final rule are continuations or clarifications of existing measures or administrative measures that do not affect current fishing practices. Delay in effectiveness of these other measures serves no useful purpose and is not in the public interest. Accordingly, the Assistant Administrator for Fisheries, NOAA, finds for good cause, under section 553(d)(3) of the Administrative Procedure Act, that the effectiveness of this final rule should not be delayed.

List of Subjects

50 CFR Part 204

Reporting and recordkeeping requirements.

50 CFR Part 638

Fisheries, Fishing, Reporting and recordkeeping requirements

Dated: December 21, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 204 and 638 are amended as follows:

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

§ 204.1 [Amended]

2. In § 204.1(b), the table is amended by removing from the left column "638.4(g)" and "638.7", and their corresponding entries in the right column, and by adding in their place, in the left column, in numerical order, "638.4", "638.5", and "638.27(d)" and in the right column, in corresponding positions, the control numbers "–0205", "–0205", and "–0016".

PART 638—CORAL AND CORAL REEFS OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

3. The authority citation for part 638 continues to read as follows:

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

4. Section 638.1 is revised to read as follows:

§ 638.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for Coral and Coral Reefs off the Southern Atlantic States and the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico developed under the Magnuson Act by the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council, respectively.

(b) This part governs conservation and management of coral, coral reefs, and live rock in the EEZ off the southern Atlantic states and in the Gulf of Mexico. "EEZ" in this part 638 refers to the EEZ in those geographical areas, unless the context clearly indicates otherwise.

5. In § 638.2, the definition of "Scientific and educational purpose" is removed; in the definition of "Allowable chemical", paragraphs (a) and (b) are redesignated as paragraphs (1) and (2), respectively; the definitions of "Allowable octocoral", "HAPC", "Prohibited coral", and "Regional Director" are revised; and new definitions of "Aquacultured live rock", "Chipping", "Gulf of Mexico", "Live rock", "Off the southern Atlantic states", "Scientific, educational, or restoration purpose", "Trip", and "Wild live rock" are added in alphabetical order to read as follows:

§ 638.2 Definitions.

* * * * *

Allowable octocoral means an erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*, plus the attached substrate—

(1) Within 1 inch (2.54 cm) of an allowable octocoral in or from the EEZ off the southern Atlantic states; and

(2) Within 3 inches (7.62 cm) of an allowable octocoral in or from the Gulf of Mexico EEZ.

Aquacultured live rock means live rock that is harvested under an aquacultured live rock permit issued pursuant to § 638.4.

Chipping means breaking up reefs, ledges, or rocks into fragments, usually by means of a chisel and hammer.

* * * * *

Gulf of Mexico means the waters off the southern states from the boundary between the Atlantic Ocean and the Gulf of Mexico, as specified in § 601.11(c) of this chapter, to the Texas/Mexico border.

HAPC means habitat area of particular concern.

Live rock means living marine organisms, or an assemblage thereof, attached to a hard substrate, including dead coral or rock (excluding individual mollusk shells).

Off the southern Atlantic states means the waters off the east coast from 36°34′55″ N. lat. (extension of the Virginia/North Carolina boundary) to the boundary between the Atlantic Ocean and the Gulf of Mexico, as specified in § 601.11(c) of this chapter.

Prohibited coral means—

(1) Coral belonging to the Class Hydrozoa (fire corals and hydrocorals);

(2) Coral belonging to the Class Anthozoa, Subclass Hexacorallia, Orders Scleractinia (stony corals) and Antipatharia (black corals);

(3) A seafan, *Gorgonia flabellum* or *G. ventalina;*

(4) Coral in a coral reef, except for allowable octocoral; or

(5) Coral in an HAPC, including allowable octocoral.

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone 813–570–5301; or a designee.

* * * * *

Scientific, educational, or restoration purpose means the objective of gaining knowledge for the benefit of science, humanity, or management of coral or returning a disturbed habitat as closely as possible to its original condition.

* * * * *

Trip means a fishing trip, regardless of number of days duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

Wild live rock means live rock other than aquacultured live rock.

6. In § 638.3, in paragraph (a), the reference to "paragraph (b) of this section" is revised to read "paragraphs (b) and (c) of this section"; and paragraph (c) is added to read as follows:

§ 638.3 Relation to other laws.

* * * * *

(c) If a state has a catch, landing, or gear regulation that is more restrictive than a catch, landing, or gear regulation in this part, a person landing in such state allowable octocoral taken from the EEZ must comply with the more restrictive state regulation.

§§ 638.8, 638.6 [Redesignated as §§ 638.9, 638.8]

7. Section 638.8 is redesignated as § 638.9; § 638.6 is redesignated as § 638.8; §§ 638.4, 638.5, and 638.7 are revised, and new § 638.6 is added to read as follows:

(**Note:** This revision supersedes the amendments to § 638.5 published in the emergency interim rule on June 27, 1994 (59 FR 32933) and extended on September 16, 1994 (59 FR 47563).)

§ 638.4 Permits and fees.

(a) *Applicability.* (1) *Federal permits.* Federal permits are required for specified activities in the EEZ as follows:

(i) *Prohibited coral.* A Federal permit is required for an individual to take or possess prohibited coral and will be issued only when the prohibited coral will be used for a scientific, educational, or restoration purpose.

(ii) *Allowable chemical.* A Federal permit is required for an individual to take or possess fish or other marine organisms with an allowable chemical in a coral area, other than fish or other marine organisms that are landed in Florida.

(iii) *Allowable octocoral.* A Federal permit is required for an individual to take or possess allowable octocoral, other than allowable octocoral that is landed in Florida.

(iv) *Wild live rock.* (A) A Federal permit is required for a vessel to take or possess wild live rock A wild live rock

vessel permit will not be issued unless the current owner of the vessel for which the permit is requested had the required Florida permit and endorsements for live rock on or before February 3, 1994, and a record of landings of live rock on or before February 3, 1994, as documented on trip tickets received by the Florida Department of Environmental Protection before March 15, 1994. For landings other than in Florida, equivalent state permits/endorsements, if required, and landing records may be substituted for the Florida permits/endorsements and trip tickets. An owner will not be issued permits in numbers exceeding the number of vessels for which the owning entity had the requisite reported landings. An owner of a permitted vessel may transfer the vessel permit to another vessel owned by the same person by returning the existing permit with an application for a vessel permit for the replacement vessel.

(B) A Federal permit is required for an individual to take or possess wild live rock for a scientific, educational, or restoration purpose and an individual permit will be issued only for such purpose. Such individual wild live rock permit may authorize the taking and possession of wild live rock in or from areas not otherwise allowed by the regulations in this part.

(v) *Aquacultured live rock.* A Federal permit is required for a person to take or possess aquacultured live rock. Each aquacultured live rock permit will be issued for a specific site, which may not exceed 1 acre (0.4 ha). Aquacultured live rock permits are available only for harvests in the Gulf of Mexico.

(2) *Florida permits.* Appropriate Florida permits and endorsements are required for the following activities, without regard to whether they involve activities in the EEZ or Florida's waters:

(i) Landing in Florida fish or other marine organisms taken with an allowable chemical in a coral area.

(ii) Landing allowable octocoral in Florida.

(iii) Landing live rock in Florida.

(b) *Application.* An application for a Federal permit must be signed and submitted by the applicant on an appropriate form, which may be obtained from the Regional Director. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. Information must be provided as follows:

(1) *Basic information.* (i) Name, mailing address including zip code, telephone number, social security number, and date of birth of the applicant.

(ii) Name and address of any affiliated company, institution, or organization.

(iii) Information concerning vessels and harvesting gear/methods requested by the Regional Director.

(iv) Any other information that may be necessary for the issuance or administration of the permit.

(2) *Scientific, educational, or restoration purpose.* An applicant for a prohibited coral permit or a wild live rock permit for a scientific, educational, or restoration purpose must specify the amount and size of prohibited coral or wild live rock to be harvested, by species, its intended use, and proposed locations and periods of fishing.

(3) *Allowable chemical.* An applicant for an allowable chemical permit must specify the type of chemical to be used, species to be harvested and their intended use, and proposed locations and periods of fishing.

(4) *Aquacultured live rock.* An applicant for an aquacultured live rock permit must identify each vessel that will be depositing material on or harvesting aquacultured live rock from the proposed aquacultured live rock site, must specify the port of landing of aquacultured live rock, and must provide a site evaluation report prepared pursuant to generally accepted industry standards that—

(i) Provides accurate coordinates of the proposed harvesting site so that it can be located using LORAN or Global Positioning System equipment;

(ii) Shows the site on a chart in sufficient detail to determine its size and allow for site inspection;

(iii) Discusses possible hazards to safe navigation or hindrance to vessel traffic, traditional fishing operations, or other public access that may result from aquacultured live rock at the site;

(iv) Describes the naturally occurring bottom habitat at the site; and

(v) Specifies the type and origin of material to be deposited on the site and how it will be distinguishable from the naturally occurring substrate.

(c) *Change in application information.* An individual, the owner of a vessel, or a person with a permit must notify the Regional Director within 30 days after any change in the application information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

(d) *Fees.* A fee is charged for each permit application submitted under paragraph (b) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application.

(e) *Issuance.* (1) The Regional Director will issue a permit at any time to an applicant if the application is complete. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified at § 638.5.

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the Regional Director's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 or the permitted vessel is sold.

(g) *Transfer.* A permit issued pursuant to this section is not transferable or assignable, except as provided under paragraph (a)(1)(iv)(A) of this section for a wild live rock vessel permit. An individual or person who desires to conduct an activity for which a permit is required must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of a signed bill of sale or equivalent acquisition papers if the application involves a current permit for aquacultured live rock.

(h) *Display.* (1) An individual permit issued pursuant to this section must be available when the permitted activity is being conducted, including the landing of species taken as a result of that activity.

(2) A vessel permit for wild live rock issued pursuant to this section must be carried on board the vessel and such vessel must be identified as required by § 638.6.

(3) An aquacultured live rock permit issued pursuant to this section, or a copy, must be carried on board a vessel depositing or possessing material on an aquacultured live rock site or harvesting or possessing live rock from an aquacultured live rock site, and such vessel must be identified as provided for in § 638.6.

(4) The operator of a vessel or an individual must present the permit for inspection upon the request of an authorized officer.

(i) *Sanctions and denials.* A permit issued pursuant to this section may be revoked, suspended, or modified, and a

permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(j) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(k) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application. A fee, the amount of which is stated with the application form, must accompany each request for a replacement.

§ 638.5 Recordkeeping and reporting.

(a) An individual with a Federal prohibited coral or wild live rock permit for a scientific, educational, or restoration purpose must submit a report of harvest to the Regional Director. Specific reporting requirements will be provided with the permit.

(b) An individual with a Federal allowable octocoral permit must submit a report of harvest to the Science and Research Director. Specific reporting requirements will be provided with the permit.

(c) A person with an aquacultured live rock permit must report to the Regional Director each deposition of material on a site. Such reports must be postmarked not later than 7 days after deposition and must contain the following information:

(1) Permit number of site and date of deposit.

(2) Geological origin of material deposited.

(3) Amount of material deposited.

(4) Source of material deposited, that is, where obtained, if removed from another habitat, or from whom purchased.

(d) The owner of a vessel that takes wild live rock, and a person who takes aquacultured live rock that is landed in Florida, must submit Florida trip tickets as required by Florida statutes and regulations.

(e) A person who takes aquacultured live rock that is landed other than in Florida must submit a report of harvest to the Regional Director. Specific reporting requirements will be provided with the permit.

(f) Additional data will be collected by authorized statistical reporting agents, as designees of the Science and Research Director, and by authorized officers. An owner or operator of a fishing vessel, an individual or person with a coral permit issued pursuant to § 638.4, and a dealer or processor are required upon request to make prohibited coral, fish or other marine organisms taken with an allowable chemical, allowable octocoral, or live rock available for inspection by the Science and Research Director or an authorized officer.

§ 638.6 Vessel identification.

(a) *Official number.* A vessel with a Federal permit for wild live rock or operating under an aquacultured live rock permit, issued pursuant § 638.4, must display its official number—

(1) On the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in length and at least 10 inches (25.4 cm) in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number from any enforcement vessel or aircraft.

§ 638.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Without a Federal permit, take or possess in the EEZ—

(1) Prohibited coral,

(2) Fish or other marine organisms with an allowable chemical in a coral area,

(3) Allowable octocoral,

(4) Wild live rock, or

(5) Aquacultured live rock—as specified in § 638.4(a)(1).

(b) Falsify information specified in § 638.4(b) on an application for a permit.

(c) Fail to display or present a permit, as specified in § 638.4(h).

(d) Falsify or fail to submit required reports or trip tickets, as specified in § 638.5(a), (b), (c), (d), and (e).

(e) Fail to make prohibited coral, fish or other marine organisms taken with an allowable chemical, allowable octocoral, or live rock available for inspection, as specified in § 638.5(f).

(f) Falsify or fail to display and maintain vessel identification, as required by § 638.6.

(g) Fail to return immediately to the sea prohibited coral, allowable octocoral, or live rock taken as incidental catch, or, in fisheries in which the entire catch is landed unsorted, sell, trade, or barter, or attempt to sell, trade, or barter prohibited coral, allowable octocoral, or live rock; as specified in § 638.21.

(h) Use or possess a toxic chemical in a coral area in the EEZ, as specified in § 638.22(a).

(i) Use a power-assisted tool in the EEZ to take prohibited coral, allowable octocoral, or live rock, or possess in the EEZ such coral or live rock taken with a power-assisted tool, as specified in § 638.22(b).

(j) Fish for or possess prohibited coral or allowable octocoral in the West and East Flower Garden Banks HAPC or the Florida Middle Grounds HAPC, except as authorized by a permit, as specified in § 638.23(a)(1) and (b)(1).

(k) Use prohibited fishing gear in an HAPC, as specified in § 638.23(a)(2), (b)(2), and (c).

(l) After the fishery for allowable octocoral is closed, harvest or possess allowable octocoral in the EEZ, or purchase, barter, trade, or sell allowable octocoral so harvested or possessed, or attempt any of the foregoing, as specified in § 638.24(b).

(m) Harvest or possess wild live rock in the EEZ off the southern Atlantic states north of 25°58.5′ N. lat., or in the Gulf of Mexico EEZ west of 87°31′06″ W. long. or south of 25°20.4′ N. lat., as specified in §§ 638.25(a) and 638.26(a).

(n) Harvest wild live rock by chipping or possess wild live rock taken by chipping in the EEZ off the southern Atlantic states south of 25°58.5′ N. lat. or in the Gulf of Mexico EEZ from 87°31′06″ W. long. east and south to 28°26′ N. lat., as specified in §§ 638.25(b) and 638.26(b)(1).

(o) After the fishery for wild live rock is closed in the EEZ off the southern Atlantic states, harvest or possess wild live rock in that area, or purchase, barter, trade, or sell wild live rock so harvested or possessed, or attempt any of the foregoing, as specified in § 638.25(c).

(p) In the Gulf of Mexico EEZ from 28°26′ N. lat. to 25°20.4′ N. lat., harvest or possess wild live rock taken other than by hand or by chipping with a nonpower-assisted, hand-held hammer and chisel, as specified in § 638.26(b)(2).

(q) Exceed the daily vessel harvest and possession limit applicable to the harvest or possession of live rock in or from the Gulf of Mexico EEZ, as specified in § 635.26(c).

(r) Fail to comply with the restrictions applicable to aquacultured live rock sites specified in § 638.27(b).

(s) Mechanically dredge or drill, or otherwise disturb, aquacultured live

rock or harvest live rock other than by hand, as specified in § 638.27(c).

(t) Falsify or fail to provide information 24 hours prior to harvesting aquacultured live rock, as specified in § 638.27(d).

(u) Harvest live rock from a site for which the person does not have an aquacultured live rock permit, as specified in § 638.27(e).

(v) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of allowable octocoral, prohibited coral, or live rock.

(w) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

Subpart B—Management Measures

8. Subpart B of part 638 is revised to read as follows:

(**Note:** This revision supercedes the amendments to subpart B published in the emergency interim rule on June 27, 1994 (59 FR 32933) and extended on September 16, 1994 (59 FR 47563).)

Subpart B—Management Measures

638.20 Fishing years.
638.21 Harvest limitations.
638.22 Gear restrictions.
638.23 Habitat areas of particular concern.
638.24 Octocoral quota and closure.
638.25 Wild live rock off the southern Atlantic states.
638.26 Wild live rock in the Gulf of Mexico.
638.27 Aquacultured live rock.
638.28 Specifically authorized activities.

Subpart B—Management Measures

§ 638.20 Fishing years.

The fishing year for live rock begins on January 1 and ends on December 31. The fishing year for prohibited coral and allowable octocoral begins on October 1 and ends on September 30.

§ 638.21 Harvest limitations.

Except as authorized by a permit issued pursuant to § 638.4, prohibited coral, allowable octocoral, and live rock taken as incidental catch must be returned immediately to the sea in the general area of fishing. In fisheries where the entire catch is landed unsorted, such as the scallop and groundfish fisheries, unsorted prohibited coral, allowable octocoral, and live rock are exempt from the requirement for a Federal permit and may be landed; however, no person may sell, trade, or barter or attempt to sell, trade, or barter such prohibited coral, allowable octocoral, or live rock.

§ 638.22 Gear restrictions.

(a) A toxic chemical may not be used or possessed in a coral area in the EEZ.

(b) A power-assisted tool may not be used in the EEZ to take prohibited coral, allowable octocoral, or live rock, and the possession in the EEZ of such corals or live rock taken with a power-assisted tool is prohibited.

§ 638.23 Habitat areas of particular concern.

The following areas are designated as HAPCs:

(a) *West and East Flower Garden Banks.* The West and East Flower Garden Banks are geographically centered at 27°52′14.21″ N. lat., 93°48′54.79″ W. long. and 27°55′07.44″ N. lat., 93°36′08.49″ W. long., respectively. On each bank, the HAPC extends from its geographical center to the 50-fathom (300-ft) (91.4-m) isobath. The following restrictions apply in the HAPC:

(1) Fishing for or possessing prohibited coral or allowable octocoral is prohibited, except as authorized by a permit issued pursuant to § 634.4; and

(2) Fishing with bottom longlines, traps, pots, dredges, or bottom trawls is prohibited.

(b) *Florida Middle Grounds.* The Florida Middle Grounds is bounded by rhumb lines connecting the following points:

Point	North latitude	West longitude
A	28°42.5′	84°24.8′
B	28°42.5′	84°16.3′
C	28°11.0′	84°00.0′
D	28°11.0′	84°07.0′
E	28°26.6′	84°24.8′
A	28°42.5′	84°24.8′

The following restrictions apply in the HAPC:

(1) Fishing for or possessing prohibited coral or allowable octocoral is prohibited, except as authorized by a permit issued pursuant to § 634.4; and

(2) Fishing with bottom longlines, traps, pots, dredges, or bottom trawls is prohibited.

(c) *Oculina Bank.* The Oculina Bank is located approximately 15 nautical miles east of Fort Pierce, FL, at its nearest point to shore, and is bounded on the north by 27°53′ N. lat., on the south by 27°30′ N. lat., on the east by 79°56′ W. long., and on the west by 80°00′ W. long. In the HAPC, fishing with bottom longlines, traps, pots, dredges, or bottom trawls is prohibited. See § 646.26(d) of this chapter for prohibitions on fishing for snapper-grouper in the Oculina Bank HAPC.

§ 638.24 Octocoral quota and closure.

(a) The quota for allowable octocoral from the EEZ is 50,000 colonies per fishing year.

(b) When the quota specified in paragraph (a) of this section is reached or is projected to be reached, the Assistant Administrator will file notification to that effect with the Office of the **Federal Register**. On and after the effective date of such notification, for the remainder of the fishing year, allowable octocoral may not be harvested or possessed in the EEZ and the purchase, barter, trade, or sale, or attempted purchase, barter, trade, or sale, of allowable octocoral in or from the EEZ is prohibited. The latter prohibition does not apply to allowable octocoral that was harvested and landed prior to the effective date of the notification in the **Federal Register**.

§ 638.25 Wild live rock off the southern Atlantic states.

(a) *Closed area.* No person may harvest or possess wild live rock in the EEZ off the southern Atlantic states north of 25°58.5′ N. lat. (extension of the Dade/Broward County, Florida, boundary).

(b) *Gear limitation.* In the EEZ off the southern Atlantic states south of 25°58.5′ N. lat., no person may harvest wild live rock by chipping and no person may possess in that area wild live rock taken by chipping.

(c) *Quota and closure.* (1) The quota for wild live rock from the EEZ off the southern Atlantic states is 485,000 lb (219,992 kg) for the fishing year that begins January 1, 1995. Commencing with the fishing year that begins January 1, 1996, the quota is zero.

(2) When the quota specified in paragraph (c)(1) of this section is reached, or is projected to be reached, the Assistant Administrator will file notification to that effect with the Office of the **Federal Register**. On and after the effective date of such notification, for the remainder of the fishing year, wild live rock may not be harvested or possessed in the EEZ off the southern Atlantic states and the purchase, barter trade, or sale, or attempted purchase, barter, trade, or sale, of wild live rock in or from the EEZ off the southern Atlantic states is prohibited. The latter prohibition does not apply to wild live rock that was harvested and landed prior to the effective date of the notification in the **Federal Register**.

(3) The 1994 quota for wild live rock from the EEZ off the southern Atlantic states was reached and the fishery was closed effective November 1, 1994. The provisions of paragraph (c)(2) of this section regarding harvest or possession

of wild live rock and the purchase, barter, trade, or sale, or attempts thereof, of wild live rock are effective December 22, 1994, through December 31, 1994.

§ 638.26 Wild live rock in the Gulf of Mexico.

(a) *Closed areas.* No person may harvest or possess wild live rock in the Gulf of Mexico EEZ—

(1) West of 87°31'06" W. long. (extension of the Alabama/Florida boundary); or

(2) South of 25°20.4' N. lat. (extension of the Monroe/Collier County, Florida boundary).

(b) *Gear limitations.* (1) In the Gulf of Mexico EEZ from 87°31'06" W. long. east and south to 28°26' N. lat. (extension of the Pasco/Hernando County, FL, boundary), no person may harvest wild live rock by chipping and no person may possess in that area wild live rock taken by chipping.

(2) In the Gulf of Mexico EEZ from 28°26' N. lat. to 25°20.4' N. lat., wild live rock may be harvested only by hand, without tools, or by chipping with a nonpower-assisted, hand-held hammer and chisel, and no person may possess in that area wild live rock taken other than by hand, without tools, or by chipping with a nonpower-assisted, hand-held hammer and chisel.

(c) *Harvest and possession limits.* Through December 31, 1996, a daily vessel limit of twenty-five 5-gallon (19-L) buckets, or volume equivalent (16.88 ft^3 (478.0 L)), applies to the harvest or possession of wild live rock in or from the Gulf of Mexico EEZ from 87°31'06" W. long. east and south to 25°20.4' N. lat., regardless of the number or duration of trips. Commencing January 1, 1997, the daily vessel limit is zero.

§ 638.27 Aquacultured live rock.

(a) Aquacultured live rock may be harvested from the Gulf of Mexico EEZ only under a permit, as required by § 638.4(a)(1)(v). A person harvesting aquacultured live rock is exempt from the prohibition on taking prohibited coral for such prohibited coral as attaches to aquacultured live rock.

(b) The following restrictions apply to individual aquaculture activities:

(1) No aquaculture site may exceed 1 acre (0.4 ha) in size.

(2) Material deposited on the aquaculture site must be geologically or otherwise distinguishable from the naturally occurring substrate or be indelibly marked or tagged; may not be placed over naturally occurring reef outcrops, limestone ledges, coral reefs, or vegetated areas; must be free of contaminants; must be nontoxic; must be placed on the site by hand or lowered completely to the bottom under restraint, that is, not allowed to fall freely; and must be placed from a vessel that is anchored.

(3) A minimum setback of at least 50 ft (15.2 m) must be maintained from natural vegetated or hard bottom habitats.

(c) Mechanically dredging or drilling, or otherwise disturbing, aquacultured live rock is prohibited, and aquacultured live rock may be harvested only by hand.

(d) Not less than 24 hours prior to harvest of aquacultured live rock, the owner or operator of the harvesting vessel must provide the following information to the NMFS Law Enforcement Office, Southeast Area, St. Petersburg, FL, telephone (813) 570-5344:

(1) Permit number of site to be harvested and date of harvest.

(2) Name and official number of the vessel to be used in harvesting.

(3) Date, port, and facility at which aquacultured live rock will be landed.

(e) Live rock on a site may be harvested only by the person, or his or her employee, contractor, or agent, who has been issued the aquacultured live rock permit for the site.

§ 638.28 Specifically authorized activities.

The Regional Director may authorize, for the acquisition of information and data, activities otherwise prohibited by the regulations in this part.

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50 CFR Parts 222

[Docket No. 940822-4334; I.D. 101194C]

Endangered and Threatened Species; Status of Snake River Spring/Summer Chinook Salmon and Snake River Fall Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is issuing a proposed rule to reclassify permanently Snake River spring/summer and Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) as endangered, a change from the previous threatened status, under the Endangered Species Act of 1973 (ESA). NMFS has determined that the status of Snake River spring/summer chinook salmon and the status of Snake River fall chinook salmon warrant reclassification to endangered, based on a projected decline in adult Snake River chinook salmon abundance. Both species have already been temporarily listed as endangered through an emergency rule published on August 18, 1994, which allowed for waiver of notice and comment requirements of the Administrative Procedure Act.

DATES: Comments must be received by February 21, 1995. Requests for a public hearing must be received by February 6, 1995.

ADDRESSES: Comments on this proposed rule and requests for supporting documents should be sent to the Environmental and Technical Services Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232-2737. The public hearing will be held in the Federal Complex, 911 NE 11th Ave., first floor, west side, Portland, OR.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, 503-230-5430, or Marta Nammack, 301-713-1401.

SUPPLEMENTARY INFORMATION:

Background

For background, see **Federal Register** documents 55 FR 37342 (September 11, 1990), 56 FR 29547 (June 27, 1991), and 59 FR 42529 (August 18, 1994).

Current Status

Spring/Summer Chinook Salmon

Since the listing of Snake River spring/summer chinook salmon as a threatened species in 1992, redd counts in index areas have remained at the low levels observed during the 1980s. Data from 1994 indicate that the situation is much worse than in recent years, indicating that the Snake River spring/summer chinook salmon faces an imminent threat of extinction throughout all or a significant portion of its range. While NMFS has determined that both the spring and summer runs constitute a single "species" (distinct population segment), returning adults are counted separately as "spring" or "summer" fish. The pre-season estimate of adult Columbia River upriver spring chinook salmon returning in 1994 was 49,000, the third lowest on record since 1938. However, this year's final count of adult spring chinook salmon (of hatchery origin and naturally spawned) at Bonneville Dam was only 20,185 (Fish Passage Center 1994), about 43 percent of the previous record low return. Further upstream at Lower Granite Dam, the final 1994 count of adult spring and summer chinook salmon was 3,915 (Fish Passage Center 1994), about 16 percent of the recent 10-year average. The estimated escapement

of the combined run of Snake River spring and summer chinook salmon to Lower Granite Dam in 1994 will likely result in the production of 250 to 500 redds in the index areas (since naturally spawning fish represent only a fraction of the returning adults). This redd production figure is only 14 to 28 percent of the recent 10-year average (NMFS and the U.S. Fish and Wildlife Service (USFWS) 1994).

The return of spring and summer chinook salmon in 1995 is likely to be even lower than in 1994. The total spring chinook salmon jack (precocious males) count at Bonneville Dam in 1994 was 397 fish (Fish Passage Center 1994), less than 30 percent of the record low in 1993, and 10 percent of the recent 10 year average (NMFS and USFWS 1994). At Lower Granite Dam, the final count of spring chinook salmon jacks in 1994 was about 25 percent of the 1993 count, and the total 1994 summer chinook salmon jack count at Lower Granite Dam was about 62 percent of the 1993 count (Fish Passage Center 1994).

For a given brood year, spring/summer chinook salmon can produce offspring that return primarily as 3- (jacks), 4-, and 5-year-old adults. While it is impossible to make specific projections for returns of spring chinook salmon over the next 3 to 5 years, it is possible to comment in general terms on the prospects for decreasing run sizes. Because of the weak 1990 brood (i.e., adults spawning in 1990) and the apparent failure of the 1991 brood, the prospects for improved returns depend on the relatively abundant 1992 and 1993 broods. Outmigration conditions in 1994 for offspring of the 1992 brood were poor. Therefore, there is reason to believe that adult returns will not substantially increase until offspring of the 1993 brood contribute to the returns in 1997 and 1998. After 1998, returns will again be influenced by poor production resulting from the low adult returns experienced in 1994 and expected in 1995. NMFS is concerned that the dramatic decline in the spring run of Columbia River chinook salmon abundance may indicate that Snake River spring/summer chinook salmon abundance will continue to decline in the near future.

When a species population reaches precariously low levels, random processes can lead to two major types of risk: demographic and genetic. Demographic risk is the risk of extinction due to environmental fluctuations, random events affecting individuals in the population, and possible reductions in reproduction or survival due to a small population size. Genetic risk is the risk of loss of genetic variability and/or population fitness through inbreeding and genetic drift. Both types of risk increase rapidly as population size decreases. Severe, short-term genetic problems from inbreeding are unlikely unless the population size remains very small for a number of years. However, the erosion of genetic variability due to small population size is cumulative, so long-term effects on the population (even if it subsequently recovers numerically) are also a concern.

The Snake River spring/summer chinook salmon evolutionarily significant unit (ESU) is spread over a large geographic area and consists of many local spawning populations (subpopulations). Therefore, the total number of spawners in a subpopulation would be much less than the total run size. Assuming that 1,500 to 2,000 listed (naturally reproducing) spring/summer chinook salmon adults survive to spawn in 1994, the average number of spawners per subpopulation would only be approximately 40 to 50 fish. Based on recent trends in redd counts in major tributaries of the Snake River, NMFS believes that many subpopulations could be at critically low levels, especially subpopulations in the Grande Ronde River, Middle Fork Salmon River, and Upper Salmon River Basins. Therefore, both demographic and genetic risks are evident, and in some cases, habitat might be so sparsely populated that spawning adults may not find mates.

Fall Chinook Salmon

After the listing of Snake River fall chinook salmon as a threatened species in 1992, adult counts at Lower Granite Dam during 1992 and 1993 remained at low levels. In-season estimates for the 1994 return indicate that the situation has not substantially improved. This lack of overall improvement during recent years, exacerbated by the low returns of 1994 and expected low returns in the next few years, indicates that the Snake River fall chinook salmon faces an imminent threat of extinction throughout all or a significant portion of its range. The projected adult return of listed Snake River fall chinook salmon to the Columbia River during 1994 is 803 fish, the second lowest on record (Columbia River Technical Staffs (CRTS) 1994). As discussed in CRTS (1994) and summarized in NMFS (1994), the number of listed Snake River fall chinook salmon returning in 1994 is expected to be below replacement level (i.e., fewer progeny than parents); spawners have not replaced themselves in 7 or 8 of the last 9 years.

Although final count data from the 1994 return will not be available until February 1995, a tentative forecast of the 1995 run size suggests that the return will be about 60 percent of that expected in 1994 (NMFS and USFWS 1994). While it is impossible to make specific projections for returns of fall chinook salmon over the next 3 to 5 years, it is possible to comment generally on the prospects for decreasing run sizes. The number of offspring from the 1991 brood is apparently quite small, based on the record low return of jacks in 1993. Therefore, the 5-year-old component of the 1996 return is likely to be low. There was sufficient escapement in 1992 and 1993 to allow for increased returns after 1995, but success of these runs will depend largely on improvements in migration passage and ocean survival conditions.

Although risks associated with small population sizes are also applicable to Snake River fall chinook salmon, currently there is no evidence of multiple, naturally spawning subpopulations of this species. Still, the primary risk to Snake River fall chinook salmon remains the continued low numbers of spawning adults, and genetic and demographic risks will increase if the population remains at depressed levels for a number of consecutive years.

Factors Affecting the Species

Section 4(a)(1) of the ESA specifies five factors to be evaluated during a status review of a species or population proposed for listing or reclassification. These factors are discussed below with respect to Snake River spring/summer chinook salmon and Snake River fall chinook salmon.

A. Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Hydropower development has resulted in the blockage and inundation of habitat, turbine-related mortality of juvenile fish, and increased travel times for adults and juveniles migrating through the Snake and Columbia Rivers. Water withdrawal and storage, irrigation diversions, siltation and pollution from sewage, farming, grazing, logging, and mining have also degraded Snake River salmon habitat. Changes in the operation of lower Snake and Columbia River Dams and changes in land and water management activities since the listing of Snake River chinook salmon should result in long-term improvements in survival of adult and juvenile chinook salmon. However, the low adult run size in 1994 and projected

low returns during the next few years suggest that these changes have not yet been sufficient to remove the immediate risks to these species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Historically, combined ocean and river harvest rates of Snake River spring/summer chinook salmon exceeded 80 and sometimes 90 percent (Ricker 1959). Current ocean and river harvest levels of Snake River spring/summer chinook salmon have been reduced in the commercial, recreational, and tribal fisheries due to low escapements and efforts to protect these runs. Between 1991 and 1993, the approximate harvest rate for Snake River spring/summer chinook salmon (primarily in the Columbia River) ranged from 5.5 to 7.7 percent.

For upriver bright (upper Columbia River and Snake River) fall chinook salmon, the 1990 total harvest rate (commercial, recreational, and tribal fisheries) was approximately 70 percent. Measures have been taken between 1991 and 1993 to reduce harvest rates on Snake River fall chinook salmon to approximately 50 percent. However, as evidenced by continued and projected low returns, these efforts have not reversed the decline of the species and further measures are urgently needed to reduce the risk of extinction.

While there are a number of scientific research programs which involve handling, tagging, and moving fish in the Columbia and Snake Rivers, NMFS believes that the contribution of these programs to the decline of listed Snake River chinook salmon is negligible. Furthermore, these programs contribute to the efforts to enhance long-term survival of these species.

C. Disease or Predation

Chinook salmon are exposed to numerous bacterial, protozoan, viral, and parasitic organisms; however, these organisms' impacts on Snake River chinook salmon are largely unknown.

Predator populations, particularly northern squawfish (*Ptychocheilus oregonensis*), have increased due to hydroelectric development that created impoundments providing ideal predator foraging areas. Turbulent conditions in dam turbines, bypasses, and spillways have increased predator success by stunning or disorienting passing juvenile salmon migrants. Increased efforts to reduce populations of northern squawfish should result in survival improvements of listed salmon, but the benefits are not yet fully known.

Marine mammal numbers, especially harbor seals (*Phoca vitulina*) and California sea lions (*Zalophus californianus*), are increasing on the West Coast, and increases in predation by pinnipeds have been noted in some Northwest salmonid fisheries. However, the extent to which marine mammal predation is a factor causing the decline of listed Snake River chinook salmon is unknown.

D. Inadequacy of Existing Regulatory Mechanisms

A wide variety of Federal and state laws and programs have affected the abundance and survival of anadromous fish populations in the Columbia River Basin. Relevant regulatory mechanisms in place when the species were proposed for listing were discussed in supplemental reports identifying factors for the species' decline (NMFS 1991a; NMFS 1991b). Several factors identified as contributing to the decline of fall chinook salmon (56 FR 29547, June 27, 1991) have seen improvements during the past 3 years. For example, regulations aimed at improving river flow and juvenile acclimation for upper Columbia River (e.g., Umatilla River) fall chinook salmon are believed to have reduced straying impacts on listed fall chinook populations. Similarly, marking programs have been successfully implemented which will prevent the accidental inclusion of upper Columbia River fall chinook salmon into the Lyons Ferry Hatchery broodstock, i.e., a hatchery population believed to contain genetic resources potentially important to the recovery of listed Snake River fall chinook salmon. Although these and other improvements in regulatory mechanisms have been made since listing these species, increases in estimated Snake River chinook salmon abundance during the 1991 through 1993 period are not expected to be sustained in the near future. This indicates that regulatory mechanisms currently in place are insufficient or not effectively applied, and further measures must be taken to reverse the continuing decline of listed Snake River salmon. NMFS will soon publish a recovery plan for these species which will describe site-specific management actions and recovery tasks needed to restore Snake River chinook salmon populations to optimum sustainable levels.

E. Other Natural and Manmade Factors Affecting its Continued Existence

Drought conditions have contributed to the decline of Snake River chinook salmon, especially in recent years. Annual mean streamflows for the 1977 water year were the lowest recorded since the late 19th century for many streams (Columbia River Water Management Group 1978). Generally, drought conditions have continued since this time, particularly in the Snake River Basin.

Long-term trends in marine productivity associated with atmospheric conditions in the North Pacific Ocean may have a major influence on salmon production. Unusually warm ocean surface temperatures and associated changes in coastal currents and upwelling, known as El Niño conditions, result in ecosystem alterations such as reductions in primary and secondary productivity and changes in prey and predator species distributions. The degree to which adverse ocean conditions can influence Snake River chinook salmon production is not known, however, juvenile salmon adapting to the nearshore ocean environment are probably particularly vulnerable.

Artificial propagation has, in some cases, impacted listed Snake River spring/summer chinook salmon. Potential problems associated with hatchery programs include genetic impacts on indigenous wild populations from stock transfers, reduced natural production due to collection of wild adults for hatchery brood stocks, competition with wild salmon, predation of wild salmon by hatchery salmon, and disease transmission.

Artificial propagation activities in the Snake River have also been a factor in the decline of Snake River fall chinook salmon. The taking of Snake River fall chinook salmon for hatchery brood stock has reduced natural escapement, and the straying of hatchery fall chinook salmon from other areas into the Snake River threatens the genetic integrity of wild Snake River fall chinook salmon. Most of the stray adult fall chinook salmon returning to Lyons Ferry Hatchery originate from Umatilla River releases. Although the Oregon Department of Fish and Wildlife now releases hatchery fall chinook salmon further upstream in the Umatilla River to improve imprinting, implementation of adequate flow augmentation actions in the lower Umatilla River have not yet been accomplished and low-flow conditions in the Umatilla River during adult return periods still contribute to straying concerns.

Conclusion

Although measures have been taken pursuant to the ESA since listing in 1992 to improve habitat and migration passage conditions, decrease harvest levels, and improve hatchery programs,

NMFS believes that recent and projected adult returns indicate that Snake River chinook salmon are now in danger of extinction throughout all or a significant portion of their range. Therefore, NMFS is proposing to reclassify Snake River spring/summer chinook salmon and Snake River fall chinook salmon as endangered under the ESA. While these species are currently listed as endangered, this listing was done on an emergency basis that expires after 240 days. This proposed rule is for a reclassification as endangered until a further reclassification is warranted and a rulemaking to accomplish same is completed.

Although the reclassification will not result in additional prohibitions under section 9 of the ESA, the reclassification serves notice that NMFS will implement further protections to reverse the continued decline.

Evaluation criteria used by Federal action agencies to assess impacts on listed salmon should be reassessed to ensure adequate protection for these species and preserve future options for recovery. The proposed reclassification more accurately reflects the status of these species and the fact that these stocks are now considered to be precariously close to extinction. A more accurate characterization of the status of Snake River chinook salmon should encourage action agencies to immediately employ more conservative criteria when they propose, evaluate, and implement their actions. Reclassification signals the continuing decline of these species; new information regarding population size or other threats to these species, such as further drought or another El Nino, may indicate that Federal actions are affecting listed species in a manner or to an extent not previously analyzed.

Public Comment Solicited

To ensure that the final action resulting from this proposal will be as accurate and effective as possible, NMFS is soliciting comments and suggestions from the public, including states and tribes, other concerned public agencies, the scientific community, industry, and any other interested parties. The final decision on this proposal will take into consideration the comments and any additional information received by NMFS.

NMFS will be soliciting expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for species under consideration for listing and summarizing in the final decision document the opinions of all independent peer reviewers received on this proposed reclassification.

Classification

The 1982 amendments to the ESA in section 4(b)(1)(A) restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F.2d 825 (6th Cir. 1981), NMFS has categorically excluded all ESA listing actions from environmental assessment requirements of the National Environmental Policy Act under NOAA Administrative Order 216–6.

This proposed rule is exempt from review under E.O. 12866.

References

Columbia River Technical Staffs (CRTS). 1994. Biological Assessment of Impacts of Anticipated 1994 Fall Season Columbia River and Mainstem Tributary Fisheries on Listed Snake River Salmon Species Under the Endangered Species Act. June 30, 1994. 34 p.

Fish Passage Center. 1994. Weekly Report 94–24 (September 9, 1994). Fish Passage Center, Portland, OR.

Matthews, G.M. and R.S. Waples. 1991. Status Review for Snake River Spring and Summer Chinook Salmon. U.S. Dep. Commer., NOAA Tech. Memo. NMFS F/NWC–200. 75 p.

National Marine Fisheries Service. 1991a. Factors for Decline: A Supplement to the Notice of Determination for Snake River Spring/Summer Chinook Salmon Under the Endangered Species Act. NMFS, Environmental and Technical Services Division, Portland, OR. 70 p.

National Marine Fisheries Service. 1991b. Factors for Decline: A Supplement to the Notice of Determination for Snake River Fall Chinook Salmon Under the Endangered Species Act. NMFS, Environmental and Technical Services Division, Portland, OR. 55 p.

National Marine Fisheries Service (NMFS). 1994. Section 7 Consultation—Biological Opinion: 1994 Fall Season Mainstem Columbia River Recreational Fishery, Tributary and Terminal Area Fisheries and Trapping Operations at Bonneville Dam. August 10, 1994. NMFS, Northwest Regional Office, Seattle, WA. 12 p.

National Marine Fisheries Service and U.S. Fish and Wildlife Service. 1994. May 9, 1994, letter (with enclosures) from J. Smith, NMFS, and M. Plenert, USFWS, to Governor Lowry, Washington, and Governor Roberts, Oregon.

Waples, R.S., R.P. Jones, Jr., B.R. Beckman, and G.A. Swan. 1991. Status Review for Snake River Fall Chinook Salmon. U.S. Dep. Commer., NOAA Tech. Memo. NMFS F/NWC–201. 73 p.

List of Subjects

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: December 21, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, the amendment to 50 CFR part 222 published in the emergency interim rule at 59 FR 42532, on August 18, 1994, is proposed to continue in effect as a permanent regulation.

[FR Doc. 94–31869 Filed 12–22–94; 3:14 pm]

BILLING CODE 3510–22–P

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50 CFR Parts 611 and 658

[Docket No. 940846–4348; I.D. 080194C]

RIN 0648–AF83

Foreign Fishing; Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 7 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). This rule increases the domestic quota for royal red shrimp harvested from the exclusive economic zone (EEZ) of the Gulf of Mexico and eliminates the total allowable level of foreign fishing (TALFF) for royal red shrimp from that area. In addition, NMFS changes the existing regulations that implement the FMP to clarify and conform them to current agency standards and to enhance enforcement.

EFFECTIVE DATE: January 27, 1995.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813–570–5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented by regulations at 50 CFR parts 611 and 658 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Detailed descriptions, backgrounds, and rationales for the management measures in Amendment 7 and the additional measures proposed by NMFS were included in the proposed rule (59 FR 46810, September 12, 1994) and are not repeated here.

Emergency Action for Royal Red Shrimp

By emergency interim rule published October 25, 1994 (59 FR 53604), NMFS increased the domestic quota for royal red shrimp from the Gulf of Mexico from 111.6 metric tons (mt) to 215 mt for the fishing year that ends December 31, 1994. All weights are tail weights. This emergency action was taken to prevent an unnecessary closure of the royal red shrimp fishery. Background and rationale for the emergency action were contained in the emergency interim rule.

Comments and Responses

Two comments were received on the proposed rule. The Council submitted comments on the concept of setting the optimum yield (OY) for royal red shrimp above the maximum sustainable yield (MSY) and on the Council's intent regarding the framework procedure for changing MSY and OY for royal red shrimp. The Center for Marine Conservation (CMC), an environmental advocacy group, commented on the adequacy of the environmental assessment (EA) regarding the impact of the shrimp fishery on threatened and endangered species. Specific comments and NMFS responses by subject follow.

OY and Definition of Overfishing for Royal Red Shrimp

Amendment 7 proposes an OY for royal red shrimp of 110 percent of MSY and a definition of overfishing for royal red shrimp as exceeding OY in a fishing year. In the proposed rule, NMFS expressed concerns that: (1) A setting of OY in excess of MSY may be inconsistent with National Standard 1 of the Magnuson Act, which requires conservation and management measures to prevent overfishing; and (2) a definition of overfishing that is based on an unacceptable setting of OY (as stated in item (1)) may be inconsistent with the national standards for fishery conservation and management (national standards), as established by the Magnuson Act (Magnuson Act), and other applicable law.

Comment: The Council commented that the MSY estimate for royal red shrimp was based on the best available scientific information, but that data used to estimate MSY were sparse. Without additional catch/effort data, the Council indicates that its stock assessment panel would be unable to improve the estimate of MSY. After consulting with the fishery biologists who developed the initial MSY estimates in 1981 and other fisheries biologists at the NMFS Southeast Fisheries Science Center, the Council proposed in Amendment 7 to set the OY at MSY plus 10 percent. Under the provisions of Amendment 7, if royal red shrimp catches exceeded MSY in 2 consecutive years, the Council would be required to convene its stock assessment panel to consider changes in catch and effort and determine if the MSY should be revised. The Council believes this process would provide better data for estimating MSY and still protect the resource.

Response: NMFS has concluded that an OY set at a fixed percentage above MSY cannot prevent overfishing, as required by national standard 1 of the Magnuson Act. NMFS considers MSY to be the largest amount of catch that can be taken in the long term without overfishing the resource. Based on biological principles, NMFS determined that a management regime that sets OY perpetually greater than MSY creates the conditions for overfishing. While the Council would be required by Amendment 7 to convene its stock assessment panel if the catch of royal red shrimp exceeded MSY in 2 consecutive years, Amendment 7 provides no assurance that corrective action would be taken. Consequently, NMFS is disapproving this measure and recommends that the Council consider an FMP amendment that would allow the royal red shrimp fishery to expand, with due consideration for preventing overfishing, while providing the opportunity for NMFS to collect the additional catch, effort, and other data that are required to better estimate MSY.

The results of the final agency decisions regarding Amendment 7 are as follows: (1) The royal red shrimp OY remains equal to the MSY; (2) based on the Council's revised and approved estimate of domestic annual harvesting capacity, the annual commercial domestic quota is equal to the OY; (3) there is no longer any total allowable level of foreign fishing for royal red shrimp. Because the definition of overfishing for royal red shrimp is based on the disapproved OY, NMFS has disapproved that definition.

Framework Procedure for Modification of the MSY and OY for Royal Red Shrimp

In the proposed rule, NMFS expressed concern regarding Amendment 7's proposed framework procedure for modification of the MSY and OY for royal red shrimp by "Notice Action." NMFS questioned whether such a framework procedure would ensure consideration of social and economic factors and would comply with Administrative Procedure Act requirements to provide opportunity for public comment on a proposed change.

Comment: The Council clarified that "Notice Action" in this context refers to a regulatory amendment and its supporting documents and required procedures, including a regulatory impact review, an environmental assessment (EA), proposed and final rules, and a public review and comment period. The Council specifically noted that Amendment 7 contains a similar reference to "Notice Action" in its procedures for addressing recruitment overfishing of brown, white, or pink shrimp. In the case of brown, white, or pink shrimp, Amendment 7 clearly explains that a regulatory amendment procedure is intended.

Response: NMFS no longer uses the term "Notice Action" in describing regulations to be published because the Office of the **Federal Register**'s *Document Drafting Handbook* defines a "Notice Action" as a document published in the **Federal Register** that does not contain regulatory text, impose requirements with general applicability and legal effect, or affect a rulemaking proceeding. With the clear understanding that the Amendment 7 framework procedure for modifying MSY and/or OY for royal red shrimp will include proposed and final rules, a regulatory impact review, an EA, and an opportunity for public review and comment on the proposed action, NMFS approves the framework procedure for modifying the royal red shrimp OY and MSY.

Adequacy of the Environmental Assessment (EA)

Comment: The CMC commented that the EA inadequately assessed the impact of the unlimited growth of the shrimp fishery, particularly the white shrimp fishery, on the incidental capture of endangered and threatened sea turtles. The present fishing effort for white shrimp is twice that of the early 1960s. CMC indicated that although the EA for Amendment 7 assumes that implementation of 1992 regulations under the Endangered Species Act (ESA) requiring shrimp trawlers to use turtle excluder devices (TEDs) has resolved the issues of the shrimp fishery's adverse impacts on the subject turtles, the recent level of marine turtle strandings off Texas and other Gulf states indicates that this assumption is

not valid. CMC argues that the EA should be revised to find that shrimping activities may have a significant effect on the environment and recommends that an environmental impact statement (EIS) be prepared to better evaluate this shrimp fishery-turtle situation and various alternatives that might be considered to reduce/mitigate its adverse impacts on sea turtles. CMC also asked NMFS to consider the matter of unlimited shrimp fishing effort and ways to mitigate its adverse impacts on sea turtles during its current reinitiation of consultation under Section 7 of the ESA.

Response: In the EA prepared for Amendment 7, the Council and NMFS considered the impacts of shrimp fishing under the management measures of the amendment, as well as the impacts of the measures on the environment, particularly on marine mammals and on species protected under the ESA. This EA did not undertake a new or revised comprehensive analysis of the effects of the Gulf shrimp fishery on the environment. However, previous environmental review documents analyzed the effects of the Gulf shrimp fishery, particularly its effects on marine mammals and on species protected under the ESA. For example, the August 19, 1992, biological opinion on shrimp fishing in waters off the southeastern coastal states provided an extensive analysis of these environmental effects. Based on these documents and the environmental review in the EA, NMFS determined that measures in Amendment 7 would not have a significant impact on the human environment.

The EA finding of no significant impacts from Amendment 7 on protected and endangered species was based on an informal Section 7 consultation under the ESA done by NMFS on the measures in Amendment 7 and on fishing under these measures. The biological assessment and resulting informal consultation for the amendment were completed in March 1994. This March 4, 1994, consultation concluded that implementation of Amendment 7 was not likely to adversely affect any endangered or threatened species under NMFS jurisdiction.

After the informal consultation for Amendment 7 was concluded, NMFS became aware of increased strandings of sea turtles in the Gulf of Mexico and reinitiated consultation on the Gulf shrimp fishery under Section 7 of the ESA. This consultation re-evaluated the August 19, 1992, biological opinion which analyzed the impacts of shrimp fishing in the waters off the southeastern coastal states. The reinitiated consultation and the associated biological opinion, dated November 14, 1994, concluded that shrimp fishing in these waters is likely to jeopardize the continued existence of the Kemp's ridley sea turtle. This biological opinion contains reasonable and prudent alternatives that must be implemented to ensure that fishing is not likely to jeopardize the continued existence of sea turtles. NMFS has concluded that the management measures of Amendment 7 and fishing under these measures will not affect the agency's ability to implement the reasonable and prudent alternatives.

Based on a continuing assessment of the impacts of the Gulf shrimp fishery on the human environment, including protected species, an EIS or supplemental EIS may be prepared to further evaluate the effects of the shrimp fishery, and fishing under the FMP's measures, on the environment.

Miscellaneous Issues

Comment: The Council stated that it did not receive any comments from NMFS or NOAA Office of General Counsel on its draft Amendment 7 regarding the unacceptable aspects of the proposed OY, MSY, and total allowable catch (TAC). The Council further indicated that NOAA General Counsel suddenly interpreted 50 CFR Part 602 (Guidelines for Fishery Management Plans) as prohibiting an arrangement allowing total allowable catch (TAC) to exceed OY by 10 percent in 2 consecutive years. The Council explained that it tried to address this issue by submitting a clarifying addendum to Amendment 7 that set the royal red shrimp OY equal to TAC or MSY plus 10 percent. The Council alleged that NMFS did not advise the Council on the approval problems with OY in relation to OY until 6 months after Amendment 7 was submitted for agency review. Finally, the Council indicated that one of its major concerns about the OY and MSY is that any NMFS action resulting in an early or unnecessary closure of the royal red shrimp fishery in 1994 would be a "tragedy" resulting in fishermen losing a recently developed, significant market niche and in the Southeast Science Center losing the opporunity to collect catch and effort data necessary to further refine the MSY estimate.

Response: Fisheries management is a dynamic process. NMFS reviews all of the Council's draft fishery management plans, amendments, regulatory amendments, and associated draft supporting documents (e.g., regulatory impact reviews, environmental assessments, etc.). NMFS attempts to identify regulatory benefits from each proposed management measure as well as all potential problems that might affect agency approval of the measure. NMFS regrets that neither it nor NOAA General Counsel identified and communicated the problems with the relationships between OY, MSY, and TAC in Amendment 7 in time for the Council to resolve them prior to submission of the final Amendment 7 to the agency. While NMFS did raise many of these approval issues after the beginning of review, NMFS did issue an emergency rule to prevent an unnecessary closure of the royal red shrimp fishery during 1994.

After reviewing Amendment 7 and considering all public comments received on the amendment and proposed rule, NMFS concluded that an OY set at a fixed percentage above MSY would not prevent overfishing, as required by national standard 1 of the Magnuson Act. NMFS understands that the Council intended that all the royal red shrimp measures in Amendment 7, taken together, would prevent overfishing. However, based on biological principles, NMFS concluded that a management regime that sets OY greater than MSY, without an adequate mechanism for curbing harvest above MSY, would not ensure prevention of overfishing. NMFS has indicated to the Council that it will work closely with the Council to provide specific guidance on resolving the problems underlying the disapproval of the OY and overfishing definition and to see that these issues are resolved in time to allow the royal red shrimp fishery to expand in 1995, with due consideration for preventing overfishing, while providing the opportunity for NMFS to collect the additional catch, effort, and other fishery data required to provide a more accurate MSY estimate.

Partial Disapproval of Amendment 7

On November 3, 1994, the Director, Southeast Region, NMFS, (Regional Director) partially disapproved Amendment 7. As discussed above, the specification of OY at a fixed percentage above MSY and the definition of overfishing of royal red shrimp were disapproved.

Changes from the Proposed Rule

Because of the disapproval of OY for royal red shrimp exceeding MSY by a fixed percentage, the specific figures to calculate TALFF are revised. Specifically, the OY, the estimate of domestic annual harvest (DAH), and TALFF for royal red shrimp in the Gulf

of Mexico, as published on February 3, 1987 (52 FR 3248), are revised to read, in metric tons, tail weights, as follows:

Species	OY	DAH	Talff
Royal red shrimp	177.8	177.8	0

In § 658.21(a), the quota for royal red shrimp is revised to 392,000 lb (177.8 mt).

The description of the area of the southwestern Florida seasonal trawl closure and its depiction in Appendix A, figure 2, to this part are clarified to describe and show only the area that is in the EEZ.

Additional Measures in Amendment 7

Amendment 7 contains a definition of overfishing for white shrimp; procedures for revising the overfishing indices for brown, white, and pink shrimp, as required by 50 CFR 602.11(c); specific actions to be taken if overfishing for brown, white, or pink shrimp occurs; and a framework procedure for changing the MSY and OY of royal red shrimp. These additional measures in Amendment 7 have been approved, but do not require implementing regulations.

Classification

The Regional Director determined that Amendment 7 is necessary for the conservation and management of the Gulf of Mexico shrimp fishery and that it is consistent with the Magnuson Act and other applicable law, with the exception of the specification of the OY at a fixed percentage above MSY and the definition of overfishing for royal red shrimp.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were published in the proposed rule (59 FR 46810, September 12, 1994). As a result, a regulatory flexibility analysis was not prepared.

This rule involves, but does not substantively change, a collection-of-information requirement subject to the Paperwork Reduction Act—namely, vessel and dealer reporting. The collection of this information has been approved by the Office of Management and Budget (OMB), OMB Control Number 0648–0013.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 20, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries, Service.

For the reasons set out in the preamble, 50 CFR parts 611 and 658 are amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

Appendix A to Subpart A [Amended]

2. In appendix A to subpart A, Table 1—Addresses, is amended by revising the second column heading, the entries for the Director, Southeast Region in the first column, and the Director, Southeast Fisheries Science Center in the second column, to read as follows:

APPENDIX A TO SUBPART A—ADDRESSES, AREAS OF RESPONSIBILITY AND COMMUNICATIONS

TABLE 1.—ADDRESSES

NMFS regional directors	NMFS science and research directors	U.S. Coast Guard commanders
* * *	* * *	* * *
Director, Southeast Region, National Marine Fisheries Service, NOAA, 9721 Executive Center Drive N., St. Petersburg, FL 33702; Telephone: (813) 570–5301; FAX: (813) 570–5300.	Director, Southeast Fisheries Science Center, National Marine Fisheries Service, NOAA, 75 Virginia Beach Drive, Miami, FL 33149, Telephone: (305) 361–5761; FAX: (305) 361–4219.	* * *
* * *	* * *	* * *

§ 611.62 [Removed and Reserved]

3. Section 611.62 is removed and reserved.

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

4. The authority citation for part 658 continues to read as follows:

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

5. Section 658.1 is revised to read as follows:

§ 658.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico prepared by the Gulf of Mexico Fishery Management Council under the Magnuson Act.

(b) This part governs conservation and management of shrimp in the Gulf of Mexico EEZ, except that §§ 658.5 and 658.21(a) also apply to shrimp in adjoining state waters.

6. Section 658.2 is revised to read as follows:

§ 658.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Gulf of Mexico EEZ means the EEZ from the intercouncil boundary between the South Atlantic and Gulf of Mexico Fishery Management Councils, as specified at 50 CFR 601.11(c), to the U.S./Mexico border.

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone 813–570–5301; or a designee.

Science and Research Director means the Science and Research Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305–361–5761; or a designee.

Shrimp means one or more of the following species, or a part thereof:

Brown shrimp, *Penaeus aztecus.*

Pink shrimp, *Penaeus duorarum.*

Rock shrimp, *Sicyonia brevirostris.*

Royal red shrimp, *Pleoticus robustus.*

Seabob shrimp, *Xiphopenaeus kroyeri.*

White shrimp, *Penaeus setiferus.*

7. In § 658.3, paragraph (a) is amended by revising the reference "paragraph (b) of this section" to read "paragraphs (b) and (c) of this section", and paragraph (c) is added to read as follows:

§ 658.3 Relation to other laws.

* * * * *

(c) Regulations governing the taking of endangered and threatened marine mammals and sea turtles appear at 50 CFR parts 222 and 227.

8. Section 658.4 is revised to read as follows:

§ 658.4 Permits and fees.

A permit is not required to fish for shrimp under this part.

9. In § 658.5, paragraphs (a) introductory text, (a)(4), and (b) are revised to read as follows:

§ 658.5 Recordkeeping and reporting.

(a) *Vessel owners and operators.* The owner or operator of a vessel that fishes for shrimp in the Gulf of Mexico EEZ or in adjoining state waters, or that lands shrimp in an adjoining state, must provide the following information regarding any fishing trip when requested by the Science and Research Director:

* * * * *

(4) Fishing depths and locations;

* * * * *

(b) *Dealers and processors.* A person who receives shrimp by way of purchase, barter, trade, or sale from a vessel or person that fishes for shrimp in the Gulf of Mexico EEZ or in adjoining state waters, or that lands shrimp in an adjoining state, must provide the following information when requested by the Science and Research Director.

(1) Name and official number of the vessel from which shrimp were received or the name of the person from whom shrimp were received, if received from other than a vessel;

(2) Amount of shrimp received by species and size category for each receipt; and

(3) Exvessel value, by species and size category, for each receipt.

10. Section 658.6 is revised to read as follows:

§ 658.6 Vessel identification.

(a) *Official number.* A vessel that fishes for or possesses shrimp in the Gulf of Mexico EEZ must display its official number;

(1) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in length and at least 10 inches (25.4 cm) in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of a vessel that fishes for or possesses shrimp in the Gulf of Mexico EEZ must;

(1) Keep the official number clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number from an enforcement vessel or aircraft.

11. Section 658.7 is revised to read as follows:

§ 658.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify or fail to provide information required by § 658.5.

(b) Falsify or fail to display and maintain vessel identification, as specified in § 658.6.

(c) After a closure of the royal red shrimp fishery, retain, sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter royal red shrimp, as specified in § 658.21(b).

(d) Trawl in a closed area or during a closed season, as specified in §§ 658.23, 658.24, 658.25, or § 658.26, or as may be implemented under § 658.27(b).

(e) Interfere with fishing or obstruct or damage fishing gear or the fishing vessel of another, as specified in § 658.27(a).

(f) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of shrimp.

(g) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

12. Appendix A to part 658—Figures are added as follows:

Appendix A—Figures to Part 658.

§§ 658.22 and 658.23 [Amended]

13. Section 658.22(a), Figure 1, and § 658.23(b), Figure 3, are redesignated as Appendix A to part 658, Figures 1 and 3, respectively.

14. Subpart B of part 658 is revised to read as follows:

Subpart B—Management Measures

658.20 Fishing years.
658.21 Allowable levels of harvest.
658.22 Size limits.
658.23 Tortugas shrimp sanctuary.
658.24 Southwest Florida seasonal trawl closure.
658.25 Shrimp/stone crab separation zones.
658.26 Texas closure.
658.27 Prevention of gear conflicts.
658.28 Specifically authorized activities.

Subpart B—Management Measures

§ 658.20 Fishing years.

The fishing year for royal red shrimp begins on January 1. The fishing year for other species of shrimp begins on May 1.

§ 658.21 Allowable levels of harvest.

(a) *Quotas.* The quota for royal red shrimp is 392,000 lb (177.8 mt), tail weight. There are no quotas for other species of shrimp.

(b) *Closures.* When the quota specified in paragraph (a) of this section is reached, or is projected to be reached, the Assistant Administrator will publish a notification to that effect in the **Federal Register.** On and after the effective date of the notification, for the remainder of the fishing year, royal red shrimp in or from the Gulf of Mexico EEZ may not be retained, and the sale, purchase, trade, or barter, or attempted sale, purchase, trade, or barter of royal red shrimp taken from the Gulf of Mexico EEZ is prohibited. The latter prohibition does not apply to trade in royal red shrimp that were harvested, landed, and sold, traded, or bartered prior to the effective date of the notification in the **Federal Register** and were held in cold storage by a dealer or processor.

(c) *State waters.* The regulations in this part do not limit the harvest of shrimp in waters landward of the Gulf of Mexico EEZ. However, harvests from waters landward of the Gulf of Mexico EEZ are taken into account in the calculations of maximum sustainable yield and optimum yield.

§ 658.22 Size limits.

There are no minimum size limits for shrimp harvested in the Gulf of Mexico EEZ. White shrimp harvested in the EEZ are subject to the minimum-size landing and possession limits of Louisiana when

possessed within the jurisdiction of that State.

§ 658.23 Tortugas shrimp sanctuary.

(a) The area commonly known as the "Tortugas shrimp sanctuary," off the State of Florida, is closed to trawling. The area is that part of the Gulf of Mexico EEZ shoreward of a line connecting the following points (see Appendix A, Figure 1, of this part):

Point	North latitude	West longitude	Name
N	25°52.9′	81°37.9′	Coon Key Light
F	24°50.7′	81°51.3′	
G	24°40.1′	82°26.7′	New Ground Rocks Light
H	24°34.7′	82°35.2′	Rebecca Shoal Light
P	24°35′	82°08′	Marquessas Keys

(b) The provisions of paragraph (a) of this section notwithstanding;

(1) Effective from April 11 through September 30, each year, that part of the Tortugas shrimp sanctuary seaward of a line connecting the following points is open to trawling: From point T at 24°47.8′ N. lat., 82°01.0′ W. long. to point U at 24°43.83′ N. lat., 82°01.0′ W. long. (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point V at 24°42.55′ N. lat., 82°15.0′ W. long.; thence north to point W at 24°43.6′ N. lat., 82°15.0′ W. long. (see Appendix A, Figure 1, of this part).

(2) Effective from April 11 through July 31, each year, that part of the Tortugas shrimp sanctuary seaward of a line connecting the following points is open to trawling: From point W to point V, both points as specified in paragraph (b)(1) of this section, to point G, as specified in paragraph (a) of this section (see Appendix A, Figure 1, of this part).

(3) Effective from May 26 through July 31, each year, that part of the Tortugas shrimp sanctuary seaward of a line connecting the following points is open to trawling: From point F, as specified in paragraph (a) of this section, to point Q at 24°46.7′ N. lat., 81°52.2′ W. long. (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point U and north to point T, both points as specified in paragraph (b)(1) of this section (see Appendix A, Figure 1, of this part).

§ 658.24 Southwest Florida seasonal trawl closure.

From January 1 to 1 hour after sunset (local time) May 20, each year, the area described in this section is closed to trawling, including trawling for live bait. The area is that part of the Gulf of Mexico EEZ shoreward of a line connecting the following points (see Appendix A, Figure 2, of this part):

Point	North Latitude	West Longitude
B[1]	26°16′	81°58.5′
C	26°00′	82°04′
D	25°09′	81°47.6′
E	24°54.5′	81°50.5′
M[1]	24°49.3′	81°46.4′

[1] On the seaward limit of Florida's waters.

§ 658.25 Shrimp/stone crab separation zones.

Five zones are established in the Gulf of Mexico EEZ and Florida's waters off Citrus and Hernando Counties for the separation of shrimp trawling and stone crab trapping. The zones are as shown in Appendix A, Figure 3, of this part. Although Zone II is entirely within Florida's waters, it is included in this paragraph and Appendix A, Figure 3, of this part for the convenience of fishermen. Restrictions that apply to Zone II and those parts of the other zones that are in Florida's waters are contained in Rule 46–38.001, Florida Administrative Code. Geographical coordinates of the points referred to in this paragraph and shown in Appendix A, Figure 3, of this part are as follows (loran readings are unofficial and are included only for the convenience of fishermen):

Point	North latitude	West longitude	W	Loran Chain 7980		
				X	Y	Z
A	28°59′30″	82°45′36″	14416.5	31409.4	45259.1	62895.3
B	28°59′30″	83°00′10″	14396.0	31386.3	45376.8	63000.0
C	28°26′01″	82°59′47″	14301.5	31205.9	45103.2	63000.0
D	28°26′01″	82°56′54″	14307.0	31212.2	45080.0	62981.3
E	28°41′39″	82°55′25″	14353.7	31300.2	45193.9	62970.0
F	28°41′39″	82°56′09″	14352.4	31298.6	45199.4	62975.0
G	28°48′56″	82°56′19″	14372.6	31337.2	45260.0	62975.0
H	28°53′51″	82°51′19″	14393.9	31371.8	45260.0	62938.7
I	28°54′43″	82°44′52″	(1)	(1)	(1)	(1)
J	28°51′09″	82°44′00″	(2)	(2)	(2)	(2)
K	28°50′59″	82°54′16″	14381.6	31351.8	45260.0	62960.0
L	28°41′39″	82°53′56″	14356.2	31303.0	45181.7	62960.0
M	28°41′39″	82°38′46″	(3)	(3)	(3)	(3)
N	28°41′39″	82°53′12″	14357.4	31304.4	45176.0	62955.0
O	28°30′51″	82°55′11″	14323.7	31242.4	45104.9	62970.0
P	28°40′00″	82°53′08″	14352.9	31295.7	45161.8	62955.0
Q	28°40′00″	82°47′58″	14361.3	31305.4	45120.0	62920.0
R	28°35′14″	82°47′47″	14348.6	31280.6	45080.0	62920.0
S	28°30′51″	82°52′55″	14327.7	31247.0	45086.6	62955.0
T	28°27′46″	82°55′09″	14315.2	31225.8	45080.0	62970.0
U	28°30′51″	82°52′09″	14329.1	31248.6	45080.0	62949.9

[1] Crystal River Entrance Light 1A.
[2] AAAA2 Long Pt. (southwest tip).

[3] Shoreline.

(a) *Zone I* is enclosed by rhumb lines connecting, in order, points A, B, C, D, T, E, F, G, H, I, and J, plus the shoreline between points A and J. It is unlawful to trawl in that part of Zone I that is in the EEZ during the period October 5 through May 20, each year.

(b) *Zone II* is enclosed by rhumb lines connecting, in order, points J, I, H, K, L, and M, plus the shoreline between points J and M.

(c) *Zone III* is enclosed by rhumb lines connecting, in order, points P, Q, R, U, S, and P. It is unlawful to trawl in that part of Zone III that is in the EEZ during the period October 5 through May 20, each year.

(d) *Zone IV* is enclosed by rhumb lines connecting, in order, points E, N, S, O, and E.

(1) It is unlawful to place a stone crab trap in that part of Zone IV that is in the EEZ during the periods October 5 through December 1, and April 2 through May 20, each year.

(2) It is unlawful to trawl in that part of Zone IV that is in the EEZ during the period December 2 through April 1, each year.

(e) *Zone V* is enclosed by rhumb lines connecting, in order, points F, G, K, L, and F.

(1) It is unlawful to place a stone crab trap in that part of Zone V that is in the EEZ during the periods October 5 through November 30, and March 16 through May 20, each year.

(2) It is unlawful to trawl in that part of Zone V that it is in the EEZ during the period December 1 through March 15, each year.

§ 658.26 Texas closure.

(a) *Area and season restrictions.* From 30 minutes after sunset on May 15 to 30 minutes after sunset on July 15, the area described in this paragraph (a) is closed to all trawling, except that a vessel may trawl for royal red shrimp beyond the 100-fathom (183-m) depth contour. The area is that part of the Gulf of Mexico EEZ off Texas west of a line connecting point A at 29°32.1′ N. lat., 93°47.7′ W. long., to point B at 26°11.4′ N. lat., 92°53.0′ W. long.

(b) *Adjustment of dates.* In accordance with the procedures and restrictions of the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, the Regional Director may adjust the closing and/or opening date to provide an earlier, later, shorter, or longer closure, but the duration of the closure may not exceed 90 days or be less than 45 days. Notification of the adjustment of the closing or opening date will be published in the **Federal Register**.

§ 658.27 Prevention of gear conflicts.

(a) No person may knowingly place in the Gulf of Mexico EEZ any article, including fishing gear, that interferes with fishing or obstructs or damages fishing gear or the fishing vessel of another; or knowingly use fishing gear in such a fashion that it obstructs or damages the fishing gear or fishing vessel of another.

(b) In accordance with the procedures and restrictions of the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, the Regional Director may modify or establish separation zones for shrimp trawling and the use of fixed gear as may be necessary and appropriate to prevent gear conflicts. Necessary prohibitions or restrictions will be published in the **Federal Register**.

§ 658.28 Specifically authorized activities.

The Regional Director may authorize, for the acquisition of information and data, activities otherwise prohibited by the regulations in this part.

15. New Figure 2 is added to Appendix A to part 658 to read as follows:

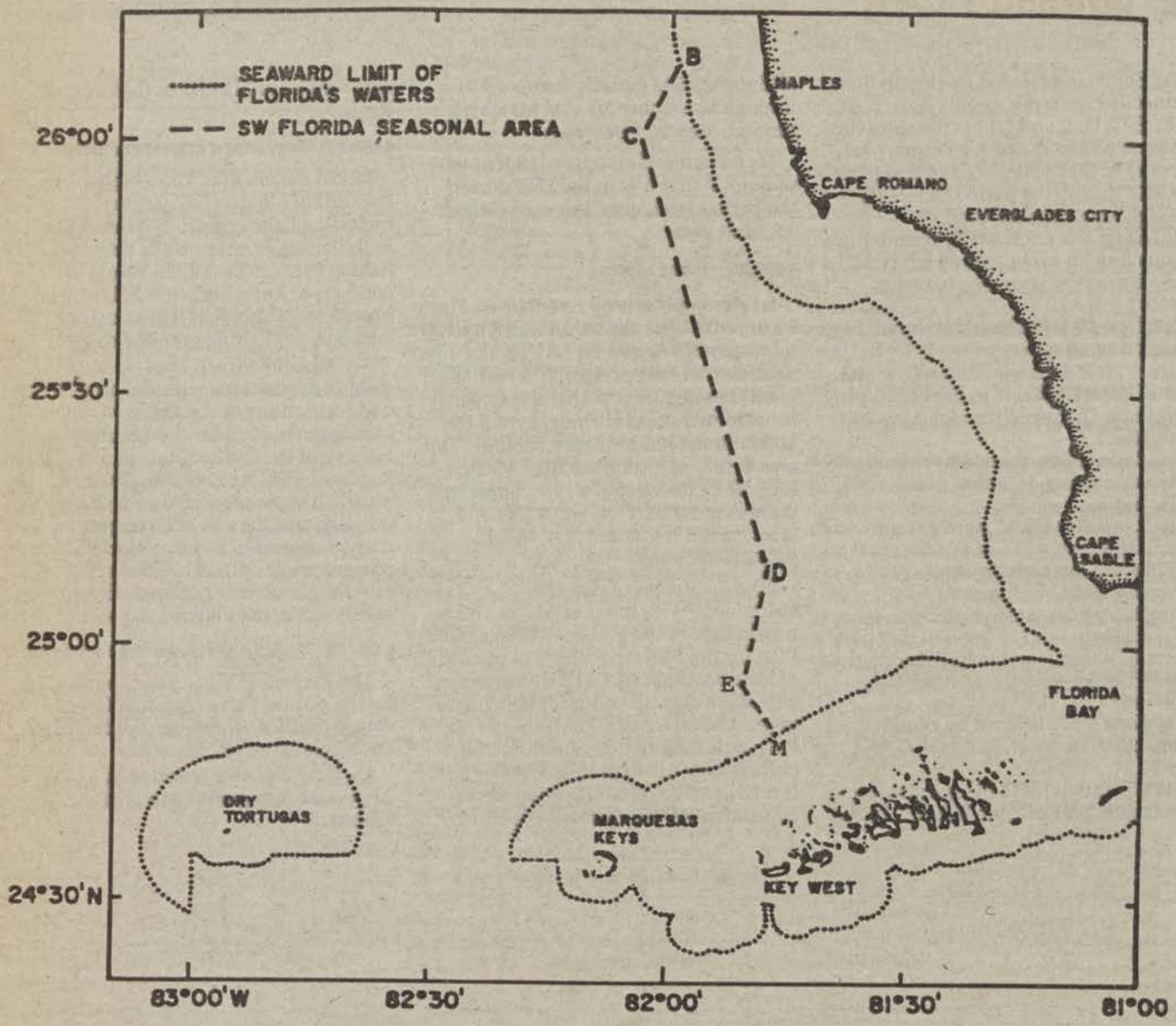

FIGURE 2. SOUTHWEST FLORIDA SEASONAL TRAWL CLOSURE

[FR Doc. 94–31770 Filed 12–27–94; 8:45 am]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 59, No. 248
Wednesday, December 28, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 6325–AG46

Prevailing Rate Systems; Redefinition of Scranton-Wilkes-Barre, PA; Harrisburg, PA; Washington, DC; and Waco, TX, Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule that would remove Schuylkill County, PA, from the Scranton-Wilkes-Barre, PA, Federal Wage System (FWS) wage area. This rule would also move Adams County and Perry County, PA, from the Harrisburg survey area to the Harrisburg area of application. Additionally, this rule would add Manassas and Manassas Park, two independent cities in Virginia, to the Washington, DC FWS wage area definition. This rule also corrects a printing error by reinserting McLennan County, TX, in the Waco, TX, FWS wage area listing.

DATES: Comments must be received on or before January 27, 1995.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 6H31, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Mark Allen, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is currently engaged in an ongoing system-wide review of the geographic definitions of Federal Wage System (FWS) appropriated fund wage areas. OPM recently reviewed the definition of the Scranton-Wilkes-Barre, PA, FWS wage area. Based on an analysis of the regulatory wage area criteria in 5 CFR 532.211, OPM proposes to remove Schuylkill County, PA, from the Scranton-Wilkes-Barre area of application and reassign the county to the Harrisburg, PA, area of application.

5 CFR 532.211 lists the following criteria for consideration when redefining FWS wage areas:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

Schuylkill County is on the southern boundary of the Scranton-Wilkes-Barre wage area and is contiguous to the Harrisburg wage area. The criteria for transportation facilities, geographic features, commuting patters, overall population, and private industrial establishments do not favor defining Schuylkill County to either the Scranton-Wilkes-Barre wage area or the Harrisburg wage area more than the other. However, the distance criteria favor the Harrisburg wage area when measuring from the Federal employment site in Schuylkill County to either the FWS survey locations or the host installations for the two wage areas. OPM also gave consideration to the unusual FWS employment patterns in the region. The sole FWS employer in Schuylkill County is a recently activated Federal prison, the Federal Correctional Institution-Schuylkill. The new prison is close to older Federal Bureau of Prisons facilities near Allenwood, PA, and Lewisburg, PA, that are all in the Harrisburg FWS wage area. Citing the proximity of its facilities in the region, their organizational relationship, and staffing considerations, the Department of Justice has urged that employees at the new facility in Schuylkill County also be paid from the Harrisburg wage schedule.

As part of the system-wide review of wage area boundaries, OPM is also considering whether current survey areas should be redefined. OPM proposes that Adams County, PA, be removed from the Harrisburg survey area but remain assigned to the Harrisburg area of application. OPM added the York, PA metropolitan Statistical Area (MSA) to the Harrisburg survey area in 1988. At that time, the York, PA MSA was composed of Adams County, PA, and York County, PA. The Office of Management and Budget no longer defines Adams County as a metropolitan county. In addition, less than 1 percent of the FWS employees in the Harrisburg FWS wage area are stationed in Adams County, and the survey yield from Adams County has been minor in past surveys—less than 6 percent of the Harrisburg survey data during the last full-scale wage survey in the wage area. Adams County's non-metropolitan status, low FWS employment, and low wage survey yield support removing the county from the Harrisburg survey area.

OPM proposes that Perry County, PA, be removed from the Harrisburg survey area but remain assigned to the Harrisburg area of application. Perry County has no FWS employment and has historically yielded either no survey data or an insignificant amount of data. While Perry County remains part of the Harrisburg-Lebanon-Carlisle, PA MSA, the local wage survey committee in the wage area has reported that severe weather and unusually difficult road conditions create recurring delays and hardships in reaching Perry County establishments during January wage surveys, only to have little or no resultant survey days. This combination of very unusual circumstances supports the exceptional removal of Perry County from the survey area despite its continuing metropolitan status.

The Federal Prevailing Rate Advisory Committee has reviewed and concurred with all of the proposed changes in the Scranton-Wilkes-Barre, PA, and Harrisburg, PA, wage areas.

OPM proposes to add the independent cities of Manassas and Manassas Park, VA, to the Washington, DC, appropriated find FWS wage area. Although these two cities are geographically within the boundaries of the survey county of Prince William, VA, they are politically separate from the surrounding county and should be listed separately as part of the Washington, DC, survey area. The Federal Prevailing Rte Advisory Committee has reviewed and concurred with this proposed change.

OPM proposes to reinsert McLennan County, TX, in the listing for the Waco, TX, appropriated fund FWS wage area. Because of a printing error, McLennan County, TX, was omitted from the Waco, TX, survey area listing in 5 CFR part 532, as revised on January 1, 1994.

McLennan County was included in earlier issuances of 5 CFR part 532, but was inadvertently deleted beginning with the January 1, 1992, edition.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management

James B. King,

Director.

Accordingly, OPM proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix C to subpart B is amended by revising the wage area listings for Washington, District of Columbia; Harrisburg, Pennsylvania; Scranton-Wilkes-Barre, Pennsylvania; and Waco, Texas; to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

District of Columbia

Washington, DC

Survey Area

District of Columbia:
  Washington, D.C.
Maryland
  Charles
  Frederick
  Montgomery
  Prince George's
Virginia (cities):
  Alexandria
  Fairfax
  Falls Church
  Manassas
  Manassas Park
Virginia (counties):
  Arlington
  Fairfax
  Loudoun
  Prince William
Area of Application. Survey area plus:
Maryland:
  Calvert
  St. Mary's
Virginia:
  Fauquier
  King George
  Stafford

* * * * *

Pennsylvania
  Harrisburg

Survey Area

Pennsylvania
  Cumberland
  Dauphin
  Lebanon
  York
Area of Application. Survey area plus:
Pennsylvania:
  Adams
  Berks
  Juniata
  Lancaster
  Lycoming[19]
  Mifflin
  Montour
  Northumberland
  Perry
  Schuylkill
  Snyder
  Union

* * * * *

Scranton-Wilkes-Barre

Survey Area

Pennsylvania
  Lackawanna
  Luzerne
  Monroe
Area of Application. Survey area plus:
Pennsylvania
  Bradford
  Carbon
  Columbia
  Lycoming[20]
  Pike
  Sullivan
  Susquehanna
  Tioga
  Wayne
  Wyoming

* * * * *

Texas

* * * * *

Waco

Survey Area

Texas:
  Bell
  Coryell
  McLennan
Area of Application. Survey area plus:
Texas:
  Anderson
  Bosque
  Brazos
  Falls
  Freestone
  Hamilton
  Hill
  Leon
  Limestone
  Mills
  Robertson

* * * * *

[FR Doc. 94–31820 Filed 12–27–94; 8:45 am]

BILLING CODE 6325–01–M

[19] Allenwood Federal Prison Camp portion only

[20] Excluding Allenwood Federal Prison Camp.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1601

Participant Choices of Investment Funds

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing proposed amendments to interim regulations on participants' choices of Thrift Savings Plan (TSP) investment funds. The proposed amendments, to subparts A and C of 5 CFR part 1601, reflect changes in the methods by which TSP participants may request interfund transfers, including use of an automated voice response system to make, change, or cancel interfund transfer requests.

DATES: Comments must be received on or before January 27, 1995.

ADDRESSES: Comments may be sent to: David L. Hutner, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: David L. Hutner, (202) 942–1661

SUPPLFMENTARY INFORMATION: Interim rules governing participants' choices of investment funds were originally published in the **Federal Register** on March 29, 1990, as an amendment to title 5 of the Code of Federal Regulations, adding Part 1601, Participants' Choice of Investment Funds. Revised interim rules were published in the **Federal Register** on January 7, 1991, primarily to implement section 3 of the Thrift Savings Plan Technical Amendments Act of 1990 (TSPTAA), which removed investment restrictions that had been in place prior to the effective date of the TSPTAA. The present proposed rules, when adopted, will further amend the interim rules by making changes in the procedures by which TSP participants may make, change, or cancel interfund transfer requests. The primary change in the procedures involves the availability of the automated voice response system, known as the "ThriftLine," for participants to make interfund transfer requests over the telephone. The ThriftLine provides service to participants in addition to enabling them to make interfund transfer requests, but those other functions are not addressed in the proposed regulations.

Section by Section Analysis

Subpart A

The proposed rule amends § 1601.1, which contains the definitions applicable to part 1601, by revising one definition and adding three new ones.

The definition of "Interfund transfer request" has been amended to reflect that properly completing and submitting to the TSP recordkeeper an Interfund Transfer Request (Form TSP–30) is no longer the exclusive method to request an interfund transfer. A request may also be made by proper entry of the transaction on the automated ThriftLine.

Definitions of "Board" (the Federal Retirement Thrift Investment Board), "Acknowledgment of Risk," and "ThriftLine" have been added. Under 5 U.S.C. 8439(d), all participants who invest in the Common Stock Index Investment Fund (C Fund) or the Fixed Income Investment Fund (F Fund) must sign an acknowledgment that the investment is made at the participant's own risk and that the participant is not protected against losses on the investment or guaranteed a return on the investment. Under § 1601.5 (as amended by the proposed rule), the procedures for satisfying the requirements of 5 U.S.C. 8439(d) have been changed.

Instructions for use of the ThriftLine to make interfund transfer requests on the telephone will be widely available to all TSP participants.

Subpart C

Proposed § 1601.5 sets forth the methods by which interfund transfer requests can be made. Section 1601.5(a) contains the general rule that interfund transfer requests may now be made either by submission of a properly completed Form TSP–30 or by entry of the transaction on the ThriftLine. Section 1601.5(a) also states explicitly that Forms TSP–30 generated prior to October 1990 cannot be used to make interfund transfer requests. Such forms can be readily identified because they were preprinted with participants' names and addresses, described restrictions on the amounts that could be invested in the C Fund and F Fund, and specified a particular effective date for the interfund transfer. Similarly, Form TSP–30–S, which was designed for use only by certain FERS participants to make interfund transfers effective as of the end of December 1990, cannot be used to make interfund transfer requests.

Section 1601.5(b) retains the rule that interfund transfer requests must include designations of percentages to be invested in each of the TSP investment funds in multiples of 5 percent that total 100 percent. This requirement applies regardless of whether the interfund transfer request is entered on the ThriftLine or is submitted on Form TSP–30. Section 1601.5 also retains from the previous rule the admonition that an interfund transfer request does not affect future contributions made by a participant. If a participant wishes to change the allocation of future contributions among the investment funds, that can only be accomplished by submission to his or her employing agency of a properly completed Election Form (TSP–1) during a TSP Open Season. The rules for submission of Election Forms are set forth in subpart B, which is unchanged by the proposed amendments.

Section 1601.5(c) retains the previous rule that percentages elected by the participant are applied to the account balance as of the effective date of the interfund transfer, which is established as provided in § 1601.6. The percentages are applied to the account in the same manner, whether submitted on Form TSP–30 or entered on the ThriftLine.

Section 1601.5(d) contains significant changes to the procedures governing the acknowledgment of risk required by 5 U.S.C. 8439(d). Under the previous rule all participants requesting an interfund transfer were required to sign the acknowledgment of risk section on Form TSP–30, unless the request was for investment of 100% of the account balance in the Government Securities Investment Fund (G Fund). The proposed rule is premised on a determination that each participant should only be required to acknowledge investment risk once. To date, participants who have invested any portion of their accounts in the C Fund or F Fund at any time must have already signed an acknowledgment of risk, either on Form TSP–1 or on Form TSP–30, since those are the only two methods by which money could have been invested in the C Fund or F Fund. Accordingly, all participants whose account records indicate that they have invested in the C Fund or F Fund (regardless of whether they currently have money in those funds) are deemed to have satisfied the requirements of 5 U.S.C. 8439(d), and will be permitted to use the ThriftLine to request interfund transfers without further acknowledgment of investment risk. Participants who have never invested in the C Fund or F Fund, and therefore have never been required to sign an acknowledgment of risk, will not be permitted to make interfund transfers on the ThriftLine until the TSP recordkeeper receives a signed acknowledgment of risk form from them. A new acknowledgment of Risk For ThriftLine Interfund Transfers (Form TSP–32) has been created for this purpose.

The proposed rule treats participants who may continue to make their interfund transfer requests on paper, using Form TSP–30, consistently with those who use the ThriftLine. Since it is only necessary to acknowledge investment risk once, participants who use Form TSP–30 and fail to sign the acknowledgment of risk section will no longer have their forms rejected if they have previously invested any portion of their TSP account in the C Fund or F Fund, or if the TSP recordkeeper has received a properly completed Form TSP–32. Form TSP–30 has been amended to delete the statement that all forms requesting investment in the C Fund or F Fund will be rejected if the acknowledgment of risk section of the form is not signed. The proposed rule retains the requirement that the form itself (as opposed to the acknowledgment of risk section) must be signed and dated in all cases.

It is anticipated that some participants may continue to sign the acknowledgment of risk section even though they have already invested in the C Fund and/or F Fund and therefore do not need to sign again. This is not an area of concern to the Board, however, because the superfluous signature does not impose a significant burden on participants. Any participant who submits Form TSP–30 requesting investment in the C Fund or F Fund and is uncertain as to whether he or she has ever invested in those funds should sign the acknowledgment of risk section of the form to eliminate the possibility that the form will be rejected for lack of an acknowledgment of risk. For purposes of determining whether participants' interfund transfer requests should be processed, the TSP recordkeeper system will identify whether a participant has ever invested in the C Fund or F Fund, even if the participant subsequently transferred his or her entire account to the G Fund.

Section 1601.5(e) of the proposed rule, which addresses only use of Form TSP–30, remains virtually unchanged in substance from the previous rule, except that paragraph (2) has been amended to reflect the rules set forth in § 1601.5(d). The other changes to this section are designed to consolidate the language for ease of reading rather than to make substantive changes to the procedures for processing interfund transfer requests. In particular, the language "or otherwise is not properly completed in accordance with the instructions on the

form" in proposed § 1601.5(e)(1) is a substitute for several of the specific bases for rejection of forms that were included in the previous rule. Since the instructions on Form TSP–30 include requirements that had been reflected in separate paragraphs of the previous rule, those paragraphs have been eliminated to avoid redundancy.

Section 1601.5(f) has not been changed in substance.

Section 1601.6 of the proposed rule governs the timing and effective dates of interfund transfers. Although the proposal adopts the same general principles that were embodied in the previous rule, the proposed rule sets forth the order of precedence with respect to multiple transfer requests and cancellations using the ThriftLine and/or Form TSP–30. Although the proposed rule permits interaction between entry of transactions on the ThriftLine and on paper (i.e., by Form TSP–30 or written cancellations), the Board notes that the rules governing that interaction are, in some cases, complex; therefore, participants are encouraged to avoid, if possible, mixing the two media. The ThriftLine provides the most expeditious and certain method of entering all transactions, because it eliminates any delays caused by mail delivery and processing of documents.

Section 1601.6(a) of the proposal is identical to the previous rule. Participants may make up to four interfund transfers per calendar year, based on the effective dates of the transfers. Any transfer as of the end of December counts for the year that ends with that December.

Section 1601.6(b) contains the general rule governing the date on which an interfund transfer will be made effective, based on the date of receipt of the interfund transfer request. In the case of a request made on the ThriftLine, the date of receipt is the date the transaction is entered on the ThriftLine. In the case of a request made by Form TSP–30, the date of receipt is the date the form is delivered to the TSP recordkeeper. Apart from the fact that interfund transfer requests may now be received by two methods, the general rule adopted by the proposal is identical to the previous rule: requests received by the 15th of a month (or next business day) are effective as of the end of the month of receipt; requests received after the 15th of a month are effective as of the end of the month following receipt.

Section 1601.6(c) sets forth the rules governing receipt of more than one interfund transfer request during the same one-month period after the 15th of one month (or next business day) and on or before the 15th of the next month. The basic rule, set forth in § 1601.6(c)(1), is that the request with the latest date of signature (if Form TSP–30 is used) or entry (if the ThriftLine is used) controls. Thus, if a properly completed Form TSP–30 was dated June 17 and received by NFC on June 25, and another interfund transfer request was entered on the ThriftLine on June 23, the ThriftLine transaction would supersede the request on Form TSP–30, because the June 23 ThriftLine transaction was later than the June 17 signature on the Form TSP–30.

The rules are based on the presumption that, when a participant enters a new transfer on the ThriftLine, he or she intends to supersede a form that was mailed on an earlier date. The rules also presume that a participant intends for a later ThriftLine entry to supersede an earlier one. Similarly, where a Form TSP–30 is dated one day and another Form TSP–30 is dated on a subsequent day, it is presumed that the participant intends to override the earlier dated form, regardless of the order in which the forms may be received by the TSP recordkeeper, which can be affected by the uncertainties of mail delivery.

Therefore, under the proposed rules, the date of receipt of Form TSP–30 determines only the effective date for the interfund transfer that is requested. A Form TSP–30 dated June 8 and received by the TSP recordkeeper on June 12 cannot be superseded by a subsequent form dated June 13 but not received by the recordkeeper until June 17. The former will be processed as of the end of June; the latter as of the end of July. If participants using Form TSP–30 wish to control the month end for which a transfer is to be made effective, it is their responsibility to ensure that the form is actually delivered to NFC during the proper one-month period. This can be accomplished in most cases by allowing sufficient time to accommodate potential mail delays or by using overnight mail (or other guaranteed forms of delivery). Participants can also control the effective date of their interfund transfers by using the ThriftLine rather than Form TSP–30, because the ThriftLine provides immediate acceptance of properly entered interfund transfer requests.

Section 1601.6(c)(2) of the proposal provides more detailed rules governing receipt of multiple interfund transfer requests having the same date and requesting transfers for the same effective date. Section 1601.6(c)(2)(i) provides that as between a ThriftLine request and a Form TSP–30 dated the same day, the ThriftLine entry will be made effective. Thus, the ThriftLine entry will supersede a Form TSP–30 dated the same day.

Section 1601.6(c)(2)(ii) provides that as between two transactions entered the same day on the ThriftLine, the one entered later in the day supersedes the earlier request.

Finally, § 1601.6(c)(2)(iii) provides that if more than one Form TSP–30 has the same date, then all shall be rejected, unless they contain an identical percentage allocation among the investment funds, in which case that allocation will be accepted. Unlike interfund transfer requests entered on the ThriftLine, were Forms TSP–30 bear the same date but different allocation elections, the Board has no way to determine which form represents the participant's latest request. What is most important to participants is that there be uniform rules that can be consistently applied in cases involving multiple interfund transfer requests. The proposed rule accomplishes that purpose.

Section 1601.6(c)(3) sets forth the rules for determining the date of an interfund transfer request. Under § 1601.6(c)(3)(i), if made on the ThriftLine, the date of the interfund transfer request is the date of the telephone entry of the transaction. Under § 1601.6(c)(3)(iii), if the interfund transfer request is made on Form TSP–30, the date of the request is the signature date entered on the form by the participant. As previously discussed, the date of receipt of the form is not the date of the request; the receipt date controls only the effective date for which the form is deemed to be a request. Finally, under § 1601.6(c)(3)(iii), the date on which a transaction is entered on the ThriftLine is determined by application of Central Time. For example, a transaction entered at 12:15 a.m. Eastern Time on the 16th of a month will be considered a transaction entered on the 15th, because it was 11:15 p.m. Central Time when the transaction occurred. Conversely, a transaction entered at 11:15 p.m. Pacific Time on the 15th, is entered at 1:15 a.m. Central Time and will therefore be considered a transaction entered on the 16th. The determination of the date on which a ThriftLine transaction was requested may be important for two purposes: (1) to determine whether the request was made by the applicable 15th of the month cutoff date, and (2) to determine whether the request supersedes or cancels another request.

Section 1601.6(d) of the proposed rule governs cancellation of interfund transfer requests. Under § 1601.6(d)(1), a

signed and dated cancellation letter containing the required information must be received by the same cutoff date (15th of the month or next business day) that applies to receipt of an interfund transfer request that is to be effective as of the end of the month for which the transfer to be cancelled is pending. For example, a letter to cancel a pending interfund transfer that is to be made effective as of the end of June must be received by June 15 (or next business day). A cancellation letter will not cancel a transfer with a date after the date of the cancellation letter. If a cancellation letter does not state unambiguously the specific interfund transfer request to be cancelled, it will cancel any earlier dated interfund transfer request that is pending for the applicable effective date. If the letter does state unambiguously the interfund transfer request to be cancelled, then only that request will be cancelled by the letter.

The TSP recordkeeper will compare multiple interfund transfer requests to determine which is the controlling request prior to determining the effect of a written cancellation. For example, assume there are two interfund transfer requests received prior to June 15, one dated June 3 and one dated June 5. The June 5 request supersedes the June 3 request. If there is a cancellation letter dated June 10 (and received by June 15) specifying cancellation of the June 5 request, then no interfund transfer would be processed, because the June 3 request would be superseded and the June 5 request would be cancelled. On the other hand, if the June 10 letter specified cancellation of the June 3 request, then the June 5 request would be processed, because it would not be superseded by the earlier June 3 request nor would it be cancelled by the June 10 cancellation letter that specified cancellation of the June 3 request.

The last sentence of § 1601.6(d)(1) governs the rate situation where the written cancellation bears the same date as an interfund transfer request. A different rule applies depending upon whether the interfund transfer request was submitted on Form TSP–30 or entered on the ThriftLine. In the former case, it is presumed that the cancellation letter was intended to cancel a Form TSP–30 dated the same day. In the latter case, with one exception, the ThriftLine entry is presumed to supersede the cancellation letter, which may have been an attempt to cancel another Form TSP–30 that was received for a prior effective date or that has not yet been received or entered into the TSP system. The only exception is where the written cancellation specifically states that it is intended to cancel the ThriftLine entry of the same date; in that situation, the cancellation letter will be effective to cancel the ThriftLine request of the same date.

Under § 1601.6(d)(2), a cancellation entered on the ThriftLine before the relevant 15th of the month cutoff will cancel a pending interfund transfer request that had been entered previously on the ThriftLine. An interfund transfer request made using Form TSP–30 can be cancelled using the ThriftLine only if it has been entered into the TSP recordkeeping system and is, therefore, at the time the cancellation is entered, a pending transfer. In that regard, participants are cautioned that in many cases Forms TSP–30 are not entered into the TSP recordkeeping system until after the 15th cutoff, even if they are received before that cutoff. If that is the case, then the participant cannot use the ThriftLine to cancel an interfund transfer request that was submitted on Form TSP–30. For that reason, participants who prefer to make interfund transfer requests by use of Form TSP–30 are encouraged to cancel only in writing. The Board will not be responsible for a participant's inability to cancel a Form TSP–30 by use of the ThriftLine. Participants are encouraged to use, in any one interfund transfer period, only one medium to make, change, or cancel interfund transfer requests.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

List of Subjects in 5 CFR Part 1601

Employee benefit plans, Government employees, Retirement, Pensions.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, part 1601 of chapter VI of title 5 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 1601—[AMENDED]

1. The authority citation for Part 1601 continues to read as follows:

Authority: 5 U.S.C. 8351, 8438, 8474 (b)(5) and (c)(1).

2. Section 1601.1 is amended by revising the definition "Interfund Transfer Request" and adding in alphabetical order definitions "Acknowledgment of Risk", "Board", and "ThriftLine", to read as follows:

§ 1601.1 Definitions.

* * * * *

Acknowledgment of Risk means an acknowledgment that any investment in the C Fund or F Fund is made at the participant's risk, that the participant is not protected by the United States Government or the Board against any loss on the investment, and that neither the United States Government nor the Board guarantees any return on the investment.

* * * * *

Board means the Federal Retirement Thrift Investment Board.

* * * * *

Interfund transfer request means submission of a properly completed Interfund Transfer Request (Form TSP–30) or proper entry of an interfund transfer through use of the ThriftLine.

* * * * *

ThriftLine means the automated voice response system by which TSP participants may, among other things, make interfund transfer requests by telephone.

* * * * *

3. Section 1601.5 is revised to read as follows:

§ 1601.5. Methods of requesting an interfund transfer.

(a) To make an interfund transfer, participants may either submit to the TSP recordkeeper a properly completed Interfund Transfer Request (Form TSP–30), or may enter the interfund transfer request over the telephone by using the ThriftLine. Forms TSP–30 generated prior to October 1990, which were preprinted with a participant's name and address, described restrictions on the amounts which could be invested in the C Fund and F Fund, and specified an effective date for the interfund transfer, are obsolete forms. They will be rejected by the TSP recordkeeper if submitted to make an interfund transfer request. Similarly, Form TSP–30–S, which was designed for use only by certain FERS participants to make interfund transfers effective as of the end of December 1990, are obsolete forms which will be rejected by the TSP recordkeeper if submitted to make an interfund transfer request.

(b) To make an interfund transfer request, a participant must designate the percentages of his or her account balance that are to be invested in the C Fund, F Fund, and/or G Fund. The percentages selected by the participant

must be in multiples of 5 percent and must total 100 percent. An interfund transfer request has no effect on contributions made by a participant after the effective date of the interfund transfer (as determined in accordance with § 1601.6); such subsequent contributions will continue to be allocated among the investment funds in accordance with the participant's election under subpart B of this part.

(c) The percentages elected by the participant will be applied to the participant's account balance attributable to each source of contributions as of the effective date of the interfund transfer, as determined in accordance with § 1601.6.

(d) Participants who have at any time in the past invested any portion of their TSP accounts in the C Fund or F Fund are eligible to make interfund transfer requests using the ThriftLine; such participants need not, if using Form TSP–30 to make a written interfund transfer request, complete the section of the form that contains the acknowledgment of risk. Participants who have not at any time in the past invested any portion of their TSP accounts in the C Fund or F Fund are not eligible to make interfund transfers using the ThriftLine until a properly completed Acknowledgment of Risk for ThriftLine Interfund Transfer (Form TSP–32) has been received by the TSP recordkeeper. Participants who have not at any time in the past invested any portion of their TSP accounts in the C Fund or F Fund must complete the acknowledgment of risk section of Form TSP–30 if they make a written interfund transfer request, unless a properly completed Form TSP–32 has been received by the TSP recordkeeper.

(e) An Interfund Transfer Request (Form TSP–30) that has been submitted to the TSP recordkeeper will not be processed and will have no effect, if:

(1) it is not signed and dated, or otherwise is not properly completed in accordance with the instructions on the form;

(2) in the case of a participant who has not previously invested any portion of his or her TSP account in the C Fund or F Fund and for whom a properly completed Form TSP–32 has not been received by the TSP recordkeeper, the acknowledgment of risk section of the Form TSP–30 is not signed; or

(3) the participant is not otherwise eligible to make an interfund transfer (e.g. because he or she has already made the maximum number of interfund transfers permitted during the year).

(f) If a Form TSP–30 is rejected, the form will have no effect. The participant will be provided with a brief written statement of the reason the form was rejected.

4. Section 1601.6 is revised to read as follows:

§ 1601.6 Timing and effective dates of interfund transfers.

(a) *Annual Limit.* A participant may have no more than four interfund transfers made effective during any calendar year. For purposes of this limitation, an interfund transfer made effective as of the end of December will count against the limit for the calendar year in which that December falls.

(b) *Effective dates.* Interfund transfer requests received by the TSP recordkeeper (whether by Form TSP–30 or on the ThriftLine) on or before the 15th day of a month (or, if the 15th day is not a business day, by the next business day) shall be effective as of the end of the month during which the interfund transfer request was received. Interfund transfer requests received by the TSP record-keeper after the 15th day of a month (or, if applicable, by the next business day) will be effective as of the end of the month following the month during which the interfund transfer request was received. Account balances that are reallocated among the investment funds effective as of the end of any month will reflect the effects of all other account activity posted to the account effective during or as of the end of that month.

(c) *Multiple interfund transfer requests.* (1) If more than one properly completed interfund transfer request with different dates are received for the same participant after the 15th day of one month (or, if applicable, after the next business day), but on or before the 15th day of the next month (or, if applicable, the next business day), the interfund transfer request with the latest date (as determined by paragraph (c)(3) of this section) will be made effective and the earlier interfund transfer request(s) will be superseded.

(2) If more than one properly completed interfund transfer request with the same dates are received for the same participant after the 15th day of one month (or, if applicable, after the next business day), but on or before the 15th day of the next month (or, if applicable, the next business day), the following rules shall apply:

(i) If one or more of the interfund transfer requests were submitted using the ThriftLine and one or more were made on Form TSP–30, the request(s) made on the ThriftLine will supersede the request(s) made on Form TSP–30;

(ii) If more than one of the interfund transfer requests were made on the ThriftLine, the request entered at the latest time of day will supersede the earlier request(s); and

(iii) If more than one of the interfund transfer requests were submitted using Form TSP–30, all such forms will be rejected, unless they all contain identical percentage allocations among the TSP investment funds, in which case they will be accepted.

(3) For purposes of determining the date of an interfund transfer request:

(i) The date of an interfund transfer request made on the ThriftLine shall be the date of its telephone entry;

(ii) The date of an interfund transfer request made on Form TSP–30 shall be the signature date set forth on the form by the participant; and

(iii) Central time will be used for determining the date on which a transaction is entered on the ThriftLine.

(d) *Cancellation of interfund transfer requests.* Interfund transfer requests may be cancelled either in writing or by entering the cancellation on the ThriftLine:

(1) *Cancellation by letter.* A participant may cancel an interfund transfer request by submitting a letter to the TSP recordkeeper requesting cancellation. To be accepted, the cancellation letter must be signed and dated and must contain the participant's name, Social Security number, and date of birth. To be effective, the cancellation letter must be received on or before the 15th day of the month as of the end of which the interfund transfer is to be effective (or, if applicable, by the next business day). Unless the letter states unambiguously the specific interfund transfer request it seeks to cancel, the written cancellation will apply to any interfund transfer request with a date (as determined under paragraph (c)(3) of this section) before the date of the cancellation letter. If the date of a cancellation letter is the same as the date of an interfund transfer request and the request was made on Form TSP–30, it will be cancelled; if the request was made on the ThriftLine it will only be cancelled if the written cancellation specifies the date of the ThriftLine request to be cancelled.

(2) *Cancellation on ThriftLine.* An interfund transfer request may also be cancelled by entering the cancellation on the ThriftLine on or before the 15th day of the month (or, if applicable, the next business day) as of the end of which the interfund transfer is to be effective. A cancellation entered on the ThriftLine will apply to a pending interfund transfer request entered on the ThriftLine prior to the entry of the cancellation. A cancellation entered on the Thriftline can only apply to

interfund transfer requests submitted on Forms TSP–30 that were:

(i) Dated on or before the date of the cancellation; and

(ii) Received and entered into the TSP recordkeeping system before the cancellation is attempted on the ThriftLine.

(3) *Cancellation of Form TSP–30 Using ThriftLine.* The Board cannot guarantee that the TSP recordkeeper will enter Forms TSP–30 into the TSP recordkeeping system before the 15th day of the month, regardless of the date the Form TSP–30 may have been received. Thus, participants cannot rely on the ThriftLine to cancel an interfund transfer request that was submitted on Form TSP–30, and participants are discouraged from attempting to do so. The Board is not responsible for any consequences of a participant's inability to cancel on the ThriftLine an interfund transfer request submitted on Form TSP–30.

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BILLING CODE 6760–01–M

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5 CFR Part 1650

Methods of Withdrawing Funds From the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing new proposed regulations concerning methods of withdrawing funds from the Thrift Savings Plan (TSP). These new proposed regulations reflect changes made to eligibility requirements for the withdrawal of accounts from the Thrift Savings Plan resulting from the enactment of section 9 of the Federal Workforce Restructuring Act of 1994. That law provides that all of the withdrawal methods formerly reserved for persons retiring from Government employment would become available to all Thrift Savings Plan participants who separated from Government employment, regardless of length of service or retirement eligibility at the time of separation.

DATES: Comments must be received on or before January 27, 1995.

ADDRESSES: Comments may be sent to: James B. Petrick, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: James B. Petrick, (202) 942–1661.

SUPPLEMENTARY INFORMATION: The TSP was originally established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335. FERSA set forth provisions, found in subchapter III of chapter 84 of title 5, United States Code, for the administration of the TSP. Provisions concerning TSP withdrawals were found primarily in sections 8433 and 8434 of title 5. As originally enacted, FERSA conditioned eligibility for the various withdrawal methods upon eligibility for basic retirement benefits. Consequently, persons without such eligibility upon separation from Government employment (generally less than 5 years of service) were not permitted to leave their accounts in the TSP and were only permitted to withdraw them by transferring them to an Individual Retirement Arrangement (IRA) or other eligible retirement plan. They could not receive a cash payment of their account. Persons with 5 or more years of service could leave their accounts in the TSP and had more withdrawal options, but cash payment options were only available to them when they reached retirement age. These rules proved confusing to participants and difficult to administer, requiring, for example, various withdrawal forms depending upon the participant's retirement eligibility. As a result of Public Law 103–226, which was enacted on March 30, 1994, all TSP participants who separate from Government employment will now have the same withdrawal options available to them. This has simplified the TSP withdrawal process. Therefore, part 1650 is being revised to reflect that all participants can choose among any of the available withdrawal options and can leave their accounts in the TSP after separation.

Interim rules governing TSP withdrawals were originally published in the **Federal Register** on August 16, 1987. At the time part 1650 was originally published, the TSP was just beginning to pay withdrawals and the Board had very little experience with this program. At present, however, the TSP has been processing withdrawals for over seven years, and has developed and finalized many policies in this area. Also, since the original proposed regulations were issued, several pieces of legislation have been enacted making significant changes to the TSP withdrawal program. For example, Public Law 101–335 permitted the TSP to issue cash payments automatically to any person who separated from Government employment and whose vested account balance at the time of payment was $3,500 or less. Therefore, the Board has deemed it advisable to use the occasion of implementing the changes made by Public Law 103–226 to reissue the entire part 1650 in proposed form.

In reissuing part 1650, the Board has also decided to reorganize some of its provisions, to publish some provisions separately, and to eliminate others. Original subpart G, Spousal Rights, will be retained in part 1650 as subpart D, but has been issued separately for comment. A new subpart, dealing with minimum distributions and to be designated as subpart E, will also be issued separately. The subparts dealing with court-ordered payments from TSP accounts and death benefits are each being issued as separate parts in the Code of Federal Regulations. Experience has shown that each of these areas has complex rules which are different from those used to process withdrawals. Finally, the subpart entitled "Denial of Benefits," which was originally published as subpart K of part 1650, is being eliminated entirely. Experience in paying withdrawal benefits has shown that there is no need for a formal "claims" procedure with respect to those benefits. Participants or others who wish to question or challenge certain aspects of a TSP withdrawal are free to do so simply by contacting the TSP Service Office or the Board. Each case must often be addressed or handled on its own merits, although, as permitted in § 1650.6, the account can be "frozen" while the matter is under review. The Board currently sees no merit in having particular procedures which participants must follow in order to request such a review. Further, participants and beneficiaries remain free to pursue any claim for benefits in Federal court pursuant to 5 U.S.C. 8477

Section by Section Analysis

Subpart A

Subpart A of part 1650 sets forth the general rules affecting a participant's eligibility to withdraw his or her TSP account.

Section 1650.1 sets forth definitions of terms used in part 1650. The TSP is a defined contribution retirement plan, similar to a private sector 401(k) plan, for persons employed by the Federal Government. It is administered by the Board, an independent Federal agency whithin the Executive Branch, pursuant to the provisions of FERSA. Thus § 1650.1 provides general definitions for the terms "Board", "TSP," and "Plan."

Participants in the Plan are generally covered under either the Federal Employees' Retirement System (FERS), established in 1986 along with the TSP, or the Civil Service Retirement System

(CSRS), which was the previous retirement system for Federal employees. However, some Federal employees, such as those employed by the State Department, are covered under separate retirement systems, which are modeled after either FERS or CSRS. Therefore, definitions of "FERS" and "CSRS" are provided which make it clear that these terms also encompass "equivalent retirement systems" such as those for State Department employees.

Definitions are also provided for the terms "account balance," "participant," and "spouse." The term "account balance" is defined to mean the nonforfeitable, valued account balance as of the month-end prior to a withdrawal. Pursuant to 5 U.S.C. 8432(g) and part 1603, Vesting, Agency Automatic (1%) Contributions of persons who separate with less than three years (or in some cases two years) of service are forfeited to the TSP prior to withdrawal of an account. Also, as noted in the discussion of § 1650.7, only the most recent valued account balance is eligible to be withdrawn. Therefore, it was deemed preferable to define "account balance" to mean the nonforfeitable (also referred to as "vested"), valued account balance rather than to repeat both modifiers each time the term was used. The term "participant" rather than "employee" is used to describe persons having a TSP account, since the withdrawal rules primarily affect people who have ceased to be "employed" but who are still participating in the Plan. The term "spouse" is defined to include any person to whom the participant is married (as determined under the laws of the appropriate jurisdiction) on the date the participant signs a TSP withdrawal form asking him or her to state marital status. This definition recognizes that the TSP does not have information to determine marital status as of the date of separation or as of the date of payment. Instead, the TSP must rely upon the statement of the participant as to his or her marital status when the participant files TSP withdrawal forms. These statements are accompanied by a warning that a false statement is subject to criminal penalties under 18 U.S.C. 1001. The regulation makes it clear that a separated spouse is treated as a spouse under these rules.

Section 1650.2 states the general rule that, as a result of Public Law 103–226, all TSP participants who separate from Government employment have the right to choose any of the TSP withdrawal options. Those withdrawal options are set forth in subpart B. However, the availability of those withdrawal options may be affected by two other sets of rules. First, the spousal rights provisions of FERSA restrict the withdrawal options of married participants covered by the Federal Employees' Retirement Systems (FERS participants) to the 50 percent joint life annuity with level payments and no cash refund feature unless the spouse waives his or her right to that option. Married participants covered by the Civil Service Retirement (CSRS participants) are not restricted in their choice of withdrawal options, but the law requires that their spouses be notified of the withdrawal method the participant chooses. Proposed rules implementing the changes to spousal rights resulting from Public Law 103–226 were published in the Federal Register on September 13, 1994 (59 FR 46934). The Board intends to publish the final version of those rules as subpart D of part 1650.

Second, the rules relating to required minimum distributions, which are found in section 401(a)(9) of the Internal Revenue Code, require tax-qualified government retirement plans, including the TSP, to begin making distributions to participants by April 1 of the year following the year they become age 70½ or the year they separate from Government employment, whichever is later. These rules also require that, in certain circumstances, minimum distribution amounts be paid directly to the participant rather than transferred to an IRA or other eligible retirement plan or used to purchase an annuity. Consequently, the minimum distribution rules can limit the ability of some participants to have their entire accounts paid according to the withdrawal method they choose under these rules. The Board intends to publish separate rules, adding subpart E to part 1650, describing the effect of minimum distributions on TSP accounts. Reference to the minimum distribution rules is required here because they limit the participant's ability to withdraw the entire account according to his or her choice. Until regulations are issued adding subpart E to part 1650, those rules will simply be referred to as "minimum distribution requirements."

Section 1650.3 describes what constitutes a "separation from Government employment" for purposes of determining who is entitled to withdraw his or her TSP account. Section 8433 of title 5 limits the ability to withdraw an account from the TSP to persons who have "separated from Government employment." This limitation is in keeping with the primary purpose of the TSP as a retirement plan under which contributions and earnings are afforded favorable tax treatment because they will be used primarily to fund retirement benefits.

Section 1650.3 makes it clear that the term "separation from Government employment" encompasses separation from positions in the Federal government, the Postal Service, and in organizations that have employees who by statute are eligible to contribute to the TSP. For example, certain employees of employee organizations and employees working for a state or local government on an Intergovernmental Personnel Act (IPA) assignment are eligible to participate in the TSP under the provisions of Public Law 100–238. (See 5 CFR part 1620). Under these regulations, separation from such positions will be considered a separation from Government employment (unless the participant returns to his or her position with the Federal Government).

Section 1650.3 also makes it clear that the Board interprets the term "separation" to mean separation from Government employment (as described above) for at least 31 full calendar days. Because Congress limited access to the often significant amounts of money in TSP accounts to persons who had separated from Government employment, the Board determined that persons transferring between Government jobs (for example) should not be able to gain access to their TSP accounts after a short break in service. Thus the regulation states that a break in service must be at least 31 full calendar days. Similar rules have been adopted by Congress to limit access to refunds under the FERS and CSRS basic annuity programs.

Section 1650.4 sets forth rules for dealing with employees who are rehired by the Government before they withdraw their TSP accounts. Because the Board has decided to define "separation" to mean a break in service of more than 31 full calendar days, it is necessary to establish procedures to ensure that participants who are withdrawing have the requisite break in service. Therefore, § 1650.4(a) describes the statements that participants must make concerning their employment status and the length of their expected break in service in order to be able to withdraw their TSP accounts.

This "self-certifying" approach was deemed preferable to an approach requiring the agency immediately to report all rehired employees. Because rehired employees are not permitted to resume TSP contributions until the next election period (see 5 U.S.C. 8432(b)),

agencies may not need to report transactions to the TSP concerning these employees for up to six months after the date of rehire. Consequently, information concerning the rehired employee would not otherwise be reported to the TSP promptly or within a consistent timeframe after the date of rehire. Also, the Board wanted to avoid imposing upon the employing agencies the administrative burden of reporting every rehire action to the TSP, when only a few of those actions would ever affect TSP withdrawals. Because false information provided by the participant is subject to criminal penalties, self-certification was deemed a reasonable way to ensure that persons who have been rehired (or expect to be rehired) within 31 days are prevented from withdrawing their accounts.

Section 1650.4(b) states the rules for persons who are rehired after 31 full calendar days but still want to withdraw the portion of their accounts attributable to the earlier period of employment. Section 1650.4(b) provides that such a participant can only withdraw the portion of the account balance attributable to the first period of employment. The term "attributable to the first period of employment" means amounts contributed to the account during the period of employment to which the separation relates and any earnings on those amounts as of the date of payment. Amounts contributed after the date of rehire and earnings on such amounts are excluded.

Section 1650.4(b) also provides that, if the amount in the account attributable to the first period of employment is more than $3,500, the participant can withdraw that amount only if he or she submits a valid withdrawal request form prior to the date the participant is rehired. As explained above, this requirement is fulfilled by the requirement that the participant state on the form if he or she has been rehired. It was not feasible to require that withdrawal actually occur before the date of rehire, because administrative delays on the part of the employing agency or the Board might make withdrawal impossible before then. However, it seemed inappropriate to give rehired participants the ability to withdraw their funds at any time (perhaps many years) after they were rehired. Thus, the Board has established the rule that the withdrawal request must be submitted before the date of rehire.

If, however, the amount in the participant's account attributable to the first period of employment is $3,500 or less, the participant is eligible to receive an "automatic cashout" under the procedures set forth in § 1650.17, without submitting any withdrawal forms. Therefore, the participant cannot be required to submit a withdrawal form prior to rehire in order to receive a withdrawal. For such a participant, § 1650.4(b) allows the scheduled automatic cashout of the amount attributable to the first period of employment to proceed, even if the person has already been rehired (after more than 31 days) and no forms are submitted.

Section 1650.5 states the rule that a participant cannot withdraw his or her TSP account until an outstanding loan has either been paid in full or declared to be a taxable distribution. Under the TSP loan program (see 5 CFR Part 1655), a participant who separates with an outstanding loan must repay his or her loan in full within 90 days. If the participant does not do so, the outstanding loan balance is declared to be a taxable distribution. The participant can also speed up the declaration of the taxable distribution by signing a statement that he or she does not intend to repay the loan. The withdrawal must be delayed until this process is completed so that, if the participant pays the loan in full, that amount will be available to be included in the withdrawal.

Section 1650.6 recognizes that, in certain circumstances, a withdrawal cannot be paid because a TSP participant's account is "frozen." The most common reason for placing a freeze on an account is that the Board receives a retirement benefits court order or an alimony or child support enforcement order. The Board is required by title 5 to honor the terms of such orders if they meet certain requirements. The requirements for such orders are discussed in part 1653, which was published in proposed form in the Federal Register on October 26, 1994 (59 FR 53874). If such orders are found to be qualifying, the account cannot be paid to the participant until the interest of the other party (most frequently a spouse or former spouse) has been determined and paid out. At that point the account can be "unfrozen" and the withdrawal can proceed. See 5 CFR 1653.3. This section also recognizes that the Board may need to place a freeze on an account for administrative reasons. For example, an employing agency error may have caused the account to have the wrong address. Until such an error is corrected, the account should not be paid.

Section 1650.7 discusses the timing of TSP withdrawal payments. The TSP is a "monthly valued" plan. This means that the earnings (either positive or negative) on a TSP account, and thus the "value" of the account, is determined once a month as of the end of the preceding month. For the TSP, this determination occurs at approximately mid-month, although the exact date varies, depending on the availability of the applicable rates of return. A TSP withdrawal cannot occur until the valuation process is completed for a given month; otherwise the amount to be withdrawn cannot be accurately determined. (Since all TSP funds are held in individual accounts, the amount to be withdrawn must be determined precisely; if too much or too little is paid, the difference must be absorbed by all other accounts.) The timing of the withdrawal payments in a monthly valued plan is also important for determining the timing of other actions, such as when a withdrawal election can be changed or canceled (see § 1650.14).

Subpart B of part 1650 describes the basic TSP withdrawal options which, as noted above, are now available to any TSP participant who is eligible to withdraw his or her TSP account balance under the rules stated in subpart A, and subject to the limitations found in the other rules identified in § 1650.2. The conditions for eligibility contained in subpart A are not repeated for each withdrawal method identified in subpart B. Subpart B contains the rules governing the way each withdrawal option can be exercised (for example, the availability of certain annuity options to certain participants), as well as the rules for transferring all or part of certain withdrawal payments, making deferred withdrawal elections, changing withdrawal elections, and imposing limits on the date by which a withdrawal choice must be made.

Section 1650.8 provides that all TSP participants can withdraw their account balances in a single payment. The term "lump sum" is not used, since that term has a specific meaning for the tax treatment of the payment, which may or may not be applicable to all payments made under this method. All or part of the single payment received under this method can be transferred to an IRA or other eligible retirement plan in accordance with the rules set forth in § 1650.11.

Section 1650.9 sets forth the types of monthly payment options a participant can choose. Section 8433 of title 5 requires that the Board offer a participant the opportunity to receive his or her account in "one or more substantially equal payments to be made not less frequently than annually. * * *" Under this provision, the Board has established three options for calculating monthly payments. The

options provide only for monthly payments because this was considered to be consistent with the presumed intent of the law to provide participants with the ability to receive a regular stream of retirement income from their TSP accounts. Under the first option, described in § 1650.9(a)(1), a participant can choose monthly payments in a fixed dollar amount of his or her choice, with a minimum monthly payment amount of $25. The minimum amount avoids the administrative expense of processing small monthly payments. Under this option, which allows the participant to receive a predictable monthly income, payments continue until the entire account is paid out. When the account decreases to a point that the amount remaining is less than two payments, the remaining amount is paid out in a single payment. Therefore, the last payment may be larger than the chosen amount.

The second option, described in § 1650.9(a)(2), allows the participant to choose a fixed number of monthly payments instead of a fixed monthly payment amount. Under this option, payments are initially calculated by dividing the account balance by the number of payments chosen. Initial payments must be at least $25 for the election to be accepted. Payments are then recalculated each year in January by dividing the December 31 account balance by the remaining number of payments. Although each year's monthly payment amount will be different from that of the previous year, because earnings will be reflected in the annual recalculation, the annual recalculation allows the account to be paid out as evenly as possible within the elected number of payments. Each year's monthly payment amount will be increased to $25, if necessary.

The third option, described in § 1650.9(a)(3), allows a participant to have monthly payments calculated based on Internal Revenue Service (IRS) life expectancy multiple Table No. V, found at 26 CFR 1.72–9. Under this method, the monthly payment amount is calculated by dividing the account balance by the multiple from the table corresponding to the participant's age on his or her birthday in the year payments are being made, and then dividing the result by 12. Payments are recalculated in January of each year based upon the December 31 account balance and the multiple corresponding to the participant's age as of his or her birthday in the new payment year. This method allows a participant to spread monthly payments over his or her entire life expectancy. It also allows a participant who separates from Government employment prior to the year in which he or she becomes age 55 to avoid the 10 percent early withdrawal penalty on monthly payments received before the participant becomes age 59½. This result is allowed under the Internal Revenue Code because payments are based on life expectancy. The early withdrawal penalty cannot be avoided by choosing the other two monthly payment methods. However, payments made under a TSP annuity (see § 1650.10) are also exempted because they are based on life expectancy.

Section 1650.9(b) states the rule that a participant cannot change his or her monthly payment election and choose a different calculation method or amount once payments have begun. This restriction is imposed because the statute requires that the payments be "substantially equal." If a participant were able to change the calculation method or amount at will, the payments would not comply with the "substantially equal" requirement. Such a process could also create significant administrative burdens for the Plan.

However, under § 1650.9(c), a participant can decide at any time to receive his or her remaining account balance in a final single payment. This recognizes that participants may have a sudden need to liquidate their account balances, for example in cases where there is a health emergency. It was determined that the "substantially equal" rule was not violated where the account would be entirely liquidated through a final single payment.

Section 1650.9(d) provides that, once they begin receiving equal payments, participants may invest their TSP account balances in accordance with the rules provided in part 1601, Participant Choices of Investment Funds. Under current regulations, participant accounts must be invested entirely in the Government Securities Investment Fund (G Fund) while participants are receiving monthly payments. It was originally thought that accounts of persons receiving monthly payments should be invested only in the G Fund to ensure a predictable monthly payment stream. However, with the elimination of the restrictions on participants' investment choices which originally existed, demand has grown to eliminate this restriction also. The calculation methods described above automatically account for positive and negative earnings associated with investing in the Common Stock Index Investment Fund (C Fund) or the Fixed Income Investment Fund (F Fund), thus insuring a relatively predictable income stream. The Board intends in the future to allow participants receiving monthly payments to invest in any investment funds offered by the TSP. When this change is implemented, part 1601 will be amended, and the language of § 1650.9(d) will automatically incorporate the new rules.

Section 1650.10 describes the rules relating to TSP annuities, including the various annuity options and features among which a participant can choose. TSP annuities are monthly payments made to the participant during his or her life or to the participant and a designated joint annuitant while either one is alive. The TSP purchases annuities for participants from a private sector annuity provider using the participant's entire account balance (although in some cases minimum distribution amounts must first be paid directly to the participant).

Section 1650.10(a) describes the basic rules concerning the purchase of a TSP annuity. Annuities are purchased in the mid-month processing cycle and payments commence within approximately thirty days after purchase. Because it is not practicable to purchase annuities using small account balances, the minimum amount that can be used to purchase an annuity is $3,500. All TSP annuities and annuity features have equivalent actuarial values. This means that selection of additional features will result in a reduction in the amount of the monthly annuity payment.

Section 1650.10(b) describes the basic annuity types. Section 8434 of title 5 requires that the Board offer certain types of annuities for the TSP. The basic types of annuities offered by the TSP conform to the statutory requirement. These are a single life annuity for the participant with level payments (§ 1650.10(b)(1)), a joint life annuity for the participant and his or her spouse with level payments (§ 1650.10(b)(2)), a single life annuity or a joint life annuity with the spouse that has annual increasing payments (§ 1650.10(b)(3)), and a joint life annuity with a former spouse or a person having an insurable interest in the participant (§ 1650.10(b)(4)).

Section 1650.10(b)(3) describes how the annual increase for increasing annuities is calculated. The amount of the increase is based upon the change in the Consumer Price Index. The statute prohibits decreases in annual payments; therefore, the annual increases will be zero in years where the relevant change in the index is either negative or zero. Also, because of Internal Revenue Code limits, the annual increase cannot be more than 3 percent.

Section 1650.10(b)(4) describes the rules for the option of a joint life

annuity with a person other than the spouse. As required by the statute, this option can only be used to purchase a joint life annuity with a former spouse or with a person having an "insurable interest" in the participant. The statute gives the Board discretion to define the term "insurable interest" in regulations. The definition of "insurable interest" is based upon the idea that the survivor could be expected to obtain continuing financial benefit from the participant's life. Under this definition, close relatives and common law spouses are presumed to have an insurable interest in the participant. However, a method is also prescribed by which the participant can establish by affidavit that another person, not in the presumed group, has an insurable interest in him or her.

Section 1650.10(c) describes the two levels of survivor benefits that are available for joint life annuities, whether with a spouse or with another person. These particular levels were not prescribed by statute, but rather were adopted by the Board based upon annuity options commonly available in the private sector. A participant who chooses a joint life annuity must also choose one of these levels. The 50 percent survivor benefit provides that, whenever one of the joint annuitants dies, the other will receive, during his or her lifetime, 50 percent of the benefit that was paid to the participant when both were alive. The 100 percent survivor benefit provides that the same amount paid to the participant when both the participant and the joint annuitant are alive will continue to be paid to the survivor during the survivor's lifetime. The initial payment amount will be lower if the 100 percent survivor level is chosen than if the 50 percent survivor level is chosen. Under the IRS minimum distribution rules, the 100 percent survivor benefit cannot be chosen for a joint annuity with someone other than the spouse if the joint annuitant is more than 10 years younger than the participant. This rule is designed to prevent the use of retirement annuities to transfer income to a much younger beneficiary (for example, a child or grandchild). However, the regulations provide (in accordance with IRS regulations) that a 100 percent benefit can be chosen for a joint annuity with any former spouse, regardless of age, if a qualifying court order (as described in part 1653) so provides.

Section 1650.10(d) describes two additional features that can be combined with certain annuities. These features are not required by statute. The Board decided to make them available based upon its evaluation of annuity features that participants would be likely to find attractive. If either feature is chosen, the monthly payment amount is reduced.

The first feature, described in § 1650.10(d)(1), is the "cash refund" feature. This feature, which can be selected for any type of annuity, provides that, if the participant (or the participant and joint annuitant in the case of a joint annuity) dies before the amount used to purchase the annuity has been paid out, the remainder of the amount used to purchase the annuity will be paid in a lump sum to the beneficiary or beneficiaries named by the participant. The participant who chooses this feature must, before the annuity can be purchased, complete Form TSP–11–B, Beneficiary Designation for a TSP Annuity, to mane the beneficiaries to receive this payment and to state the portion of the payment to be paid to each beneficiary. After the annuity is purchased, the participant may change the beneficiaries. If the annuity is a joint life annuity, the survivor (even if not the participant) may also change the beneficiaries or their shares. Beneficiary changes after the purchase of an annuity are handled between the annuitant and the annuity provider and do not involve the TSP.

The second feature, described in § 1650.10(d)(2), is known as the "10-year certain" feature. This feature provides that, if a single life annuity is chosen, payments will be made for at least 10 years. If the participant dies before the 10-year period expires, payments will be made to a designated beneficiary for the remainder of the period. Beneficiaries under this feature are designated on a Form TSP–11–B, in the same way as under the cash refund feature. The 10-year certain feature is only available for single life annuities, because it is expected that, in most cases, payments under joint life annuities would last at least 10 years.

Section 1650.10(e) provides that the Board can establish other types of annuities and other optional annuity features, as it did in the case of the cash refund and 10-year certain features. The statute makes it clear that the Board can decide to offer additional annuity options.

Section 1650.10(f) reflects the requirement found in the statute that any annuity method must be available to separating participants for at least 5 years after the date it is eliminated. This provision appears to have been designed to prevent the Board from eliminating annuity methods precipitously, when a participant may have been planning to choose such a method. Although the 5 year requirement may have little applicability to younger participants, it appears to be designed to preserve options for those participants who are near retirement age and who might be able to change their retirement date if they knew in advance that an annuity method would cease to be offered. Although the statute only speaks in terms of elimination of a "method of payment," the regulation makes it clear that the Board would apply this rule to any annuity type (other than the statutorily prescribed annuity types), any benefit level, or any other annuity feature (such as the cash refund feature) that the Board has previously decided to offer.

Section 1650.11 describes the situations under which a participant can have the TSP transfer all or a portion of a TSP withdrawal payment to an IRA or other eligible retirement plan, as defined in the Internal Revenue Code. Transfer of the entire account balance to an eligible retirement plan was mandated by Congress in FERSA. At the time of issuance of the original interim regulations in 1987, the participant had to choose to transfer either the entire account balance or nothing at all. However, in 1992 Congress enacted Public Law 102–318, which required all tax-qualified retirement plans (including the TSP), effective in 1993, to allow the transfer to an IRA or other eligible retirement plan of all or part of any "eligible rollover distribution." Any part of an eligible rollover distribution that is not directly transferred is subject to mandatory 20 percent income tax withholding. Therefore, beginning in 1993, the Board implemented changes in the TSP transfer option to comply with the requirements of Public Law 102–318. This means that all TSP withdrawals that are identified as "eligible rollover distributions" can now be transferred, in whole or in part, to an IRA or other eligible retirement plan. Eligible rollover distributions include all single payments, as well as final single payments that end a series of monthly payments. Thus, a participant who wants his or her entire account balance transferred can elect a single payment (which is an option now available to all) and can have the entire payment transferred.

Because the definition of "eligible rollover distribution" in Public Law 102–318 includes monthly payments expected to be made for fewer than 10 years and not based on life expectancy, certain TSP monthly payments also qualify for transfer. Section 1650.11 explains that monthly payments can be transferred if the participant elects fewer than 120 payments (i.E., fewer than 10 years of monthly payments), or

the participant elects a monthly payment amount which when divided into the account balance, yields a number less than 85. This number was chosen based upon an assumed annual earnings rate of 8 percent for the account. This means that a fixed payment amount chosen by the participant that would result in fewer than 85 payments if paid in equal monthly installments from his or her existing account balance could be expected to result in fewer than 120 payments if the account accrued earnings at the rate of 8 percent per year during the payout period. TSP monthly payments calculated based on life expectancy cannot be transferred. This is because the Internal Revenue Code does not allow any payment which is calculated based on life expectancy to be transferred. (This also means that TSP annuity payments and minimum distribution payments cannot be transferred.)

Section 1650.11(d) states the definition of an eligible retirement plan, which is found in section 402(c)(8) of the Internal Revenue Code. An IRA is included in the definition of an eligible retirement plan. The Internal Revenue Code also requires that an IRA or other eligible retirement plan be maintained in the United States, which is defined as the 50 states and the District of Columbia. Plans maintained in foreign countries or in United States possessions, such as Puerto Rico, the Virgin Islands, or Guam, do not qualify.

Section 1650.12(a) contains the basic rule establishing the participant's right to choose that a single payment be made, or that monthly payments or an annuity begin, at a future date of his or her own choosing. This type of election is referred to as a "deferred withdrawal" election, and is specifically authorized in 5 U.S.C. 8433(b).

Section 1650.12(b) describes the time limit placed by 5 U.S.C. 8433(b) upon the participant's right to make a deferred withdrawal election. Under that section, a participant must choose a date for his or her withdrawal to begin that is no later than April 1 of the year following the year the participant becomes age 70½. Because the TSP is a monthly valued plan, as explained in § 1650.7, the month chosen for payment under § 1650.12(b) must be no later than March of the relevant year, so that a payment can be made by April 1. Also, because the first annuity payment is made approximately 30 days after the annuity is purchased, an annuity will be purchased in the monthly cycle prior to the month chosen. Therefore, if a participant chooses an annuity to begin in March of the year following the year in which he or she becomes age 70½ (i.e., the latest possible date), the annuity will be purchased in February of that year. Persons who are already past the limit date (e.g., participants who separate when they are age 73) when they make a withdrawal election cannot make a deferred withdrawal election. They must elect an immediate withdrawal.

The rule stated in § 1650.12(b) generally comports with the minimum distribution requirements found in the Internal Revenue Code. The minimum distribution rules generally require separated participants to begin receiving payments from their accounts by April 1 of the year following the year they become age 70½. The rule set forth in § 1650.12(b) requires a TSP withdrawal method to begin by the same date. Eventually, the Board expects the rule set forth in § 1650.12(b), in conjunction with the rule set forth in § 1650.13 concerning the date by which an election is required, to eliminate the need for most required minimum distribution payments, except for those made in conjunction with another withdrawal election. However, as explained further in the discussion of § 1650.13, because some participants over age 70½ who leave Government employment with less than 10 years of service will still be able to defer making a decision, minimum distribution payments will continue to be made to this group.

Section 1650.12 (c) and (d) describe the TSP procedures for notifying participants who have made deferred withdrawal elections of what actions they are permitted or required to take prior to implementation of their election.

Section 1650.13 provides rules for implementing the provisions of 5 U.S.C. 8433(h)(3). This section requires a TSP participant to make a withdrawal election by February 1 of the year following the year in which the later of three events occurs—the participant becomes age 65, the participant separates from Government employment, or the participant has 10 years of Plan participation. The status expresses the latter event as "the tenth anniversary of the year in which * * * [the participant] became subject to this subchapter." The regulation reflects the Board's interpretation of this language to mean the effective date of the first contribution made to the participant's TSP account, but no earlier than April 1, 1987, the date the TSP first began accepting contributions. The effective date of the first contribution is also chosen for administrative purposes, because it is a date that is clearly reflected in TSP records.

For most participants (i.e., those with more than 10 years of Government service who separate or retire before age 65), this provision will operate to require a choice by February 1 of the year following the year in which the participant reaches age 65. the participant is still permitted to make a deferred election at that time, but the date of the deferral is subject to the limits stated in § 1650.12(b), which require that a deferred election must begin by April 1 of the year following the year a participant becomes age 70½. Together, these provisions ensure that a decision about the method of withdrawing the TSP account is made on or about the time a participant might be expected to retire and that payments begin no later than the year following the year in which the participant becomes age 70½. This allows both the TSP and the participant's spouse, who has certain rights with respect to the election, to be aware of the chosen withdrawal method by the normal retirement age. This also prevents the participant from receiving his or her entire account balance through the minimum distribution process without spousal involvement.

However, because TSP participation only began in April 1987, the 10th anniversary of the first TSP contributions will not occur until 1997 Therefore, a withdrawal election will not need to be made under this provision until February 1, 1998, at the earliest.

By establishing a date by which the participant must make an election, the Board has also interpreted the statute as providing that a separated TSP participant need not make any withdrawal election prior to that date. Instead, a participant who separates from Government employment can decide to lead his or her account in the Plan and take no action until the required date.

If a withdrawal election is not made by the required date, the statute provides that the "benefits under this subchapter will be paid as an annuity. * * *" Because the 10-year anniversary has not yet occurred for any TSP participant, there has as yet been no need to address participants who do not make an election by the required date. Section 1650.13(d) describes procedures which reasonably accommodate the language of the statute requiring that an annuity be purchased for such persons, yet also recognizes that the TSP may not be able to purchase an annuity for a participant who will not provide

required information (such as a current address).

Section 1650.13(d) also provides that, for married FERS participants, the annuity that must be purchased is the required joint life annuity with the spouse. Although this is not explicitly stated in 5 U.S.C. 8433(h)(3), 5 U.S.C. 8435 requires a married FERS participant to purchase the required joint life annuity with his or her spouse if the spouse does not waive that right. If the required joint life annuity were not purchased under § 1650.13, a married FERS participant could effectively avoid the requirement to purchase a joint life annuity with the spouse by refusing to make any election at all. For single participants covered by FERS and all participants covered by CSRS, however, a single life annuity will be purchased, since there is no statutory requirement to purchase a joint life annuity with the spouse.

Section 1650.13(d)(3) recognizes that, in certain cases, the participant will not provide the TSP with adequate information to purchase the required annuity (either single life or joint life with spouse). Because the law does not allow accounts in this status to remain open indefinitely, the regulation describes a procedure whereby an account will be forfeited if there is not adequate information to purchase an annuity. However, if any person (such as the spouse or a guardian, for example) can provide such information, the account will be restored and the annuity purchased. At the time of forfeiture, the participant generally would lose the right to choose a different method of withdrawal.

Section 1650.14 sets forth rules concerning participants who change or cancel their withdrawal elections. Generally, participants can change their withdrawal elections as long as they have met any applicable spouse rights requirements with respect to the new election. For example, if a spouse of a FERS participant waives his or her right to a survivor benefit when the participant chooses a single life annuity, the participant can later change his or her election to a single payment without obtaining another waiver from that spouse. However, if the participant has a different spouse when a new election is made, a waiver would be required from the new spouse.

The right both to change and cancel a withdrawal election is also affected by the date the payment is scheduled. As explained in § 1650.7, the TSP is a monthly valued plan. As such, payments are scheduled to occur once a month during the mid-month processing cycle. Participants who have their accounts invested only in the G Fund can change or cancel their election as long as the change or cancellation can be processed prior to the mid-month cycle in which the account is scheduled to pay. This is because the underlying value of investments in the G Fund does not fluctuate. However, if a participant has all or a portion of his or her account invested in the C Fund or the F Fund, the underlying value can fluctuate. Therefore, the change or cancellation must be processed no later than the second-to-last business day (the "cutoff date") of the month preceding the mid-month cycle in which the account is scheduled to pay, so that the amount to be withdrawn can be insulated from fluctuations in value after the end of the month. Failure to remove funds scheduled for withdrawal from the C and F Funds on the last day of the month would result in all other accounts having to absorb the fluctuations in the C and F Fund values after the end of the month. However, a person with money in the C or F Funds can change (but not cancel) his or her withdrawal election after the cutoff date if, under the changed election method, there is no change in the amount to be withdrawn from the C and F Funds as originally scheduled.

Section 1650.14(d) provides an example to illustrate the treatment of elections to change withdrawal method made by participants whose accounts are invested in the C or F Funds.

Subpart C of part 1650 sets forth procedures adopted by the Board for processing TSP withdrawal elections and payments.

Section 1650.15 sets forth the information that must be provided by the employing agency both to the TSP and to the participant at the time of the participant's separation from Government employment.

Section 1650.15(a) requires the agency to inform the TSP recordkeeper of the participant's separation from Government employment. This is done by submitting a code indicating the separation from employment and the date of separation. Until this information is received, the withdrawal cannot be processed. Also a withdrawal cannot occur until 30 days have elapsed since the date of separation reported by the agency. This interval ensures that normal contributions are received before the date of withdrawal and that the participant has a reasonable period of time after receipt of withdrawal and tax information from the employing agency to make withdrawal and tax withholding decisions. (The 30-day interval described in this section does not operate to enforce the rule stated in § 1650.3 that an employee rehired within 31 days is not permitted to withdraw. As explained earlier, the TSP does not maintain information on the dates employees are rehired. Therefore, the 30-day interval could not ensure that employees rehired within that period were not paid. Rather, as provided in § 1650.4, that requirement is enforced by asking the participant to certify to the length of his or her break in service and his or her employment status.)

Section 1650.15(b) requires the agency to provide certain withdrawal and tax information to the participant at the time he or she separates from employment. The Board relies on the employing agencies to distribute this information to participants. This includes TSP withdrawal materials and forms and the written explanation required by section 402(f) of the Internal Revenue Code. The Code requires plans to furnish this explanation to participants within a reasonable time prior to their withdrawal. In order to facilitate TSP participants' ability to withdraw their accounts in a timely manner, the Board has instructed employing agencies to provide participants with this information when they separate. (The TSP also mails this notice to each participant upon receipt of separation information from his or her agency, unless withdrawal forms have already been received from the participant.)

Section 1650.16 states the basic rule that, in order to withdraw his or her TSP account, a participant must complete the basic TSP withdrawal form (TSP–70) and any other form required by the TSP. As a result of the standardization of TSP withdrawal options accomplished by Public Law 103–226, the Board has been able to devise a withdrawal form that can be used by every participant to make a withdrawal choice under any of the withdrawal methods. Participants with account balances of $3,500 or less are also eligible to receive an "automatic cashout" of their accounts which require no paperwork, as described in § 1650.17.

Section 1650.17 describes the procedures for paying out TSP accounts of $3,500 or less. These procedures differ from those relating to other TSP accounts because of Public Law 101–335. That statute amended title 5 of the United States Code to provide that a separated TSP participant with an account balance of $3,500 or less will automatically be paid the amount in his or her account in a single payment, unless the participant elects another withdrawal method. This payment is

referred to as an "automatic cashout." These participants can also choose to leave their accounts in the Plan.

Section 1650.17(c) states that spousal notice and waiver provisions (to be published as subpart D) do not apply to the withdrawal of accounts of $3,500 or less. This also reflects the provisions of Public Law 101–335.

Section 1650.17(d) confirms that the automatic cashout provisions apply only while the account is $3,500 or less. If the account increases to more than $3,500 (due to additional contributions or earnings), these rules cease to apply and the participant must submit withdrawal forms as required in § 1650.16.

Section 1650.17(e) excludes accounts of less than $5.00 from the automatic cashout procedures. Many participants have contacted the TSP asking that they not continue to be sent information about very small account balances. Often these accounts represent amounts deposited into a participant's account after an initial withdrawal, where a former employing agency has discovered that it owed small amounts of lost earnings to a group of employees. (See part 1605 for rules concerning agency paid lost earnings.) The Board has also determined that, for accounts of less than $5.00, it is not prudent to undertake the administrative processing costs associated with an automatic cashout. The Board plans to forfeit these accounts to the Plan automatically under procedures to be developed. The procedures will allow participants to reclaim these amounts, if they wish.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only the ability of Federal employees to withdraw their TSP accounts and Board procedures relating to those withdrawals.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

List of Subjects in 5 CFR Part 1650

Employee benefit plans, Government employees, Retirement, Pensions.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, part 1650 of chapter VI of title 5 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

Subpart A—General

1650.1 Definitions.
1650.2 Eligibility.
1650.3 Separation from Government employment.
1650.4 Rehired employees.
1650.5 Outstanding loans.
1650.6 Frozen accounts.
1650.7 Monthly cycle for withdrawal payments.

Subpart B—Withdrawal Options

1650.8 Single payment.
1650.9 Monthly payments.
1650.10 Annuities.
1650.11 Transfer of withdrawal payments.
1650.12 Deferred withdrawal elections.
1650.13 Required date for making withdrawal election.
1650.14 Changes and cancellation of withdrawal election.

Subpart C—Procedures for Withdrawing TSP Accounts

1650.15 Information to be provided by agency.
1650.16 Accounts of more than $3,500.
1650.17 Accounts of $3,500 or less.

Authority: 5 U.S.C. 8351, 8433, 8434, 8435, 8467(b)(5), and 8474(c)(1).

Subpart A—General

§ 1650.1 Definitions.

As used in this part:

Account balance means, unless otherwise specified, the nonforfeitable valued account balance of a TSP participant as of the most recent month end prior to the date a withdrawal occurs;

Board means the Federal Retirement Thrift Investment Board, established pursuant to 5 U.S.C. 8472;

CSRS means the Civil Service Retirement System established by 5 U.S.C. chapter 83, subchapter III, or any equivalent retirement system;

FERS means the Federal Employees' Retirement System established by 5 U.S.C. chapter 84, or any equivalent retirement system.

Participant means any person with an account in the Thrift Savings Plan;

Spouse means the person to whom a TSP participant is married on the date he or she signs withdrawal forms to be submitted to the TSP, including a spouse from whom the participant is legally separated.

Thrift Savings Plan, TSP, or *Plan* means the Federal Retirement Thrift Savings Plan, established under subchapters III and VII of the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8431 *et seq.;*

Thrift Savings Plan Service Office means the office established by the Board to service separated TSP participants. This office's current address is: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana 70161–1500.

§ 1650.2 Eligibility.

A participant who separates from Government employment, as described in § 1650.3, is immediately eligible to choose one of the withdrawal methods described in subpart B of this part, subject to the rules relating to spouses' rights,[1] minimum distributions, and domestic relations orders (part 1653).[2] A participant cannot choose a withdrawal method before he or she separates from Government employment.

§ 1650.3 Separation from Government employment.

For purposes of this part, a separation from Government employment occurs when a participant ceases employment with the Federal Government or the U.S. Postal Service (or with any other employer from a position that is deemed to be Government employment for purposes of participating in the TSP) for at least 31 full calendar days.

§ 1650.4 Rehired employees.

(a) A participant who is reemployed in a position in which he or she can participate in the TSP on or before the 31st full calendar day after the date of separation is not eligible to withdraw his or her TSP account. In order to be eligible to withdraw his or her TSP account, a participant must state on Form TSP–70 (Withdrawal Request) that he or she is separated and expects the separation to last at least 31 full calendar days. If a participant is scheduled for an automatic cashout, as described in § 1650.17, the cashout will be canceled if the participant states to the TSP that he or she has been reemployed or expects to be reemployed within 31 full calendar days.

(b) A participant who is reemployed after 31 full calendar days after his or her date of separation in a position in which the participant is eligible to participate in the TSP may withdraw the portion of his or her account balance attributable to the earlier period of employment. However, if the amount in the account attributable to the first period of employment is greater than $3,500, the participant must submit, prior to the date of his or her reemployment, a properly completed withdrawal form (TSP–70) choosing a

[1] These rules were proposed in the **Federal Register** of September 13, 1994 (59 FR 46934).

[2] Part 1653 was proposed in the **Federal Register** of October 26, 1994 (59 FR 53874).

withdrawal option that results in an immediate withdrawal. A reemployed participant may not make a deferred withdrawal election, as described in § 1650.12, or an election of monthly payments, as described in § 1650.9. If a reemployed participant is already receiving monthly withdrawal payments, such payments will stop.

§ 1650.5 Outstanding loans.

A participant is not entitled to withdraw his or her account balance until any loan outstanding at the time of separation has either been repaid in full or declared to be a taxable distribution.

§ 1650.6 Frozen accounts.

A participant may not withdraw any portion of his or her account balance if the account is frozen as a result of a retirement benefits court order or a child support or alimony enforcement order, as described in part 1653,[3] or as a result of a freeze placed on the account by the Board for another reason.

§ 1650.7 Monthly cycle for withdrawal payments.

The value of a TSP account is determined at approximately mid-month, as of the end of the preceding month, after earnings are allocated to the account. TSP transactions that require valued account balances, such as withdrawals, can only occur after the value of an account has been determined. Because of this, withdrawal payments are generally made once a month, during what is known as the "mid-month processing cycle."

Subpart B—Withdrawal Options

§ 1650.8 Single payment.

A participant can withdraw his or her entire account in a single payment.

§ 1650.9 Monthly payments.

(a) A participant can withdraw his or her account balance in two or more substantially equal monthly payments, to be calculated under one of the following methods:

(1) A fixed monthly payment amount. The amount must be at least $25 per month and must satisfy any minimum distribution requirements. Payments will be made each month until the account is expended. If the last scheduled payment would be less than the chosen amount, it will be combined and paid with the previous payment;

(2) A fixed number of monthly payments. The participant's month-end account balance for the month preceding the month of the first payment will be divided by the number of payments chosen in order to determine the monthly amount. If that amount is less than $25, the election is rejected. The payment must also meet any minimum distribution requirements. In January of each subsequent year, the TSP will divide the December 31 account balance from the prior year by the remaining number of payments in order to determine that year's monthly payments. If the monthly payment amount is less than $25, it will be increased to $25. This process will be repeated each year until the account is expended; or

(3) A monthly payment amount calculated using the factors set forth in Internal Revenue Service expected return multiple table V, 26 CFR 1.72–9. There is no $25 minimum monthly payment under this method. In the year payments begin, the monthly payment amount is calculated by dividing the month-end account balance for the month preceding the month of the first payment by the factor from table V based upon the participant's age as of his or her birthday in that year. This amount is then divided by 12 to yield the monthly payment amount. In subsequent years, the monthly payment amount is recalculated each January by dividing the December 31 account balance from the previous year by the factor from Table V based upon the participant's age as of his or her birthday in the year payments will be made. That amount is divided by 12 to yield the monthly payment amount.

(b) A participant who chooses to receive monthly payments calculated using one of the three methods set forth in paragraph (a) of this section cannot change the method after payments begin. Also, except as provided in paragraph (c) of this section, the participant cannot change the number of payments or the payment amount after payments begin.

(c) A participant receiving monthly payments can choose to receive the remainder of his or her account balance in a final single payment.

(d) A participant receiving monthly payments may invest his or her account balance as provided in 5 CFR part 1601.

§ 1650.10 Annuities.

(a) A participant can withdraw his or her entire account balance in the form of a life annuity. The participant's account balance must be $3,500 or more in order for the TSP to purchase an annuity. If a participant chooses this method, the TSP will purchase the annuity from the TSP's annuity vendor using the participant's entire account balance, except for any amount necessary to satisfy minimum distribution requirements. The first annuity payment will be made approximately 30 calendar days after the purchase of the annuity. The annuity will provide a payment for life to the participant and, if applicable, the participant's survivor, in accordance with the type of annuity chosen.

(b) The following types of annuities are available to participants:

(1) A single life annuity with level payments. This annuity is based upon the life expectancy of the participant at the time of purchase and provides monthly payments to the participant as long as the participant lives.

(2) A joint life annuity for the participant and his or her spouse with level payments. This annuity is based upon the combined life expectancies of the participant and the spouse and provides monthly payments to the participant, as long as both the participant and spouse are alive, and monthly payments to the survivor, as long as he or she is alive.

(3) Either a single life or joint life annuity (as described in paragraph (b)(1) or (b)(2) of this section) where the amount of the monthly payment can increase each year on the anniversary date of the first annuity payment. The amount of the increase is based on the average annual change in the Consumer Price Index for Urban Wage Earners and Clerical Workers as measured between the period of July through September in the second calendar year preceding the anniversary date and July through September in the calendar year preceding the anniversary date. For example, if the anniversary date of an increasing annuity occurs in November of 1995, the amount of the increase will be calculated based upon the change in the index between the July-September period in 1993 and the July-September period in 1994. Monthly payments cannot decrease, nor can they increase more than 3 percent each year. If this option is chosen in conjunction with a joint life annuity with the spouse, the annual increase continues to apply to benefits received by the survivor.

(4) A joint life annuity, with level payments, for the participant and another person who either is a former spouse or has an insurable interest in the participant. This annuity is based upon the combined life expectancies of the participant and the other person. It provides monthly payments to the participant as long as both the participant and the joint annuitant are alive, and monthly payments to the survivor as long as he or she is alive. Increasing payments cannot be chosen for a joint annuity with a person other than the spouse.

[3] See Footnote 2 to section 1650.2.

(i) A person has an "insurable interest" in a participant if the person is financially dependent on the participant and could reasonably expect to derive financial benefit from the participant's continued life.

(ii) The following persons are presumed to have an insurable interest in the participant:

(A) A relative (whether blood or adopted, but not by marriage) who is closer than a first cousin; or

(B) A person with whom a participant is living in a relationship that constitutes a common-law marriage in the jurisdiction in which they live.

(iii) A participant can establish that a person not described in paragraph (b)(4)(ii) of this section has an insurable interest in him or her by submitting with the annuity request an affidavit from a person other than the participant or the joint annuitant demonstrating that the designated joint annuitant has an insurable interest (as defined in paragraph 9b)(4)(i) of this section) in the participant.

(c) Participants who choose a joint life annuity (with either a spouse or a person with an insurable interest) must choose either a 50 percent or a 100 percent survivor benefit. A 50 percent survivor benefit provides a monthly payment to the survivor which is 50 percent of the payment made when both the participant and the joint annuitant are alive. A 100 percent survivor benefit provides a monthly payment to the survivor which is 100 percent of the payment made when both the participant and the survivor are alive. Either the 50 percent or the 100 percent survivor benefit may be combined with any joint life annuity option, except that the 100 percent survivor benefit can be combined with a joint annuity with a person other than the spouse (or a former spouse, if required by a retirement benefits court order described in part 1653)[4] only if the joint annuitant is not more than 10 years younger than the participant.

(d) The following mutually exclusive features can be combined with certain types of annuities, as indicated:

(1) *Cash refund.* This feature provides that, if the participant (and joint annuitant, if applicable) dies before an amount equal to the balance used to purchase the annuity has been paid out, the difference between the balance used to purchase the annuity and the sum of monthly payments already made will be paid to the named beneficiaries. The participant (or the joint annuitant, if the participant is deceased) may name or change the beneficiaries. This feature can be combined with any other annuity option.

(2) *Ten-year certain.* This feature provides that, if the participant dies before annuity payments have been made for 10 years (120 payments), monthly payments will continue to be made to the beneficiaries selected by the participant until 120 payments have been made. This feature can be combined with any single life annuity option, but cannot be selected in conjunction with any joint life annuity option.

(e) The Board can, from time to time, establish other types of annuities, other levels of survivor benefits, and other annuity features.

(f) The Board can, from time to time, eliminate a type of annuity (except for those annuities described in paragraph (b) of this section), a survivor benefit level, or an annuity feature. However, if the Board does so, it must continue to allow participants to purchase annuities of the eliminated type or containing the eliminated feature for 5 years after the date the decision to eliminate the annuity type or feature is announced in the **Federal Register**.

(g) Once an annuity has been purchased, the type of annuity, any annuity features, and the identity of the joint annuity cannot be changed, and the annuity cannot be terminated.

§ 1650.11 Transfer of withdrawal payments.

(a) At the participant's request, the TSP will transfer directly to an eligible retirement plan all or part of any withdrawal that is an "eligible rollover distribution," as defined in 26 U.S.C. 402(c)(4). A withdrawal method that is not an eligible rollover distribution cannot be transferred.

(b) The following TSP withdrawal methods are considered eligible rollover distributions:

(1) A single payment, as described in § 1650.8;

(2) Monthly payments, as described in § 1650.9, where payments are expected to last less than 10 years at the time they begin, according to the following rules:

(i) If the participant elects a number of monthly payments, the number of payments must be fewer than 120;

(ii) If the participant elects a monthly payment amount, the amount, when divided into the participant's account balance as of the end of the month prior to the first payment, must yield a number less than 85.

(3) A final single payment, as described in § 1650.9(c).

(c) The following withdrawal methods are not eligible rollover distributions:

(1) Any annuity purchased by the TSP;

(2) Any monthly payment that does not meet the rules set forth in paragraph (b)(2) of this section, including any monthly payment computed based on the Internal Revenue Service expected return multiple table V (see § 1650.9(a)(3)).

(3) Any minimum distribution payments or any portion of another payment which represents a minimum distribution payment.

(d) An eligible retirement plan is a plan defined in 26 U.S.C. 402(c)(8). There are three types of eligible retirement plans: an Individual Retirement Arrangement (IRA) (which can be either an individual retirement account or an individual retirement annuity), a plan qualified under 26 U.S.C. 401(a), and a plan described in 26 U.S.C. 403(a). An IRA or other eligible retirement plan must be maintained in the United States, which means one of the 50 states or the District of Columbia.

§ 1650.12 Deferred withdrawal elections.

(a) Subject to paragraph (b) of this section, a participant who separates from Government employment and elects to withdraw his or her account under one of the methods provided in §§ 1650.8, 1650.9, or 1650.10 may specify a future date (which shall be a month and year) for payment of the withdrawal.

(b) The future date chosen under this section cannot be later than March of the year following the year in which the participant becomes age 70½. If that date has already passed when the participant makes an election, the participant cannot choose a future date.

(c) If the withdrawal method chosen for future payment is a single payment or monthly payments (and the date specified for payment is more than four months in the future on the date the election form is processed), the participant will be notified before the date chosen that such payments are scheduled to begin. If the payments are eligible rollover distributions, the participant may choose to transfer all or part of the payments to an Individual Retirement Arrangement (IRA) or another eligible retirement plan.

(d) If the withdrawal method chosen for future payment is an annuity (and the date specified for payment is more than four months in the future on the date the election form is processed), the participant will be notified before the date chosen. At that time the participant will be sent information asking him or her to choose an annuity method, name a beneficiary (if the cash refund or 10-year certain feature is chosen), and

[4] See Footnote 2 to section 1650.2.

provide any necessary spousal waiver or spousal information.

§ 1650.13 Required date for making withdrawal election.

(a) A participant who separates from Government employment need not elect one of the withdrawal methods provided in §§ 1650.8, 1650.9, or 1650.10 until February 1 of the year following the latest of these dates:

(1) The date upon which the participant becomes age 65;

(2) The date that is 10 years after the effective date of the first TSP contribution made by or on behalf of the participant (but not earlier than April 1, 1987); or

(3) The date the participant separates from Government employment.

(b) A separated participant may make a withdrawal election before the date described in paragraph (a) of this section, but is not required to do so.

(c) A participant will fulfill the requirements of paragraph (a) of this section by making a deferred withdrawal election (as described in § 1650.12) by the required date, provided that the date described in § 1650.12(b) has not already occurred.

(d) If a participant does not make an election by the date required by this section, the TSP will purchase an annuity for the participant in accordance with the following rules:

(1) If a participant is covered by the Federal Employees' Retirement System (FERS) and is married on the date an election is required by this section, the TSP will purchase a joint life annuity with his or her spouse with a 50 percent survivor benefit, level payments, and no cash feature.

(2) If the participant is covered by the Civil Service Retirement System (CSRS) or the participant is not married on the date an election is required by this section, the TSP will purchase a single life annuity with no other features.

(3) If the participant fails to provide the TSP with adequate information to purchase one of the annuities described in either paragraph (d)(1) or (d)(2) of this section, as appropriate, by the date an election is required by this section, and such information cannot be obtained by the TSP from other sources, the participant's account will be forfeited. If the TSP is later provided with the required information, the TSP will purchase an annuity in accordance with this section, using the amount forfeited. No earnings will be credited to this amount after the date of forfeiture.

§ 1650.14 Changes and cancellation of withdrawal election.

(a) *Basic rule.* Subject to paragraphs (b) and (c) of this section and the rules relating to spouses' rights, a participant who has separated from Government employment can change his or her withdrawal election to any other withdrawal election or can cancel his or her withdrawal election if the change or cancellation can be processed before the withdrawal election is scheduled for disbursement.

(b) *Cutoff dates.* For participants who have any part of their accounts invested in the Common Stock Index Investment Fund (C Fund) or the Fixed Income Index Investment Fund (F Fund), a withdrawal payment that has been approved is scheduled on the second-to-last business day of the month preceding the month the withdrawal payment is to be made. For participants whose accounts are invested entirely in the Government Securities Investment Fund (G Fund), a withdrawal payment that has been approved is scheduled by the close of business on the day before the mid-month processing cycle in which payments are made.

(c) *Special Rule for C and F Fund Participants.* Participants who have any part of their accounts invested in the C or F Funds may also change to another withdrawal method if the requested change can be processed before the close of business on the day before the mid-month processing cycle in which payment will be made, and provided that under the new withdrawal method the amounts they have invested in the C or F Funds will still be withdrawn as originally scheduled from those Funds during the mid-month processing cycle.

(d) *Example for participants whose accounts are invested in the C or F Funds.* This example illustrates the operation of the rules set forth in paragraphs (b) and (c) of this section for participants who have a portion of their account invested in the C or F Funds. Assume that such a participant wishes to withdraw the account by purchasing a single life annuity at the earliest possible date. The participant is married and has obtained the necessary waiver from her spouse for the purpose. All necessary forms have been submitted by the middle of April; thus, on the second-to-last business day in April, the annuity will be scheduled to be purchased in the May mid-month processing cycle. However, in late April, the participant decides that she would rather receive the account in a single payment. The participant must submit a new Form TSP–70 electing the new withdrawal method. (She does not need a new spousal waiver, since her spouse already waived his right to a survivor benefit.) In this case, the participant will be able to change to a single payment if her properly completed Form TSP–70 is received and processed by the TSP recordkeeper by the close of business on the day before the May mid-month processing cycle. If that occurs, she will receive the single payment in May, instead of having the annuity purchased then. If, on the other hand, the participant wished to cancel her annuity purchase and leave her money in the Plan (or to change to a deferred withdrawal option), the TSP recordkeeper would have to be able to process her cancellation or change no later than the second-to-last business day in April. If that did not occur, the annuity purchase would proceed in May.

Subpart C—Procedures for Withdrawing TSP Accounts

§ 1650.15 Information to be provided by agency.

(a) *Information to be provided to the TSP.* When a TSP participant separates from Government employment, his or her employing agency must report the separation (including the date of separation) to the TSP recordkeeper. Until the TSP recordkeeper receives this information from the employing agency, it cannot process a withdrawal for the participant. A withdrawal cannot occur until at least 30 full calendar days have elapsed after the date of separation.

(b) *Information to be provided to the participant.* When a TSP participant separates from Government employment, his or her employing agency must furnish the participant with the most recent copies of the TSP withdrawal booklet, withdrawal forms, and tax notice.

§ 1650.16 Accounts of more than $3,500.

A participant whose account balance is more than $3,500 must submit a properly completed withdrawal election on Form TSP–70, Withdrawal Request, and any other form required by the TSP, in order to elect a withdrawal of his or her account balance.

§ 1650.17 Accounts of $3,500 or less.

(a) Unless he or she has already submitted a complete withdrawal election and can be scheduled for payment, a participant whose account balance is $3,500 or less as of the month end following receipt of separation information from the employing agency will be sent a notice informing him or her that the account balance will be paid directly to the participant automatically in the third mid-month cycle following the date of the notice if the account balance is still $3,500 or less on the date of payment. The notice will inform the participant that he or she can:

(1) Choose to transfer all or part of this payment to an Individual Retirement Arrangement (IRA) or other eligible retirement plan;

(2) Choose another withdrawal method (as described in subpart B of this part);

(3) Choose to have the payment made directly to him or her as soon as possible; or

(4) Choose to leave his or her money in the Plan.

(b) If the participant does not take one of the actions described in paragraph (a) of this section, payment will be made as scheduled.

(c) No spousal rights attach to any withdrawals made to a participant whose account balance is $3,500 or less.

(d) If a participant's account balance is $3,500 or less after separation but later increases to more than $3,500, this section will cease to apply to that participant.

(e) The rules stated in this section do not apply to accounts containing a balance of less than $5.00.

[FR Doc. 94-31651 Filed 12-27-94; 8:45 am]

BILLING CODE 6760-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11 and 25

RIN 3150-AF21

NRC Licensee Renewal/ Reinvestigation Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend its regulations to eliminate the five year expiration date for licensee "U" and "R" special nuclear material access authorizations and "Q" and "L" access authorizations and require the licensee to submit NRC renewal application paperwork only for an individual who has not been reinvestigated by the Department of Energy (DOE) or another Federal agency within the five-seven year span permitted in the regulations. The proposed rule would achieve administrative efficiencies that reduce paperwork and cut red-tape in a manner that is consistent with National Performance Review Initiatives.

DATES: Comment period expires January 27, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Copies of the regulatory analysis and comments received may be examined at: The NRC's Public Document Room, 2120 L Street, NW. (Lower Level), room LL6, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James J. Dunleavy, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-7404.

SUPPLEMENTARY INFORMATION: The NRC currently requires "U" and "R" special nuclear access authorizations and "Q" and "L" access authorizations to expire five years from the issuance date unless a timely application is made for renewal. An application for renewal must include a personnel security forms packet, including a Questionnaire for Sensitive Positions (SF-86, Parts 1 and 2), two completed standard fingerprint cards (FD-258), other related forms, and a statement of continuing need by the licensee.

For those individuals who also have an active DOE or other comparable access authorization and are subject to DOE's or another Federal agency's reinvestigation program, the application that must be filed with the NRC consists of an NRC Form 237, "Request for Access Authorization," or comparable list containing the individual's full name, social security number, date of birth, type of request (renewal), the agency conducting the reinvestigation and the date of reinvestigation submittal and a statement of continuing need by the licensee.

The proposed rule would eliminate the five year expiration date for "U", "R", "Q" and "L" access authorizations and require renewal application paperwork to be submitted to NRC only for an individual who has not been reinvestigated by DOE or another Federal agency for any reason within the five-seven year span permitted in the regulations.

This proposed rule would reduce paperwork for the licensee and NRC, cut red-tape and achieve the timely reinvestigation of licensee personnel on a more cost effective basis.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Because the rule will relax existing information collection requirements, the public burden for this collection of information is expected to be reduced by three hours per licensee. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the estimated burden reduction or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (T-6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0050, -0062, and -0046), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC has prepared a regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Room LL6, Washington, DC. Single copies of the analysis may be obtained from James J. Dunleavy, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-7404.

Regulatory Flexibility Certification

Based upon the information available at this stage of the rulemaking proceeding and in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C.605(b), the Commission certifies that, if promulgated, this rule will not have a significant economic impact on a substantial number of small entities. This rulemaking only applies to those licensees and others who need to use, process, store, transport, or deliver to a carrier for transport, formula quantities of special nuclear material (as defined

in 10 CFR Part 73) or generate, receive, safeguard, and store National Security Information or Restricted Data (as defined in 10 CFR Part 95). Approximately 20 NRC licensee and other license related interests would be affected under the provisions of 10 CFR Parts 11 and 25. Because these licensees are not classified as small entities as defined by the NRC's size standards (November 6, 1991; 56 FR 56671), the Commission finds that this rule will not have a significant economic impact upon a substantial number of small entities.

Backfit Analysis

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

List of Subjects

10 CFR Part 11

Hazardous materials—transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 11 and 25.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

2. In § 11.15, paragraph (c) is revised to read as follows:

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(c)(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, NRC–U and NRC–R special nuclear material access authorizations must be renewed every five years from the date of issuance. An application for renewal must be submitted at least 120 days before the expiration of the five-year period and must include:

(i) A statement by the licensee that at the time of application for renewal the individual's assigned or assumed job requires an NRC–U special nuclear material access authorization, justified by appropriate reference to the licensee's security plan;

(ii) The questionnaire for Sensitive Positions (SF–86, Parts 1 and 2);

(iii) Two completed standard fingerprint cards (FD–258); and

(iv) Other related forms specified in accompanying NRC instructions (NRC Form 254).

(2) An exception to the time for submission of NRC–U special nuclear material access authorization renewal applications and the paperwork required is provided for those individuals who have a current and active DOE–Q access authorization and who are subject to DOE Reinvestigation Program requirements. For these individuals, the submission to DOE of the SF–86 pursuant to DOE Reinvestigation Program requirements (generally every five years) will meet the NRC renewal submission and paperwork requirements even if less than five years has passed since the date of issuance or renewal of the NRC–U access authorization. Any NRC–U special nuclear material access authorization renewed in response to provisions of this paragraph will not be due for renewal until the date set by DOE for the next reinvestigation of the individual pursuant to DOE's Reinvestigation Program.

(3) An exception to the time for submission of NRC–R special nuclear material access authorization renewal applications and the paperwork required is provided for those individuals who have a current and active DOE–L or DOE–Q access authorization and who are subject to DOE Reinvestigation Program requirements. For these individuals, the submission to DOE of the SF–86 pursuant to DOE Reinvestigation Program requirements (generally every five years) will meet the NRC renewal submission and paperwork requirements even if less than five years has passed since the date of issuance or renewal of the NRC–R access authorization. Any NRC–R special nuclear material access authorization renewed pursuant to this paragraph will not be due for renewal until the date set by DOE for the next reinvestigation of the individual pursuant to DOE's Reinvestigation Program.

(4) Notwithstanding the provisions of paragraph (c)(2) or (c)(3) of this section, the period of time for the initial and each subsequent NRC–U or NRC–R renewal application to NRC may not exceed seven years. Any individual who is subject to the DOE Reinvestigation Program requirements but, for administrative or other reasons, does not submit reinvestigation forms to DOE within seven years of the previous submission, shall submit a renewal application to NRC using the forms prescribed in paragraph (c)(1) of this section before the expiration of the seven-year period.

* * * * *

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

3. The authority citation for Part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p.398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701.)

4. In § 25.21, paragraphs (c)(1) and (c)(2) are revised to read as follows:

§ 25.21 Determination of initial and continued eligibility for access authorization.

* * * * *

(c)(1) Except as provided in paragraph (c)(2) of this section, NRC "Q" and "L" access authorizations must be renewed every five years from the date of issuance. An application for renewal must be submitted at least 120 days before the expiration of the five-year period, and must include:

(i) A statement by the licensee or other person that the individual continues to require access to classified National Security Information or Restricted Data; and

(ii) A personnel security packet as described in § 25.17(c).

(2) Renewal applications and the paperwork required for renewal applications are not required for individuals who have a current and active access authorization from another Federal agency and who are subject to a reinvestigation program by that agency that is determined by NRC to meet NRC's requirements (the DOE Reinvestigation Program has been determined to meet NRC's requirements). For such individuals, the submission of the SF–86 by the licensee or other person to the other government

agency pursuant to their reinvestigation requirements will meet the NRC renewal submission and paperwork requirements, even if less than five years has passed since the date of issuance or renewal of the NRC "Q" or "L" access authorization. Any NRC access authorization continued in response to the provisions of this paragraph will, thereafter, not be due for renewal until the date set by the other government agency for the next reinvestigation of the individual pursuant to the other agency's reinvestigation program. However, the period of time for the initial and each subsequent NRC "Q" or NRC "L" renewal application to NRC may not exceed seven years. Any individual who is subject to the reinvestigation program requirements of another Federal agency but, for administrative or other reasons, does not submit reinvestigation forms to that agency within seven years of the previous submission, shall submit a renewal application to NRC using the forms prescribed in § 25.17(c) before the expiration of the seven-year period.

Dated at Rockville, MD, this 15th day of November, 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94–31772 Filed 12–27–94; 8:45 am]

BILLING CODE 7590–01–P

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10 CFR Parts 20, 30, 40, 61, 70, and 72

RIN 3150–AF17

Termination or Transfer of Licensed Activities: Recordkeeping Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations pertaining to the disposition of certain records when a licensee terminates licensed activities or licensed activities are transferred to another licensee. The proposed rule would require a licensee to transfer records pertaining to decommissioning the facility effectively, and records pertaining to public dose and waste disposal, to the new licensee if licensed activities will continue at the same location, or require the licensee to forward records pertaining to public dose and waste disposals to the NRC before the license is terminated.

DATES: Submit comments by March 28, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

Documents related to this rulemaking may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Many of these documents may also be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking.

Single copies of the proposed rule, 10 CFR Parts 20, 30, 40, 61, 70, and 72, Termination or Transfer of Licensed Activities: Recordkeeping Requirements may be obtained by written request or telefax (301–504–2260) from: Distribution Services, Printing and Mail Services Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

The NRC requests public comment on the proposed rule, 10 CFR Parts 20, 30, 40, 61, 70, and 72, Termination or Transfer of Licensed Activities: Recordkeeping Requirements. Comments may be submitted to: Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publication Services, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to 11555 Rockville Pike, Maryland between 7:45 a.m. and 4:15 p.m. on Federal workdays. Comments on the proposed rule, 10 CFR Parts 20, 30, 40, 61, 70, and 72, Termination or Transfer of Licensed Activities: Recordkeeping Requirements may be submitted electronically as indicated below.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the rulemaking are also available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Use ANSI or VT–100 terminal emulation. The NRC rulemaking subsystems can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FedWorld consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and databases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS: 703–321–8020; Telnet via Internet: fedworld.gov (192.239.92.3); File Transfer Protocol (FTP) via Internet: ftp.fedworld.gov (192.239.92.205); and World Wide Web using the "Home Page": www.fedworld.gov (this is the Uniform Resource Locator (URL)).

If using a method other than the NRC's toll free number to contact FedWorld, then the NRC subsystem will be accessed from the main FedWorld menu by selecting "F—Regulatory, Government Administration and State Systems" or by entering the command "/go nrc" at a FedWorld command line. At the next menu select "A—Regulatory Information Mall," and then select "A—U.S. Nuclear Regulatory Commission" at the next menu. If you access NRC from FedWorld's "Regulatory, Government Administration" menu, then you may return to FedWorld by selecting the "Return to FedWorld" option from the "NRC Main Menu." However, if you access NRC at FedWorld by using NRC's toll-free number, then you will have full access to all NRC systems, but you will not have access to the main FedWorld system. For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Mary L. Thomas, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone (301) 415–6230, e-mail MLT1@NRC.GOV.

SUPPLEMENTARY INFORMATION:

I. Background

After evaluating an incident where some offsite contamination was found, the NRC identified a deficiency in the current recordkeeping requirements.

The NRC was unable to determine how much radioactive material was released to a sanitary sewerage system because records of previous releases by the original holder of the license were not available. Furthermore, when a licensee requests to transfer, assign, or in any other manner terminate a license, and another person continues licensed activities at the same site, there are no provisions in the regulations requiring the original licensee to transfer records that might be needed by the new licensee. Such records might be necessary to evaluate offsite consequences from the previous licensee's activities or to decommission the facility effectively. In addition, the existing regulations are unclear regarding final disposition of these records when licensed activities have ceased and the license is terminated.

II. Discussion of Proposed Rule Changes

The existing regulations do not provide for the transfer of records to the new licensee when a licensee transfers, assigns, or terminates a license and another person continues licensed activities at the same location under a new or amended license. The proposed rule change would provide for such a transfer for those records that may be needed to evaluate offsite consequences of the previous licensee's activities or to decommission the facility effectively. The proposed amendments would also require that the NRC be provided with the information needed to assess possible risks associated with licensed activities once a licensee has terminated its license. These proposed amendments contain requirements that are intended to ensure that the applicable records will be available when needed.

Paragraphs 20.2107(b) and 20.2108(b) are being amended to state that there are additional requirements for disposition of the records required by 10 CFR Parts 30, 40, 61, 70, and 72. Paragraphs 30.35(g), 40.36(f), 70.25(g), and 72.30(d) specify records that the Commission considers important to decommissioning. The NRC is proposing to amend the aforementioned paragraphs to require the transfer of all decommissioning records required by these sections to the new licensee. A new paragraph is proposed for §§ 30.51, 40.61, 70.51 and 72.80 to clarify that other records, such as public dose, retained under § 20.2107; and waste disposals, retained under the current § 20.2108 and previously retained under former § 20.401(c)(3); must also be transferred to the new licensee and that these records are to be forwarded to the Commission when all licensed activities cease and the license is terminated. Also, new paragraphs are proposed for §§ 61.30(a)(3) and 61.31(c)(1) to clarify that records required by §§ 61.80 (e) and (f) be transferred to the disposal site owner or to the party responsible for institutional control of the disposal site, respectively. To lessen the burden on licensees, the proposed rule would permit these records to be submitted electronically in accordance with guidance that will be issued by the NRC. Until such guidance is issued, licensees should contact NRC's Office of Information Resources Management for interim guidance prior to submittal of any records in electronic form. Finally, a new paragraph is proposed for §§ 30.36, 40.42, 70.38, and 72.54 to state that a license will not be terminated until the NRC receives the records required by proposed §§ 30.35(g), 30.51, 40.36(f), 40.61, 70.25(g), 70.51, 72.30(d), and 72.80.

When records are transferred from one licensee to another for the instance where licensed activities will continue at the same location under a new or amended license, the new licensee will be responsible for maintaining these records until the license is terminated. It is expected that very few licensees will fall into this category. The estimated burden per licensee is expected to be low and is discussed in the draft Regulatory Analysis.

In selecting records to include in this rulemaking, the NRC focused attention on information that would be needed by licensees and the NRC to evaluate offsite consequences from a previous licensee's operation or to effectively conduct decommissioning. There may be other records in addition to those identified above that would be needed by the new licensee to operate safely. The Commission is interested in comments identifying such records.

III. Agreement State Compatibility

The proposed rule will be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency between Federal and State safety requirements. The NRC is proposing that a Division 2 level of compatibility be assigned to allow the Agreement State regulators the flexibility to adopt similar or more stringent requirements based on their radiation protection experience, professional judgments, and community values.

IV. Finding of No Significant Environmental Impact: Availability

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(ii), recordkeeping requirements. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

The proposed action would require that records pertaining to waste disposals, public doses, and decommissioning be transferred to the new licensee whenever licensed activities will continue at the site, and that certain records be forwarded to the NRC at the end of licensed activities at the facility The proposed action is directed to improving the regulatory, licensing, inspection, and enforcement framework relating to these facilities where licensed activities will continue and to ensure that adequate information on the facility is retained after license termination.

V. Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (T–6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0014, 3150–0017, 3150–0020, 3150–0009, and 3150–0132, 3150–0135), Office of Management and Budget, Washington, DC 20503.

VI. Regulatory Analysis

The NRC has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The draft regulatory analysis is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft analysis may be obtained from Mary L. Thomas, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington,

DC 20555–0001, telephone: (301) 415–6230.

The NRC requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

VII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule would impose requirements on licensees who are terminating activities at their facility and the license would be transferred to a new licensee. These changes would require the transfer of records pertaining to waste disposals, public doses, and decommissioning to the new licensee. In addition, the proposed rule would require forwarding records to the NRC pertaining to waste disposals and public doses at license termination. Although the proposed rule would include all 24,000 licensees regulated by the NRC and the Agreement States, no new information would be collected. All of these records are already required to be maintained until the license is terminated by the Commission. These records would be needed to provide sufficient information to a new licensee to evaluate offsite consequences from previous licensee activities and to decommission the site effectively.

VIII. Backfit Analysis

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

List of Subjects

10 CFR Part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 30

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

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials—transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, and Uranium.

10 CFR Part 61

Low-level waste, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Criminal penalties, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Independent storage of spent fuel and high level waste, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, and Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 20, 30, 40, 61, 70, and 72.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236), secs. 201, as amended 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. In § 20.2107, paragraph (b) is revised to read as follows:

§ 20.2107 Records of dose to individual members of the public.

* * * * *

(b) The licensee shall retain the records required by paragraph (a) of this section until the Commission terminates each pertinent license requiring the record. Additional requirements for disposition of these records are specified in §§ 30.51, 40.61, 61.80, 70.51, and 72.80 for activities licensed under 10 CFR parts 30, 40, 61, 70 and 72.

2. In § 20.2108, paragraph (b) is revised to read as follows:

§ 20.2108 Records of waste disposal.

* * * * *

(b) The licensee shall retain the records required by paragraph (a) of this section until the Commission terminates each pertinent license requiring the record. Additional requirements for disposition of these records are specified in §§ 30.51, 40.61, 61.80, 70.51, and 72.80 for activities licensed under 10 CFR parts 30, 40, 61, 70 and 72.

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

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

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

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.35, the introductory text of paragraph (g) is revised to read as follows:

§ 30.35 Financial assurance and recordkeeping for decommissioning.

* * * * *

(g) Each person licensed under this part or parts 32 through 36, and 39 of this chapter shall keep records of information important to the decommissioning of a facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with § 30.34(b), the licensee shall transfer all records described in this paragraph to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the Commission considers important to decommissioning consists of—

* * * * *

3. In § 30.36, paragraph (j)(4) is added to read as follows:

§ 30.36 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(j) * * *

(4) Records required by §§ 30.35(g) and 30.51(d) have been received.

4. In § 30.51, paragraph (d) is added to read as follows:

§ 30.51 Records.

* * * * *

(d) The licensee shall retain each record that is required by the regulations in §§ 20.2107 and 20.2108 until the Commission terminates each pertinent license requiring the record. This includes records retained under the Standards for Protection Against Radiation in effect prior to January 1, 1994.[1]

(1) Before license termination, the licensee shall transfer all records described in this paragraph to the appropriate NRC regional office. To submit records in electronic format, contact the NRC's Office of Information Resources Management.

(2) If licensed activities are transferred or assigned in accordance with § 30.34(b), the licensee shall transfer all records described in this paragraph to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

5. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

6. In § 40.36, the introductory text of paragraph (f) is revised to read as follows:

§ 40.36 Financial assurance and recordkeeping for decommissioning.

* * * * *

(f) Each person licensed under this part shall keep records of information important to the decommissioning of a facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with § 40.41(b), the licensee shall transfer all records described in this paragraph to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the Commission considers important to decommissioning consists of—

* * * * *

7. In § 40.42, paragraph (j)(4) is added to read as follows:

§ 40.42 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(j) * * *

(4) Records required by §§ 40.36(f) and 40.61(d) have been received.

* * * * *

8. In § 40.61, paragraph (d) is added to read as follows:

§ 40.61 Records.

* * * * *

(d) The licensee shall retain each record that is required by the regulations in §§ 20.2107 and 20.2108 until the Commission terminates each pertinent license requiring the record. This includes records retained under the Standards for Protection Against Radiation in effect prior to January 1, 1994.[1]

(1) Before license termination, the licensee shall transfer all records described in this paragraph to the appropriate NRC regional office. To submit records in electronic format contact the NRC's Office of Information Resources Management.

(2) If licensed activities are transferred or assigned in accordance with § 40.41(b), the licensee shall transfer all records described in this paragraph to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

9. The authority citation for Part 61 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246, (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601 92 Stat. 2951 (42 U.S.C. 2021a and 5851) and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

10. In § 61.30, paragraph (a)(3) is revised to read as follows:

§ 61.30 Transfer of license.

(a) * * *

(3) That any funds for care and records required by §§ 61.80(e) and (f) be transferred to the disposal site owner.

11. In § 61.31, paragraph (c)(3) is added to read as follows:

§ 61.31 Termination of license.

* * * * *

(c) * * *

(3) That the records required by §§ 61.80(e) and (f) be transferred to the party responsible for institutional control of the disposal site and a copy be sent to the Commission immediately prior to license termination.

12. In § 61.80, paragraph (f) is revised to read as follows:

§ 61.80 Maintenance of records, reports, and transfers.

* * * * *

(f) Following receipt and acceptance of a shipment of radioactive waste, the licensee shall record the date of disposal of the waste, the location in the disposal site, the condition of the waste packages as received, any discrepancies between materials listed on the manifest and those received, and any evidence of leaking or damaged packages or radiation and contamination levels in excess of limits specified in Department of Transportation and Commission regulations. The licensee shall briefly describe any repackaging operations of any of the waste packages included in the shipment, plus any other information required by the Commission as a license condition. The licensee shall retain each record that is required by the regulations in §§ 20.2107 and 20.2108 until the Commission terminates each pertinent license requiring the record. This includes records retained under the Standards for Protection Against

[1] See § 20.401(c)(3) continued in the 10 CFR, parts 0 to 50, edition revised as of January 1, 1993.

[1] See § 20.401(c)(3) contained in the 10 CFR, parts 0 to 50, edition revised as of January 1, 1993.

Radiation in effect prior to January 1, 1994.[1]

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

13. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486 sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

14. In § 70.25, the introductory text of paragraph (g) is revised to read as follows:

§ 70.25 Financial assurance and recordkeeping for decommissioning.

* * * * *

(g) Each person licensed under this part shall keep records of information important to the decommissioning of a facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with § 70.32(a)(3), the licensee shall transfer all records described in this paragraph to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the Commission considers important to decommissioning consists of—

* * * * *

15. In § 70.38, paragraph (j)(4) is added to read as follows:

§ 70.38 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(j) * * *

(4) Records required by §§ 70.25(f) and 70.51(b)(6) have been received.

[1] See § 20.401(c)(3) contained in the 10 CFR, parts 0 to 50, edition revised as of January 1, 1993.

16. In § 70.51, paragraph (b)(6) is revised to read as follows:

§ 70.51 Material balance, inventory, and records requirements.

* * * * *

(b) * * *

(6) The licensee shall retain each record that is required by the regulations in § 20.2107 and § 20.2108 until the Commission terminates each pertinent license requiring the record. This includes records retained under the Standards for Protection Against Radiation.[1]

(i) Before license termination, the licensee shall transfer all records described in this paragraph to the appropriate NRC regional office. To submit records in electronic format contact the NRC's Office of Information Resources.

(ii) If licensed activities are transferred or assigned in accordance with § 70.32(a)(3), the licensee shall transfer all records described in this paragraph to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

17. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102 Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and Sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

[1] See § 20.401(c)(3) contained in the 10 CFR, parts 0 to 50, edition revised as of January 1, 1993.

18. In § 72.30, the introductory text of paragraph (d) is revised to read as follows:

§ 72.30 Financial assurance and recordkeeping for decommissioning.

* * * * *

(d) Each person licensed under this part shall keep records of information important to the decommissioning of a facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with § 72.44(b)(1), the licensee shall transfer all records described in this paragraph to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the Commission considers important to decommissioning consists of—

* * * * *

19. In § 72.54, paragraph (l)(3) is added to read as follows:

§ 72.54 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(l) * * *

(3) Records required by §§ 72.30(d) and 72.80(e) have been received.

20. In § 72.80, paragraph (e) is added to read as follows:

§ 72.80 Other records and reports.

* * * * *

(e) The licensee shall retain each record that is required by the regulations in §§ 20.2107 and 20.2108 until the Commission terminates each pertinent license requiring the record. This includes records retained under the Standards for Protection Against Radiation in effect prior to January 1, 1994.[1]

(1) Before license termination, the licensee shall transfer all records described in this paragraph to the appropriate NRC regional office. To submit records in electronic format contact the NRC's Office of Information Resources Management.

(2) If licensed activities are transferred or assigned in accordance with § 72.44(b)(1), the licensee shall transfer all records described in this paragraph to the new licensee. In this case, the new licensee will be responsible for

[1] See § 20.401(c)(3) codified as of January 1, 1993.

maintaining these records until the license is terminated.

Dated at Rockville, Maryland, this 12th day of December, 1994.

For the Nuclear Regulatory Commission.

James L. Milhoan,

Acting Executive Director for Operations.

[FR Doc. 94-31771 Filed 12-27-94; 8:45 am]

BILLING CODE 7590-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 356

RIN 3064-AA94

Insider Transactions—Conflicts of Interest

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule; withdrawal.

SUMMARY: The FDIC is withdrawing its proposed rule governing business dealings other than extensions of credit between an insured nonmember bank and its directors, executive officers, principal shareholders, and related interests of such persons. Several factors have led the FDIC to its decision to withdraw the proposed rule. These include an intervening federal statute and implementing regulations that have addressed many of the concerns contained in the proposal, overwhelmingly negative comments received in response to the proposed rule, and an FDIC policy statement recommending the withdrawal of proposed rules that have not been acted upon by the FDIC's Board of Directors within nine months of the date of proposal. The FDIC, in its discretion, will revisit the issue at a later date if the agency determines that such course of action is necessary or appropriate.

DATES: Proposed Part 356 is withdrawn on December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Senior Counsel, Legal Division (202-898-3730), Michael D. Jenkins, Examination Specialist, Division of Supervision (202-898-6896), or Lori J. Sommerfeld, Attorney, Legal Division (202-898-8515).

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1991, the FDIC published for comment a proposal (56 FR 37673) to add a new Part 356 to its regulations designed to address conflicts of interest in two areas: (1) business dealings, other than extensions of credit, between an insured state nonmember bank and its directors, executive officers and principal shareholders, as well as their related interests (bank insiders); and (2) business dealings in which an insured nonmember bank invests in real estate in which one of its insiders holds an equity interest. While the second category of transactions would have been strictly prohibited, the first category of business dealings would have been subject to an arms-length standard.

The impetus for the proposed rule was the FDIC's statistical finding that insider business dealings gave rise to unsafe and unsound banking practices that resulted in losses to the deposit insurance funds (see 56 FR 37674). The objective of the proposed rule was to prevent further losses from occurring. The proposed rule would have established certain requirements designed to ensure that business dealings between insured nonmember banks and bank insiders are conducted in an arm's length manner consistent with safe and sound banking and to ensure that such transactions receive adequate review and control by the bank's board of directors. The preliminary view adopted in the proposal was that risks arising from the conflicts of interest inherent in situations in which banks invest in real estate owned by insiders were so great that such business dealings should be prohibited. The rationale advanced for this prohibition was that real estate investment activities involve greater risk than at least some other activities in which banks engage and that those dangers are exacerbated when a bank insider has an interest in the real estate in question.

Other than losses to the deposit insurance funds, two other concerns prompted the 1991 proposal. First, the preamble stated that it was important for all members of an institution's management team to be cognizant of their responsibilities and to discharge those responsibilities in such a manner that would ensure the stability and soundness of the institutions they serve. Management must act so as to put the performance of their duties above personal gain and must never abuse their influence with respect to management of the institution. Second, the preamble expressed the FDIC's view that inadequate recordkeeping by banks contributes to insider abuse and that any type of investigation into such abuse is often hampered by the lack of adequate records. In typical cases of fraud and abuse, the institution lacked policies and procedures designed to detect insider involvement in transactions early enough to prevent the abuse from occurring. Tying the two concerns together, the preamble stated that a bank's board of directors is not properly discharging its fiduciary obligations unless it pays sufficient attention to recordkeeping and internal control issues.

Discussion

Several factors have led the FDIC to its decision to withdraw proposed Part 356. Most significantly, as a result of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102-242, 105 Stat. 2236), the FDIC now has several statutory and regulatory tools to combat the dangers inherent in transactions between bank insiders and their institutions that the agency lacked in 1991 when the proposed rule was issued. Specifically, FDICIA required the FDIC to promulgate rules governing three areas germane to the proposed rule: external audits (section 112 of FDICIA), safety and soundness standards (section 132 of FDICIA), and permissible state bank activities and investments (section 303 of FDICIA). The FDIC believes that these three regulations, when taken as a whole, adequately address many of the concerns articulated in the proposal. In addition, the FDIC received strongly negative comments in response to the proposed rule. Commenters cited increased recordkeeping burdens and costs and an inability to attract directors and officers if the rule were adopted. Moreover, an FDIC policy statement advises the withdrawal of any proposed rule that has not been acted upon by the FDIC's Board of Directors within nine months of issuance.

Pursuant to section 112 of FDICIA, the FDIC added a new Part 363 (12 CFR Part 363) to its regulations requiring external audits and audit committees for insured banks and thrifts. The final rule, issued on June 2, 1993 and effective July 2, 1993 (58 FR 31332), applies to institutions with $500 million or more in total assets as of the beginning of each fiscal year after December 31, 1992. The rule requires each covered institution to file an annual report with the FDIC, its primary federal regulator, and any appropriate state banking agency within 90 days after the end of its fiscal year. An independent accountant must also report separately on the institution's compliance with designated safety and soundness laws and regulations. The rule further requires each covered institution to establish an audit committee composed entirely of independent outside directors, who must review the annual audit findings with management and the independent public accountant.

Additional audit committee requirements are imposed upon "large institutions," defined as those having $3 billion or more in total assets.

Furthermore, section 132 of FDICIA added a new section 39 to the Federal Deposit Insurance Act (FDI Act, 12 U.S.C. 1831p-1, as amended by section 318(a) of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160) which requires the Federal bank and thrift supervisors to promulgate, either by regulation or guideline, certain safety and soundness standards for insured institutions and their holding companies. An interagency proposal issued on November 18, 1993 (58 FR 60802), if adopted, would articulate general safety and soundness standards in three categories mandated by FDICIA: (1) operations and management; (2) asset quality, earnings and stock valuation; and (3) employee compensation. However, the proposed rule leaves the specific methods for achieving the objectives of proper operations and management to each institution. The standards are designed to identify emerging safety and soundness problems and to require submission of a compliance plan before those problems become serious enough to impair capital. If an institution fails to meet a standard prescribed by guideline, the appropriate Federal banking agency may require the institution to submit an acceptable plan to achieve compliance with the standard.

Finally, section 303 of FDICIA added section 24 to the FDI Act which prohibits insured state-chartered banks from directly or indirectly acquiring or retaining any equity investments of a type or in an amount not permissible for national banks. Section 24, which became effective on the date of FDICIA's enactment (December 19, 1991), requires divestiture of prohibited equity investments as quickly as prudently possible, but no later than December 19, 1996. The FDIC issued a final rule adding a new Part 362 (12 CFR Part 362) to its regulations which implements section 24 on November 9, 1992 (57 FR 53211).

The FDIC believes that its regulations governing external audits and safety and soundness standards sufficiently address the recordkeeping and conflicts of interest concerns expressed in the proposed rule. Furthermore, the FDIC's rules governing permissible state bank investments effectively supplant the prohibition on real estate investment contained in the proposal. Therefore, the proposed rule is no longer necessary

In addition, the comments received in response to the proposed rule were overwhelmingly negative. In particular, 158 of the 213 comments received opposed the rule. Only 11 supported the proposal, and 42 commenters suggested modifying it. Nearly half of all commenters (106) argued that the proposal would adversely affect the ability of institutions to attract and retain directors and officers by placing unwarranted constraints on insider business transactions. Some commenters further asserted that the rule would have the adverse effect of discouraging any insider business dealings regardless of whether they were sound transactions. Seventy-six commenters criticized the proposed rule as creating tremendous recordkeeping burdens and costs on banks with minimal demonstrated benefit. Furthermore, 53 commenters characterized the proposal as unnecessary, maintaining that existing statutes and regulations provide adequate protection to address the proposal's concerns (*e.g.*, section 8 of the FDI Act, granting general enforcement authority (12 U.S.C. 1818); section 30 of the FDI Act, prohibiting contracts that would adversely affect the safety and soundness of insured institutions (12 U S.C. 1831g); and sections 23A and 23B of the Federal Reserve Act, imposing restrictions on transactions with affiliates (12 U.S.C. 371c and 371c-1)). These commenters insisted the problem was simply lax enforcement. Several commenters also opposed the prohibition on real estate investments in which an insider holds an equity interest, arguing that such investments should be subject to an arm's-length standard like any other insider transaction.

Lastly, the withdrawal is consistent with the FDIC's policy statement on Development and Review of FDIC Rules and Regulations (44 FR 31007, May 30, 1979) which calls for withdrawal of any proposed regulation on which final action by the FDIC's Board of Directors has not been taken within nine months from the date of proposal. Far more than nine months have elapsed since the proposed rule was adopted.

As a result of the intervening developments discussed above, the FDIC believes that most of the elements and concerns contained in the proposed rule have been adequately addressed. Therefore, the FDIC considers the proposal unnecessary at this juncture. The FDIC reserves the right, however, to revisit the issue at a later date if it determines that such action is required or appropriate. In accordance with the aforementioned FDIC policy statement, if the FDIC wishes at a later date to reconsider a proposed regulation that has been withdrawn, it will begin the rulemaking process anew (*i.e.*, republish in the **Federal Register**, resolicit public comment, etc.).

In consideration of the foregoing, the FDIC hereby withdraws proposed Part 356 of Title 12 of the Code of Federal Regulations.

By Order of the Board of Directors.

Dated at Washington, D.C. this 20th day of December, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–31707 Filed 12–27–94; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–39]

Airworthiness Directives; Rolls-Royce, plc RB.211 Series Turbofan 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 Rolls-Royce, plc (R–R) RB.211 series turbofan engines. This proposal would require removing and replacing the existing rigid low pressure (LP) fuel system tube assembly with a tube assembly having flexible sections and revised clip points to preclude cracking and subsequent fuel leakage. This proposal is prompted by multiple reports of fuel leaks. The actions specified by the proposed AD are intended to prevent a fuel system leak, which could result in rapid atomization of fuel and an engine fire.

DATES: Comments must be received by February 27, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–39, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Rolls-Royce, plc., P.O. Box 31, Derby,

England. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Daniel Kerman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7130, fax (617) 238–7199.

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 should 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–ANE–39." 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, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–39, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce, plc. (R-R) Models RB.211–535E4 series and -535E4–B series turbofan engines. The CAA advises that it has received multiple reports of fuel leaks. These fuel leaks have occurred due to fracture of the ferrule retainer of the existing low pressure (LP) fuel system tube assembly, which runs from the LP fuel filter to the inlet of the high pressure (HP) fuel pump. This condition, if not corrected, could result in a fuel system leak, which could result in rapid atomization of fuel and an engine fire.

In response to this problem the Boeing Aircraft Co. has issued an Operations Manual Bulletin (OMB) to provide the flight crew with enhanced fuel loss detection capability. The FAA made this OMB mandatory through Airworthiness Directive (AD) 94–09–10 in order to prevent fuel exhaustion due to undetected fuel leakage. In addition, R-R has issued Service Bulletin (SB) No. RB.211–73–B048, Revision 1, dated July 22, 1994, that specifies replacing the existing rigid LP fuel system tube assembly with a new soft mounting design that includes a flexible section at each end and revised clip points. Engineering analysis shows that the original rigid system under transient conditions is failure prone due to high stress levels that can induce low cycle fatigue cracking. The CAA classified this service bulletin as mandatory in order to assure the airworthiness of these R-R engines in the United Kingdom.

This engine model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for engines of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other R–R engines of the same type design registered in the United States, the proposed AD would require replacement of the LP fuel tube assembly. This new fuel tube assembly has been redesigned to incorporate a flexible mounting system at both ends and revised clip points, which reduce stress loading by providing multiple degrees of freedom in which to deflect, thus eliminating the rigid constraint of the fuel tube. The proposed compliance time of one year after the effective date of this AD has been established based on FAA review of past service history. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 558 engines of the affected design in the worldwide fleet. The FAA estimates that 292 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $1,000 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $324,120.

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:

Rolls-Royce, plc.: Docket No. 94–ANE–39.

Applicability: Rolls-Royce, plc. (R–R) Models RB.211–535E4 series and –535E4–B series turbofan engines, installed on but not limited to Boeing 757 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent a fuel system leak, which could result in rapid atomization of fuel and an engine fire, accomplish the following:

(a) Within one year after the effective date of this AD, remove the existing rigid low pressure (LP) fuel system tube assembly and replace with the new flexible LP fuel system tube design with revised clip points, in accordance with R–R Service Bulletin No. RB.211–73–B048, Revision 1, dated July 22, 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, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Issued in Burlington, Massachusetts, on December 14, 1994.

Kirk E. Gustafson,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–31871 Filed 12–27–94; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Early Warning Reporting Requirements for Futures Commission Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to amend Rule 1.12 to: make paragraph (g), which requires the reporting of certain reductions in adjusted net capital, applicable to all futures commission merchants ("FCMs"), rather than just those FCMs subject to the risk assessment reporting requirements of Rule 1.15; require reporting of a margin call that exceeds an FCM's excess adjusted net capital which remains unanswered by the close of business on the day following the issuance of the call; and require reporting by an FCM whenever its excess adjusted net capital is less than six percent of the maintenance margin required to support proprietary and noncustomer positions carried by the FCM.

DATES: Comments must be received on or before January 27, 1995.

ADDRESSES: Comments on the proposed rules should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581.

FOR FURTHER INFORMATION CONTACT: Paul H. Bjarnason, Chief Accountant, or Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581; telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1994, the Commission proposed Risk Assessment Rules for Holding Company Systems, 59 FR 9689. Certain portions of the rules were adopted by the Commission and are published elsewhere in this edition of the **Federal Register**. The proposed rules generally would have required, inter alia, FCMs to notify the Commission of certain events or transactions that would reduce or potentially reduce an FCM's net capital. The triggering events were originally proposed to be included in a new Rule 1.15. Several commenters suggested that the reporting of certain of these triggering events would more appropriately be part of the Commission's existing early warning reporting system set forth in Rule 1.12. The Commission agrees. Therefore, although it has adopted as part of the risk assessment rulemaking one of the triggering provisions relating to declines in capital at the FCM, the final rule is relocated in § 1.12(g) of the Commission's early warning rules.[1] As proposed and adopted, this rule would require only those FCMs which are required to file reports under Rule 1.15 also to report the triggering event specified in Rule 1.12(g). However, certain commenters had suggested that this triggering event should be applicable to all FCMs, not just those subject to the risk assessment rules. The Commission agrees and is hereby proposing to further amend Rule 1.12 to make the reporting of capital declines applicable to all FCMs and to make certain other changes to the early warning system as an adjunct to its risk assessment initiative.

Early Warning Rule

Reportable Events

The Commission has required FCMs[2] to report to the Commission and to the FCMs' designated self-regulatory organization ("DSRO") certain situations that involve an FCM's financial position, an FCM's procedures for safeguarding customer and firm assets, and its ability to monitor its financial position through an appropriate system of records and reports. The purpose of such reporting is to make the Commission and the FCM's DSRO aware of situations that have or potentially could have a negative impact on the FCM's ability to carry on normal business operations consistent with the Commission's prudential requirements and pose a potential threat to customer funds or the FCM's financial integrity. Receipt of such notices results in a heightened degree of surveillance over the FCM by the Commission and the DSRO. The situations to be reported include undercapitalization, the FCM's capital falling below its early warning level (*i.e.*, 150 percent of the minimum required), failure to maintain current books and records, the existence of material inadequacies in the FCM's accounting systems or internal controls, and the issuance of a margin call exceeding the FCM's adjusted net capital. Collectively, these are known as the Commission's early warning reporting requirements and are set forth in Rule 1.12.

Reductions in adjusted Net Capital

The Commission has now added to the list of reportable events under Rule 1.12 a new paragraph (g), requiring that certain FCMs (*i.e.*, those FCMs required to file risk assessment reports) report declines in capital which may not necessarily result in the FCM being undercapitalized or its capital declining below early warning levels, but which are sufficiently material to the FCM's regulatory capital as to warrant enhanced monitoring by the Commission and the FCM's DSRO. The reporting of such an event was initially proposed as a part of the Commission's

[1] The balance of the proposed trigger event provisions remains under consideration by the Commission.

[2] Section 1.12 requires reports from FCMs, introducing brokers ("IBs"), self-regulatory organizations ("SROs"), and exchange clearing organizations depending on the nature of the matter to be reported. The current changes relate only to reporting by FCMs. There are no changes proposed with respect to reporting requirements imposed on IBs, SROs, or clearing organizations.

March 1, 1994, rule proposals relating to risk management for holding company systems ("risk assessment rules")[3] and included in § 1.15(b)(2)(i) of those proposed rules. Several commenters noted that this reportable event would more appropriately be included in the Commission's § 1.12 early warning rule. The Commission has issued final rules on certain of the proposed risk assessment rules and in that connection, in accordance with these comments, adopted this reporting requirement as paragraph (g) of Rule 1.12. This action of the Commission is addressed elsewhere in this edition of the **Federal Register**.

As adopted, Rule 1.12(g) applies only to those FCMs which are required to file reports with the Commission under the risk assessment rules. Several commenters, including the Futures Industry Association and National Futures Association, suggested that the reporting requirement now in paragraph (g) be made applicable to all FCMs, not just those required to report under Rule 1.15. The Commission agrees that this reporting requirement serves to alert the Commission and DSRO to potential problems resulting from transactions that affect an FCM directly and therefore should not be limited to those FCMs subject to the risk assessment rules.[4] Since FCMs that believed they were not subject to the risk assessment rules may not have taken advantage of the opportunity to comment on the Commission's March 1994 risk assessment rule proposals, the Commission is publishing this proposed change to § 1.12(g) for comment.

The event to be reported, which is set forth in Rule 1.12(g), is the occurrence of any transaction or condition that results in a reduction of more than 20 percent in the adjusted net capital of the FCM from that reported in the most recent financial report filed with the Commission pursuant to Rule 1.10. If the decline in adjusted net capital is due to activities in the normal course of the FCM's business, the reduction is to be reported within two business days following the reduction in adjusted net capital. These are events that are not normally planned for in advance. However, where a transaction or series of transactions is planned to be taken which will reduce adjusted net capital by more than 20 percent, the notice must be filed at least two business days in advance of the transaction or series of transactions. This would permit Commission or DSRO staff to make further inquiries concerning the transaction before the transaction is effected to assure that the FCM has adequately considered the effect of the transaction on its overall liquidity. The rule does not provide for Commission approval or disapproval of the transaction prior to the FCM effecting the transaction, nor does it provide a means for the Commission to delay or prevent the FCM from carrying out the transactions.[5]

The Commission's early warning rules relating to an FCM's level of capital contemplate that the FCM will have systems in place to monitor its capital levels and its compliance with the Commission's net capital rules on a day-to-day basis. The Commission requires each FCM to be able to demonstrate its capital compliance at any time and not just on a required formal computation or filing date.[6] Consequently, the effect of planned transactions on net capital should be readily determinable.

The initial filing is to be made, pursuant to redesignated Rule 1.12(h), with the regional office of the Commission with which the FCM normally files its financial reports under Rule 1.10, with the principal office of the Commission in Washington, D.C., with the FCM's designated self-regulatory organization, and with the Securities and Exchange Commission if the FCM is also registered as a securities broker/dealer. Rule 1.12(g) also provides that, following receipt of a notice from an FCM, the Director of the Commission's Division of Trading and Markets, or the Director's designee, may request additional information concerning the effect of the reported event on the FCM's financial or operational condition. The FCM is required to provide such additional information within three business days, or sooner if the Commission believes prompter filing is needed to address the early warning condition and so requests.

Unanswered Margin Calls

In its March 1994 risk assessment rule proposal, the Commission had proposed to adopt Rule 1.15(b)(2)(iii), which would have required an FCM to notify the Division of Trading and Markets whenever aggregate cumulative losses in all noncustomer accounts exceeded the greater of: (A) in any 30-day period, 10 percent of the last reported consolidated stockholders' equity of the FCM's parent or $50 million, and (B) in any 12-month period, 20 percent of the last reported stockholders' equity of the FCM's parent or $100 million. The proposal was opposed by a number of commenters. Several commenters suggested that, as an alternative, an FCM be required to notify the Commission within two business days after a margin call to a noncustomer remains outstanding for two business days, if the margin call exceeds 20 percent of the FCM's adjusted net capital.

The original proposal was intended to require the reporting of holding company group losses that could adversely affect the regulatee, and as such the suggestions of the commenters are that a failure to pay margin is a proxy for such losses and more readily reportable using existing systems. The Commission therefore has determined to propose a narrower early warning notice requirement based upon an unsatisfied margin call on a customer, noncustomer or omnibus account that exceeds the firm's excess adjusted net capital. This notice would augment existing notice requirements by identifying potentially delinquent margin payments which could affect the firm's integrity. The Commission is therefore proposing that it be notified pursuant to paragraph (f)(4) of Rule 1.12 if the call to the account owner is not answered by the close of business on the day following the day the call is made. The Commission would also take account of favorable market moves in determining whether the margin call is required to be reported under this rule.

For purposes of this rule, a margin call would be taken to mean any deposit of funds required by the FCM to margin guarantee or secure a futures or commodity option position. Thus, if, with respect to an exchange-traded contract, the FCM requires a deposit in excess of the minimum required pursuant to exchange rules, that greater amount is the amount to be used in determining whether a call has been collected from an account holder. Although exchanges may exempt firms from the requirements of Commission Rule 1.12(f)(3), which requires notice of issuance of a margin call in excess of a

[3] 59 FR 9689.

[4] Certain exchanges have a similar requirement. See Chicago Mercantile Exchange ("CME") Rule 972A; Chicago Board of Trade Rule 285.03; New York Mercantile Exchange Rule 2.14(d) and Clearing Rule 9.22(c) (i) and (ii); Commodity Exchange, Inc. Rule 7.08(a); Coffee, Sugar and Cocoa Exchange, Inc. Clearing Rule 302(c)(i); Kansas City Board of Trade Rule 1311.00; Kansas City Board of Trade Clearing Corporation Rule 8.01(c); and Minneapolis Grain Exchange Rule 2088.00.

[5] See Securities and Exchange Commission Rule 240.15c3-1(e)(1), 17 CFR 240.15c3-1(e)(1) (1994), which requires a securities broker-dealer to provide notice two business days prior to withdrawals of equity capital that on a net basis exceed in the aggregate in any 30 calendar day period, 30 percent of the firm's excess net capital, or two business days after such withdrawals during any 30 calendar day period exceed 20 percent of the firm's excess net capital. The Commission requests comment as to whether Rule 1.12(g) should establish a mechanism by which the Commission could delay or prevent an FCM from carrying out the relevant transactions.

[6] See Commission Rules 1.17(a)(3)-(5) and 1.18(b), 17 CFR 1.17(a)(3)-(5) and 1.18(b) (1994).

firm's entire adjusted net capital, such waivers would not be permitted from the Rule 1.12(f)(4) notice requirement. The Commission also requests additional comment, however, on the originally proposed trigger event for which this was proposed as an alternative.

Maintenance Margin Factor

Some commenters on the Commission's risk assessment proposals also suggested that the Commission amend Rule 1.12 to add an early warning reporting requirement to require an FCM to report to the Commission whenever its excess adjusted net capital is less than 6 percent of the maintenance margin requirement applicable to positions in proprietary and noncustomers' accounts in lieu of certain other reports of losses in noncustomer accounts. These commenters noted that the CME imposes such a capital requirement on an informal basis on its clearing members. The Commission agrees that a similar provision should be included on an industry-wide basis as a part of the Commission's early warning rule.

For purposes of proposed paragraph (f)(5), "maintenance margin" includes all deposits which the FCM requires its noncustomers to maintain in order to carry a position at the futures commission merchant. With respect to an FCM's proprietary account positions, maintenance margin shall mean the amount of funds the FCM is required to maintain at the exchange's clearing organization or with its clearing broker, or 5 percent of the value of the contract, whichever is greater. The Commission requests comment on these standards for calculating maintenance margin for purposes of this rule.

This requirement is intended to address the risk attendant to positions not currently subject to the 4 percent and 6 percent factors applied to account equity in accounts of customers to establish minimum adjusted net capital requirements and early warning capital levels, respectively, for an FCM. An FCM that trades for its own account and handles accounts of noncustomers currently bears the risk of such positions, without any incremental increase in its net capital requirement over an FCM that does not do so. The Commission believes that that risk should be reflected in the early warning reporting requirement, which will represent some measure of that risk and apprise the Commission and DSROs that an FCM is carrying positions that bear a certain risk but are not factored into the adjusted net capital requirement.[7]

Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rules discussed herein will affect FCMs. The Commission already has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.[8] FCMs have been determined not to be small entities under the RFA. The Commission believes that the proposals, if adopted, would not have a significant economic impact on smaller entities.

Accordingly, pursuant to Rule 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that these proposed rules will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comment from any registered FCM who believes that these rules would have a significant impact on its operations.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA the Commission has submitted these proposed rules and its associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection, including these proposed rules, is as follows:

Average Burden Hours Per Response: 18.00
Number of Respondents: 1,782
Frequency of Response: annually, quarterly and on occasion

The burden associated with these proposed rules, is as follows:

Average Burden Hours Per Response: 1.00
Number of Respondents: 12
Frequency of Response: on occasion

Persons wishing to comment on the estimated paperwork burden associated with this proposed rule should contact Jeff Hill, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503 (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Office, 2033 K Street, NW., Washington, DC 20581, (202) 254–9735.

List of Subjects in 17 CFR Part 1

Commodity futures, Commodity options, Prohibited transactions.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular Sections 4f(b), 4f(c), 4g and 8a, 7 U.S.C. 6f(b), 6f(c), 6g, and 12a, the Commission hereby proposes to amend Part 1 of Chapter I of Title 17 of the Code of Federal Regulations as amended and published as a final rule elsewhere in this issue of the **Federal Register** as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

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

2. Section 1.12 is proposed to be amended by adding paragraphs (f)(4) and (f)(5) and by revising the first sentence of paragraph (g) introductory text to read as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

* * * * *

(f) * * * (4) A futures commission merchant shall report immediately whenever any commodity interest account it carries is subject to a margin call, or call for other deposits required by the futures commission merchant, that exceeds the futures commission merchant's excess adjusted net capital, determined in accordance with § 1.17, and such call has not been answered by the close of business on the day following the issuance of the call. This applies to all accounts carried by the futures commission merchant, whether customer, noncustomer, or omnibus, that are subject to margining, including commodity futures and options. In addition to actual margin deposits by an account owner, a futures commission merchant may also take account of favorable market moves in determining whether the margin call is required to be reported under this paragraph.

(5) A futures commission merchant shall report immediately whenever its excess adjusted net capital is less than

[7] The CME currently assesses clearing members an informal capital charge based on this amount as do bank regulators for bank-affiliated FCMs.

[8] 47 FR 18618–18621 (April 30, 1982).

6 percent of the total of: (i) the maintenance margin required by the futures commission merchant on all positions held in noncustomer accounts; and (ii) the maintenance margin applicable to all positions held in the futures commission merchant's proprietary accounts. For purposes of this paragraph, maintenance margin shall include all deposits which the futures commission merchant requires its noncustomers to maintain in order to carry the position at the futures commission merchant. With respect to a futures commission merchant's proprietary account positions, maintenance margin shall mean the amount of funds the futures commission merchant is required to maintain at the exchange's clearing organization or with its clearing broker, or 5 percent of the value of the contract, whichever is greater.

(g) A futures commission merchant shall provide written notice of any reduction in adjusted net capital in excess of 20 percent of the futures commission merchant's adjusted net capital as last reported in financial reports filed with the Commission pursuant to § 1.10. * * *

* * * * *

Issued in Washington, D.C. on December 21, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–31827 Filed 12–27–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA–42–93]

RIN 1545–AS93

Adjustments Required by Changes in Method of Accounting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations under sections 446(e) and 481 of the Internal Revenue Code of 1986 relating to the requirements for changes in a taxpayer's method of accounting. The proposed amendments conform existing regulations to the IRS's long-standing administrative procedures and practices for changing a taxpayer's method of accounting. The proposed amendments would affect taxpayers subject to sections 446(e) and 481.

DATES: Written comments must be received by February 27, 1995. Requests to appear and outlines of oral comments to be presented at the public hearing scheduled for March 10, 1995, at 10 a.m. must be received by February 17, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R:(IA–42–93), Room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, D.C. 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R(IA–42–93), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. The public hearing scheduled for March 10, 1995, will be held in the IRS Auditorium, 7th floor, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Rosemary DeLeone, 202–622–4930; concerning submissions and the hearing, Christina Vasquez, 202–622–6803. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to clarify rules under sections 446(e) and 481 regarding changes in method of accounting.

Explanation of Provisions

Section 446(e) states that, except as otherwise expressly provided, a taxpayer must secure the Commissioner's consent prior to computing its taxable income under a new method of accounting. Section 446(e) was enacted as part of the Internal Revenue Code of 1954, Pub. L. 591, 68A Stat. 1, to codify then-existing regulations that authorized the Commissioner to impose terms and conditions on voluntary changes in method of accounting (i.e., changes initiated by the taxpayer).

Section 481 was also enacted as part of the Internal Revenue Code of 1954, Pub. L. 591, 68A Stat. 1. Section 481(a) generally provides that in computing a taxpayer's taxable income for the year of a change in method of accounting, there shall be taken into account those adjustments which are determined to be necessary, solely by reason of the change, in order to prevent amounts from being duplicated or omitted. Under section 481(c), however, a section 481(a) adjustment may be taken into account in such manner and subject to such conditions as prescribed by the Commissioner.

As originally enacted, section 481 provided that the portion of the adjustment attributable to pre-1954 Code years was excluded from the required adjustment, regardless of whether the change was voluntary or involuntary. This exclusion enabled taxpayers to change from one permissible method to another permissible method or from an impermissible method to a permissible method without accounting for any duplication or omission of amounts that were attributable to pre-1954 Code years. When it became apparent that this provision was being abused, Congress amended section 481 in the Technical Amendments Act of 1958, Pub. L. 85–866, 72 Stat. 1606, Title 1, to provide that the section 481(a) adjustment would include amounts attributable to pre-1954 Code years if the change was voluntary, but would exclude such amounts if the change was required by the Commissioner.

Under the authority of sections 446(e) and 481(c), the IRS's long-standing administrative practice has been to provide specific adjustment periods under section 481(a) for voluntary changes in method of accounting. These adjustment periods are intended to achieve an appropriate balance between the goals of mitigating distortions of income that would otherwise occur by taking the section 481(a) adjustment into account entirely in the year of change and providing appropriate incentives for voluntary compliance. See, for example, Rev. Proc. 92–20, 1992–1 C.B. 685; Rev. Proc. 84–74, 1984–2 C.B. 736; Rev. Proc. 80–51, 1980–2 C.B. 818; and Rev. Proc. 70–27 1970–2 C.B. 509, *clarified*, Rev. Proc. 75–18, 1975–1 C.B. 687. With respect to involuntary changes in method of accounting, the IRS's long-standing administrative practice generally has been to require that the section 481(a) adjustments be taken into account in computing taxable income entirely in the year of change.

In order to conform existing regulations with the IRS's long-standing administrative practice regarding section 481(a) adjustments, certain amendments are provided in this notice of proposed rulemaking. Section 1.481–1(c) is amended to clarify that, generally, any section 481(a) adjustments attributable to a voluntary or involuntary change in method of accounting are taken into account in the taxable year of the change, regardless of whether the adjustments increase or decrease taxable income. However, sections 1.446–1(e)(3) and 1.481–5 are

also amended to clarify the Commissioner's authority to prescribe terms and conditions for effecting a change in method of accounting, including the taxable year or years in which any adjustment that is necessary to prevent amounts from being duplicated or omitted is taken into account. The terms and conditions that may be prescribed by the Commissioner may include terms and conditions that require the change in method of accounting to be effected on a cut-off basis.

Finally, because the Tax Reform Act of 1986, Pub. L. 99–514, 100 Stat. 2085, redesignated the Internal Revenue Code of 1954 as the Internal Revenue Code of 1986, certain references to the Internal Revenue Code of 1954 contained in §§ 1.481–1, 1.481–2, 1.481–3, and 1.481–5 are revised to reflect the redesignation. In addition, §§ 1.481–1, 1.481–2, 1.481–3, 1.481–4, 1.481–5, and 1.481–6 are revised to remove certain obsolete provisions.

Effective Date

These regulations are proposed to be effective for Consent Agreements signed on or after December 27, 1994.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Friday, March 10, 1995, at 10 a.m., in the IRS Auditorium, 7th floor, 1111 Constitution Avenue, N.W., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by February 27, 1995 and submit an outline (a signed original and eight copies) of the topics to be discussed and the time to be devoted to each topic by February 17, 1995. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Rosemary DeLeone, Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for section 1.446–1 and by adding the following citations:

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

Section 1.446–1 also issued under 26 U.S.C. 446 and 461(h). * * *

Section 1.481–1 also issued under 26 U.S.C. 481.

Section 1.481–2 also issued under 26 U.S.C. 481.

Section 1.481–3 also issued under 26 U.S.C. 481.

Section 1.481–4 also issued under 26 U.S.C. 481.

Section 1.481–5 also issued under 26 U.S.C. 481.

Par. 2. Section 1.446–1 is amended as follows:

1. Paragraph (e)(3) is revised to read as follows:

§ 1.446–1 General rule for methods of accounting.

* * * * *

(e) * * *

(3)(i) Except as otherwise provided under the authority of paragraph (e)(3)(ii) of this section, to secure the Commissioner's consent to a taxpayer's change in method of accounting the taxpayer must file an application on Form 3115 with the Commissioner within 180 days after the beginning of the taxable year in which the taxpayer desires to make the change in method of accounting. To the extent applicable, the taxpayer must furnish all information requested on the Form 3115. This information includes all classes of items that would be treated differently under the new method of accounting, any amounts that would be duplicated or omitted as a result of the proposed change, and the taxpayer's computation of any adjustments necessary to prevent such duplications or omissions. The Commissioner may require such other information as may be necessary to determine whether the proposed change will be permitted. Permission to change a taxpayer's method of accounting will not be granted unless the taxpayer agrees to the Commissioner's prescribed terms and conditions for effecting the change, including the taxable year or years in which any adjustment necessary to prevent amounts from being duplicated or omitted is to be taken into account. See section 481 and the regulations thereunder, relating to certain adjustments resulting from accounting method changes and section 472 and the regulations thereunder, relating to adjustments for changes to and from the last-in, first-out inventory method.

(ii) Notwithstanding the provisions of paragraph (e)(3)(i) of this section, the Commissioner may prescribe administrative procedures under which taxpayers will be permitted to change their method of accounting. The administrative procedures shall prescribe those terms and conditions necessary to obtain the Commissioner's consent to effect the change and to prevent amounts from being duplicated or omitted. The terms and conditions that may be prescribed by the Commissioner may include terms and conditions that require the change in method of accounting to be effected on a cut-off basis or by an adjustment under section 481(a) to be taken into account in the taxable year or years prescribed by the Commissioner.

(iii) This paragraph (e)(3) is effective for Consent Agreements signed on or after February 27, 1995. For Consent Agreements signed before December 27, 1994, see § 1.446–1(e)(3) as contained in the 26 CFR Part 1 edition revised as of April 1, 1994.

Par. 3. Section 1.481–1 is amended as follows:

1. Paragraph (a)(2) is amended by adding the phrase "(hereinafter referred

to as "pre-1954 years")" to the end of the sentence.

2. The third sentence of paragraph (c)(1) is amended by removing "pre-1954 Code years" and replacing it with "pre 1954 years".

3. Paragraphs (c)(2), (3), and (4) are revised.

4. Paragraph (c)(6) is removed.

5. Paragraph (c)(7) is removed.

6. Paragraph (d) is revised.

7. Paragraph (e) is removed.

8. The revised paragraphs read as follows:

§ 1.481–1 Adjustments in general.

* * * * *

(c) * * *

(2) If a change in method of accounting is voluntary (i.e., initiated by the taxpayer), the entire amount of the adjustments required by section 481(a) is generally taken into account in computing taxable income in the taxable year of the change, regardless of whether the adjustments increase or decrease taxable income. See, however, § 1.446–1(e)(3) and 1.481–4 which provide that the Commissioner may prescribe the taxable year or years in which the adjustments are taken into account.

(3) If the change in method of accounting is involuntary (i.e., not initiated by the taxpayer), then only the amount of the adjustments required by section 481(a) that is attributable to taxable years beginning after December 31, 1953, and ending after August 16, 1954, (hereinafter referred to as "post-1953 years") is taken into account. This amount is generally taken into account in computing taxable income in the taxable year of the change, regardless of whether the adjustments increase or decrease-taxable income. See, however, §§ 1.446–1(e)(3) and 1.481–4 which provide that the Commissioner may prescribe the taxable year or years in which the adjustments are taken into account. See also § 1.481–3 for rules relating to adjustments attributable to pre-1954 years.

(4) For any adjustments attributable to post-1953 years that are taken into account entirely in the year of change and that increase taxable income by more than $3,000, the limitations on tax provided in sections 481(b)(1) or (2) apply. See § 1.481–2 for rules relating to the limitations on tax provided by sections 481(b) (1) and (2).

* * * * *

(d) Any adjustments required under section 481(a) that are taken into account during a taxable year must be properly taken into account for purposes of computing gross income, adjusted gross income, or taxable income in determining the amount of any item of gain, loss, deduction, or credit that depends on gross income, adjusted gross income, or taxable income.

Par. 4. Section 1.481–2 is amended as follows:

1. The first and second sentences of paragraph (a) are revised.

2. The first sentence of paragraph (b) introductory text is revised.

3. The first sentence of paragraph (c)(1) is revised.

4. The first sentence of paragraph (c)(2) is amended by removing "subparagraph (1) of this paragraph" and replacing it with "paragraph (c)(1) of this section".

5. Paragraph (c)(3) introductory text is amended by removing "subparagraph (1) of this paragraph" and replacing it with "paragraph (c)(1) of this section"

6. Paragraph (c)(4) is revised.

7. Paragraph (c)(6) is amended by removing "Internal Revenue Code of 1954" and replacing it with "Internal Revenue Code of 1986"

8. The second sentence of paragraph (d) is amended by removing "Internal Revenue Code of 1954" and replacing it with "Internal Revenue Code of 1986"

9. *Example* (1) of paragraph (d) is amended by removing "pre-1954 Code years" and replacing it with "pre-1954 years" every place that it appears.

10. The revised paragraphs read as follows:

§ 1.481–2 Limitation on tax.

(a) *Three-year allocation.* Section 481(b)(1) provides a limitation on the tax under chapter 1 of the Internal Revenue Code for the taxable year of change that is attributable to the adjustments required under section 481(a) and § 1.481–1 if the entire amount of the adjustments is taken into account in the year of change. If such adjustments increase the taxpayer's taxable income for the taxable year of the change by more than $3,000, then the tax for such taxable year that is attributable to the adjustments shall not exceed the lesser of the tax attributable to taking such adjustments into account in computing taxable income for the taxable year of the change under section 481(a) and § 1.481–1, or the aggregate of the increases in tax that would result if the adjustments were included ratably in the taxable year of the change and the two preceding taxable years. * * *

(b) *Allocation under new method of accounting.* Section 481(b)(2) provides a second alternative limitation on the tax for the taxable year of change under chapter 1 of the Internal Revenue Code that is attributable to the adjustments required under section 481(a) and § 1.481–1 where such adjustments increase taxable income for the taxable year of change by more than $3,000.

* * *

(c) *Rules for computation of tax.* (1) The first step in determining whether either of the limitations described in sections 481(b)(1) or (2) applies is to compute the increase in tax for the taxable year of the change that is attributable to the increase in taxable income for such year resulting solely from the adjustments required under section 481(a) and § 1.481–1.

* * * * *

(4) The tax for the taxable year of the change shall be the tax for such year, computed without taking any of the adjustments referred to in paragraph (c)(1) of this section into account, increased by the smallest of the following amounts:

(i) The amount of tax for the taxable year of the change attributable solely to taking into account the entire amount of the adjustments required by section 481(a) and § 1.481–1;

(ii) The sum of the increases in tax liability for the

(ii) The sum of the increases in tax liability for the taxable year of the change and the two immediately preceding taxable years that would have resulted solely from taking into account one-third of the amount of such adjustments required for each of such years as though such amounts had been properly attributable to such years (computed in accordance with paragraph (c)(2) of this section); or

(iii) The net increase in tax attributable to allocating such adjustments under the new method of accounting (computed in accordance with paragraph (c)(3) of this section).

* * * *

Par. 5. Section 1.481–3 is amended as follows:

1. Remove "pre-1954 Code years" and replace it with "pre-1954 years" from the section heading and every place it appears in the section.

2. Remove the last sentence of the section which reads "See section 481(b)(4)(A).".

Par. 6. Section 1.481–4 is removed.

Par. 7. Section 1.481–5 is redesignated as § 1.481–4 and is revised to read as follows:

§ 1.481–4 Adjustments taken into account with consent.

(a) In addition to the terms and conditions prescribed by the Commissioner under § 1.446–1(e)(3) for effecting a change in method of accounting, including the taxable year or years in which the amount of the adjustments required by section 481(a)

is to be taken into account, or the methods of allocation described in section 481(b), a taxpayer may request approval of an alternative method of allocating the amount of the adjustments under section 481. See section 481(c). Requests for approval of an alternative method of allocation shall set forth in detail the facts and circumstances upon which the taxpayer bases its request. Permission will be granted only if the taxpayer and the Commissioner agree to the terms and conditions under which the allocation is to be effected. See § 1.446–1(e) for the rules regarding how to secure the Commissioner's consent to a change in method of accounting.

(b) An agreement to the terms and conditions of a change in method of accounting under § 1.446–1(e)(3), including the taxable year or years prescribed by the Commissioner under that section (or an alternative method described in paragraph (a) of this section) for taking the amount of the adjustments under section 481(a) into account, shall be in writing and shall be signed by the Commissioner and the taxpayer. It shall set forth the items to be adjusted, the amount of the adjustments, the taxable year or years for which the adjustments are to be taken into account, and the amount of the adjustments allocable to each year. The agreement shall be binding on the parties except upon a showing of fraud, malfeasance, or misrepresentation of material fact.

Par. 7. A new section 1.481–5 is added to read as follows:

§ 1.481–5 Effective dates.

Sections 1.481–1, 1.481–2, 1.481–3, and 1.481–4 are effective for Consent Agreements signed on or after December 27, 1994. For Consent Agreements signed before December 27, 1994, see §§ 1.481–1, 1.481–2, 1.481–3, and 1.481–4 as contained in the 26 CFR Part 1 edition revised as of April 1, 1994.

Par. 8. Section 1.481–6 is removed.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–31531 Filed 12–27–94; 8:45 am]

BILLING CODE 4830–01–P

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26 CFR Part 300

[PS–39–94]

RIN 1545–AS84

User Fees

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to user fees for certain services provided to specific persons and implements the Independent Offices Appropriations Act (IOAA).

DATES: Written comments must be received by January 27, 1995. Requests to speak at the public hearing scheduled for January 20, 1995, must be received by January 17, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (PS–39–94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (PS–39–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing and submission of written comments, Carol Savage, (202) 622–8452; concerning costing methodology, Robert Miller (202) 535–9701(x3222); concerning installment agreements, Kevin Connelly (202) 622–3640 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The IOAA, codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations that establish charges for services provided by the agency (user fees). The charges must be fair and be based on the costs to the Government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA expressly provides that regulations implementing user fees "are subject to policies prescribed by the President * * *"

The FY 1995 Appropriations Bill for the Treasury Department (the 1995 Appropriations Bill) includes a provision relating to the establishment of new fees for services provided by the IRS if the fees are authorized by another law, such as the IOAA.

Since 1959, the Office of Management and Budget (OMB) has issued policy guidance on user fees through Circular A–25 (the OMB Circular). See *FPC* v. *New England Power Co.*, 415 U.S. 345, 349–51. (1974) (citing the OMB Circular). On July 15, 1993, OMB issued a revised version of the OMB Circular in the Federal Register (58 FR 38142), which provides updated policy guidance on user fees. Under the OMB Circular, user fees for Government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public are encouraged. The amount of the user fee imposed should recover the cost for providing the special benefit or the value of the special benefit.

For these proposed fees, the IRS followed the guidance provided by the OMB Circular and the relevant court cases in calculating the costs of the services provided. Under the OMB Circular, each agency is to include in its calculation of the cost of providing a benefit:

(1) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement.

(2) Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment.

(3) Management and supervisory costs.

(4) The costs of enforcement, collection, research, establishment of standards, and regulation, including any environmental impact statements.

Establishment of User Fees

Pursuant to the IOAA, the OMB Circular, and the 1995 Appropriations Bill, the IRS is proposing user fees for the following services that confer a special benefit on identifiable recipients: (1) entering into an installment agreement, and (2) restructuring or reinstating an installment agreement.

Section 300.1 of these regulations proposes to impose a $43 fee for entering into an installment agreement The taxpayer entering into the installment agreement is the person that would be liable for the fee.

Section 300.2 of these regulations proposes to impose a $24 fee for restructuring or reinstating an installment agreement. The taxpayer that has an installment agreement restructured or reinstated is the person that would be liable for the fee.

These regulations do not propose procedures relating to paying any fee. Subsequent guidance will provide that information.

Effective Date

These regulations are proposed to be effective thirty days after the date of publication in the **Federal Register** of the final regulations. Depending on the exact publication schedule, the effective date is estimated to be March 3, 1995.

Entering Into Installment Agreements

Section 6159 of the Internal Revenue Code authorizes the IRS to enter into a

written agreement with any taxpayer for the payment of that taxpayer's outstanding tax obligation in installments. Each taxpayer that enters into an installment agreement receives the special benefit of being allowed to pay an outstanding tax obligation over time rather than immediately.

Before entering into an installment agreement, the IRS must first determine whether such an agreement is appropriate, then set up the agreement, process payments, and monitor for conformance with the agreement.

The amount of the proposed installment agreement fee has been determined by using activity-based costing. In a 1993 study, the IRS analyzed the work activities related to establishing new installment agreements at both the Service Center (pre-assessment) and District Office levels (post assessment). The costs incurred in establishing new installment agreements at Service Centers and District Offices were averaged in computing a uniform fee. Projected costs for program start-up and training and software maintenance were developed. Lockbox and remittance processing costs (based on an historic average of 8.5 payments per agreement) were calculated. These figures were added to the initial activity-based costing totals. The activity-based methodology did not include some indirect cost elements (primarily executive support) which were then calculated at a 2.3% indirect cost rate. Based on this costing methodology, the proposed installment agreement fee is $43.

Restructuring or Reinstating Installment Agreements

When a taxpayer fails to meet any of the conditions of an installment agreement, that agreement is deemed to be in default. The IRS has the right to terminate an installment agreement in default. Each taxpayer that has an installment agreement restructured or reinstated receives not only the special benefit of being allowed to pay an outstanding tax obligation over time rather than immediately but also the special benefit of avoiding a potential enforcement action, including but not limited to the filing of liens and the making of levies.

Before restructuring or reinstating an installment agreement, the IRS must monitor for nonconformance, analyze the cause(s) of default, correspond with the taxpayer, analyze the taxpayer's responses, and, if appropriate, restructure or reinstate the agreement.

The amount of the proposed restructuring or reinstatement fee was calculated by determining direct labor costs and overhead labor costs derived from the IRS' Work Planning and Control tracking system, standard correspondence and postage costs incurred in preparing and mailing certified notices, and an indirect cost factor representing support cost. Examining program history through fiscal year 1993, the IRS estimated the total number of installment agreements likely to be restructured or reinstated in fiscal year 1995 as approximately 150,000. Based on this costing methodology, the proposed restructuring or reinstatement fee is $24.

Special Analyses

Although it has been determined that this notice of proposed rulemaking is a significant regulatory action as defined in EO 12866, the Office of Management and Budget has waived the preparation of a regulatory assessment. Because no substantive changes were made to these regulations subsequent to their submission to the Office of Management and Budget, the provisions of section 6(a)(3)(E) of EO 12866 do not apply. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. The economic impact of these regulations on any small entity would result from the entity being required to pay a fee prescribed by these regulations in order to obtain a particular service. However, due to the small dollar amount of each of these fees, the economic impact on any entity subject to one of the fees would not be significant. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Friday, January 20, 1995, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Requests to speak at the hearing must be received by January 17, 1995.

Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving requests to speak has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries) and Tom Baker, Office of Assistant Chief Counsel (General Legal Services). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 300

User fees, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 300 is proposed to be added to read as follows:

PART 300—USER FEES

Sec.
300.0 User fees; in general.
300.1 Installment agreement fee.
300.2 Restructuring or reinstatement of installment agreement fee.

Authority: 31 U.S.C. 9701.

§ 300.0 User fees; in general.

(a) *In general.* The regulations in this part 300 are designated the User Fee Regulations and provide rules relating to user fees under 31 U.S.C. 9701.

(b) *Applicability.* User fees are imposed on the following services:

(1) Entering into an installment agreement.

(2) Restructuring or reinstating an installment agreement.

(c) *Effective date.* This part 300 is effective thirty days after the date of publication of the final regulations.

§ 300.1 Installment agreement fee.

(a) *Applicability.* These regulations apply to installment agreements under section 6159 of the Internal Revenue Code.

(b) *Fee.* The fee for entering into an installment agreement is $43.

(c) *Person liable for fee.* The person liable for the installment agreement fee is the taxpayer entering into an installment agreement.

§ 300.2 Restructuring or reinstatement of installment agreement fee.

(a) *Applicability.* These regulations apply to installment agreements under section 6159 of the Internal Revenue Code that are in default. An installment agreement is deemed to be in default when a taxpayer fails to meet any of the conditions of the installment agreement.

(b) *Fee.* The fee for restructuring or reinstating an installment agreement is $24.

(c) *Person liable for fee.* The person liable for the restructuring or reinstatement fee is the taxpayer that has an installment agreement restructured or reinstated.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–31819 Filed 12–27–94; 2:46 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 90

[OJP No. 1015]

RIN 1121–AA27

Grants to Combat Violent Crimes Against Women

AGENCY: Department of Justice, Office of Justice Programs.

ACTION: Proposed Rule.

SUMMARY: This proposed rule implements and requests comments on the Grants to Combat Violence Against Women Program as authorized by sections 2001 through 2006 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by Title IV, Section 40121 of the Violent Crime Control and Law Enforcement Act of 1994.

DATE: Comments on this proposed rule must be received on or before February 27, 1995.

ADDRESS: All comments concerning these proposed regulations should be addressed to the Office of the General Counsel, Office of Justice Programs, Room 1245, 633 Indiana Avenue NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Response Center at 1–800–421–6770 or (202) 301–1480.

SUPPLEMENTARY INFORMATION: The Violence Against Women Act (VAWA), is enacted by the 103rd Congress, is set out in Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103–322, 108 Stat. 1796 (Sept. 13, 1994). VAWA, in part, amends the Omnibus Crime Control and Safe Streets Act of 1968, as amended (the Omnibus Act), 42 U.S.C. 3711 et seq. by adding a new 'Part T'. Part T comprises Sections 2001 through 2006, to be codified at 42 U.S.C. 3796gg through 3796gg–5. Unless otherwise specified, statutory references to those provisions will be to the Sections in Part T of the Omnibus Act, as amended by VAWA.

This new program authorizes FY 1995 Federal financial assistance to States for developing and strengthening effective law enforcement and prosecution strategies and victim services in cases involving violent crimes against women. Units of local government, Indian tribal governments and non-profit, non-governmental victim service programs are eligible to apply directly to the Office of Justice Programs for discretionary grants under Subpart C of these regulations.

Statement of the Problem

There are three aspects to violence against women in the United States which reflect the compelling nature of the problem. First, there are a tremendous number of incidents of violent crimes against women, many of which are often hidden and under-reported. The following statistics taken from the Bureau of Justice Statistics' 1994 data from the National Crime Victimization Survey, and a recent Bureau of Justice Statistic report, Violence Against Women (January 1994), paint a grim picture of violence against women in America:

- Over two-thirds of violent crimes committee against women were committed by someone known to them.
- Over 1 million women a year are victims of violence perpetrated by husbands or boyfriends.
- Every year, nearly 500,000 women age 12 or older are victims of rape or attempted rape.
- Data from 1992 show that one-third of all female murder victims over age 14 were killed by an intimate, such as a boyfriend, spouse, or ex-spouse.
- Over half of the family violence crime victimizations result in injuries to the victim; female victims are more likely to sustain injuries at the hands of intimates than strangers.
- Less than half of all violent crime against women is ever reported to law enforcement officials.
- Over one-fifth of those convicted of intimate violent offenses reported having been physically or sexually abused during childhood.
- Over one-third of those incarcerated for harming an intimate had a previous conviction for a violent offense.

Second, it is only recently that society has begun to view violence against women as a serious criminal problem. In domestic violence cases, where the victim knows the perpetrator, there has been a tendency to consider the matter a private dispute and not a crime for public scrutiny or judgment. Even when the violence comes at the hands of a stranger, as in many cases of sexual assault, the incident has too often been blamed more on the victim than on the perpetrator.

The third aspect of the problem lies in the traditional response by the justice system to incidents of violence against women. Existing criminal justice and victim services efforts to alleviate the problem have been fragmented due to lack of resources and/or coordination. Consequently, the criminal justice system has too often not been responsive to women in domestic violence and sexual assault cases.

The Violence Against Women Act of 1994

VAWA reflects a firm commitment towards working to change the criminal justice system's response to violence that occurs when any women is threatened or assaulted by someone with whom she has or has had an intimate relationship, with whom she was previously acquainted, or who is a stranger. By committing significant Federal resources and attention to issues of violence against women, VAWA can assist the nation's criminal justice system in responding to the needs and concerns of women who have been, or potentially could be, victimized by violence.

Law Enforcement and Prosecution Grants To Reduce Violent Crimes Against Women

For FY 1995, Congress appropriated $26 million to the Department of Justice as a down payment towards assistance to combat violent crimes against women. Part T authorizes an appropriation of $130 million for FY 1996 and increasing amounts in following years.

Thus, the $26 million appropriation for FY 1995 is the initial step of a multi-year program designed to encourage States to implement innovative and effective criminal justice approaches to this problem. VAWA enumerates the following seven broad purpose areas for which funds may be used:

(1) training for law enforcement officers and prosecutors to identify and respond more effectively to violent

crimes against women, including crimes of sexual assault and domestic violence;

(2) developing, training, or expanding units of law enforcement officers and prosecutors specifically targeting violent crimes against women;

(3) developing and implementing more effective police and prosecution policies and services for preventing and responding to violent crimes against women;

(4) developing and improving data collection and communications systems linking police, prosecutors, and courts or for purposes of identifying and tracking arrests, protection orders, violations of protection orders, prosecutions, and convictions;

(5) developing, expanding, or improving victim services programs, including improved delivery of such services for racial, cultural, and ethnic minorities, and providing specialized domestic violence court advocates;

(6) developing and enhancing programs addressing stalking; and

(7) developing and enhancing programs addressing the special needs and circumstances of Indian tribes in dealing with violent crimes against women.

Additionally, by statute, 4% of the of the amount appropriated each year is available for Indian tribal governments through a discretionary program. For FY 1995, this program will fund up to fifteen to twenty programs. Tribes, which may apply individually or as a consortium in order to maximize resources, are encouraged to develop programs which address their unique needs.

A Coordinated and Integrated Approach to the Problem

By definition, a coordinated and integrated approach suggests a partnership among law enforcement, prosecution, the courts, victim advocates and service providers. The goal of this program is to encourage States and localities to restructure and strengthen the criminal justice response to be pro-active in dealing with this problem; to draw on the experience of all the players in the system, including the advocate community; and to develop a comprehensive set of strategies to deal with this complex problem. The development of such strategies necessitates collaboration among police, prosecutors, the courts, and victim services providers. Thus, the program requires that jurisdictions draw into the planning process the experience of nongovernmental victim services and State domestic violence and sexual assault coalitions, as well as existing domestic violence and sexual assault task forces and coordinating councils, in addition to police, prosecutors and the courts. Examples of innovative approaches include those:

- Instituting comprehensive training programs to change attitudes that have traditionally prevented the criminal justice system from adequately responding to the problem.
- Forming specialized units within police departments and prosecutors' offices, or specialized multi-disciplinary units, devoted exclusively to the handling of domestic violence and sexual assault cases.
- Establishing sexual trauma units in emergency rooms where forensic examinations, victim counseling, and victim advocacy are equally available.
- Developing strategies that maximize resources by establishing regional approaches, such as the registration and enforcement of protective orders across jurisdictional lines.
- Establishing protocols to achieve better coordination in the handling of cases involving violence against women between civil and criminal courts.
- Establishing and expanding victim services that address the special needs of women from minority and ethnic communities, women who are disabled, or women who do not speak English.

Eligibility Requirements Applicable To The States

To be eligible to receive grants under this program, States must develop plans which comply with the requirements set out in VAWA. Although grant amounts are limited for FY 1995, States should plan their VAWA activities with a view to implementing a continuing program over the next several years.

First, States will have to demonstrate how they plan each year to distribute their grant funds. At least 25% must be allocated to law enforcement, 25% to prosecution, and 25% to victim services programs. Section 2002(c)(3). Second, priority must be given to areas within the State of varying geographic size with the greatest showing of need. Need is based on population and the availability of existing domestic violence and sexual assault programs in the population and geographic area to be served. Section 2002(e)(2)(C). States must insure equitable geographic distribution among urban, non-urban, and rural areas. They must also address the needs of populations previously underserved due to geographic location, racial or ethnic barriers, or special needs such as language barriers or physical disabilities. Section 2002(e)(2)(D). States are encouraged to develop preliminary multi-year plans for the disbursement of funds based on geography, need, and underserved populations to achieve a balanced distribution, consistent with the statute, over the life of the program extending through FY 2000.

Third, in their applications, States and Indian tribal governments must certify that they (or another level of government) will incur the full out-of-pocket costs for forensic medial exams involving sexual assault victims. Section 2005(a)(1). Additionally, each State and Indian tribal government must also provide certification that their laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, that the victim bear the costs associated with the filing of criminal charges against the domestic violence offender, or the costs associated with the issuance or service of a warrant, protection order, and witness subpoena. Section 2006(a)(1). If the latter condition is not satisfied, States and Indian tribal governments must provide assurances that they will be in compliance by September 13, 1996, or at the end of the next legislative session, whichever is later.

Finally, an important goal of the legislation is to create vehicles for the various participants in the system to begin a dialogue. To help foster this communication, States are required to consult and coordinate with non-profit, non-governmental victim services programs, including sexual assault and domestic violence victim services programs.

Indian Tribal Governments Discretionary Program

Indian tribal governments are eligible recipients for these funds either through the States as subgrantees or directly from the Office of Justice Programs through a small discretionary program. As described, the Office of Justice Programs will make grants to States and the State will make funds available to units of local government, Indian tribal governments and non-profit, non-governmental victim services programs. In addition, VAWA requires that 4% of the total funds be set aside for Indian tribal governments. These funds may be used for the same general purposes set out for the State recipients in the block grant program.

Tribes will be invited to make individual applications, or apply as a consortium or as an inter-tribal group. VAWA defines Indian tribes to include both those with and without law enforcement authority. Section 2003(3). Consequently, the requirement applicable to State block grants, that at least 25% of the total grant award be allocated respectively to law

enforcement, prosecution, and victim assistance, would not be applicable to Indian tribal governments that do not have law enforcement authority. Nonetheless, program plans should be developed through consultation with tribal law enforcement, prosecutors, courts, and victims services to the extent they exist. Tribal applicants are also encouraged to integrate into their plans traditional models of dispute resolution such as peacemaker forums. Additionally, tribes may want to develop a domestic violence code, if one is not already in place, to facilitate the implementation of strategies which have reduced violence against women in other court systems.

Funding limits the number of discretionary grants in FY 1995 to approximately fifteen to twenty awards. To be eligible for funding under the discretionary program, Indian tribal governments must comply with the forensic exam cost and the filing and serving fee requirements applicable to the State block grant program.

Technical Assistance and Training/ Evaluation

The Office of Justice Programs intends to assist States and Indian tribal governments in meeting the program goal of developing effective coordinated and integrated strategies. A small portion of the funds provided under this program has been set aside to provide specialized training and technical assistance to States and units of local government and Indian tribal governments to help restructure the system's response to violence against women.

Further, consistent with the statute, the Office of Justice Programs, in conjunction with the National Institute of Justice, will evaluate the effectiveness of the programs established with these funds. Recipients of grants must agree to cooperate with Federally-sponsored evaluations of their projects. In addition, the Attorney General is required by VAWA to report to Congress on a profile of the persons served, the programs funded, and their effectiveness. Program recipients must therefore specifically provide a statistical summary of persons served, detailing the nature of victimization, and providing data on age, relationship of victim to offender, geographic distribution, race, ethnicity, language, and disability. Additionally, program recipients are expected to cooperate with any investigations or audits performed by components of the Department of Justice, including the Civil Rights Division or the Office of the Inspector General.

Request for Comments

The Office of Justice Programs seeks to fulfill Congressional intent by soliciting, encouraging and incorporating comments on all aspects of this program while ensuring that the statutory limitations are applied appropriately to all recipients. Comments are specifically solicited on, but not limited to, the following issues:

(1) The scope of the impact on States, units of local government, and Indian tribal governments of the mandate, contained in § 90.14 of subpart B of this regulation, that exempts sexual assault victims from paying out-of-pocket expenses with regard to forensic medical exams.

(2) Whether the scope of the services identified in § 90.2(b) of subpart A (the definition of forensic exam) of this proposed regulation adequately covers the needs of victims and prosecutors.

(3) The special needs of Indian tribal governments in implementing the discretionary grant program.

(4) The scope of the impact on States, units of local government, and Indian tribal governments of the mandate, contained in § 90.15 of subpart B of this regulation, prohibiting the imposition of criminal court-related costs on domestic violence victims,and proposed timetables for States, local governments and Indian tribal governments in meeting this mandate.

(5) Approaches to addressing allocation and distribution requirements applicable to States, as set out in § 90.16 of subpart B, in making subgrants to units of local government.

A detailed Program Announcement for the States for FY 1995 will be available in March 1995. An Application Kit for Indian tribal governments will also be available in March 1995.

Administrative Requirements

The Office of Justice Programs has determined that this rule is a "significant regulatory action" for purposes of Executive Order 12866 and, accordingly, this rule has been reviewed by the Office of Management and Budget.

In addition, this rule will not have a significant impact on a substantial number of small entities; therefore, an analysis of the impact of these rules on such entities is not required by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

No information requirements are contained in this rule. Any information collection requirements contained in future application notices for this program will be reviewed by the Office of Management and Budget, as is required by provisions of the Paperwork Reduction Act, 44 U.S.C. 3504(h).

List of Subjects

Grant programs, Judicial administration. For the reasons set out in the preamble, Title 28, Chapter I of the Code of Federal Regulations is proposed to be amended by adding the new part 90 as set forth below.

PART 90—VIOLENCE AGAINST WOMEN

Subpart A—General Provisions

Sec.
90.1 General.
90.2 Definitions.

Subpart B—Grants to Combat Violence Against Women Program

90.10 Description of Grants To Combat Violence Against Women.
90.11 Program criteria.
90.12 Eligible purposes.
90.13 Eligibility.
90.14 Rape exam payment requirement.
90.15 Filing costs for criminal charges.
90.16 Availability and allocation of funds.
90.17 Matching requirements.
90.18 Non-supplantation.
90.19 State Office.
90.20 Application content.
90.21 Evaluation.
90.22 Review of state applications.
90.23 Grantee reporting.

Subpart C—Discretionary Grants for Indian Tribal Governments

90.50 Indian tribal governments discretionary program.
90.51 Program criteria for Indian tribal government discretionary grants.
90.52 Eligible purposes.
90.53 Eligibility of Indian tribal governments.
90.54 Allocation of funds.
90.55 Matching requirements.
90.56 Non-supplantation.
90.57 Application content.
90.58 Evaluation.
90.58 Grantee reporting.

Authority: Title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3711 *et seq.*, as amended by Pub. L. No. 103–322.

Subpart A—General Provisions

§ 90.1 General.

(a) This part implements provisions of the Violence Against Women Act (VAWA), which was enacted by Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103–322 (Sept. 13, 1994).

(b) Subpart B of this part defines program eligibility criteria and sets forth requirements for application for and administration of formula grants to States to combat violent crimes against women. This program under VAWA was enacted as a new "Part T" of Title

I of the Omnibus Crime Control and Safe Streets Act of 1968 (the Omnibus Act), codified at 42 U.S.C. 3796gg through 3796gg–5. Units of local government, Indian tribal governments, and non-profit, non-governmental victim services programs are eligible to apply for subgrants from this program.

(c) Indian tribal governments are eligible to receive assistance as part of the State program pursuant to subpart B of this part. In addition, Indian tribal governments may apply directly for discretionary grants under subpart C of this part.

§ 90.2 Definitions.

(a) *Domestic violence.* As used in this part, *domestic violence* includes felony or misdemeanor crimes of violence (including threats or attempts) committed:

(1) By a current or former spouse of the victim;

(2) By a person with whom the victim shares a child in common;

(3) By a person who is co-habitating with or has co-habitated with the victim as a spouse;

(4) By a person similarly situated to a spouse of the victim under domestic or family violence laws of the jurisdiction receiving grant monies; or

(5) By any other adult person against a victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction receiving grant monies. Section 2003(1).

(b) *Forensic medical examination.* The term *forensic medical examination* means:

(1) All medical diagnostic procedures performed for a sexual assault victim, including, but not limited to:

(i) Examination of physical trauma;

(ii) Determination of penetration, force, or lack of consent;

(iii) Patient interview; and

(iv) Collection and evaluation of evidence.

(2) The records and test results of such diagnostic procedures and evidence collection must be obtained in a manner suitable for use in a court of law.

(c) *Indian tribe.* The term *Indian Tribe* means a tribe, band, pueblo, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation [as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)], that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. Section 2003(3).

(d) *Law enforcement.* The term law enforcement means a public agency charged with policing functions, including any of its component bureaus (such as governmental victim services programs). Section 2003(4).

(e) *Prosecution.* For purpose of this program the term *prosecution* means any public agency charged with direct responsibility for prosecuting criminal offenders, including such agency's component bureaus such as governmental victim services programs. Section 2003(5).

(f) *Sexual assault.* The term *sexual assault* means any conduct proscribed by chapter 109A of Title 18, United States Code, and includes both assaults committed by offenders who are strangers to the victim and assaults committed by offenders who are known or related by blood or marriage to the victim. Section 2003(6).

(g) *State.* The term *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(h) *Unit of local government.* For the purpose of subpart B, of this part, the term *unit of local government* means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, or Indian tribe which performs law enforcement functions as determined by the Secretary of Interior, for the purpose of assistance eligibility, any agency of the District of Columbia government or the United States Government performing law enforcement functions in and for the District of Columbia and the Trust Territory of the Pacific Islands.

(i) *Victim services.* The term *victim services* means a private non-profit non-government organization that assists domestic violence and sexual assault victims, including rape crisis centers, battered women's shelters, and other sexual assault or domestic violence programs, such as non-profit, non-governmental organizations assisting domestic violence or sexual assault victims through the legal process. Section 2003(8).

Subpart B—Grants To Combat Violence Against Women Program

§ 90.10 Description of grants to combat violence against women.

It is the purpose of this program to assist States, Indian tribal governments, and units of local government to develop and strengthen effective law enforcement and prosecution strategies to combat violent crimes against women, and to develop and strengthen victim services in cases involving violent crimes against women. Section 2001(a).

§ 90.11 Program criteria.

(a) The Assistant Attorney General for the Office of Justice Programs is authorized to make grants to the States, for use by States, Indian tribal governments, units of local government and non-profit, non-governmental victim services programs for the purpose of developing and strengthening effective law enforcement and prosecution strategies to combat violent crimes against women, and to develop and strengthen victim services in cases involving violent crimes against women.

(b) States and localities shall develop plans for implementation and shall consult and coordinate with non-profit, non-governmental victim services programs, including sexual assault and domestic violence victim services programs. Section 2002(c)(2). The goal of the planning process is the enhanced coordination and integration of law enforcement, prosecution, and victim services in the prevention, identification, and response to cases involving violence against women. States and localities are encouraged to include Indian tribal governments in developing their plans. States and localities should, therefore, consider the needs of Indian tribal governments in developing their law enforcement, prosecution and victims services in cases involving violence against women. services in cases involving violence against women. Indian tribal governments may also be considered subgrantees of the State. Section 2002(a).

§ 90.12 Eligible purposes.

(a) *In general.* Grants under this program shall provide personnel, training, technical assistance evaluation, data collection and equipment for the more widespread apprehension, prosecution, and adjudication of persons committing violent crimes against women.

(b) *Eligible purposes.* Section 2001(b). Grants under the program may be used for the following purposes:

(1) Training law enforcement officers and prosecutors to more effectively identify and respond to violent crimes against women, including the crimes of sexual assault and domestic violence;

(2) Developing, training, or expanding units of law enforcement officers and prosecutors specifically targeting violent crimes against women, including the crimes of sexual assault and domestic violence;

(3) Developing and implementing more effective police and prosecution policies, protocols, orders, and services specifically devoted to preventing, identifying, and responding to violent crimes against women, including the crimes of sexual assault and domestic violence;

(4) Developing, installing, or expanding data collection and communication systems, including computerized systems, linking police, prosecutors, and courts or for the purpose of identifying and tracking arrests, protection orders, violations of protection orders, prosecutions, and convictions for violent crimes against women, including the crimes of sexual assault and domestic violence;

(5) Developing, enlarging, or strengthening victim services programs, including sexual assault and domestic violence programs; developing or improving delivery of victim services to racial, cultural, ethnic, and language minorities; providing specialized domestic violence court advocates in courts where a significant number of protection orders are granted; and increasing reporting and reducing attrition rates for cases involving violent crimes against women, including crimes of sexual assault and domestic violence;

(6) Developing, enlarging, or strengthening programs addressing stalking; and

(7) Developing, enlarging, or strengthening programs addressing the needs and circumstances of Indian tribes in dealing with violent crimes against women, including the crimes of sexual assault and domestic violence.

§ 90.13 Eligibility.

(a) All States are eligible to apply for, and to receive, grants to combat violent crimes against women under this program. Indian tribal governments, units of local government, and non-profit, non-governmental victim service programs may receive subgrants from the States under this program.

(b) For the purpose of this subpart B, American Samoa and the Commonwealth of the Northern Mariana Islands shall be considered as one State and, for these purposes, 67% of the amounts allocated shall be allocated to American Samoa, and 33% to the Commonwealth of the Northern Mariana Islands.

§ 90.14 Rape exam payment requirement.

(a) For the purpose of this subpart B, a State, Indian tribal government or unit of local government shall not be entitled to funds under this program unless the State, Indian tribal government, unit of local government, or another governmental entity incurs the full costs of forensic medical exams for victims of sexual assault. Section 2005(a)(1).

(b) A State, Indian tribal government, or unit of local government shall be deemed to incur the full cost of forensic medical exams for victims of sexual assault if that governmental entity or some other:

(1) Provides such exams to victims free of charge;

(2) Arranges for victims to obtain such exams free of charge; or

(3) Reimburses victims for the cost of such exams if:

(i) The reimbursement covers the full cost of such exams, without any deductible requirement or limit on the amount of reimbursement;

(ii) The governmental entity permits victims to apply for reimbursement for not less than one year from the date of the exam;

(iii) The governmental entity provides reimbursement not later than ninety days after written notification of the victim's expense; and

(iv) The governmental entity provides information at the time of the exam to all victims, including victims with limited or no English proficiency, regarding how to obtain reimbursement. Section 2005(b).

§ 90.15 Filing costs for criminal charges.

(a) A State shall ot be entitled to funds under this subpart B unless it:

(1) Certifies that its laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, that the victim bear the costs associated with the filing of criminal charges against the domestic violence offender, or the costs associated with the issuance or service of a warrant, protection order, and witness subpoena; or

(2) Assures that its laws, policies and practices will be in compliance with the requirements of paragraph (a)(1) of this section by the date on which the next session of the State legislature ends, or by September 13, 1996, whichever is later.

(b) An Indian tribal government or unit of local government shall not be eligible for subgrants from the State unless it complies with the requirements of paragraph (a) of this section with respect to its laws, policies and practices.

(c) If a State does not come into compliance within the time allowed in paragraph (a)(2) of this section, the State will not receive its share of the grant money whether or not individual units of local government are in compliance.

§ 90.16 Availability and allocation of funds.

(a) Section 2002(b) provides for the allocation of the amounts appropriated for this program as follows:

(1) *Allocation to Indian tribal governments.* Of the total amounts appropriated for this program, 4% shall be available for grants directly to Indian tribal governments. This program is addressed in subpart C of this part.

(2) *Allocation to States.* Of the total amounts appropriated for this program in any fiscal year, after setting aside the portion allocated for discretionary grants to Indian tribal governments covered in paragraph (a)(1) of this section, and setting aside a portion for evaluation, training and technical assistance, a base amount shall be allocated for grants to eligible applicants in each State. After these allocations are made, the remaining funds will be allocated to each State on the basis of the State's relative share of total U.S. population. For purposes of determining the distribution of the remaining funds, the most accurate and complete data complied by the U.S. Bureau of the Census shall be used.

(3) *Allocation of funds within the State.* Funds granted to qualified States are to be further subgranted by the State to agencies and programs including, but not limited to State agencies, public or private non-profit organizations, units of local government, Indian tribal governments, non-profit, non-governmental victim services programs, and legal services programs to carry out programs and projects specified in § 90.12.

(b) In distributing funds received under this part, States must:

(1) Give priority to areas of varying geographic size with the greatest showing of need. In assessing need, States must consider the range and availability of existing domestic violence and sexual assault programs in the population and geographic area to be served in relation to the avalability of such programs in other such populations and geographic areas. Applications submitted by a State for program funding must include a proposal which delineates the method by which States will distribute funds within the State to assure compliance with this requirement on an annual or multi-year basis. Section 2002(e)(2)(A).

(2) Take into consideration the population of the geographic area to be served when determining subgrants. Section 2002(e)(2)(B). Applications submitted by a State for program funding must include a proposal which delineates the method by which States will distribute funds within the State to assure compliance with this

requirement on an annual or multi-year basis.

(3) Equitably distribute monies on a geographic basis, including non-urban and rural areas of various geographic sizes. Section 2002(e)(2)(C). Applications submitted by the State for program funding must include a proposal which delineates the method by which States will distribute funds within the State to assure compliance with this requirement on an annual or multi-year basis.

(4) In disbursing monies, States must ensure that the needs of previously underserved populations are identified and addressed in its funding plan. Section 2002(e)(2)(D). For the purposes of this program, underserved populations include, but are not limited to, populations underserved because of geographic location (such as rural isolation), underserved racial or ethnic populations, and populations underserved because of special needs due to language barriers or physical disabilities. Section 2003(7). Each State has flexibility to determine its basis for identifying underserved populations, which may include public hearings, needs assessments, task forces, and U.S. Bureau of Census data. Applications submitted by the States for program funding must include a proposal which delineates the method by which States will distribute funds within the State to assure compliance with this requirement on an annual or multi-year basis.

(c) States must certify that a minimum of 25% of each year's grant award (75% total) will be allocated, without duplication, to each of the following areas: prosecution, law enforcement, and victim services. Section 2002(c)(3). This requirement applies to States and does not apply to individual subrecipients, or Indian tribal governments.

§ 90.17 Matching requirements.

A grant made under the State formula program may not be expended for more than 75% of the total costs of the projects specified in a State's application submission. Section 2002(f). The States are expected to submit a budget which identifies the source of the 25% non-Federal portion of the budget. The non-Federal expenditures must be committed for each funded project and cannot be derived from other Federal funds. States may satisfy this 25% match through in-kind services. Indian tribes, who are subgrantees of a State under this program, may meet the 25% matching requirement for programs under this subpart B by using funds appropriated by Congress for the activities of any agency of an Indian tribal government or for the activities of the Bureau of Indian Affairs performing law enforcement functions on any Indian lands. All funds designated as match are restricted to the same uses as the Violence Against Women Program funds and must be expended within the grant period.

§ 90.18 Non-supplantion.

Federal funds received under this part shall be used to supplement, not supplant non-Federal funds that would otherwise be available for expenditure on activities described in this part. Section 2002(c)(4).

§ 90.19 State office.

(a) Statewide plan and application. The chief executive of each participating State shall designate a State office for the purposes of:

(1) Certifying qualifications for funding under this subpart B;

(2) Developing a statewide plan for implementation of the grants to combat violence against women in consultation and coordination with non-profit, non-governmental victim services programs, including sexual assault and domestic violence service programs;

(3) preparing an application to obtain funds under this subpart B;

(b) Administration and fund disbursement. In addition to the duties specified by paragraph (a) of this section the office shall:

(1) Administering funds received under this subpart B, including receipt, review, processing, monitoring, progress and financial report review, technical assistance, grant adjustments, accounting, auditing and fund disbursements; and

(2) Coordinating the disbursement of funds provided under this part with other State agencies receiving Federal, State, or local funds for domestic or family violence and sexual assault prosecution, prevention, treatment, education, and research activities and programs.

§ 90.20 Application content.

(a) *Format.* Applications from the States for grants to Combat Violence Against Women must be submitted on Standard Form 424, Application for Federal Assistance, at a time specified by the Office of Justice Programs. The Office of Justice Programs will request the Governor of each State to identify which State agency should receive the Application Kit. The Application Kit will include a Standard Form 424, a list of assurances that the applicant must agree to, a table of fund allocations, and additional guidance on how to prepare and submit an application for grants under this subpart.

(b) *Programs.* Applications must set forth programs and projects which meet the purposes and criteria of the Grants to Combat Crimes Against Women program set out in §§ 90.11 and 90.12 on an annual or multi-year basis.

(c) *Requirements.* Applicants in their applications shall at the minimum

(1) Include documentation from non-profit, non-governmental victim services programs describing their participation in developing the plan as provided in § 90.19(a);

(2) Include documentation from prosecution, law enforcement, and victim services programs to be assisted, demonstrating the need for grant funds, the intended use of the grant funds, the expected results from the use of grant funds, and demographic characteristics of the populations to be served, including age, marital status, disability, race, ethnicity and language background. Section 2002(d)(1);

(3) Include proof of compliance with the requirements for rape exam payments as provided in § 90.14(a);

(4) Include proof of compliance with the requirements for filing and service costs for domestic violence cases as provided in § 90.15; and

(5) Describe how the State and its subgrantees will provide for evaluation of programs funded under this subpart, as provided in § 90.21(b), and agree to cooperate with the National Institute of Justice in a Federally-sponsored evaluation.

(d) *Certifications.* (1) As required by Section 2002(c) each State must certify in its application that it has met the requirements of this subpart regarding the use of funds for eligible purposes (§ 90.12); allocation of funds for prosecution, law enforcement, and victims services § 90.16(c)); non-supplantation (§ 90.18); and the development of a statewide plan and consultation with victim services programs (§ 90.19(a)(2)).

(2) Each State must certify that all the information contained in the application is correct, that all submissions will be treated as a material representation of fact upon which reliance will be placed, that any false or incomplete representation may result in suspension or termination of funding, recovery of funds provided, and civil and/or criminal sanctions.

§ 90.21 Evaluation.

(a) The National Institute of Justice will conduct an evaluation of these programs. A portion of the overall funds authorized under this grant program will be set aside for this purpose.

Recipients of funds under this Subpart must agree to cooperate with Federally-sponsored evaluations of their projects.

(b) Recipients of program funds are strongly encouraged to develop a local evaluation strategy to assess the impact and effectiveness of the program funded under this subpart. Applicants should consider entering into partnerships with research organizations that are submitting simultaneous grant applications to the National Institute of Justice for this purpose.

§ 90.22 Review of State Applications.

(a) *Review criteria.* The provisions of Part T of the Omnibus Act and of these regulations provide the basis for review and approval or disapproval of State applications and amendments in whole or in part.

(b) *Intergovernmental review.* This program is covered by Executive Order 12372 (Intergovernmental Review of Federal Programs) and implementing regulations at 28 CFR part 30. A copy of the application submitted to the Office of Justice Programs should also be submitted at the same time to the State's Single Point of Contact, if there is a Single Point of Contact.

(c) *Written notification and reasons for disapproval.* The Office of Justice Programs shall approve or disapprove applications within sixty days of official receipt and shall notify the applicant in writing of the specific reasons for the disapproval of the application in whole or in part. Section 2002(e)(1).

§ 90.23 Grantee Reporting.

(a) Upon completion of the grant period under this subpart, a State shall file a performance report with the Assistant Attorney General for the Office of Justice Programs explaining the activities carried out, including an assessment of the effectiveness of those activities in achieving the purposes of this part.

(b) A section of the performance report shall be completed by each grantee and subgrantee that performed the direct services contemplated in the application, certifying performance of direct services under the grant. Section 2002(h)(2).

(c) The Assistant Attorney General shall suspend funding for an approved application if:

(1) An applicant fails to submit an annual performance report;

(2) Funds are expended for purposes other than those described in this subchapter; or

(3) A report under this Section or accompanying assessments demonstrate to the Assistant Attorney General that the program is ineffective or financially unsound.

Subpart C—Discretionary Grants for Indian Tribal Governments

§ 90.50 Indian Tribal Governments Discretionary Program.

(a) Indian tribal governments are eligible to receive assistance as part of the State program pursuant to subpart B of this part. In addition, Indian tribal governments may also apply directly to the Office of Justice Programs for discretionary grants under this Subpart, based on Section 2002(b)(1).

(b) Indian tribal governments under the Violence Against Women Act (VAWA) do not need to have law enforcement authority. Thus, the requirements, applicable to State formula grants under Subpart B that at least 25% of the total grant award be allocated to law enforcement and 25% to prosecution, are not applicable to Indian tribal governments which do not have law enforcement authority.

§ 90.51 Program Criteria for Indian Tribal Government Discretionary Grants.

(a) The Assistant Attorney General for the Office of Justice Programs is authorized to make grants to Indian tribal governments for the purpose of developing and strengthening effective law enforcement and prosecution strategies to combat violent crimes against women, and to develop and strengthen victim services in cases involving violent crimes against women.

(b) Grantees shall develop plans for implementation and shall consult and coordinate with, to the extent that they exist, tribal law enforcement; prosecutors; courts; and non-profit, non-governmental victim services programs, including sexual assault and domestic violence victim services programs. The goal of the planning process should be to achieve better coordination and integration of law enforcement, prosecution, and victim services in the prevention, identification, and response to cases involving violence against women.

§ 90.52 Eligible Purposes.

(a) Grants under this program may provide personnel, training, technical assistance, evaluation, data collection and equipment for the more widespread apprehension, prosecution, and adjudication of persons committing violent crimes against women.

(b) Grants may be used for the following purposes (Section 2001(b)):

(1) Training law enforcement officers and prosecutors to identify and respond more effectively to violent crimes against women, including the crimes of sexual assault and domestic violence;

(2) Developing, training, or expanding units of law enforcement officers and prosecutors specifically targeting violent crimes against women, including the crimes of sexual assault and domestic violence;

(3) Developing and implementing more effective police and prosecution policies, protocols, orders, and services specifically devoted to preventing, identifying, and responding to violent crimes against women, including the crimes of sexual assault and domestic violence;

(4) Developing, installing, or expanding data collection and communication systems, including computerized systems, linking police, prosecutors, and courts or for the purpose of identifying and tracking arrests, protection orders, violations of protection orders, prosecutions, and convictions for violent crimes against women, including the crimes of sexual assault and domestic violence;

(5) Developing, enlarging, or strengthening victim services programs, including sexual assault and domestic violence programs; providing specialized domestic violence court advocates in courts where a significant number of protection orders are granted; and increasing reporting and reducing attrition rates for cases involving violent crimes against women, including crimes of sexual assault and domestic violence;

(6) Developing, enlarging, or strengthening programs addressing stalking; and

(7) Developing, enlarging, or strengthening programs addressing the needs and circumstances of Indian tribes in dealing with violent crimes against women, including the crimes of sexual assault and domestic violence.

§ 90.53 Eligibility of Indian Tribal Governments.

(a) *General.* Indian tribes as defined by Section 90.2 of this Part shall be eligible for grants under this Subpart.

(b) *Rape exam payment requirement.* (1) An Indian tribal government shall not be entitled to funds under this program unless the Indian tribal government (or other governmental entity) incurs the full costs of forensic medical exams for victims of sexual assault.

(2) An Indian tribal government shall be deemed to incur the full cost of forensic medical exams for victims of sexual assault if, where applicable, it meets the requirements of § 90.14(b) or establishes that another governmental entity is responsible for providing the

services or reimbursements meeting the requirements of § 90.14(b).

(c) *Filing costs for criminal charges requirement.* An Indian tribal government shall not be entitled to funds under this Part unless the Indian tribal government:

(1) Certifies that its laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, that the victim bear the costs associated with the filing of criminal charges against the domestic violence offender, or the costs associated with the issuance or service of a warrant, protection order, witness subpoena; or

(2) Assures that its laws, policies and practices will be in compliance with the requirements of paragraph (a) of this section by September 13, 1996. (Section 2006).

§ 90.54 Allocation of Funds.

(a) 4% of the total amounts appropriated for this program under Section 2002(b) shall be available for grants directly to Indian tribal governments.

(b) Indian tribal governments may make individual applications, or apply as a consortium.

(c) Limited funding restricts the awarding of grants to approximately fifteen to twenty awards in FY 1995. The selection process will be sensitive to the differences among tribal governments and will take into account the applicants' varying needs in addressing violence against women.

§ 90.55 Matching Requirements.

A grant made to an Indian tribal government under this subpart C may not be expended for more than 75% of the total costs of the projects specified in the application. Applicants should submit a budget which identifies the source of the 25% matching funds. Funds appropriated by the Congress for the activities of any agency of an Indian tribal government or the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide matching share of the cost of programs or projects funded. An Indian tribal government may also satisfy the 25% match through in-kind services. All funds designated as match are restricted to the same uses as the grant funds and must be expended within the grant period.

§ 90.56 Non-supplantation.

Federal funds received under this part shall be used to supplement, not supplant funds that would otherwise be available for expenditure on activities described in this part. (Section 2002(c)(4))

§ 90.57 Application Content.

(a) *Format.* Applications from the Indian tribal groups for discretionary grants to Combat Violence Against Women must, under this subpart, be submitted on Standard Form 424, Application for Federal Assistance, at a time specified by the Office of Justice Programs.

(b) *Programs.* (1) Applications must set forth programs and projects for a one year period which meet the purposes and criteria of the Grants to Combat Crimes Against Women program set out in Section 2001(b) and § 90.12.

(2) Plans should be developed by consulting with tribal law enforcement, prosecutors, courts, and victim services, to the extent that they exist. Applicants are also encouraged to integrate into their plans traditional models of dispute resolution, such as peacemaker forums. Additionally, tribes may want to develop a domestic violence code, if one is not already in place, to facilitate the implementation of strategies which have reduced violence against women in other court systems.

(c) *Requirements.* Applicants in their applications shall at the minimum:

(1) Describe the project or projects to be funded.

(2) Agree to cooperate with the National Institute of Justice in a Federally-sponsored evaluation of their projects,

(d) *Certifications.* (1) As required by Section 2002(c) each Indian tribal government must certify in its application that it has met the requirements of this subpart regarding the use of funds for eligible purposes (§ 90.52); and non-supplantation (§ 90.56).

(2) A certification that all the information contained in the application is correct, that all submissions will be treated as a material representation of fact upon which reliance will be placed, that any false or incomplete representation may result in suspension or termination of funding, recovery of funds provided, and civil and/or criminal sanctions.

§ 90.58. Evaluation.

The National Institute of Justice will conduct an evaluation of these programs.

§ 90.59 Grantee Reporting.

(a) Upon completion of the grant period under this part, an Indian tribal grantee shall file a performance report with the Assistant Attorney General for the Office of Justice Programs explaining the activities carried out, including an assessment of the effectiveness of those activities in achieving the purposes of this subpart. Section 2002(h)(1).

(b) The Assistant Attorney General shall suspend funding for an approved application if:

(1) An applicant fails to submit an annual performance report;

(2) Funds are expended for purposes other than those described in this subchapter; or

(3) A report under this Section or accompanying assessments demonstrate to the Assistant Attorney General that the program is ineffective or financially unsound.

Laurie Robinson,

Assistant Attorney General, Office of Justice Programs.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the New Mexico regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for New Mexico's proposed rules pertain to the exemption for coal extraction incidental to the extraction of other minerals. The amendment is intended to revise the New Mexico program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., m.s.t., January 12, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Thomas E. Ehmett at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive

one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Thomas E. Ehmett, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102.

New Mexico Energy & Minerals Department, Mining and Minerals Division, 2040 South Pacheco Street, Santa Fe, New Mexico 87505, Telephone: (505) 827–5970.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated October 26, 1994, New Mexico submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. NM–716). New Mexico submitted the proposed amendment in response to a February 7, 1990, letter (administrative record No. NM–563) that OSM sent to New Mexico in accordance with 30 CFR 732.17(c). New Mexico did so with the intent of making its rules consistent with corresponding Federal regulations. New Mexico proposed new rules to implement Sections 69–25A–1 through 35 of the New Mexico Surface Mining Act concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale. The rules that New Mexico proposed to add were Coal Surface Mining Commission (CSMC) Rules 80–1–34–1, scope; 80–1–34–2, definitions; 80–1–34–3, application requirements and procedures; 80–1–34–4, contents of application for exemption; 80–1–34–5, public availability of information; 80–1–34–6, requirements for exemption; 80–1–34–7, conditions of exemption and right of inspection and entry; 80–1–34–8, stockpiling of minerals; 80–1–34–9, revocation and enforcement; and 80–1–34–10, reporting requirements.

OSM announced receipt of the proposed amendment in the November 15, 1994, **Federal Register** (59 FR 58801), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record NO. NM–718). Because no one requested a public hearing or meeting, none was held. The public comment period ended on December 15, 1994.

During its review of the amendment, OSM identified concerns relating to the provisions of CSMC Rules 80–1–34–2, definition of "cumulative measurement period," and 80–1–34–9, administrative review of revocation decisions. OSM notified New Mexico of the concerns by letter dated December 20, 1994 (administrative record No. NM–724). New Mexico responded by submitting a revised amendment on December 20, 1994 (administrative record No. NM–723).

New Mexico proposed revisions at CSMC Rules 80–1–34–2, definition of "cumulative measurement period," by adding a generic date as the effective date for annual revenue calculations, and at CSMC Rules 80–1–34–9, administrative review of revocation decisions, by requiring that the request for administrative review by made in accordance with the procedures of CSMC Rules 80–1–12–11 rather than with the procedures of CSMC Rules 80–1–12–10.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed New Mexico program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this 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.*) The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that

existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 20, 1994.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

[FR Doc. 94–31973 Filed 12–27–94; 8:45 am]

BILLING CODE 4310–05–M

SELECTIVE SERVICE SYSTEM

32 CFR Part 1636

Selective Service Regulations; Registrant Processing Procedures

AGENCY: Selective Service System.

ACTION: Proposed rule.

SUMMARY: Procedures for the processing of registrants under the Military Selective Service Act (50 App. U.S.C. 451 et seq.) are revised to assure greater fairness and efficiency in administration in the processing of registrants.

DATES: *Comment Date:* Written comments received on or before March 1, 1995 will be considered.

EFFECTIVE DATE: Subject to the comments received, the amendment is proposed to become effective upon publication in the **Federal Register** of a final rule.

ADDRESSES: Written comments to: Selective Service System, ATTN: General Counsel, 1515 Wilson Blvd., Arlington, VA 22209–2425.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, 1515 Wilson Blvd., Arlington, VA 22209–2425. Phone (703) 235–2050.

SUPPLEMENTARY INFORMATION:

A. Discussion of Proposed Regulation

Part 1636—Classification of Conscientious Objectors. Paragraph (b) of sec. 1636.8 reads: "The registrant's stated convictions should be a matter of conscience which would give him no rest or peace should he participate in war." The proposed rule would delete the words "which would give him no rest or peace should he participate in war." This action is proposed because of allegations that paragraph (b) is unclear.

B. Matters of Rule Making Procedures

This amendment to Selective Service Regulations is published pursuant to section 13(b) of the Military Selective Service Act (50 App. U.S.C. 463(b)) and Executive Order 11623. These Regulations implement the Military Selective Service Act (50 App. U.S.C. 451 et seq.)

Interested persons are invited to submit written comments on the proposed rule. All written comments received in response to this notice of proposed rulemaking will be available for public inspection in the Office of the General Counsel from 9 a.m. to 4 p.m. Monday through Friday, except legal holidays.

As required by Executive Order 12291, I have determined that this proposed rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), I have determined that this regulation does not have a significant economic impact on a substantial number of small entities.

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rule does not contain an information collection requirement that requires the approval of the Office of Management and Budget.

List of Subjects in 32 CFR Part 1636

Armed forces—draft.

Gil Coronado,

Director of Selective Service.

The proposed regulation is:

PART 1636—CLASSIFICATION OF CONSCIENTIOUS OBJECTORS

1. The authority citation for part 1636 continues to read as follows:

Authority: Military Selective Service Act (50 App. U.S.C. 451 et seq.); E.O. 11623.

2. In sec. 1636.8, paragraph (b) is revised to read as follows:

§ 1636.8 Considerations relevant to granting or denying a claim for classification as a conscientious objector.

* * * * *

"The registrant's stated convictions should be a matter of conscience."

* * * * *

[FR Doc. 94–31721 Filed 12–27–94; 8:45 am]

BILLING CODE 8015–01–M

POSTAL SERVICE

39 CFR Part 20 and Part 111

Proposed Amendment of International Mail Manual Part 123, Customs Forms; and Domestic Mail Manual, Part E010, Overseas Military Mail

AGENCY: Postal Service.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Postal Service proposes amending International Mail Manual part 123 and Domestic Mail Manual part E010 to change the conditions under which customs declaration forms will be used on international and military mail items and the use of these forms by the Postal Service. Customs declaration forms will be required, with certain exceptions, for the following types of mail: International letters and letter packages weighing more than 16 ounces; printed matter weighing more than 16 ounces; small packets, matter for the blind, M-bags, parcel post packages, and Express Mail International Service items; and all domestic mail weighing more than 16 ounces sent to or from overseas military post offices (APO and FPO destinations). This change should enhance aviation security by establishing procedures that will discourage the use of the mails to send, knowingly or unknowingly, dangerous goods or explosives. The key aspects of the system are (1) the face-to-face interaction between the mailer and a postal employee; (2) the completion of a customs declaration form containing the mailer's name, address, and signature; (3) the inclusion of a statement on the form regarding the safety of the contents and the security controls to which that mail is subject; and (4) the retention of one copy of the form until such time as delivery would be completed.

DATES: Comments must be received on or before January 27, 1995.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Pricing, U.S. Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260–2406. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 6670 at the above address.

FOR FURTHER INFORMATION CONTACT: Walter J. Grandjean, (202) 268–5180.

SUPPLEMENTARY INFORMATION: The United States is a member of the Universal Postal Union (UPU). By virtue of that membership, the U.S. Postal Service adheres to the agreements of the

UPU to which it is signatory. Specifically, both the Universal Postal Convention (Convention) and the Postal Parcels Agreement (Parcels Agreement) provide for the use of customs declaration forms on certain international mail items to facilitate customs examination, collection of duties and taxes, and delivery to the addressee. The Convention and the Parcels Agreement provide formats for the forms given to mailers by postal administrations. With some exceptions, the Postal Service follows the format of these forms and provides them to the public for use on international mail, as appropriate.

In most cases, customs declaration forms are required before items possibly subject to customs duties or taxes are accepted by the Postal Service for transmission to the destination foreign country. Currently, the mailer must declare the contents in detail and show the value of the articles in the mail. Some forms require the identities of the mailer and recipient and a signed declaration that the mail item does not contain harmful matter. As a matter of routine, the Postal Service does not keep a copy of the declaration or maintain any information about the item, except at the dispatching exchange office where records are maintained for accounting purposes. This information is limited to the number of the item if registered or insured, the origin and destination of the item, and the weight of the item.

The Postal Service proposes changing these procedures and the documentation required for international mail weighing more than 16 ounces, military mail weighing more than 16 ounces, and mail on which a customs declaration form must be attached as follows:

(1) Mail requiring customs declaration forms may be deposited only at post office windows. Such mail found in collection boxes will be returned to the sender.

(2) The revised Postal Service customs declaration forms will require the sender's name and address on the forms and will require the sender to sign a certification that the mail does not contain dangerous articles.

(3) The Postal Service will retain a copy of the customs declaration form until the mail is delivered.

(4) When the Postal Service determines that there is a credible threat that certain mail might contain explosives or other material that would endanger life or property, it may institute additional security measures such as requiring identification of the mailer before accepting mail weighing more than 16 ounces.

This change should enhance aviation security by establishing procedures that discourage the use of the mails to send, knowingly or unknowingly, dangerous goods or explosives. It is neither designed nor intended to be a foolproof preventive measure. This change would, however, serve as an additional deterrent for an individual knowingly mailing dangerous items, while providing notice to an individual who is unaware of the prohibition against mailing dangerous or prohibited goods.

The Postal Service also proposes to exempt known mailers from these requirements when alternative procedures will provide comparable levels of security, for example, a signed mailing statement for bulk mail certifying that all the mail covered by the mailing statement does not contain any dangerous material.

As a part of this change, the Postal Service is reducing from four to two the number of different customs declaration forms provided to the mailing public. The UPU is expected to adopt new forms, and the Postal Service forms will conform to the UPU standards. Specimens of the proposed Postal Service forms are published with this notice.

Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding rulemaking (5 U.S.C. 553), the Postal Service invites public comment at the above address.

The Postal Service proposes to adopt the following amendments to the International Mail Manual and the Domestic Mail Manual, which are incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1 and 39 CFR 111.1.

List of Subjects

39 CFR Part 20

Foreign relations, Incorporation by reference, International postal services.

39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual is amended by revising part 123, Customs Forms, to read as follows:

123 Customs Forms.

123.1 General. Two customs declaration forms are used on international mail: Form 2976, Customs-Douane C1; and Form 2976–A, Customs Declaration and Dispatch Note—C2/CP3/CP2. Form 2976–E, Customs Declaration Envelope, is used with Form 2976–A. Only editions printed after [DATE TO BE DETERMINED BY POSTAL SERVICE] may be used.

123.2 Availability. Customs declaration forms are available at post offices without charge. On request, mailers may receive a reasonable supply for preparation of mail.

123.3 Privately Printed Forms. Mailers may privately print Form 2976 if it is an exact facsimile of the form printed by the Postal Service. Mailer information may be preprinted on the form. Mailers may privately print Form 2976–A only if authorized by the Manager, Business Mail Acceptance, USPS Headquarters, 475 L'Enfant Plaza, SW, Washington, DC 20260–6808. Mailers must submit a preproduction sample similar to the Form 2976–A printed by the Postal Service. If the mailer prefers using a manifest instead of printing the post office copy of Form 2976–A, this use must be indicated with the request for privately printing the form.

123.4 Nonpostal Forms. Certain items must bear one or more of the forms required by the nonpostal export regulations described in Chapter 5.

123.5 Place of Mailing. Items requiring customs declaration forms may be mailed only by presenting the items and completed forms at a post office; such items may not be deposited into street collection boxes. Express Mail items paid by corporate account may be deposited into collection boxes. The acceptance clerk removes the post office copy and forwards it to the appropriate location for storage. Items found in collection boxes or not presented to an acceptance clerk are returned to the sender for proper mailing and acceptance.

123.6 Required Usage

123.61 Conditions. Customs declaration forms, either Form 2976 or Form 2976–A, must be used as shown in Exhibit 123.61.

Item	Declared value	Required form	Placement	Observation
Nondutiable letters and letter packages 16 ounces and under	.....	None	.....	
Dutiable letters and letter packages and all letters and letter packages over 16 ounces.	Under $400. $400 and over	2976 or 2976–A* 2976–A*.	Outside, Inside. Inside	Known mailers may be exempt from using forms on nondutiable items over 16 ounces (see 123.62).
Nondutiable printed matter 16 ounces and under	.....	None	.....	
Dutiable printed matter and all printed matter over 16 ounces	Under $400. $400 and over	2976 or 2976–A*. 2976–A*	Outside, Inside. Inside	Known mailers may be exempt from using forms on nondutiable items over 16 ounces (see 123.62).
Matter for the blind	Under $400. $400 and over	2976 or 2976–A*. 2976–A*	Outside, Inside. Inside	
Small packets	Under $400. $400 and over	2976 or 2976–A*. 2976–A*	Outside, Inside. Inside	
Parcel post	.....	2976–A	Outside	Form 2976 may not be used on parcel post.
Express Mail	.....	2976 or 2976–A, as required.	Outside, Outside.	See Individual Country Listings.
M-bag	Under $400. $400 and over	2976 or 2976–A*. 2976–A*	Outside, Inside. Inside	

* When Form 2976–A is enclosed in the item, the top part of Form 2976 must be affixed to the outside of the item.

Customs Declaration Forms Usage

Exhibit 123.61

123.62 Known Mailers. Known mailers having advance deposit accounts or customer identification numbers for international mailing programs (such as International Surface Air Lift, International Priority Airmail, or VALUEPOST/Canada) may be exempt from providing customs declaration forms as required in 123.61 on nondutiable letters, letter packages, and printed matter weighing more than 16 ounces. Such mailers must complete the declaration on the mailing statement, certifying that all mailpieces in the mailing do not contain hazardous material.

123.63 Additional Security Controls. When the chief postal inspector determines that there is a unique, credible threat, a mailer can be required to provide photo identification at the time of mailing. The signature on the identification must match the signature on the customs declaration form.

123.7 Completing Customs Forms.

123.71 Form 2976 (Green Label).

123.711 Preparation by Sender. The sender must complete Form 2976, Customs-Douane C1, and affix this form to the address side of each letter or letter package containing dutiable merchandise; each package of dutiable printed matter; each small packet; each item mailed as matter for the blind; each M-bag; and all items, whether dutiable or not, that weigh more than 16 ounces. Form 2976 may be used on Express Mail items as specified in the Individual Country Listings. (Form 2976 may not be used on parcel post packages; Form 2976–A is used on such packages. Form 2976–A is also required on items valued at $400 or more (see 123.72)). A sender completes Form 2976 by:

a. Providing a complete and accurate description in English of the contents of the item, even if it contains a gift, merchandise, or sample. General descriptions such as "food," "medicine," "gift," or "clothing" are not permitted. An interline translation in another language is permitted. The exact quantity of each article in the item must be stated.

b. Declaring the value of the item in U.S. dollars. The sender may declare that the contents have no value; however, indicating no value does not exempt the item from customs examination or charges in the destination country.

c. Indicating in the appropriate box on the form whether the item is a gift, merchandise, or sample. If it is not, the sender does not check a box.

d. Entering his or her full name and address in the block indicated.

e. Signing his or her name in the blocks indicated on each part of the form. The sender's signature certifies that all entries are correct and that the mail does not contain any dangerous articles prohibited by postal regulations.

f. Affixing the form to the address side of the mailpiece and presenting it for mailing.

123.712 Preparation by Accepting Clerk. The clerk accepting the item for mailing must:

a. Instruct the sender how to complete the customs declaration form, as required, legibly and accurately. Failure to complete the form properly can delay the mail or inconvenience the addressee. Moreover, a false, misleading, or incomplete declaration can result in the seizure or return of the item or can result in criminal or civil penalties. The U.S. Postal Service assumes no responsibility for the

accuracy of information that the sender enters on the form.

b. When the item is presented, verify that the required information is entered and that the sender has signed both parts (the part affixed to the item and the part separated for postal records).

c. Enter the weight of the item on the form, if not already done.

d. Remove the post office copy and retain it for 30 days.

123.72 Form 2976–A.

123.721 Preparation by Sender. The sender must complete Form 2976–A, Customs-Declaration and Dispatch Note—C2/CP3/CP2; place it into Form 2976–E, Customs Declaration Envelope; and affix this envelope to the address side of each parcel post package. Form 2976–A may be used on Express Mail items as specified in the Individual Country Listings. (Other items (LC/AO) valued at $400 or more also use Form 2976–A, placed inside the item as required by 123.61. If the sender does not want to show the contents of these LC/AO items on the wrapper, only the top part of the form is affixed to the wrapper and Form 2976–A is completed and enclosed in the package.) A sender completes Form 2976–A by:

a. Providing the names and addresses of the sender and addressee.

b. Providing a complete and accurate description in English of the contents of the parcel or item, even if it contains a gift, merchandise, or sample. General descriptions such as "food," "medicine," "gift," or "clothing" are not permitted. An interline translation in another language is permitted. The exact quantity of each article in the parcel or item must be stated.

c. Declaring the value of the item in U.S. dollars. The sender may declare that the contents have no value; however, indicating no value does not exempt the parcel or item from customs examination or charges in the destination country. If there is not sufficient space on the customs declaration form to give a complete list of the contents, a second form should be used to continue listing the contents. The first form must then be annotated to indicate that there are two forms. Both forms are placed into the envelope.

d. Indicating in the appropriate box on the form whether the parcel or item is a gift, merchandise, or sample. If it is not, the sender does not check a box.

e. Providing disposal instructions in the event that the parcel cannot be delivered. The sender checks the appropriate box on the form to indicate whether the parcel is to be returned, forwarded to an alternate address, or treated as abandoned. (Undeliverable parcels returned to the sender are subject to collection on delivery of return postage and any other charges assessed by the foreign postal authorities. The sender must mark the parcel "Abandon" if he or she is not willing to pay return postage.)

f. Signing his or her name in the block indicated. The sender's signature certifies that all entries are correct and that the parcel or item does not contain any dangerous articles prohibited by postal regulations.

g. Presenting the parcel or item for mailing at a post office. The sender must not place the customs declaration form into the envelope before the accepting clerk completes the required information.

123.722 Preparation by Accepting Clerk. The clerk accepting the parcel or item for mailing must:

a. Instruct the sender how to complete the customs declaration form, as required, legibly and accurately. Failure to complete the form properly can delay the mail or inconvenience the addressee. Moreover, a false, misleading, or incomplete declaration can result in the seizure or return of the parcel or item or can result in criminal or civil penalties. The U.S. Postal Service assumes no responsibility for the accuracy of information that the sender enters on the form.

b. When the item is presented, verify that the required information is entered and that the sender has signed the declaration.

c. Complete an insurance receipt and affix the insured number to the package, if the contents of a parcel post package are to be insured. Enter the insured number, insured amount in U.S. dollars and SDRs, postage, and gross weight (pounds and ounces) on Form 2976–A.

d. Remove the post office copy and retain it for 30 days.

e. Insert the customs declaration form (Form 2976–E) into the envelope and seal and affix the envelope to the parcel or item.

* * * * *

242.3 Mailing Locations.

242.31 General. Items requiring customs declaration forms may be mailed only by presenting the items and completed forms at a post office; such items may not be deposited into street collection boxes. Express Mail items paid by corporate account may be deposited into collection boxes. Items not requiring customs declaration forms and fully prepaid with postage stamps or meter postage may be deposited into post office drops or collection boxes. (See 123.61 for a summary of items requiring customs declaration forms.)

* * * * *

PART 111—[AMENDED]

3. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

4. The Domestic Mail Manual is amended by adding section 2.6 to part E010, Overseas Military Mail, to read as follows:

E010.2.6 Customs Declarations.

All mail items weighing more than 16 ounces that are addressed to overseas military post offices must bear Form 2976, Customs-Douane C1, and must be presented for mailing at a post office. Certain destination military post offices require Form 2976–A, Customs Declaration and Dispatch Note—C2/CP3/CP2. Refer to the chart "Conditions Applied to Mail Addressed to Military Post Offices Overseas," published periodically in the Postal Bulletin. Known mailers presenting bulk mailings declared on a mailing statement are not required to use customs declaration forms unless required by the chart. See IMM 123 for information on completing these forms.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

BILLING CODE 7710–02–P

No.

Customs - Douane C 1

May Be Opened Officially.
Peut Être Ouvert d'Office.

Cut

See instructions on the back.

Detailed Description of Contents	Value (US $)
Weight *Poids*	Total

☐ Gift *Cadeau* ☐ Merchandise *Marchandises* ☐ Commercial Sample

I guarantee that this item does not contain any dangerous article prohibited by postal regulations.

Signature

X

PS Form **2976** *(DRAFT)*

No.

Customs - C 1
Sender's Declaration

I certify that the particulars given in the Customs Declaration are correct and that this item does not contain any dangerous article prohibited by postal regulations.

Name of Sender (Block Letters)

Address

City State ZIP Code

Signature Date

X

PS Form **2976** *(DRAFT)* **Post Office Copy**

United States Postal Service
Customs Declaration and Dispatch Note – C2/CP3/CP2 No.

Sender's Name and Address *(Nom et Adresse de l'Expéditeur)*

Adressee's Name and Address *(Nom et Adresse du Destinataire)*

Itemized List of Contents *(Designation Détaillée du Contenu)* Please Print	**Qty.**	**Value** *(Valeur)*	**Net Weight** *(Poids Net)*

Insured No.	**Insured Amount** (US$)	**SDR Value**	**Postage**	**Gross Weight**
V-		SDR _____		lb oz

Fold Here

☐ Commercial Sample ☐ Gift
☐ Merchandise

I certify that the particulars given in the customs declaration are correct and that this item does not contain any dangerous article prohibited by postal regulations.

Sender's Instructions in Case of Nondelivery
(Instructions de l'Expéditeur en Cas de Non-Livraison)

☐ Return to Sender *(Renvoyer à l'Origine)*
NOTE: Item subject to return charges at sender's expense.
☐ Abandon *(Abandonné)*
☐ Redirect to Address Below: *(Réexpédié à)*

Sender's Signature *(Signature de l'Expéditeur)* **Date** *(Date)*

PS Form **2976-A** *(DRAFT)* Copy 1 - Customs Declaration C2/CP3

[FR Doc. 94–31905 Filed 12–27–94; 8:45 am]
BILLING CODE 7710–02–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, 60, 61 and 64

[FRL–5128–3]

Enhanced Monitoring Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: EPA is soliciting comment on a limited set of revisions to its proposed Enhanced Monitoring Program. EPA received numerous comments on a wide range of issues pertaining to the October 22, 1993 proposed rulemaking for a new 40 CFR part 64. EPA is issuing this notice to take additional comment on a limited number of specific issues concerning the proposed regulations. First, the Agency is considering phasing in the implementation of the program over a five year period. This implementation approach would allow for the Agency to develop guidance on acceptable enhanced monitoring protocols for many types of affected emissions units in order to streamline the selection and approval of enhanced monitoring. Second, EPA seeks comment on the consideration of cost in selecting and approving enhanced monitoring protocols. Third, the Agency seeks comment on a second phase of applicability for nonattainment areas and on specifically adopting periodic monitoring under 40 CFR part 70 as sufficient enhanced monitoring for applicable emissions units that do not meet the emission level applicability thresholds for part 64 enhanced monitoring. The range of issues on which EPA is soliciting comment is strictly limited to those issues identified in this notice.

DATES: Comments on the issues discussed in this notice must be received by January 27, 1995.

ADDRESSES: *Comments:* Comments must be mailed (in duplicate, if possible) to: EPA Air Docket (LE–131), Attention: Docket No. A–91–52, Room M–1500, Waterside Mall, 401 M Street SW., Washington, DC 20460. Comments should refer to page numbers and columns whenever possible. Only comments addressing the specific issues identified below will be considered.

Docket: Supporting information used in developing the regulations is contained in Docket No. A–91–52. This docket is available for public inspection and copying between 8 a.m. and 5:30 p.m. Monday through Friday, excluding government holidays, and is located at: EPA Air Docket (LE–131), Room M–1500, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Scott Throwe, U.S. Environmental

Protection Agency, Office of Enforcement and Compliance Assurance, Manufacturing, Energy and Transportation Division, at (202) 564–7013.

SUPPLEMENTARY INFORMATION:

I. Purpose of Today's Notice

EPA received numerous comments on many issues in response to the October 22, 1993 proposal to adopt an Enhanced Monitoring Program. The EPA has reviewed those comments, and has engaged in a series of discussions with a wide range of members of the public, including State and local governments, affected industries, and environmental groups. (Summaries of those discussions are contained in Docket No. A–91–52.) Based on EPA's review of the written comments received, and in light of the views presented by the parties noted above, EPA has determined that it would be appropriate to reopen the comment period to solicit additional comments on a limited number of issues. The EPA is soliciting comment on the following issues: phasing in the implementation of the Enhanced Monitoring Program over a five year period, including a process for developing guidance on example protocols and an implementation deadline that together would establish the timing for phasing in the program; the consideration of cost in proposing and approving enhanced monitoring protocols; a second phase of applicability in nonattainment areas; and the adoption of periodic monitoring under 40 CFR part 70 as sufficiently enhanced monitoring for applicable emissions units that do not meet the emissions level applicability thresholds for part 64 enhanced monitoring. The Agency believes it is useful to reopen the comment period in this limited manner in order to be certain that EPA has the benefit of a full range of views on these topics.

This rulemaking is subject to a court-ordered deadline established by a consent decree in *Sierra Club* v. *Browner*, No. 93–0124 (NHJ) (D.D.C.). The original September 30, 1994 deadline for completion of this rulemaking was extended by the court at the request of the parties to December 20, 1994. The parties have agreed to request that the court extend the deadline again, to April 30, 1995 in order to accommodate this limited revision to the original rulemaking proposal and reopening of the comment period. The EPA believes that most of the issues addressed in the October 22, 1993 proposal have been fully addressed in the numerous detailed comments already received. For this reason, and in order to meet the court-ordered deadline and ensure that the Enhanced Monitoring Program is promulgated without undue delay, the scope of issues addressed in this notice is limited. The Agency will not consider comments submitted on issues that are not related specifically to those addressed in this notice. The issues on which EPA is soliciting comment are set forth below.

II. Implementation

The proposed regulations would require that the owner or operator of a major stationary source propose an enhanced monitoring protocol as part of an application for a permit under the operating permits program pursuant to title V of the Act. In the public comments received on the proposed regulations, many commenters expressed concern about the burden of the enhanced monitoring protocol selection process on the operating permits program process. Many commenters suggested modifying the implementation approach to address their concerns regarding burdens associated with the permit process. Some commenters suggested that EPA engage in rulemaking to determine nationally applicable enhanced monitoring protocols for each source category as opposed to a permit-based implementation approach. Others suggested separating the protocol approval process from the permit approval process. Finally, still other commenters suggested phasing in the implementation so that permitting authorities would not be required to implement the entire enhanced monitoring program in the first round of permits without the benefit of national guidance on example enhanced monitoring protocols.

Because of the concerns about burdens to the permit process, EPA is considering phasing in implementation of the enhanced monitoring rule over a five year period. The implementation approach would have several elements. First, EPA would develop guidance on presumptively acceptable protocols that may be used for particular process/pollutant combinations. In referring to "process/pollutant combinations," the Agency is referring to emissions units classified on both a pollutant-specific basis and on a process-specific basis, including the applicable pollutant control measures, and, where appropriate, the nature of the emission limitation or standard. For example, one process/pollutant combination could be SO2 emissions from a coal-fired boiler using a scrubber to achieve compliance with an SO2 standard expressed in lbs/mmBtu, while another could be a similar boiler using low sulfur coal to achieve compliance with a sulfur-in-fuel limit.

After EPA issues guidance for a particular process/pollutant combination, the owner or operator of an affected source that includes such a combination for an emissions unit subject to part 64 would be required to propose an enhanced monitoring protocol as part of the operating permit application for the applicable emissions unit. Except, as discussed below, sources generally would not be required under part 64 to propose a protocol in the absence of EPA guidance. The protocol may be based on a presumptively acceptable example protocol developed by EPA or a different monitoring approach that can satisfy the part 64 criteria. If the permitting authority has published a notice requesting public comment on a draft title V permit before EPA issues applicable guidance for a particular process/pollutant combination, then an enhanced monitoring protocol would not have to be proposed for that emissions unit until either a reopening of the permit that involves public notice and comment, or the next renewal of the permit.

Finally, to ensure timely implementation of the program, EPA would incorporate a "hammer" provision that would be triggered on January 1, 2000. Under this provision, any title V operating permit issued after the effective date of the "hammer" provision would have to include enhanced monitoring for emissions units subject to part 64. In addition, any existing permit that does not include an enhanced monitoring protocol where one would have been required by part 64 in the absence of phased implementation would have to be reopened expeditiously to incorporate enhanced monitoring. This "hammer" provision would apply regardless of whether EPA has issued guidance for a particular process/pollutant combination.

Nothing in this phased approach would prevent a State from requiring that enhanced monitoring comporting with the part 64 criteria be included in a title V operating permit at any time before EPA's guidance for the relevant pollutant/process combination is available.

The following outline describes in more detail each of these particular elements of EPA's suggested implementation approach. The Agency believes that its suggested approach alleviates many of the burdens

associated with trying to implement enhanced monitoring in the first round of operating permits. The Agency's guidance development process would serve as a means of assisting sources and permitting authorities alike in implementing the program. At the same time, this approach would assure that enhanced monitoring is adopted in a timely manner at all affected emissions units. The EPA requests specific comment on this suggested approach to phasing in the program. The Agency solicits suggestions on any variations on this approach that commenters believe would reduce burdens on the permitting process while assuring timely adoption of enhanced monitoring protocols at affected emissions units.

A. Guidance Development Process

As discussed in the preamble to the proposed rule (see 58 FR 54658), EPA is preparing an Enhanced Monitoring Reference Document that will serve as guidance on the implementation of the Enhanced Monitoring Program and that will include example protocols that can be used by various types of emissions units with respect to specific process/pollutant combinations. The Agency noted in the preamble to the proposed rule that EPA intended this document to be a compendium of available monitoring that would be updated on a regular basis.

Under the implementation approach described in this notice, the purpose of the Enhanced Monitoring Reference Document would change in some important respects. First, EPA would issue guidance for a given process/pollutant combination only after a notice of availability of the example protocol in draft form is published in the **Federal Register**, with an opportunity for the public to respond in writing. The Agency would commit to publishing example protocols for a wide variety of process/pollutant combinations over the next four years, with many examples scheduled to be completed by the end of 1995. In addition, the examples published in the Enhanced Monitoring Reference Document would serve as presumptively acceptable protocols for the type of process/pollutant combinations covered by the individual protocols.

This approach would allow owners or operators and permitting authorities to rely on the examples in the Enhanced Monitoring Reference Document to a greater extent than contemplated in the preamble to the proposed rule. However, the Agency notes that the guidance is intended to remain as guidance, and would not be a binding regulation. Thus, owners or operators would not be required to use these example protocols where an alternative protocol would satisfy the part 64 criteria. The Agency emphasizes that the flexibility in the proposed rule to propose other monitoring satisfying the criteria in the rule would be retained.

The Agency intends to develop presumptively acceptable protocols in a manner that assures the broadest coverage of process/pollutant combinations as expeditiously as possible while providing interested parties the opportunity for input. One issue on which the Agency is soliciting comment is the prioritization for developing example protocols, including how to group example protocols to allow cost-effective collection of supporting data and other technical background information while at the same time ensuring that the most environmentally significant protocols are completed expeditiously.

The Agency also solicits comment on whether and how to use particular types of tools for evaluating the degree of confidence that a particular monitoring methodology can provide in demonstrating compliance. In particular, the Agency is considering a "Data Quality Objectives" (DQO) process for protocol evaluation where EPA guidance is not available or in circumstances in which a source proposes an alternative to EPA's example protocol, although a DQO process may also be helpful to EPA in developing its example protocols. (Item No. IV–A–3 in the docket for this rulemaking provides a detailed description of this process.) Recognizing that all measurements have imprecisions, EPA staff have developed the DQO process for application to environmental data collection programs. The DQO process is a systematic method for designing and evaluating any data collection activity, including the development and evaluation of many types of enhanced monitoring protocols. The process can account for the effects of process or emissions variability, margin of compliance, measurement precision, and frequency of data collection or measurements in designing an enhanced monitoring protocol. The DQO procedure is very similar to other statistical procedures used in the manufacturing and chemical process industries to optimize equipment design and production operations.

The application of the DQO process to protocol development and review would reduce uncertainty about whether a proposed protocol will be accepted and will promote consistent decisions on review of protocols. Application of the DQO process requires the establishment of an acceptable level of probability of compliance assurance that enhanced monitoring data must meet when the affected emissions unit is emitting near or over the applicable emission limit. The appropriate level for the probability limit is an issue for which the Agency requests comment. The probability level selected will necessarily affect protocol design. For example, a low probability of error (e.g., less than 5 percent) may dictate more frequent, and thus, costly, sampling than a higher probability (e.g., 10 percent or higher). In another example, the probability level selection may be linked to the risk associated with a particular emission, that is, a lower probability may be applied for higher risk emissions monitoring systems data. The data needed to calculate these probabilities can be obtained through field tests, historical data, quality assurance/quality control documentation (e.g., measurement method precision), data from tests at similar sources, or engineering and scientific literature.

In return, the DQO process would provide the owner or operator and the permitting authority a method for evaluating enhanced monitoring protocol design effectiveness. It also would allow for significant flexibility in protocol design regarding which parameters should be monitored, frequency of data collection, and margin of compliance. The result should be cost-effective protocols that meet the data quality criteria in part 64.

The DQO process would provide an iterative planning method for the design of the enhanced monitoring protocol. The process leads to a mathematical determination of the probability of decision errors associated with reported protocol values. The DQO process might also optimize the protocol design process by identifying the most effective data collection and analysis design for the protocol that will satisfy the DQOs. This element of the process may include additional data collection on alternative protocol designs, formulating additional mathematical expressions, or redefining the sample size or measurement frequency.

With respect to this DQO process, the Agency requests specific comment on three issues: (1) the usefulness or limitations of the DQO approach to protocol design; (2) the acceptable probability level of data quality or compliance assurance, and appropriate mathematical approaches for determining the probability; and (3) examples of cost-effective protocols

demonstrating a known high level of assurance of continuous compliance using DQO analysis principles.

The Agency also requests comment on the possibility of using independent third parties to evaluate protocols proposed by sources particularly where a source proposes an alternative to a presumptively acceptable example protocol provided by EPA. The use of third parties could increase confidence in the protocol development and review process and reduce the resource burdens associated with enhanced monitoring protocol review and approval. The Agency is considering the idea of using third-party reviewers through a public/private partnership between the Agency and interested industrial organizations. The Agency has in the past relied on outside parties to streamline implementation of programs, such as certifying laboratories in connection with the certification of woodstoves with NSPS requirements under 40 CFR part 60, subpart AAA. The function of the third party organization would be to review industry-submitted protocols for a fee paid by the source owner submitting the protocol for review. The third party would provide to the source owner or operators and the permitting authorities an evaluation of the feasibility and acceptability of the protocol for specific applications. The Agency is soliciting comment on whether establishing a third party review process to augment permitting authority review and evaluation of protocols is appropriate; what would be a suitable structure for a third party review organization and process; the suitability of the industry paid fee for the third party review services or any alternative funding mechanism; and what procedures (e.g., data quality objectives analysis) would be appropriate to guide a third party review.

The Agency intends to provide for input from all interested parties throughout the example protocol guidance development process. To assure that all interested parties have an opportunity to comment, EPA intends to publish in the **Federal Register** a notice of availability of example protocols in draft form prior to incorporating those protocols into the Reference Document A notice of availability of final example protocols would also be published in the **Federal Register**. In addition, the Agency will use its Technology Transfer Network (TTN) electronic bulletin board to facilitate public involvement in the development and review of guidance on example protocols. The Agency will make available through the TTN initial information on the development of example protocol guidance, as well as draft and final example protocols and other pertinent information. Regular updates to the Enhanced Monitoring Reference Document will be available on the TTN as well. The Agency anticipates updating the Enhanced Monitoring Reference Document after the five year phase-in period, as well as throughout the initial implementation period, so that it continues to reflect advances in monitoring techniques. The phone number for accessing the TTN is (919) 541–5742. Persons unfamiliar with the TTN but interested in using the system should contact the TTN help desk at (919) 541–5384 for further information.

B. Timing of Implementation

Under the proposed rule, owners or operators would be required to submit proposed enhanced monitoring protocols with an application for a title V operating permit. The approach that EPA is now considering would delay implementation until EPA has published a notice of availability of an example protocol (or protocols) for the type of process/pollutant combination for which a protocol is required, subject to the "hammer" provision described below. In the interim, the monitoring requirements in 40 CFR 70.6(a)(3) and 70.6(c) would apply.

Following publication of the notice of availability of example protocol(s) for a process/pollutant combination, the time at which the owner or operator would be required to submit a proposed enhanced monitoring protocol would depend on the status of the title V operating permit for the applicable facility. If the initial operating permit application has not yet been filed for the facility, then the owner or operator generally would be required to include a proposed protocol in the initial application for an emissions unit subject to part 64 that includes the relevant process/pollutant combination. In some circumstances, notice that EPA's example protocols are available may be published shortly before an affected source is obligated to submit its permit application to the permitting authority. In such circumstances, the source may submit its application as scheduled and then update the application to include enhanced monitoring no later than 90 days after publication of the notice of availability.

If the operating permit application is filed before EPA publishes notice of availability of example protocol(s) for a process/pollutant combination applicable to emissions units subject to part 64 at the affected source, but the permitting authority has not yet published a notice to request public comment on a draft permit, then the owner or operator would be required to update the permit application within 90 days of publication of the example protocols(s) to address enhanced monitoring for the emissions units covered by the example protocol(s). If an application is filed and a draft permit is noticed for public comment before EPA publishes a notice of availability of applicable example protocols, then the owner or operator would not be required to submit a proposed protocol until the earlier of: (1) the next application for permit renewal; or (2) a reopening of the permit that involves public notice and comment that is consistent with the type of public notice and comment required by 40 CFR part 70 for approval of an enhanced monitoring protocol.

The "hammer" provision would limit the duration of the phased-in implementation process. Where enhanced monitoring is not required for an affected emissions unit and applicable requirement under the implementation schedule outlined above, the "hammer" provision would mandate implementation of enhanced monitoring as of January 1, 2000. There are three different scenarios in which the "hammer" provision would apply First, an enhanced monitoring protocol must be included where applicable under part 64 in any title V permit issued after the "hammer" deadline, even if EPA has not issued guidance on a particular process/pollutant combination. Second, an existing title V permit that has not included an enhanced monitoring protocol required under part 64 because EPA has not yet issued guidance for the applicable process/pollutant combination would have to be reopened expeditiously after the January 1, 2000 deadline to incorporate enhanced monitoring. Finally, where an existing title V permit has not included an enhanced monitoring protocol because EPA has issued guidance only after the date of notice for public comment on the draft permit, the permit would have to be reopened expeditiously after the January 1, 2000 deadline assuming that the required enhanced monitoring protocol had not been approved previously during a permit renewal or reopening. The Agency requests comment on appropriate timeframes for processing permit actions where the "hammer" provision requires an expeditious reopening of an existing permit.

The Agency believes that including this type of "hammer" provision is essential to assure that the program is implemented in a timely manner. This

"hammer" provision would provide an incentive for all parties to facilitate the development of example protocol guidance. The Agency also believes that the experience gained over the next five years and the publication of guidance for many types of process/pollutant combinations will facilitate effective implementation for the limited number of process/pollutant combinations for which the Agency may not develop guidance before the January 1, 2000 deadline. The Agency believes that guidance will be available for most affected emissions units before the end of this time period. The Agency requests comment on this "hammer" provision.

III. Consideration of Cost

Many industry representatives and some other groups commented that the proposed rule would not allow adequate consideration of the costs of various monitoring approaches in selecting enhanced monitoring for a particular emissions unit. The Agency requests comment generally on how the final rule should address the issue of considering cost in the context of protocol selection and approval and specifically on whether the final rule should be clarified to allow owners or operators to select the least-cost monitoring protocol that can achieve the requirements in the rule.

Some comments from industry representatives indicate that cost also should be a consideration where the only monitoring approaches that can meet the other part 64 criteria are not cost-effective for the particular emissions unit. The EPA finds this an important issue and is considering incorporating a more explicit role for the consideration of cost in the selection and approval of enhanced monitoring. In the notice of proposed rulemaking (NPRM), EPA discussed in numerous places the importance of designing an enhanced monitoring program that would both achieve cost-effective emissions reductions and also allow sources to adopt monitoring methods that would satisfy the enhanced monitoring standards in the most cost-effective manner. EPA thus sees the consideration of costs in establishing enhanced monitoring as consistent with the NPRM and the Clean Air Act. The Agency requests specific comment as to whether and how the final rule should allow the Agency to consider cost and effectiveness in developing guidance for monitoring protocols.

The Agency also requests comment on whether the final rule should allow, on a case-by-case basis and upon a demonstration by the owner or operator that no monitoring approach that satisfies all of the part 64 criteria is cost-effective, the owner or operator to propose a cost-effective monitoring approach that comes as close as possible to achieving all the other part 64 criteria. The Agency also requests specific comment as to what procedures and criteria should be used by permitting authorities to evaluate such proposals by owners or operators.

If EPA adopts this approach, EPA would define enhanced monitoring as representing the monitoring for determining compliance, taking cost and effectiveness into account. The basic purpose of Section 114(a)(3) and associated sections of the Clean Air Act is to require all major sources to conduct monitoring which will allow them to certify continuous or intermittent compliance. However, nothing in Section 114(a)(3) dictates that all sources must certify to being in either continuous compliance or else be considered in noncompliance; sources may also certify to being in compliance as demonstrated on an intermittent basis. For example, by virtue of consideration of cost (or because the emissions unit is below the applicability threshold for part 64) a source may not have monitoring data that is sufficient to support a certification of continuous compliance but does provide the basis for certification on an intermittent basis. EPA emphasizes that a certification of intermittent compliance does not mean that a source has operated in violation of applicable requirements. Rather, it merely reflects the fact that under some enhanced monitoring protocols, a source will only be able to gather enough data to certify compliance on an intermittent basis. In order to ensure effective implementation of enhanced monitoring and to minimize the burden on the operating permits program, any approach related to protocol cost would, in EPA's view, need to allow the permitting authority to make an expeditious determination based on simple, direct criteria.

IV. Special Applicability for Nonattainment Areas and Incorporation of Periodic Monitoring

Many industry representatives and several State and local agencies commented that the proposed applicability of the rule covered too many sources and emissions units, especially too many small emissions units. Environmental groups commented that the proposed applicability was too narrow and criticized any reduction in applicability. In response to these comments, the Agency solicits comment on whether it would be appropriate to have a second phase of applicability only for nonattainment pollutants in nonattainment areas.

The Agency is considering applying part 64 primarily to emissions units which emit, or have the potential to emit, a pollutant at or above the applicable major source threshold, as defined under title V of the Act. This approach would have the effect of significantly reducing the number of sources and emissions units subject to part 64. To address concerns that environmentally significant emissions units would not be covered, the EPA is also considering the appropriateness of a second phase of applicability, only for nonattainment pollutants in nonattainment areas, in which all major sources which are major for a nonattainment pollutant would be required to cover a prescribed minimum percentage of their emissions units, perhaps with a de minimis cutoff for very small units.

In such a second phase, part 64 could require each major source which is located in a nonattainment area and major for a nonattainment pollutant to conduct enhanced monitoring on at least 25% of its emissions units that are subject to applicable requirements for the nonattainment pollutant, except that it would not have to conduct enhanced monitoring for that pollutant on any emissions unit which emits, and has the potential to emit, less than 50% of the applicable major source threshold. Emissions units would be selected for coverage as part of the 25% requirement based on the potential to emit of the units, with the largest selected first. Any emissions units already required to conduct enhanced monitoring under the regular, first phase of implementation would "count" toward the 25%.

The EPA believes that this second phase of applicability is appropriate as a means of ensuring that emissions units that have the potential to contribute significantly to nonattainment problems are subject to enhanced monitoring while at the same time excluding the smallest emissions units.

The EPA solicits comment on the appropriateness of requiring such a second phase only in nonattainment areas (i.e., not in attainment areas); the appropriate percentage threshold to use; whether and at what level a de minimis level should be used to exclude small emissions units; when and how such a second phase should be implemented in connection with the title V permitting process; and on all other aspects of such a second phase in nonattainment areas. After reviewing any comments received, EPA may proceed to finally promulgate

a second phase without further opportunity to comment.

The EPA realizes that the applicability approach described above may still leave some major sources with no emissions units subject to enhanced monitoring requirements in part 64. To satisfy the statutory obligation that all major stationary sources conduct enhanced monitoring, the preamble to the proposed rule stated EPA's intent to rely on periodic monitoring under 40 CFR part 70 as sufficiently enhanced for small units under the size threshold proposed by EPA. The Agency also requested comment on the possibility of relying upon a de minimis exemption theory as allowed under *Alabama Power v. Costle*, 636 F.2d 323 (D.C. Cir. 1979).

Accordingly, EPA solicits comment on the appropriateness of relying in part on periodic monitoring under 40 CFR part 70 to satisfy the Agency's obligation to require enhanced monitoring for all major sources.

The Agency also solicits comment on whether to codify this link between enhanced and periodic monitoring by specifically including the rule language from 40 CFR 70.6(a)(3)(i) into a separate subpart of part 64. A separate subpart of part 64 could provide that at a major source, for all emissions units and applicable requirements that do not meet the applicability thresholds for the enhanced monitoring requirements discussed in the proposed rule and in this notice, the source must conduct monitoring, to the extent necessary to comply with 40 CFR 70.6(a)(3)(i) and 70.6(c)(1) and (5), that is periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit. Such monitoring requirements would be required to assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.

Such a codification of existing part 70 language into part 64 would not be intended to alter, or add to, the existing part 70 monitoring requirements. Rather, this codification would merely make clear that EPA considers existing periodic monitoring requirements as partial fulfillment of its obligation to require enhanced monitoring for all major sources.

Finally, in a separate section above, the Agency discusses the potential role of cost in selecting enhanced monitoring. In this context, EPA may also consider periodic monitoring approaches under certain circumstances as one of the ways of achieving more cost-effective monitoring approaches.

Dated: December 20, 1994.

Carol M. Browner,

Administrator, U.S. Environmental Protection Agency.

[FR Doc. 94–31742 Filed 12–27–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MI34–01–6662, MI35–01–6663; FRL–5126–3]

Approval and Promulgation of Implementation Plan: Michigan; NO_X Exemption Request for East Lansing and Genesee County Transitional Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to grant oxides of nitrogen (NO_X) exemptions to the East Lansing (Ingham, Eaton and Clinton Counties) and Genesee County transitional ozone nonattainment areas. This proposed approval would exempt these areas from the NO_X provisions of the general conformity and transportation conformity requirements of the Clean Air Act (Act).

The State of Michigan submitted NO_X exemption requests on July 1, 1994 and July 8, 1994 for the East Lansing and Genesee County transitional areas, respectively. Ozone monitors in these areas indicated that the average number of exceedances of the National Ambient Air Quality Standard for ozone (ozone standard) during the most recent 3-year monitoring period, 1991 through 1993, is fewer than one per year. Based upon this demonstration that additional reductions of NO_X would not contribute to attainment of the ozone standard, Michigan requested that EPA approve a revision to Michigan's State Implementation Plan (SIP) exempting these areas from the requirement to provide conformity analyses for NO_X.

Additional information is available at the address indicated.

DATES: Comments must be received by January 27, 1995.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Copies of the request and EPA's analysis are available for inspection at the same address. Please telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 353–6960.

SUPPLEMENTARY INFORMATION:

I. Background

Section 176 of the Act, 42 U.S.C. 7506, prohibits the Federal Government from engaging in, supporting, providing financial assistance, licensing, permitting or approving any activity which does not conform to a SIP after the SIP is promulgated pursuant to section 110 of the Act, 42 U.S.C. 7410. Regulations promulgated pursuant to section 176 of the Act provide for the granting of exemptions from certain NO_X requirements of section 176 for a specific nonattainment area, if the Administrator of EPA determines under section 182(f) of the Act that additional reductions of NO_X would not contribute to attainment of the ozone standard in the area. 58 FR 62188, 62218 (November 24, 1993) (to be codified at 40 CFR 51.394(b)(3)(i)) and 58 FR 63214, 63248 (November 30, 1993) (to be codified at 40 CFR 51.852).

Section 182(f) of the Act, 42 U.S.C. 7511a(f), requires that major stationary sources of NO_X in marginal and above ozone nonattainment areas comply with SIP provisions required for major stationary sources of volatile organic compounds unless, *inter alia*, the Administrator of EPA determines that an exemption from these requirements is appropriate. The EPA has determined that it would grant to a State an exemption from the NO_X requirements of section 182(f) for an area that did not implement the section 182(f) requirements, if the average number of exceedances of the ozone standard in the area over the prior 3-year period was less than or equal to one per year. See memo entitled, "Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria" signed by John S. Seitz, Director, Office of Air Quality Planning and Standards (May 27, 1994).

EPA adopted this position based upon the theory that the section 182(f) controls were not necessary for an area which already had attained the ozone standard without the controls. A State could prove that the section 182(f) controls were not necessary by demonstrating that the nonattainment area in question had not experienced any violations of the ozone standard for the most recent 3 years. However, in order for EPA to approve an exemption request, the air quality data relied upon for this demonstration must be consistent with 40 CFR part 58 requirements and other relevant EPA

guidance, and must be recorded in EPA's Aerometric Information Retrieval System. Moreover, EPA will not approve the exemption request if there is evidence, such as photochemical grid modeling, showing that the NO_X exemption would interfere with attainment or maintenance in the area petitioning for exemption or in any downwind areas. *See* "Guideline for Determining the Applicability of Nitrogen Oxides requirements Under Section 182(f)" (December 1993).

Section 182(f) of the Act applies only to ozone nonattainment areas classified as marginal and above. Because section 176(c) applies to all ozone nonattainment areas, EPA has extended the procedure for exemptions under section 182(f) to areas not affected by the section 182(f) requirements, that is, submarginal, transitional, and incomplete/no data areas. See "Conformity; General Preamble for Exemption from Nitrogen Oxides Provisions," 59 FR 31238 (June 17, 1994).

On July 1, 1994 and July 8, 1994 the State of Michigan submitted to EPA petitions requesting that EPA approve SIP revisions which would, in effect, exempt the East Lansing and Genesee County transitional ozone nonattainment areas from the NO_X conformity requirements of section 176(c).

II. Description and Analysis of State Submittal

The State of Michigan submitted petitions in accordance with section 182(f) of the Act and the **Federal Register** document entitled "Conformity; General Preamble for Exemption from Nitrogen Oxides" (59 FR 31238). In its submittals, the State included data for the most recent 3 year monitoring period, 1991–1993, from ozone monitors located in the two nonattainment areas. These data showed that, over the 3-year period, the monitors recorded that the average number of violations of the ozone standard in either the East Lansing or Genesee County areas was fewer than one per year.

Given that these areas have not implemented the section 182(f) NO_X requirements and have submitted adequate monitoring data demonstrating that there have been no violations of the ozone standard over the last 3 years, EPA finds that the State requests for exemption are approvable. Furthermore, EPA does not possess any evidence that the exemptions will interfere with attainment or maintenance of the ozone standard in the petitioning or any downwind areas.

III. Proposed Action

EPA is proposing approval of Michigan's SIP revision request granting the East Lansing and Genesee County transitional ozone nonattainment areas section 182(f) NO_X exemptions. This proposed approval would allow these areas exemption from the section 176(c) NO_X conformity requirements. This proposed approval for exemption is based upon the evidence provided by the State and the State's compliance with the requirements outlined in the Act and in EPA guidance. However, EPA is granting these exemptions only on a contingent basis, that is, each exemption will continue only as long as the respective area's monitoring data continue to demonstrate attainment of the ozone standard. The State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify attainment status of the area (see "Conformity; General Preamble for Exemption from Nitrogen Oxides" (59 FR 31238)).

If, subsequent to granting NO_X exemptions to the East Lansing and Genesee County transitional nonattainment areas, EPA determines that either area has violated the ozone standard, the exemption for the area in which the violation occurred will no longer be valid. EPA will notify the State of Michigan that the exemption no longer applies to the area in which the violation occurred, and also will provide notice to the public in the **Federal Register.** If an exemption is revoked, the State must comply with any applicable NO_X requirements set forth in the Act. The **Federal Register** notice revoking the NO_X exemption also would establish the schedule for adoption and implementation of NO_X RACT.

Miscellaneous

I. Applicability to Future SIP Decision

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

II. Executive Order 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 Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

III. Regulatory Impact

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

This approval does not create any new requirements. Therefore, I certify that this action 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 the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. United States Environmental Protection Agency*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intragovernmental relations, Oxides of nitrogen, Ozone.

Dated: December 9, 1994

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–31741 Filed 12–27–94; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 60

[AD-FRL–5127–8]

New Source Performance Standards and Emission Guidelines: Industrial and Commercial Waste Incinerators and Other Solid Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advanced Notice of Proposed Rulemaking (ANPRM).

SUMMARY: The EPA seeks information to identify and characterize industrial and commercial waste incinerators (ICWI) sources and where they are located. This action requests information and data concerning the operation, location, emissions, and emission controls for ICWI's.

Another source category that may be similar to ICWI's is other solid waste

incinerators (OSWI's). The EPA also requests information and data concerning the operation, emissions, and emission controls for OSWI's.

DATES: Information, data, and comments must be received on or before March 28, 1995.

ADDRESSES: *Comments.* Information, data, and comments on this notice should be submitted in duplicate to: The Air and Radiation Docket and Information Center, ATTN: Docket No. A-94-63, U. S. Environmental Protection Agency, 401 M. St., S.W., Room M1500 Mail Code 6102, Washington, DC 20460. Commenters wishing to submit proprietary information to be treated as confidential business information should not use the preceding address. See **SUPPLEMENTARY INFORMATION** for directions on submitting proprietary comments.

Docket. Dockets are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M St., S.W., Room M1500, Washington, DC 20460. Their telephone number is (202) 260-7548 and their fax number is (202) 260-4400. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. George Smith at (919) 541-1549 or Mr. Fred Porter at (919) 541-5251, Emission Standards Division (MD-13), U.S. EPA, Research Triangle Park, NC 27711.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments

The EPA seeks full public participation in arriving at its final decisions, and strongly encourages comments on this notice from all interested parties. Whenever applicable, full supporting data and detailed analysis should accompany all comments to allow EPA to consider and understand these comments for the proposed rulemaking. All information, data, and comments should be directed to the EPA Air and Radiation Docket and Information Center, Docket No. A-94-63 (See Addresses). Information, data, and comments must be received on or before March 28, 1995.

Commenters wishing to submit proprietary information for consideration should clearly distinguish such information from other comments, and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. George Smith, c/o Ms. Melva Toomer, U. S. EPA Confidential Business Manager, 411 W. Chapel Hill Street, Room 944, Durham, NC 27701. Information covered by such a claim of confidentiality will be disclosed by the EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, it may be made available to the public without further notice to the commenter.

II. Background Information

Section 129 of the Clean Air Act requires the EPA to develop NSPS and EG for four classes of solid waste incineration units. These are municipal waste combustors (MWC's), medical waste incinerators (MWI's), ICWI's, and categories of OSWI's. The pollutants that will be regulated by these standards are particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. Standards applicable to solid waste incineration units promulgated under this section shall reflect the maximum degree of reduction in emissions of the air pollutants listed above that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines achievable for new or existing units in each category. The Administrator may distinguish among classes, types (including mass-burn, refuse-derived fuel, modular and other types of units), and sizes of units within a category in establishing such standards. The degree of reduction in emissions that is deemed achievable for new units in a category shall not be less stringent than the emissions control that is achieved in practice by the best controlled similar unit, as determined by the Administrator. Emission standards for existing units in a category may be less stringent than standards for new units in the same category but shall not be less stringent than the average emissions limitation achieved by the best performing 12 percent of units in the category (excluding units which first met lowest achievable emissions rates 18 months before the date such standards are proposed or 30 months before the date such standards are promulgated, whichever is later).

An MWC is defined as any equipment that combusts municipal solid waste. Municipal solid waste (MSW) is defined as either a mixture or a single-item stream of household, commercial, and/or institutional discards. This would include materials such as paper, wood, yard wastes, tree trimmings, plastics, leather, rubber, glass, metals, and other combustible and noncombustible materials. The MSW definition includes household discards as well as discards from institutional and commercial sources, but does not include industrial process or manufacturing discards. The MWC NSPS and EG were proposed on September 20, 1994 (59 FR 48198 and 48228). The MWC NSPS and EG will regulate all new and existing units with plant capacities greater than 35 Mg/day.

An MWI is defined as any device used to burn medical waste, with or without other types of waste and including the heat recovery device, if one is present. Medical waste is defined as any solid waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in production or testing of biologicals. Medical waste includes materials such as sharps, fabrics, plastics, paper, waste chemicals/drugs that are not resource conservation and recovery act (RCRA) hazardous waste, and pathological waste. Medical waste does not include household waste, hazardous waste, or human and animal remains not generated as medical waste. The EPA is under a court order to propose the MWI standards by February 1, 1995.

The EPA listed categories of OSWI's and a regulatory schedule for issuing standards under section 129 on November 2, 1993 (58 FR 58498). Promulgation for the NSPS AND EG is scheduled for November 15, 2000, and the OSWI categories that will be covered by these standards are as follows:

1. MWC's with plant capacities less than 35 Mg/day
2. Residential incinerators
3. Agricultural waste incinerators
4. Wood waste incinerators
5. Construction and demolition waste incinerators
6. Crematories
7. Contaminated soil treatment facilities

All other incinerators burning solid waste other than what has been defined above, are probably industrial and commercial waste incinerators.

The EPA believes that most incinerators operate in basically the same manner and that the controls for most incinerators are similar, i.e., wet scrubbers, acid gas control systems, electrostatic precipitators, spray dryer/fabric filter, etc. At this time, EPA believes that the technology requirements on which emission limits (and other requirements) are established are transferable to the other categories of sources. Unless enough information is

received to develop standards for ICWI's, EPA may have to rely upon the data and information obtained during the study of other combustion sources. The EPA will also consider establishing a de minimis emission concentration level at which all facilities that emit less than this level may be exempt from some of the NSPS and EG requirements. Testing may be required to validate the facility's emissions.

III. Request for Comments, Data, and Information

It is important that the Agency receive comments, data, and information from the owners and operators of ICWI's and OSWI's, States and local agencies, and anyone else who may have information concerning these sources. It would be very helpful for the Agency to learn what processes and/or control technologies that ICWI and OSWI facilities would use to reduce emissions. Therefore, comments on the information presented in this notice are requested from the public and the affected industry. Specific comments are requested on the following areas:

- Are there any incineration sources that are not already included by the MWC, MWI, or OSWI source categories? If so, please provide the following information about these sources: Name, address, phone number, type of waste burned, number of units, size of units, combustor type, existing control technology, age of equipment, and emissions data. Please accompany any emissions data with test method used and incinerator's parameters when test was performed.
- Please provide the following information about OSWI source categories: Name, address, phone number, type of waste burned, number of units, size of units, combustor type, existing control technology, age of equipment, and emissions data. Please accompany any emissions data with test method used and incinerator's parameters when test was performed.
- What are the capital and annual costs to operate and maintain the facility? Please itemize the costs to include the capital and annual cost of the incinerator, capital and annual cost of any emission controls used, capital and annual monitoring costs, and any other costs incurred as a result of emission control.
- What specific plant or control device characteristics would impact on a plant's ability to reduce emissions. Describe how and why the impact would occur.

The EPA will consider only those comments that pertain to ICWI's and OSWI's sources and their performance levels and associated control technologies as discussed in this notice.

Dated: December 19, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–31743 Filed 12–27–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 60

[AD-FRL–5128–5]

Standards of Performance for New Stationary Sources: Industrial-Commercial-Institutional Steam Generating Units; Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed revision of rule.

SUMMARY: New source performance standards (NSPS) limiting emissions of nitrogen oxides (NO_X) from industrial-commercial-institutional steam generating units capable of combusting more than 100 million Btu per hour were proposed on June 19, 1984 and were promulgated on November 25, 1986. These standards limit NO_X emissions from the combustion of fossil fuels, as well as the combustion of fossil fuels with other fuels or wastes. The standards include provisions for facility-specific NO_X standards for steam generating units which simultaneously combust fossil fuel and chemical byproduct waste(s) under certain conditions. This action proposes to approve a facility-specific NO_X standard for a steam generating unit which simultaneously combusts fossil fuel and chemical byproduct waste at the Rohm & Haas Kentucky Plant located in Louisville, Kentucky.

DATES: *Comments.* Comments on the proposed revision must be received by January 27, 1995.

ADDRESSES: *Comments.* Comments on the proposed revision should be submitted (in duplicate, if possible) to: The Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460, attention Docket Number A–94–49.

Docket. Docket Number A–94–49, containing supporting information used in developing the proposed revision, is available for public inspection and copying between the hours of 8:00 a.m. and 5:30 p.m., Monday through Friday (except for government holidays) at The Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. George Smith at (919) 541–1549, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Background

Combustion is one means for disposal of chemical by-product wastes. Combustion in a flare or an incinerator is effective, in terms of disposal of the waste, but provides no additional benefit. Combustion in a steam generating unit, on the other hand, provides the benefit of energy recovery, thereby reducing overall energy consumption and conserving energy resources.

Depending on the composition of the waste, however, combustion of chemical by-product waste may be an emission source of toxic air pollutants. For this reason, steam generating units are a source category scheduled for regulation by national emissions standards for hazardous air pollutants (NESHAP) under section 112 of the Clean Air Act by November 15, 2000.

Currently, any steam generating unit which commenced construction, modification, or reconstruction after June 19, 1984 and is capable of combusting greater than 100 million Btu per hour of fossil fuel or a combination of fossil fuel with other fuels or wastes is subject to NSPS. These NSPS are codified under 40 CFR Part 60 as Subpart Db and include emission limits for NO_X.

These NSPS allow for two different NO_X emission limits for steam generating units that combust either natural gas or distillate oil, depending on whether the steam generating unit has a low heat release rate or high heat release rate. A low heat release rate is defined in the NSPS as being 70,000 Btu/hour-cubic foot or less; a high heat release rate is greater than 70,000 Btu/hour-cubic foot. The NO_X emission limit for low heat release rate steam generating units that combust either natural gas or distillate oil is 0.1 pounds per million Btu and for high heat release rate units it is 0.2 pounds per million Btu.

The objective of the NSPS is to limit NO_X emissions from the combustion of fossil fuel. For steam generating units combusting by-product waste, the requirements of the NSPS vary depending on the operation of the steam generating units.

During periods when only fossil fuel is combusted, the steam generating unit must comply with the NO_X emission limits in the NSPS for fossil fuel. During

periods when only by-product waste is combusted, the steam generating unit may be subject to other requirements or regulations which limit NO_X emissions, but it is not subject to NO_X emission limits under the NSPS. In addition, if the steam generating unit is subject to Federally enforceable permit conditions limiting the amount of fossil fuel combusted in the steam generating unit to an annual capacity factor of 10 percent or less, the steam generating unit is not subject to NO_X emission limits under the NSPS, when it simultaneously combusts fossil fuel and by-product waste.

With the exception noted above, during periods when fossil fuel and by-product waste is simultaneously combusted in a steam generating unit, the unit must generally comply with NO_X emission limits under § 60.44b(e) of the NSPS. Under § 60.44b(e) the applicable NO_X emission limit depends on the nature of the by-product waste combusted. In some situations, however, "facility specific" NO_X emission limits developed under § 60.44b(f) may apply. The order for determining which NO_X emission limit applies is as follows.

A steam generating unit simultaneously combusting fossil fuel and by-product waste is expected to comply with the NO_X emission limit under § 60.44b(e); only in a few situations may NO_X emission limits developed under § 60.44b(f) apply. Section 60.44b(e) includes an equation to determine the NO_X emission limit applicable to a steam generating unit when it simultaneously combusts fossil fuel and by-product waste.

In essence, if the by-product waste is gaseous in nature and it is combusted with natural gas or distillate oil, the equation in § 60.44b(e) subjects the steam generating unit to the NO_X emission rate for natural gas or distillate oil, which are the same under the NSPS. If the by-product waste is liquid in nature and it is combusted with residual oil, the equation subjects the steam generating unit to the NO_X emission limit for residual oil. The heat input to the steam generating unit released by combustion of both the natural gas, distillate oil or residual oil, as well as the heat input released from combustion of the by-product waste, are used to determine compliance with the NO_X emission limit.

Finally, if the by-product waste is gaseous in nature or liquid in nature and is combusted with natural gas, distillate oil, residual oil, or coal, the equation subjects the steam generating unit to an NO_X emission limit derived from the NO_X emission limits for natural gas, distillate oil, residual oil, and coal. This NO_X emission limit depends on the relative heat input to the steam generating unit provided by combustion of the gaseous and/or liquid by-product waste, natural gas, distillate oil, residual oil, and/or coal.

As mentioned above, the objective of the NSPS is to limit NO_X emissions from the combustion of fossil fuel. Consequently, in determining compliance with the NO_X emission limits, NO_X introduced into the steam generating unit with the combustion air or the fuel may be subtracted from NO_X emissions released from the steam generating unit in determining compliance with the NO_X emission limits under the NSPS. Such situations may arise where the exhaust from a gas turbine is used as a source of preheated combustion air to a steam generating unit. The gas turbine exhaust will contain NO_X (which may be subject to the NO_X emission limits in the NSPS applicable to gas turbines) and this NO_X may be subtracted from the NO_X released from the steam generating unit, in determining compliance with the NSPS applicable to steam generating units. Similarly, NO_X contained in a by-product waste may be subtracted from the NO_X released by the steam generating unit in determining compliance with the NSPS when the steam generating unit simultaneously combusts fossil fuel and by-product waste.

Only where a steam generating unit which simultaneously combusts fossil fuel and by-product waste is unable to comply with the NO_X emission limit determined under § 60.44b(e), might a facility specific NO_X emission limit under § 60.44b(f) apply. This section permits a steam generating unit to petition the Administrator for a facility specific NO_X emission limit. A facility specific NO_X emission limit will be proposed and promulgated by the Administrator for the steam generating unit, however, only where the petition is judged to be complete.

To be considered complete, a petition for a facility-specific NO_X standard under § 60.44b(f) consists of three components. The first component is a demonstration that the steam generating unit is able to comply with the NO_X emission limit for fossil fuel when combusting fossil fuel alone. The purposes of this provision are to ensure that the steam generating unit has installed best demonstrated NO_X control technology, to identify the NO_X control technology installed, and to identify the manner in which this technology is operated to achieve compliance with the NO_X emission limit for fossil fuel.

The second component of a complete petition is a demonstration that this NO_X control technology does not enable compliance with the NO_X emission limit for fossil fuel when the steam generating unit simultaneously combusts fossil fuel with chemical byproduct waste under the same conditions used to demonstrate compliance on fossil fuel alone. In addition, this component of the petition must identify what unique and specific properties of the chemical byproduct waste(s) are responsible for preventing the steam generating unit from complying with the NO_X emission limit for fossil fuel.

The third component of a complete petition consists of data and or analysis to support a facility-specific NO_X standard for the steam generating unit when it simultaneously combusts fossil fuel and chemical byproduct waste and operates the NO_X control technology in the same manner it would be operated in to demonstrate and maintain compliance with the NO_X emission limit for fossil fuel, if only fossil fuel were combusted. This component of the petition must identify the NO_X emission limit(s) and/or operating parameter limits, and appropriate testing, monitoring, reporting and recordkeeping requirements which will ensure operation of the NO_X control technology and minimize NO_X emissions at all times.

Upon receipt of a complete petition, the Administrator will propose a facility-specific NO_X standard for the steam generating unit when it simultaneously combusts chemical byproduct waste with fossil fuel. The NO_X standard will include the NO_X emission limit(s) and/or operating parameter limit(s) to ensure operation of the NO_X control technology at all times, as well as appropriate testing, monitoring, reporting and recordkeeping requirements.

Rohm & Haas Petition

Rohm and Haas Kentucky Incorporated (Rohm & Haas) of Louisville, Kentucky has submitted a petition for a facility-specific NO_X standard under § 60.44b(f) of Subpart Db. The facility-specific standard would apply to a steam generating unit referred to by Rohm & Haas as Boiler No. 100. This steam generating unit has a heat input capacity of approximately 250 million Btu/hour and simultaneously combusts the fossil fuels natural gas and distillate oil with the chemical byproduct wastes of methyl methacrylate.

Boiler No. 100 has a heat release rate of greater than 70,000 Btu/hour-cubic

foot, and is therefore a high heat release rate steam generating unit. Because Boiler No. 100 combusts natural gas and distillate oil, its applicable NO_X emission limit is the high heat release rate NO_X emission limit for natural gas and distillate oil of 0.2 pounds per million Btu.

The merits of the Rohm & Haas petition are discussed below in terms of the components of a complete petition for a facility-specific NO_X standard under § 60.44b(f) of Subpart Db.

Component One: Fossil Fuel Compliance

As discussed above, the first component of a complete petition is a demonstration that the steam generating unit is able to comply with the NO_X emission limit for fossil fuel when combusting fossil fuel alone. This ensures the steam generating unit has installed best demonstrated NO_X control technology, identifies the NO_X control technology, and identifies the manner in which the NO_X control technology is operated to demonstrate compliance.

Section 60.44b(f) states that the owner or operator must conduct a 30-day performance test with the steam generating unit combusting fossil fuel alone to demonstrate compliance with the NO_X emission limit for fossil fuel. Rohm & Haas has submitted the results of a 30-day performance test demonstrating compliance with the NO_X emission limit in Subpart Db when combusting fossil fuel alone. The 30-day performance test showed the NO_X emissions to be 0.1 pounds per million Btu. This is less than the 0.2 pounds per million Btu emission limit specified in Subpart Db. The test results also identified the NO_X control technology as a combination of low-NO_X burners and flue gas recirculation. The low-NO_X burners were operated with their air ratio control damper tee handles at a minimum of 5 inches out of the boiler to ensure minimal NO_X formation by the low-NO_X burner. The flue gas recirculation line was operated at a minimum of 10 percent open as indicated by its valve opening position indicator to further minimize the formation of NO_X.

The Administrator considers the above data and information submitted by Rohm & Haas sufficient to satisfy the criteria of component one of a complete petition.

Component Two: Fossil Fuel/Waste Noncompliance

As discussed above, the second component of a complete petition is a demonstration that the steam generating unit's NO_X control technology does not enable compliance with the NO_X emission limit for fossil fuel when the steam generating unit simultaneously combusts fossil fuel with chemical byproduct waste under the same conditions used to demonstrate compliance on fossil fuel alone. This component of the petition must also identify the unique and specific properties of the chemical byproduct waste(s) which prevent the steam generating unit from complying with the NO_X emission limit for fossil fuel. Rohm & Haas has submitted data and information that demonstrates that Boiler No. 100 can not comply with the NO_X emission limit for fossil fuel (natural gas and distillate oil) of 0.2 pounds per million Btu, when simultaneously combusting fossil fuel and chemical byproduct waste, and when employing the same NO_X emission controls in the same manner as they were employed when Rohm & Haas demonstrated compliance with the NO_X emission limit for fossil fuel alone.

Rohm & Haas has shown that the properties of the chemical byproduct waste cause Boiler No. 100 to exceed the NO_X emission limit for combusting fossil fuel alone. The chemical byproduct waste has an average nitrogen content of approximately 1.7 percent by weight. Moreover, Rohm & Haas has submitted to the Administrator the test results of NO_X emissions from Boiler No. 100, when it had simultaneously combusted fossil fuel and chemical byproduct waste. Rohm & Haas has submitted data that demonstrates that the NO_X emission limit that Boiler No. 100 can comply with when simultaneously combusting fossil fuel and chemical byproduct waste is 1.1 pounds per million Btu. The NO_X control technology was the same combination of low-NO_X burners and flue gas recirculation used to demonstrate compliance for fossil fuel alone. The low-NO_X burners again were operated with their air ratio control damper tee handles at a minimum of 5 inches out of the boiler. The flue gas recirculation line again was operated at a minimum of 10 percent open as indicated by its valve opening position indicator.

Although Rohm & Haas' Boiler No. 100 will employ low-NO_X burners and flue gas recirculation to reduce NO_X emissions, these emissions will still be above the 0.2 pounds per million limit specified in Subpart Db. The data and information provided by Rohm & Haas demonstrates to the Administrator's satisfaction that the NO_X control technology installed and operated in a manner to achieve compliance with the NO_X emission limit for fossil fuel, if fossil fuel alone were combusted in the unit, is unable to achieve compliance with the fossil fuel NO_X emission limit when a mixture of chemical byproduct waste and fossil fuel is combusted in the unit. It also indicates the reason is the high level of nitrogen contained in the chemical byproduct wastes.

The Administrator considers the above data and information submitted by Rohm & Haas sufficient to satisfy the criteria of component two of a complete petition.

Component Three: Facility Specific NO_X Standard

As discussed above, the third component of a complete petition is data and/or analysis to support a facility-specific NO_X standard for the steam generating unit when it simultaneously combusts fossil fuel and chemical byproduct waste and operates the NO_X control technology in the manner it would be operated in to demonstrate and maintain compliance with the NO_X emission limit for fossil fuel, if only fossil fuel were combusted in the unit. This component of the petition must identify the NO_X emission limit(s) and/or operating parameter limits, and appropriate testing, monitoring, reporting and recordkeeping requirements to ensure operation of the NO_X control technology at all times.

As discussed above, the data and information supplied by Rohm & Haas indicates:

1. Low-NO_X burners and flue gas recirculation are the technologies installed to comply with the NO_X emission limit for fossil fuel.

2. When combusting fossil fuel alone, the low-NO_X burners and flue gas recirculation will ensure compliance with the NO_X emission limit of 0.2 pounds per million Btu, when the low-NO_X burners are operated with their air ratio control damper tee handles at a minimum of 5 inches out of the boiler and the flue gas recirculation line is operated at a minimum of 10 percent open as indicated by its valve opening position indicator.

3. When simultaneously combusting fossil fuel and chemical byproduct waste, the low-NO_X burners and flue gas recirculation will limit NO_X emissions to 1.1 pounds per million Btu or less, when the low-NO_X burners are operated with their air ratio control damper tee handles at a minimum of 5 inches out of the boiler and the flue gas recirculation line is operated at a minimum of 10 percent open as indicated by its valve opening position indicator.

The information supplied by Rohm & Haas also indicates NO_X emissions, as well as the settings of the low-NO_X burner air ratio control damper tee handles and flue gas recirculation line valve opening position indicator, will be continuously measured and monitored to ensure operation of the NO_X control technologies in the manner they would be operated in to demonstrate and maintain compliance with the NO_X emission limit for fossil fuel, if only fossil fuel were combusted.

The Administrator considers the above data and information submitted by Rohm & Haas sufficient to satisfy the criteria of component three of a complete petition.

Proposed Facility-Specific NO_X Standard

The Administrator considers the petition from Rohm & Haas complete and proposes that a facility-specific NO_X standard for the steam generating unit. The NO_X standard for Rohm & Haas' Boiler No. 100 when it simultaneously combusts fossil fuel with chemical byproduct waste is proposed at 1.1 pounds per million Btu. A continuous NO_X monitor shall be used to monitor compliance with the NO_X emission limit in accordance with the requirements of Subpart Db. In addition, the low-NO_X burners shall be operated with the air ratio control damper tee handle at a minimum of 5 inches out of the boiler, and the flue gas recirculation line shall be operated at a minimum of 10 percent open as indicated by its valve opening position indicator.

Administrative Requirements

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fee, or lan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rule was classified "non-significant" under Executive Order 12866 and, therefore was not reviewed by the Office of Management and Budget.

Paperwork Reduction Act

The information collection requirements of the previously promulgated NSPS under 40 CFR Part 60, Subpart Db were submitted to and approved by the Office Of Management and Budget. A copy of this Information Collection Request (ICR) document (OMB control number 2060–0135) may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y); U.S. Environmental Production Agency; 401 M Street, SW., Washington, DC 20460, or by calling (202) 260–2740. Today's changes to the NSPS do not affect the information collection burden estimates made previously. The information that is required to be collected for this facility specific NO_X standard is the same as for all other affected facilities subject to these NSPS. Therefore, the ICR has not been revised.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small business entities.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Cement industry, Coal, Electric power plants, Gasoline, Heaters, Intergovernmental relations, Natural gas, Nitrogen dioxide, Petroleum, Reporting and recordkeeping requirements, Steel, Waste treatment and disposal.

Dated: December 20, 1994.

Carol M. Browner,

Administrator.

Title 40, chapter I, part 60, of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Subpart Db—Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401—7601.

2. Section 60.49b is amended by adding paragraph (t) to read as follows:

§ 60.49b Reporting and recordkeeping requirements.

* * * * *

(t) Facility specific nitrogen oxides standard for Rohm and Haas Kentucky Incorporated's Boiler No. 100 located in Louisville, Kentucky:

(1) Definitions.—Air ratio control damper is defined as the part of the low nitrogen oxides burner that is adjusted to control the split of total combustion air delivered to the reducing and oxidation portions of the combustion flame.

Flue gas recirculation line is defined as the part of Boiler No. 100 that recirculates a portion of the boiler flue gas back into the combustion air.

(2) Standard for nitrogen oxides. (i) When fossil fuel alone is combusted, the nitrogen oxides emission limit for fossil fuel in § 60.44b(a) applies.

(ii) When fossil fuel and chemical byproduct waste are simultaneously combusted, the nitrogen oxides emission limit is 473 ng/J (1.1 lb/million Btu), and the air ratio control damper tee handle shall be at a minimum of 5 inches (12.7 centimeters) out of the boiler, and the flue gas recirculation line shall be operated at a minimum of 10 percent open as indicated by its valve opening position indicator.

(3) Emission monitoring for nitrogen oxides. (i) The air ratio control damper tee handle setting and the flue gas recirculation line valve opening position indicator setting shall be recorded during each 8-hour operating shift.

(ii) The nitrogen oxides emission limit shall be determined by the compliance and performance test methods and procedures for nitrogen oxides in § 60.46b.

(iii) The monitoring of the nitrogen oxides emission limit shall be performed in accordance with § 60.48b.

(4) Reporting and recordkeeping requirements. (i) The owner or operator of Boiler No. 100 shall submit a report on any excursions from the limits required by paragraph (b)(2) of this

section to the Administrator with the quarterly report required by § 60.49b(i).

(ii) The owner or operator of Boiler No. 100 shall keep records of the monitoring required by paragraph (b)(3) of this section for a period of 2 years following the date of such record.

(iii) The owner of operator of Boiler No. 100 shall perform all the applicable reporting and recordkeeping requirements of § 60.49b.

[FR Doc. 94–31745 Filed 12–27–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 60

[AD–FRL–5128–4]

Standards of Performance for New Stationary Sources: Industrial-Commercial-Institutional Steam Generating Units; Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed revision of rule.

SUMMARY: New source performance standards (NSPS) limiting emissions of nitrogen oxides (NO_X) from industrial-commercial-institutional steam generating units capable of combusting more than 100 million Btu per hour were proposed on June 19, 1984 and were promulgated on November 25, 1986. These standards limit NO_X emissions from the combustion of fossil fuels, as well as the combustion of fossil fuels with other fuels or wastes. The standards include provisions for facility-specific NO_X standards for steam generating units which simultaneously combust fossil fuel and chemical byproduct waste(s) under certain conditions. This action proposes to approve a facility-specific NO_X standard for a steam generating unit which simultaneously combusts fossil fuel and chemical byproduct waste (vent gas) at the Cytec Industries Fortier Plant located in Westwego, Louisiana.

DATES: Comments. Comments on the proposed revision must be received by January 27, 1995

ADDRESSES: *Comments.* Comments on the proposed revision should be submitted (in duplicate, if possible) to: The Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460, attention Docket Number A–94–48.

Docket. Docket Number A–94–48, containing supporting information used in developing the proposed revision, is available for public inspection and copying between the hours of 8:00 a.m. and 5:30 p.m., Monday through Friday (except for government holidays) at The Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr George Smith at (919) 541–1549, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Background

Combustion is one means for disposal of chemical by-product wastes. Combustion in a flare or an incinerator is effective, in terms of disposal of the waste, but provides no additional benefit. Combustion in a steam generating unit, on the other hand, provides the benefit of energy recovery, thereby reducing overall energy consumption and conserving energy resources.

Depending on the composition of the waste, however, combustion of chemical by-product waste may be an emission source of toxic air pollutants. For this reason, steam generating units are a source category scheduled for regulation by national emissions standards for hazardous air pollutants (NESHAP) under section 112 of the Clean Air Act by November 15, 2000.

Currently, any steam generating unit which commenced construction, modification, or reconstruction after June 19, 1984 and is capable of combusting greater than 100 million Btu per hour of fossil fuel or a combination of fossil fuel with other fuels or wastes is subject to NSPS. These NSPS are codified under 40 CFR part 60 as subpart Db and include emission limits for NO_X.

These NSPS allow for two different NO_X emission limits for steam generating units that combust either natural gas or distillate oil, depending on whether the steam generating unit has a low heat release rate or high heat release rate. A low heat release rate is defined in the NSPS as being 70,000 Btu/hour-cubic foot or less; a high heat release rate is greater than 70,000 Btu/hour-cubic foot. The NO_X emission limit for low heat release rate steam generating units that combust either natural gas or distillate oil is 0.1 pounds per million Btu and for high heat release rate units it is 0.2 pounds per million Btu.

The objective of the NSPS is to limit NO_X emissions from the combustion of fossil fuel. For steam generating units combusting by-product waste, the requirements of the NSPS vary depending on the operation of the steam generating units.

During periods when only fossil fuel is combusted, the steam generating unit must comply with the NO_X emission limits in the NSPS for fossil fuel. During periods when only by-product waste is combusted, the steam generating unit may be subject to other requirements or regulations which limit NO_X emissions, but it is not subject to NO_X emission limits under the NSPS. In addition, if the steam generating unit is subject to Federally enforceable permit conditions limiting the amount of fossil fuel combusted in the steam generating unit to an annual capacity factor of 10 percent or less, the steam generating unit is not subject to NO_X emission limits under the NSPS, when it simultaneously combusts fossil fuel and by-product waste.

With the exception noted above, during periods when fossil fuel and by-product waste is simultaneously combusted in a steam generating unit, the unit must generally comply with NO_X emission limits under § 60.44b(e) of the NSPS. Under § 60.44b(e) the applicable NO_X emission limit depends on the nature of the by-product waste combusted. In some situations, however, "facility specific" NO_X emission limits developed under § 60.44b(f) may apply. The order for determining which NO_X emission limit applies is as follows.

A steam generating unit simultaneously combusting fossil fuel and by-product waste is expected to comply with the NO_X emission limit under § 60.44b(e); only in a few situations may NO_X emission limits developed under § 60.44b(f) apply. Section 60.44b(e) includes an equation to determine the NO_X emission limit applicable to a steam generating unit when it simultaneously combusts fossil fuel and by-product waste.

In essence, if the by-product waste is gaseous in nature and it is combusted with natural gas or distillate oil, the equation in § 60.44b(e) subjects the steam generating unit to the NO_X emission rate for natural gas or distillate oil, which are the same under the NSPS. If the by-product waste is liquid in nature and it is combusted with residual oil, the equation subjects the steam generating unit to the NO_X emission limit for residual oil. The heat input to the steam generating unit released by combustion of both the natural gas, distillate oil or residual oil, as well as the heat input released from combustion of the by-product waste, are used to determine compliance with the NO_X emission limit.

Finally, if the by-product waste is gaseous in nature or liquid in nature and is combusted with natural gas, distillate oil, residual oil, or coal, the equation subjects the steam generating unit to an NO_X emission limit derived from the NO_X emission limits for natural gas, distillate oil, residual oil, and coal. This NO_X emission limit depends on the relative heat input to the steam generating unit provided by combustion of the gaseous and/or liquid by-product waste, natural gas, distillate oil, residual oil, and/or coal.

As mentioned above, the objective of the NSPS is to limit NO_X emissions from the combustion of fossil fuel. Consequently, in determining compliance with the NO_X emission limits, NO_X introduced into the steam generating unit with the combustion air or the fuel may be subtracted from NO_X emissions released from the steam generating unit in determining compliance with the NO_X emission limits under the NSPS. Such situations may arise where the exhaust from a gas turbine is used as a source of preheated combustion air to a steam generating unit. The gas turbine exhaust will contain NO_X (which may be subject to the NO_X emission limits in the NSPS applicable to gas turbines) and this NO_X may be subtracted from the NO_X released from the steam generating unit, in determining compliance with the NSPS applicable to steam generating units. Similarly, NO_X contained in a by-product waste may be subtracted from the NO_X released by the steam generating unit in determining compliance with the NSPS when the steam generating unit simultaneously combusts fossil fuel and by-product waste.

Only where a steam generating unit which simultaneously combusts fossil fuel and by-product waste is unable to comply with the NO_X emission limit determined under § 60.44b(e), might a facility specific NO_X emission limit under § 60.44b(f) apply. This section permits a steam generating unit to petition the Administrator for a facility specific NO_X emission limit. A facility specific NO_X emission limit will be proposed and promulgated by the Administrator for the steam generating unit, however, only where the petition is judged to be complete.

To be considered complete, a petition for a facility-specific NO_X standard under § 60.44b(f) consists of three components. The first component is a demonstration that the steam generating unit is able to comply with the NO_X emission limit for fossil fuel when combusting fossil fuel alone. The purposes of this provision are to ensure that the steam generating unit has installed best demonstrated NO_X control technology, to identify the NO_X control technology installed, and to identify the manner in which this technology is operated to achieve compliance with the NO_X emission limit for fossil fuel.

The second component of a complete petition is a demonstration that this NO_X control technology does not enable compliance with the NO_X emission limit for fossil fuel when the steam generating unit simultaneously combusts fossil fuel with chemical byproduct waste under the same conditions used to demonstrate compliance on fossil fuel alone. In addition, this component of the petition must identify what unique and specific properties of the chemical byproduct waste(s) are responsible for preventing the steam generating unit from complying with the NO_X emission limit for fossil fuel.

The third component of a complete petition consists of data and or analysis to support a facility-specific NO_X standard for the steam generating unit when it simultaneously combusts fossil fuel and chemical byproduct waste and operates the NO_X control technology in the same manner it would be operated in to demonstrate and maintain compliance with the NO_X emission limit for fossil fuel, if only fossil fuel were combusted. This component of the petition must identify the NO_X emission limit(s) and/or operating parameter limits, and appropriate testing, monitoring, reporting and recordkeeping requirements which will ensure operation of the NO_X control technology and minimize NO_X emissions at all times.

Upon receipt of a complete petition, the Administrator will propose a facility-specific NO_X standard for the steam generating unit when it simultaneously combusts chemical byproduct waste with fossil fuel. The NO_X standard will include the NO_X emission limit(s) and/or operating parameter limit(s) to ensure operation of the NO_X control technology at all times, as well as appropriate testing, monitoring, reporting and recordkeeping requirements.

Cytec Industries Petition

Cytec Industries of Westwego, Louisiana has submitted a petition for a facility-specific NO_X standard under § 60.44b(f) of Subpart Db. The facility-specific standard would apply to a steam generating unit referred to by Cytec Industries as their C.AOG off-gas incinerator. This steam generating unit has a heat input capacity of approximately 260 million Btu per hour and simultaneously combusts the fossil fuel natural gas with the chemical byproduct wastes (vent gas) described below. The C.AOG off-gas incinerator has a heat release rate of less than 70,000 Btu/hour-cubic foot, and is therefore a low heat release rate steam generating unit. Because the C.AOG off-gas incinerator combusts natural gas, its applicable NO_X emission limit is the low heat release rate NO_X emission limit for natural gas of 0.1 pounds per million Btu.

The merits of the Cytec Industries petition are discussed below in terms of the components of a complete petition for a facility-specific NO_X standard under § 60.44b(f) of Subpart Db.

Component One: Fossil Fuel Compliance

As discussed above, the first component of a complete petition is a demonstration that the steam generating unit is able to comply with the NO_X emission limit for fossil fuel when combusting fossil fuel alone. This ensures the steam generating unit has installed best demonstrated NO_X control technology, identifies the NO_X control technology, and identifies the manner in which the NO_X control technology is operated to demonstrate compliance.

Section 60.44b(f) states that the owner or operator must conduct a 30-day performance test with the steam generating unit combusting fossil fuel alone to demonstrate compliance with the NO_X emission limit for fossil fuel. The General Provisions of Part 60, however, permit the Administrator to waive the requirements for a performance test. Specifically, paragraph (b)(4) of § 60.8, entitled Performance Tests, states the Administrator may waive the requirement for a performance test where the owner or operator demonstrates by other means to the satisfaction of the Administrator that the affected facility (i.e., the steam generating unit) is in compliance.

While a 30-day performance test is the most direct means of ensuring that best demonstrated NO_X control technology has been installed, Cytec Industries' C.AOG incinerator is not capable of combusting the fossil fuel (i.e., natural gas) at the full rated heat input capacity of the steam generating unit. Instead of conducting this performance test, Cytec Industries has submitted to the Administrator engineering calculations on NO_X formation for its C.AOG incinerator.

These calculations were made by employing a computer program written by Cytec Industries' C.AOG incinerator designer and manufacturer and by

utilizing published equilibrium and kinetic data on NO_X formation. Cytec Industries has installed staged air combustion on its C.AOG incinerator to control NO_X emissions. This staged air combustion system effectively divides the combustion process into two zones: a fuel-rich or reducing zone and an oxygen-rich or oxidizing zone. To reduce NO_X emissions, the staged air combustion system will operate with a maximum of 81 percent of the total inlet air entering the reducing zone. The computer program predicts the NO_X emissions when combusting natural gas alone would be a maximum of 0.036 pounds per million Btu. This is less than the 0.1 pounds per million Btu emission limit specified in subpart Db.

The engineering calculations, data and information provided by Cytec Industries demonstrate to the Administrator's satisfaction that their C.AOG incinerator would comply with the NO_X emission limit for fossil fuel (i.e., natural gas), if the steam generating unit combusted fossil fuel alone. Consequently, the requirement to conduct a 30 day performance test is waived. However, this waiver is not to be construed as any abrogation of the Administrator's authority to require testing under section 114 of the Clean Air Act. In addition, the data and information provided by Cytec industries identifies staged air combustion as the best demonstrated technology installed to comply with Subpart Db. It also demonstrates that this technology will operate with a maximum of 81 percent of the inlet air provided to the reducing zone to demonstrate and maintain compliance with the NO_X emission limit for fossil fuel.

The Administrator considers the above data and information submitted by Cytec Industries sufficient to satisfy the criteria of component one of a complete petition.

Component Two: Fossil Fuel/Waste Noncompliance

As discussed above, the second component of a complete petition is a demonstration that the steam generating unit's NO_X control technology does not enable compliance with the NO_X emission limit for fossil fuel when the steam generating unit simultaneously combusts fossil fuel with chemical byproduct waste under the same conditions used to demonstrate compliance on fossil fuel alone. This component of the petition must also identify the unique and specific properties of the chemical by-product waste(s) which prevent the steam generating unit from complying with the NO_X emission limit for fossil fuel. Because Cytec Industries has no operating data yet on their C.AOG incinerator, they have submitted to the Administrator data and information on the composition of the wastes and the projected NO_X emissions resulting from the combustion of the wastes.

Cytec Industries' C.AOG incinerator was designed to destroy the hydrocarbons in absorber off gas (AOG) from its acrylonitrile production at its Fortier Plant. This AOG contains approximately 90 percent nitrogen and its oxides and can not support combustion on its own. The C.AOG incinerator is also designed to accept relatively smaller vent gas volumes from an adjacent and related production unit (a methyl methacrylate plant), as well as vaporous hydrogen cyanide and acetonitrile, when conditions are such that they can not be condensed for sale.

The waste materials (vent gas) being burned include 90 pounds of NO_X per hour from the reactor waste gas, as well as a varying load of organic nitrogen compounds. Although Cytec Industries' C.AOG incinerator will employ staged air combustion to reduce NO_X emissions, these emissions will still be above the 0.1 pounds per million Btu emission limit specified in Subpart Db. (This is still the case even when subtracting the incoming 90 pounds of NO_X per hour from the reactor waste gas.) The computer program written by Cytec Industries' C.AOG incinerator designer and manufacturer predicts NO_X emissions of 0.67 pounds per million Btu.

The engineering calculations, data, and information provided by Cytec Industries demonstrates to the Administrator's satisfaction that the NO_X control technology installed and operated in a manner to achieve compliance with the NO_X emission limit for fossil fuel, if fossil fuel alone were combusted in the unit, is unable to achieve compliance with the fossil fuel NO_X emission limit when a mixture of chemical byproduct waste and fossil fuel is combusted in the unit. It also indicates the reason is the high level of nitrogen and its oxides contained in the chemical byproduct wastes.

The Administrator considers the above data and information submitted by Cytec Industries sufficient to satisfy the criteria of component two of a complete petition.

Component Three: Facility Specific NO_X Standard

As discussed above, the third component of a complete petition is data and/or analysis to support a facility-specific NO_X standard for the steam generating unit when it simultaneously combusts fossil fuel and chemical byproduct waste and operates the NO_X control technology in the manner it would be operated in to demonstrate and maintain compliance with the NO_X emission limit for fossil fuel, if only fossil fuel were combusted in the unit. This component of the petition must identify the NO_X emission limit(s) and/or operating parameter limits, and appropriate testing, monitoring, reporting and recordkeeping requirements to ensure operation of the NO_X control technology at all times.

As discussed above, the information and analysis supplied by Cytec Industries indicates:

1. Staged air combustion is the technology installed to comply with the NO_X emission limit for fossil fuel (i.e., natural gas).

2. When combusting natural gas alone, this staged air combustion system will ensure compliance with the NO_X emission limit of 0.1 pounds per million Btu, when it is operated with 81 percent of the inlet air diverted to the reducing zone.

3. When simultaneously combusting natural gas and chemical by product waste, this staged air combustion system will limit NO_X emissions to 0.67 pounds per million Btu or less, when it is operated with a maximum of 81 percent of the inlet air diverted to the reducing zone.

The information supplied by Cytec Industries also indicates NO_X emissions, as well as air flow to the reducing and oxidizing zones, will be continuously measured and monitored to ensure operation of the NO_X control technology in the manner it would be operated in to demonstrate and maintain compliance with the NO_X emission limit for fossil fuel, if only fossil fuel were combusted.

The Administrator considers the above data and information submitted by Cytec Industries sufficient to satisfy the criteria of component three of a complete petition.

Proposed Facility-Specific NO_X Standard

The Administrator considers the petition from Cytec Industries complete and proposes a facility-specific NO_X standard for the C.AOG steam generating unit. The NO_X standard for Cytec Industries' C.AOG incinerator when it simultaneously combusts natural gas (fossil fuel) with chemical byproduct waste (vent gas) is proposed as 0.67 pounds per million Btu. A continuous NO_X monitor shall be used to monitor compliance with the NO_X

emission limit in accordance with the requirements of Subpart Db. In addition, the staged air combustion system shall be operated with a maximum of 81 percent of the total inlet air entering the reducing zone. The percent of total inlet air provided for the reducing zone shall be determined continuously by measuring the air flow of all the air entering the reducing zone and the air flow of all the air entering the oxidation zone.

Administrative Requirements

Executive Order 12866

Under Executive Order 12866 {58 FR 51735, (October 4, 1993)}, the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fee, or lan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities , or the principles set forth in the Executive Order.

This rule was classified "non-significant" under Executive Order 12866 and, therefore was not reviewed by the Office of Management and Budget.

Paperwork Reduction Act

The information collection requirements of the previously promulgated NSPS under 40 CFR Part 60, Subpart Db were submitted to and approved by the Office Of Management and Budget. A copy of this Information Collection Request (ICR) document (OMB control number 2060–0135) may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y); U.S. Environmental Production Agency; 401 M Street, SW; Washington, DC 20460, or by calling (202) 260–2740. Today's changes to the NSPS do not affect the information collection burden estimates made previously. The information that is required to be collected for this facility specific NOx standard is the same as for all other affected facilities subject to these NSPS. Therefore, the ICR has not been revised.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small business entities.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Cement industry, Coal, Electric power plants, Gasoline, Heaters, Intergovernmental relations, Natural gas, Nitrogen dioxide, Petroleum, Reporting and recordkeeping requirements, Steel, Waste treatment and disposal.

Dated: December 20, 1994.

Carol M. Browner,

Administrator.

Title 40, chapter I, part 60, of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Subpart Db—Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401–7601.

2. Section 60.49b is amended by adding paragraph (s) to read as follows:

§ 60.49b Reporting and recordkeeping requirements.

* * * * *

(s) Facility specific nitrogen oxides standard for Cytec Industries Fortier Plant's C.AOG incinerator located in Westwego, Louisiana:

(1) Definitions.

Oxidation zone is defined as the portion of the C.AOG incinerator that extends from the inlet of the oxidizing zone combustion air to the outlet gas stack.

Reducing zone is defined as the portion of the C.AOG incinerator that extends from the burner section to the inlet of the oxidizing zone combustion air.

Total inlet air is defined as the total amount of air introduced into the C.AOG incinerator for combustion of natural gas and chemical byproduct waste and is equal to the sum of the air flow into the reducing zone and the air flow into the oxidation zone.

(2) Standard for nitrogen oxides. (i) When fossil fuel alone is combusted, the nitrogen oxides emission limit for fossil fuel in § 60.44b(a) applies.

(ii) When natural gas and chemical byproduct waste are simultaneously combusted, the nitrogen oxides emission limit is 289 ng/J (0.67 lb/million Btu) and a maximum of 81 percent of the total inlet air provided for combustion shall be provided to the reducing zone of the C.AOG incinerator.

(3) Emission monitoring. (i) The percent of total inlet air provided to the reducing zone shall be determined at least every 15 minutes by measuring the air flow of all the air entering the reducing zone and the air flow of all the air entering the oxidation zone, and compliance with the percentage of total inlet air that is provided to the reducing zone shall be determined on a 3-hour average basis.

(ii) The nitrogen oxides emission limit shall be determined by the compliance and performance test methods and procedures for nitrogen oxides in § 60.46b.

(iii) The monitoring of the nitrogen oxides emission limit shall be performed in accordance with § 60.48b.

(4) Reporting and recordkeeping requirements. (i) The owner or operator of the C.AOG incinerator shall submit a report on any excursions from the limits required by paragraph (a)(2) of this section to the Administrator with the quarterly report required by § 60.49b(i).

(ii) The owner or operator of the C.AOG incinerator shall keep records of the monitoring required by paragraph (a)(3) of this section for a period of 2 years following the date of such record.

(iii) The owner or operator of the C.AOG incinerator shall perform all the applicable reporting and recordkeeping requirements of § 60.49b.

[FR Doc. 94–31744 Filed 12–27–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 80

[AMS–FRL–5128–9]

Regulation of Fuels and Fuel Additives: Standards for Deposit Control Gasoline Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On December 6, 1993, EPA published a Notice of Proposed Rulemaking (NPRM) to require the use of deposit control (detergent) additives in all gasoline used in the United States. The NPRM contained a proposed interim program which would take effect beginning January 1, 1995, as well as a proposed performance-based detergent additive certification program to be implemented at a later date. The interim program was finalized on October 14, 1994. The detergent certification program is expected to be finalized by June 30, 1995, and to take effect a year later.

As proposed, the detergent certification program was concerned specifically with the control of port fuel injector deposits (PFID) and intake valve deposits (IVD). While also acknowledging the potential importance of combustion chamber deposits (CCD), EPA did not propose any requirements for CCD control because of uncertainty regarding the scope of the problem and the current lack of suitable performance test procedures and standards. Subsequently, some commenters expressed concern that a federal requirement for PFID and IVD control might encourage detergent overuse, which could potentially exacerbate CCD concerns. These commenters suggested that, as a temporary measure, until CCD performance tests become available, EPA should cap detergent use by implementing standards to limit the level of unwashed gums in additized gasoline. However, other commenters disagreed with this suggestion. This document discusses the CCD issue and requests comments on alternative approaches for addressing it. Additional comment is also sought in regard to selected issues related to the proposed detergent certification program and the enforcement provisions of the detergents program.

DATES: Written comments on the specific issues discussed in this document will be accepted until January 27, 1995. EPA is not soliciting new comments on aspects of the original proposed rule that are not specifically addressed in this document.

ADDRESSES: Comments on this notice should be submitted in duplicate to: EPA Air Docket Section (LE–131); Attention: Public Docket No. A–91–77; Room M–1500, 401 M Street S.W., Washington, DC 20460. (Phone 202–260–7548; FAX 202–260–4000). This docket also contains all other materials relevant to this rulemaking. The docket is open for public inspection from 8:00 a.m. until 4:00 p.m., except on government holidays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying docket materials.

Electronic copies of this and other documents related to this rulemaking are available through the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS). Details on how to access this bulletin board are included in Section VII of this notice.

FOR FURTHER INFORMATION CONTACT: For general information and information related to technical issues contact: Mr. Jeffrey A. Herzog, U.S. EPA (RDSD–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105; Telephone: (313) 668–4227, Fax: (313) 741–7816. For information on enforcement related issues contact: Judith Lubow, U.S. EPA, Office of Enforcement and Compliance Assurance, Western Field Office, 12345 West Alameda Parkway, Suite 300, Lakewood, CO 80228; Telephone: (303) 969–6483, FAX: (303) 969–6490.

SUPPLEMENTAL INFORMATION:

I. Introduction

Section 211(l) of the Clean Air Act (CAA) specifies that, beginning January 1, 1995, all gasoline shall contain additives to prevent the accumulation of deposits in engines or fuel supply systems. Such deposits can have adverse effects on the emissions of a vehicle as well as its fuel economy and driveability. As part of the CAA mandate, EPA was tasked with the promulgation of rules establishing specifications for such additives.

In response to these statutory requirements, on December 6, 1993, (59 FR 64213) EPA published a Notice of Proposed Rulemaking (NPRM) requiring that gasolines contain detergents to control port fuel injector deposits (PFID) and intake valve deposits (IVD). The rule was proposed to be implemented in two phases. The first phase was an interim program focused on registration and record-keeping requirements which would apply for the first year. The second phase, to apply thereafter, was a certification program requiring detergents to be evaluated in a matrix of test fuels using national consensus test procedures and prescribed standards for IVD and PFID control.

The detergents rule is being finalized in two parts. The interim program was promulgated October 14, 1994, and appeared in the **Federal Register** on November 1, 1994 (59 FR 54678). Promulgation of the full detergent certification program is expected to occur by June 30, 1995. This second phase of the rule was delayed for two reasons. First, the national consensus procedure EPA proposed for use in testing PFID control was not finalized by the American Society for Testing and Materials (ASTM) in time to be incorporated into the rule. Since an interim program had already been proposed for 1995, EPA saw little value in abandoning reliance on the ASTM procedure solely for the sake of promulgating the entire rule at once. Second, issues were raised in the comments regarding the possible impact of IVD and PFID control requirements on combustion chamber deposits (CCD).

While the NPRM also contained a substantial discussion on CCD, it did not propose specific CCD control measures due to a lack of national consensus test procedures and performance standards as well as uncertainty as to the scope of the CCD problem. Given the need for a slight delay in the final rulemaking schedule to allow completion of the test procedure development, EPA believed it was important to further evaluate the CCD issue prior to finalization of the certification program.

As part of that evaluation effort, this notice seeks public comment on concerns raised by auto industry commenters that the gum levels in gasoline will increase as a result of the use of IVD and PFID detergent additives and that these gums will increase CCD. This could have an adverse effect on emissions and vehicle driveability. Additional comment is also sought on several points raised in the comments regarding the proposed implementation and enforcement schemes under the detergent certification program. Each of these areas is discussed below.

II. Combustion Chamber Deposit Control

A. Background

CCDs are composed of fuel and other material which enter the combustion chamber, are not fully burned, and are deposited in various portions of the engine's combustion chamber rather than leaving the chamber with other exhaust products. The formation of CCD is governed by the combustion process

combustion temperatures, and the design of the combustion chamber itself. Other factors influencing CCD formation include fuel and oil composition, engine design/technology and operating conditions (e.g., speed, load, coolant temperature), engine oil consumption, and fuel/oil additive usage. The technical literature indicates that CCD potentially have three effects on engine operations: an adverse effect on emission rates, an increase in engine octane requirements, and an impact on fuel economy. Additional background information on CCD is provided in the NPRM as well as a memorandum to the docket entitled, "Summary Discussion of Combustion Chamber Deposits" (Docket Item IV-B-04).

Based on the incomplete information available in the literature and the lack of available consensus test procedures or standards, EPA did not propose a requirement for CCD control related to emissions or octane requirement increase (ORI) effects. EPA received comments both supporting and opposing this position.

Vehicle manufacturers expressed concern that the proposed rule, which contained IVD/PFID performance standards but no requirements to control CCD, may have an adverse impact on vehicle performance. They stated that the use of excessive quantities of some types of detergent additives, which provide an acceptable level of IVD/PFID control, tend to incrementally contribute to CCD. They further held that EPA's rule, by requiring a consistent level of IVD/PFID control additives in all gasoline, may exacerbate this incremental additive contribution to CCD, since there would be at least a slight incentive to over-additize fuel to assure compliance. An adverse impact on vehicle NOx and HC emissions performance and durability would result.

Vehicle manufacturers also stated that CCD can cause ORI, and that higher engine octane demand might limit future attempts to achieve fuel economy improvements through the design of engines with higher compression ratios. Concerns regarding the potential impact of CCD on vehicle driveability and durability centered around reports that detergent additive overuse could result in valve sticking and combustion chamber deposit interference (CCDI). These commenters stated that CCDI results from the accumulation of CCD on the top of the piston and combustion chamber, which causes mechanical interference during engine operation.

Vehicle manufacturers urged EPA to investigate the potential adverse impact of some IVD/PFID additives on CCD as soon as possible, with the ultimate goal of a standardized CCD control test. As an interim measure, until such a performance test is available, several commenters urged EPA to, in effect, adopt a cap on additive concentration, by setting a maximum unwashed gum level in additized gasoline as measured by ASTM test D381. Two vehicle manufacturers recommended an unwashed gum standard of 20 mg/100 ml, based on the allowable limit for Japanese gasoline. They stated that CCD problems are not present in vehicles in Japan and this may be due in large part to the unwashed gum standard of 20 mg/100 ml. The American Automobile Manufacturers Association (AAMA) recommended an unwashed gum limit of 70 mg/100 ml, and stated that this value would act as a cap and not create a large burden since it exceeds the levels found in most gasolines today. These commenters supported their position by stating that a relationship exists between the increased use of IVD detergent additives, an increase in unwashed gum levels in gasoline, and an increased incidence of CCD-related customer complaints.

One vehicle manufacturer recommended that, as a condition for detergent certification, data should be required demonstrating that the additive does not increase CCD relative to base gasoline. This commenter further stated that it would be appropriate in the interim to allow each additive manufacturer to use its own CCD control test methods. The commenter stated that, because these test procedures would be expected to vary from manufacturer to manufacturer, this approach was recommended only as an interim solution until a standardized CCD performance test and standard is developed.

In contrast to the vehicle manufacturers, the petroleum and additive industries contended that regulatory control of CCD was not appropriate at this time because of a lack of data on the effects of CCD and the lack of an adequate performance test and standard. They stated that data suggesting a link between additive use and increased CCD with associated increased emissions and ORI is too sparse to reach sound conclusions. These commenters also stated that engine manufacturing tolerances may play a greater role than fuel properties in determining the onset and occurrence of CCDI. Commenters from the petroleum industry stated that, while negative impacts from overtreatment exist, including valve sticking, these occurrences have been very rare and usually result from an accidental overtreatment. In summary, API stated that there is no immediate, growing CCD-related problem in the field, and EPA's planned IVD/PFID control requirements are not likely to cause one. They stated that regulatory control of CCD should not be attempted until the Coordinating Research Council (CRC) has had an opportunity to investigate potential adverse effects of CCD and to gain an understanding of all of the factors which can affect CCD, including hardware, lubricant, fuel and additive effects.

Commenters from the petroleum industry all agreed that, even if the need to control CCD were demonstrated, setting a cap on the unwashed gum level in additized gasoline would not be an appropriate control measure. They argued that the data offered to support a correlation between unwashed gum levels and CCD formation is unreliable. Furthermore, they claimed that the unwashed gum test is highly unrepeatable and cannot differentiate different sources of the gum content in the gasoline. They also noted that, since many current IVD/PFID detergents have varying levels of dispersant and carrier oils (some having no carrier oil), the unwashed gum level in gasoline can be highly misleading as a measure of the amount of additive present.

Given the disparity in these positions, EPA requested additional input from the affected industries. Additional comment was received from AAMA, API, Shell Development Company, and the Chemical Manufacturer's Association (CMA)[1] Two technical papers were also published in this time frame that presented additional useful data on CCD related issues.[2]

B. Considerations for Determining a Course of Action

EPA is considering the implementation of a CCD control measure at this time in view of auto industry concerns that, absent such a measure, EPA's planned detergent certification program might contribute to CCD-related vehicle performance problems. Any CCD control measure which EPA might require must be based

[1] See the memorandum to the docket entitled "Summary of Additional Comments on Combustion Chamber Deposits", Docket Item IV-E-35. Discussion of additional comments on CCD is also contained in the following docket items: IV-E-12, IV-E-27, IV-E-29, IV-E-33, IV-E-36, IV-G-37, and IV-E-38.

[2] "Effects of Gasoline and Gasoline Detergents on Combustion Chamber Deposit Formation", Yasunori Takei et. al., SAE Technical Paper Series No. 941893. "Effects of Fuel and Additives on Combustion Chamber Deposits," Mitchell Jackson and Sara Pocinki, SAE Technical Paper Series No. 941890.

on EPA's belief that such a measure would prevent a future CCD problem or solve one which now exists. In addition, it would have to be practical to implement and be founded on a sound understanding of its impacts. If a control program is found to be needed, it would preferably be based on a national consensus test procedure and performance standard. Because several years may be required to develop such a test procedure and standard, however, a cap on unwashed gums has been suggested as a surrogate CCD control strategy. Thus, to determine whether it is appropriate for EPA to implement an unwashed gum standard for additized gasoline as an interim measure to control the potential additive contribution to CCD, EPA must assess the following questions:

1. To what extent do some or all IVD/PFID detergents contribute to unwashed gum levels in gasoline? Which, if any, classes/types of additives are of concern? Under what conditions and how substantial is this contribution?

2. To what extent do gums added to gasoline as part of the detergent additive package correlate or contribute to CCD formation?

3. To what extent is there now a CCD problem associated with the voluntary use of IVD/PFID detergents? Will mandatory use of these detergents exacerbate the potential concerns?

4. To what extent do CCD cause vehicle emission and performance problems?

The information found in the literature and presented by the industry either in their written comments or in response to EPA follow-up is helpful in answering these questions. However, more information is needed. These points are discussed below, followed by a discussion of various alternatives that EPA could adopt regarding CCD control. EPA encourages public comment that would help to further the understanding of these issues.

1. Additive Contribution to Gasoline Unwashed Gum Levels

The data summarized in the previous section indicate a trend toward increased unwashed gum levels with increased detergent additive use and concentration. Public comment is sought on the unwashed gum levels in additized gasoline for both the various classes/types of detergent additives and individual detergent products. Information is also sought on the relative contribution of various detergent additive package components to unwashed gums. In addition, EPA is also interested in more detail and public comment on claims that some detergents with superior CCD control performance cause relatively high unwashed gum levels in gasoline.

2. Gum/Additive Package Contribution to CCDs

The information available seems to support the view that some detergent additives contribute to CCD more than others. However, the significance of this contribution relative to the potential adverse impacts of CCD remains unclear. It is also not completely clear what fraction of the additive types currently used contribute to CCD. This may be a significant concern if a CCD control measure were considered that would preclude the use of a significant fraction of the detergents currently being used. EPA understands that PIBA type detergent additives that use a mineral-based carrier oil predominate in the market. EPA requests comment on several points. First, more data is requested on the relationship between gums, the additive packages, and CCD. Second, EPA is interested in information on which classes/types of additives contribute to this concern more than others and market share and cost information on each type. Third, EPA requests comment on whether the use of a synthetic-based carrier oil rather than a mineral-based carrier oil in PIBA detergents would decrease the gum levels and improve the CCD impacts of these additives and the economic impacts which might result from such a change.

3. Prevalence of CCD-Related Problems Due to Detergent Use and the Effect of IVD Control Requirements on CCD

More information is needed to quantify the scope of the current CCD problem as it relates to detergent additives. Additional information is needed on the fraction of vehicles with CCD-related performance problems as well as estimates of how the problem could grow with federal detergent requirements. Some public comment presented the viewpoint that the planned IVD/PFID control requirements would not result in over-additization because the primary result would be the use of deposit control additives by all fuel marketers at levels that are currently achieved in the majority of gasoline sold within the U.S. However, this comment neglects concerns about possible over-additization to assure compliance during field enforcement as well as for marketing/advertising purposes. EPA encourages additional comment on this issue.

4. Potential CCD-Related Vehicle Emissions and Performance Impacts

A review of the available data on the potential impact of CCD on exhaust emissions is suggestive of a potentially significant impact. However, in addition to the prevalence issue discussed above, comment is requested in a number of areas relative to this point. First, comment is requested regarding the role of vehicle technology on the sensitivity to CCD. Second, more information is requested regarding a potential for threshold effect(s). Is there a level below which no CCD effect occurs for emissions, CCDI, ORI, or fuel economy? If thresholds exist, do they vary for the different impacts? In what relative order? Is there a CCD level above which the level of CCD no longer exacerbates the impact? If such thresholds exist, any potential control measure would ideally need to result in the reduction of CCD beyond this threshold to ensure any meaningful emissions benefit. Since there may be a threshold effect for the impact of CCD on fuel economy, the relationship of this threshold to the possible threshold for exhaust emissions and other impacts would also need to be considered in evaluating the overall impact of a CCD control measure. Third, data is needed relating these threshold effects to the amount of detergent additive used. EPA welcomes the submission of any data which might help to clarify these issues.

The data on CCDI is also not conclusive as to whether this problem is related to fuel quality or vehicle manufacturing problems. EPA encourages the submission of additional data to further evaluate this issue. Of particular value would be data illustrating the extent to which out-of-tolerance engine manufacture may play a role.

The commenters agreed that problems with intake valve sticking sometimes result from detergent additive overtreatment. However, opinions differed as to the extent of these problems and their relevance to the possible necessity of a standard to limit detergent additive concentration. The data currently available is limited and EPA encourages the submission of additional data to help determine the prevalence of this problem. The data on the potential impact on vehicle performance associated with oil viscosity increase (OVI) from the use of detergent additives is likewise very limited and more data is requested in this area.

C. Alternative Actions Which EPA Could Adopt

Based on the information already available and any additional information received in response to this notice, several options will be considered. Each of these is discussed below.

1. Option 1: Follow Approach Proposed in NPRM

The first approach to the CCD issue that EPA is considering is to follow the basic strategy outlined in the NPRM. Under this option, EPA would defer action on CCD pending the gathering of more data, while encouraging responsible actions by industry to develop an industry consensus test procedure and standard. The CRC CCD panel may be in the best position to lead development of national consensus test procedures and standards for CCDs. However, EPA is aware of the disagreement among members of the industry regarding the current direction of the CRC CCD panel's work. Thus, there is considerable uncertainty as to the viability of this option. Members of the CRC's panel from the automobile industry have expressed reservations about whether the investigative work of the CRC CCD panel will proceed rapidly enough to address their concerns regarding the potential impact of CCD on vehicle driveability and on in-use emissions. EPA requests comment on whether it is appropriate to allow industry to evaluate CCD related issues further prior to initiating any potential regulatory action regarding CCD control, or if more immediate intervention on the part of the Agency is necessary.

2. Option 2: Consideration of a CCD Performance Standard

As discussed above, the Agency concluded in the proposal that the lack of adequate data relating CCD to emissions, ORI, or other engine performance indicators, as well as the lack of a suitable test procedure, precluded the Agency from proposing a CCD-related detergent additive performance standard at that time. However, the Agency stated that it may, at a later time, propose test procedures and performance standards for the control of CCD (among other deposit-related phenomena).

In light of recent events (e.g., receipt by EPA of written and verbal comments concerning issues not considered previously), the Agency is again considering the issue of whether or not EPA should pursue such a combustion chamber deposit control performance standard at this time. A discussion of specific issues related to the development of a CCD performance standard is provided in a memorandum to the docket entitled, "Consideration of a Combustion Chamber Deposit Control Performance Standard" (Docket Item IV–B–05).

3. Option 3: Require Data Submission on Unwashed Gums

As an intermediate measure, EPA could require that data on the unwashed gum levels of additized gasoline be submitted as part of detergent certification. Under this option, the detergent certifier would be required to measure the unwashed gum levels in their certification test fuel using the ASTM D–381 test procedures (see next section). The only requirement would be that these measurements be reported to EPA. Using these data, EPA could assess the difference in unwashed gum levels relative to the chemistry of the detergent additive package to evaluate whether a correlation exists. This information would also be useful in determining what fraction of gasoline is treated using additives that cause high unwashed gum levels for the purposes of evaluating the potential effect on industry of implementing an unwashed gum standard or CCD control program in the future.

This option would also be beneficial in that it would encourage continued industry focus on CCD-related issues and may encourage the use of additives with better CCD control performance or less of an impact on unwashed gum levels. An unwashed gum reporting requirement would have little economic impact on industry, since the testing would be conducted concurrent with detergent certification testing, would not require a separate submittal to the Agency, and would be of minimal cost. EPA requests comments on the potential benefits and usefulness of this option in responding to current CCD concerns, and on any additional data that EPA should require to be submitted during detergent certification to help evaluate whether a CCD control measure based on an unwashed gum specification is appropriate.

4. Option 4: Implement an Unwashed Gum Standard

As a measure to address concerns that detergent over-additization would contribute to CCDs, EPA requests comment on whether it would be appropriate to implement a limit on the unwashed gum level in additized gasoline as part of the requirements for detergent certification. As previously discussed, questions remain regarding the need for a full regulatory program to control CCD effects, and the potential associated impacts on emissions, fuel economy and vehicle driveability. While some public comments suggest that limiting the additive contribution to unwashed gums would not necessarily always result in a reduction in CCD, it is possible that an intermediate measure such as this would address the most significant concerns raised by the auto industry commenters without levying large direct compliance costs on the fuel and detergent additive industries. As perceived by the regulated industry the benefits may be very small, but, as discussed below, costs would also be very small. On the other hand, this requirement could make detergent packages with higher gum levels less attractive and could act as a disincentive for research on detergent additive packages with high gum levels. If an unwashed gum standard is established, EPA asks comment on whether such a standard should only be implemented for an interim period, assuming a CCD test procedure/standard is established by regulation.

a. *Unwashed Gum Test Procedure.* If an unwashed gum standard is adopted, it would likely need to be implemented by requiring testing of unwashed gum levels in detergent-additized gasoline using the ASTM D381 procedure or a derivation of this procedure. Concerns have been raised about the repeatability and reproducibility reported for this procedure in the ASTM D381 document, and EPA believes it would be useful to further explore the reasons for the reproducibility and repeatability performance cited in the procedure. In discussions with industry experts regarding the ASTM D381 procedure, one member of the panel which originally developed the procedure suggested the possibility that greater precision might be expected in measuring the unwashed gum levels of modern gasoline. The repeatability/reproducibility data in the ASTM procedure is based on gasolines of the 1960s and 1970s.[3] EPA requests comment on the extent to which gasoline composition can effect the precision that can be achieved in the ASTM test.

EPA's analysis of 1993–94 unwashed gum data collected under ASTM's Interlaboratory Crosscheck Program suggests that the current reproducibility of the procedure may be somewhat better than that reported in the D381

[3] Memorandum to the docket entitled, "Phone Call with Leo Stavinola of Southwest Research Institute (SwRI), Regarding the Applicability of the Unwashed Gum Test to Modern Gasoline", Docket Item IV–E–33.

document.[4] However, the limited range of unwashed gum values represented in the test samples prevents an accurate assessment of test variability over the range of unwashed gum values likely to be encountered in use.

Not all laboratories using the D381 unwashed gum procedure encounter the variability discussed in the ASTM document. EPA contacted Southwest Research Institute (SwRI) to further evaluate the suitability of the unwashed gum test from the standpoint of repeatability and reproducibility.[5] SwRI stated that the unwashed gum test is used routinely by their laboratory to determine whether or not gasoline had been detergent additized. In addition, SwRI related that not only was this test a useful predictor of additive presence, but it could also distinguish additive concentration fairly well. SwRI stated that, in their considerable experience in performing the unwashed gums test, they have achieved significantly better repeatability than that reported in the ASTM procedure. For example, at an unwashed gum level of 60 mg/100 ml, they commonly achieve repeatability of results within ±5 mg/100 ml, as compared to the ±25 mg/100 ml reported in the ASTM procedure. A round robin program conducted by AAMA using three fuels and four labs also indicated good reproducibility (coefficients of variation of 6 percent, 12 percent, and 2 percent) for the three fuels tested. (See memo in public docket at IV-G-39).

SwRI stated that they are aware of several potential problems that may partially account for the poor reproducibility reported by ASTM. SwRI related that the temperature of the evaporation bath and the flow of air to the airjet apparatus must be carefully controlled to limit the variability in results. SwRI also related that another potential problem which can introduce variability in test results is contamination of the oil from the supply pumps. If the repeatability reported by SwRI and the reproducibility achieved in the AAMA study could also be achieved at other laboratories, it might be possible to achieve adequate test precision while minimizing the required number of repeat tests.

EPA requests comment on ways in which the ASTM D381 procedure could be modified to limit test variability. In particular, EPA requests comment on whether additional specifications are required regarding control of the evaporation bath temperature, flow of air to the air jet apparatus, and prevention of oil contamination of the fuel sample from the supply pumps. Specifically, EPA is considering tighter specifications on several elements of the test including the air jet apparatus to 600mL/s ±30 mL/s, the steam jet apparatus to 1000 mL/s ±50 mL/s, and the evaporation bath well temperature to 155°C ±2 °C. Use of a temperature measuring approach other than a thermometer (e.g., thermocouple with digital readout) is also being considered. Other similar modifications to test specifications will also be considered to the degree that they would reduce variability. The submission of test data from the ASTM D381 procedure would also be useful in assisting further evaluation evaluating test repeatability and reproducibility.

b. *Unwashed Gum Limit.* If an unwashed gum standard for additized gasoline is adopted, it must be carefully selected based on the consideration of several factors. First, the available data suggests that the contribution to unwashed gums from sources other than detergent additives is generally under 10 mg/100 ml per the ASTM test. This consideration is important because the focus of an unwashed gum standard must be on the additive contribution to gums. EPA believes that it may be reasonable to assume that the base fuel contribution to gasoline unwashed gum levels does not exceed 10 mg/100 ml. EPA requests data to further evaluate whether this assumption is appropriate.

Second, the choice of an unwashed gum cap should be based on an understanding that such a cap would result in an appropriate level of CCD control. This involves consideration of the possible threshold effects of CCD-related emissions, fuel economy, and vehicle driveability impacts. EPA requests comments on what would be an appropriate unwashed gum cap given these considerations.

There were two separate suggestions in the public comment regarding the choice of an appropriate unwashed gum cap. The first suggestion was to adopt the unwashed gum cap already in place for Japanese gasoline of 20 mg/100 ml.[6] This suggestion was based on the premise that the 20 mg/100 ml cap has been in force for Japanese gasoline for some time, that industry has been able to comply with this cap while meeting other deposit control performance needs, and that the presence of such a cap might be credited for the absence of CCD-related problems in Japan. EPA is concerned about setting a potential standard at this level, because it would prevent the use of many current IVD/PFID detergents. Assuming absolute precision in unwashed gum measurement, a 20 mg cap would limit the additive contribution to unwashed gums to about 10 mg. The available data indicates that this is significantly less than the contribution to unwashed gums for IVD/PFID detergents currently used in the U.S. which typically appears to be between 20 and 60 mg/100 ml and can be considerably higher.[7] EPA's review of AAMA gasoline survey data reveals that less than 40 percent of U.S. gasoline samples tested had an unwashed gum level below 20 mg/100 ml.[8] One explanation for the apparent large difference in unwashed gum levels in Japanese and U.S. gasolines might be that Japanese gasoline tends to require less detergent for adequate IVD control. EPA requests comment that would help explain the difference between the unwashed gum levels in Japanese and U.S. gasoline.

AAMA suggested a significantly higher unwashed gum cap than that observed in Japan. AAMA contended that their suggested cap of 70 mg/100 ml took into account the base gasoline contribution to gums and the variability in the ASTM test procedure, and would allow the use of detergents capable of IVD, PFID and CCD control. They further stated that compliance with this cap could be achieved using current additive technology that results in unwashed gum levels of 35 to 40 mg/100 ml. AAMA's suggestion is based on the premise that an appropriate level of control of the detergent additive contribution to CCD can be achieved by preventing the use of the highest concentrations of detergent additives and unnecessary over-additization. EPA's review of AAMA gasoline survey data reveals that more than 90 percent of U.S. gasoline samples analyzed had unwashed gum levels below 70 mg/100 ml. A review of the same data also showed that approximately 35 percent of U.S. gasoline had unwashed gum levels in excess of 40 mg/100 ml. Thus, depending on the precision of the unwashed gum test, a 70 mg/100 ml unwashed gum cap could result in disqualification for use of detergent packages/concentrations used in

[4] Report to EPA from George Hoffman, CSC, entitled "Sample Sizes for Unwashed Gums Measurements".

[5] Memorandum to the docket entitled "Phone Call with Karen Kohl of Southwest Research Institute (SwRI) Regarding the Unwashed Gums Test," Docket Item IV-E-32.

[6] Written comments on the NPRM from Mazda Motor Corporation, Docket Item IV-G-17, and from Toyota Motors Inc., Docket Item IV-G-25.

[7] Letter to Glenn Passavant, Office of Mobile Sources, from James Williams, American Petroleum Institute, Docket Item IV-G-36.

[8] AAMA unleaded gasoline survey data, 1991-1993, California gasoline excluded.

approximately 10 to 35 percent of gasoline in the U.S.

EPA requests comment on the suitability of an unwashed gum cap of 70 mg/100 ml. In particular, EPA requests comment on the potential benefit of implementing such a standard, and the ability of industry to meet IVD/PFID deposit control requirements with additives that comply with a 70 mg/100 ml unwashed gum standard.

Given concerns expressed by some commenters about variability, EPA proposes that certification or data submission requirements be based on the average of five unwashed gum tests (ASTM D381). With regard to an unwashed gum standard, EPA asks for comment on the minimum number of unwashed gums tests which should be specified to demonstrate compliance and, as an option to industry, the maximum number which could be allowed.

c. *Incorporation of Unwashed Gum Standard Into the Detergent Certification Program.* If EPA adopts an unwashed gum standard or requires submission of unwashed gum levels, the primary compliance focus would be placed on unwashed gum testing of the properly additized test fuel(s) used during detergent certification. One option would be to require the measurement of the unwashed gum level of a test fuel blended with the minimum treatment rate of the detergent package as determined by certification testing for IVD/PFID control. To limit variability in the base fuel contribution to unwashed gums, the test fuel would be required to comply with other specifications regarding gasoline composition (i.e., aromatic, olefin, T–90 and oxygenate content) prescribed for detergent certification testing. For the detergent additive to be certified, the unwashed gum level in this test (or the average for a series of tests) would need to be below the unwashed gum standard.

One of the major issues raised by the auto industry commenters was concern that over-additization could lead to increased gum levels and CCD-related problems. While there may be no economic incentive to over-additize, it is likely to occur. It may occur accidentally, some fuel manufacturers may choose to slightly over-additize to ensure compliance with the volume accounting reconciliation requirements of EPA's enforcement program, or it may occur for other reasons such as advertising. One way to accommodate these possibilities and yet also address the concerns of auto makers is to set the concentration of the additive in the test fuel during testing for unwashed gums at a level higher than the certified treat rate. For example, requiring certification to the unwashed gum standard (or testing of unwashed gums under Option 3) at a level of 110 percent of the certified treat rate would allow the assessment of the impact of a slight over-additization without creating an unreasonable obstacle to compliance. This would also allow for some variation in the unwashed gum level of the unadditized gasoline. Yet another approach with a similar effect would be to reduce the proposed standard by 10 percent. That is, instead of 20 mg/100 ml or 70 mg/100 ml, the standard would be set at 18 mg/100 ml or 63 mg/100 ml with testing conducted at the certified treat rate.

The detergent registration and certification programs require that each gasoline contain detergent in an amount at least equivalent to the minimum certified treat rate. No maximum limit is anticipated. While testing at 110 percent of the minimum certified treat rate would address slight over-additization when the minimum treat rate is the actual target concentration, it will not be representative for fuels additized at even higher rates. EPA, therefore, asks comment on an option which would require those fuel manufacturers who add detergent at greater than 110 percent of the minimum treat rate to pass the unwashed gum standard using fuel treated at the rate actually being used.

As an ancillary enforcement tool, EPA might also require the submission of test data on the unwashed gum levels of in-use fuels from detergent additive blenders. In-use testing of unwashed gum levels might also be conducted by EPA. EPA does not anticipate that such in-use testing would be conducted routinely, but rather that it would be used in cases where there was a suspicion of violation, or would be conducted randomly to encourage compliance. Penalties for noncompliance with an unwashed gum standard would be similar to those for noncompliance with minimum concentration requirements. EPA requests comments on the potential certification and enforcement requirements described above as well as input on other options.

d. *Costs and Benefits.* The potential economic impacts of implementing an unwashed gum standard or data submission requirement vary with the provisions of the potential program, but in general would be similar. First, EPA needs to further evaluate the number of unwashed gum tests that would be required for each detergent certification. If a single unwashed gum test was performed during certification testing, the additional cost for each certification would be approximately $100 for a total cost to industry of approximately $40,000 for the approximately 400 detergents certified in the first year of the program. (This assumes that these tests are not already conducted for other reasons. If multiple tests are used to reduce variability concerns raised in association with the ASTM D381 test, the total cost would be somewhat higher. If, for example, five tests were conducted as proposed above, the total cost for all detergents would be $200,000 in the first year. Recurring annual costs would vary between $6,000 and $30,000 assuming 15 percent new certifications per year.

While it may be difficult to quantify the emission benefits, it is possible to estimate whether such a program could be cost effective. One approach would be to calculate the amount of emissions that would need to be prevented by an unwashed gum standard for the control measure to be cost-effective. If the costs were low, the amount of emissions that would need to be prevented could be relatively small and yet the program could still be quite cost effective. Using the first year cost of $200,000 discussed above, only 200 tons of HC/NOx emission reductions would be required to achieve a nominal cost effectiveness of $1,000 per ton. Given the large number of miles travelled per year by gasoline-fueled vehicles, only a tiny fraction of the fleet would have to get a tiny benefit for this level of benefits to be achieved. For example, less than a hundredth of one percent of vehicles would have to achieve a 0.01 g/mi benefit in order to achieve this benefit. This level of benefits and more appears quite conceivable. The potential negative impact of fuel economy that may accompany a reduction in CCDs complicates consideration of the potential economic impact of the program, as do potential adverse impacts on companies manufacturing detergent additives with high unwashed gum levels. EPA requests comment on the approach to determine the cost-effectiveness of CCD control outlined above and on a method by which any potential negative impact on fuel economy might be accounted for. EPA also asks comment on whether it is possible to reduce emissions or prevent emission problems without adversely affecting fuel economy. It should be noted that section 211(l) of the CAA does not require EPA to justify deposit control measures on a cost-effectiveness basis. However, EPA will give the costs

and benefits of any potential CCD control measure due consideration.

5. Other Options

a. *Use of a Standard Based on Thermogravimetric Analysis of Detergent Additives as an Interim CCD Control Measure.* EPA requests comment on whether a standard based on thermogravimetric analysis (TGA) of detergent additives could be used as an interim measure to limit the additive contribution to CCD. Such a standard would be based on the premise that, to limit the additive contribution to CCD, a detergent additive must decompose at temperatures encountered in the combustion chamber. Any additive which does not decompose and burn in the combustion chamber may provide material for the formation of CCD. Thermogravimetric analysis is one method of determining the thermal characteristics of materials, and might be useful in determining what portion of detergent additive packages remain unburned and may contribute to the formation of CCD.

One potential TGA-based standard would require that, as part of detergent certification testing, a TGA analysis would be performed on the detergent additive package. For a detergent to be certified, the residue of the detergent package left at the specified temperature would be required to not exceed a specified fraction by weight of the original sample. Specifying a testing temperature is a critical element in a potential TGA-based CCD control standard. Recent research indicates that the surface temperature in the combustion chamber may be the most important physical parameter in the formation of CCD.[9] This research indicates that, with high surface temperatures, CCD will reach stabilized levels earlier and the total amount of deposits will be lower. It further indicates that the critical surface temperature beyond which no additional fuel-derived CCD form is 310 °C, and the critical surface temperature beyond which no oil-derived deposits form is approximately 60 °C higher. This research may be useful in helping to determine the proper test temperature specification for a TGA-based CCD control standard. EPA requests comment on an appropriate temperature specification.

Comment is also requested on the allowable fraction of the additive package which could remain as residue after the completion of the TGA analysis. EPA believes that, for a TGA-based standard to provide a meaningful measure of CCD control, the specification on the allowable amount of residue would need to be set in the range of 2 percent of the original sample. EPA requests comment on whether, alternately, it would be more appropriate to place an absolute specification on the allowed weight of detergent residue for a given quantity of additized gasoline, and what an appropriate specification would be. Comment is also requested on what procedural guidelines EPA should implement for the TGA test.

The detergent additive package on which a TGA analysis was performed would be required to contain the maximum concentration of the detergent-active components covered under a registration. Use of these components at higher concentrations to fulfill gasoline detergency requirements would be prohibited. To enforce such a requirement, EPA could require that samples of detergent additive be tested by the additive manufacturer or submitted by the additive manufacturer for analysis by EPA. A violation would occur if this sample failed to satisfy the specified TGA-based limit. Alternately, a violation would occur if, through fourier transform infrared spectroscopy (FTIR) analysis, a sample was found to contain higher concentrations of detergent-active components than those specified in the registration.

b. *Use of Existing CCD Control Performance Data.* One commenter suggested that, as an interim measure, EPA require vehicle/engine CCD control test data to be submitted by each detergent certifier without detailing any requirements regarding the acceptability of the data. EPA believes that such a requirement, while potentially encouraging responsible consideration of CCD control by industry, would not provide a meaningful measure of an additive's CCD control performance. EPA believes that CCD control performance testing is too ill defined to allow EPA to implement guidelines regarding its acceptability. The Agency encourages public comment on this and other options that EPA might adopt to control the potential adverse impacts of detergent additive overuse.

D. Relationship to California Detergent Additive Program

Under EPA's proposed detergent certification requirements, a detergent certified for use under the state of California's detergent program (Title 13, section 2257 of the California Code of Regulations) could be used to satisfy federal detergency requirements for gasoline sold in California. The detergent additive certification requirements currently implemented by the state of California include IVD/PFID control requirements but do not include any unwashed gums or other CCD control provisions. Therefore, if EPA were to implement an unwashed gum standard or reporting requirement, a detergent certified by the California Air Resources Board (CARB) would need to satisfy these requirements in addition to complying with CARB's detergent certification program in order to be eligible for use in complying with federal detergency requirements in the state of California.

III. Other Issues for Additional Comment

A. Formulation of Certification Test Fuels

The discussion in this notice regarding the formulation of certification test fuels pertains specifically to measures which EPA might take to account for yet-to-be-identified nonoxygenate fuel severity factors. Also discussed is the potential difference in the deposit forming tendency of ethanol produced by different processes, and measures that EPA might take to account for this variability. Other issues related to test fuel definition will be addressed in the detergent certification final rule.

1. Accounting for Unidentified Nonoxygenate Fuel Severity Factors

a. *Approach Proposed in the NPRM.* Under the proposed requirements, certification testing for IVD/PFID control would normally be conducted using a matrix of four test fuels, although testing in as few as two fuels would be allowed under certain circumstances. Test fuels would be required to meet or exceed minimum specifications regarding the levels of the following four nonoxygenate fuel parameters which EPA believes affect the deposit forming tendency of gasoline (referred to as fuel severity factors): olefins, sulfur, aromatics, and T–90 distillation point. To account for the deposit forming tendency of oxygenates, one fuel would be required to contain 10 percent ethanol, and another would be required to contain 15 percent MTBE. The NPRM included provisions allowing other fuel parameters to be used to define certification test fuels if their effect on IVD/PFID fuel severity could be demonstrated.

In the NPRM, EPA discussed concerns that specifications on these fuel severity factors may not completely define a

[9] "A Physical Mechanism for Deposit Formation in a Combustion Chamber", Society of Automotive Engineers (SAE) Technical Paper Series No. 941892.

gasoline's deposit forming severity. If this were the case, detergent certifiers might be able to locate or specially blend certification test fuels that meet the proposed compositional requirements but are still inappropriately mild in their deposit forming tendency. To help account for unknown factors in gasoline composition that may affect fuel severity, EPA proposed that gasoline samples for certification testing must be drawn from normal production gasoline stock (finished commercial gasoline) taken from normally operating refinery and/or terminal facilities. In addition, the multiple test fuels were to be drawn from separate production/distribution facilities. This requirement would increase the certainty that unknown severity factors will be represented by ensuring that various refinery stocks are tested. It would also tend to limit the opportunity to select test fuels from refineries that, for unidentified reasons, tend to produce gasoline with a relatively low deposit forming tendency.

b. *Public Comment on the Proposal.* Comments submitted by API and CMA stated that requiring commercial fuels for testing would be extremely burdensome and would have impractical consequences with regard to the logistics and mechanics of obtaining non-additized fuel. Amoco, API, CMA, Nalco, Texaco, and Ashland stated that EPA should allow the use of refinery blend stocks that meet ASTM D4814 specifications to formulate certification fuels. It was also suggested that the finished certification test fuels should meet ASTM D4814 specifications. One commenter stated that, to help alleviate concerns regarding fuel blending, the identity of each blending component should be documented regarding its source and properties.

AAMA stated that there might be characteristics that effect a gasoline's deposit forming tendency which are not represented by consideration of the five parameters proposed to define certification test fuels. AAMA acknowledged that there are no data available to determine which additional parameters would be appropriate to include in the test fuel specifications. However, AAMA stated that certification test fuels could be made more representative by requiring that the major refinery streams be represented in the blending stocks used to formulate these fuels. Such a practice would tend to help ensure that yet-to-be-identified fuel severity factors are represented in the certification test fuels. AAMA stated that requiring more than one certification test fuel would allow for the inclusion of more refinery streams in the formulation of certification test fuels, thereby enhancing the representativeness of the testing.

Comments from API and CMA requested that EPA allow certification testing on a single fuel, formulated from refinery blend stocks, that contains each nonoxygenate fuel severity factor at its highest level in the proposed test fuel matrix, plus 10 percent ethanol. These commenters stated that the increase in gasoline deposit forming tendency resulting from the addition of 10 percent ethanol is more than enough to address concerns about the potential deposit forming tendency of MTBE. Hence, testing on a second MTBE-containing fuel should not be required. On the other hand, commenters from the automobile industry stated that testing on both ethanol- and MTBE-containing fuels should still be required to account for differences in their tendency to form deposits.

c. *Alternative Approaches that EPA Might Adopt.* EPA is considering several approaches, in addition to those proposed in the NPRM, to help ensure the representativeness of the certification test fuels. Under the first option, specifications on fuel parameters in addition to the five that were proposed to be used to define certification test fuels (olefins, sulfur, aromatics, T–90 distillation point, and oxygenate content) would be added to better define the test fuels deposit forming tendency. The NPRM discussed other fuel parameters that might have an impact on a gasoline's tendency to form deposits. Several of these are refinements on the nonoxygenate fuel parameters already considered.

The limited data available indicates that diolefins may affect a gasoline's tendency to form deposits more significantly than do mono-olefinic species. Certain species of sulfur, such as ditertiary butyl disulfide, may also have more of an impact on a gasoline's deposit forming severity than do other species of sulfur. In addition, limited data suggests that heavier, polycyclic aromatic species may have a greater impact on fuel severity than do other aromatic species. These additional fuel parameters might be used in place of, or in addition to, the less specific fuel parameters proposed in the NPRM (total olefins, total sulfur, and total aromatics). Data were also discussed in the NPRM suggesting that fuel nitrogen content might be useful in helping to define the deposit forming tendency of certification test fuels.

Nevertheless, the data available appears to be insufficient to positively identify these fuel parameters as additional severity factors. Also, since levels of such fuel parameters as diolefins, ditertiary butyl disulfide, polycyclic aromatics, and fuel nitrogen are not commonly measured or reported, it would be difficult to determine what levels of these additional fuel parameters would be appropriate to require in certification test fuels. As noted earlier, the proposed test fuel specifications on the levels of sulfur, olefins, aromatics, and T90 were based on national gasoline survey data. EPA requests comments on what additional fuel parameters could be used to help better define the severity of certification test fuels, and on the levels of such fuel parameters that would be appropriate to require in the test fuels to ensure adequate deposit control.

Given that it may not be feasible to use specifications on additional fuel parameters to better define the severity certification test fuels, EPA is considering several other alternatives to improve their representativeness. One such approach would be to specify the refinery blendstocks which must be used in the formulation of certification test fuels. Due to their potential impact on the deposit forming tendency of finished gasoline, EPA believes that specifications on the minimum proportions of the following gasoline blendstocks to be used in the formulation of certification test fuels may be useful in helping to better define test fuel severity: full range fluid catalytic-cracked (FCC) naphtha, full range reformate, full range straight run naphtha, and light coker naphtha.

The relative proportions of these blendstocks required to be used in the formulation of certification test fuels could be based on the fraction at which they are used in blending finished gasoline in the U.S. In keeping with the proposed certification test fuel specifications, which require that each of the four nonoxygenate fuel severity factors must be represented at levels greater than their respective national average levels, it may be appropriate to require that the subject blendstocks be represented in the certification test fuels at proportions that exceed their average representation in finished U.S. gasoline. Based on this approach, appropriate specifications on the minimum percentage of the subject refinery blendstocks which must be used in formulating the certification test fuels are likely to fall within the following ranges: 25 to 40 percent full range FCC naphtha, 25 to 40 percent full range reformate, 1 to 3 percent full range straight run naphtha, and 1 to 3 percent

light coker naphtha.[10] These specifications would account for approximately 50 to 85 percent of the gasoline blendstocks used in formulating certification test fuels. The remaining blending components used in formulating the test fuels could be drawn from any type of refinery blendstock.

EPA requests comment on the usefulness of this approach in accounting for yet-to-be-identified fuel severity factors and in preventing the use of certification test fuels with inappropriately mild deposit forming severity. EPA specifically requests comment on which refinery blend stocks should be included and on the proportions at which they should be represented in the test fuels. EPA also requests comment on the number of test fuels which would be needed to adequately represent all the relevant refinery blend stocks given the need to meet EPA's proposed fuel compositional specifications (regarding minimum required levels of olefins, sulfur, aromatics, T–90, and oxygenates). EPA believes that a single test fuel may not be adequate for this purpose. In addition, the Agency requests comment on the extent to which previous commenters concerns regarding potential logistical problems associated with EPA's proposal to require testing of finished commercial fuels also apply to the approach of formulating test fuels from specified proportions of particular refinery blend stocks.

Another approach EPA is considering would involve raising the levels of the four nonoxygenate fuel parameters required in the certification test fuels. This approach may be useful in helping to limit the variability in fuel severity for a given fuel specification, because the extent of this variability may tend to decrease as levels of these fuel parameters increase. EPA is considering requiring that the 65th percentile levels of these four nonoxygenate fuel parameters must be present in the certification test fuels after the addition of oxygenates, rather than before their addition as was proposed. This approach is being considered due to public comment on the NPRM which indicated that allowing the levels of these fuel parameters to be diluted by the addition of oxygenate may inappropriately reduce test fuel severity. If EPA were to take such an approach, the resulting increase in fuel severity may tend to reduce concerns over the variability in fuel severity due to the effect of yet-to-be identified fuel parameters. EPA requests comment on the extent to which variability in test fuel severity would continue to be a concern if such an approach were adopted.

EPA also requests comment on whether it would be appropriate to increase the required levels of the nonoxygenate fuel parameters still further to limit the variability. To this end, EPA is considering requiring that each of the nonoxygenate fuel parameters must be represented in the certification test fuels at their respective 70th percentile levels after the addition of oxygenate. Such comment should also address the potential that such an upward adjustment in test fuel severity may cause higher concentrations of detergent additive to be used, with an associated heightening of concerns regarding the additive contribution to the formation of CCD.

Another approach EPA is considering would require that the deposit forming tendency of test fuels be demonstrated through testing of the non-additized fuels prior to their use for certification testing purposes. Under this approach, each test fuel would be evaluated for its tendency to form intake valve deposits using the BMW 318i test procedure (as adopted by EPA for certification testing). The cost of implementing such a requirement would naturally increase with the number of test fuels required, and its adoption would be most economical if only a single test fuel formulation were required. For a fuel to be acceptable for use in certification testing, a specified deposit weight would need to be accumulated during pre-certification testing of the fuel in an unadditized state. EPA is considering several alternative test fuel evaluation criteria. Under the first alternative, at least 150–250 mg of intake valve deposits (on average) would be required to be accumulated over the course of 10,000 test miles for a test fuel to be acceptable. Under the second alternative, at least 80–120 mg of IVD would be required to be accumulated over the course of 5,000 test miles. Specific comment is also sought on point values within the two mg ranges presented above.

EPA requests comment on whether this approach is a necessary and useful measure to ensure the representativeness of certification test fuels. Comment is requested on whether it would be useful to require that fuels meet compositional specifications if EPA were to require that they be tested to demonstrate adequate deposit forming severity prior to use for certification purposes. Specific comment is requested on the level of IVD that should be required to be generated for a test fuel to be acceptable as having an adequately severe deposit forming tendency. EPA also requests comment on whether it is necessary to require demonstration of a test fuel's tendency to form fuel injector deposits (PFID) and the appropriate test/standard which might be used to accomplish this purpose. One option under consideration is use of the Chrysler 2.2L vehicle in the ASTM test with the fuel required to generate a flow restriction in the range of 10–20 percent. Specific comment is requested on this option including a point in the range and also on whether a bench rig test may be sufficient to screen a test fuel for its tendency to form PFID. Comment is also requested on other measures which may be implemented to ensure the representativeness of certification test fuels.

2. Accounting for Potential Variability in the Deposit Forming Severity of Ethanol

EPA proposed that the ethanol used in formulating certification test fuels must be of fuel-grade quality. Specially processed ethanol would not be acceptable for use in formulating certification test fuels. This requirement was proposed to account for the deposit forming tendency of other substances commonly found in fuel-grade ethanol. EPA now believes that depending on the processing method used to produce fuel-grade ethanol, various levels and types of impurities may be present. These varying levels of these impurities, such as fatty acids, might potentially effect the deposit forming severity of fuel-grade ethanol to different degrees. If this were the case, certification testing could be conducted using fuels blended with fuel-grade ethanol that has an inappropriately low tendency to increase gasoline forming tendency.

EPA requests comment on the extent to which this is a concern and on potential approaches that EPA might take to ensure that the ethanol used during certification testing is representative of in-use ethanol blending stock in its tendency to from deposits. One approach would be to require that ethanol used for certification testing purposes must contain a minimum level of impurities. Specifications might also be necessary on the type of impurities which must be present. The maximum allowed levels of impurities specified in commercial standards for fuel-grade ethanol might

[10] For a review of the quantities of manufactured gasoline blendstocks blended into U.S. gasoline during the period of April 1 through September 30, 1989, see the National Petroleum Refiners Association Survey of U.S. Refining Industry Capacity to Produce Reformulated Gasolines, part A, January 1991.

be useful in determining the levels of impurities that must be present in ethanol used for certification testing. Potable and chemical grade ethanol as well as fuel grade ethanol which receives additional processing not common to all fuel grade ethanol could not be used in testing. EPA also requests comment on the extent to which the concerns discussed above may also apply to MTBE used in certification testing. EPA also asks for comment on whether the restrictions discussed above for ethanol should also be applied to MTBE.

B. ASTM IVD and PFID Control Test Procedures

In the NPRM, EPA proposed test procedures to evaluate IVD and PFID control that were largely based on draft procedures under evaluation by the American Society for Testing and Materials (ASTM) at the time of the proposal. EPA also proposed that the ASTM test procedures might be adopted in the detergent certification final rule if they were finalized by ASTM in time, and there were no changes that would require further public notice and comment.[11] These test procedures have recently been finalized by ASTM and EPA anticipates their adoption under the detergent certification final rule.[12] EPA requests comment this approach. EPA proposed an alternate IVD control standard at a 5,000 mile test length, in addition to the traditional 10,000 mile standard. Comment is requested on what addition to the ASTM IVD control procedure would be necessary to allow the use of a 5,000 mile test length as well as the 10,000 mile test length specified by ASTM.

C. Applicability of Gasoline Detergency Requirements

The gasoline detergency requirements implemented by the interim detergent registration rule apply to all gasoline, leaded and unleaded, highway and off-road, including both reformulated and conventional gasolines, oxygenated gasoline, and the gasoline component of M85 and E85, as well as marine fuel and gasoline for military purposes. (M85 is a mixture of 85% methanol and 15% gasoline. E85 is a mixture of 85% ethanol and 15% gasoline.) Gasoline service accumulation fuel is also required to comply with gasoline detergency requirements, as is the gasoline component of alcohol blend service accumulation fuel. As noted in the detergent registration final rule, the following types of gasoline are exempted from compliance: aviation fuel, racing fuel, emissions certification fuel, and gasoline used for research and developmental purposes. Gasoline detergency requirements apply to all gasoline other than those types for which an exemption was specifically prescribed.

As an example, although not specifically mentioned in the regulation, since it is to be used in highway motor vehicles factory fill fuel must comply with gasoline detergency requirements.[13] Factory fill fuels must comply with these requirements despite the exemption from general fuel registration requirements noted for these fuels in 40 CFR 79.4(a)(3).

An automobile manufacturer recently suggested to EPA that certain detergent additives used in the gasoline portion of E85 may contribute to the formation of deposits in vehicle fuel pumps in E85 vehicles.[14] EPA requests comment on the potential incompatibility of certain detergent additives for use in the gasoline portion of E85, and on the regulatory measures which EPA could take to address such a problem if it exists. Comment is also requested on the extent to which such concerns might also apply to M85 fuel.

D. Aftermarket Detergent Additives

The proposed detergent certification program did not cover the use of aftermarket detergent additives.[15] EPA requests comment on whether any requirements regarding the deposit control efficiency of aftermarket additives should be implemented, and the authority under which EPA could act to implement such requirements. Specifically, EPA requests comment on what requirements might be necessary on aftermarket additives to limit their potential contribution to the formation of CCD. This is of particular concern since EPA believes that the manufacturers of such aftermarket additives advise their use at very high concentrations to remedy PFID/IVD related problems. As discussed earlier, potential interim CCD control options involve limiting the concentrations used of detergents which have a tendency to form CCD.

E. Detergent Additives Certified for Use in California Phase-2 Reformulated Gasoline

The interim detergent registration rule specified that data used to support the certification of detergent additives under California's detergent additive program, specifically for use in California Phase-2 Reformulated Gasoline, will be acceptable for use in demonstrating the performance of detergents used to comply with Federal detergent gasoline requirements only for gasoline sold within the state of California. During a workshop on the interim requirements for deposit control additives, held by the American Petroleum Institute (API) on October 26, 1994, commenters from the audience suggested that EPA should allow California Phase-2 reformulated gasoline that is additized with detergents certified under California's detergent additive program to be sold outside of California. EPA agrees that this approach is in keeping with the goals of this program. The addition of such a provision would also allow improved flexibility in the gasoline distribution system.

Therefore, EPA proposes to amend the provisions of the interim detergent rule to provide that gasoline additized within the state of California in accordance with the requirements of the California Air Resource Board's (CARB's) detergent rule may also be sold outside of the state of California. Specifically, EPA proposes to amend section 80.141(e)(1) of the regulatory text to state that, under the interim program, CARB detergent certification data specific to California phase-2 reformulated gasoline will be accepted as adequate support of detergent effectiveness for detergent gasoline that is blended within the state of California in accordance with CARB's detergent program.

F. Allowed Variation in the Concentration of Detergent-Active Components Within a Single Registration for a Detergent Additive Package

During the workshop on the interim requirements for deposit control additives held by API, commenters from the audience requested clarification of the allowed variation in the concentration of detergent-active components in a detergent additive

[11] Drafts of the ASTM IVD and PFID test procedures were placed in the public docket for review.

[12] The ASTM procedures are designated as follows: ASTM test method D 5500, "Standard Test Method for Evaluation of Unleaded Automotive Spark-Ignition Engine Fuel for Intake Valve Deposit Formation", and ASTM test method D 5598, "Standard Test Method for Evaluating Unleaded Automotive Spark-Ignition Engine Fuel for Electronic Port Fuel Injector Fouling"

[13] Factory fill fuels must comply with these requirements despite the exemption from general fuel registration requirements noted for these fuels in 40 CFR 79.4(a)(3).

[14] Memorandum entitled: "Phone Call with Gerald Barnes of General Motors Regarding the Potential Incompatibility of Certain Detergent Additives for use in the Gasoline Portion of E85 fuel.", Docket Item IV-E-34

[15] Aftermarket detergent additives are marketed directly to gasoline consumers for addition directly into the vehicle fuel tank.

package under a single additive registration. They stated that it is not possible to comply with the requirements of section 80.141(c)(2), which state that no variation is allowed in the concentration of any of the detergent-active components under a single variation, given variability in manufacturing process. They further stated that upward variation in the concentration of these components should be allowed, since such variation would not compromise the additive's deposit control efficiency. Indeed, as suggested by these commenters, EPA intended the language of section 80.141(c)(2) to prevent downward variation in the concentrations of the detergent-active components from the minimum concentrations reported in the subject additive registration. It was not intended to prevent an upward variation in the concentration of these components. Therefore, to clarify this provision, EPA proposes to amend section 80.141(c)(2) to state that upward variation in the concentration of detergent active components would be permitted, provided that such variation is specified in the registration, and that such variability does not change the minimum recommended concentration reported to be necessary to control deposits.

G. Enforcement Issues

EPA has several enforcement issues for which comments are requested prior to the issuance of the certification final rule. EPA believes these issues are integral to successful enforcement of the detergent program, and will be addressing these issues in the certification final rule.

1. Meters

a. *Required Use of Meters on Automated Additization Systems.* In the NPRM, the proposed mass balance (now volumetric additive reconciliation, or "VAR") formulas provided for three different additization systems: hand blending, meters on every injector, and a metering system that did not have meters on every injector. EPA requested comments on whether the certification rule should require, for the purpose of measurement accuracy, that automated additization equipment be equipped with meters on every injector.

EPA received no comments specifically addressing this issue. However, API commented that the final automated VAR formulas should be flexible enough to permit the use of presently existing automated additization equipment, which includes meters on every injector, metered systems without meters on every injector, and automated systems without any meters that measure detergent use through tank inventory gauging.

The VAR formula in the interim program final rule does not require automated detergent blenders to have metered measurement systems, in deference to lead time concerns. However, as was proposed in the NPRM, EPA does intend to require some form of metered measurements for automated detergent blenders in the certification program final rule. EPA is still interested in receiving comments about the value of requiring systems with meters on every injector, as opposed to permitting the use of metered systems that measure the flow from many injectors on one meter.

A metered measurement system will be required in the certification program final rule because meters are unquestionably a more accurate measurement system than tank inventory gauging. Meters measure the actual flow of product going through them, while inventory gauges merely determine drop in tank volume. As API commented in its analysis of automated additization system errors, inventory measurement systems are subject to error both in measuring inventory as well as in measuring additions to inventory. API's own member survey, submitted to EPA as comment, suggested that metered systems would need a smaller accuracy tolerance range than inventory systems, i.e., an 8 to 10 percent tolerance based on metered system errors, as opposed to the greater 10 to 15 percent tolerance range based on inventory system errors. (Parenthetically, an enforcement tolerance was not provided in the interim program final rule and is not anticipated in the certification program final rule. This issue was addressed at length in the preamble to the interim program final rule.)

The final detergent certification program rule, expected to be effective in mid-1996, will not have the lead time issues associated with implementation of the interim program. EPA therefore reconfirms its proposal that, under the final certification program, all automated detergent blenders using the automated formula be required to have metered measurements. Furthermore, to assure accuracy of the VAR measurements, EPA proposes that all metered systems must include meters on every injector. This more stringent proposal recognizes that not all metered systems can accurately establish whether gasoline is being appropriately additized. If the system merely has a master meter which measures, in the aggregate, the flow of detergent from the tank into a multitude of injectors, it is not possible to determine whether any particular injector is operating properly and dispensing the proper amount of detergent. To ensure that each injector is dispensing the appropriate detergent concentration, a meter would have to be installed on each injector.

Obviously, EPA wants to fulfill its statutory mandate of ensuring the proper additization of gasoline to prevent deposits, and believes it is necessary to require all automated systems to be equipped with meters on every injector. However, the Agency is also concerned about the costs of such a requirement, and is therefore very interested in receiving comments about the number of automated blenders that would need to upgrade under such a requirement, the cost that would accrue to such blenders, as well as the aggregate cost. The Agency would then be interested in comparing these costs with the value received in additional additization accuracy expected to result from this requirement.

b. *Precision of Metered Measurements.* The NPRM proposed that VAR detergent measurements for automated blenders be determined and recorded to one tenth of a gallon. API commented that detergent volume measurement should only be required to be recorded at the gallon level, since scaling back the determination to precision of a gallon would be necessary to accommodate all present additization systems. In deference to the concern that some parties would be unable to upgrade to systems with precision to at least one tenth of a gallon in time for the January 1, 1995 implementation date of the interim program rule, the interim program requires VAR detergent measurements to be recorded only to the nearest gallon.

EPA is now proposing that, under the certification program final rule, the VAR detergent measurements for automated blenders must be recorded to a precision of at least one tenth of a gallon. This provision is consistent with the proposal that all automated blenders using the automated VAR formula must be equipped with metered detergent measurement equipment. It is EPA's understanding that metered equipment is easily able to measure to the one tenth of a gallon precision standard, and it should not be difficult for regulated parties to meet this higher level of precision once the provisions of the certification program go into effect. Comments are requested about the measurement capabilities of metered measurement equipment and about the reasonableness of requiring recording accuracy to one tenth of a gallon.

2. The Use of a Per-Gallon Minimum Detergent Requirement within VAR Compliance Periods for Automated Detergent Blenders

In the NPRM, EPA proposed that all detergent blenders conduct regular product reconciliations to determine the accuracy of their additizations. Hand blenders were proposed to perform this reconciliation on a per-batch basis, whereas automated blenders, not having the uniform capability to easily determine per-batch usage, were proposed to perform the reconciliations on a weekly basis.[16] The detergent reconciliation proposed for automated blenders was, in effect, an averaging procedure, permitting automated blenders to calculate the accuracy of their additization throughout the compliance period on an averaged basis.

To limit the ability to average detergent usage, EPA also proposed in the NPRM that any intentional alteration of the detergent concentration within the compliance period would terminate the period and necessitate the start of a new period. Under this proposal, intentional compensation for under-additization discovered in the period would not be permitted. However, in its comments, API expressed concern that, without a significant enforcement tolerance to determine compliance with the VAR standard over the entire period, automated detergent blenders in some circumstances would be required to make concentration adjustments in order to stay in compliance. As explained in detail in the interim program final rule, EPA did not believe it was appropriate to create a VAR standard enforcement tolerance, but did decide to permit limited intentional compensation within the compliance period for discovered under-additizations. The permissible adjustment was limited to 10 percent above the concentration initially used in the period. The purpose of this limitation was to prevent blenders from attempting to compensate for substantial under-additizations (and thus avoid liability for such under-additizations) by means of intentionally over-additizing, to a significant degree, for the rest of the period.

However, the Agency still has concerns that permitting averaging over the automated blender VAR compliance period will tolerate unacceptable amounts of per-gallon under-additization of gasoline. Depending on the amount of additized gasoline measured in the compliance period, it is clear that even the 10 percent adjustment limitation could permit some quantity of gasoline being non-additized or significantly under-additized. Even if serious under-additization occurred early in the period, the averaged compliance standard might still be attained by the blender through the permissible upward adjustment of the detergent concentration rate for the rest of the period.

Naturally, EPA would like to ensure that all gasoline is additized at an effective detergent concentration rate, as established during certification testing. The VAR compliance procedures included in the interim program go a considerable way toward accomplishing this goal, but only on an average for the compliance period. Individual loads of gasoline may still be severely out of specification. Consequently, for the final certification program rule, EPA is proposing that, within the monthly compliance period for automated blenders, each load of the product must be additized at a rate that is at least 90 percent of the certified detergent treat rate. This 90 percent figure would allow for some lapse in equipment efficiency while providing assurance that each load in the averaging period will approximate the certification standard. The reasonableness of the proposed 90 percent minimum requirement is supported by on an API member survey which was submitted as a comment to EPA. This survey indicated that many blenders (73 per cent of proprietary systems, and 37 percent of non-proprietary systems) can apparently attain a monthly blending accuracy to within 10 per cent of the goal.

The minimum per-gallon requirement within the averaged VAR compliance standard would not only provide greater assurance of across-the-period accurate additization, but would also provide EPA with a useful enforcement tool. With this per-gallon minimum, EPA would be able to sample and test additized gasoline for detergent program compliance at the facilities of any regulated party. Under the interim program, on the contrary, the testing of additized product may reveal complete non-additization without necessarily establishing a violation, since there is no minimum per-gallon requirement under the interim period's VAR procedures. Although extensive sampling and testing of additized product is not presently contemplated, the ability to conduct such testing on a case-specific basis and to establish violations based on such testing would be very useful.

EPA is requesting comments on the proposed per-gallon minimum requirement within the VAR compliance procedures. The Agency is particularly interested in learning whether the 90 percent minimum requirement is considered attainable, what problems would be associated with this minimum requirement, what records would be useful in monitoring compliance with the requirement, and what the costs would be in attaining compliance with a minimum standard. Comment is also requested on an alternate per-gallon minimum requirement, with rationale to support its adoption instead of a 90 percent minimum requirement. If commenters believe the per-gallon minimum concept is not appropriate, EPA requests suggestions for alternative means to assure greater additization accuracy throughout the VAR compliance period. One such alternative option being contemplated by the Agency is the previously proposed weekly compliance period, which would obviously permit less extensive averaging than the longer, monthly period.

3. Presumptive Liability for VAR Violations

Under the interim program final rule, only detergent blenders will be held liable for VAR violations. However, EPA stated in the preamble to interim program rule that this issue may be revisited in the detergent certification final rule. Although some commenters asserted that detergent blenders should be the only parties liable for VAR violations, EPA believes that parties other than, or in addition to detergent blenders, could cause VAR violations. Therefore, limiting liability for VAR violations to detergent blenders may allow culpable parties to evade liability for VAR violations that they have caused.

For example, a party may cause VAR violations by providing inaccurate or incomplete blending instructions to detergent blenders, or by conspiring with detergent blenders to sell under-additized gasoline that violates VAR requirements. The latter scenario could come about if a retailer attempted to save money by intentionally purchasing cheaper, unadditized or under-additized gasoline from a terminal which was intentionally violating VAR requirements to produce such gasoline. In this scenario, the collusion would occur because the retailer would benefit from the lower cost of its purchased gasoline, and the terminal would benefit from the sale of the misadditized product to the retailer.

[16] In fact, pursuant to comments, the interim program requires only a monthly reconciliation period for automated blenders.

Further, the newly proposed per-gallon minimum requirement within the VAR procedures would make it possible for EPA to effectively discover VAR per-gallon minimum violations downstream, at retail outlets or at other regulated parties receiving product from the detergent blenders. When such violations are found, EPA needs the ability to hold these parties liable for such VAR violations. As shown in the preceding paragraph, it clearly could be in the financial interest of these parties to cause VAR violations by colluding with detergent blenders to sell VAR violating, less expensive gasoline.

EPA believes that parties who cause VAR violations should not escape liability for those violations. Therefore, EPA is considering as an option under the detergent certification final rule, that all parties in the misadditized product's distribution system, including detergent blenders but excepting upstream carriers, will be presumptively liable for such VAR violations. As is typically the case, carriers upstream to where a violation is found will be liable for such violations if EPA can establish that they caused the violation.

The rationale for imposing a presumptive liability scheme for VAR violations would be the same as that which supports presumptive liability for other violations in the detergent program, and for violations of other EPA fuels programs such as reformulated gasoline, gasoline volatility, and lead contamination. Typically, many parties handle and control gasoline, detergent and detergent-additized post-refinery component, which are, often times, fungible products. Under these circumstances, it will be difficult for EPA to determine who, in addition to the detergent blender, might have caused the VAR violations. When multiple parties potentially may have caused a violation, the Agency needs a presumptive liability scheme to effectively enforce its regulatory program.

All presumptively liable parties would have the right to establish an affirmative defence to such liability. EPA expects that the vast majority of VAR violations will be caused by detergent blenders, and in these cases, the blenders will be the only parties liable.

EPA requests comments on the issue of presumptive liability for VAR violations, including comments regarding EPA's legal authority to impose such liability. Parties disagreeing with EPA's proposed approach are urged to submit alternative options to address the problem of multiple party causation of VAR violations. One alternative approach that EPA is considering, and is requesting comment on, is the imposition of an affirmative duty (with attendant penalties) on upstream parties transferring title to detergent or custody to those who will physically do the blending, to transfer accurate written blending instructions for use of that detergent. In addition, a new liability section would be created which would hold any regulated party liable for a VAR violation if EPA could establish that the party caused the violation.

4. Right of Entry to Inspect the Premises of Regulated Parties in the Detergent Distribution System

Current regulations permit EPA to enter the premises of gasoline refiners, retailers, wholesale purchaser-consumers, distributors, and importers, and to make inspections, take samples, and conduct tests at such facilities to determine compliance with EPA requirements. See 40 C.F.R. 80.4. EPA is today proposing to amend this provision to include manufacturers, distributors, and carriers of detergent additives.

To investigate possible violations of detergent specifications promulgated under Sections 211(l) and 211(c), and to ensure compliance with those specifications, it is necessary for EPA to have the ability to collect samples of detergent additives at the facilities of the detergent manufacturer, distributor, and carrier. Section 211(l) directs EPA to establish, by regulation, specifications for detergent additives that must be used to prevent the accumulation of engine or fuel system deposits. EPA must be able to sample the detergent additive before it is blended into gasoline to ensure that manufacturers produce detergents that comply with EPA regulations, and to ensure that distributors and carriers of detergents do not take actions that alter detergents in such a way that the requirements are not met. Further, this approach is consistent with the currently existing provision in Part 80 under which EPA may enter the facilities of gasoline refiners and other parties, and make inspections, take samples, and conduct tests at such facilities to determine compliance with the requirements of that part.

Therefore, under EPA's broad authority under Section 301(a) to promulgate such regulations as are necessary to carry out the Agency's functions under the Act, and EPA's authority under Sections 114, 211(c), and 211(l), EPA is proposing to amend the currently existing right of entry provision in 40 C.F.R. 80.4 to include detergent manufacturers, distributors, and carriers. Also, see *Dow Chemical Co. v. United States*, 476 U.S. 227 (1986), recognizing EPA's broad authority to use reasonable means to carry out its investigatory function under the Act, including but not limited to Section 114. EPA invites comment on this proposed amendment.

5. The Use of Multiple Detergent Concentrations by Automated Detergent Blenders

Under the proposed regulatory approach published in the NPRM, automated detergent blenders were not permitted to include several detergent concentrations in one VAR compliance record. Any change in concentration under the NPRM would have necessitated the start of a new VAR period. The purpose of this limitation was to prevent the attempt by blenders to compensate for significant under-additization within a compliance period by changing the rate of additization in the rest of the period.

The Agency received a comment protesting this prohibition against the use of several detergent set rates in one VAR record. The commenter argued that this restriction would penalize blenders with sophisticated equipment that could automatically change set rates depending on the product being additized. According to this commenter, such a blender would be required to create a new VAR record every time his equipment automatically switched concentration rates to accommodate different grades of product being additized.

EPA does not intend to discourage the use of sophisticated additization equipment by detergent blenders. Therefore, under the interim program EPA did not prohibit the use of several set rates on a single VAR record. However, blenders are required to meet the following conditions under the interim program to ensure additization accuracy: no concentration set rate can be set below the detergent's lowest additive concentration (LAC); each initial set rate used in the period must be recorded on the VAR record, along with the product to be additized with each rate; no adjustments to the initially set rates can be made in the period above 10 percent of the initial rate; the blender must maintain records of all adjustments to the set rates.

These requirements protect additization accuracy, while at the same time, provide industry with the flexibility to use sophisticated additization equipment capable of automatically varying set rates. The Agency continues to believe that these VAR requirements are useful. However,

further restrictions are necessary to ensure additization accuracy under the detergent certification final rule.

Under the interim program, automated blenders can measure on a single VAR record product being additized by the same detergent under different set rates, as long as they meet the conditions stated above. Since VAR compliance under the interim program is an averaged compliance, there is no way to determine under this procedure if the product being additized at the lower rate is actually meeting its LAC requirements, because the product being additized at the higher rates would conceal any failure of the lower product to meet the averaged standard. This procedure of multi-rate averaging is thus not conducive to assuring the additization of all product.

Consequently, EPA is proposing that, under the detergent certification final rule, automated blenders may continue to blend their detergent at multiple rates in one VAR period, but product being blended at each set rate must have its own VAR record. This would ensure that product additized at each rate meets the LAC standard. Further, the Agency is also proposing that a blender choosing to use different set rates within a single VAR period must have equipment that can accurately measure detergent use at each set rate, (e.g. meters which can switch to measuring different rates, meters on individual injectors measuring different rates, or other effective systems). This latter requirement will ensure that the accuracy of each set rate's additization can be effectively measured, not merely estimated or assumed.

Comments are requested about these proposed changes to automated blender VAR requirements. Specifically requested is information about the cost associated with implementation of these changes, such as the number of blenders they would impact, the number of blenders that would be forced to upgrade their equipment to accommodate these changes, and the cost of such upgrades. If commenters are opposed to the implementation of these changes, they are urged to submit alternative plans to address the problem of ensuring proper additization of product additized at lower concentrations when multiple concentrations are being measured.

6. Regulation of Imported Additized Gasoline

Under the NPRM, importers of gasoline are regulated parties, subject to the requirements of the detergent rule. They are thus subject to product transfer document requirements and the prohibitions against the transfer and sale of nonconforming product. They are permitted to import either additized or nonadditized product. If they additize the gasoline they import, they are considered detergent blenders, and are subject to VAR requirements for the gasoline. If they import additized gasoline but are not detergent blenders, they are not required to create and maintain VAR records establishing VAR compliance. However, if the product they import is sampled and shown to be under- additized, the importer would be presumptively liable for the violation. As a practical matter, it would be extremely difficult for the importer to effectively meet its affirmative defence requirements, unless it would provide EPA with the VAR records documenting proper additization of the product.

The Agency believes the control over imported gasoline needs to be strengthened in regard to gasoline which is additized prior to importation. As was extensively discussed in the NPRM, enforcement of the detergent regulation will primarily be based on record review, since sampling and testing of additized gasoline for compliance will be difficult. Agency review of VAR records to determine accurate additization is thus critical to the success of the program. It is just as important for EPA to be able to review VAR records for imported gasoline which is additized, as it is to review those records for domestic product, given the sampling and testing limitation. Under the interim program, however, Agency review of VAR records for imported additized gasoline will be limited to those situations in which violations have already been discovered through testing or otherwise. This means that, in regard to imported gasoline, the Agency is deprived of its prime measures to determine detergent program violations.

To correct this deficiency, EPA is proposing that the detergent certification final rule will amend the definition of detergent blender to include importers of additized gasoline within the definition. If importers choose to import additized product, they must be held accountable for its additization accuracy as detergent blenders. If not, those selling domestically additized gasoline will be at a disadvantage to importers, since VAR records establishing violations will not be generally available for EPA review. Including importers of additized product within the definition of detergent blender will make the importers responsible for the creation and maintenance of the VAR records verifying additization accuracy, as well as with compliance with the other VAR requirements that apply to domestically additized product. EPA requests comments about the proposed amendment of the definition of detergent blender.

IV. Public Participation

EPA has encouraged full participation of the regulated industry and other interested parties in the development of the rule to implement the statutory requirements and continues to do so. A public workshop was held on February 13, 1992 to initiate open discussion of the relevant issues and EPA met with numerous industry representatives separately to obtain their input.

The Notice of Proposed Rulemaking (NPRM) was published on December 6, 1993 (58 FR 64213) and a public hearing was held in Ann Arbor, Michigan on January 11, 1994. Comments on the NPRM were accepted until March 11, 1994. EPA received 31 written comments on the NPRM before the close of the initial comment period and has received additional comments since that time particularly with respect to the issues discussed in this notice. EPA encourages additional comment on the issues discussed in this notice through the close of the current comment period. (For the date on which the comment period closes see the Dates section in this notice.) EPA does not intend to hold an additional public hearing to discuss the issues raised in this notice.

V. Electronic Copies of Rulemaking Documents

Electronic copies of this notice, and other documents associated with the detergent certification rule are available on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS). Instructions for accessing TTNBBS and downloading the relevant files are described below.

TTNBBS can be accessed using a dial-in telephone line (919- 541–5742) and a 1200, 2400, or 9600 bps modem (equipment up to 14.4 Kbps can be accommodated). The parity of the modem should be set to N or none, the data bits to 8, and the stop bits to 1. When first signing on to the bulletin board, the user will be required to answer some basic informational questions to register into the system. After registering, proceed through the following options from a series of menus:

(T) GATEWAY TO TTN TECHNICAL AREAS (Bulletin Board)
(M) OMS
(K) Rulemaking and Reporting
(3) Fuels

(4) Detergent Additives

At this point, the system will list all available files in the chosen category in chronological order with brief descriptions. The following five ".ZIP" files are currently available:

"DCA_PRE.ZIP" (Preamble from the Notice of Proposed Rulemaking)

"DCA_IFP.ZIP" (Preamble to the final rule on the Interim Requirements for Deposit Control Additives)

"DCA_IFR.ZIP" (Regulatory text for the final rule on the Interim Requirements for Deposit Control Additives)

"DCA_RIA.ZIP" (Regulatory Impact Analysis)

"DCA_RCN.ZIP" (Notice to Reopen the Comment Period)

File information can be obtained from the "READ.ME" file. Choose from the following options when prompted:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, <H>elp or <ENTER> to exit.

To download a file, e.g., <D> filename.ZIP, the user needs to choose a file transfer protocol appropriate for the user's computer from the options listed on the terminal. The user's computer is then ready to receive the file by invoking the user's resident file transfer software. Programs and instructions for de-archiving compressed files can be found under <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

TTNBBS is available 24 hours a day, 7 days a week except Monday morning from 8–12 EST, when the system is down for maintenance and backup. For help in accessing the system, call the systems operator at 919–541–5384 in Research Triangle Park, North Carolina, during normal business hours EST.

V. Statutory Authority

The statutory authority for the regulation of gasoline detergent additives is granted to EPA by sections 211 (c) and (l) of the Clean Air Act, as amended, 42 U.S.C. 7414, 7545 (c) and (k), and 7601.

List of Subjects in 40 CFR Part 80

Environmental protection.

Fuel additives, Gasoline detergent additives, Gasoline motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: December 19, 1994.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 94–31815 Filed 12–27–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3400, 3470, and 3480

[WO–600–4120–02–24 1A]

RIN 1004–AC15

Logical Mining Units (LMU's) in General; LMU Application Procedures; LMU Approval Criteria; LMU Diligence; and Administration of LMU Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed regulation.

SUMMARY: This proposed rule has three purposes. First, it would amend the regulations relating to logical mining units (LMU's) for coal mining operations. The proposed amendments would ensure that, consistent with the goals of the Federal Coal Leasing Amendments Act (FCLAA) and the Mineral Leasing Act, as amended (MLA), LMU's are approved only for the purpose of developing Federal coal resources in an "efficient, economical and orderly manner," and not solely for the purpose of extending diligent development periods. The amendments would also make several minor clarifications.

Second, the proposed rule would clarify the definition of "producing," which governs how lessees holding current Federal coal leases are qualified to obtain new MLA leases under the law.

Finally, the proposed rule would remove the provision that allows extension of the 3-year deadline for submission of resource recovery and protection plans.

DATES: Comments should be submitted by February 27, 1995. Comments received or postmarked after this date may not be considered in the decisionmaking process on the issuance of the final regulation.

ADDRESSES: Comments should be submitted to: Director (140), Bureau of Land Management, Room 5555 MIB, 1849 C Street NW, Washington, DC 20240. Comments will be available for public review in room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Harold W. Moritz, (202) 452–0350.

SUPPLEMENTARY INFORMATION:

Background:

The concept of LMU's was created when FCLAA was enacted on August 4, 1976. Section 5(b) of FCLAA amended Section 2(d) of the MLA (30 U.S.C. 202a(1)) so that it provides that the Secretary of the Interior, upon determining that maximum economic recovery of the coal deposit or deposits is served thereby, may approve the consolidation of coal leases into a logical mining unit. Such consolidation may only take place after a public hearing, if requested by any person whose interest is or may be adversely affected. A logical mining unit is an area of land in which the coal resources can be developed in an efficient, economical, and orderly manner as a unit with due regard to conservation of coal reserves and other resources. A logical mining unit may consist of one or more Federal leaseholds, and may include intervening or adjacent lands in which the United States does not own the coal resources, but all the lands in a logical mining unit must be under the effective control of a single operator, be able to be developed and operated as a single operation and be contiguous.

An LMU is a production allocation mechanism, which allows a straightforward approach to the logical sequencing of mining operations on contiguous lands. The purpose of an LMU is to permit coal to be mined in a sequence that makes sense. In the western United States, where checkerboard land-ownership patterns are common, an operator may develop several contiguous coal leases on lands that are owned by different entities and were leased at different times. In some cases, requiring the operator to mine the oldest Federal leases first in order to meet diligent development requirements would be inefficient and would not ensure maximum economic recovery of coal reserves. Similarly, requiring an operator to maintain production on multiple contiguous leases in order to meet lessee-qualification requirements under Section 2(a)(2)(A) or continued operation requirements under Section 7 of MLA would be inefficient.

An LMU consolidates two or more Federal leases (or Federal and non-Federal tracts) and allows the Secretary to credit production from anywhere in the LMU to all Federal leases contained in the LMU, for purposes of diligent development, continued operation and lessee qualification. Thus, formation of an LMU can permit more efficient mine

sequencing, allowing an operator to progress logically from one lease to the next, while also allowing the lessee to meet applicable production requirements.

LMU's are an important part of the Federal Coal Management Program. The BLM has approved 39 LMU's to date. These LMU's include 155 of the remaining 431 Federal coal leases. For fiscal year 1993, these approved LMU's comprised more than 32 percent of the Federal lease acres and 51 percent of Federal production.

While LMU's are a legitimate means of managing Federal coal resources, BLM has determined that, in some circumstances, the existing regulations could be used as a device to circumvent FCLAA-mandated lease-specific production requirements. The current LMU regulations provide that: (1) An LMU's 10-year diligent development period starts on the effective date of the "most recent Federal lease" and (2) LMU diligence supersedes lease-specific diligence for the duration of the LMU. This presents the possibility that an operator holding a lease that is about to be terminated for failure to meet diligent development could extend the diligent development period for the lease by applying for an LMU that combines that old lease with newer leases. The term "most recent Federal lease" is defined at 43 CFR 3480.0–5(a)(13)(ii)(B) to mean the Federal coal lease that is first made subject to the 1982 regulatory diligence system closest to, but preceding, the effective date of the approved LMU.

The BLM believes that the regulations governing the commencement of an LMU's diligent development period should be continued without change. The BLM believes, however, that a lease that has not met its diligent development requirements 8 years after its effective date should be included in a new LMU only where the operator is actively pursuing development on some portion of the proposed LMU. This requirement will help ensure that new LMU's are formed only for the purposes intended under FCLAA, and not for the purpose of speculation. For further information regarding this proposal see the discussion of 43 CFR 3487.1(f) below.

BLM has also concluded that the regulations should provide more detailed criteria to guide BLM's review of LMU applications. While the factors proposed are ones that LMU applicants have often addressed in their applications in the past, BLM has concluded that publication of these specific criteria would better ensure that LMU's are approved only where appropriate.

Advance Notice of Proposed Rulemaking

On December 10, 1993, BLM published an Advance Notice of Proposed Rulemaking (ANPRM) (58 FR 64919). The ANPRM gave notice to the public that BLM was considering revision of the regulations at 43 CFR Group 3400 relating to LMU's for coal operations, in order to improve procedures for review of LMU applications and to improve administration of LMU operations.

The ANPRM stated that the purpose of any proposed amendment would be to place a greater emphasis on the stewardship of the Federal coal resources and to ensure that Federal coal resources are developed in an efficient, economical, and orderly manner with due regard to the conservation of coal reserves and other resources, as required by the MLA. The ANPRM presented only a general description of the actions being considered, and included no specific regulatory text. The ANPRM requested information and public comments related to 8 general questions related to LMU's.

The ANPRM solicited public comments to assist in the preparation of a proposed rule. The public comment period closed on February 8, 1994. Seventeen comments were received. Nine comments came from the coal industry, all of them from current Federal coal lessees. Three comments came from State government offices in the State of Wyoming. Three comments came from interest groups; two of these were from industry-oriented groups and one from an environmental group. Two comments came from individuals.

In general, most of the comments said that there was no demonstrated need to change the LMU regulations. Some comments said that changing the LMU regulations could place newly approved LMU's at a competitive disadvantage compared with LMU's approved under the existing regulations. Some comments said that, if BLM does change the regulations, the changes should have a prospective effect only.

The ANPRM requested information and public comments on the following 8 questions concerning LMU's. While not every comment responded to all of the questions, the summaries below address the comments responding to each one.

1. Is any change in the current regulations related to LMU diligent development required or necessary?

All of the comments answering this question said that no changes from the current LMU diligent development regulations were either required or necessary. However, BLM believes that some changes relating to LMU diligent development are warranted. For example, see the detailed discussion relating to the timing of the start of the LMU recoverable coal reserves exhaustion period at 43 CFR 3487.1(e)(6).

2. Is it appropriate for the approval of an LMU to allow for LMU diligent development requirements to supersede lease-specific diligence?

All of the comments responding to this question stated that it is appropriate for the approval of an LMU to allow for LMU diligent development requirements to supersede lease-specific diligence. BLM has determined that the current regulations, which allow LMU diligent development requirements to supersede lease-specific diligence, implement the intent of Congress in enacting the LMU provisions of FCLAA. In debates on the bill, one of the co-sponsors of FCLAA described LMU's as "providing an enormous exemption to the requirements of due diligence and continuous operation by permitting old leases to be consolidated and treated as one . . . ." 122 Cong. Rec. 507 (January 21, 1976) (remarks of Chairwoman Mink).

3. Is it appropriate to tie LMU diligent development to the date of the most recent Federal lease included in the LMU?

4. What methods should be used to establish LMU diligent development requirements?

5. How should LMU diligent development requirements be related to the lease-specific diligent development requirements of those leases included in the LMU?

These questions address essentially the same issue: whether BLM should continue the current practice of tying LMU diligent development to the date of the most recent Federal lease included in the LMU. All of the comments responding to these three questions supported the current regulatory approach. BLM has determined that tying the diligent development period's start date to the most recent Federal lease remains appropriate. The most recent Federal lease in an LMU may be the one that should logically be mined first. It is appropriate to provide the same lead time for diligent development for a recently issued lease when it is part of an LMU as would be required for the lease standing alone.

6. Should the regulations continue to allow an LMU to be effective as early as the date that a complete LMU application was submitted?

All of the comments addressing this question said that the regulations should continue to provide BLM the option to allow an LMU to be effective as early as the date that a complete LMU application was submitted. There are several, often time-consuming, steps involved in approving an LMU once an application is received. Having a Federal coal lease included in an approved and producing LMU can provide protection to a lessee from the disqualification (due to the lessee's holding of nonproducing Federal coal leases) that would otherwise occur pursuant to Section 2(a)(2)(A). In order to provide this protection in a timely manner, it is not appropriate for BLM to delay the effective date of an LMU during its processing of an LMU application. Therefore, the current procedure of allowing an LMU to be effective as early as the date that a complete LMU application was submitted will be continued.

7. Should the regulations require that at least one Federal lease be either producing or included in an approved Surface Mining Control and Reclamation Act (SMCRA) permit in order to be included in an LMU application?

All of the comments responsive to this question stated that the regulations should not be amended to require that at least one Federal lease be either producing or included in an approved SMCRA permit in order to be included in an LMU application. Based on the public comments received, BLM has determined that the regulations should not be amended to require that at least one Federal lease be producing. However, BLM has determined that, where the proposed LMU would include a lease that has not met diligent development requirements within 8 years after its issuance, it is appropriate to require that at least some part of the proposed LMU be covered by a pending or an approved application for a SMCRA permit in order for the LMU to be approved. See the discussion of 43 CFR 3487.1(f)(7), below.

8. What would be a viable, working definition of the term "producing" or "production" under the Federal Coal Leasing Amendments Act and MLA as the term relates to LMU's? Should separate definitions of "producing" and "production" be developed specifically for LMU's? If so, what should the definition be?

All of the comments answering this question said that the regulations already contain viable working definitions for the terms "producing" or "production" under FCLAA and MLA as the terms relate to LMU's. All of these comments further stated that the regulations should not contain separate definitions of "producing" and "production" specifically for LMU's. None of the comments suggested any alternative definitions. Nevertheless, BLM believes that the definition of "producing" at 43 CFR 3400.0–5(rr)(6) needs some clarification. The BLM proposes to clarify the existing provisions of and add two new provisions to 43 CFR 3400.0–5(rr)(6). These changes would: (1) remove the term "standard industry operation practices;" (2) address the "producing" status of leases that are mined out and being held solely for reclamation; and (3) make it clear that market conditions do not provide a basis for extended "temporary" suspensions of severance. See also the discussion on 43 CFR 3400.0–5(rr)(6), below.

Finally, the public was invited to raise any additional concerns relating to diligent-development requirements for LMU's and to submit suggested solutions. None of the comments provided any additional insight into diligent development requirements for LMU's. Experience in implementing the LMU program over the past 12 years has led BLM to consider several additional small changes. See the more detailed discussions below.

Study by the General Accounting Office (GAO)

Since 1992, GAO has been examining BLM's coal leasing program. In the course of its investigation, GAO has raised several issues, including two related to LMU's. First, GAO suggested that BLM should prepare regulations to provide clear criteria that BLM can use to determine whether an LMU will further the efficient, economical and orderly development of coal deposits. Second, GAO suggested that the definition of producing, as it relates to an approved LMU's ability to provide protection from the lessee-qualification sanctions of Section 2(a)(2)(A) of MLA, could be improved to reduce the possibility of speculation. This proposed rule addresses both of these areas.

Section 3400.0–5 Definitions

The prefatory clause to the list of definitions at 43 CFR 3400.0–5 presently states "As used in this part:". This could be interpreted to mean that the definitions are applicable only to the general coal management provisions of part 3400, and not to the remainder of group 3400. This has never been the intention of the regulation, as all of the terms defined at section 3400.0–5 appear throughout group 3400. To eliminate any possible confusion, the prefatory wording of section 3400.0–5 would be amended to make it clear that the definitions apply to all of the Federal coal management regulations in group 3400.

The proposed rule would also amend the definition of "producing" at section 3400.0–5(rr)(6), which defines one of the lessee qualifications under MLA. Section 2(a)(2)(A) of the MLA provides that no lease may be issued under MLA to any entity that holds, and has held for 10 years, a Federal coal lease that is not "producing" in commercial quantities.

The BLM has concluded that the present regulation, which defines "producing" to include "operating an ongoing mining operation in accordance with standard industry operation practices," has potential for abuse. The present language could allow a lessee to claim that it is "producing" in accordance with standard industry practices even though, for reasons that are within its control, coal has not been produced for many years. This practice does not well serve a major goal of FCLAA: to prevent speculative holding of leases.

BLM recognizes, however, that operator/lessees may have legitimate reasons that are beyond their control for temporarily suspending severance of coal. Congress recognized this possibility in Section 2(a)(2)(A) of MLA, which provides that lessees that are not producing are not disqualified from obtaining new leases if the leases meet the exception-to-producing requirements in Section 7(b) of MLA (30 U.S.C. 207(b)). Section 7(b) exempts lessees from diligent development and continued operation requirements where operations are interrupted by strikes, the elements, or casualties not attributable to the lessee or where the operator/lessee is paying advance royalty in lieu of continued operation.

Consequently, the proposed rule would remove the "standard industry operation practices" language, but would preserve the exception permitting temporary suspension of operations for reasons beyond the reasonable control of the operator/lessee. BLM believes that the examples of reasons for suspending operations that are listed in the present regulation account for most "standard industry operation practices" that might require a temporary suspension. There may be other reasons for temporarily suspending operations, but any such reasons must also be beyond the reasonable control of the operator/lessee. BLM solicits public comment on other reasons that may be included in this listing.

The present regulation does not define "temporary." It is appropriate to place a definite limit on the duration of temporary suspensions of severance for purposes of the meaning of "producing" under Section 2(a)(2)(A). The BLM would establish 3 months as the maximum period of time that would be considered temporary under section 3400.0–5(rr)(6). Should forces beyond the operator/lessee's control require a longer period of suspension, the operator/lessee could apply for a force majeure suspension under Section 7(b) of the MLA (30 U.S.C. 207(b)), as implemented by 43 CFR 3483.3. In accordance with the exceptions stated in Section 2(a)(2)(A) of the MLA and 43 CFR 3472.1–2(e)(1)(i), any operator/lessee who has, under 43 CFR 3483.3 an approved suspension of the requirement for continued operations found in Section 7(b) of the MLA is not barred by Section 2(a)(2)(A) from acquiring new leases on account of that suspension.

The listed examples of reasons for temporary suspension of severance remain appropriate, but they require minor clarifications. The proposed rule adds to "sale of stockpiles of coal" the phrase "that was severed from the lease or LMU in question," in order to make it clear that an operator/lessee's sale of coal from any source other than the lease or LMU in question would not be grounds for suspending the production requirement for purposes of Section 2(a)(2)(A).

Additionally, the phrase "limited duration of time" found at the end of existing section 3400.0–5(rr)(6)(i) would be removed and replaced with a cross-reference to this same temporary period of time (i.e., that could not exceed 3 months). This will make it clear that, when the coal buyer's operation of its power plants requires the coal buyer to stop taking coal shipments for temporary periods of up to 3 months, the lease or LMU supplying that coal can be viewed as producing under these regulations.

A new paragraph (rr)(6)(ii)(B) would be added to provide that market conditions are not considered by BLM to fall within the scope of the term "reasons beyond the reasonable control of the operator/lessee." The Department of the Interior (DOI) takes the position that lack of a market or the loss of a contract constitutes a normal business risk, and that neither event is a justifiable reason for granting a suspension. These situations are distinguishable from circumstances where the operator/lessee has temporarily suspended further severance of coal for short periods while selling stockpiled coal severed from the lease or LMU in question or while the coal buyer's operations require it to stop taking coal.

Section 2(a)(2)(A) of MLA was added principally as an anti-speculation device for leases in existence at the time of FCLAA's enactment. Maintaining a lease in a nonproducing status while waiting for a market to develop, or for a contract to be negotiated or renegotiated, is the kind of speculation that Congress intended to discourage when it enacted FCLAA.

Because proposed § 3400.0–5(rr)(6)(ii)(A) would limit to 3 months or less those temporary suspensions not affecting lessee eligibility, paragraph (rr)(6)(iii) would be added in order to avoid disqualification of lessees whose production is suspended for longer periods by orders of governmental authorities and through no fault of the operator/lessee. The effect of the rule would be to move the exception from the requirement of actual severance, on account of suspensions due to the orders of governmental authorities, from the existing paragraph (rr)(6)(i) to the proposed paragraph (rr)(6)(iii).

Paragraph (rr)(6)(iv) would be added to clarify that the term operator/lessee as used in paragraphs (rr)(6), (ii) and (iii) would have the same meaning as stated in § 3480.0–5(a)(28).

As presently drafted, the proposed changes in the definition of "producing" would, if adopted in the final rule, take effect 30 days after the date when the final rule is published. The BLM solicits public comment on whether a longer phase-in period, such as 6 months, is necessary and appropriate to allow operators/lessees to come into compliance with these changes.

Section 3472.1–2 Special leasing qualifications

Section 3472.1–2 sets forth special qualifications that applicants must meet in order to obtain leases. The BLM proposes to make several clarifying changes in the section. Paragraph (e)(1)(i) parallels MLA Section 2(a)(2)(A), which prohibits issuance of new leases to those who have held a Federal coal lease for 10 years that is not producing in commercial quantities. The current regulation sets forth exceptions to that prohibition, including those provided in "paragraph (e)(4) or (5) of this section."

Proposed paragraph (e)(1)(i) would make several minor grammatical corrections, and would add a reference to paragraph (e)(6) as another exception to the lessee qualification provisions. As the present language of the regulation suggests, BLM has always considered paragraph (e)(1)(i) to be subject to the exceptions set forth in paragraph (e)(6). The proposed change simply clarifies that fact.

The proposed rule also includes several clarifying changes in paragraph 3472.1–2(e)(6)(ii). Paragraphs (A) through (C), which apply to pre-FCLAA leases, clearly require that a lease actually be "producing" at the time qualification for new leases is determined. Paragraph (D) requires leases subject to diligent development requirements to be "producing in compliance with diligent development and continued operation provisions of part 3480." Paragraph (E) requires that, for a lease contained in a logical mining unit, the LMU be producing "in accordance with the logical mining unit stipulations of approval."

Under the present wording of paragraph (D), a lessee who has held a non-producing lease for more than 10 years could argue that the lease is "producing in compliance with diligent development and continued operation provisions of part 3480." This could occur where the lessee holds a pre-FCLAA lease that did not become subject to diligent development until it was readjusted in, for example, 1988. In 1994, the lease would be in compliance with diligent development and continued operation requirements, because production of commercial quantities would not be due until 1998, and continued operation requirements would apply only after meeting diligent development. Similarly, under the present wording of paragraph (E), a lessee holding non-producing leases in a non-producing LMU could argue that the lessee meets the "producing" requirement for purposes of MLA Section 2(a)(2)(A) if the LMU is merely in compliance with the diligence provisions of its stipulations of approval.

The BLM believes that a policy under which mere compliance with the diligent development requirements of amended Section 7(b) of the MLA is adequate to satisfy the "producing" requirement of Section 2(a)(2)(A), where the lease has not yet produced commercial quantities, undermines the anti-speculation goal of FCLAA. The two sections have separate purposes and their requirements should be implemented separately. This interpretation of the relationship between Section 2(a)(2)(A) and Section 7(b) better serves the anti-speculation goal of FCLAA.

The BLM does believe, however, that once a lessee has actually satisfied diligent development and continued operation requirements, a lease should

be considered to be "producing" under Section 2(a)(2)(A). Accordingly, proposed paragraph (D) would be amended to provide that, in order to protect a lessee from disqualification under Section 2(a)(2)(A), a lease must be producing or, for a lease that has met its diligent development requirements, must have met its continued operation requirements for the year. Similarly, proposed paragraph (E) would be amended to make it clear that, in order to protect a lessee from disqualification, an LMU must be producing, or have satisfied its continued operation requirements for the year, in addition to complying with the LMU approval stipulations.

Section 3480.0–5 Definitions

A new paragraph (a)(21) would be added to define the new term "logical mining unit (LMU) recoverable coal reserves exhaustion period." This term would better reflect the requirement in the MLA that the maximum mine-out period allowed for each LMU is 40 years. 30 U.S.C. 202a(2) (1988). Also, see discussions below regarding sections 3487.1(d)(1), 3487.1(e)(6), and 3487.1(g)(4), where this new term would be used in the regulations.

To allow for the new definition at section 3480.0–5(a)(21), existing paragraphs (21) through (36) of section 3480.0–5(a) would be renumbered as (22) through (37), respectively.

Section 3483.3 Extension or suspension of continued operation, 3-year resource recovery and protection plan submission requirement, and operations and production

In *Natural Resources Defense Council* v. *Jamison*, 815 F. Supp. 454, 470–71 (D.D.C. 1992), the court held that the present provision at 43 CFR 3483.3(a) that allows extension of the 3-year deadline for submission of resource recovery and protection plans is inconsistent with the requirements of FCLAA. The court ruled that FCLAA's requirement that the operation and reclamation plan must be submitted within 3 years of issuance of a lease is mandatory and contains no force majeure exception. See 30 U.S.C. 207(c)(1988). Consequently, the proposed regulation removes from section 3483.3(a) all references to resource recovery and protection plans. Section 3483.3(a) has also been edited for clarity of expression.

Section 3487.1 Logical mining units

The proposed rule would make several changes in the regulations governing logical mining units. Once they are effective, BLM intends to apply the new regulations to its review of all LMU applications that are currently pending, and those that are filed after December 28, 1994.

Minor revisions would be made at paragraphs 3487 1(d)(1) and (e)(6) to make the regulation consistent with the new definition of "logical mining unit (LMU) recoverable coal reserves exhaustion period" at paragraph 3480.0–5(a)(21).

Additionally, the proposed rule would amend paragraph 3487.1(e)(6) to provide that the LMU recoverable coal reserves exhaustion period begins upon approval of the resource recovery and protection plan, in accordance with sections 3482.1(b) and 3482.2(a)(2), and to require that all recoverable reserves be mined within that period. The current regulation establishes the start date as the date on which coal is first produced from the LMU on or after the LMU's effective date. The MLA does not state expressly when the mine-out period should start. Rather, the MLA states that the period that the Secretary establishes must be part of the approved "mining plan" and cannot exceed 40 years. See 30 U.S.C. 202a(2). The BLM interprets "mining plan" to mean the "operation and reclamation plan" required under 30 U.S.C. 207(c), which the implementing regulations, at 43 CFR subpart 3482, call the "resource recovery and protection plan". This plan, which the lessee must submit within 3 years after a lease is issued, provides detailed descriptions of how the operator/lessee will mine the coal and reclaim the land. Because this plan is approved concurrently with the SMCRA permit, the operator/lessee is free to start operations after the date of approval. The BLM believes that it best serves the purposes of FCLAA to begin the 40-year LMU mine-out period on this date, in order to encourage diligent development of Federal coal reserves.

Paragraph 3487.1(f) would be revised to insert the word "may" in lieu of the phrase "shall, except for good cause stated in a decision disapproving the application." The MLA provides that the Secretary "may" approve an LMU, upon determining that maximum economic recovery of coal would be served thereby. See 30 U.S.C. 202a(1). The statute gives the Secretary broad discretion to determine whether the public interest would be served by approval of an LMU. The present regulation unnecessarily limits this discretion by requiring that the authorized officer "shall," except for good cause, approve an LMU application that meets certain standards. The legislative history of FCLAA indicates that Congress never intended that there should be a presumption in favor of approving LMU's. See 122 Cong. Rec. 507–08 (Jan. 21, 1976) (remark of Chairwoman Mink that "we have agreed to permit this limited use of the LMU device"). The proposed new wording better reflects the discretion granted by Congress.

Several additions are proposed to paragraph 3487.1(f)(2) to provide authorized officers with more detailed guidance for determining whether a proposed LMU would promote efficient, economical, and orderly development of coal resources. First, the proposed rule would make it clear that the applicant bears the burden of showing that the proposed LMU meets the statutory criteria. Second, the proposed rule would list the key geologic and engineering factors that the authorized officer will use to determine whether an LMU will meet those criteria. The proposed rule would not include an exhaustive list of such factors; the authorized officer would retain the discretion to consider other relevant factors.

A new subparagraph (f)(7) would be added to limit the circumstances under which leases that are nearing the end of their diligent development periods may be included in LMU's. The regulation would provide that an LMU will not be approved if it includes a lease that has not produced commercial quantities by the end of the eighth year of its diligent development period, unless some part of the proposed LMU is covered by an approved SMCRA permit or an administratively complete application for such a permit. (The term "administratively complete application" is defined at 30 CFR 701.5.) This requirement will help ensure that LMU's are formed only for the purposes intended by Congress when it enacted FCLAA.

Under FCLAA, any lease that is not producing coal in commercial quantities after 10 years must be terminated. The regulations define "commercial quantities" to mean one percent of the recoverable coal reserves. The current regulations also provide that an LMU's 10-year diligent development period starts either on the effective date of the LMU or the effective date of the most recent Federal lease, depending on the age and status of the leases to be included in the LMU. See 43 CFR 3480.0–5(a)(13)(ii). This presents the possibility that an operator holding an older lease that is about to be terminated for failure to produce in commercial quantities could seek to postpone the lease termination date by applying for an LMU that combines the older lease with a more recently issued one. This

would not well serve FCLAA's goal of preventing speculation in Federal coal reserves.

The BLM believes that the existing regulatory provisions for the commencement of an LMU's diligent development period should not be changed. The BLM has concluded, however, that a lease that has not met diligent development requirements after 8 years should not be included in a new LMU unless the operator is actively pursuing development of some portion of the proposed LMU. The BLM believes that, as a lease nears the end of its diligent development period without having produced in commercial quantities, the likelihood increases that the operator/lessee has included it in an LMU application merely for the purpose of delaying the lease's termination, and not for achieving efficient, economical, and orderly development of coal. Preparation of a new SMCRA permit application, however, requires a significant expenditure of time and money, indicating that the operator/lessee intends in good faith to pursue development.

A new paragraph 3487.1(g) would require BLM's authorized officer to make a written record of the basis of his or her decision on the LMU application.

As a result of the addition of new paragraph 3487.1(g), existing paragraphs 3487.1(g)–(h) would be redesignated as 3487.1(h)–(i), respectively. A minor revision would be made at redesignated 3487.1(h)(4) to ensure consistent usage with the term: "Logical mining unit (LMU) recoverable coal reserves exhaustion period," newly defined at section 3480.0–5(a)(21).

The principal author of this proposed rule is Harold W. Moritz, Senior Technical Specialist, Division of Solid Minerals, Bureau of Land Management (BLM); assisted by Allen B. Agnew, Senior Mining Engineer of the BLM's Division of Solid Minerals located in the Oregon State Office, and staff of the Division of Legislation and Regulatory Management, BLM.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. BLM has determined that this regulation is categorically excluded from further environmental review pursuant to 516 Departmental Manual, Chapter 2, Appendix 1, Item 1.10, and that the regulation will not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2.

Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of DOI, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal Agency and for which neither an environmental assessment nor an environmental impact statement is required."

This regulation has been reviewed under Executive Order 12866.

DOI also certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). LMU's have historically not been within the purview of small entities. There are currently no small entities that hold either an approved LMU or pending LMU application.

As required by Executive Order 12630, DOI has determined that the regulation would not cause a taking of private property.

DOI has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The provisions for collection of information contained at 43 CFR Group 3400, Parts 3400, 3470, and 3480 have previously been approved by the Office of Management and Budget and assigned clearance number 1004–0073. This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects

43 CFR Part 3400

Administrative practice and procedure, Coal, Government contracts, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3470

Coal, Government contracts, Lease and LMU diligence requirements Leases, Lessee qualification, Logical mining units, Mineral royalties, Mines, Producing requirements, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3480

Coal, Government contracts, Intergovernmental relations, Logical mining units, Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Suspensions.

For the reasons stated in the preamble, and under the authorities cited below, parts 3400, 3470, 3480, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations are proposed to be amended as follows:

PART 3400—COAL MANAGEMENT: GENERAL

1. The authority citation for part 3400 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.*

2. Section 3400.0–5 is amended by revising the introductory text and paragraph (rr)(6) to read as follows:

§ 3400.0–5 Definitions.

As used in this group:

* * * * *

(rr) * * *

(6) *Producing* means actually severing coal. A lease is also considered to be producing when:

(i) The operator/lessee is processing or loading severed coal, or transporting it from the point of severance to the point of sale; or

(ii)(A) The operator/lessee temporarily suspends severance of coal, for a period not to exceed 3 months, for reasons beyond the reasonable control of the operator/lessee. Circumstances allowing such suspension include but are not limited to: dragline or other equipment movement, breakdown, or repair; overburden removal; sale from stockpiles of coal that was severed from the lease or LMU in question; vacations and holidays; coal buyer's operations of its power plants that require the coal buyer to stop taking coal shipments for a similar temporary period (not to exceed 3 months);

(B) Provided, however, that neither a lack or loss of market nor a lack or loss of a contract shall be considered "reasons beyond the reasonable control of the operator/lessee" for purposes of paragraph (rr)(6)(ii)(A) of this section; or

(iii) Governmental authorities order a suspension of the severance of coal by the operator/lessee for reasons beyond the reasonable control and not the fault of the operator/lessee.

(iv) For the purposes of this paragraph (rr)(6), the term "operator/lessee" has the meaning set forth in § 3480.0–5(a)(28) of this title.

* * * * *

Part 3470—Coal Management Provisions and Limitations

3. The authority citation for part 3470 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.*, and 30 U.S.C. 351–359.

4. Section 3472.1–2 is amended by revising paragraphs (e)(1)(i) and (e)(6)(ii)(D) and (E) to read as follows:

§ 3472.1–2 Special leasing qualifications.

* * * * *

(e)(1)(i) On or after December 31, 1986, no lease shall be issued and no existing lease shall be transferred to any entity that holds and has held for 10 years any lease from which the entity is not producing coal in commercial quantities, except as authorized under the advance royalty or suspension provisions of part 3480 of this title, or paragraph (e)(4), (5), or (6) of this section.

* * * * *

(6) * * *

(ii) * * *

(D) Producing, or has produced in satisfaction of the continued operation requirements of part 3480 of this title, for leases that began their first production of coal—

(*1*) On or after August 4, 1976; and

(*2*) After becoming subject to the diligence provisions of part 3480 of this title;

(E) Contained in an approved logical mining unit that is—

(*1*) Producing, or has produced in satisfaction of the continued operation requirements of part 3480 of this title; and

(*2*) In compliance with the logical mining unit stipulations of approval under § 3487.1(e) and (f) of this title; or

* * * * *

PART 3480—COAL EXPLORATION AND MINING OPERATIONS RULES

5. The authority citation for part 3480 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.*

Subpart 3480—Coal Exploration and Mining Operations Rules: General

6. Section 3480.0–5 is amended by redesignating paragraphs (a)(21) through (a)(36) as paragraphs (a)(22) through (a)(37), respectively, and adding paragraph (a)(21) to read as follows:

§ 3480.0–5 Definitions.

(a) * * *

(21) *Logical mining unit (LMU) recoverable coal reserves exhaustion period* means the period of time that begins upon the approval of the LMU resource recovery and protection plan and ends when all the LMU recoverable coal reserves have been mined out. This period must not be more than 40 years.

* * * * *

SUBPART 3483—DILIGENCE REQUIREMENTS

7. Section 3483.3 is amended by revising the heading and paragraphs (a) and (a)(1) to read as follows:

§ 3483.3 Suspension of continued operation or operations and production.

(a) Applications for suspensions of continued operation must be filed in triplicate in the office of the authorized officer. The authorized officer, if he determines an application to be in the public interest, may approve the application and terminate suspensions that have been or may be granted.

(1) The authorized officer must suspend the requirement for continued operation by the period of time he or she determines that strikes, the elements, or casualties not attributable to the operator/lessee have interrupted operations under the Federal coal lease or LMU.

* * * * *

SUBPART 3487—LOGICAL MINING UNIT

8. Section 3487.1 is amended by redesignating paragraphs (f)(2) through (f)(5) as paragraphs (f)(3) through (f)(6), respectively, by redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively, by revising paragraph (e)(6), by adding new paragraphs (f)(2), (f)(7), and (g), and by revising newly designated paragraph (h)(4) to read as follows:

§ 3487.1 Logical mining units.

* * * * *

(e) * * *

(6) Beginning the LMU recoverable coal reserves exhaustion period on the date the LMU resource recovery and protection plan is approved, and requiring that the operator/lessee mine all LMU recoverable coal reserves within 40 years of that date.

* * * * *

(f) *Criteria for approving the establishment of an LMU.* The authorized officer may approve an LMU if it meets the following criteria:

* * * * *

(2) The application demonstrates that mining operations on the LMU will achieve maximum economic recovery of Federal recoverable coal reserves within the LMU in an efficient, economical, and orderly manner with due regard to conservation of coal reserves and other resources. A single operation may include a series of excavations. In determining whether the proposed LMU meets these requirements, the authorized officer will consider the following factors:

(i) The amount of coal reserves recoverable from the LMU, compared with the amount recoverable if each lease were developed individually;

(ii) The mining sequence;

(iii) The potential for independent development of each lease proposed to be included in the LMU;

(iv) The advantages of developing and operating the LMU as a unit;

(v) The potential for inclusion of the leases in question into another LMU;

(vi) The availability of transportation and access facilities; and

(vii) Other factors that the authorized officer finds relevant to achievement of maximum economic recovery in an efficient, economical, and orderly manner.

* * * * *

(7) The LMU does not include a lease that has not produced coal in commercial quantities by the end of the eighth year of its diligent development period, unless a portion of the LMU is covered by a SMCRA permit approved under 30 U.S.C. 1256 or by an administratively complete application for such a permit.

(g) The authorized officer will state in writing the reasons for the decision on the LMU application.

* * * * *

(h) * * *

(4) The authorized officer will not extend the LMU recoverable coal reserves exhaustion period because of the enlargement of an LMU or because of the modification of a resource recovery and protection plan.

Dated: October 14, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–31925 Filed 12–27–94; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 514, 580 and 581

[Docket No. 93–22; Docket No. 94–26]

Coloading Practices by Non-Vessel-Operating Common Carriers; Shipper Affiliate Access to Service Contracts; Inquiry into Statutory Basis for Coloading Practices and Possible Section 16 Exemption for Coloading

AGENCY: Federal Maritime Commission.

ACTION: Notice of Inquiry; Extension of Time.

SUMMARY: The Commission by notice published November 9, 1994, initiated an inquiry in these proceedings to explore whether existing coloading practices are consistent with statutory

requirements, and, if not, whether an exemption proceeding should be initiated (59 FR 55826). Upon request of interested parties, the Commission has determined to enlarge the time for comment on the inquiry.

DATES: Comments due on or before January 23, 1995.

ADDRESSES: Send comments (original and 20 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., N.W., Washington, D.C. 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol St., N.W., Washington, D.C. 20573–0001, (202) 523–5740.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–31859 Filed 12–27–94; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 309

Rin 2133–AA89

War Risk Insurance Valuation

ACTION: Notice of rulemaking withdrawal.

SUMMARY: On May 7, 1991 the Maritime Administration (MARAD) issued an advance notice of proposed rulemaking (56 FR 21118) soliciting comments on proposed changes in MARAD's ship valuation methodology for issuing war risk insurance. After reviewing the comments received, including substantial comments from another Federal agency, MARAD determined that this rulemaking requires further consideration, and so stated in the Unified Agenda of Federal Regulations published on November 14, 1994 (59 FR 57997). In this regard, MARAD is considering requesting guidance from the Congress in legislation that will be proposed to extend the authority to issue war risk insurance, which expires on June 30, 1995. Accordingly, MARAD is withdrawing this rulemaking.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, Director, Office of Subsidy and Insurance, Maritime Administration (MAR–570), 400 Seventh Street, SW., Washington, D.C. 20590, tel. (202) 366–2400.

Dated: December 21, 1994.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 94–31817 Filed 12–27–94; 8:45 am]

BILLING CODE 4910–81–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

Regulatory Flexibility Act Plan for Periodic Review of the Commission's Rules and Regulations

AGENCY: Federal Communications Commission.

ACTION: Advance notice of proposed rule making.

SUMMARY: This action establishes a plan for the review of FCC regulations pursuant to the requirements of the Regulatory Flexibility Act of 1980 (94 Stat. 1164, Public Law 96–354, September 19, 1980) 5 U.S.C. § 610. The Appendix specifies the Commission's rules that will be reviewed during calendar year 1995. Any revision to this plan will be published in the **Federal Register**.

DATES: Comments on the rules chosen for review are due February 27, 1995.

ADDRESSES: Comments should be submitted to: Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Terry Johnson, Office of Managing Director, (202) 418–0445.

SUPPLEMENTARY INFORMATION: Pursuant to the published plan, specific regulations which may require amendment or rescission will be published and provision will be made for comments by interested parties.

1. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. § 610, the Commission hereby publishes this plan for the review of all rules issued by the agency in calendar year 1985 which have, or will have, a significant economic impact on a substantial number of small entities. The purpose of the review will be to determine whether such rules should by continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of such rules upon a substantial number of small entities.

2. The accompanying Appendix lists the FCC regulations to be reviewed during calendar year 1995. In succeeding years, lists will be published for the review of regulations promulgated ten years preceding the year of review.

3. In reviewing each rule under this plan to minimize significant economic impact on small entities consistent with the stated objectives of applicable statutes, the FCC will consider the following factors:

(1) The continued need for the rule;

(2) The nature of complaints or comments received concerning the rule from the public;

(3) The complexity of the rule;

(4) The extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

4. Appropriate information has been provided for each rule including a brief description of the rule and the need for and legal basis of the rule. Pursuant to the Regulatory Flexibility Act, the public is invited to comment on the rules chosen for review within 60 days from December 28, 1994. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments. If participants wish each Commissioner to have a personal copy of their comments, an original plus nine copies must be filed. Comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

5. *It is ordered* that, the Secretary shall send a copy of this notice to the Chief Counsel for Advocacy of the Small Business Administration pursuant to the Regulatory Flexibility Act. Pub. L. No. 96–354, Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981).

Federal Communications Commission.
LaVera F. Marshall,
Acting Secretary.

Appendix—List of Rules for Review Pursuant to Section 610(c) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 610(c) for 1995

Office of Engineering and Technology

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Subpart A—Terminology

Need: These rules define terms used in this rules section.
Legal Basis: 47 U.S.C. §§ 154, 302, 303

Section Number and Title Description:

2.1 Terms and definitions.

Subpart B—Allocations, Assignments, and Use of Radio Frequencies

Need: These rules provide for the allocation of radio spectrum.
Legal Basis: 47 U.S.C. §§ 154, 302, 303

Section Number and Title Description:

2.106 Table of Frequency Allocations.

Subpart I—Marketing of Radiofrequency Devices

Need: These rules provide for authorization of radiofrequency devices.
Legal Basis: 47 U.S.C. §§ 154, 302, 303

Section Number and Title Description:

2.809 Exemption for ISM equipment.

Subpart J—Equipment Authorization Procedures

Need: These rules provide for authorization of radio frequency devices.
Legal Basis: 47 U.S.C. §§ 154, 302, 303

Section Number and Title Description:

2.977 Changes in notified equipment.
2.983 Application for type acceptance.
2.1001 Changes in type accepted equipment.
2.1033 Application for certification.

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

Subpart A—General Information

Need: These rules prescribe guidelines for the Industrial, Scientific, and Medical service.
Legal Basis: 47 U.S.C. §§ 154, 302, 303

Section Number and Title Description:

18.101 Basis and purpose.
18.103 Organization and applicability of the rules.
18.105 Other applicable rules.
18.107 Definitions.
18.109 General technical requirements.
18.111 General operating conditions.
18.113 Inspection by Commission representatives.
18.115 Elimination and investigation of harmful interference.
18.117 Report of interference investigation.
18.119 Importation.

Subpart B—Applications & Authorizations

Need: These rules prescribe the qualifications required for the Industrial, Scientific, and Medical service.
Legal Basis: 47 U.S.C. §§ 154, 302, 303

Section Number and Title Description:

18.201 Scope.
18.203 Equipment authorization.
18.205 Description of measurement facilities.
18.207 Technical report.
18.209 Identification of authorized equipment.
18.211 Multiple listing of a device.
18.213 Information to the user.

Subpart C—Technical Standards

Need: These rules prescribe rules for equipment used in the Industrial, Scientific, and Medical service.
Legal Basis: 47 U.S.C. §§ 154, 302, 303

Section Number and Title Description:

18.301 Operation frequencies.
18.303 Prohibited frequency bands.
18.305 Radiation limits.
18.307 Conduction limits.
18.309 Frequency range of measurements.
18.311 Methods of measurements.

Common Carrier Bureau

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

Subpart B—Applications and Licenses

Need: These rules describe general application filing requirements for licenses in the Domestic Public Fixed Radio Services.
Legal Basis: 47 U.S.C. §§ 154, 303, 307–310

Section Number and Title Description:

21.28 Dismissal and return of applications
21.29 Ownership changes and agreements to amend or to dismiss applications or pleadings
21.30 Opposition to applications
21.31 Mutually exclusive applications
21.32 Consideration of applications
21.35 Comparative evaluation of mutually exclusive applications

Subpart C—Technical Standards

Need: These rules prescribe technical operating standards for stations in the Domestic Public Fixed Radio Services.
Legal Basis: 47 U.S.C. §§ 154, 303, 307–310

Section Number and Title Description:

21.108 Directional Antennas
21.113 Quiet zones

Subpart I—Point-to-Point Microwave Radio Service

Need: This rule describes operating parameters for Point-to-Point Microwave Radio Service licensees.
Legal Basis: 47 U.S.C. §§ 154, 303, 397–310

Section Number and Title Description:

21.703 Bandwidth and emission limitations

Subpart J—Local Television Transmission Service

Need: This rule describes operating parameters for Local Television. Transmission Service licensees.
Legal Basis: 47 U.S.C. §§ 154, 303, 307–310

Section Number and Title Description:

21.801 Frequencies

Mass Media Bureau

PART 73—RADIO BROADCAST SERVICES

Subpart A—AM Broadcast Stations

Need: These rules contain operating procedures and technical requirements for AM radio stations.
Legal Basis: 47 U.S.C. 154, 303, 334

Section Number and Title Description:

73.61 AM directional antenna field strength measurements.
73.62 Directional antenna system tolerances.
73.154 AM directional antenna partial proof of performances measurements.
73.157 Antenna testing during daytime.

Subpart C—Noncommercial Educational FM Broadcast Stations

Need: These rules contain operating procedures and technical requirements for noncommercial educational FM radio stations.
Legal Basis: 47 U.S.C. 154, 303, 334

Section Number and Title Description:

73.509 Prohibited overlap.
73.511 Power and antenna height requirements.
73.525 TV Channel 6 protection.
73.599 NCE–FM engineering charts.

Subpart E—Television Broadcast Stations

Need: These rules contain operating procedures and technical requirements for broadcast television stations.

Legal Basis: 47 U.S.C. 154, 303, 334

Section Number and Title Description:

73.615 Administrative changes in authorizations.
73.646 Telecommunications Service on the Vertical Blanking Interval.

Subpart H—Rules Applicable To All Broadcast Stations

Need: These rules contain operating procedures and technical requirements for all types of broadcast stations.

Legal Basis: 47 U.S.C. 154, 303, 334.

Section Number and Title Description:

73.1635 Special temporary authorizations (STA).
73.3526 Local public inspection file of commercial stations.
73.3527 Local public inspection file of noncommercial educational stations.
73.3534 Applications for extension of construction permit to replace expired construction permit.
73.3535 Application to modify authorized but unbuilt facilities, or to assign or transfer control of an unbuilt facility.
73.3542 Application for emergency authorization.
73.3598 Period of construction.
73.3599 Forfeiture of construction permit.

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

Subpart E—Aural Broadcast Auxiliary Stations

Need: These rules contain operating procedures and technical requirements for aural broadcast auxiliary stations.

Legal Basis: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, 554.

Section Number and Title Description:

74.550 Equipment authorization.
74.562 Frequency monitors and measurements.

Subpart I—Instructional Television Fixed Service

Need: These rules contain operating procedures and technical requirements for instructional television fixed service stations.

Legal Basis: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, 554.

Section Number and Title Description:

74.910 Part 73 application requirements pertaining to ITFS stations.
74.911 Processing of ITFS station applications.
74.912 Petitions to deny.
74.913 Selection procedure for mutually exclusive ITFS applications.

Cable Services Bureau

PART 76—CABLE TELEVISION SERVICE

Subpart A—General

Need: These rules provide definitions and procedures applicable to the provision of cable television service.

Legal Basis: 47 U.S.C. §§ 154, 303.

Section Number and Title Description:

76.11 Lockbox enforcement.

Subpart E—Equal Employment Opportunity Requirements

Need: These rules implement the Cable Communications Policy Act of 1984, which set a national cable equal employment opportunity policy.

Legal Basis: 47 U.S.C. §§ 154, 303.

Section Number and Title Description:

76.71 Scope of application.
74.73 General EEO policy.
74.75 EEO program requirements.
74.77 Reporting requirements.
74.79 Records available for public inspection.

Subpart I—Forms and Reports

Need: These rules require cable operators to furnish and/or correct information requested by the Commission.

Legal Basis: 47 U.S.C. §§ 154, 303.

Section Number and Title Description:

73.403 Cable television system reports.

Subpart K—Technical Standards

Need: These rules prescribe technical signal quality standards for cable television.

Legal Basis: 47 U.S.C. §§ 154, 303, 601.

Section Number and Title Description:

76.604 Technical standards.
76.610 Operation in the frequency bands 108–137 and 225–400 Mhz—Scope of application.
76.611 Cable television basic signal leakage performance criteria.
76.612 Cable television frequency separation standards.
76.614 Cable television system regular monitoring.
76.615 Notification requirements.
76.616 Operation near certain aeronautical and marine emergency radio frequencies.
76.618 Grandfathering.
76.619 Grandfathered Operation in the frequency bands 108–136 and 225–400 MHz.

PART 78—CABLE TELEVISION RELAY SERVICE

Subpart B—Applications and Licenses

Need: These rules prescribe the licensing, filing, and reporting requirements for applicants for and licensees of Cable Television Relay Service.

Legal Basis: 47 U.S.C. §§ 154, 303.

Section Number and Title Description:

78.15 Contents of applications.
78.19 Interference.
78.20 Acceptance of applications; public notice.
78.22 Objections to applications.
78.23 Equipment tests.
78.27 License conditions.
78.35 Assignment or transfer of control.

Subpart C—General Operating Requirements

Need: These rules prescribe operation of CARS stations.

Legal basis: 47 U.S.C. §§ 151, 152, 301, 307.

Section Number and Title Description:

78.51 Remote control operation.
78.53 Unattended operation.
78.61 Operator requirements.
78.63 Inspection and maintenance of tower marking and association control equipment.
78.69 Station records.

Subpart D—Technical Regulations

Need: These rules prescribe technical standards for CARS stations.

Legal Basis: 47 U.S.C. §§ 4(i), 301, 303r.

Section Number and Title Description:

78.105 Antenna systems.
78.107 Equipment and installation.
78.113 Frequency monitors and measurements.

[FR Doc. 94–31719 Filed 12–27–94; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 94–151, RM–8555]

Radio Broadcasting Services; Buffalo and Lamar, Missouri

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed jointly by KBFL Broadcasting Company ("KBFL") and KHST Broadcasting Company ("KHST"). KBFL requests the substitution of Channel 260C3 for Channel 260A at Buffalo, Missouri, and

modification of the license for Station KBFL(FM) at coordinates 37–35–30 and 93–02–30. KHST proposes the substitution of Channel 269A for Channel 260A at Lamar, Missouri, and modification of the license for Station KHST(FM) at coordinates 37–25–27 and 94–16–12. We shall propose to modify the license for Station KBFL(FM) in accordance with Section 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before March 13, 1995, and reply comments on or before March 28, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: William J. Pennington, III, 5519 Rockingham Road-East, Greensboro, North Carolina 27407.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 94–151, adopted December 14, 1994, and released December 22, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's 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 contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, D.C. 20037, (202) 857–3800.

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* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–31872 Filed 12–27–94; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 94-152, RM–8565]

Radio Broadcasting Services; Bells, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Thomas S. Desmond seeking the allotment of Channel 225A to Bells, Texas, as the community's first local FM service. Channel 225A can be allotted to Bells in compliance with the Commission's mileage separation requirements without the imposition of a site restriction, at coordinates 33–36–37 North Latitude and 96–24–38 West Longitude.

DATES: Comments must be filed on or before March 13, 1995, and reply comments on or before March 28, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Stephan M. Kramer, P.E. and Associates, Broadcast and FAA Consulting Engineers, 10500 Bighorn Trail, Suite 100, McKinney, TX 75070–6208 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 94-152, adopted December 14, 1994, and released December 22, 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, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

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 47CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A Karousos,

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

[FR Doc. 94–31875 Filed 12–27–94; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

48 CFR Parts 204 and 253

Defense Federal Acquisition Regulation Supplement; Uniform Procurement Instrument Identification Numbers

AGENCY: Department of Defense (DoD).

ACTION: Withdrawal of proposed rule.

SUMMARY: The proposed rule, published August 18, 1994, (59 FR 42566), is hereby withdrawn. The rule proposed revisions to the Defense Federal Acquisition Regulation Supplement to revise the numbering system for identifying Department of Defense (DoD) orders placed against another DoD activity's contracts and to replace the DoD activity address numbers with DoD activity address codes. This action to withdraw the rule is based upon public comments which indicated that changes to automated systems cannot easily be accommodated in the near term.

FOR FURTHER INFORMATION CONTACT: Ms. Linda S. Holcombe, (703) 604–5929 FAX No. (703) 604–5971.

SUPPLEMENTARY INFORMATION: For information and planning purposes, a proposed revision to the DFARS uniform procurement instrument identification numbering system was included as Attachment 1 to the Defense Acquisition Circular 91–1. A proposed rule was subsequently published August 18, 1994 (59 FR 42566) under DFARS Case 92–D044. After a review of the public comments, a decision has been made to withdraw the proposed rule for the present. While it is necessary to expand the contract numbering system to accommodate the need for more DoD activity identifiers, public comments

indicated that changes to automated systems are not economically feasible at this time. However, both industry and government should ensure that these proposed revisions can be accommodated in any future automated systems.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

[FR Doc. 94-31901 Filed 12-27-94; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. 91-50; Notice 5]

RIN 2127-AE42

Light Truck Average Fuel Economy Standards; Model Years 1996-1997

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Denial of petition for reconsideration.

SUMMARY: On April 6, 1994, NHTSA issued a final rule establishing the corporate average fuel economy (CAFE) standard for light trucks manufactured in model years (MY) 1996-97. That rule also discontinued NHTSA's practice of separating domestic manufacturers' light trucks into two fleets, domestic and "captive import," and requiring each fleet to meet the CAFE standards. The United Auto Workers Union (UAW) petitioned the agency to reinstate that practice.

NHTSA has decided to deny the petition. The distinction between domestic and captive import fleets was not statutorily required and the agency believes that it is no longer relevant. Discontinuation of the practice has no impact on current actions by the domestic vehicle manufacturers since none of them supplement their sales of domestic light trucks through the sale of imported trucks, nor, given prevailing market conditions, are they likely to do so in the foreseeable future.

SUPPLEMENTARY INFORMATION: On April 6, 1994 (59 FR 16312), NHTSA issued a final rule establishing CAFE standards for MY 1996-1997 light trucks. The final rule terminated the agency's prior practice of dividing the fleet of each domestic light truck manufacturer into two fleets and requiring each to comply separately with the light truck CAFE standards. One fleet consisted of domestically manufactured trucks and the other of captive import trucks. Captive imports are trucks which are not manufactured domestically, but are imported by a manufacturer whose principal place of business is the U.S. (49 CFR 533.4).

The agency's first light truck fuel economy standard, which applied to MY 1979, did not separate the fleets of domestic manufacturers into domestic and captive import segments in calculating their CAFE values. Beginning in MY 1980, however, the agency required domestic manufacturers to separate their light truck fleets and meet the CAFE standards for both their domestic and captive import fleets. As described in the preamble to the final rule for MY 1980 (43 FR 11996), the purpose of the distinction was to ensure that the CAFE standards did not create an incentive for domestic manufacturers to increase the importation of high-mileage compact light trucks in order to increase their overall CAFE values.

The final rule for MYs 1996-97 returned to the original practice of calculating light truck CAFE values and determining compliance for domestic manufacturers without regard to whether the trucks are of domestic manufacture or are captive imports. In eliminating the distinction, NHTSA noted that the captive import segment of the domestic light truck market had decreased from 14.7 percent to less than 0.5 percent between MY 1980 and MY 1992. Many factors have contributed to this decrease. The agency believes that the combination of the significant rise in value of the yen, higher Japanese labor costs and the tariff on many imported light trucks has been particularly important. General Motors (GM) discontinued the use of captive imports after MY 1982. Ford's importation of captive imports became negligible after MY 1982 and ended entirely after MY 1987. For MY 1993, Chrysler sold only 6,000 imported light trucks (all manufactured in Japan by Mitsubishi). Chrysler has now discontinued this practice, entirely eliminating the captive import sector of the domestic light truck market.

On May 10, 1994, the UAW filed a petition seeking reconsideration of the agency's decision to eliminate the distinction between domestic and captive import light truck fleets. The UAW argued that requiring the two fleets to separately meet the CAFE standards helped prevent the loss of domestic jobs from increased use of captive imports. The union did acknowledge that the current use of captive import light trucks is "minimal"—it is, in fact, zero—but claimed that elimination of the distinction could combine with other economic factors to encourage renewal of the use of captive imports. The UAW's specific arguments, as well as NHTSA's responses, are set out in more detail below.

The UAW's Arguments

The UAW objected to the combination of domestic and captive import light truck fleets, claiming that allowing the averaging of CAFE values "could result in the resumption of captive imports at the expense of U.S. production and employment." The union noted its belief that the separation of the fleets, beginning in MY 1980, has helped to prevent domestic manufacturers from outsourcing light truck production as a means of improving fleet-wide fuel efficiency.

While the UAW acknowledged that domestic manufacturers are not currently importing light trucks, it noted that the practice was prevalent in the past and may return in the future. The union pointed to national and international politics and economics, citing drastic changes in oil supplies, the gradual movement of exchange rates and the evolution of new technology, and argued that they had a broad impact on the performance of the automotive industry during the past two decades. The UAW asserted that the future cannot be predicted well enough to be sure that these influences will not again create incentives for domestic companies to resume the use of captive imports as a means of meeting a unified light truck CAFE standard.

The union noted that domestic auto workers have experienced "tremendous job loss and dislocation since the late 1970s." Claiming a 22 percent job loss in automobile and parts manufacturing since 1978, the union foresees further job loss from continuing competitive pressures generated by imports, transplants (vehicles produced in the U.S. by manufacturers whose principal place of business is not in the U.S.), outsourcing and productivity gains. The union concluded by asserting that domestic auto workers should not have to suffer further losses due to changes in the light truck CAFE standards.

Responses to the UAW's Arguments

NHTSA continues to believe that there is no need to maintain separate domestic and captive import light truck fleets for the purpose of determining compliance with the fuel economy standards. Domestic manufacturers have stopped importing light trucks for sale in the U.S. and current market conditions and domestic production capacities make it unlikely that the

practice will resume in the foreseeable future. The UAW concedes that there is currently no threat presented by captive import light trucks. Its argument that future conditions might encourage the resumption of light truck imports is conjectural and cannot by itself justify the maintenance of an obsolete regulatory category, especially in light of an array of significant countervailing market forces.

Since 1980, domestic automakers have created substantial compact truck production capacity in the U.S. and Canada. Their current domestic production capacity exceeds 3,900,000 units per year (foreign-based manufacturers add another 440,000 units per year of domestic capacity). In total, domestic and foreign-based manufacturers offered only 3,446,000 light trucks for sale in the U.S. during MY 1993. This leaves domestic light truck manufacturers with substantial domestic capacity to absorb any unexpected increase in compact truck demand without needing to resort to the use of captive imports. Today's situation contrasts sharply with that of the late 1970's when domestic production capacity of compact trucks was nearly non-existent. At that time, demand for compact trucks was not high enough to justify devoting plants and production lines to them. Ford and GM had been meeting that demand by importing a small number of compact pickups for several years, but never more than 70,000 units each. When demand for these vehicles (as well as compact vans and utility vehicles) rapidly expanded in the 1980s, domestic production began.

Additionally, captive imports no longer offer domestic manufacturers the fuel economy advantages that they did in the early 1980's. At that time, imported compact pickup trucks tended to achieve the greatest fuel economy among light trucks. Now, however, a wide variety of domestically produced light trucks, including, but not limited to compact pickups, achieve fuel economy comparable to their imported competition.

Further, notwithstanding the discontinuation of the captive import category, domestic manufacturers still face strong disincentives to importing light trucks. All imported pickups and some two-door utility vehicles are subject to a 25 percent tariff. Evidence that the tariff alone is a powerful incentive to produce U.S. market trucks domestically is found in the experience of foreign-based companies. Having never been subject to the two fleet CAFE standard, foreign-based companies still sought to avoid the tariff by shifting production of the majority of their U.S. market pickups to the U.S. and discontinuing importation of many two-door utility models.

As further reason for continuing the captive import distinction, the UAW referred to the general job loss and dislocation suffered by auto workers since the 1970's. Without presenting any supporting data, the union predicted continued job loss due to competitive pressures from imports, transplants, outsourcing and productivity improvements. Finally, the UAW insisted that workers should not be further threatened by changes in the CAFE regulations. NHTSA does not believe that auto workers will be harmed by elimination of the two fleet distinction. There is now a healthy and competitive domestic light truck manufacturing industry producing high-mileage light trucks. NHTSA believes that the future of U.S. employment in the auto industry depends primarily on the continuing productivity improvements of U.S. manufacturers in cooperation with U.S. labor. While those productivity improvements may lead to the elimination of some jobs, they will be far more effective than reinstating the captive import provision in assuring the economic viability of domestic light truck production against the other competitive challenges that the union cites.

In conclusion, NHTSA has determined that the maintenance of separate CAFE requirements for domestic and captive import light trucks is not required by 49 U.S.C. 32902(a), and that continuation of the separate standards no longer serves any useful purpose. Though circumstances may arise in the future which could warrant reconsideration, at this time NHTSA sees no viable rationale for applying the fleet distinction at any time after MY 1995. The division of light trucks into separate fleets is a matter committed to the agency's discretion and the UAW has provided no convincing reason why the practice should be continued. Based on the foregoing discussion, the UAW's petition for reconsideration is denied.

Authority: 49 U.S.C. 32902; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: December 21, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–31850 Filed 12–27–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 662

[I.D. 121494B]

Pacific Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: The Pacific Fishery Management Council (Council) is holding hearings on a draft fishery management plan and three alternative approaches for managing Pacific coastal pelagic species, which include anchovy, sardine, jack mackerel, and Pacific mackerel. Final Council action on this issue is scheduled for the March 7–10, 1995, Council meeting in South San Francisco, CA.

DATES: Written comments must be received by February 24, 1995. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of hearings.

ADDRESSES: Written comments should be sent to Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR; telephone: (503) 326–6352. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of hearings.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION:

Hearings will be held at the following locations, beginning at 7 p.m. on the dates indicated:

January 11, 1995, at the Asilomar, 800 Asilomar Boulevard, Pacific Grove, CA.

January 12, 1995, at the Travelodge Hotel, 700 Queens Way Drive, Long Beach, CA.

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352 at least 5 days prior to the hearing date.

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

Dated: December 22, 1994.

David S. Crestin,

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

[FR Doc. 94–31890 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 59, No. 248
Wednesday, December 28, 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

Animal and Plant Health Inspection Service

[Docket No. 94–130–1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service during the month of October 1994. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Thomas, Program Assistant, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245. For a copy of this month's list, or to be placed on the mailing list, write to Ms. Thomas at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month, the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of October 1994. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 22nd day of December, 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–31894 Filed 12–27–94; 8:45 am]

BILLING CODE 3410–34–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, DC on Tuesday and Wednesday, January 17–18, 1995 at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, January 17, 1994

9:30–12 Noon State and Local Government Facilities Work Group (closed meeting)
1:30–3:30 p.m. State and Local Government Facilities Work Group Continued (closed meeting)
3:45–5:30 p.m. Recreational Facilities and Outdoor Developed Areas Work Group (closed meeting)

Wednesday, January 18, 1994

9:00–12 Noon Federal Facilities Work Group (closed meeting)
1:30–3:30 p.m. Board Meeting

ADDRESSES: The meetings will be held at: Marriott at Metro Center, 775 12th Street, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434 ext. 14 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items:

- Approval of the Minutes of the July 13, September 16, and November 16, 1994 Board Meetings.
- Executive Director's Report.
- Report on State and Local Government Facilities Work Group.
- Report on Federal Facilities Work Group.
- Report on Recreational Facilities and Outdoor Developed Areas Work Group.
- Report on Recommendations on Detectable Warnings.
- Election of Officers

Some meetings or items may be closed to the public as indicated above. All meetings are accessible to persons with

disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 94–31831 Filed 12–27–94; 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: Construction Project Report (Private Construction Projects).

Form Number(s): Form C–700.

Agency Approval Number: 0607–0153.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 12,000 hours.

Number of Respondents: 4,000.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Form C–700 is one of the three questionnaires used in the Construction Progress Reporting Surveys (CPRS). Statistics from the CPRS become part of the monthly value of new construction put in place series used by government agencies and private companies to monitor the amount of construction work done each month. These statistics are used by all levels of government to evaluate economic policy, to measure progress toward national goals, to make policy decisions, and to formulate legislation. The Census Bureau uses the information collected on the Form C–700 to publish estimates of the dollar value of new construction put in place at nonresidential building projects owned by private companies or individuals. These projects include industrial and manufacturing plants; office buildings; retail and service establishments such as shopping centers and restaurants; religious buildings; private schools and universities; hospitals and clinics; and miscellaneous buildings including recreational buildings, airline terminals, etc.

Affected Public: Individuals or households, Businesses or other for–profit organizations, Non–profit institutions, Small businesses or organizations.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

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: December 22, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–31957 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–07–F

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: Construction Project Report (Multi–family Residential).

Form Number(s): Form C–700(R).

Agency Approval Number: 0607–0163.

Type of Request: Extension of the expiration date of a currently approved collection without any chnage in the substance or in the method of collection.

Burden: 6,300 hours.

Number of Respondents: 2,100.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Form C–700(R) is one of the three questionnaires used in the Construction Progress Reporting Surveys (CPRS). Statistics from the CPRS become part of the monthly value of new construction put in place series used by government agencies and private companies to monitor the amount of construction work done each month. These statistics are used by all levels of government to evaluate economic policy, to measure progress toward national goals, to make policy decisions, and to formulate legislation. The Census Bureau uses the information collected on the Form C–700(R) to publish estimates of the dollar value of new construction put in place at multi–family residential building projects owned by private companies or individuals. These projects include residential buildings and apartment projects with two or more housing units.

Affected Public: Individuals or households, Businesses or other for–profit organizations, Non–profit institutions, Small businesses or organizations.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

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: December 22, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–31958 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–07–F

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: Construction Project Report (State and Local Governments).

Form Number(s): C–700(SL).

Agency Approval Number: 0607–0171.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 17,400 hours.

Number of Respondents: 5,800.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Form C–700(SL) is one of the three questionnaires used in the Construction Progress Reporting Surveys (CPRS). Statistics from the CPRS become part of the monthly value of new construction put in place series used by government agencies and private companies to monitor the amount of construction work done each month. These statistics are used by all levels of government to evaluate economic policy, to measure progress toward national goals, to make policy decisions, and to formulate legislation

The Census Bureau uses the information collected on the Form C-700(SL) to publish estimates of the dollar value of new construction put in place at construction projects owned by state or local government agencies. These projects include public schools, court houses, prisons, hospitals, civic centers, highways, bridges, sewer and water systems, etc.

Affected Public: State or local governments.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

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: December 22, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94-31959 Filed 12-27-94; 8:45 am]

BILLING CODE 3510-07-F

Bureau of Export Administration

Electronics Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Electronics Technical Advisory Committee will be held January 26, 1995, 9:00 a.m., Herbert C. Hoover Building, Room 1617-M2, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to electronics equipment or technology.

Agenda

General Session.

1. Opening remarks and introductions.
2. Presentations or comments by the public.
3. Update on Export Administration issues.

Executive Session:

4. Discussion of matters properly classified under Executive Order 12356, dealing with U.S. export control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials or comments at least one week before the meeting to the address listed below: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information or copies of the minutes call Lee Ann Carpenter, 202-482-2583.

Dated: December 21, 1994.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 94-31834 Filed 12-27-94; 8:45 am]

BILLING CODE 3510-DT-M

Bureau of Export Administration

Telecommunications Equipment Technical Advisory Committee; Notice of Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held January 24, 1995, 9:30 a.m., in the Herbert C. Hoover Building, room 1617-M2, 14th Street & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment and technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. export control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 482-2583.

Dated: December 21, 1994.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 94-31833 Filed 12-27-94; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket 41-94]

Foreign-Trade Zone 22—Chicago, Illinois; Application for Subzone; Amoco Pipeline Company (Crude Oil Storage Terminal) Manhattan, Illinois

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Illinois International Port District, grantee of FTZ 22, requesting special-purpose subzone status for the crude oil storage/blending/transhipment terminal of Amoco Pipeline Company (APL) (wholly-owned subsidiary of Amoco Corporation), in Manhattan, Illinois (Chicago area). The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 14, 1994.

The APL terminal (1.4 mil.-barrel capacity; 172 acres) is located at 15600 Bruns Road, Manhattan (Will County).

Illinois, some 40 miles southwest of Chicago. The terminal (28 employees) is used to store, blend and transport (by pipeline) crude oil for use by Amoco Oil Company's Whiting, Indiana, refinery (subzone application pending, Doc. 30–93, 58 FR 39006, 7/21/93).

Zone procedures would allow APL to defer Customs duty payment on foreign crude oil while it is in the APL facility, allowing Amoco Oil Company to maintain the appropriate zone status of the crude so that the Whiting refinery can use zone procedures as authorized by the FTZ Board. This will give the refinery the same opportunity to use zone procedures for foreign crude delivered from the APL facility as those refineries with subzone status that take direct delivery of foreign crude.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to [75 days from date of publication]).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Xerox Center, Suite 2440, 55 West Monroe St., Chicago, Illinois 60603

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: December 16, 1994.

John J. Da Ponte, Jr.,

Executive Secretary

[FR Doc. 94–31972 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 712]

Expansion of Foreign-Trade Subzone 59A, Kawasaki Motors Manufacturing Corporation, U.S.A.; Lincoln, Nebraska

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Lincoln Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone No. 59, for authority to expand the boundary of FTZ Subzone 59A at the Kawasaki Motors Manufacturing Corporation, U.S.A. plant, located in Lincoln, Nebraska, was filed by the Foreign-Trade Zones (FTZ) Board on November 22, 1993 (Docket 56–93, 58 FR 63335, 12/1/93);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that approval is in the public interest;

Now, therefore, the Board hereby orders:

The grantee is authorized to expand the boundary of FTZ Subzone 59A as requested in the application subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 12th day of December 1994.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 94–31966 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–P

Order No. 720; Expansion of Foreign-Trade Zone 46; Cincinnati, Ohio Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Greater Cincinnati Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 46, for authority to expand and relocate its general-purpose zone to a site in Springdale (Hamilton County), Ohio, within the Cincinnati Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on January 6, 1994 (Docket 3–94, 59 FR 1926, 1/13/94);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that approval is in the public interest;

Now, therefore, the Board hereby orders:

The grantee is authorized to expand and relocate its zone as requested in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 19th day of December 1994.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 94–31969 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 44–94]

Foreign-Trade Zone 46—Cincinnati, Ohio Area; Request for Manufacturing Authority (Fragrances, Soaps and Costume Jewelry)

A request has been submitted to the Foreign-Trade Zones Board (FTZB) pursuant to § 400.32(b)(1) of the Board's regulations for approval of zone manufacturing authority within FTZ 46 by the Greater Cincinnati Foreign-Trade Zone, Inc., grantee of FTZ 46, on behalf of Avon Products, Inc. (Avon). It was formally filed on December 19, 1994.

The proposed zone activity involves the manufacture by Avon of fragrances, soaps, skin toners and astringents and a type of jewelry. Fragrance products include finished perfumes and toilet waters (HTSUS 3303.00.10–3303.00.30), beauty preparations (HTSUS 3304.10.00–3304.99.00), shampoos (HTSUS 3305.10.00–3305.90.00), toothpastes (3306.10.00–3306.90.00), after-shaves and deodorants (HTSUS 3307.10.10–3307.90.00). Certain materials and components used in the manufacture of fragrance products (Chapter 33 HTSUS) are sourced abroad including: essential oils (HTSUS 3301.11.00–3301.29.50), acyclic alcohols and their derivatives (HTSUS 2905.22.50–2905.32.00), cyclic alcohols and their derivatives (HTSUS 2906.21.00–2906.29.50), saturated acyclic monocarboxylic acids and their derivatives (HTSUS 2915.39.10–2915.39.40), unsaturated acyclic monocarboxylic acids and their derivatives (HTSUS 2916.31.20), aldehydes (HTSUS 2912.42.00), and heterocyclic compounds (HTSUS 2932.21.00). For the manufacture of soap products, skin toners and astringents (HTSUS 3401 and 3402), the materials sourced from abroad include: organic surface-active agents (HTSUS 3402.00.00), saturated acyclic monocarboxylic acids (HTSUS 2915.00.00–2915.70.20), glycerol (HTSUS 1520.10.00–1520.90.00), unsaturated acyclic monocarboxylic acids (HTSUS 2916.31.10), and finished soaps (HTSUS 3401.11.00–3401.20.00) and skin toners and astringents (HTSUS 3304.99.00). For the jewelry items (HTSUS 7117), components sourced from abroad include: plastic beads and

bangles (HTSUS 3926.90.35). Many products will be packaged in a wide variety of foreign and domestic packaging materials, including baskets, glass and plastic bottles and metal containers.

Zone procedures would exempt Avon from payment of Customs duties on foreign merchandise used in products made for export. On domestic sales, the company would be able to choose the duty rate that applies to finished products (duty-free to 5%). The duty rates on foreign-sourced items range from duty-free to 23.5%. The application indicates that zone savings would help improve the international competitiveness of Avon's plant.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period of their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to [75 days from date of publication]).

A copy of the application and accompanying exhibits will be available for public inspections at each of the following locations:

U.S. Department of Commerce, 9504 Federal Building, 550 Main St., Cincinnati, Ohio 45202

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: December 21, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–31970 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 42–94]

Foreign-Trade Zone 61—San Juan, Puerto Rico; Application for Subzone; IPR Pharmaceuticals, Inc. (Pharmaceutical Products) Guayama and Carolina, Puerto Rico

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Commercial and Farm Credit and Development Corporation of Puerto Rico, grantee of FTZ 61, requesting special-purpose subzone status for the pharmaceutical manufacturing facilities (345 employees) of IPR Pharmaceuticals, Inc. (IPR), in Guayama and Carolina, Puerto Rico (San Juan area). The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 16, 1994.

IPR is a wholly-owned subsidiary of Zeneca Group PLC (U.K.), a bioscience company comprising three global businesses—pharmaceuticals, agrochemicals and seeds, and specialty products. Zeneca Group was created as part of the 1993 worldwide reorganization of Imperial Chemical Industries PLC (U.K.) along industry lines.

IPR's Guayama plant (7 bldgs./approx. 96,000 sq. ft. on 49 acres) is located at State Road No. PR53, km. 84, Guayama, Puerto Rico, some 40 miles south of San Juan. The facility is used to produce intermediate and bulk pharmaceuticals that are mainly used in the manufacture of finished pharmaceutical products in the Carolina facility. The bulk chemicals are used in cardiovasular products, and include atenolol and lisinopril at this time.

IPR's Carolina plant (2 bldgs./approx. 116,000 sq. ft. on 5 acres) is located at Sabana Gardens Industrial Park, Main Street, Carolina, Puerto Rico, some 10 miles east of San Juan. The facility is used to produce finished pharmaceuticals, primarily cardiovasular products, including TENORMIN®, TENORETIC®, ZESTRIL® and ZESTORETIC®. In addition, the company is requesting to use zone procedures for drugs currently in development that may also be produced at the Carolina facility, including ACCOLATE® asthma treatment. The active ingredients for a number of these products are or would be sourced abroad. Foreign-sourced materials account for some 30 percent of finished product value.

Zone procedures would exempt IPR from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (6.3%). The duty rates on foreign-sourced items range from 6.9 percent to 13.5 percent. At the outset, zone savings would primarily involve choosing the finished product duty rate on TENORMIN® and TENORETIC® (6.3%), rather than the rates for their foreign active ingredients: 4-hydroxiphenyl acetamide (13.5%); ester, kaneka LP1 (8%); and chlorthalidone (6.9%). The application indicates that the savings from zone procedures will help improve the plants' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to [75 days from date of publication]).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Room G–55, Federal Building, Chardon Avenue, San Juan (Hato Rey), Puerto Rico 00918

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: December 19, 1994.

John J. Da Ponte, Jr.,

Executive Secretary

[FR Doc. 94–31971 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–421–701]

Brass Sheet and Strip From the Netherlands; Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on brass sheet and strip from the Netherlands. The review covers one manufacturer/exporter of this merchandise to the United States and the period August 1, 1990, through July 31, 1991. The review indicates the existence of dumping margins for this period.

As a result of this review, the Department has preliminarily determined to assess antidumping duties equal to the difference between United States price (USP) and foreign

market value (FMV). We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam, Chip Hayes, or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 1988, the Department published in the **Federal Register** (53 FR 30455) the antidumping duty order on brass sheet and strip from the Netherlands. Based on timely requests for review, on September 18, 1991, in accordance with 19 CFR 353.22(c), we initiated an administrative review of Outokumpu Copper Rolled Products AB (OBV) for the period August 1, 1990 through July 31, 1991 (56 FR 47185). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are brass sheet and strip, other than leaded and tin brass sheet and strip, from the Netherlands. The chemical composition of the products under review is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C20000 series. This review does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. The physical dimensions of the products covered by this review are brass sheet and strip of solid rectangular cross section over 0.006 inch (0.15 millimeter) through 0.188 inch (4.8 millimeters) in gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is classified under Harmonized Tariff Schedule (HTS) item numbers 7409.21.00 and 7409.29.20.

The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive. This review covers one manufacturer/exporter, OBV, and the period August 1, 1990, through July 31, 1991.

United States Price

We based USP on purchase price (PP) and exporter's sales price (ESP), as appropriate, in accordance with section 772 of the Tariff Act. We calculated PP and ESP based on C.I.F., duty paid prices, delivered either to independent U.S. warehouses or to the customers' premises. In accordance with section 772(d)(2) of the Tariff Act, we made deductions, where appropriate, for movement expenses and customs duty.

For ESP transactions, we made deductions for U.S. movement expenses, direct selling expenses, indirect selling expenses and U.S. manufacturing costs. U.S. direct selling expenses included warranty and credit expenses, and commissions. U.S. indirect selling expenses included U.S. pre-sale storage costs, U.S. selling, general, and administrative expenses (SG&A), parent company headquarters sales and marketing expenses allocated to U.S. sales, and storage and inventory carrying costs prior to overseas shipment. U.S. manufacturing costs included further processing costs, allocated general and administrative expenses, and allocated profit.

For PP transactions, we made deductions for rebates and movement expenses. Movement expenses included brokerage and handling, duty, ocean freight, and U.S. freight.

We adjusted USP for taxes in accordance with our practice as outlined in *Siliconmanganese From Venezuela; Preliminary Determination of Sales at Less than Fair Value*, 59 FR 31204 (June 17, 1994) (*Siliconmanganese*).

No other adjustments were claimed or allowed.

Foreign Market Value

The Department used home market price, as defined in section 773 of the Tariff Act, to calculate FMV. Because the home market was viable, we compared U.S. sales with sales of such or similar merchandise in the home market.

Home market prices were based on the monthly weighted-average, packed, delivered prices to unrelated purchasers in the home market. We made adjustments, where applicable, for discounts, post-sale inland freight, credit, warranty expenses, and packing.

On January 5, 1994, the Court of Appeals for the Federal Circuit, in *The Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement v. United States, No. 93–1239*, held that the Department could not deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Accordingly, we have instead adjusted for those expenses, which were post-sale freight expenses, under the circumstance-of-sale provision of 19 CFR 353.56.

We added to FMV packing expenses incurred in the home market for all U.S. sales, and home market VAT. Where USP was based on PP, we further adjusted FMV by adding U.S. direct selling expenses (credit, warranties, post-sale warehousing, and commission expenses). We followed our practice of adjusting for indirect selling expenses when there is a commission in only one market, as called for in 19 CFR 353.56(b)(1):

> the Secretary normally will make a reasonable allowance for other selling expenses if the Secretary makes a reasonable allowance for commissions in one of the markets under consideration and no commission is paid in the other market under consideration.

For the PP sales, where a commission was granted in the U.S. market only, we limited the amount classified as home market indirect selling expenses by the sum of the U.S. commission and U.S. indirect selling expenses, and deducted this amount from FMV.

For comparison to ESP sales, we adjusted FMV for home market indirect selling expenses, limited to the amount of indirect selling expenses incurred on U.S. sales (19 CFR § 353.56(b)(2)).

We made adjustments for differences in merchandise.

We adjusted the amount of the home market VAT included in FMV in accordance with our decision in *Siliconmanganese*.

We calculated FMV using monthly weighted-average prices of sales of brass sheet and strip having the same characteristics as to alloy, gauge group, width group, temper, form, and coating, as was done in earlier proceedings.

The respondent requested that for sales comparison purposes we use different groups of gauges and widths than were requested in the questionnaire. The respondent's suggested gauge groups were more narrowly defined than the gauge groups in the questionnaire, and the respondent's width groups were defined differently than the width groups in the questionnaire.

At verification we examined the respondent's manufacturing techniques, costing methodology, and record-keeping systems. We found that the respondent's suggested gauge and width groups correspond more closely to variations in production costs and cost records than the groups in the questionnaire. Therefore, we used the respondent's suggested groups in our analysis.

Cost Test

Because of petitioner's allegations, we investigated whether OBV sold such or similar merchandise in the home market at prices below the cost of production (COP). In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made in substantial quantities over an extended period of time, and whether such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade.

COP was reported as the sum of costs of materials, labor, factory overhead, selling and general expenses, and packing. We compared COP to home market prices, net of discounts, on a month-by-month basis.

When less than 10 percent of the home market sales of a model were at prices below the COP, we did not disregard any sales of that model. When 10 percent or more, but not more than 90 percent, of the home market sales of a particular model were determined to be below cost, we excluded the below-cost home market sales from our calculation of FMV, provided that these below-cost home market sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular model were made below cost over an extended period of time, we disregarded all home market sales of that model in our calculation of FMV.

To determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular model to the number of months in which that model was sold. If the model was sold in fewer than three months, we did not disregard below-cost sales unless there were below-cost sales of that model in each month sold. If a model was sold in three or more months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold.

Results of Cost Test

We compared individual home market prices with the monthly COP. We tested the home market prices on the basis of the six physical criteria used for product matches, and found that, for certain models, between 10 and 90 percent of home market sales were made at below-COP prices. Since the respondent provided no indication that these sales were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade, we disregarded the below-cost sales for those models, if those sales were made over an extended period of time. We used the remaining above-cost sales for comparison purposes.

For certain models, we used constructed value (CV) as the basis for FMV when there were no contemporaneous home market sales of such or similar merchandise.

We calculated CV in accordance with section 773(e) of the Tariff Act. We included the cost of materials, labor, and factory overhead in our calculations. For the respondent's SG&A, we used the statutory minimum of 10 percent of the cost of manufacture (COM), or actual SG&A expenses, whichever was greater. For the respondent's profit we used the statutory minimum of eight percent of the sum of the COM and SG&A, or actual profit, whichever was greater. We adjusted the CV for warranty and credit expenses, and the lesser of home market indirect selling expenses or U.S. commissions.

No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our comparison of USP to FMV, we preliminarily determine that the following margin exists for the period August 1, 1990 through July 31, 1991:

Manufacturer/exporter	Margin (percent)
OBV	7.44

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed no later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at the hearing.

The Department will 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. 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 publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed company will be that rate established in the final results of this 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, the cash deposit rate will be the "all others" rate established in the LTFV investigation.

On May 25, 1993, the Court of International Trade, in *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (1993), and *Federal-Mogul Corporation* v. *United States*, 822 F. Supp. 782 (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 these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction for clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. Accordingly, the "all others" rate for this proceeding is 9.49 percent, the rate from the LTFV investigation.

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 Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 16, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31795 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–570–830]

Final Determination of Sales at Less Than Fair Value: Coumarin From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Louis Apple, 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) 482–4136 or (202) 482–1769, respectively.

Final Determination:

We determine that coumarin from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), a 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. The U.S. Department of Commerce (the Department) also determines that critical circumstances exist for all exporters except Jiangsu Native Produce Import & Export Corp. (Jiangsu Native).

Case History

Since the preliminary determination on July 24, 1994 (Notice of Preliminary Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China, 59 FR 3841, July 30, 1994), the following events have occurred.

During August 1994, respondents submitted revised information on factors of production. From August 13 through 22, 1994, we verified the responses of the exporters Jiangsu Native and Tianjin Native Produce Import & Export Corp. (Tianjin Native); and the manufacturers Changzhou No. 2 Chemical Factory (Changzhou No. 2) and Tianjin Perfumery Factory (Tianjin Perfumery). Prior to scheduled verifications, counsel for Tianjin Chemicals Import & Export Corp. and Gaoyo City Perfumery Factory advised the Department that these clients would not agree to verification. On August 18, 1994, counsel withdrew its appearance for the two respondents.

On August 11, 1994, we received a request from respondents to postpone the final determination in this investigation, pursuant to 19 CFR 353.20. Accordingly, on August 31, 1994, we did so (59 FR 46618, September 9, 1994).

Petitioner and respondents filed case briefs on October 19, 1994, and rebuttal briefs on October 24, 1994. A public hearing was held on October 26, 1994.

Scope of Investigation

The product covered by this investigation is courmarin. Courmarin is an aroma chemical with the chemical formula $C_9H_6O_2$ that is also known by other names, including 2H-1-benzopyran-2-one, 1,2-benzopyrone, cis-o-coumaric acid lactone, courmarinic anhydride, 2-Oxo-1,2-benzopyran, 5,6-benzo-alpha-pyrone, ortho-hydroxyc innamic acid lactone, cis-ortho-courmaric acid anhydride, and tonka bean camphor.

All forms and variations of courmarin are included within the scope of the investigation, such as courmarin in crystal, flake, or powder form, and "crude" or unrefined courmarin (*i.e.* prior to purification or crystallization). Excluded from the scope are ethylcourmarins ($C_{11}H_{10}O_2$) and methylcoumarins ($C_{10}H_8O_2$). Coumarin is classifiable under subheading 2932.21.0000 of the Harmonized Tariff Schedule of the United States (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 July 1 through December 31, 1993.

Separate Rates

Both of the participating exporters, Jiangsu Native and Tianjin Native, have requested a separate, company-specific dumping margin. Their respective business licenses indicate that they are owned "by all the people." In the 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), we found that the PRC central government had devolved control of state-owned enterprises, *i.e.*, enterprises "owned by all the people." As a result, we determined that companies owned "by all the people" were eligible for individual rates, if they met 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* and *de facto* governmental control over export activities.

De Jure Analysis [1]

The PRC laws placed on the record of this case establish that the responsibility for managing companies owned by "all the people," including the respondent companies, 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). In particular, 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. Coumarin does not appear on the Export Provisions list and is not, therefore, subject to the constraints of those provisions. Consistent with Silicon Carbide, we determine that the existence of these laws demonstrates that Jiangsu Native and Tianjin Native, companies owned by "all the people," are not subject to *de jure* control.

An additional PRC law concerning foreign exchange was obtained by the Department during this investigation. During verification, Changzhou No. 2 submitted a copy of the PRC's "Provisional Regulations on Handling the Turnover to the State of Foreign Exchange Quotas," issued on January 1, 1991 (Foreign Exchange Regulations). As stated in these regulations, "[i]n the case of general commodities, 20 percent of export exchange earnings shall be turned over gratis to the State." We find that these foreign exchange

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[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 measure by the government decentralizing control of companies.

requirements have functioned as an implied export tax rather than a demonstration of state control over export activities. Therefore, the existence of these foreign exchange regulations is not a cause for a finding of *de jure* government control. (*See* Comment 1 for further discussion of this issue).

In light of reports[2] indicating that laws shifting control from the government to the enterprises themselves have not been implemented uniformly, our standard analysis of *de facto* control becomes critical in determining whether respondents are, in fact, subject to governmental control.

De Facto Control Analysis[3]

In the course of verification, we confirmed that export prices for both Jiangsu and Tianjin Native are not set, nor subject to approval, by any government authority. This point was supported by the companies' sales documentation and customer correspondence. We also confirmed, based on examination of documents related to sales negotiations, written agreements and other correspondence, that respondents have the authority to negotiate and sign contracts and other agreements independent of government intervention. We further found that, during the POI, although required to remit a portion of their foreign exchange earnings to the government, respondents retained proceeds from their export sales, net of the "implied export tax," and made independent decisions regarding disposition of profits and financing of losses. The respondents' financial statements, accounting records, and bank statements supported this conclusion.

Based on our examination of company correspondence files during verification, we have determined that both Jiangsu Native and Tianjin Native had autonomy from the central government in making decisions regarding the selection of management. In the case of Tianjin Native, the general manager was elected by an employee assembly. We found no involvement by any government entity in Tianjin Native's selection of management.

With respect to Jiangsu Native, we found that the general manager was appointed by the local administering authority, the Jiangsu Council on foreign Trade and Economic Cooperation (JCOFTEC). While this may indicate that Jiangsu Native is subject to the control of JCOFTEC, there is no evidence that any other exporter of the subject merchandise is currently under the control of JCOFTEC. Therefore, we have concluded that this does not preclude Jiangsu Native from receiving a separate rate.[4] This determination is consistent with our recent decision in Final Determination of Sales at Less Than Fair Value: Paper Clips from the People's Republic of China, 59 JR 51168, (October 7, 1994) (Paper Clips).

Based on the foregoing analysis, we have determined that Jiangsu Native and Tainjin Native are entitled to separate rates.

Nonmarket Economy

The PRC has been treated as a nonmarket economy country (NME) in past antidumping investigations (see e.g., Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China, 59 FR 58818 (November 15,1994) *(Saccharin)*. No information has been provided in this proceeding that would lead us to overturn our former determinations. Therefore, in accordance with section 771(18)(c) of the Act, we continue to treat the PRC as an NME for purposes of this investigation.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producers' 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 NME country, and (2) significant producers of comparable merchandise. The Department has determined that India is the country most comparable to the PRC in terms of overall economic development (*see* Memorandum from David Mueller, Director, Office of Policy, to Gary Taverman, Director of Division I of Office of Antidumping Investigations, dated March 10, 1994). In addition, there is evidence on the record that India is a significant producer of coumarin.

Fair Value Comparisons

To determine whether sales of coumarin from the PRC to the United States by Jiangsu Native and Tianjin Native were made at less than fair value, 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

United States price was calculated on the basis of purchase price, as described in the preliminary determination, in accordance with section 772(b) of the Act. Pursuant to findings at verification, we adjusted foreign inland freight for Changzhou No. 2 based on verified distances between factory and port of exportation. No additional revisions were made to either exporter's USP.

Foreign Market Value

In accordance with section 773(c) of the Act, we calculated FMV based on factors of production reported by the factories in the PRC which produced the subject merchandise for the two participating exporters. We calculated FMV based on factors of production as cited in the preliminary determination, making the following adjustments:

- For Tianjin Perfumery, we based the value for the salicylaldehyde input on a weighted-average of self-produced salicylaldehyde and purchased salicylaldehyde, according to the proportion of each used during the POI. Labor and energy factors were prorated between salicylaldehyde and coumarin production based on verification information. (See Comment 5 for further discussion).
- For Changzhou No. 2, we recalculated inland freight distances between factory and input supplier, based on verified distances; adjusted the number of direct labor hours upward, on verified time sheets and included a factor for unreported usage of plastic bags for packing, which was discovered at verification.
- We added input freight values to packing materials for both producers.
- We revised the factor calculations for both producers to remove water as a separate material input, as the Department is treating water as part of "factory overhead" (see Comment 9 for further discussion).

To calculate FMV, the verified factor amounts for each company were multiplied by the appropriate surrogate values for the different input materials. In determining which surrogate value to

[2] *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.).

[3] 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).

[4] All non-responding exporters are presumed to be under the control of the central government. There is no basis on which to conclude that any non-responding exporter is controlled by JCOFTEC.

use for valuing each factor of production, we selected, where it was available and was non-aberrational, publicly available published information ("public information") from India. If there were multiple such sources for a given factor, we selected the value that was (a) most current; (b) product specific; and (c) tax-exclusive. With regard to those few factors for which we did not have public information, or where such values were considered aberrational (as discussed below), we have relied on price quotes obtained in India and submitted by petitioner. As a result, we have used the same surrogate values used in the preliminary determination, with the following exceptions:

• For chlorine and hydrochloric acid, we have reassigned values based on price quotes submitted by petitioner, because we found that values derived from Indian import statistics are aberrational. (See Comment 6 for further discussion of this issue.)

• For inputs purchased from market-economy countries, we have assigned the market price to those inputs, if they were purchased by the manufacturers directly from foreign suppliers in convertible currency. Inputs purchased from market-economy countries by trading companies for use by their suppliers, have been assigned the surrogate value (*see* Comment 7 for further discussion of this issue).

Finally, with respect to by-product offsets, we have revised our FMV calculations to offset the cost to manufacture coumarin by the amount of by-product recovered, which is consistent with Generally Accepted Accounting Principles (GAAP) and Department practice (see Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the PRC, 59 FR 28053 (May 31, 1994)) ("*Sebacic Acid*"). In the preliminary determination, we accepted an offset to the cost of materials for by-product values. For Changzhou No. 2, we have disallowed the offset for sodium hypochlorite because the company could not demonstrate than an economic benefit accrued to the firm from the disposition of this by-product (*see* Comment 8 for further discussion).

Best Information Available (BIA)

In this investigation, some PRC exporters failed to respond to our questionnaire or failed to participate in verification. We have determined that those exporters should receive rates based on BIA. In addition, because we presume all exporters to be centrally controlled, absent verified information to the contrary, in accordance with section 776(c) of the Act, we have assigned a margin based on BIA to all exporters who have not demonstrated their independence from central control. This determination is consistent with our use of a BIA-based "All Others" rate in other recent investigations (see *e.g.*, *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 more adverse margins 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 Plated 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, (b) the highest calculated rate of any respondent in the investigation, or (c) the margin from the preliminary determination for that firm.

We consider all PRC exporters that did not respond, failed to participate in verification, or otherwise did not participate in the investigation, to be uncooperative and are assigning to them the highest margin based on information submitted in the petition, as recalculated by the Department. In recalculating the petition rate, we reassigned the value of salicylaldehyde based on the average unit value for the Indian import statistics category that includes salicylaldehyde. We did not adjust the petition margins for chlorine and hydrochloric acid values, because these are inputs used in salicylaldehyde production, and the petition's margin methodology was not based on the input values for salicylaldehyde. When applying BIA from the petition, Department practice is not to revise the information accepted at initiation, except where the petition includes erroneous or grossly aberrational data (see *e.g.*, Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China, 59 FR 55625, November 8, 1994) (Pencils). In this instance, the surrogate value cited for salicylaldehyde, the principal raw material, was fair in excess of any other value for the material obtained in the course of this investigation. Therefore, we revised the petition calculation using the same value for salicylaldehyde that we are using in our company-specific FMV calculations. The recalculated petition rate applies to all exporters other than those responding exporters that are receiving separate rates.

Critical Circumstances

In our preliminary determination, we found that critical circumstances exist with respect to imports of coumarin from Tianjin Native and "all other" exporters in the PRC. We also found that critical circumstances did not exist with respect to imports of coumarin from Jiangsu Native.

Pursuant to section 733(e)(1) of the Act and 19 CFR 353.16, we based that preliminary determination on a finding of (1) an imputed knowledge of dumping to the importers because the estimated dumping margins were in excess of 25 percent, and (2) massive imports of coumarin over a relatively short period, based on an analysis of respondents' shipment data. We used BIA as the basis for our determination of critical circumstances for non-respondent exporters.

Because information submitted for the preliminary determination has been verified, and no additional information was submitted since that determination, the Department affirms the analysis as explained in its preliminary finding. Accordingly, we determine that critical circumstances exist with respect to imports of coumarin from Tianjin Native and firms covered by the "All Others" rate. Regarding imports of coumarin from Jiangsu Native, we determine that critical circumstances do not exist, as we did at the preliminary determination.

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: Separate Rates Eligibility—The petitioner argues that the Department should find that Jiangsu Native and Tianjin Native are subject to *de jure* and *de facto* control by the central government in the PRC. The respondents argue that "the totality of the information on the record" demonstrates that the respondent companies are not subject to *de jure* and *de facto* state control.

De Jure Analysis Comments

The petitioner argues that the laws submitted by the respondents in this investigation "evince significant governmental control over these companies." As an example, the petitioner cites to Chapter VI, Article 55, of the 1988 *Law*, which states that "[t]he government, or the government department in charge, shall * * * uniformly issue mandatory plans to enterprises * * * examine and approve plans submitted by enterprises * * * appoint or remove from office or reward or penalize factory directors." The petitioner also cites to the Foreign Exchange Regulations, as evidence that enterprises in the PRC are subject to significant foreign currency surrender requirements and other restrictions on access to foreign currency earnings. Specifically, the petitioner cites to Article 1, Section 3 of the Foreign Exchange Regulations which states that "[i]n the case of general commodities, 20% of export exchange earnings shall be turned over gratis to the State." Finally, the petitioner cites to a 1994 World Bank report, China Foreign Trade Reform (World Bank Report), which describes a foreign trade contract system in the PRC which has "the effect of holding local authorities and FTCs (foreign trade companies) to what are in effect mandatory export targets."

The respondents argue that the Department has reviewed the 1988 Law in previous PRC investigations, and has consistently rejected that document as a basis for a finding of *de jure* control. The respondents further argue that mandatory plans and foreign trade contracts are reserved for controlled industries or products in the PRC, as listed in the Export Provisions list—and that coumarin is not one of the controlled products. The respondents also argue that the Department has recognized the limited scope of mandatory plans in the PRC, and cite to a verification report in Silicon Carbide which reported that "[a]fter 1988, the central government was not in the internal workings of companies. In particular, there were no mandatory plans, with the exception of critical elements of the national economy," * * * such as "grain, cotton, and coal." (See, Silicon Carbide, Verification Report of Meeting at Ministry of Foreign Trade and Economic Cooperation (MOFTEC), February 15, 1994). With respect to the Foreign Exchange Regulations, the respondents argue that these regulations reflect the "complex foreign exchange system" relating to Chinese currency and foreign exchange credits in the PRC, but that the regulations "do not require that the respondents give a portion of their sales revenues to the government."

De Facto Control Comments

The petitioner argues that an examination of the factors considered by the Department in assessing evidence of *de facto* control, leads to a finding of government control of export functions. According to the petitioner, respondent companies: (1) Do not freely establish export prices nor have unrestricted autonomy to negotiate and sign contracts, because of the restrictions and controls imposed by the foreign trade contract system as outlined in the World Bank Report; (2) do not have autonomy regarding selection of management, because the general manager of Jiangsu Native was appointed by the JCOFTEC; and (3) do not retain all proceeds of their export sales because of significant restrictions on access to foreign currency earnings, and, in the case of Tianjin Native, the respondent's proceeds from export sales are deposited into an account labeled "China Native," the national trading company known as China Native Produce Import & Export Corporation.

The respondents argue that the evidence on the administrative record in this investigation, "overwhelmingly" supports a finding of a *de facto* lack of state control. The respondents assert that (1) the Department examined the exporter's purchase orders, invoices, and correspondence files, and these documents demonstrated that the exporters freely negotiate prices with customers; (2) JCOFTEC's "recommendation" of a general manager was done according to law; and (3) China Native does not have any access or control over Jiangsu Native's bank account, and respondents were able to retain earnings in the amount invoiced to customers at the Renminbe converted rate. In addition, the respondents argue that the Department examined respondents' correspondence and financial files at verification and found no evidence of mandatory business plans.

DOC Position: Regarding mandatory plans, we agree with the respondents that the provision in the 1988 Law for mandatory export plans applies to controlled industries or products, as identified in the Export Provisions list. Coumarin is not identified in the list. The business plans obtained from respondent companies at verification, which were prepared by the respondents and submitted to the local administering authorities, consisted of export targets based on company growth from previous years. We find that these business plans do not demonstrate mandatory government planning or government interference in the respondents' export activities.

With respect to the foreign trade contract system described in the World Bank Report, we find respondents' statement that such contracts, which fix export quantities for specific products, only apply to controlled industries as identified in the Export Provisions list, to be consistent with the evidence of record. We find that there is no evidence on the record indicating that a government entity controlled Jiangsu Native's or Tianjin Native's report activities during the POI through a foreign trade contract. To the contrary, we verified that the companies negotiated and signed contracts and other agreements without interference from any government entity. Although business plans are part of the foreign trade contracting system as discussed above, we do not find these plans demonstrate government interference in the respondents' exporting activities.

Regarding the foreign currency requirements cited by petitioner, we agree with the World Bank Report which refers to the PRC's foreign exchange system as a "very substantial tax burden on Chinese exports," and an "implied export tax." Absent the foreign currency requirements, an exporter would have realized a greater portion of the income associated with its export sales. This income reduction is comparable to a tax payment. We found that during the POI, Jiangsu Native retained proceeds from its export sales, net of the "implied export tax," and made independent decisions regarding the disposition of profits.

As stated in the "Separate Rates" section of this notice, we have determined that both Jiangsu Native and Tianjin Native had autonomy from the central government in making decisions regarding the selection of management. With respect to Jiangsu Native, although JCOFTEC may exercise some control through the appointment of the general manager, there is no evidence that any other exporter of the subject merchandise is currently under the control of JCOFTEC. Therefore, Jiangsu Native remains eligible for a separate rate.

Comment 2: Separate Rates for Suppliers—The respondents argue that manufacturing respondents should be assigned the same rate as their respective exporters, and not the "all others" rate. The respondents urge the Department to issue instructions to Customs that clarify that the calculated rates apply to the particular manufacturers. In support of this

argument, the respondents cite Departmental practice outlined in Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the People's Republic of China (58 FR 7543, February 8, 1993) (Sulfur Dyes), where the Department listed LTFV margins for specific exporters paired with the PRC factory which supplied that exporter. The respondents argue further that because the manufactures in this investigation were "cooperative," it would be "contrary to the statute and judicial precedent to assign a BIA margin to these companies."

Also relying on Sulfur Dyes, the petitioner agrees with the respondents to the extent that it is appropriate for the Department to assign the margin calculated for a given exporter to that exporter and its supplying factory. However, the petitioner argues that the Department should not assign the responding manufacturer separate rates because: (1) the companies have not responded to the Department's separate rates questionnaire and, therefore, have not demonstrated that they are entitled to any rate other than the "all others" rate; and (2) separate rates should only apply to the producer/exporter pair on whom that rate was based. The petitioner cites to *Paper Clips* where the Department found that companies that had claimed that they had no shipments during the POI could not receive any rate other than the country-wide BIA rate because those companies had not replied to the Department's separate rates questionnaire.

DOC Position: As noted by the petitioner, Department practice is to examine sales by exporters. We have determined that exporters and producers should not be "paired" in our instructions to Customs. Although exporters and producers were paired in *Sulfur Dyes*, recent Department practice has been to assign rates only to exporters, and in the case of multiple suppliers, margins have been based on weight-averaged FMVs (see, *e.g.*, Final Determination of Sales at Less Than Fair Value: Certain Cut-to-length Carbon Steel Plate from Poland (58 FR 27205, July 9, 1993), Pencils,[5] and Preliminary Determination of Sales at Less Than Fair Value: Magnesium from the People's Republic of China, 59 FR 55420, November 7, 1994). In this investigation, the manufacturing respondents did not export coumarin to the United States. Our separate rates determinations apply only to the exporters of the subject merchandise who have responded to the Department's questionnaire and were verified on this issue. Therefore, we are not assigning rates to the suppliers.

Comment 3: Exporters' SG&A and Profit—The petitioner argues that the Department must include SG&A expenses and profit of the exporters, as well as the suppliers, to arrive at the FMV of the subject merchandise. The resulting FMV would be based on the SG&A and profits associated with sales of coumarin to the United States during the POI. The petitioner cites Department practice in Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway (56 FR 7665, February 25, 1991) (Norwegian Salmon), which stated that the Department "combined the SG&A of the farmer and the exporter for the statutory ten percent test." The petitioner argues that because responding exporters did not report SG&A expenses, the Department should rely on the manufacturers' SG&A, as well as profit, rates and apply them to the exporters' costs.

The respondents argue that the Department followed its normal practice in the preliminary determination, in that the surrogate value for SG&A includes all selling expenses necessary to sell chemical products in the home market (see e.g., Paper Clips, Preliminary Determination of Sales at Less Than Fair Value: Silicomanganese from the People's Republic of China (59 FR 31199, June 17, 1994), Sebacic Acid, and Silicon Carbide). The respondents further assert that the petitioner has incorrectly interpreted Norwegian Salmon because in that case, the Department included the SG&A expenses of the exporters because the farmers had no selling expenses, and the case involved the use of third country sales as FMV. The respondents claim that the petitioner's suggested calculation for SG&A and profit would deviate from the Department's normal practice, and would result in double-counting.

DOC Position: We find the petitioner's reliance on Norwegian Salmon to be misplaced because of the differences in fact patterns in the investigations, as cited by the respondents. Therefore, consistent with Department practice in NME cases, as cited by the respondents, we find that SG&A and profit of the exporters should not be included in the calculation of FMV. The statute and regulations provide for valuation of factors used in the production of (emphasis added) the subject merchandise. As stipulated in § 353.52(c) of the Department's regulations, FMV is calculated "using constructed value based on factors of production incurred in the home market country in producing (emphasis added) the subject merchandise." Therefore, we have only used the SG&A and profit of the manufacturers.

Comment 4: Captively-produced Inputs—The petitioner argues that the Department should value only inputs used in the coumarin production process, and, therefore, should not base the FMV of coumarin on the value of the factors of production of the captively-produced intermediate product, salicylaldehyde. The petitioner argues that coumarin is the merchandise under investigation, and not salicylaldehyde. According to the petitioner, valuation of only the subject merchandise, is consistent with section 773 of the Act. The petitioner further argues that, since the Department did not value the factors of production for captively-produced phenol, the Department must be consistent and not value factors for any captively-produced input.

The respondents argue that section 773 of the Act requires that FMV be based on "the value of the factors of production utilized in producing" coumarin. In this case, the respondents contend that there are two production stages utilized in producing coumarin: (1) Salicylaldehyde production, and (2) finishing production of coumarin. Therefore, they argue that both stages should be valued. Further, the respondents cite the antidumping investigation concerning refined antimony trioxide as establishing Departmental practice of valuing significant input materials in all stages of the production process, including intermediate stages (see Final Determination of Sales at Less Than Fair Value: Refined Antimony Trioxide from the People's Republic of China, 57 FR 6801, February 28, 1992) (Refined Antimony).

DOC Position: We agree with the respondents that under section 773 of the Act it is appropriate to value all of the factors of production, including intermediate inputs captively-produced by the responding producer. Further, this methodology is consistent with Department practice in NME cases (see e.g., Refined Antimony, and the Calculation Memorandum for the Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's

[5] In *Pencils*, the Department calculated a zero rate for one exporter based upon the factors of production provided by the suppliers of the exporter. The Department determined that the zero rate applied only to the exporter's sales of merchandise produced by those suppliers, and that, if the exporter sold merchandise produced by other suppliers, that merchandise would be subject to the "All Others" rate. However, in the same case, the Department gave another exporter that had multiple suppliers, and did not have a zero rate, a single margin based on the weighted-average FMV of all suppliers.

Republic of China, 57 FR 29705, July 6, 1992). Regarding Changzhou No. 2's captively-produced phenol, we will not value its factors of production because phenol accounts for an insignificant percentage of materials, based on quantity and value, required to produce coumarin.

Comment 5: Purchased Salicylaldehyde—The petitioner argues that, since Tianjin Perfumery purchased significant quantities of its salicylaldehyde from outside suppliers, the Department should calculate the value of this input based on a weighted-average of the self-produced and purchased salicylaldehyde. The petitioner contends that the purchased portion of salicylaldehyde, and not the inputs into its production, should be valued in a surrogate country, including additional cost for inland freight. As such, this methodology would be consistent with Department practice, cited in Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil, 59 FR 42806 (August 19, 1994), which holds that "it is inappropriate to specifically identify inputs obtained at a lower cost to a particular product or production run."

The respondents argue that, because the factory was able to satisfy its salicylaldehyde input needs for coumarin sold to the U.S. during the POI with its self-produced amounts, there is no need to ignore the factory's production factors for valuing all of the salicylaldehyde factor. Thus, it is not necessary to resort to surrogate values because the factory was able to cover its input needs.

DOC Position: We agree with the petitioner that the salicylaldehyde value for Tianjin Perfumery should be based on a weighted-average of Tianjin Native's own factors and the purchased salicylaldehyde, because the company both self-produced and purchased the salicylaldehyde during the POI. While this situation does not occur often, where it does (*e.g.*, Preliminary Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China, signed on December 9, 1994), we use the weighted-average. This methodology recognizes the additional economic cost to a producer when it substitutes outside purchases for an input it normally produces. The weighted-average cost is thus more representative of the company's cost of production during the POI than to assume that it produced all of the input material.

Comment 6. Chlorine—The respondents contend that the surrogate value for chlorine applied at the preliminary determination is aberrational and unrealistic. The respondents compare the value derived from Indian import statistics, which was used for the preliminary determination, to numerous examples of alternative price sources, including Indian price quotes submitted by the petitioner. According to their analysis, the Indian import value is several times higher than these other values. While acknowledging the Department's preference for public information such as the Indian import statistics, the respondents cite Silicon Carbide where the Department has tested the reasonableness of its surrogate values and rejected those it found to be aberrational. For the final determination, the respondents argue that the Department should value chlorine using the petitioner's Indian price quote, or values based on either Indonesian import statistics or U.S. export statistics.

The petitioner responds that the Department properly followed its practice of utilizing public information for valuing chlorine in India based on import statistics rather than the unpublished price quote, and should continue to do so for the final determination.

DOC Position: We agree with the respondents that, although the Indian import value is preferable according to our methodology, this value is aberrational. We note that, in addition to Silicon Carbide, the Department specifically rejected surrogate values for chlorine and hydrochloric acid in Saccharin (materials common to saccharin and coumarin production) derived from Indian import statistics because these values were aberrational when compared against data derived from export statistics from five countries (Canada, Germany, Japan, South Korea, and the United States) that exported the materials to India. The only other Indian values for chlorine and hydrochloric acid properly submitted for the record in this investigation are the petitioner' price quotes. Therefore, we value both chlorine and hydrochloric acid using these Indian price quotes.

Comment 7: Inputs from Market-Economy Countries—The petitioner argues that raw material inputs that manufacturers purchased from PRC trading companies in PRC currency should be valued in a surrogate country, even though the inputs were purchased by the trading companies from market economy sources in convertible currency. The petitioner points out that the convertible currency prices were paid by the trading companies and not the manufacturers, and that prices paid by the manufacturer to the trader were in nonconvertible currency. Therefore, the petitioner contends that these factors should be assigned surrogate values.

The respondents contend that the Department should use the actual import prices for these inputs, as it did in the preliminary determination. As the respondents explain, these purchases were made by the trading companies on behalf of the producers because of the trading companies' access to foreign currency. The producers reimbursed the trading companies for the imported goods in RMB. The respondents add that there is no support for the petitioner's position in Departmental practice. They cite Paper Clips where market prices for imported goods were used to value certain inputs that were obtained by PRC manufacturers through their suppliers.

DOC Position: We agree with the petitioner. Department practice allows for the valuation of inputs in NME cases based on market prices paid by the manufacturer for goods obtained from a market economy source because these prices reflect commercial reality (see *e.g.*, Saccharin and Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the PRC (56 FR 55271, October 25, 1991) (Fans). In this case, some of the transactions are conducted by the trading companies and not the manufacturers. Thus, the manufacturer obtained the input from a PRC source (the trading company) and paid for the input in PRC currency. This is not the type of situation encountered in Saccharin or Fans where we have accepted the actual prices paid. (We note that the respondents' cite to Paper Clips is incorrect; we did not use the import prices in the situation cited.) Accordingly, for those market economy-source inputs that were exclusively obtained by PRC trading companies and resold to the manufacturers, we have applied the appropriate surrogate value.

Comment 8: By-Products—The petitioner argues that all subsidiary products generated in the production of coumarin should be classified as by-products, rather than co-products, due to the insignificance of by-product sales values when compared to the subject merchandise. Nonetheless, the petitioner goes on to argue that no by-product offsets should be made to FMV in this investigation because: (1) Hydrochloric acid, alcohol, and sodium hypochlorite are by-products of salicylaldehyde production and no coumarin production; (2) insufficient information was provided by the respondents on product held in inventory; therefore, the Department

should assume that the manufacturers did not sell coumarin by-products, and GAAP allows for by-product adjustments only for product sold; (3) there is insufficient information on the record to substantiate that the coumarin production facilities at Changzhou No. 2 benefit from the sodium hypochlorite that was given away by the manufacturer; and (4) the respondents failed to provide the Department with sufficient information regarding the grade, quality, purity, and after-separation costs of the by-products.

The respondents agree that all subsidiary products recovered during the production of coumarin should be classified as by-products. However, regarding valuation of the by-products, the respondents argue that the petitioner's suggestions are erroneous because: (1) GAAP allow for by-product offsets on the basis of production quantities, as well as sales quantities; (2) there is ample information on the record to demonstrate that the factories sell recovered by-products, except for product held in inventory; (3) Changzhou No. 2 does not retain sodium hypochlorite for its own use, but disposes of it in a manner that yields an economic benefit to the company; and (4) the respondents reported all necessary physical parameters of the by-products, including concentration levels, and the record indicates that no after-separation costs are incurred by the factories in the sale of the by-products.

DOC Position: In this investigation, we find that alcohol, acetic acid and hydrochloric acid, are produced as a result of the production of coumarin, and that these products have low sales values compared with the sales value of coumarin. Therefore, we find these products to be by-products, and that the cost to manufacture coumarin should be offset by the value of by-product recovered, except for sodium hypochlorite, adjusted for concentration levels. Such treatment is consistent with GAAP and previous Department practice (see *e.g.*, Sebacic Acid). We agree with the respondents that GAAP allows for by-product offsets on the basis of production quantities. We have also verified the respondent's reported sales of by-products, including concentration levels, and that thee are no after-separation costs associated with the by-products. We determined that no offset should be made for the sodium hypochlorite recovered and disbursed by Changzhou No. 2, because the company could neither demonstrate that any economic benefit accrued to the firm, nor that the benefit was linked to coumarin production.

Comment 9: Water—The respondents argue that the Department erred in its preliminary determination, in calculating a cost for water, separate from factory overhead. The respondents cite to Department practice that includes water costs in factory overhead, *i.e.*, Paper Clips and Silicon Carbide.

The petitioner argues that the Indian survey data from the metals and chemicals market sector used to calculate factory overhead contained water costs associated with administrative functions. The petitioner further argues that there is no evidence in the record indicating that water used for production purposes is included in the factory overhead category of "other manufacturing expense."

DOD Position: The facts in this case are very similar to those in Saccharin with respect to water consumption. In Saccharin we found that it is normal practice to include water in factory overhead, and that it is reasonable to presume that water is included in the Indian surrogate value overhead percentage. Accordingly, we have revised FMV calculations for both producers and not valued water as a separate input.

Continuation of Suspension of Liquidation

In accordance with sections 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 coumarin from the PRC, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice 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	Weighted-average margin percentage	Critical circumstances
Jiangsu Native Produce I/E Corp.	15.04	Negative.
Tianjin Native Produce I/E Corp.	50.35	Affirmative.
All Others	160.80	Affirmative.

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 causing material injury, or threat of material injury, to the industry in the United States, 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.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: December 19, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31962 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–549–812]

Postponement of Final Antidumping Duty Determination: Furfuryl Alcohol From Thailand

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Greg Thompson, 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) 482–1777 or (202) 482–2336.

POSTPONEMENT OF FINAL DETERMINATION: On December 9, 1994, (19 FR 65014, December 16, 1994), the Department of Commerce (the Department) issued a negative preliminary determination in the antidumping duty investigation of furfuryl alcohol from Thailand.

In accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended, (the Act), on December 19, 1994, the petitioner in this investigation, QO Chemicals Inc., requested that the Department postpone its final determination in this investigation until 135 days after the date of publication of the preliminary determination. Under section 735(a)(2) of the Act and § 353.20(b) of the Department's regulations (19 CFR 353.20(b)) if, subsequent to a negative preliminary determination, the Department receives a request for postponement of the final determination from the petitioner, the Department will, absent compelling reasons for denial, grant the request. Accordingly, we are postponing our final determination in this investigation until May 1, 1995.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must now be submitted to the Assistant Secretary for Import Administration no later than March 28, 1995, and rebuttal briefs, no later than March 30, 1995. A public hearing, if requested, will be held on April 4, 1995 at 10:00 a.m. at the U.S. Department of Commerce, Room 1014, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: December 21, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31965 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–412–803]

Industrial Nitrocellulose from the United Kingdom; Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On May 12, 1994, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on industrial nitrocellulose from the United Kingdom. The period of review is July 1, 1992 through June 30, 1993.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those in our preliminary results of review.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Maureen Flannery of the Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 1994, the Department published in the **Federal Register** (59 FR 24684) the preliminary results of this administrative review of the antidumping duty order on industrial nitrocellulose from the United Kingdom (55 FR 28270, July 10, 1990). The preliminary results indicated the existence of dumping margins for the respondent in this review.

Imperial Chemicals Industries PLC (ICI), the sole manufacturer and exporter in this review, and petitioner, The Aqualon Company, submitted case and rebuttal briefs. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). The changes in our calculations based on these comments are addressed below.

Scope of Review

This review covers shipments of industrial nitrocellulose (INC) from the United Kingdom. INC is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, which is produced from the reaction of cellulose with nitric acid. It is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. INC is currently classifiable under Harmonized Tariff Schedule (HTS) item number 3912.20.00. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive. The scope of the antidumping order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

The review period is July 1, 1992 through June 30, 1993. This review covers sales of INC from the United Kingdom by one company, ICI.

Analysis of the Comments Received

We invited interested parties to comment on the preliminary results. We received case and rebuttal briefs from ICI, the U.K. manufacturer, and the petitioner, The Aqualon Company.

Comment 1.

ICI claims that officials from the Department misinterpreted a comment made by counsel for ICI at the U.S. sales verification. In an April 30, 1994 memorandum to the file, the Department indicated that counsel stated that, given the amount of work that would be required in answering the further processing questionnaire and for other reasons, the entity in the United States that further processed nitrocellulose would probably not want to put forth the effort to answer the questionnaire. ICI contends that, even though the further-processing entity had no incentive to do so, it made a concerted effort to communicate and work with the Department, and to provide the Department with as much information as possible, "within its limited capability." ICI further states that the point counsel was attempting to make at verification was that ICI itself could not supply any further-manufacturing information.

Department's Position:

We have determined that use of BIA for ICI's sales that involve further manufacturing is appropriate. ICI did not respond to the further-processing questionnaire, and we have concluded that ICI could have provided the requested information. Our decision to resort to BIA is based on this lack of response, not on any alleged statement by counsel to ICI.

On January 27, 1994, we requested that ICI respond to the Department's further-processing questionnaire with respect to sales to a company that further processed nitrocellulose into ink. In a letter dated February 15, 1994, ICI indicated that it would not respond to the further-processing questionnaire, claiming that it was impossible to provide the requested information. At verification, we discussed the further-processing questionnaire with an official from the company that further processed ICI nitrocellulose. This official had indicated in previous submissions, and at the verification as well, that it was impossible to determine the amounts of nitrocellulose contained in a particular product.

In reviewing the materials that the official presented at the verification, we were only able to determine that it would be difficult, not impossible, to

trace the product formulae back to determine whether, and how much, nitrocellulose is contained in a given product. The official also noted that product data were maintained on different computer systems that were not linked, thus creating a problem in retrieving the information requested by the Department. No explanation was given of why that information could not be downloaded from the individual systems and then uploaded together onto a single system. ICI's reasons for not responding to the further-processing questionnaire apparently concern the time that would have been required to provide the requested information, rather than the impossibility of providing a response. As stated in the preliminary results, we concluded that it would not have been impossible for ICI to answer the further-processing questionnaire.

Comment 2:

ICI argues that the Department's use of non-cooperative best information available (BIA) for sales it made to a company that further processed nitrocellulose is unjustified and unsupported by fact or law. ICI cites *Allied-Signal Aerospace Co. v. United States*, 996 F.2d. 1185 (Fed. Cir. 1993), to support its argument that, in order to apply the first tier of BIA, the Department must conclude that the respondent refused to cooperate with the Department or otherwise significantly impeded the review. *See also* 19 U.S.C. § 1677e; 19 C.F.R. § 353.37.

ICI claims that it substantially cooperated with the Department to the extent possible given the further-processing entity's limited resources and given that the information submitted with regard to the further-processing entity demonstrates that no dumping resulted from sales of the further-processed product.

ICI contends that the non-cooperative BIA rate should be distinct from the cooperative rate. The cooperative rate, ICI argues, should be based on verified information on the record. ICI suggests that, as cooperative BIA, the Department should use the average dumping rate of all reported sales from ICI to the further-processing entity during the period when the two companies were related, or at the very least, a margin not exceeding the average margin for sales made to unrelated customers during the period of review.

Petitioner argues that the record supports the Department's conclusion that ICI made a calculated business decision not to cooperate with the Department on this issue. Petitioner is unconvinced by ICI's argument regarding the difficulty of tracking ICI nitrocellulose to the final product produced by the further processor. Petitioner suggests that a reasonable basis such as a first-in, first-out methodology could have been utilized to provide the Department with the requested information. Petitioner argues that, were the Department to accept ICI's argument, a huge loophole would result in almost every case involving further manufacturing. Applying BIA in such situations is necessary in order for the Department to maintain the credibility and usefulness of its further-processing questionnaire.

Petitioner asserts that the Department used an improper BIA rate for the further processed sales. Petitioner argues that, because ICI willfully refused to comply with the Department's request for information on further processing, the Department should follow past practice and use the highest non-aberrant calculated margin for any other sale of merchandise of the same class or kind made by the same respondent. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, etc.* 58 FR 37062 (July 9, 1993). Petitioner contends that there is no *a priori* reason why there should be separate BIA policies for investigations and for administrative reviews.

ICI objects to petitioner's characterization that it "willfully refuse[d]" to comply with the Department's request. ICI also contends that the further-processing entity expended significant efforts in order to cooperate fully with the Department in providing documents and explaining the company's operations at verification.

Department's Position:

We disagree with ICI and have continued to apply uncooperative BIA. The Department uses partial BIA, when, as in this case, a company's responses are deficient in limited respects. The decision to use partial rather than total BIA, therefore, is dependent upon the size of the deficiency and the degree to which the deficiency affects the balance of the response. *See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et. al.; Final Results of Antidumping Administrative Reviews*, 57 FR 28360, 28379 (June 24, 1992). *See also Allied Signal*, supra. Because ICI chose not to respond to the further-processing questionnaire, we used as BIA for further-processed sales the highest rate ever calculated for ICI.

We applied partial BIA to ICI for its failure to respond to the further-processing questionnaire. We applied BIA, which by its nature is meant to be adverse, in accordance with our general practice. ICI's failure to respond does not warrant an exception to this practice, or the application of a neutral margin to these sales, as ICI suggests.

We disagree with petitioner's assertion that the Department should use the highest non-aberrant calculated margin for any other sale. While the Department follows the same general BIA policy for investigations and administrative reviews, differences in actual BIA rates applied occur because the same information is not available in an investigation as is available for a review. The BIA we selected is in accordance with the BIA policy for antidumping reviews. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et. al.; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360, 28379 (June 24, 1992).

Comment 3:

ICI claims that the Department should not have applied BIA to all further processed sales made during the period of review but, rather, should have limited the BIA only to sales made up to May 31, 1993, since, after that date, the further-processing company became an unrelated company.

Department's Position:

We disagree. The respondent was unable to demonstrate that, after May 31, 1993, the further-processing entity had become a separate company. As noted on page 18 of the verification report, that company's parent continues to have a large degree of interaction with ICI. Moreover, during June 1993, the parent of the further processor and ICI shared the same board chairman. See the January 18, 1994, response to supplemental questionnaire, pages 1 to 5. For these reasons, which are outlined in more detail in the August 23, 1994, proprietary memorandum from case analyst to the file, we treated all of ICI's sales to the further processor during the period of review as related-party sales.

Comment 4:

ICI contests the BIA the Department used for marine insurance, claiming it was unreasonable and unjustified. ICI points out that sales trace documents confirmed ICI's calculation of marine insurance and notes the Court of International Trade's (CIT's) ruling that the "use of the best information available rule is not to be resorted to

when respondents have supplied adequate information." *See Sigma Corp. et al. v. United States*, 841 F. Supp. 1255 (CIT 1993). ICI argues that, since complete marine insurance data are on the record, the use of BIA, based on the assumption that marine insurance was received from a related party without evidence of arm's-length pricing, is "unreasonable and unsupported by any evidence on the record." *See also Rhone-Poulenc Inc. v. United States*, 899 F.2nd 1185, 1190 (Fed. Cir. 1990).

Further, ICI points out that, since ICI "self-insures marine insurance," no insurance expense is incurred in the absence of claims. Therefore, since there were no claims made during the period of review, ICI claims that the Department would be justified in not making deductions for this expense.

ICI claims that the Brazilian marine insurance rate used as BIA represents different commercial realities than those faced by ICI such as "shipping distances, risks presented and other factors." ICI points out that, for the Brazilian marine insurance, only a single shipment was involved and that rates for such a minimal shipment would not be comparable.

ICI contends that the most accurate form of BIA is the marine insurance rate from the investigation because that rate represents verified record information for the producer in the same case. ICI also asks that the Department consider the use of the publicly available insurance rates used for other antidumping cases involving shipment of goods from the United Kingdom during a contemporaneous period. ICI suggests that the marine insurance rates could be obtained from the 1992 to 1993 administrative review of forged-steel crankshafts from the United Kingdom and the 1992 to 1993 administrative review of antifriction bearings from the United Kingdom.

Department's Position:

We disagree with ICI. We did not learn until the verification that ICI's reported marine insurance was provided by a related company. ICI was unable to provide any supporting information to demonstrate that the reported marine insurance was purchased at arm's length prices. That no insurance claims were made during the period of review is irrelevant. ICI incurred an expense for marine insurance on its sales to the United States, and this expense must be deducted from U.S. price in accordance with section 772(d)(2)(A) of the Act.

The respondent's suggestion that, as BIA, we use the marine insurance rate from the investigation is inappropriate because that rate was not demonstrated to be at arm's length. Regarding ICI's other recommendation that we use the marine insurance rates for either forged-steel crankshafts from the United Kingdom or antifriction bearings from the United Kingdom, we note that these products are very different from nitrocellulose. Nitrocellulose, being a chemical, is likely to have a very different marine insurance rate than products such as crankshafts or antifriction bearings. Accordingly, the Brazilian rate used in the preliminary results is the most appropriate since it pertains to the same product (nitrocellulose) and it is an arm's length rate.

Comment 5:

ICI objects to the Department's use of BIA for packing costs for the months July to November 1992. According to ICI, the Department verified that, during the first half of the period of review, steel drums used for packing were used once in the home market and then reused in third-country markets. ICI claims that the Department not only verified the average steel drum cost for the first half of the period of review, but also verified other elements, such as labor and other materials used in packing, and that these costs should be included in the calculation of the BIA for packing costs incurred during the first half of the period of review.

Petitioner agrees with the Department's conclusion in the preliminary results that ICI did not establish the accuracy of its home market packing cost for the July 1992 through November 1992 period and that it could not demonstrate that the month of November, for which the Department had verified information, was representative of the entire 5-month period. Petitioner contends that ICI's brief exposes an additional reason why the Department should reject ICI's claimed packing expense for the July to November 1992 period: ICI's methodology assumes that the reuse rate is the same in the domestic market as in foreign markets, even though sales quantities abroad differ from domestic sales quantities. Petitioner also notes that the data for the months before November 1992 are based on information that was not documented at verification.

Department's Position:

We agree with petitioner that ICI was unable to demonstrate that November 1992 was representative of the July to November 1992 period. As discussed on pages 9 through 12 of the verification report, and in an April 15, 1994, memorandum from the case analyst to the file, ICI based its allocation of home market packing costs for the period July through November 1992 solely on the month of November 1992, but provided no information to demonstrate that November was a representative month, and as such, an appropriate basis for formulating an allocation of drum costs for the entire 5-month period. In addition to not being able to verify the drum cost allocation, we were also unable to verify the cost of the drums used during that 5-month period. Therefore, the use of BIA for packing costs during the first half of the period of review is appropriate.

We agree with ICI that we verified other elements of ICI's packing cost, such as labor and other materials (materials other than drums). These costs were already included in our calculation of the BIA for the July to November 1992 packing costs for the preliminary results. However, we failed to include return freight and refurbishing costs, which we have included for these final results.

Comment 6:

Petitioner claims that the reuse of drums for home market and third-country packing was not verified. As a result, the entire packing cost should be denied or, as an alternative, petitioner suggests using its average drum reuse rate of 6 to 7 times, rather than using the packing material costs for the latter part of the period of review and dividing that amount by two, as was done in the preliminary results.

ICI cites the verification report in contesting the petitioner's contention that drum usage was not verified. In particular, ICI indicates a passage which states that "ICI lifted the November 1992 usage rates from an inventory ledger maintained in the United Kingdom" and that "November 1992 information was taken from a page in the inventory ledger that we had already reviewed and verified in the United Kingdom with regard to another element of the verification." ICI points out that the Department did not question ICI's calculation methodology, only whether November 1992 was a representative month.

Department's Position:

During the verification, we reviewed ICI's drum purchasing records for the July to November 1992 period and observed purchasing patterns for three types of drums used in the home market. All three drum models are discussed in a June 6, 1992, document included in Verification Exhibit 3. One of those drum models was the lighter drum used during the latter portion of

the period of review. Of the other two drum models, the document states that one would "continue to be used within the U.K. until considered unfit for use, then scrapped and will not be reordered * * *" while the other would be used "once in the U.K. and * * * then sent for [e]xport." In observing the drum purchasing records, we noted that purchases were made only of the latter drum model that would be used "once in the U.K. and * * * then sent for [e]xport" and of the lighter drum used during the December 1992 to June 1993 period. (*See* page 12 of the March 24, 1994, "Report on the Verification of Imperial Chemical Industries PLC and ICI Americas" and home market verification Exhibit 3.) Thus, we were able to confirm that all drums used in the home market during the July to November 1992 period were used only once in the home market and then sent for export. Accordingly, we have not denied the entire packing cost, nor have we used petitioner's average drum reuse rate.

Comment 7:

ICI claims that the Department's use of the company's reported U.S. short-term borrowing rate as BIA for home market credit and inventory carrying costs is unreasonable. ICI notes that there are two components to home market credit calculations: (1) payment terms for each transaction (the number of days credit outstanding, measured from the date of shipment to the date of payment); and (2) the short-term borrowing rate. ICI claims that the Department verified actual payment terms for all pre-selected and "surprise" home market transactions. Regarding the reported short-term borrowing rate, ICI notes that it presented a rate from a bank at which it could have borrowed during the period of review and, to demonstrate the reasonableness of that rate, submitted a calculation of an actual short-term borrowing rate based on data for a related company.

ICI claims that the use in the preliminary results of the three-month LIBOR for short-term borrowing in the United Kingdom is improper because it is a rate for short-term borrowings of U.S. dollars, and unavailable to ICI in the United Kingdom. Respondent suggests that, if BIA is used, the Department should use the prime rate submitted by ICI.

Petitioner states that ICI's lack of short-term borrowing is an indicator of the strength of the company and, therefore, questions how ICI could possibly have home market credit costs that approximate the private sector average.

Department's Position:

We agree with respondent that the three-month LIBOR for short-term borrowings in U.S. dollars is not the most appropriate interest rate to apply as BIA for home market short-term credit costs, since ICI would have borrowed in pounds sterling, not dollars, to finance its sales in the United Kingdom. *See La Metalli Industriale, S.p.A.* v. *United States*, 912 F 2d 455, 460 (Fed. Cir. 1990). We have found the average interest rate for three-month interbank loans in pounds sterling for the review period to be comparable to the average prime rate ICI submitted. *See* memorandum from the case analyst to the file, dated 8/24/94. Therefore, for these final results we have used the average prime rate submitted by ICI to calculate home market credit costs.

Comment 8:

ICI contends that the Department incorrectly matched U.S. sales with foreign market values (FMVs) at different levels of trade without first exhausting contemporaneous FMVs at the same level of trade.

Petitioner agrees with the respondent that the matching sequence is incorrect with regard to matching by levels of trade. However, petitioner notes that there is an additional problem at one stage in the program where a file is created that groups all possible U.S. sales by product and month, while ignoring level of trade.

Department's Position:

We agree with ICI and petitioner. For the final results, we have exhausted contemporaneous FMVs at the same level of trade before seeking FMV matches at different levels of trade. We have also corrected the problem caused by grouping all possible U.S. sales by month while ignoring level of trade.

Comment 9:

Petitioner argues that, for all post-June 1, 1993, sales, the respondent has failed to report the selling price of the sale to the first unrelated customer. Petitioner notes that ICI claimed that a company that was related to ICI until a May 31, 1993, "demerger" acted as a sales agent in the United States on behalf of ICI.

Petitioner claims that that company could not have been ICI's agent, because "[a]n agent does not purchase the goods from the foreign manufacturer, take title and act as importer of record," as that company did. Rather, the demerged company was the first unrelated buyer after June 1, 1993. Therefore, ICI should have reported its June 1993 sales to that company.

ICI contests petitioner's argument that the demerged company was the first unrelated purchaser of ICI nitrocellulose, arguing that the Department verified that this was not the case. Further, ICI claims that because the Department also verified the quantity and value of ICI America's U.S. sales for the period of review, ICI was able to demonstrate that the selling price charged to the ultimate customer was the price recorded in ICI America's financial statements.

Department's Position:

We disagree with petitioner. As noted above in our response to comment 3, we do not consider the "demerged" company to have been a separate, unrelated company during any portion of the period of review. Furthermore, we verified the activities of that company with respect to ICI sales and determined that it was not the purchaser as claimed by petitioner. In verifying sales traces, we were able to confirm that shipments were made directly to the ultimate customer and did not pass through the inventory of the "demerged" company. Therefore, we concluded that company acted as a related agent throughout the period of review and, for all post-June 1, 1993 sales, have continued to use the sales from ICI to the first unrelated customer in our analysis.

Comment 10:

Petitioner contests the inclusion in ICI's case brief of certain data, claiming that those data contain new factual information. Petitioner contends that ICI has included this information in its brief in an effort to make up for deficiencies highlighted in the preliminary results.

Department's Position:

We agree with petitioner for the most part. We asked the respondent to resubmit its case and rebuttal briefs, excluding the new factual information, and that the petitioner, likewise, remove from its rebuttal brief references to that information. *See* letter from OADC Division II Director to Michael Hertzberg and Maria Tan Pedersen, dated July 15, 1994; letter from OADC Division II Director to Edward M. Lebow, dated July 15, 1994; and the memorandum from case analyst to the file dated August 25, 1994.

Comment 11:

ICI claims that the Department calculated the commission offset contrary to the methodology stated in the analysis memorandum.

Department's Position:

We agree with the respondent and have corrected this inadvertent error for the final results.

Comment 12:

ICI claims that a computer error occurred with respect to the inventory carrying cost field.

Department's Position:

We disagree with the respondent. Correct amounts were calculated for inventory carrying cost.

Comment 13:

Petitioner notes clerical errors in the program: 1) U.S. packing was not converted to U.S. dollars; and 2) U.S. brokerage was not deducted from U.S. price.

Department's Position:

We agree with the petitioner and have made these corrections for the final results.

Final Results of the Review

As a result of our comparison of the U.S. price to FMV, we determine that the following dumping margin exists:

Manufacturer/exporter	Time period	Margin (percent)
Imperial Chemicals Industries PLC	7/1/92–6/30/93	5.08

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of INC from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that 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 or a previous review or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established in the LTFV investigation for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all others" rate of 11.13 percent established in the final notice of the LTFV investigation.

This notice also serves as a 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 notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 C.F.R. 353.34(d) or 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: December 16, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31797 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–P

Intent to Revoke Antidumping Duty Orders and Findings and to Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Intent to Revoke Antidumping Duty Orders and Findings and to Terminate Suspended Investigations.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty orders and findings and to terminate the suspended investigations listed below. Domestic interested parties who object to these revocations and terminations must submit their comments in writing no later than the last day of January 1995.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty orders and findings and to terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Proceeding

Brazil
Brass Sheet & Strip
A–351–603
52 FR 1214
January 12, 1987
Contact: Chip Hayes at (202) 482–5047

Canada
Color Picture Tubes
A–122–605
53 FR 429
January 7, 1988
Contact: Valerie Turoscy at (202) 482–0145

Japan
Color Picture Tubes
A–588–609
53 FR 430
January 7, 1988
Contact: Maureen Shields at (202) 482–1690

Singapore
Color Picture Tubes
A–559–601
53 FR 432
January 7, 1988
Contact: Kris Campbell at (202) 482–0180

South Africa
Brazing Copper Wire & Rod
A–791–502
51 FR 3640
January 29, 1986
Contact: Valerie Turoscy at (202) 482–0145

South Korea
Brass Sheet & Strip

A–580–603
52 FR 1215
January 12, 1987
Contact: Chip Hayes at (202) 482–5047

South Korea
Color Picture Tubes
A–580–605
53 FR 431
January 7, 1988
Contact: Tom Prosser at (202) 482–1130

Taiwan
Stainless Steel Cooking Ware
A–583–603
52 FR 2139
January 20, 1987
Contact: Valerie Turoscy at (202) 482–0145

Canada
Potash
A–122–701
53 FR 1393
January 19, 1988
Contact: James Doyle at (202) 482–3383

If no interested party requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke or terminate pursuant to this notice, we shall conclude that the antidumping duty orders, findings, and suspended investigations are no longer of interest to interested parties and shall proceed with the revocation or termination.

Opportunity to Object

Domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings or to terminate the suspended investigations by the last day of January 1995. Any submission to the Department must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k)(3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203. This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: November 16, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance,

[FR Doc. 94–31794 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–813]

Light Scattering Instruments and Parts Thereof From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On October 18, 1994, the Department of Commerce (the Department) published the preliminary results of the third administrative review of the antidumping duty order on light-scattering instruments (LSIs) and parts thereof from Japan. The review covers one manufacturer/exporter of the merchandise to the United States, Otsuka Electronics, Ltd. (Otsuka), and entries of the subject merchandise to the United States during the period November 1, 1992 through October 31, 1993. We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results remain unchanged from those presented in the preliminary results.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Nooshen Amiri or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 1994, the Department published in the **Federal Register** (59 FR 52511) the preliminary results of the third administrative review of the antidumping duty order on LSIs and parts thereof from Japan (55 FR 48144, November 19, 1990). The Department has now completed the review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

This review covers imports of LSIs and parts thereof from Japan. The Department defines such merchandise as LSIs and the parts thereof, specified below, that have classical measurement capabilities, whether or not also capable of dynamic measurements. Classical measurement (also known as static measurement) capability usually means the ability to measure absolutely (i.e., without reference to molecular standards) the weight and size of macromolecules and submicron particles in solution, as well as certain molecular interaction parameters, such as the so-called second viral coefficient. (An instrument that uses single-angle instead of multi-angle measurement can only measure molecular weight and the second viral coefficient.) Dynamic measurement (also known as quasi-elastic measurement) capability refers to the ability to measure the diffusion coefficient of molecules or particles in suspension and deduce therefrom features of their size and size distribution. LSIs subject to this review employ laser light and may use either the single-angle or multi-angle technique.

The following parts are included in the scope of this administrative review when they are manufactured according to specifications and operational requirements for use only in an LSI as defined in the preceding paragraph: Scanning photomultiplier assemblies, immersion baths (to provide temperature stability and/or refractive index matching), sample-containing structures, electronic signal-processing boards, molecular characterization software, preamplifier/discriminator circuitry, and optical benches. LSIs subject to this review may be sold inclusive or exclusive of accessories such as personal computers, cathode ray tube displays, software, or printers. LSIs are currently classifiable under Harmonized Tariff Schedule (HTS) subheading 9027.30.40. LSI parts are currently classifiable under HTS subheading 9027.90.40. HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written product description remains dispositive. Different items with the same name as subject parts may enter under subheading 9027.90.40. To avoid the unintended suspension of liquidation of non-subject parts, those items entered under subheading 9027.90.40 and generally known as scanning photomultiplier assemblies, immersion baths, sample-containing structures, electronic signal-processing boards, molecular characterization software, preamplifier/discriminator circuitry, and optical benches must be accompanied by an importer's declaration to the Customs Service to

the effect that they are not manufactured for use in a subject LSI.

This review covers entries of the subject merchandise exported by Otsuka and entered during the period November 1, 1992 through October 31, 1993.

Final Results of Reviews

We gave interested parties an opportunity to comment on the preliminary results of these reviews. We received no comments. We have made no changes from the preliminary results of our review. Consequently, we have determined that the following dumping margin exists for the period November 1, 1992 through October 31, 1993:

Manufacturer/exporter	Period of review	Margin
Otsuka Electronics, Ltd	11/01/92–10/31/93	[1] 129.71

[1] Best information available rate; margin used is from the investigation.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Otsuka will be 129.71 percent, 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 investigation of sales at less than fair value (LTFV), but the manufacturer is, the cash deposit rate shall 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, the cash deposit rate will be the "all others" rate from the LTFV investigation of this case, in accordance with the Court of International Trade's decisions in *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (1993), and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, 839 F. Supp. 864 (1993). The all others rate is 129.71 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final 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.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: December 13, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31964 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–841]

Initiation of Antidumping Duty Investigation: Manganese Sulfate From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Mark Wells or Louis Apple, 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) 482–3003 or (202) 482–1769, respectively.

Initiation of Investigation

The Petition

On November 30, 1994, we received a petition filed in proper form by American MicroTrace Corporation (the petitioner). On December 1 and 14, 1994, the petitioner submitted additional information supporting their allegation. In accordance with 19 CFR 353.12, the petitioner alleges that manganese sulfate from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

The petitioner also alleges that critical circumstances, as defined under 19 CFR 353.16, exist with respect to manganese sulfate from the PRC.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because the petition is filed on behalf of the U.S. industry producing the product subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

Scope of Investigation

The product covered by this investigation is manganese sulfate, including manganese sulfate monohydrate ($MnSO_4H_2O$), and any other forms whether or not hydrated, without regard to form, shape, or size, the addition of other elements, the presence of other elements as impurities, and/or the method of manufacture. The subject merchandise is currently classifiable under subheading 2833.29.50 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for

convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

United States Price and Foreign Market Value

United States Price

The petitioner based United States price (USP) on f.o.b, c.i.f, and c.f.r. price quotes from Chinese exporters of the subject merchandise. In calculating USP, petitioner deducted: foreign inland freight, ocean freight, and marine insurance. The petitioner based inland freight on the distance from the PRC producers of the subject merchandise to the PRC port of export and valued freight transportation using Indian surrogate data.

Foreign Market Value

A. Non-Market Economy Determination

The petitioner contends that the PRC is a non-market economy (NME) country within the meaning of section 771(18)(A) of the Act. The Department has determined in previous investigations that the PRC is an NME, and the presumption of NME status continues for purposes of initiation of this investigation. See e.g., Final Determination of Sales at Less than Fair Value: Certain Paper Clips from the PRC, 59 FR 51168 (October 7, 1994).

In accordance with section 773(c) of the Act, foreign market value (FMV) in NME cases is based on NME producers' factors of production, valued in a market economy country. Consistent with Department practice (see Initiation of Antidumping Duty Investigation: Glycine from the PRC, 59 FR 38435 (July 28, 1994)) absent evidence that a particular NME country government determines which of its factories shall produce for export to the United States, we intend, for purposes of this investigation, to base FMV only on those factories that produced manganese sulfate sold to the United States during the period of investigation (POI).

In the course of this investigation, parties will have the opportunity to address this NME determination and provide relevant information and argument related to the issues of the PRC's NME status and granting of separates rates to individual exporters.

B. FMV Calculations

The petitioner based the factors of production on the production process used by PRC producers of the subject merchandise and valued these factors with publicly available published information from the surrogate country, India. For purposes of this initiation, we have accepted India as a surrogate country because in past cases the Department has determined that its economy is at a level of development comparable to the PRC and petitioner has provided evidence that, in this case, it is a significant producer of comparable merchandise, as required by section 773(c)(4) of the Act.

Pursuant to section 773(c)(1) of the Act, petitioner added to the material costs, energy, labor and a percentage for factory overhead, all based on published information from India. Petitioner then added a percentage for selling, general and administrative expenses also based on published information from India, as well as an amount for packing. Finally, petitioner added the statutory minimum of eight percent for profit.

Petitioner has alleged, based on information submitted in the petition, dumping margins ranging from 142.25 percent to 801.26 percent. We will carefully reexamine these margins if the use of best information available becomes an issue in this investigation.

Initiation of Investigation

We have examined the petition on manganese sulfate and have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of manganese sulfate from the PRC are being, or are likely to be, sold in the United States at less than fair value.

Additionally, we have examined petitioner's allegation that critical circumstances exist with respect to manganese sulfate from the PRC and have determined they have met the requirements of 19 CFR 353.16. Therefore, we are also initiating an investigation as to whether critical circumstances exist with respect to imports of manganese sulfate from the PRC.

International Trade Commission (ITC) Notification

Section 732(d) of the Act requires us to notify the ITC of this action and we have done so.

Preliminary Determination by the ITC

The ITC will determine by January 17, 1995, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of manganese sulfate from the PRC. A negative ITC determination will result in a termination of the investigation; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: December 20, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31961 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–827]

Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Kristin Heim or Thomas McGinty, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3798 or (202) 482–5055, respectively.

Scope of Order

The products covered by this investigation are certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this investigation are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Specifically excluded from the scope of this investigation are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chalks.

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended ("the Act"), on October 31, 1994, the Department of Commerce ("the Department") made its final determination that certain cased pencils from the people's Republic of China ("PRC") were being sold at less than fair value (59 FR 55625, November 8, 1994). On December 15, 1994, the International Trade Commission notified the

Department of its final determination, pursuant to section 735(b)(1)(A)(ii) of the Act, that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise. Additionally, pursuant to section 735(b)(4)(B) of the Act (19 U.S.C. 1673d(b)(4)(B)), the ITC examined whether material injury would have been found but for the suspension of liquidation of the merchandise. The ITC determined that such was not the case.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 736(b)(2) of the Act applies. Therefore, all entries of certain cased pencils from the People's Republic of China, entered or withdrawn from warehouse, for consumption, made on or after the date on which the ITC publishes its final affirmative determination of threat of material injury in the **Federal Register** (which is currently scheduled for December 21, 1994), will be liable for the assessment of antidumping duties.

The Department will direct the U.S. Customs Service to terminate the suspension of liquidation for the entries of certain cased pencils from the People's Republic of China, entered or withdrawn from warehouse, for consumption, before the date on which the ITC publishes its final affirmative determination of threat of material injury in the **Federal Register** (which is currently scheduled for December 21, 1994), and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to those entries. For entries on or after that date, the U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below.

In our final determination, we calculated zero margins for two of the exporters, China First and Guangdong. We stated that in accordance with 19 CFR section 353.21 and consistent with *Jia Farn Manufacturing Co., Ltd. v. United States*, Slip Op. 93–42 (March 26, 1993); we would exclude from an order imports of subject merchandise that are sold by either China First or Guangdong and manufactured by the producers whose factors formed the basis for the zero margin. At the time of our final determination, we were unable to reveal the names of the corresponding producers as their identities were business proprietary. Thus, we referred to the corresponding producers as Company A and Company B. Subsequent to our final determination, we have received authorization from those two exporters through their counsel that the names of the corresponding producers are now public. Therefore, we have identified these producers below. Additionally, the "All Others" rate applies to all exporters of PRC cased pencils not specifically listed below.

The *ad valorem* weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Percentage
China First/China First	0.00
China First/Any other manufacturer	44.66
Guangdong/Three Star Stationery	0.00
Guangdong Any other manufacturer	44.66
SFTC	8.31
Shanghai Lansheng	17.45
All Others	44.66

In accordance with section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1), the Department will direct Customs officers to assess, upon further advice by the Department, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all relevant entries of certain cased pencils from the PRC. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins. In accordance with section 736(b)(2), these antidumping duties will be assessed on all unliquidated entries of certain cased pencils from the People's Republic of China which were entered, or withdrawn from warehouse, for consumption, on or after the date on which the ITC publishes its final affirmative determination of threat of material injury in the **Federal Register**.

This notice constitutes the antidumping duty order with respect to certain cased pencils from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: December 21, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31960 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–538–802]

Shop Towels from Bangladesh; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from the petitioner, Milliken & Company, the Department of Commerce is conducting an administrative review of the antidumping duty order on shop towels from Bangladesh. The review period is September 12, 1991 through February 28, 1993. This review covers six manufacturers/exporters. The preliminary results of this review indicate the existence of dumping margins for two manufacturers/exporters during the period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, Matthew Rosenbaum, or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 1993, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (58 FR 13583) of the antidumping duty order on shop towels from Bangladesh (57 FR 9688, March 20, 1992) for the period September 12, 1991 through February 28, 1993. On March 29, 1993, the petitioner, Milliken & Company (Milliken), requested an administrative review of six companies subject to the antidumping order, Eagle Star Mills, Ltd. (Eagle Star); Greyfab (Bangladesh) Ltd. (Greyfab); Hashem International (Hashem); Khaled Textile Mills, Ltd. (Khaled); Shabnam Textiles (Shabnam); and Sonar Cotton Mills (BD), Ltd. (Sonar). We published a notice of initiation of the review on May 6, 1993 (58 FR 26960). The Department is now conducting a review of these respondents pursuant to section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The product covered by this administrative review is shop towels. Shop towels are absorbent industrial wiping cloths made from a loosely woven fabric. The fabric may be either 100 percent cotton or a blend of materials. Shop towels are currently classifiable under item numbers 6307.10.2005 and 6307.10.2015 of the *Harmonized Tariff Schedules* (HTS). Although HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

United States Price

The Department used purchase price (PP) for Greyfab, Hashem, Khaled, Shabnam, and Sonar, as defined in section 772(b) of the Tariff Act, in calculating U.S. price (USP) because the subject merchandise was sold by the manufacturer, prior to importation, to unrelated purchasers for exportation to the United States. For Greyfab, Hashem, and Shabnam, we calculated PP based on packed and delivered C&F prices. We made deductions where appropriate for forwarding charges and ocean freight. For Khaled and Sonar, we calculated PP based on packed and delivered C&F or CIF prices. We made deductions where appropriate for forwarding charges, ocean freight, and insurance expenses.

Foreign Market Value

We calculated foreign market value (FMV) based on constructed value (CV) in accordance with section 773(e) of the Tariff Act, because none of the respondents sold such or similar merchandise in the home market or in any third-country market during the period of review (POR). The CV includes the cost of materials and fabrication of the merchandise exported to the United States, plus 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 costs and general expenses, whichever was greater; and (3) packing costs for merchandise exported to the United States. Because the only general expenses incurred were those incurred for U.S. sales, we used these general expenses in our calculation of CV. We made no adjustments.

Currency Conversion

In our analysis, we normally make currency conversions in accordance with 19 CFR 353.60 using the exchange rates certified by the Federal Reserve Bank of New York. Since the Federal Reserve Bank of New York does not provide exchange rate information for Bangladesh, we used the average monthly exchange rates published in the International Monetary Fund's *International Financial Statistics.*

Best Information Available (BIA)

On November 18, 1993, we sent Eagle Star a questionnaire. On December 30, 1993, we received a letter from Eagle Star explaining that it was no longer in the shop towel business, and therefore, would not participate in the first administrative review. Eagle Star stated, however, that it had made four shipments during the period of review. Therefore, in accordance with section 776(c) of the Act, we have determined that the use of BIA is appropriate for Eagle Star.

In determining what to use as BIA, the Department employs a two-tier methodology. The Department uses one method to determine the BIA margin for those respondents who cooperate in a review, while it uses a different method to determine the BIA margin for those respondents who do not cooperate, or who significantly impede the review. *See Final Results of Antidumping Administrative Review; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany* 56 FR 31704 (July 11, 1991).

In the case of uncooperative respondents, we use as BIA the higher of (1) the highest of the rates found for any firm for the same class or kind of merchandise in the less-than-fair-value (LTFV) investigation or prior administrative reviews; or (2) the highest calculated rate in the current review for any firm. Because Eagle Star refused to respond to the Department's questionnaire, and therefore was uncooperative, we have used this method to determine Eagle Star's margin for purposes of this review in accordance with Departmental practice. Accordingly, a margin of 42.31 percent, the highest rate for any company from this or any prior segment of the proceeding, has been applied to this company. *See Final Determination of Sales at Less Than Fair Value; Shop Towels from Bangladesh,* 57 FR 3996 (September 3, 1992).

Preliminary Results of Review

We preliminarily determine that the following margins exist for the period September 12, 1991 through February 28, 1993:

Manufacturer/producer/exporter	Margin percentage
Eagle Star Textile Mills, Ltd.	42.31
Greyfab (Bangladesh), Ltd.	0.00
Hashem International	0.00
Khaled Textile Mills, Ltd.	9.61
Shabnam Textiles (*de minimis*)	0.15
Sonar Cotton (BD), Ltd.	17.46

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between the USP and FMV may vary from the percentages stated above. Upon completion of this review, the Department will issue appraisement instructions concerning all respondents directly to U.S. Customs.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of Bangladeshi shop towels entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this administrative review. (Because the rates for Greyfab and Hashem were zero and the rate for Shabnam was *de minimis,* the Department shall not require cash deposits on shipments of subject merchandise for these firms); (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 or the original 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) the cash deposit rate for any future entries from all other manufacturers or exporters will continue to be 4.60 percent, the "all others" rate established in the LTFV investigation of this case, in accordance with the Court of International Trade's (CIT's) decisions in *Floral Trade Council v. United States*, 822 F.Supp. 766 (CIT 1993), and *Federal Mogul Corporation and the Torrington Company v. the United States* 822 F.Supp. 782 (CIT 1993).

These deposit requirements when imposed, shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within five days of publication of this notice and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties, but not later than 44 days after the date of publication or the first workday thereafter. Interested parties may submit written comments (case briefs) on these preliminary results not later than 30 days after the date of publication of this notice. Rebuttal comments (rebuttal briefs), limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will include its analysis of issues raised in any such written comments when it publishes the final results of this administrative review.

This notice 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 notice is in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: December 16, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31796 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–806]

Certain Small Business Telephone Systems and Subassemblies Thereof From Taiwan; Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Lou Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–1769, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 4, 1992 (57 FR 57419), the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the Antidumping Duty Order on Certain Small Business Telephone Systems and Subassemblies from Taiwan (December 11, 1989, 54 FR 50790). The review covers the period December 1, 1991 through November 30, 1992. In accordance with 19 CFR 353.22(a)(2), on December 28 and 30, 1992, respectively, Bitronic Telecoms Co., Ltd., ("Bitronic") and Tecom Co., Ltd. ("Tecom") each requested an administrative review of the antidumping order. The Department initiated the administrative review on February 23, 1993 (58 FR 11026) and is conducting the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

On March 17, 1993, Tecom withdrew its request for an administrative review.

On February 17, 1994, the Department issued a questionnaire to Bitronic. Bitronic submitted its questionnaire response on April 18, 1994. On May 20, 1994, the Department issued a supplemental questionnaire which identified deficiencies in Bitronic's response. Bitronic submitted its supplemental questionnaire response on June 23, 1994, and amendments to its supplemental response on July 8, 1994.

Partial Termination of Review

Because Tecom withdrew its request within 90 days of publication of notice of initiation of the review, in accordance with 19 CFR 353.22(a)(5), we are terminating this review with respect to Tecom.

Scope of the Review

Imports covered by this review are shipments of certain small business telephone systems and subassemblies thereof, currently classifiable under the following Harmonized Tariff Schedule (HTS) item numbers: 8504.40.0004, 8504.40.0008, 8504.40.0010, 8504.40.0015, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.81.0010, 8517.81.0020, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8517.90.4000, and 8518.30.1000. Although HTS item numbers are provided for convenience and Customs purposes, the written description of the scope of this proceeding is dispositive

Certain small business telephones and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between two and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are designed as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: Answer all lines in the system, monitor the status of other phone sets, and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: Housing, hand set, cord (line or hand set), power supply, telephone set circuit cards, or console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: Connectors to accept circuit cards or modules and building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching

equipment of telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise is excluded from the scope of this order; (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software used on external data processing equipment.

Preliminary Results of Review

While Bitronic responded to the Department's questionnaire and deficiency letter, major deficiencies remained in its U.S. sales response. These deficiencies included failure to report U.S. sales by a related subsidiary and failure to report U.S. customs entry information. Bitronic claimed that it was unable to report the subsidiary's sales because the subsidiary is no longer in business. Without complete U.S. sales reporting and customs entry data, the Department is unable to calculate a proper assessment rate, or apply a calculated rate to those sales which Bitronic reported.

Because Bitronic failed to adequately produce the information requested, in accordance with section 776(c) of the Act, we have preliminarily determined that the use of best information available (BIA) is appropriate. Since Bitronic made substantial attempts to submit information to the Department in a timely manner, we consider it to be a cooperative respondent. Standard Department practice dictates that for a cooperative respondent, the Department will generally assign to that respondent the higher of (a) the highest rate ever applicable to that respondent for the same class or kind of merchandise from either the Less Than Fair Value (LTFV) investigation or a prior administrative review or, if the firm has never before been investigated or reviewed, the all others rate from the LTFV investigation; or (b) the highest calculated rate in this review for the class or kind of merchandise for any firm from the same country or origin (see, Final Results of Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts thererof from the Federal Republic of Germany, (56 FR 31705, July 11, 1991). This practice has been upheld in *Allied Signal Aerospace Co.* v. *United States*, 996 F.2nd 1195, 1191–92 (Fed. Cir. 1993), and *Krup Stahl AG et. al.* v. *United States, 822 F. Supp 789 (CIT 1993)*.

Therefore, since Bitronic was not a party to the LTFV investigation and there are no other firms in this review, we used as BIA the highest rate ever applicable to Bitronic—6.97 percent as determined in the August 3, 1989, through November 30, 1990, administrative review (57 FR 29283, July 1, 1992).

We preliminarily determine the dumping margin for the period December 1, 1991, to November 30, 1992, to be:

Manufacturer/exporter	Margin (percent)
Bitronic Telecoms Co., Ltd.	6.97

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between the United States price and the foreign market value may vary from the percentages stated above. Upon completion of this review, the Department will issue appraisement instructions concerning the respondent directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final result of this administrative review for all shipments of small business telephone systems and subassemblies thereof from Taiwan, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed company will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or previous reviews, 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 or the original less than fair value investigation or previous reviews, but the manufacture is, the cash deposit rate will be the rate established for the manufacturer of the merchandise in the final results of this review or, if not covered in this review, the rate for the most recent period for the manufacturer; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters will continue to be 0.00% percent, the "all others" rate established in the LTFV investigation of this case, in accordance with the Court of International Trade's (CIT's) decisions in *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993), and *Federal Mogul Corporation and the Torrington Company* v. *the United States* 822 F Supp. 782 (CIT 1993).

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 the 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.

Public Comment

Interested parties may request disclosure within five days of publication of this notice in the **Federal Register** and may request a hearing within 10 days of the date of publication. Interested parties may submit written comments (case briefs) on these preliminary results not later than 30 days after the date of publication. Rebuttal comments (rebuttal briefs), limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Any hearing, if requested, will be held 44 days after the date of publication. The Department will include its analysis of issues raised in any such written comments when it publishes the final results of this administrative review.

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: December 16, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31963 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–M

[A-351-825]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Kate Johnson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-6320 or (202) 482-4929.

Final Determination

The Department of Commerce (the Department) determines that stainless steel bar (SSB) from Brazil is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Scope of Investigation

The merchandise covered by this investigation is SSB. For purposes of this investigation, the term "stainless steel bar" means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross sections along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to this investigation is currently classifiable under subheading 7222.10.0005 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075 and 7222.30.0000 of the Harmonized Tariff Schedule of the United States (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 July 1, 1993, through December 31, 1993.

Case History

Since the announcement of the preliminary determination on July 29, 1994 (59 FR 39732, August 4, 1994), the following events have occurred. Also on July 29, 1994, petitioners submitted a letter opposing respondents' request for an extension of the final determination.

On August 10, 1994, petitioners requested the opportunity to participate in a hearing if held. None was held.

At the request of respondent, on August 26, 1994, we postponed the final determination until December 19, 1994 (59 FR 44129).

Petitioners were the only interested party to file a case brief in this investigation. They did so on November 8, 1994.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information available (BIA) is appropriate for Acos Villares, S.A. (Villares), the only named respondent in this investigation. Villares did not respond to the Department's questionnaire. Because Villares failed to answer the Department's questionnaire, we find it has not cooperated in this investigation.

Specifically, our BIA methodology for uncooperative respondents is to assign the higher of the highest margin alleged in the petition or the highest rate calculated for another respondent. Accordingly, as BIA, we are assigning the highest margin among the margins alleged in the petition. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review* (56 FR 31692, 31704, July 11, 1991). The Department's methodology for assigning BIA has been upheld by the U.S. Court of Appeals of the Federal Circuit; *see Allied Signal Aerospace Co. v. United States*, 996 F.2d 1185 (Fed. Cir. 1993); *see also Krupp Stahl, AG et al. v. United States*, 822 F. Supp. 789 (CIT 1993)).

Interested Party Comments

Comment 1

Petitioners argue that since the issuance of the preliminary determination, there have been no further efforts on the part of the respondent to cooperate with the Department in this case or submit any information requested. Accordingly, petitioners believe that the final determination should continue to be based on the highest margin of dumping alleged in the petition for all Brazilian SSB producers and exporters, 19.43 percent.

DOC Position

We agree with petitioners and have continued to use the highest margin of dumping alleged in the petition for purposes of the final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) (19 U.S.C. 1673b(d)(1)) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of SSB from Brazil, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted average margin percent
Acos Villares, S.A.	19.43
All Others	19.43

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether imports of the subject merchandise 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 proceedings will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on SSB from Brazil entered or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 C.F.R. 353.20(a)(4).

Dated: December 19, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration

[FR Doc. 94–31804 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–P

(A–533–810)

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: V. Irene Darzenta or Katherine Johnson, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6320 or 482–4929, respectively.

Final Determination

We determine that stainless steel bar (SSB) from India is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Scope of Investigation

The merchandise covered by this investigation is SSB. For purposes of this investigation, the term "stainless steel bar" means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (i.e., cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (i.e., cold-formed products in coils, of any uniform solid cross sections along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to this investigation is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075 and 7222.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are 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 July 1, 1993, through December 31, 1993.

Case History

Since the publication of the notice of preliminary determination on August 4, 1994 (59 FR 39733), the following events have occurred.

On August 5, 1994, Grand Foundry Limited (GF) submitted its response to Section D of the Department's questionnaire. On August 18, 1994, petitioners submitted comments on GF's August 5, Section D questionnaire response. The Department issued a Section D deficiency questionnaire on September 9, 1994. On September 16, 1994, respondent requested an extension of time until October 3, 1994, within which to respond to the Department's deficiency questionnaire. Petitioners opposed this request on September 19. On September 20, the Department granted respondent a partial extension until September 30 to submit its response.

The Department issued its sales verification outline on August 26, 1994. On August 29, 1994, GF submitted revised U.S. and third country sales listings correcting certain clerical errors found in preparation for verification.

On September 28, 1994, petitioners submitted comments for the verification of GF's Section D response. Respondent submitted its Section D deficiency response on September 30, 1994. The Department issued its cost verification outline on October 3, 1994.

Verification of GF's questionnaire responses took place in Bombay, India, from September 5 through 9, and from October 10 through 14, 1994.

On October 11, 1994, GF submitted certain minor clerical error corrections/clarifications relevant to the reported cost data which it found in preparation for verification.

In a letter to the Department on October 27, 1994, Bhansali Ferromet Bars (P) Ltd. (Bhansali) and Paramount Trading Inc. (Paramount), a foreign exporter and domestic importer of subject merchandise, respectively, requested that Bhansali be assigned the preliminary margin calculated for GF, rather than the "all others" rate normally assigned to non-responding foreign producers/exporters. (*See* Comment 1 in the "Interested Party Comments" section of this notice.)

The Department's sales and cost verification reports were issued on November 2, and 3, 1994, respectively.

Neither petitioners nor respondent requested a public hearing in this proceeding. Case and rebuttal briefs were received on November 10, and 17, 1994, respectively.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information available (BIA) is appropriate for Mukand Limited (Mukand). Mukand did not respond to the Department's questionnaire, and, as such, we find it has not cooperated in this investigation.

Specifically, our BIA methodology for uncooperative respondents is to assign

the higher of the highest margin alleged in the petition or the highest rate calculated for another respondent. Accordingly, as BIA, we are assigning to Mukand the highest margin among the margins alleged in the petition. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review* (56 FR 31692, 31704, July 11, 1991). The Department's methodology for assigning BIA has been upheld by the U.S. Court of Appeals for the Federal Circuit. *See, Allied Signal Aerospace Co. v. United States*, 996 F.2d 1185 (Fed. Cir. 1993); *see also Krupp Stahl, AG et al. v. United States*, 822 F. Supp. 789 (CIT 1993)).

Product Comparisons

We have determined that all products covered by this investigation constitute a single category of such or similar merchandise. We made fair value comparisons on this basis. In accordance with the Department's standard methodology, we first compared identical merchandise. Where there were no sales of identical merchandise to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping questionnaire (on file in Room B–099 of the main building of the Department).

Consistent with our preliminary determination, we altered the order of the SSB grades specified within the grade criterion of Appendix V of our questionnaire. This was done to account for certain other SSB grades which respondent sold in the third country market during the POI, but which were not taken into account in Appendix V. We also reversed the order of the size and shape criteria in Appendix V. Because there were no sales of export-quality merchandise in the home market during the POI to compare to U.S. sales, we used GF's third country sales in Germany, in accordance with section 773(a)(1) of the Act. *See* the "Foreign Market Value" section of this notice. We made adjustments for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act. In accordance with 19 CFR 353.38, we made comparisons at the same level of trade, where possible.

Fair Value Comparisons

As discussed above, we are using BIA with regard to Mukand. For GF, we made fair value comparisons as discussed below.

To determine whether sales of SSB from GF to the United States were made at less than fair value, 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.

We made revisions to respondent's reported data, where appropriate, based on verification findings. We included in our analysis certain U.S. sales of subject merchandise which respondent incorrectly deleted from its August 29, 1994 sales listing. (*See* Comment 2 in the "Interested Party Comments" section of this notice.)

United States Price

We based USP on purchase price (PP), in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States before importation and because exporter's sales price methodology was not otherwise indicated.

We calculated PP based on packed C&F prices to unrelated customers. In accordance with section 772(d)(2)(A) of the Act, we made deductions, where appropriate, for foreign brokerage (including containerization, foreign inland freight and port charges) and ocean freight.

We recalculated credit expenses to account for the verified short-term interest rate.

Foreign Market Value

In order to determine whether there were sufficient sales of SSB in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of SSB to the volume of third country sales of SSB in accordance with section 773(a)(1)(B) of the Act. Based on this comparison, we determined that GF had a viable home market with respect to sales of SSB during the POI. However, based on GF's claim, which we verified, that sales in its home market made during the POI consisted only of SSB scrap and rejects and that its U.S. sales during the same period consisted only of first (or export) quality SSB, we determined that third country sales would be a more appropriate basis for FMV. (*See* April 5, 1994 Decision Memorandum To Richard W. Moreland From The Team Re: Appropriate Basis for FMV.)

In order to select the appropriate third country in this case, we examined three factors in accordance with 19 C.F.R. 353.49(b): (1) the degree of similarity in terms of physical characteristics between the products sold in the United States and the individual third country markets; (2) the volume of sales in each third country market relative to that in the United States; and (3) the similarity of the market organization and development between the U.S. market and third country market. Based on these factors, we selected sales to Germany as the appropriate basis on which to calculate FMV.

Cost of Production

Petitioners alleged that GF made third country sales during the POI at prices below the cost of production (COP). Based on information submitted by petitioners in their allegation, and in accordance with section 773(b) of the Act, we concluded that we had reasonable grounds to believe or suspect that sales were made below COP. (*See* June 15, 1994, Decision Memorandum from Richard W. Moreland to Barbara R. Stafford Re: Petitioners' Allegation of Sales Below the Cost of Production.)

In order to determine whether third country prices were below COP within the meaning of section 773(b) of the Act, we performed a product-specific cost test, in which we examined whether each third country product sold during the POI was priced below the COP of that product. *See, e.g., Final Determination of Sales at Not Less Than Fair Value: Saccharin from Korea* (59 FR 58826; November 15, 1994) (*Saccharin from Korea*). We calculated COP based on the sum of the respondent's reported cost of materials, fabrication, general expenses and packing costs, in accordance with 19 CFR 353.51(c). We compared the COP for each product to the third country price, net of movement expenses.

We relied on the submitted COP data except in the following instances where the costs were not appropriately quantified or valued:

1. We increased the reported nickel costs by excluding inventory on hand at December 31, 1993, which we determined more accurately reflected the COP during the POI;
2. We recalculated wastage related to the centerless grinding and smooth turning processes to reflect the correct recovery amounts;
3. We increased fixed overhead amounts to reflect minor corrections found at verification;
4. We recalculated the general and administrative (G&A) expense and financial expense ratios to reflect results for the year ended March 31, 1994;
5. We eliminated the income tax provision amount included in the G&A expense calculation; and
6. We recalculated third country indirect selling expenses in accordance with verification findings.

In accordance with section 773(b) of the Act, we also examined whether GF's third country sales were made below COP in substantial quantities over an extended period of time, and whether such sales were made at prices that would permit the recovery of all costs within a reasonable period of time in the normal course of trade.

To satisfy the requirement of section 773(b)(1) that below cost sales be disregarded only if made in substantial quantities, the following methodology was used: For each product where less than ten percent, by quantity, of the third country sales made during the POI were made at prices below the COP, we included all sales of that model in the computation of FMV. For each product where ten percent or more, but less than 90 percent, of the third country sales made during the POI were priced below COP, we excluded from the calculation of FMV those third country sales which were priced below COP, provided that the below cost sales of that product were made over an extended period of time. Where we found that more than 90 percent of the respondent's sales of a particular product were at prices below the COP and were made over an extended period of time, we disregarded all sales of that product and calculated FMV based on constructed value (CV), in accordance with section 773(b) of the Act.

In accordance with section 773(b)(1) of the Act, in order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POI in which that product was sold. If a product was sold in three or more months of the POI, we did not exclude below-cost sales unless there were below-cost sales in at least three months during the POI. When we found that sales of a product only occurred in one or two months, the number of months in which the sales occurred constituted the extended period of time; *i.e.*, where sales of a product were made in only two months, the extended period of time was two months, where sales of a product were made in only one month, the extended period of time was one month. (See *Saccharin from Korea*).

We examined GF's product-specific COP data, as corrected based on our findings at verification, and found no sales below COP.

Constructed Value-to-Price Comparisons

For one U.S. sales comparison, where the variable costs of the differences in physical characteristics of the merchandise exceeded 20 percent, we used constructed value (CV) as the basis for FMV, in accordance with section 773(a)(2) of the Act. Pursuant to section 773(e) of the Act, we calculated constructed value (CV) based on the sum of the cost of materials, fabrication, general expenses, U.S. packing costs and profit. In accordance with section 773(e)(1)(B) (i) and (ii) of the Act we: 1) included the greater of respondent's reported general expenses or the statutory minimum of ten percent of the cost of manufacture (COM), as appropriate; and 2) used the greater of respondent's actual profit or the statutory minimum of eight percent of the sum of COM and general expenses.

We relied on the submitted CV data, but made the same modifications numbered 1–5 under the "Cost of Production" section of this notice.

Pursuant to 19 C.F.R. 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses and bank charges (including bank interest, courier charges and commissions) between the U.S. and third country markets. We recalculated credit expenses to reflect the verified short-term interest rate. We deducted third country commissions and added U.S. indirect selling expenses (which were recalculated based on verification findings) capped by the amount of third country commissions in accordance with 19 CFR 353.56(b).

Price-to-Price Comparisons

For all other U.S. sales comparisons, in accordance with 19 C.F.R. 353.46, we calculated FMV based on CIF or C&F prices charged to unrelated customers in Germany.

In light of the Court of Appeals for the Federal Circuit's (CAFC) decision in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement v. United States*, 13 F.3d 398 (Fed. Cir. 1994), the Department no longer can deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we will adjust for those expenses under the circumstance-of-sale provision of 19 C.F.R. 353.56(a) and the exporter's sales price offset provision of 19 C.F.R. 353.56(b)(2), as appropriate. Accordingly, in the present case, we deducted post-sale movement charges from FMV under the circumstance-of-sale provision of 19 C.F.R. 353.56(a). This adjustment included home market foreign brokerage (including containerization, foreign inland freight, loading and port fees), ocean freight, and marine insurance.

Pursuant to 19 C.F.R. 353.56(a)(2), we made further circumstance-of-sale adjustments, where appropriate, for differences in credit expenses and bank charges (including bank interest, courier charges and commissions) between the U.S. and third country markets. We recalculated credit expenses to reflect the verified short-term interest rate. We deducted third country commissions and added U.S. indirect selling expenses capped by the amount of third country commissions in accordance with 19 CFR 353.56(b). We recalculated U.S. indirect selling expenses in accordance with our findings at verification.

We also deducted third country packing and added U.S. packing costs, in accordance with section 773(a)(1) of the Act. We made adjustments, where appropriate, for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See* 19 C.F.R. 353.60(a).

Verification

As provided in section 776(b) of the Act, we conducted verification of the information provided by GF by using standard verification procedures, including the examination of relevant sales, cost and financial records, and selection of original source documentation.

Interested Party Comments

Comment 1: Bhansali and Paramount, a foreign exporter and domestic importer of subject merchandise, respectively, requested in a letter to the Department on October 27, 1994, that Bhansali be assigned the preliminary margin calculated for GF (2.67 percent), rather than the "all others" rate normally assigned to non-respondent foreign producers/exporters. Bhansali and Paramount believe this treatment to be appropriate because: (1) Bhansali procures the raw materials for SSB production from the same sources as GF, and like GF, converts the material into SSB; and (2) the all others rate includes the BIA margin for Mukand which did not cooperate in the investigation. They contend that "penalizing" Bhansali with the all others rate would be denying them "equal protection" and "due process."

Petitioners believe that the Department should retain the preliminary "all others" rate (11.85

percent) for Bhansali's and Paramount's SSB exports to the United States. Petitioners state that the two interested parties appear to rest their request on the fact that Bhansali procures raw materials from the same source as GF and subsequently converts the material into SSB. They assert that this argument ignores the fact that the Department is required to verify all information upon which it relies in calculating antidumping margins in an investigation. Moreover, petitioners point out that as interested parties, Bhansali and Paramount could have requested the Department to permit Bhansali to appear as a voluntary respondent and, thereby, receive a separate dumping rate based on its own verified data. Petitioners also point out that both companies may request an administrative review of Bhansali's exports and, thereby, obtain a company-specific rate for Bhansali's shipments to the United States.

Furthermore, petitioners assert that the Department has repeatedly used BIA in calculating the "all others" rate for non-responding companies, even when there is only one respondent and when the rate reflects the most adverse BIA. According to petitioners, the Department has been reluctant to modify the all others rate calculation absent compelling circumstances. To support its arguments, petitioners cite, among other Department rulings, the *Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from India*, 56 FR 46285 (September 11, 1992) and *Final Determination of Sales at Less Than Fair Value: Certain Paper Clips from the People's Republic of China*, 54 FR 51168 (October 7, 1994).

DOC Position: We agree with petitioners. The Department assigns company-specific rates to those companies which were either mandatory respondents or accepted as voluntary respondents. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Forged Stainless Steel Flanges from India*, 58 Fed. Reg. 68853, 68857 (Dec. 29, 1993) (*"Steel Flanges"*); *Antidumping; Oil Country Tubular Goods from Canada; Final Determination of Sales at Less Than Fair Value*, 51 Fed. Reg. 15029 (Apr. 22, 1986). In this case, Bhansali was neither named by the Department as a mandatory respondent nor did it request treatment as a voluntary respondent. It is our practice to assign the "all others" rate to companies which either were not named as mandatory respondents or did not request voluntary status. *See Floral Trade Council v. United States*, 822 F. Supp. 766, 768 (CIT 1993); *See Steel Flanges* at 68857. The Department applies the "all-others" rate to these companies because they did not provide company-specific information necessary to calculate individual rates. Given the fact that Bhansali, as a foreign exporter, was given the opportunity to request treatment as a voluntary respondent, and, thereby, could have participated in the investigation and receive a company-specific rate, we believe that Bhansali was not denied equal protection and was afforded due process. In addition, because both Bhansali and Paramount will be able to request an administrative review, if an order is issued in this case, we believe that these parties have not been denied due process. We disagree with Bhansali that we could use GF's data to calculate a company-specific rate because there is no evidence on the record that GF's data is the same as its own and the Department must verify all information upon which it relies in calculating a margin.

We also disagree with Bhansali's argument not to include the BIA rate in the all-others rate calculation. It is the Department's practice to calculate the all-others rate based on the average of the margins assigned to all companies under investigation. *See Steel Flanges* at 68858. Consequently, we included the BIA rate in calculating the all-others rate.

Comment 2: Petitioners argue that the seven sales that were deleted from GF's revised August 29, 1994, U.S. sales listing should be included in the Department's final margin analysis. Petitioners assert that these sales, shipped under two invoices, were made pursuant to a purchase order dated within the POI. Despite the fact that the purchase order was ultimately canceled, a portion of the order was shipped to the U.S. customer. Accordingly, petitioners maintain that the subject transactions should be returned to the revised sales listing from which they were removed.

Respondent states that it is indifferent as to whether these sales are included in the Department's analysis. GF asserts that it submitted the necessary data for these sales so that the Department may consider them in its analysis, if appropriate. However, GF points out that it had a legitimate basis to believe that such sales should be excluded. According to respondent, by explicit agreement between GF and the U.S. customer after purchase order issuance, the quantity shipped greatly differed from the quantity ordered. In other words, a significant term of sale changed after the date of purchase order and, in fact, after the date of shipment. Under the Department's practice for determining date of sale, when the buyer and seller agree on a change in the terms of sale after the purchase order, the new date of sale is the date on which the change in terms was agreed upon. In the case of the subject sales, respondent maintains that the new date of sale is the date of shipment which falls outside the POI.

DOC Position: We agree with petitioners. We verified that these sales should not have been deleted from respondent's U.S. sales listing. While we found that the purchase order at issue was cancelled in June 1994, we also found that a portion of the order had been shipped under two invoices in February and April 1994, prior to order cancellation. The terms of sale, as specified in the original purchase order dated within the POI, did not change until after the two shipments were made. Therefore, we consider the subject sales to be appropriately included in the sales listing and, accordingly, have used them in our final analysis.

Comment 3: For certain U.S. sales made to one U.S. customer during the POI, GF reported two different prices—purchase order price (reported under the variable "GRSUPRU" in the U.S. sales listing) and invoice price (reported under the variable "INVPRU in the U.S. sales listing). In its August 29, 1994, submission and at verification, respondent explained that the difference between the two prices was an offset granted by GF to the customer which related to pre-POI shipments made under the International Price Reimbursement Scheme (IPRS) [1].

Petitioners contend that for these transactions, the prices reported under the "INVPRU" variable (*i.e.*, the price charged minus the IPRS offset), rather than the "GRSUPRU" variable, (*i.e.*, the price agreed upon by the parties), should be used by the Department as the basis of U.S. price in its final margin calculations. Petitioners' contention is premised primarily on the following: (1) the Department verified that INVPRU was the actual price paid by the customer; and (2) GF did not provide sufficient evidence to the Department at verification to substantiate its claim that the difference between the two prices related to the effects of the IPRS on pre-POI shipments. (For a detailed summary of petitioners' comments, *see* December 16, 1994, Final Concurrence

[1] Under the IPRS, which expired prior to the POI for stainless steel products, the Indian government compensated exporters for the higher cost of using domestic versus imported materials in the production of export products.

Memorandum from the Team to Barbara R. Stafford at 8–9.)

Respondent claims that for the transactions at issue, GRSUPRU, not INVPRU, is the actual total price charged and paid to GF by the U.S. customer, and, therefore, GRSUPRU should be used as the basis of U.S. price in the Department's final analysis. According to GF, GRSUPRU and INVPRU differ for one U.S. customer because of commitments made between GF and that customer with respect to pre-POI shipments that related to the IPRS. Contrary to suggestions in the Department's sales verification report, respondent claims that there was no price change between the purchase order and invoice with respect to these few sales. If the Department concluded that there was a change in price, the date of sale would be affected. In this case, the date of sale would have been the date of shipment since the alleged price change was first reflected in the invoice issued after shipment, which for several transactions occurred after the POI. Respondent asserts that, contrary to a statement in the Department's verification report, GF's allocations of certain charges (*i.e.*, bank interest charges, indirect selling expenses and imputed credit expenses) applicable to the subject sales were correct; that is, it was correct to use GRSUPRU in its allocation methodology since that is the actual price paid for those sales. (For a detailed summary of respondent's comments, *see* December 16, 1994, Final Concurrence Memorandum from the Team to Barbara R. Stafford at 7–8.)

DOC Position: We agree with respondent. It appears that the inconsistencies in the Department's sales verification report resulted in confusion between the parties concerning the definition of, and difference between, GRSUPRU and INVPRU. In our sales verification report on page 19, we noted that our examination of source documentation revealed "no discrepancies" with respondent's claim. However, in an earlier section of our verification report on page 6 and at the top of page 19, respectively, we incorrectly suggested that, for certain sales made to one U.S. customer during the POI, there were price "changes" between the purchase order and invoice due to the effects of the IPRS, and that INVPRU referred to the "actual price GF charged the U.S. customer" which differed from the original purchase order price. We also incorrectly suggested on page 20, that because GF used GRSUPRU, not INVPRU, to calculate bank interest charges, imputed credit and indirect selling expenses, these expenses were "overstated" for the affected sales.

Based upon further review of the source documentation provided at verification, we believe that the difference between GRSUPRU and INVPRU reported for the affected sales resembles a kind of "rebate" given by GF to the U.S. customer on pre-POI shipments which was accounted for in the final invoice price for the affected POI shipments. We consider a rebate to be a return of a previous amount paid for goods. This "rebate" was the vehicle by which respondent paid back what it owed the customer on pre-POI shipments in lieu of direct cash payments, and bore no relation to POI sales. Furthermore, we view GRSUPRU as the price that the customer would have otherwise paid for the subject sales, but for the "rebate" related to pre-POI shipments made under the IPRS. (For a complete discussion of this issue, *see* December 16, 1994, Final Concurrence Memorandum from the Team to Barbara R. Stafford at 7–10.)

Comment 4: Petitioners contend that certain bank charges incurred on third country sales should be allocated over invoice value, rather than weight, because they are based on the value of the merchandise. Petitioners maintain that by allocating these charges on the basis of weight, respondent has overstated them, thereby understating the net third country sales price. As best information available, petitioners suggest decreasing all third country bank charges based on the percentage difference between the per unit bank charge calculated by value and that calculated by weight for a sample transaction to more accurately reflect GF's true bank cost experience.

Respondent argues that petitioners cite no record evidence for their assertion. Respondent maintains that the record clearly indicates that the subject bank charges (*i.e.*, courier charges) are fixed charges that do not vary with transaction value. Furthermore, respondent emphasizes that it reported other bank charges (*i.e.*, bank interest charges) which were allocated by value.

DOC Position: We agree with respondent. GF claimed in its response and we verified that the subject bank charges were assessed on the basis of weight, not value. Therefore, we have used the verified bank charges in our analysis and made deductions to FMV, where appropriate. (*See* November 2, 1994, Sales Verification Report at page 12).

Comment 5: Petitioners claim that GF incorrectly allocated its ocean freight and foreign brokerage charges on third country sales over net weight rather than gross weight. Since these expenses are incurred on the total weight of the shipments, petitioners contend that they should be allocated over gross weight. Petitioners add that although the differences between gross and net weight for most transactions in the third country sales listing are not substantial, for two invoices the differences are significant. Accordingly, petitioners argue that the movement expenses for all reported third country sales related to the two invoices should be decreased by the percentage difference between the net and gross weights.

Respondent contends that net weight is the weight of SSB actually shipped; in contrast, gross weight includes packing materials. According to respondent, movement costs should be allocated over net weight so that the movement costs are fully absorbed by the SSB actually shipped. To allocate some movement costs to the packing materials would understate per unit movement costs. Furthermore, GF points out that it allocated movement costs over net weight for both U.S. and third country movement charges. If movement costs incurred on third country sales were allocated over gross weight, then for consistency purposes, movement costs incurred on U.S. sales should also be allocated over gross weight. Consequently, the reallocation would affect U.S. and third country sales equally, with no net impact on the Department's dumping margin calculation.

DOC Position: We agree with respondent. Respondent claimed and we verified that the subject movement charges were properly allocated over net or actual weight of the subject merchandise, not gross weight. Therefore, we have made deductions to FMV, where appropriate, for the verified movement charges. (*See* November 2, 1994, Sales Verification Report at page 13).

Comment 6: Petitioners argue that raw material costs should not be reduced by the revenues generated from sales of duty-free advance import licenses.[2] Petitioners contend that the Department should disallow this reduction in GF's raw material costs for several reasons. First, they maintain that these revenues are unrelated to the production and sale of the subject merchandise because they reflect earnings gained from the sale of the unused portion of the import

[2] These licenses allow Indian exporters to import duty-free raw materials that are used in the production of export products. Indian exporters may also sell their license capacity to other (non-exporting) companies which may not have obtained such a license directly from the government.

licenses. Second, the unused capacity was purchased by a company, the function of which was unrelated to the production of subject merchandise. Third, GF incurred no expenses in selling this unused capacity, as the purchaser incurred all costs related to the importation of the material. According to petitioners, the Department has consistently refused to allow an adjustment to respondent's costs of production for income that is unrelated to the production and sale of the subject merchandise. Among other cases, petitioners cite the final determination of *Certain Stainless Steel Wire Rods from France* (58 FR 68865; December 29, 1993) to support its argument.

Furthermore, petitioners assert that GF's revenues from sales of unused license capacity were earned in a period outside the POI. According to petitioners, since these revenues are unrelated to the production or sale of subject merchandise and were earned outside the POI, they should not be allowed as offsets to direct raw material costs.

GF argues that the subject revenues should be considered in the calculation of raw material costs, as they are directly related to raw material purchases. According to GF, they exist only because GF used domestic, instead of imported, material to produce the SSBs for export. Respondent argues that, if not for these import license revenues, it would not make sense for the company to purchase domestic raw materials which have a higher cost than imported materials.

Furthermore, GF asserts that the Indian Government Import License Program replaced the prior IPRS which had the same purpose and effect (*i.e.*, compensating Indian exporters for the higher cost of using domestic material). Respondent points out that during the IPRS program's existence, it was well-established by Department precedent that raw material costs should be adjusted downward for IPRS reimbursements. GF cites *Forged Stainless Steel Flanges from India* (58 FR 68853, 68558 (Comment 10) December 29, 1993) to support its claim. Similarly, respondent maintains that raw material costs should be reduced by the amount of revenues received from license sales which are permitted under the Indian Government Import License Program.

In addition, respondent asserts that the import licenses were secured during the POI, which makes them applicable to POI production. Therefore, benefits from the sale of import licenses are related to, and were accrued during, the POI, regardless of when these benefits are posted in the company's books.

DOC Position: We agree with respondent that the license fee revenues relate to purchases of raw materials for GF's export sales made during the POI. GF purchased raw materials in the domestic market to produce exported SSB. At the same time, GF sold its unused license capacity in a related transaction in order to reduce its overall raw material costs for exported products. Based on our understanding of the license program, GF had to demonstrate that the raw material amount covered by the import license was used in exported products, even if the license amount was sold to another party. GF was able to sell its import licenses only because it was able to satisfy its export obligation under the license by using domestically sourced raw materials, instead of imported raw materials, to produce its exported products. Therefore, the revenues GF received from the sale of its import licenses are directly related to its purchases of domestic raw materials and represent an appropriate offset to GF's raw materials costs.

Comment 7: Petitioners argue that the nickel costs reported by GF should be adjusted to account for a decline in nickel costs at the end of the POI. They contend that the respondent's calculation of average POI material costs should not have included the declining nickel purchase prices at the end of the POI (December 1993). Petitioners argue that it is unreasonable to assume that the nickel purchased by GF in December 1993 was used in the production of subject merchandise during the POI, given the time necessary to import the nickel and convert it into wire rods or bars for use in SSB production. Accordingly, GF's nickel costs should be recalculated to exclude those purchases of nickel that could not have been used in production of the subject merchandise before the end of the POI.

Respondent argues that it is possible that the nickel purchased in December 1993 was used in SSB production during the POI. Respondent states that the reason for the fall in nickel prices was mainly because the early POI nickel purchases were from domestic sources while the later POI nickel purchases were imports which are cheaper than domestically produced nickel. Furthermore, GF states that its financial accounting records do not track when purchased materials are actually used in production. Consequently, GF does not know whether the wire rod it receives from the contractor is made from an earlier or later supply of nickel. According to respondent, only the POI weighted-average approach can be reconciled with GF's financial statements.

DOC Position: We agree with petitioners. Respondent's methodology for calculating weighted-average POI nickel costs failed to adequately account for the beginning POI inventory values and was based on quantities in excess of quantities used. In order to reasonably account for these deficiencies, we excluded from the weighted-average nickel cost calculation, the quantity purchased in excess of consumption (i.e. ending inventory), valued at the most recent purchase price. This approach most accurately values the nickel used in production.

Comment 8: Petitioners contend that GF has understated its reported labor costs by the number of times material passes through a particular process. Since one bar can pass through a particular processing center more than once, petitioners argue that the total weight of material processed in that center will be greater than the finished good weight by a factor equal to the number of times it passes through that processing center. Accordingly, the Department should increase GF's reported labor costs by an appropriate factor in order to properly account for GF's actual labor experience with respect to the subject merchandise.

Respondent maintains that it properly calculated labor costs by considering the cost for each time a particular bar passes through a production process and accounting for the per unit cost of that process by the number of times the bar passes through that process. GF asserts that the Department reviewed its allocation methodology at verification and noted that it appeared reasonable.

DOC Position: We agree with respondent. GF's reported calculation methodology first computed a labor cost for each time a particular bar passed through a particular process. The "per pass" cost was then multiplied by the number of times a certain model passed through the particular process. We have determined that GF's labor cost methodology is reasonable, because it properly accounts for the cumulative cost of processing labor, and accordingly we conclude that no adjustment is warranted.

Comment 9: Petitioners argue that the Department should revise the total production quantity used by GF in calculating certain costs by removing the quantity of inspection wastage, or second quality product. According to petitioners, the quantity of inspection wastage and secondary grade product should not be included in the allocation

base because, by definition, these products did not meet inspection standards and were inferior in quality. The fact that these inferior products could not recover the entire raw material costs, let alone the processing costs, further indicates to petitioners that these products should not be treated as standard products in calculating GF's cost of production. Instead, petitioners maintain that the costs associated with these inferior products should be absorbed by the standard products. Accordingly, petitioners contend that, in its final determination, the Department should revise the total production quantity by removing the quantity for inspection wastage.

Respondent argues that costs were properly allocated over all saleable products, including second-quality SSB. According to respondent, the costs to produce the lower quality bars were the same as those to produce higher quality bars which went through the same production process. In addition, respondent points out that at verification the Department reviewed the allocation methodology for variable expense items and noted it to be reasonable.

DOC Position: We agree with respondent and have made no adjustment. When the finished bar comes out of production, it is examined and classified as either export quality or inspection wastage (*i.e.*, second quality) by inspection teams. The same manufacturing factors go into the production of both export quality and second quality stainless steel bar. Other than quality and market value there is no difference between these products. We have determined that the circumstances in this case are similar to those in *Certain Carbon and Alloy Steel Wire Rod From Canada*, 59 FR 18797 (April 20, 1994), where we allowed the respondent to allocate production costs over both prime and non-prime merchandise. *See also, IPSCO, Inc. v. United States*, 965 F 2d 1057 (Fed. Cir. 1990). We note that, in this context, inspection wastage (or second quality) and non-prime merchandise are synonymous.

Comment 10: Petitioners contend that the Department should revise GF's direct material cost by adding a portion of the excise tax paid by GF to the total cost of direct materials. In petitioners opinion, the deductions to direct material costs GF claimed for excise and sales taxes which were refunded to GF upon exportation of the finished products are overstated because GF sold products in the domestic market during the POI. Because these products were not exported, GF was not eligible for excise and sales tax refunds on their sale. Therefore, petitioners maintain, the Department should revise GF's reported direct material costs to account for the overstatement of tax refunds.

Respondent asserts that petitioners' arguments are irrelevant because this case concerns the costs of product sold to the United States and Germany, and not in the home market. GF also points out that when GF sells in the home market, GF charges the excise or sales taxes to its customer, meaning that GF ultimately does not incur such costs.

DOC Position: We agree with respondent. We observed at verification that GF charged its domestic customers for sales and excise taxes they had paid on raw materials and, therefore, ultimately did not incur any cost for these taxes. We also observed that sales and excise taxes were refunded upon exportation of the subject merchandise. Consequently, we find no evidence on the record of an overstatement of tax refunds as claimed by petitioners.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of SSB from India that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the FMV of the subject merchandise exceeds the USP, as shown below. The less than fair value margins for SSB are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Grand Foundry	3.87
Mukand	21.02
All Others	12.45

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 proceedings will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on SSB from India entered or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in these investigations of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: December 19, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31802 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–813]

Notice of Final Determination of Sales at Not Less Than Fair Value: Stainless Steel Bar from Italy

Agency: Import Administration, International Trade Administration, Department of Commerce.

Effective Date: December 28, 1994.

For Further Information Contact: Kate Johnson or Irene Darzenta, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4929 or 482–6320, respectively.

Final Determination

We determine that stainless steel bar (SSB) from Italy is not being, nor is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated *de minimis* margins are shown in the "Discontinuance of Suspension of Liquidation" section of this notice.

Scope of Investigation

The merchandise covered by this investigation is SSB. For purposes of this investigation, the term "stainless steel bar" means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-

finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentions, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles shapes and sections.

The SSB subject to this investigation is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075 and 7222.30.0000 of the *Harmonized Tariff Schedule of Schedule of the United States* (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 July 1 to December 31, 1993.

Case History

Since publication of the notice of preliminary determination on August 4, 1994 (59 FR 39736), the following events have occurred.

On August 5, 1994, Acciaierie Valbruna S.r.l. (Valbruna) submitted its response to Section D of the Department's questionnaire. It supplemented this response on October 3, 1994.

On August 9 and 10, 1994, Valbruna and petitioners, respectively, requested the opportunity to participate in a hearing, if held. None was held.

Also, on August 10, 1994, Valbruna alleged that the Department made certain ministerial errors in its preliminary margin calculations. On August 11, 1994, petitioners submitted comments and rebuttal regarding these ministerial errors. With respect to these allegations, on September 13, 1994, we published a notice of amended preliminary determination correcting the ministerial errors in the preliminary margin calculations (59 FR 46961).

On August 12, 1994, Foroni S.p.A. (Foroni) tentatively requested a hearing in this investigation. It withdrew its request on October 26, 1994.

Verification of Valbruna's and Foroni's responses took place in August and October, 1994.

Case and rebuttal briefs were submitted on November 17, and 23, 1994, respectively.

At the Department's request, Valbruna and Foroni submitted revised computer tapes correcting certain minor clerical errors found at verification on November 22 and 30, 1994, respectively.

Product Comparisons

We have determined that all products covered by this investigation constitute a single category of such or similar merchandise. We made fair value comparisons on this basis. In accordance with the Department's standard methodology, we first compared identical merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping questionnaire, on file in Room B–099 of the main building of the Department of Commerce.

Consistent with our preliminary determination, we altered the order of the SSB grades specified within the grade criteria of Appendix V to account for certain other SSB grades which Foroni sold during the POI, but which were not taken into account in Appendix V. We also reversed the order of the size and shape criteria in Appendix V.

Fair Value Comparisons

To determine whether sales of SSB from Italy to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMB"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. In accordance with 19 C.F.R. 353.58, we made comparisons at the same level of trade, where possible.

We made revisions to both respondents' reported data, where appropriate, based on verification findings.

United States Price

Foroni

All of Foroni's U.S. sales to the first unrelated purchaser took place after importation into the United States. Therefore, we based USP on exporter's sales prices (ESP), in accordance with section 772(c) of the Act. In accordance with section 772(d) of the Act, we calculated ESP based on FOB warehouse and FOB port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage, ocean freight (including foreign inland freight and loading/unloading charges), U.S. brokerage and handling, U.S. inland freight, U.S. import duties (including harbor maintenance fees and merchandise processing fees), and export processing fees. For those sales of subject merchandise with FOB U.S. port sales terms, we made no deduction for the U.S. inland freight charges reported in respondent's U.S. sales listing.

We also deducted credit expenses, warranty expenses, product liability premiums, and commissions paid to an employee, in accordance with section 772(e)(2) of the Act. We recalculated credit expenses to account for updated shipment and payment information which we reviewed at verification. For sales with missing shipment and payment dates, we calculated credit using the average credit days outstanding for all other sales in the U.S. databases. We also deducted U.S. indirect selling expenses, including pre-sale warehousing costs incurred in the United States, advertising, and inventory carrying costs. We recalculated certain indirect selling expenses, including advertising and pre-sale warehousing expenses, in accordance with verification findings.

In addition, we made no adjustment for U.S. packing expenses because Foroni claimed, and we verified, that the subject merchandise is not packed for shipment to the customer.

We also made an adjustment to USP for the value-added tax (VAT) paid on the comparison sales in Italy in accordance with our practice, pursuant to the Court of International Trade's (CIT) decision in *Federal-Mogul Corp. and The Torrington Co. v. United States*, Slip Op. 93–194 (CIT October 7, 1993). (*See Final Determination of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France*. 59 FR 14136, March 25, 1994).

Valbruna

For Valbruna, we based USP on both ESP and purchase price (PP), in accordance with section 772 of the Act, because Valbruna made sales both before and after importation into the United States. We calculated both PP and ESP based on packed prices to

unrelated customers. In accordance with section 772(d)(2)(A) of the Act, for both PP and ESP sales we made deductions, where appropriate, for ocean freight (including foreign inland freight, foreign inland insurance, marine insurance and foreign brokerage and handling), U.S. import duties, U.S. merchandise processing and harbor maintenance fees, U.S. inland freight, U.S. brokerage and handling, and containerization expenses (including drayage, stripping, and storage expenses). We added freight income (*i.e.*, freight charges paid by the customer but not included in the gross price) to both ESP and PP sales.

For ESP sales only, we further deducted credit expenses, in accordance with section 772(e)(2) of the Act. Accordingly, we deleted the affected invoice from the database. We also deducted indirect selling expenses incurred in Italy on sales to the United States, as well as indirect selling expenses incurred in the United States, and inventory carrying costs. We recalculated indirect selling expenses incurred in the United States to reflect verification findings. With regard to the reported warranty expenses applicable to one U.S. sales invoice, we made no adjustment because we determined that these expenses were not characteristic of "warranty" expenses; rather, they reflected a return to merchandise.

Finally, we made an adjustment to USP for the VAT paid on the comparison sales in Italy in accordance with our practice, as described above for Foroni.

Foreign Market Value

In order to determine whether there were sufficient sales of SSB in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of SSB to the volume of third country sales of SSB in accordance with section 773(a)(1)(B) of the Act. Based on this comparison, we determined that both respondents had viable home markets with respect to sales of SSB during the POI.

Foroni

We calculated FMV based on ex-factory prices charged to unrelated customers in the home market. Pursuant to 19 C.F.R. 353.56(a)(2), we deducted credit expenses. We also deducted home market indirect selling expenses capped by the sum of U.S. commissions and indirect selling expenses (including inventory carrying costs), in accordance with 19 C.F.R. 353.56(b).

We made adjustments, where appropriate, for differences in the physical characteristics of the merchandise (difmer), in accordance with section 773(a)(4)(C) of the Act. We recalculated difmers to take into account quality control expenses, which we verified were related to production.

We adjusted for VAT in accordance with out practice for those home market sales for which we verified that VAT applied. (*See* the "United States Price" section of this notice.)

In addition, we made no adjustment for U.S. packing expenses because Foroni claimed, and we verified, that the subject merchandise is not packed for shipment to the customer.

Valbruna

We calculated FMV based on packed prices charged to related and unrelated customers in the home market. We included arm's-length sales to related customers, pursuant to 19 C.F.R. 353.45. We excluded from our analysis sales of secondary merchandise, which we verified were not made in the ordinary course of trade.

We deducted cash discounts. We added freight income (*i.e.*, freight charges paid by the customer but not included in the gross price) to both ESP and PP sales.

In light of the Court of Appeals for the Federal Circuit's (CAFC) decision in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement V. United States*, 13 F.3d 398 (Fed. Cir. 1994), the Department no longer can deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we will adjust for those expenses under the circumstances-of-sale provision of 19 C.F.R. 353.56(a) and the ESP offset provision of 19 C.F.R. 353.56(b)(2), as appropriate. Accordingly, in the present case, we deducted post-sale movement charges from FMV under the circumstances-of-sale provision of 19 C.F.R. 353.56(a). This adjustment included home market inland freight (including inland insurance) from respondent's factory or service centers to its home market customers. We adjusted for pre-sale movement charges in the ESP offset.

For comparison to ESP sales, we also deducted credit expenses and home market commissions from FMV. We considered pre-sale warehousing expenses incurred by Valbruna's service centers and inventory carrying costs related to pre-sale warehousing at these service centers to be direct selling expenses (*see* Comment 10 in the "Interested Party Comments" section of this notice). Accordingly, we deducted these expenses. We then deducted home market indirect selling expenses (including pre-sale movement charges) capped by the sum of U.S. indirect selling expenses and inventory carrying costs.

For comparison to PP sales, we made a circumstance-of-sale adjustment for differences in credit expenses, pursuant to 19 C.F.R. 353.56(a)(2). We also deducted home market commissions from FMV and added to FMV the U.S. indirect selling expenses capped by the amount of home market commissions.

Furthermore, we made no adjustment for the claimed imputed VAT expenses (*see* Comment 4 in the "Interested Party Comments" section of this notice).

For both ESP and PP sales, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

We made adjustments, where appropriate, for difmers, in accordance with section 773(a)(4)(C) of the Act.

We adjusted the VAT in accordance with our practice for those home market sales for which we verified that VAT applied. (*See* the "United States Price" section of this notice, above.)

Cost of Production

Petitioners alleged that Valbruna made home market sales during the POI at prices below the cost of production (COP). Based on petitioners' allegation, and in accordance with section 773(b) of the Act, we concluded that we had reasonable grounds to believe or suspect that sales were made below COP. Thus, we initiated an investigation to determine whether Valbruna made home market sales of subject merchandise at prices below its COP.

In order to determine whether home market prices were below COP within the meaning of section 773(b) of the Act, we performed a product-specific cost test, in which we examined whether each home market product sold during the POI was priced below the COP of that product. We calculated COP based on the sum of respondent's cost of materials, fabrication, general expenses and packing costs, in accordance with 19 C.F.R. 353.51(c). (*See, e.g., Final Determination of Sales at Not Less Than Fair Value: Saccharin from Korea* (59 FR 58826; November 15, 1994)) (*Saccharin from Korea*). We compared the COP for each product to the home market price, net of movement expenses and discounts.

We relied on submitted COP data except in the following instances. We recalculated cost of manufacturing (COM) to exclude the change in inventory adjustment claimed by respondent (*see* Comment 14 in the "Interested Party Comments" section of this notice). We also recalculated

general and administrative and interest expenses based on the adjusted COM.

In accordance with section 773(b) of the Act, we also examined whether Valbruna's home market sales were made below COP in substantial quantities over an extended period of time, and whether such sales were made at prices that would permit the recovery of all costs within a reasonable period of time in the normal course of trade.

To satisfy the requirement of section 773(b)(1) of the Act that below cost sales be disregarded only if made in substantial quantities, the following methodology was used: For each product where less than ten percent, by quantity, of the home market sales made during the POI were made at prices below the COP, we included all sales of that model in the computation of FMV. For each product where ten percent or more, but less than 90 percent, of the home market sales made during the POI were priced below COP, we excluded from the calculation of FMV those home market sales which were priced below COP, provided that the below cost sales of that product were made over an extended period of time. Where we found that more than 90 percent of the respondent's sales of a particular product were at prices below the COP and were made over an extended period of time, we disregarded all sales of that product and calculated FMV based on constructed value (CV), in accordance with section 773(b) of the Act.

In accordance with section 773(b)(1) of the Act, in order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POI in which that product was sold. If a product was sold in three or more months of the POI, we did not exclude below-cost sales unless there were below-cost sales in at least three months during the POI. When we found that sales of a product only occurred in one or two months, the number of months in which the sales occurred constituted the extended period of time; *i.e.*, where sales of a product were made in only two months, the extended period of time was two months, where sales of a product were made in only one month, the extended period of time was one month. (*See Saccharin from Korea* and *Preliminary Results and Partial Termination of Antidumping Duty Administrative Reviews: Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan* (58 FR 69336, 69338, December 10, 1993)).

Valbruna provided no indication that the disregarded sales were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade. (*See* 19 U.S.C. 1677b(b)(2)).

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See* 19 C.F.R. 353.60.

Verification

As provided in section 776(b) of the Act, we conducted verification of the information provided by Foroni and Valbruna by using standard verification procedures, including the examination of relevant sales, cost and financial records, and selection of original source documentation.

Interested Party Comments

Foroni

Comment 1:

Foroni argues that its failure to report a relatively small portion of U.S. sales was unintentional and does not warrant the application of adverse BIA. It contends that given the Department's thorough review of these sales at verification, this error does not cast any doubt on the reliability of Foroni's overall response. Foroni states that the Department verified that the gross prices indicated on these invoices were comparable to those observed for reported sales of the same products. Furthermore, Foroni asserts that its underreporting of these sales resulted in the overestimation of U.S. selling expenses and, hence, an exaggerated dumping margin.

Foroni believes that if the Department must substitute information for these sales, it should base such information on the overall weighted-average margin calculated for Foroni. At worst, Foroni believes the Department should use the highest margin found for any U.S. sale. Foroni argues that if other information or BIA is applied in these circumstances it should be based on either of the above-mentioned approaches, particularly where the petition contained no information or allegations regarding Foroni.

Petitioners assert that in calculating final dumping margins, the Department should make certain adverse inferences based on Foroni's failure to report all sales. Petitioners argue that, with regard to the statement in the verification report concerning the gross prices of these omitted sales, gross prices are not used in the dumping analysis. Petitioners state that only after deductions to U.S. price are made and the identical or most similar home market comparison sale is selected can a dumping margin be calculated. Furthermore, according to petitioners, because of the number of adjustments to USP and FMV, transaction margins can and do vary widely. Petitioner sales believe that the omission of a portion of U.S. sales could have a dramatic effect on Foroni's dumping margin. Petitioners argue that the Department should assign the highest calculated non-aberrational margin to these unreported sales.

DOC Position

During our sales reconciliation at verification, company officials explained that all sales records generated prior to the point of invoicing are manually maintained, and that in order to compile a listing of U.S. sales made during the POI based on the reported date of sale methodology (i.e., purchase order date), company officials were required to search their invoice files for all invoices generated during and after the POI pursuant to purchase orders issued within the POI.

To ensure that Foroni had accurately reported all sales to the Department including those that may have been invoiced after the POI pursuant to purchase orders within the POI, we conducted a manual search of the company's 1994 invoiced file. During this exercise, the Department discovered certain invoices related to subject merchandise ordered within the POI which had not been reported in the U.S. sales listing. We established the total unreported quantity and value. Upon close examination, the verifiers concluded that the gross prices indicated on these invoices were comparable to those for reported sales of the same products.

When questioned, company officials stated that they were previously unaware of this apparent omission. The officials speculated that they had misplaced certain purchase orders in the warehouse (at the time respondent prepared its response these orders had not been filled). The officials further explained that, for example, with regard to one misplaced purchase order, which accounted for the majority of the unreported sales quantity, it had taken between five and eight months to fill the order. Once the purchase order was filled, however, the relevant invoices issued were filed in the company's 1994 invoice book, in accordance with the company's normal business practice. Consequently, our audit of the company's 1994 invoice book revealed these unreported sales.

Given the unique circumstances noted above, we determine that application of an adverse BIA rate to the subject sales is unwarranted. Although the Department was under no obligation to accept or review these sales during verification, in this case the verifiers reviewed the invoices for these sales and concluded that the prices for these sales were similar to those for reported sales of the same products. In light of the circumstances surrounding the omission, the limited number of transactions involved, and the overall accuracy of Foroni's response, the Department determines that it is reasonable to fill this gap with a neutral surrogate. See *Replacement Parts for Self-Propelled Bituminous Paying Equipment from Canada; Final Results of Administrative Review of Antidumping Finding*, 58 FR 15481, 15482 (March 23, 1993). Accordingly, we have assigned Foroni's overall weighted-average calculated margin to these unreported sales.

Comment 2: Petitioners argue that the Department should reject Foroni's assignment of unique grade codes and control numbers to sales of 316LUG and 316LN (because they are most similar to 316L, which is the product sold in the United States), and should account for any differences in the products through a difmer adjustment as opposed to a change in control number. According to petitioners, although Foroni argues that the chemical composition of these grades is different than for 316L, chemical composition is not one of the six principal matching criteria in Appendix V of the Department's questionnaire. Accordingly, petitioners assert that Foroni should not be permitted to change the Department's matching hierarchy at such a late point in the proceeding.

Foroni requests that, for the final determination, the Department assign a unique grade code to the three unique products previously misidentified by Foroni. Foroni contends that its failure to assign unique grade codes to home market sales of grades 25.22.2, 316LUG, and 316LN was an inadvertent error.

Foroni argues that, contrary to petitioners' contention, the chemical composition of each grade of SSB is precisely what differentiates it from any other grade. Foroni further argues that it is not in any way attempting to alter the Department's matching criteria, but rather to comply with them. Respondent states that petitioners' claim that grades 315LUG and 316LN should not have unique grade codes because these sales are most similar to sales of 316L is irrelevant because U.S. sales of 316L can be compared to sales of identical merchandise in Italy. Foroni states that it did not sell grades 316LUG or 316LN in the U.S. market during the POI. Finally, Foroni claims that the Department reviewed these product identification errors and verified the information provided by Foroni.

DOC Position: We agree with respondent and have corrected the misidentified grade codes in the revised home market sales listing provided by respondent on November 30, 1994. We reviewed the information provided by Foroni regarding the different chemical compositions and material costs of each product prior to, as well as during, verification and determined that grades 316LUG and 316LN are in fact chemically different from grade 316L. Based on our review of the chemical compositions and material costs as stated above, we determined that these products are not the most similar to grade 316L sold in the United States.

Furthermore, we disagree with petitioners' contention that Foroni is attempting to alter the matching hierarchy. Grade, which takes into account chemical composition, is in fact one of the matching criteria in Appendix V of the questionnaire.

Comment 3: Petitioners argue that the Department should not accept the updated shipment, payment and quantity information collected at verification, which represents information for nine percent of the total U.S. transactions, because this information was submitted subsequent to the Department's deadline for submission of factual information. Petitioners believe that in filling in these missing dates, the Department should make certain adverse assumptions. For example, petitioners argue that the Department should assume that the payment date is the date of the final determination for purposes of calculating credit.

Foroni argues that certain minor clerical errors, as well as verified updated information, should be substituted in Foroni's sales data prior to the final determination. Foroni states that, in any event, the Department has requested that Foroni submit a revised sales listing on computer disk to include this data.

DOC Position: We agree with respondent and have allowed it to revise its U.S. sales listing to reflect the actual shipment/payment dates and quantity data for the subject U.S. transactions where the information had previously been missing or estimated. Respondent presented the updated information at issue in the context of minor clerical errors found in preparation for verification and the accuracy of this information was verified.

Valbruna

Comment 1: Petitioners believe the home market sales for which Valbruna reported limited data ("File 2" sales) should be included in the Department's final analysis. Valbruna requested that these sales be excluded from the analysis based on its representations that the sales would not be "similar" because the difmer exceeds 20 percent. Petitioners note that the Department required Valbruna to provide worksheets showing a difmer in excess of 20 percent for all these sales and that respondent did not provide the worksheets.

Petitioners also compare the first four product characteristics for File 2 sales to the home market sales that Valbruna did report as comparable merchandise to SSB sold in the United States ("File 1" sales). According to petitioners, this comparison shows that several products are identical (based on the first four matching criteria) to subject merchandise reported by Valbruna. Accordingly, petitioners contend that File 2 sales should be included in the Department's analysis because certain products in this file are in fact identical to sales reported in File 1.

Respondent counters with the following arguments. First, at verification Valbruna demonstrated that there were no sales in File 2 within the first five identical or most similar matches for Valbruna's reported U.S. sales. Second, since the File 2 sales would never match to a U.S. sale based on product characteristics, there was no need to provide worksheets showing that the size of the difmer exceeds 20 percent. Third, petitioners' analysis of the File 1 and File 2 is flawed because the analysis takes into account only four of the six matching criteria that Valbruna reported and which the Department used in its preliminary determination.

DOC Position: We verified the fact that these sales would not be used for matching purposes. Therefore, consistent with our preliminary determination, we have continued to disregard the sales in File 2 for purposes of our margin calculation.

With regard to petitioners' argument that Valbruna failed to provide worksheets showing difmers in excess of 20 percent for sales in File 2, our letter of April 1, 1994, to Valbruna stated that we would require worksheets for any sales not reported solely because of the size of the difmer (as opposed to those that did not match to a U.S. sale based on product characteristics). As

respondent states, and as we verified, because the sales in File 2 would never match to U.S. sales based on the six product characteristics specified in Appendix V of the questionnaire issued in this case, there was no need for respondent to provide worksheets. Finally, concerning petitioners' argument that a comparison of File 2 sales to U.S. sales shows several products with identical matches, we agree with respondent that this argument is incorrect because petitioners based their analysis on only the first four product characteristics as opposed to the six point characteristics that the Department required for matching purposes in Appendix V of the questionnaire. As explained above, when all of the matching characteristics are considered, the sales in question would not be used for matching purposes.

Comment 2: Petitioners argue that the Department should revise its dumping calculations to account for home market sales that are exempt from VAT. Petitioners state that VAT was not collected on a portion of the sales reported in Valbruna's sales listing. Petitioners note, however, that the Department increased the price on all U.S. sales to account for the VAT paid on comparison sales in Italy. Furthermore, petitioners contend that Valbruna is inconsistent in its reporting of customers that were exempt from VAT. Petitioners request that the Department:

- Adjust the U.S. price for the VAT only if the VAT was paid on the comparison sales in Italy;
- Adjust the U.S. price only to the extent that the VAT is included in weighted-average FMV; or
- Treat all home market sales to "export-oriented" companies as tax-exclusive sales and do not adjust the price for any U.S. sales compared to such home market sales.

Respondent maintains that petitioners' argument is based on the incorrect inference that VAT-exempt sales were incorrectly reported. Respondent further maintains that it was not inconsistent in its reporting of customers that were exempt from VAT because the exemption is only allowed up to a specified ceiling. According to Valbruna, customers can elect to use or not use their exemption on specific sales; therefore, it is not unusual for a customer to pay VAT on some sales and not on others. Accordingly, respondent believes that petitioners' requests should be denied.

DOC Position: Prior to verification, respondent revised its home market sales listing to account for VAT-exempt sales based on its discovery of this information while preparing for verification. During verfication we examined sales to which VAT applied as well as VAT-exempt sales and determined that respondent correctly reported this information. Accordingly, we have adjusted for VAT on home market sales to which it applies and have made an adjustment to the USP only if the VAT was paid on comparison home market sales.

Comment 3: Petitioners state that the Department should deduct cash discounts on home market sales before calculating adjustments for home market commissions, credit, direct selling expenses, inventory carrying charges and imputed VAT. Petitioners claim that the Department noted in its home market verification report that cash discounts were not considered in these calculations.

Respondent states that, pursuant to the Department's request, it submitted a revised computer tape on November 22, 1994, in which it appropriately accounted for cash discounts in calculating the adjustments listed above.

DOC Position: We agree with both parties. We used respondent's revised sales listing, which properly accounts for cash discounts in calculating the above-referenced adjustments, for purposes of the final margin calculations.

Comment 4: Respondent argues that the Department should adjust FMV for the imputed cost or income associated with the timing difference between respondent's payment of the VAT and receipt of the VAT payment from the customer. Respondent argues taht the imputed VAT cost or income is a *bona fide* adjustment in accordance with the circumstance of sale provisions of the antidumping statute. Respondent states that there is no discernible difference between the applicability of these provisions to credit expense incurred on payment of sales and the applicability of these provisions to credit expense incurred on VAT payments.

Additionally, respondent states that the Department verified the income or expense incurred by Valbruna for financing its customers' VAT payments. Therefore, according to Valbruna, petitioners' claim that the opportunity cost was not verified is incorrect unless petitioners do not consider these amounts to be opportunity costs. According to respondent, petitioners' argument that imputed VAT cost or income should be based on the net VAT paid is irrelevant because Valbruna is virtually exempt from paying VAT taxes on raw materials and services purchased in connection with the production of merchandise.

Petitioners contend that the Department did not verify whether there is an opportunity cost associated with Valbruna's VAT payments to the government. Petitioners also state that VAT law allows an offset to the VAT payment due the government for VAT paid for raw materials and services purchased in connection with production of merchandise. Therefore, according to petitioners, the imputed VAT cost or income claimed by Valbruna should be based on the net VAT paid and not the total VAT on the sale. In addition, petitioners believe that Valbruna should report a theoretical VAT opportunity cost for sales to the United States if Valbruna claims imputed VAT costs for its Italian sales.

Petitioners argue that, unless the Department calculates opportunity costs for all associated charges, an adjustment for VAT opportunity costs alone would be incomplete. Additionally, petitioners maintain that allowing adjustments for some of these opportunity costs but not for others would provide respondents with an opportunity to manipulate dumping calculations by claiming only those opportunity costs that would benefit a respondent.

DOC Position: We agree with petitioners and have not allowed this adjustment, in accordance with the Department's policy outlined in the *Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the United Kingdom*, 58 FR 3253 (January 8, 1993). In that case, the Department noted that "virtually every charge or expense associated with price-to-price comparisons is either prepaid or paid for at some point after the cost is incurred. Accordingly, for each pre- or post-service payment,there is also an opportunity cost (or gain).

Thus, to allow the type of adjustment suggested by respondent would imply that in the future the Department would be faced with the impossible task of trying to determine the opportunity cost (or gain) of every freight charge, rebate and selling expense for each sale reported in a respondent's database." (*See also Final Determination of Sales at Less Than Fair Value: Calcium Aluminate Cement, Clinker and Flux from France*, 59 FR 14136, 14146, March 25, 1994).

The wording of the Department's regulation providing for circumstance of sale adjustments supports this interpretation. Section 353.56(a)(2) identifies the type of expenses or differences in circumstances of sale which the Department normally adjusts

for. These include credit terms and similar expenses which a producer chooses to incur or which become necessary due to the producer's business activities. The regulations contain no indication that the Department should consider granting an adjustment to account for a government imposed tax such as the VAT, or for any other type of so-called "opportunity cost." Similarly, the CIT has affirmed the Department's rejection of the claim that a circumstance of sale adjustment is warranted to offset the effect of accounts payable and imputed expenses incurred between the seller and its suppliers. *Independent Radiomic Workers of America v. United States*, Slip Op. 94–144 at 11 (CIT September 16, 1994); *Federal-Mogul Corp. v. United States*, 839 F. Supp. 881, 885–86 (CIT 1993). Finally, and perhaps most fundamentally, the CIT relied upon the Court of Appeals' decision in *Daewoo Electric Co. v. United States*, 6 F. 2d 1511, 1518–19 (Fed. Cir. 1993), to hold that the Department is simply "not required to reach the level of precision in quantifying circumstance of sale adjustments which [the party] believe[d] is required." *Federal-Mogul*, 839 F. Supp. at 886. The same conclusion applies to the present investigation.

Comment 5: Petitioners maintain that Valbruna did not report all ocean freight costs. Petitioners cite the Department's verification report which states that "one of Valbruna's two shipping companies separately reports, as a different line item on the same invoice, freight charges and document processing fees." Petitioners believe that the document processing fees which have been separately reported have not been accounted for in Valbruna's ocean freight costs and, therefore, these fees should be deducted from USP for the affected sales.

Valbruna officials claim that all ocean freight costs borne by Valbruna have been accounted for. Respondent also states that the Department explicitly verified ocean freight expenses and found no discrepancies.

DOC Position: We agree with respondent. We have no reason to believe that document processing fees were not properly accounted for simply because they were sometimes separately reported. We verified ocean freight expenses (including document processing fees) and found no discrepancies. Therefore, we have deducted ocean freight charges as reported.

Comment 6: Petitioners point out that the Department's home market verification report states, "We noted that bank expenses were not included in the calculation of the U.S. interest rate. Moreover, the methodology used to calculate the home market rate was different (from) that used to calculate the U.S. rate." Petitioners add that Valbruna's home market interest rate calculation includes "non-interest" loan expenses while Valbruna did not include such expenses in its U.S. interest rate calculation. Petitioners contend the Department should revise Valbruna's home market interest rate calculation (and all fields, such as credit, that employ the interest rate) by using the actual rates charged by banks, exclusive of any "bank expense" deductions, and should ensure that the home market interest rate calculation otherwise is consistent with the interest rate used for U.S. sales.

Respondent maintains that it included bank expenses in its U.S. interest rate calculation. Accordingly, respondent claims that its methodology for calculating its home market interest rate did not differ from the methodology used to calculate its U.S. interest rate.

DOC Position: We incorrectly noted in our verification report that bank charges were not included in the calculation of the U.S. interest rate. Therefore, petitioners' comments are moot. We used the home market and U.S. interest rates as reported and verified in our calculations.

Comment 7: Petitioners assert that Valbruna improperly reported part of its credit expenses on PP sales by reporting as inventory carrying costs the financing expenses for the period from the date of shipment from Vicenza to the date of entry at the U.S. port. Petitioners argue that the credit period for PP sales should begin on the date the SSB was shipped from the plant in Italy and should include time in transit to the U.S. port. Petitioners state that Valbruna's failure to properly report credit expenses for its PP sales resulted in an understatement of the circumstance of sale adjustment to FMV for differences in credit expenses.

Respondent contends that it properly reported U.S. credit expenses for PP sales. Valbruna explains that it finances PP sales for the time the merchandise is on the water while Avesta Sheffield, Inc. (ASI), which markets Valbruna's SSB products in the United States, finances these sales from the date the merchandise is shipped from the U.S. port to the date of receipt of payment. Valbruna explains that separate interest rates were used to calculate the credit costs during each of these shipping phases; therefore, credit expenses is reported under two variables in the U.S. database.

DOC Position: We have considered both the reported credit expenses, and the costs reported by respondent as inventory carrying costs for PP sales, as credit expenses in accordance with our normal practice of calculating the credit period from the time the merchandise leaves the factory until it reaches the customer.

Furthermore, with regard to the Valbruna's use of separate interest rates for each segment of this expense, we used the two U.S. rates as reported because we verified that a portion of the credit period is financed by Valbruna and the remainder is financed by ASI.

Comment 8: Petitioners argue that the Department should adjust respondent's credit calculation to correct for inconsistencies in the method respondent used to determine the U.S. and home market credit periods. Petitioners note that the bank deposit date marks the end of the credit period for U.S. sales while the date the funds were actually credited to Valbruna's account marks the end of the credit period for home market sales. Since finds in the home market are usually credited to the account three days after the deposit date, petitioners believe the Department should either add three days to the credit period for all U.S. sales or deduct three days from the credit period for all home market sales.

Respondent maintains the Department's verification reports show that the U.S. and home market credit periods were determined using consistent methods. Respondent notes that the Department's home market verification report explicitly states that Valbruna reported the date of receipt of payment as the date that funds were actually credited by the bank into its account. Respondent further notes that in the U.S. sales verification report the Department traced the reported date of receipt of payment to the date funds were actually credited by the bank. Thus, respondent believes the Department should reject petitioners' argument.

DOC Position: We agree with respondent that the credit periods were consistently reported. During the ESP as well as home market verifications we examined payment documentation for numerous sales and confirmed that in both markets respondent reported date of payment as the date funds were actually credited to its account by the bank. Therefore, we have used the reported and verified payment dates in both the U.S. and home market credit calculations.

Comment 9: During our review of individual sales transactions during the U.S. verification, we noted a reduction

in sales price for one transaction. Petitioners contend that if ASI allowed this price reduction then it is likely that they allowed other price reductions. Petitioners argue that the Department should reduce the price of other sales, where appropriate, by the amount of the price reduction discovered at verification. Furthermore, petitioners contend that there may be similar price reductions because the above-mentioned price reduction was discovered from a review of only a few sales. (For further amplification of petitioners' position see proprietary Concurrence Memorandum dated December 16, 1994).

Valbruna maintains that ASI does not offer any such reductions in price to its U.S. customers. Respondent explains that ASI reviewed its sales records for such reductions in price and, to the best of its knowledge, it allowed no other price reductions during the POI. Respondent also maintains that the Department examined numerous sales transactions and found no trace of any other price reductions. Respondent notes that it has revised its U.S. sales listing to properly account for this price reduction. (for further amplification of respondent's position see proprietary Concurrence Memorandum dated December 16, 1994).

DOC Position: Based on our review of numerous sales at verification, we have no reason to believe that Valbruna offered such price reductions to other customers. At verification we reviewed respondent's cash posting list and noted that other such price reductions were for nonsubject merchandise. Accordingly, we believe that the situation as described above, and in the proprietary record, is unique and does not reflect a general policy of granting price reductions on U.S. sales. Moreover, this price reduction has been accounted for in Valbruna's sales listing.

Comment 10: Respondent maintains that home market pre-sale warehousing and inventory carrying costs are directly related to sales of the subject merchandise. Respondent notes that the Department treated all pre-sale expenses associated with Valbruna's home market service centers as indirect selling expenses in the preliminary determination because Valbruma did not adequately demonstrate that such expenses are directly attributable to particular sales of the subject merchandise. Respondent argues that the Department's findings at verification now provide it with sufficient justification to determine that Valbruna's presale expenses associated with home market service centers are directly related to home market sales. In addition, respondent cites the *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom,* 58 FR 6207 (January 27, 1993) *(Lead and Bismuth)* as well as the *Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Japan,* 56 FR 16300 (April 22, 1991) (*PET Film*) to support its argument.

Petitioners argue that the cases cited by respondent do not support Valbruna's claim. Petitioners maintain that Valbruna calculated its pre-sale warehousing expenses in the same manner as a respondent in the *PET Film* case whose claim for direct warehousing expenses was rejected by the Department. In addition, petitioners note that in *PET Film* and *Lead and Bismuth* the Department stated that a requirement for allowing pre-sale warehousing expense as a direct expense was that the stock in question was only available for sales to those specific customers, which is not the case for Valbruna.

Finally, petitioners request that the Department treat pre-sale expenses incurred for Valbruna's U.S. sales as direct selling expenses if the Department determines that Valbrunna's home market pre-sale expenses are direct selling expenses. Petitioners argue for parallel treatment because Valbruna manufacturers SSB for its ESP sales to the customers' exact specifications and, like the regional warehouses in the home market, the SSB that is inventoried by ASI is merchandise that is restricted to servicing only those customers located in an assigned geographic region.

DOC Position: For purposes of the final determination, we have treated Valbrun's pre-sale warehousing/service center warehousing costs as direct expenses. We believe that the facts in this case most closely resemble those in *Lead and Bismuth* which stated that the respondent:

> accepts requests from some home market customers to maintain in inventory a certain amount of product manufactured to that customer's specifications. Then, when the customer needs the steel, it issues a specific purchase order for delivery out of this customer-specific stock. Customers can thereby obtain immediate delivery, rather than wait for the normal monthly rolling cycle.

In *PET Film,* also the Department accepted the respondent's contention that its pre-sale warehousing expenses were directly related to its home market sales since the Department verified that the expenses were incurred and reported on the basis of specific products sold to specific customers during the POI.

At verification we reviewed customer purchase orders and Valbruna order confirmations which stipulated that Valbruna was required to keep on hand a specified amount of subject merchandise with certain specifications for particular customers at particular service centers. The record contains no indication that Valbruna sold this merchandise to customers other than the ones for which the particular merchandise was held in inventory. In fact, company officials stated that the merchandise is usually so specialized that Valbruna would be unable to sell it to other customers. We also observed during the plant tour merchandise with "open order" tags reflecting open orders against a customer's supply forecast for which Valbruna was required to maintain specific inventory levels at its service centers. Furthermore, we observed that Valbruna's accounting system tracks additional stock going to a warehouse; it lists the quantity, but not the price, and states the merchandise is destined for a specific customer.

This approach is consistent with the Department's determination in other cases, such as *Brass Sheet and Strip from West German; Final Results of Antidumping Administrative Review,* 56 FR 60087, 60090 (1991), which the CIT recently upheld in *Hussey Copper, Ltd v. United States,* 834 F. Supp. 413, 421 (CIT 1993). There, the Department declined to treat expenses associated with pre-sale inventory ("buffer stock") as direct expenses. Based upon those facts, the court agreed, noting in addition that information on the record indicated that respondent withdrew "the material for shipment to customers other than the ones who generally purchase material out of those warehouses." *Hussey Copper,* 834 F Supp. at 421. *See also LMI-La Metalli Industriale, S.p.A. v. United States,* 912 F.2d 455, 457 (Fed. Cir. 1990).

With respect to petitioners' latter argument, ASI's warehousing practices do not resemble Valbruna's service center warehousing practices. ASI's customers' purchase orders do not stipulate that ASI must keep a certain amount of merchandise available for particular customers. Although SSB that is shipped by Valbruna and inventoried by ASI may be restricted to servicing only those customers located in an assigned geographic region, it is not customer-specific, as is the merchandise stocked at Valbruna's service centers in Italy. In addition, ASI not only warehouse Valbruna-related products,

but also sells non-subject merchandise, including Avesta Sheffield's standard and special stainless steel products such as steel plates, sheets, strips, wire and welded pipe and tubing. Therefore, ASI's warehousing expenses and corresponding inventory carrying costs cannot be directly tied to specific sales of the subject merchandise.

Comment 11: Valbruna argues that in the event its final dumping margin is affirmative, that margin would be due solely to the use of quarterly exchange rates. Valbruna argues that the Department is required to use daily exchange rates whenever a dumping margin would be created by the Department's use of quarterly exchange rates. Therefore, Valbruna argues that the Department must use daily exchange rates in this case. Valbruna cites *Luciano Pisoni Fabbrica Accessori v. United States, (Luciano Pisoni)* 640 F. Supp. 255 (CIT 1986), in an apparent attempt to argue that no demonstration need be made that the exchange rates fluctuated during the POI in order to invoke this rule.

Petitioners argue that exchange rate fluctuations must be "temporary" to warrant the use of daily exchange rates (*See Final Determination of Sales of Less Than Fair Value: Coated Groundwood Paper from Finland*, 56 FR 56363 (November 4, 1991), and Valbruna has not offered any evidence that there were temporary exchange rate fluctuations during the POI.

DOC Position: We disagree with Valbruna and have continued to use quarterly exchange rates, in accordance with the Department's regulations and as warranted by the facts of this case. Pursuant to section 363.60 of the Department's regulations, we rely upon the quarterly exchange rates as published by the Federal Reserve Board. Section 353.60(b) does provide for a special rule under which during an investigation, the Department may rely upon daily rates if the price of the merchandise is affected by "temporary exchange fluctuations." The Department has defined temporary exchange rate fluctuations as occurring when the daily rate varies from the quarterly average rate by more than five percent. However, we do not interpret the special rule outlined in 19 C.F.R. 353.60(b) as envisioning the treatment of an entire POI as a temporary fluctuation. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Portable Electric Typewriters from Singapore*, 58 FR 43334 43338 (1993); *Groundwood Paper.*

In this case, Valbruna has not provided any evidence on the record to demonstrate that the exchange rates fluctuated in the manner contemplated by the Department's regulations. Accordingly, it is appropriate to reject Valbruna's claim on this basis. Indeed, Valbruna did not raise the issue until submitting its case brief. Moreover, we do not agree with Valbruna's interpretation of the CIT's decision in *Luciano Pisoni.* In this decision, the CIT highlighted the fact that the respondent in that investigation had made only ten relevant home market sales during the POI. *Luciano Pisoni*, 640 F. Supp, at 260. The court stressed that based upon the facts in that case, it would have been unfair to use quarterly exchange rates. As such, because *Luciano Pisoni* can be distinguished from the present investigation on this basis, we have not addressed any other aspect of the CIT's reasoning in *Luciano Pisoni.*

Comment 12: Respondent requests that, pursuant to 19 C.F.R. 353.20(c), if the final determination is above *de minimis*, the Department should transmit the output from its margin program to the U.S. International Trade Commission to alert the Commission (ITC) to the facts that (1) the amount of sales reflecting transaction margins is minuscule, and (2) the transaction margins, where they exist, reflect minimal amounts.

DOC Position: Because Valbruna's final dumping margin is *de minimis*, this issue is moot.

Comment 13: Petitioners argue that Valbruna incorrectly reported the weighted-average COP based on costs incurred during the POI. Rather, petitioners contend that the Department should adjust Valbruna's reported data to reflect the actual costs incurred for sales made during the POI. Petitioners assert that the Section D questionnaire "covers cost of production information for the merchandise sold in the home market/third country." Petitioners assert that the appropriate reporting period for cost would be the corresponding production months before the POI. Petitioners state that raw material prices were higher in the period prior to the POI.

Respondent argues that it properly reported costs to reflect the actual cost for sales during the POI. Valbruna reported that, for its home market sales, production takes place a number of months before the product is sold. Respondent asserts that petitioners' analysis is erroneous, because it relies solely on dollar denominated costs of stainless steel scrap.

DOC Position: The Department agrees with respondent. Section D of the questionnaire clearly requests weighted-average production data based on costs incurred during the POI. The Department has departed from this general policy only when unique circumstances arise, such as when there was no production during the POI. Furthermore, companies, frequently hold inventory for a period of time between production and shipment and raw materials are held for a period of time between purchase and production. An average inventory holding period or length of time between order and production are only estimates. Sales are sometimes made from existing stock or may be produced to order, or even a combination of both.

Petitioners raised the issue for the first time in the pre-verification comments—too late in the investigation for the Department to perform the appropriate analysis to determine whether a change in the cost data reporting period is warranted. Furthermore, if the Department was to accept petitioners' argument, the CV data would be based on a different accounting period than the COP data, effectively doubling the burden on all parties. Accordingly, absent strong evidence to the contrary, the Department assumes that the cost structure prevailing during the POI is representative and can be sued to calculate COP.

Comment 14: Petitioners argue that the Department should reject Valbruna's adjustment for the change in inventory value. Petitioners assert that the inventory adjustment claim is not consistent with the inventory policy stated in Valbruna's financial statements. Furthermore, the calculations obtained by the Department during verification show that the claim has no bearing on the actual COP for the SSB sold during the POI. The analysis does not represent an adjustment to the COP; it merely represents a comparison of the cost of materials at the beginning of the POI and the end of the POI. The cost verification report states that Valbruna's management cost accounting system calculates material costs on a current basis and excludes the effect of beginning and ending inventory.

Respondent argues that it properly accounted for changes in inventory. Respondent states that the cost system accumulates material costs on a current cost basis, and that the financial accounting system calculates material costs on a historical cost basis. The financial accounting system takes into account changes in inventory, unlike the cost accounting system. According to Valbruna, although petitioners complain that Valbruna inaccurately valued the change in inventory adjustment, if Valbruna would have

used average quantities in the POI, rather than quantities at the end of the POI, the resulting adjustment would have been more favorable to Valbruna, as demonstrated at verification.

DOC Position: The Department agrees with petitioners. Although the cost methodology used by Valbruna calculates the current production costs and fails to include the difference in price between the beginning and ending inventories and the average POI price, the adjustment is incorrect for two reasons. First, because the beginning and ending finished goods inventory was included in the calculation, the adjustment theoretically converts the cost of manufacturing, which is what should be reported, into cost of goods sold. Secondly, Valbruan uses the last-in-first-out inventory method for financial statement purposes which results in something similar to current costing. Therefore, because the methodology followed by Valbruna, absent the inventory adjustment, closely reflects the methodologies used for financial statement purposes, we disallowed the adjustment.

Discontinuance of Suspension of Liquidation

In accordance with section 735(c)(2)(A) of the Act, because the margins are *de minis*, we are directing the Customs Service to discontinue the suspension of liquidation of all entries of SSB from Italy, that were entered, or withdrawn from warehouse, for consumption on or after August 4, 1994. Accordingly, all bonds should be released and estimated antidumping duties deposited should be refunded.

Manufacturer/producer/exporter	Margin percent
Acciaierie Valbruna S.r.l.	0.14
Foroni S.p.A.	0.23

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 C.F.R. 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 C.F.R. 353.20(a)(4).

Dated: December 19, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31805 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–833]

Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Bar From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Kate Johnson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–6320 or (202) 482–4929.

Final Determination

The Department of Commerce (the Department) determines that stainless steel bar (SSB) from Japan is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Scope of Investigation

The merchandise covered by this investigation is SSB. For purposes of this investigation, the term "stainless steel bar" means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross sections along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to this investigation is currently classifiable under subheading 7222.10.0005, 7222.10.0050 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States (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 July 1, 1993, through December 31, 1993.

Case History

Since the announcement of the preliminary determination on July 29, 1994, the following events have occurred. Also on July 29, 1994, petitioners submitted a letter opposing respondents' request for postponement of the final determination. On August 1 1994, petitioners supplemented their July 29, 1994, submission.

On August 4, 1994, we published the notice of preliminary determination in the **Federal Register** (59 FR 39739). Petitioners requested the opportunity to participate in a hearing, if held, on August 10, 1994.

On August 26, 1994, we published the postponement of final determination in the **Federal Register** (59 FR 44129).

On October 19, 1994, Autocam, a U.S. manufacturer of precision machined parts for the automotive industry and importer of subject merchandise, requested that we temporarily exclude from the scope of this investigation a series of modified 430 leaded stainless steel. Petitioners filed a letter in support of Autocam's request on November 9, 1994.

On November 21, 1994, we informed both Autocam and petitioners that the request as stated was not acceptable and that they could either withdraw the request or resubmit it. Since that time, petitioners have not commented further on this issue.

Petitioners were the only interested party to file a case brief in this investigation. They did so on November 8, 1994.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information available (BIA)

is appropriate for the three named respondents. Given that none of the three responded to the Department's questionnaire, we find they have not cooperated in this investigation.

Specifically, our BIA methodology for uncooperative respondents is to assign the higher of the highest margin alleged in the petition or the highest rate calculated for another respondent. Accordingly; as BIA, we are assigning the highest margin among the margins alleged in the petition. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review* (56 FR 31692, 31704, July 11, 1991). The Department's methodology for assigning BIA has been upheld by the U.S. Court of Appeals of the Federal Circuit. (*see Allied Signal Aerospace Co.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993)); *see also Krupp Stahl, AG et al.* v. *United States*, 822 F. Supp. 789 (CIT 1993)).

Interested Party Comments

Comment 1

Petitioners argue that since the issuance of the preliminary determination, there have been no further efforts on the part of any respondent to cooperate with the Department in this case or submit any information requested. Accordingly, petitioners believe that the final determination should continue to be based on the highest margin of dumping alleged in the petition for all Japanese SSB producers and exporters, 61.47 percent.

DOC Position

We agree with petitioners and have continued to use the highest margin of dumping alleged in the petition for purposes of the final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) (19 U.S.C. 1673b(d)(1)) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of SSB from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted average margin percent
Aichi Steel Works, Ltd	61.47
Daido Steel Co., Ltd	61.47
Sanyo Special Steel Co., Ltd	61.47
All Others	61.47

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether imports of the subject merchandise 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 proceedings will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on SSB from Japan entered or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: December 19, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31601 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–469–805]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or Kate Johnson, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1756 or 482–4929, respectively.

Final Determination

We determine that stainless steel bar (SSB) from Spain is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Scope of Investigation

The product covered by this investigation is SSB. For purposes of this investigation, the term "stainless steel bar" means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (i.e., cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness have a width which exceeds 150 mm and measures at least twice the thickness), wire (i.e., cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to this investigation is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075 and 7222.30.0000 of the *Harmonized Tariff Schedule of the United States* (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 July 1, 1993, to December 31, 1993.

Case History

Since publication of the notice of preliminary determination on August 4, 1994 (59 FR 39740), which the Department amended through a notice of *Correction of Ministerial Errors* published on September 13, 1994 (59 FR 46962), the following events have occurred.

On August 3, 1994, after receiving letters from the Department dated July 13 and 29, 1994, regarding deficiencies in its initial questionnaire response, Acenor, S.A. (Acenor) informed the Department that, on July 27, 1994, it had sold the part of its industrial assets dedicated to the production of SSB to DIGECO, S.A. and CLORIMAX, SRL. Acenor provided no further details about this sale or its successors. Given this situation, Acenor requested that it be allowed to withdraw as a mandatory respondent, and that it be granted an indefinite extension of time for its successors to decide whether to continue participating in the investigation. The Department denied these requests, and neither Acenor nor its successors filed any further submissions with the Department.

On August 4, 1994, Roldan submitted a supplemental response to the Section D questionnaire. On September 19, 1994, Roldan submitted supplemental information relating to its sales response.

Verification of Roldan's responses took place in September and October 1994. As requested by the Department, on November 7, 1994, Roldan submitted a post verification submission based on verification findings.

Case and rebuttal briefs were submitted on November 16, and 21, 1994, respectively. A hearing was held on November 23, 1994.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information available (BIA) is appropriate for Acenor. Neither Acenor nor its successors responded to our deficiency letters, and we were not able to verify the incomplete information in Acenor's initial questionnaire given Acenor's complete withdrawal from this proceeding. On that basis, we have found that Acenor has not cooperated in this investigation.

Specifically, our BIA methodology for uncooperative respondents is to assign the higher of the highest margin alleged in the petition, the highest rate calculated for another respondent, or the estimated margin found for that respondent in the preliminary determination (if applicable). Accordingly, as BIA, we are assigning to Acenor the highest margin among the margins alleged in the petition, as recalculated by the Department. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review (Antifriction Bearings)* (56 FR 31692, 31704, July 11, 1991). The Department's methodology for assigning BIA has been upheld by the U.S. Court of Appeals for the Federal Circuit. *See, Allied Signal Aerospace Co.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993) (*Allied Signal*); *see also Krupp Stahl, AG et al.* v. *United States*, 822 F. Supp. 789 (CIT 1993)).

Such or Similar Merchandise

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise. We made fair value comparisons on this basis. In accordance with the Department's standard methodology, we first compared identical merchandise. Where there were no sales of identical merchandise to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping questionnaire, on file in Room B–099 of the main building of the Department of Commerce.

Consistent with our preliminary determination, we altered the order of the SSB grades specified within the grade criterion of Appendix V to account for certain other SSB grades which respondent sold during the POI, but which were not taken into account in Appendix V. We also reversed the order of the size and shape criteria in Appendix V.

Fair Value Comparisons

To determine whether sales of SSB from Spain to the United States were made at less than fair value, 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. In accordance with 19 C.F.R. 353.58, we made comparisons at the same level of trade, where possible. We made revisions to respondents' reported data, where appropriate, based on verification findings.

United States Price

We based USP on purchase price (PP) in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States before importation and exporter's sales price methodology was not otherwise indicated.

We calculated PP based on CIF delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling, foreign inland freight, ocean freight, marine insurance, U.S. brokerage and handling (including insurance), U.S. inland freight and U.S. import duties. No adjustment was made for freight charge differentials claimed by Roldan because the actual cost of freight paid by Roldan was deducted (*see* Comment 10 below).

We made an adjustment to USP for the value-added tax (VAT) paid on the comparison sales in Spain, in accordance with our practice, pursuant to the Court of International Trade decision in *Federal-Mogul Corp.* v. *United States*, 834 F. Supp 1319 (CIT 1993). (*See Final Determination of Sales at Less than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France*, 59 FR 14136, March 25, 1994).

Foreign Market Value

In order to determine whether there were sufficient sales of SSB in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of SSB to the volume of third country sales of SSB in accordance with section 773(a)(1)(B) of the Act and section 353.48(a) of the Department's regulations. Based on this comparison, we determined that Roldan had a viable home market with respect to sales of SSB during the POI.

Cost of Production

Petitioners alleged that Roldan made home market sales during the POI at prices below the cost of production (COP). Based on information submitted by petitioners in their allegation, and in accordance with section 773(b) of the Act, we concluded that we had reasonable grounds to believe or suspect that sales were made below COP. (*See* the June 13, 1994, decision memorandum from Richard W. Moreland to Barbara R. Stafford.)

In order to determine whether home market prices were below COP within the meaning of section 773(b) of the Act, we performed a product-specific cost test, in which we examined whether each home market product sold during the POI was priced below the COP of

that product. *See, e.g., Final Determination of Sales at Not Less Than Fair Value: Saccharin from Korea* (59 FR 58826; November 15, 1994) (*Saccharin from Korea*). We calculated COP based on the sum of the respondent's reported cost of materials and fabrication, general expenses and packing costs, in accordance with 19 CFR 353.51(c). We then compared the COP for each product to the home market price, net of movement expenses.

We relied on the submitted COP data with the following exceptions where the costs were not appropriately quantified or valued: At verification, we found that Roldan, when reporting the cost of manufacturing (COM) associated with the blooms which it purchased from its parent company, erroneously failed to classify its parent's cost of production as Roldan's raw materials costs and, in addition, wholly excluded its parent's selling, general and administrative (SG&A) expenses. We had Roldan recalculate its COM to correct the errors. For COP purposes, we valued Roldan's raw materials costs for the blooms purchased from its parent at the parent's cost of production. In addition, we revised the SG&A rate applied to Roldan's COM to reflect only Roldan's experience rather than the experience of both Roldan and its parent. Finally, discrepancies between the difference-in-merchandise (difmer) data and cost data were corrected.

In accordance with section 773(b) of the Act, we also examined whether Roldan's home market sales were made below COP in substantial quantities over an extended period of time, and whether such sales were made at prices that would permit the recovery of all costs within a reasonable period of time in the normal course of trade.

To satisfy the requirement of section 773(b)(1) that below cost sales be disregarded only if made in substantial quantities, the following methodology was used: For each product where less than ten percent, by quantity, of the home market sales made during the POI were made at prices below the COP, we included all sales of that model in the computation of FMV. For each product where ten percent or more, but less than 90 percent, of the home market sales made during the POI were priced below COP, we excluded from the calculation of FMV those home market sales which were priced below COP, provided that the below cost sales of that product were made over an extended period of time. Where we found that more than 90 percent of the respondent's sales of a particular product were at prices below the COP and were made over an extended period of time, we disregarded all sales of that product and calculated FMV based on constructed value (CV), in accordance with section 773(b) of the Act.

In accordance with section 773(b)(1) of the Act, in order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POI in which that product was sold. If a product was sold in three or more months of the POI, we did not exclude below-cost sales unless there were below-cost sales in at least three months during the POI. When we found that sales of a product only occurred in one or two months, the number of months in which the sales occurred constituted the extended period of time; *i.e.*, where sales of a product were made in only two months, the extended period of time was two months, where sales of a product were made in only one month, the extended period of time was one month (*see Saccharin from Korea*).

With regard to Section 773(b)(2) of the Act, Roldan provided no indication that any of the below-cost sales were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade.

Results of COP Test

We examined Roldan's product-specific COP data, as corrected based on our findings at verification. For certain products, we found that less than 10 percent of home market sales were below COP; accordingly, we included all home market sales of these products in the computation of FMV. For certain other products, we found that between 10 and 90 percent of home market sales were below COP over an extended period of time, and we therefore excluded from the computation of FMV those sales which were below COP. Finally, we found that for certain products, more than 90 percent of Roldan's home market sales were at below-COP prices over an extended period of time. We disregarded all of these sales. After performing this analysis, certain U.S. sales were left without a match. Accordingly, for those sales, we based FMV on CV.

Price to Price Comparisons

For price-to-price comparisons, we calculated FMV based on packed delivered and FOB prices to unrelated customers in the home market. Based on verification findings, we increased the gross unit price to account for freight revenue collected from certain customers for merchandise not yet shipped. We also increased the gross unit price for sales made by Roldan's related service centers to account for a cutting surcharge charged to its customers and interest revenue collected from certain customers for extended credit terms.

Constructed Value

We calculated CV based on the sum of the cost of materials, fabrication, general expenses, U.S. packing costs and profit. In accordance with section 773(e)(1)(B)(i) and (ii) of the Act we: 1) included the greater of respondent's reported general expenses or the statutory minimum of ten percent of the COM, as appropriate; and 2) for profit, we used the statutory minimum of eight percent of the sum of COM and general expenses.

We relied on the submitted CV data except where the costs were not appropriately quantified or valued, as described above in the "Cost of Production" section of this notice. For CV purposes, however, Roldan's raw materials costs (for the blooms that it purchased from its parent) were valued at an amount equal to the higher of the transfer price, market price or the parent's cost of production. In addition, the SG&A rate applied to Roldan's COM was changed so that it reflected only Roldan's experience rather than the experience of both Roldan and its parent, as Roldan had reported it. Finally, discrepancies between the difmer data and cost data were corrected.

For both price-to-price comparisons and comparisons to CV, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, pursuant to 19 C.F.R. 353.56(a)(2). Roldan calculated credit expenses based on the average interest rate received from its discounted accounts receivable during the POI from one bank. Based on findings at verification, we re-calculated home market and U.S. credit expenses based on an average of the interest rates of all banks used by Roldan to discount its accounts receivable during the POI. In addition, for those sales with missing shipment dates and payment dates, we calculated credit expenses based on the average payment period for the respondent's sales reported with shipment and payment dates.

We did not make a circumstance-of-sale adjustment for commissions claimed by Roldan that were paid to its parent company for export sales services, nor did we adjust for commissions paid by Roldan to the U.S. subsidiary of its parent company for

marketing Roldan's products in the United States. We consider these payments to be intra-company transfers not tied directly to sales of the subject merchandise (*see* Comment 4 below).

We deducted home market packing costs and added U.S. packing costs inclusive of the labor cost submitted in Roldan's post verification submission for certain U.S. packing forms, in accordance with section 773(a)(1) of the Act.

For price-to-price comparisons only, we also made adjustments, where appropriate, for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act. We adjusted for VAT in accordance with our practice, as described in the "United States Price" section of this notice, above.

In light of the Court of Appeals for the Federal Circuit's decision in *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement* v. *United States*, 13 F.3d 998 (Fed. Cir. 1994), the Department no longer can deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we will adjust for those expenses under the circumstance-of-sale provision of 19 C.F.R. 353.56(a) or, where appropriate, the exporter's sales price offset provision of 19 C.F.R. 353.56(b)(2), as appropriate. We did so in this case. This adjustment included home market inland freight and insurance.

In addition to the adjustments noted above, there were certain U.S. sales for which there were no comparable sales at the same level of trade (as reported by Roldan) in the home market. For these U.S. sales, we used home market sales at a different level of trade (as reported by Roldan) as the basis for our less than fair value comparisons (*see* DOC response to comment 7). For these comparisons, in accordance with 19 C.F.R. 353.58, we made a level of trade adjustment. As a level of trade adjustment, we offset the cost difference between the indirect selling expenses incurred by respondent in the home market in selling to the different levels of trade. We granted this adjustment because, based on our analysis of the questionnaire response, we are satisfied that: 1) Roldan's sales from its factory to unrelated customers and its sales through its related service centers represent two distinct levels of trade; and 2) the difference in level of trade affects price comparability (*see* Comments 6 through 8 below).

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See* 19 C.F.R. 353.60(a).

Verification

As provided in section 776(b) of the Act, we conducted verification of the information provided by Roldan by using standard verification procedures, including the examination of relevant sales, cost and financial records, and selection of original source documentation.

Interested Party Comments

Comment 1

Petitioners argue that Acenor's status as a party to this proceeding cannot be altered simply by the apparent transfer of its production assets to other owners. Petitioners state that any change in the ownership of Acenor took place some time subsequent to the POI, and thus does not alter the fact that Acenor was the producer and exporter of the subject merchandise at issue during the POI. Thus, the ostensible transfer of ownership and the question of the status of the successor companies is an issue for a future administrative review, not for this investigation.

Petitioners argue that Acenor should be subject to the highest adverse margin on record as BIA. Petitioners state that in determining what rate to apply as BIA, the agency has developed a two-tiered methodology, in which the most adverse rate is assigned to an uncooperative respondent, and cite to *Antifriction Bearings* and *Allied-Signal*. Petitioners submit that the most adverse rate available for Acenor is the highest individual margin calculated by the Department's preliminary determination for Acenor. As support for this selection, petitioners cite *Final Determination of Sales at Less Than Fair Value; Certain Hot-rolled Carbon Steel Flat Products, et al., from France*, 58 FR 37125 (July 9, 1993), and *Final Determination of Sales at Less Than Fair Value; Stainless Steel Wire Rods from France*, 57 FR 68865 (Dec. 29, 1993).

DOC Position

We agree with petitioners and have treated Acenor as an uncooperative respondent for BIA purposes in this investigation. Once a company has been named as a mandatory respondent, a decision to withdraw is in essence a decision to refuse to cooperate in the Department's investigation. In assigning total BIA to an uncooperative respondent, our methodology specifies that we will assign the highest margin from among: (a) the margins in the petition, (b) the calculated rate for another respondent, or (c) the estimated margin found for that respondent in the preliminary determination. *See Final Determinations of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products, et al., from Canada*, 58 FR 37099, 37100–01 (July 9, 1993). Although petitioners cite to *Certain Hot-Rolled Carbon Steel Flat Products from France* and *Stainless Steel Wire Rods from France* as cases where the Department has used the highest margin calculated for an individual sale as BIA, those cases involved partial BIA, not total BIA. In this case, we have assigned Acenor the highest margin in the petition.

Comment 2

Petitioners argue that the Department should use BIA to calculate a dumping margin for Roldan because Roldan was unable to establish, through any existing company records, that the sales it had reported were accurate. Petitioners further state that, at verification, the lists used to substantiate the supporting documents for Roldan's sales volume and value figures were inappropriately developed while the verification was on-going.

Respondent states that the Department's verification team was: (1) able to establish that all sales were correctly reported, (2) able to determine that the total sales quantity and value were correct, and (3) able to trace the sales journal directly to the general ledgers and financial statements.

DOC Position

We disagree with petitioners. Petitioners quote the verification report out of context. Based on our analysis of Roldan's sales reporting and accounting system at verification, we were able to determine that the total quantity and value figures reported by Roldan were complete and accurate. Roldan's sales are recorded in its accounting books at the time of invoice, rather then the time at which price and quantity are agreed upon (as reflected in mill order acceptances). Therefore, Roldan reported its total quantity and value figures based on mill order acceptances. Consequently, in order to reconcile Roldan's total quantity and value figures reported to the Department, Roldan created a list of the orders accepted by the mill to capture all sales made within the POI in accordance with the Department's date of sale methodology. The mill acceptance orders were verified by the Department. Therefore,

we consider Roldan to have presented appropriate documentation to support its reported sales.

Comment 3

Petitioners argue that during the verification of Inoxcenter, one of Roldan's related distributors, the Department found that Inoxcenter applied a surcharge for cutting SSB to some customers and that information on this charge was not included in the sales data previously submitted to the Department. Petitioners state that the Department should adjust all of Roldan's home market sales prices upward for this unreported surcharge by applying the surcharge as a percentage of the sales value of the invoice which contained a cutting surcharge to all home market sales.

Respondent states that the amount of this charge to customers is minimal and that it would have required a manual search of thousands of invoices to be able to report this item. Respondent further argues that Inoxcenter, like most service centers in Spain and in the United States, maintains inventory and, where necessary, cuts the steel products it sells. Respondent states that any minimal amount of additional sales revenue or selling expense resulting from these services are reflected in indirect selling expenses.

DOC Position

We agree with petitioners that an adjustment is warranted for the unreported cutting surcharge. However, we consider the adjustment advocated by petitioners to be inappropriate given the circumstances of this case. At verification, we examined a small number of sales (due to time constraints), and found the surcharge on only one of the sales. Therefore, we have applied this surcharge to all service center sales in the ratio observed for the six sales verified.

Comment 4

Petitioners argue that the Department should make a circumstance of sale adjustment for commissions paid to Acerol Corporation (Acerol), Roldan's related U.S. sales organization. Petitioners disagree with the Department's refusal to make a circumstance-of-sale adjustment in the preliminary determination, where the Department treated the expenses as intra-company transfers, not tied directly to sales of the subject merchandise.

Petitioners first state that, since it is in the respondent's best interest that expenses incurred in the United States be indirect, Roldan must demonstrate that the payments to Acerol are not tied directly to sales. Petitioners cite to *Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan; Final Results of Administrative Review*, 57 FR 4951, 4955–56 (1992), in which the Department stated that it generally will reclassify a U.S. adjustment as direct when a respondent fails to provide information substantiating that the U.S. adjustment is indirect. Petitioners also cite to *Timken Co.* v. *United States* 673 F Supp. 495 (CIT 1987), in which the CIT stated that it is reasonable that the burden of establishing an adjustment is on the respondent that seeks that adjustment. Petitioners further argue that Acerol's financial statements classify these payments as commissions.

Petitioners next insist that the Department, in its preliminary determination, impermissibly assumed that the U.S. commission payments were not made at arm's length. According to petitioners, Roldan failed to satisfy its burden of showing that these payments were not at arm's length, and therefore the Department should have assumed that they were at arm's length.

Respondent refers to the Department's verification report of Inoxcenter to argue that its payments to Acerol were not tied directly to sales. In addition, respondent states that these payments were negotiated between Roldan's and Acerinox' chief executive officers. Respondent argues that this type of negotiation between related parties could hardly be considered indicative of an arm's-length transaction.

DOC Position

We agree with respondent. In *Final Determination of Sales at Less Than Fair Value; Coated Groundwood Paper From Finland*, 56 FR 56359 (Nov. 4, 1991) (*Coated Groundwood Paper*), we explained that we interpreted *LMI-La Metalli Industriale, S.p.A. v. United States*, 912 F.2d 455 (Fed. Cir. 1990), to mean that related party commissions paid in either the United States or the home market are allowable as circumstance-of-sale adjustments when they are determined to be (a) at arm's length, and (b) directly related to the sales in question. In the instant investigation, we have found that the "commissions" at issue are indirect selling expenses, and are neither arms'-length nor directly related to the sales under consideration. Therefore, no circumstance-of-sale adjustment is warranted. In this regard, we examined the payments made by Roldan to Acerol at verification and found that they were year-end, intra-company payments made to cover Acerol's operating expenses. We concluded that there was no relationship between the amount of the payments and direct sales made through Acerol. We also noted, based on our review of Acerol's financial statements, that these payments, which were included in indirect selling expenses, were separate from the charges made by Acerol to perform such services as movement, which are characterized as commissions in Acerol's financial statements. Furthermore, in this investigation, we cannot find the "commissions" at issue to have been provided at arm's length. We have no appropriate benchmark against which to test whether the commission arrangements between Roldan and Acerol are at arm's length.

Comment 5

With regard to product comparisons, petitioners argue that the Department should continue to use the product comparisons used in the preliminary determination, and that there is no basis to use the five SSB size ranges proposed by Roldan. According to petitioners, use of only five groupings results in groupings much too broad to be meaningful or to provide appropriate comparisons, particularly in the narrowest dimensions. Petitioners state that Roldan's cost accounting system may assign these products the same costs, but that does not mean that the products actually bear the same costs. Finally, petitioners note that the product criteria for SSB were not developed for this investigation alone, but have been applied to other contemporaneous SSB investigations and no respondent in any other SSB investigation has claimed that the sizes should be compared in ranges.

Respondent argues that the use of each millimeter to determine whether a product is identical is far too restrictive for matching purposes. Roldan urges the Department to treat as identical all sizes within each of the five ranges it has identified in its responses. Roldan states that in terms of its manufacturing costs, the sizes falling within each of these ranges are identical for matching purposes. This would not only result in more identical comparisons, but also identical comparisons of sizes bearing the same manufacturing cost under Roldan's cost accounting system; Moreover, it would avoid the difmer adjustment distortions caused by attempting to compare, as most similar, products having different manufacturing costs.

DOC Position

We agree with petitioners that we should continue to use the product comparisons used in our preliminary determination. It only became apparent at verification that respondent's cost accounting system does not recognize cost differences at the level of detail in Appendix V. Respondent did not raise this issue prior to verification; therefore, at this stage in the investigation, we will not consider changing our product matching criteria.

Comment 6

Petitioners argue that in accordance with the test set forth in Appendix II to the final determination in *Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Carbon Steel Flat Products From Argentina*, 58 FR 37062 (July 9, 1993) (*Argentina Steel*), the Department should reject Roldan's related party sales and rely instead on sales by Roldan's related parties to the first unrelated customer in the home market, *i.e.*, the downstream sales. Petitioners add that to ignore the entire home market of resales to unrelated parties under the guise of a level of trade assertion, as Roldan requests, would essentially nullify the agency's related party test and unjustly limit the home market database of comparisons. Moreover, petitioners also argue that Roldan's downstream sales, i.e, the home market sales at Level II (see Comment 7 below), are tainted because of Roldan's inability to trace these sales (through the large related service centers) to Roldan merchandise, given that the service centers purchase from Roldan and other producers but do not have records to trace the source of the SSB for any particular sale. According to petitioners, BIA would be the only appropriate alternative where such home market sales were needed for comparison to U.S. sales. Petitioners assert that in *Final Determinations of Sales at Less Than Fair Value; Certain Hot-Rolled Flat Carbon Steel Products, et al. from France*, 58 FR 37,125, 37127–28 (1993), where the respondent's related party prices were not at arm's length and the respondent failed to report home market downstream sales, the Department used BIA.

Roldan argues that the Department should use its related party sales. Roldan argues, alternatively, that the Department should only match Level I home market sales with U.S. sales. According to Roldan, the use of Level II home market sales is inappropriate given the fact that there is no assurance that any given sale by the related service centers selling at Level II actually included the sale of SSB produced by Roldan.

DOC Position

We have applied the test set forth in Appendix II to the final determination in *Argentina Steel*, and we have determined that Roldan's related party sales are not at arms-length. Accordingly, we have rejected all of Roldan's related party sales and have relied instead on sales by Roldan's related parties to the first unrelated customer in the home market. In addition, consistent with our past practice, we have used home market sales at both Level I and Level II for matching purposes. *See, e.g., Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*, 58 FR 64720, 64729 (Dec. 9, 1993). Sales of certain SSB products made by Roldan's related service centers to the first unrelated customer in the home market involved commingled SSB products, *i.e.*, SSB products that could have been produced by Roldan or by other unrelated suppliers. Section 773(a)(1) of the Act directs that FMV be calculated based on sales of "such or similar merchandise," and the term "such or similar merchandise" is defined by section 771(16) of the Act as merchandise which is produced in the same country and by the same person as the merchandise which is the subject of the investigation. Therefore, we cannot use sales of SSB products produced by persons other than Roldan when calculating FMV. We have only included in our foreign market value analysis sales made by related service centers of the SSB products that we were able to determine were purchased exclusively from Roldan.

Comment 7

Roldan has identified two levels of trade within its home market distribution system. Roldan argues that Level I sales are made directly from the factory (through the commercial department of Roldan's parent, Acerinox) to large related and unrelated service centers and large end-users that maintain substantial inventories and, therefore, are willing to wait the two to three months it usually takes from the time the order is placed until the product can be manufactured and delivered. Roldan states that Level II sales are made by its large related service centers, who have purchased merchandise directly from Acerinox' commercial department, *i.e.*, at Level I. According to Roldan, these related service centers have the expenses of maintaining merchandise in inventory for resale to unrelated end-users, and occasionally to other unrelated service centers. Roldan also maintains that, while there are two types of customers at each level of trade, *i.e.*, service center and end-user, the level of trade is dictated by whether the customer wants immediate delivery or wants to wait 2–4 months, and whether the cost of carrying inventory falls on the seller or the customer. Roldan also argues that the prices and selling expenses are very different at each level of trade, and thereby requests a cost-based level of trade adjustment.

Petitioners argue that Roldan has inaccurately claimed that its sales through related parties are at a different level of trade. Petitioners argue that Roldan's distinctions are not between levels of trade but between volumes sold and timing of delivery. Petitioners state that the same types of customers are at both levels of trade claimed by Roldan: service centers (*i.e.*, distributors) and end-users. Petitioners argue that these customers perform the same functions at both levels identified by Roldan. Petitioners cite to the Department's recent decision in *Final Determination of Sales at Less Than Fair Value; Certain Carbon and Alloy Steel Wire Rod from Canada*, 59 FR 18791 (April 20, 1994), where the Department rejected respondent's claim of differences in levels of trade because it was based on differences in quantities and types of products, not functions. In addition, the Department noted that the two claimed levels of trade represented end-users. Petitioners also argue that Roldan's attempt to include end-users at each of its purported levels of trade suffers from the same flaws the agency identified in *Preliminary Determination of Sales at Less Than Fair Value; Disposable Pocket Lighters from Thailand*, 59 FR 53414, 53415 (Oct. 24, 1994). In that case, the Department found that there was no indication of different functions performed to justify a distinction within the same general category

DOC Position

Consistent with Import Administration Policy Bulletin 92.2 dated July 29, 1992, we have accepted respondent's level of trade classifications for matching purposes. We have done so because the record indicates that there are distinct functions and selling services at each of the levels of trade identified which result in different selling expenses.

At the first level of trade (Level I), Roldan manufactures and ships to order relatively large quantities. As the product is manufactured after receipt of the order, the costs and risks of maintaining a finished goods inventory are transferred from Roldan to the buyer. Since the time between order and shipment is at least two months, the buyer, not Roldan, bears the risks attendant to a long elapsed time between order and receipt. On the other hand, at the second level of trade (Level II), Roldan sells through related steel service centers. The service centers sell relatively small orders, from inventory, manufactured in advance, and maintained at the service center. It is the service center, not the customer, that bears the cost and risks of maintaining inventory.

Although the customer category "end-user" purchases at both levels of trade, the characteristics of these customers is significantly different. There is, in fact, little or no overlap between Roldan's unrelated customers that purchase at Level I and Level II. The end-users that purchase at Level I have predictable manufacturing lead times that permit advance orders in relatively large quantities and have the capacity to maintain significant inventory; the end-users purchasing at Level II operate with shorter lead times and lower inventory. Moreover, the end-users at Level II purchase both the manufactured product and inventory maintenance services from Roldan and the cost of these additional services generally is reflected in the price.

In summary, our analysis indicates that there is both a correlation between prices and level of trade and a correlation between selling expenses and level of trade. Therefore, we have accepted respondent's request and have made a cost-based level of trade adjustment.

Comment 8

Petitioners argue that Roldan's reported level of trade adjustment is flawed because the Department found at verification that the methodology Roldan used to report costs at different levels of trade was not consistent. According to petitioners, respondent has failed to compare apples with apples in calculating expenses for the different levels of trade.

Petitioners further argue that the entire additional selling expense applicable to selling Roldan bars should not be deducted. According to petitioners, if the Departments make a level of trade adjustment, it should derive its best estimate of costs incurred at Level I sales, and offset the indirect selling expenses reported for Level II by this amount.

Petitioners state that the Department should recalculate the cost data rather than accept the intra-company transfer payment figures provided by Roldan. In addition to this re-adjustment, petitioners argue that there are three other flaws in Roldan's calculation of its Level II selling expenses: 1) Roldan did not include sales to related parties, 2) Roldan included fixed expenses and non-selling expenses, and 3) Roldan included general and administrative expenses.

Roldan argues that because the price at which its merchandise is sold is dictated by the level of trade at which it is sold and the additional selling expenses incurred, a level of trade adjustment is warranted. Roldan states that the indirect selling expenses for the large related service centers selling at Level II represent the additional selling expenses applicable to selling Roldan bars at Level II rather than at Level I. Roldan states that the Level II selling expenses represent, in their entirety, the "appropriate adjustment for differences affecting price comparability" and, therefore, should be subtracted from the Level II price in order to arrive at a comparable price to be compared with the sales made directly from the factory.

DOC Position

We agree with respondent that a level of trade adjustment should be made. As in *Final Results of Antidumping Duty Administrative Review; Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof from Japan* (56 FR 41512, August 21, 1991), we have made a level of trade adjustment based on an offset between the indirect selling expenses incurred in selling subject merchandise at Level I and Level II. However, we agree with petitioners that these expenses should be allocated over all sales, to related and unrelated customers, and should not be limited solely to sales to unrelated customers, as reported by Roldan. Roldan has provided no evidence to suggest that the indirect selling expenses incurred at both levels of trade are incurred exclusively with respect to sales to unrelated customers. Rather, these expenses are indirect selling expenses which, by their very nature, are not attributable to specific sales. Therefore, we have followed our normal practice of allocating indirect selling expenses over all sales.

Comment 9

According to petitioners, Roldan reported that the total freight cost that Roldan actually paid differed from the total amount charged on the invoice for export delivered merchandise. Petitioners state that this cost differential should be treated as movement charges rather than indirect selling expenses.

Respondent argues that the revision in movement charges for U.S. sales requested by petitioners is inappropriate. Roldan further states that the ocean freight and other movement charges verified by the Department reflect the actual freight charged by the shipping company.

DOC Position

We disagree with petitioners. We are not making the adjustment to U.S. movement charges suggested by petitioners. Since we verified the actual shipping costs incurred by Roldan, we know that the cost differential reported as indirect selling expenses does not reflect actual shipping costs for U.S. sales. Our examination of U.S. sales invoices did not show any additional costs for delivery of subject merchandise and, thus, no adjustment to the verified freight expenses is warranted.

Comment 10

Petitioners state that a comparison of the average prices and total sales quantities for each home market product code on Roldan's June 15, 1994, computer tape with those on its November 7, 1994, computer tape revealed changes to the average home market price or to the total home market sales quantities for some product codes. Moreover, petitioners state that they compared the prices on the two sales listings for the same sales and found that the prices for certain home market sales had changed. Petitioners argue that the Department should reject home market sales for which Roldan reported revised prices and quantities after verification.

Respondent states that the changes in question are reflected in the pre-verification amendments filed with the Department by Roldan in its September 19, 1994, submission. These amendments included a number of cancelled sales, credit memos, and sales made outside the normal course of trade.

DOC Position

The changes in Roldan's database were submitted to the Department on September 19, 1994. At verification, we examined the circumstances surrounding these sales. On the basis of that examination, we agree that the sales at issue should not be included in our margin analysis. These sales include

cancelled sales, credit memos and sales outside the ordinary course of trade. (*See also* comment 6.)

Comment 11

Respondent renews for the record its objection with respect to all stainless steel bar constituting a single class or kind of merchandise rather than two separate classes or kinds of merchandise for hot-rolled bar and cold-formed bar, respectively.

Respondent also renews for the record its objection to the commencement of this investigation despite the failure of the petitioners to file a complete copy of the petition with the United States International Trade Commission as specifically required by law.

DOC Position

Respondent has raised no new arguments concerning the determination of the class or kind of merchandise in this investigation, nor has respondent raised any new arguments with regard to the filing of the petition with the International Trade Commission (ITC). Therefore, there is no basis to reconsider our decision made at the preliminary determination. *See Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar from Spain* (59 FR 39740, August 4, 1994).

Comment 12

Petitioners argue that Roldan failed to report costs for the appropriate period. Roldan reported the weighted average cost of production based on costs incurred during the POI. Petitioners contend that Roldan should have provided cost of production data for the SSB that was sold in Spain during the POI. Petitioners assert that the Section D questionnaire "covers cost of production information for the merchandise sold in the home market/third country." Roldan stated that production is generally scheduled for one to four months after the acceptance of an order; therefore, according to petitioners, the appropriate reporting period for cost would cover the last three months of the POI and the three months subsequent to the POI. Petitioners state that raw material prices increased 14.5 percent in the three months after the POI.

Respondent argues that it reported costs for the appropriate period. Roldan cites the Section D questionnaire, which states: "The cost of production and the CV should be calculated on a weighted average production basis for the cost incurred during the period of investigation." Respondent argues that for purposes of applying the antidumping law, every attempt should be made to permit an exporter an opportunity to determine whether or not goods are being sold at a dumped price at the time the decision is made to accept the order.

DOC Position

We agree with respondent. The Section D questionnaire clearly requests weighted average production data based on costs incurred during the POI. We have departed from this general policy only when unique circumstances arise, such as when production did not occur during the period of investigation. Companies frequently hold inventory for a period of time between production and shipment. Raw materials are held for a period of time between purchase and production. Sales are sometimes made from existing stock or may be produced to order. An average inventory holding period or length of time between order and production are only estimates. Therefore, absent strong evidence to the contrary, the Department assumes that the cost structure during the POI is representative and can be used to calculate an estimate of the cost of production.

Finally, we note that, in cases where products are made "to order" a company would set prices based on its current costs. Any attempt to discern what costs will be in the future must be, at best, an estimate. If the expectation is that costs will significantly increase, then the sale would probably be structured as a cost plus contract.

Comment 13

Petitioners argue that the Department should revise its calculations to account for unexplained changes and inconsistences in the cost data submitted after verification. According to petitioners' analysis: 1) for a significant number of products, the variable costs reported for cost of production were different from the variable costs reported for the product's difmer calculation; 2) for a significant number of products, the variable overhead and fixed overhead costs reported for cost of production were different from the costs reported prior to verification; and, 3) for a few products, the cost of manufacturing reported for constructed value was different from the cost of manufacturing reported for the product's difmer calculation.

Respondent argues, with regard to item one, that the difference reflected in petitioners' analysis results from an adjustment relating to provisional amortization made to the cost of manufacturing. Instead of reducing each fixed overhead amount proportionally, the provision adjustment was applied directly to Roldan's cost of manufacturing. The net cost of manufacturing result is the same, but each of the fixed overhead amounts remains slightly overstated. They reflect the provisional amortization reported in Roldan's cost accounting system and have not been adjusted to reflect the actual rate of amortization reflected in the financial statements.

As for item two, respondent disagrees with petitioners that the variable overhead and fixed overhead costs have been reported incorrectly. Respondent argues that the changes in variable and fixed overhead are the result of the change in the manner in which Acerinox' bloom costs were incorporated. Most of the differences referred to by petitioners appear to result from the fact that Acerinox' variable and fixed overhead costs for the blooms were no longer separately broken out, but rather were reported entirely as materials cost. Respondent notes that the increase in materials cost in the November submission generally more than outweighs the combined decreases reported in variable and fixed overhead costs.

Finally, as for item three, respondent agrees with petitioners that the cost of manufacturing reported for constructed value should be the same as the cost of manufacturing reported for the product's difmer calculation.

DOC Position

We agree with petitioners' first concern. There should not be a difference between the amounts reported for the difmer adjustment and the cost of production. There appears to be an error in the difmer data for one specific set of products; we have corrected this error for this final determination.

We disagree with petitioners' second concern that the variable and fixed overhead costs of Roldan should not have changed in the revised post-verification submission. The variable and fixed overhead costs reported in the original response included the variable and fixed overhead costs of both Acerinox and Roldan. However, after Roldan was instructed to value the blooms purchased from Acerinox at the cost of production of Acerinox, and the variable and fixed overhead costs of Acerinox were reclassified to material costs (*see* "Cost of Production" section above), the post-verification submission necessarily reflected changes in Roldan's variable and fixed overhead costs.

Finally, the Department agrees with petitioners' third concern that the cost of manufacturing of a product on the constructed value tape should equal the cost of manufacturing of that product on the difmer tape. The constructed value has been corrected accordingly.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of SSB from Spain, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated margin amount by which the FMV of the subject merchandise exceeds the USP, as shown below. The less than-fair-value margins for SSB are as follows:

Manufacturer/producer/exporter	Margin percent
Acerinox, S.A. (and successor companies)	62.85
Roldan, S.A.	7.74
All Others	25.80

ITC Notification

In accordance with section 735(d) of the Act, we have notified the 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 proceedings will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on SSB from Spain entered or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 C.F.R. 353.20(a)(4).

Dated: December 19, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31804 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–P

United States-Egypt Presidents' Council: Membership

ACTION: Notice of Membership Opportunity.

SUMMARY: During his September, 1994 visit to Cairo, Vice President Gore, on behalf of President Clinton, and President Mubarak announced a "Partnership for Growth and Development". This bilateral initiative includes the establishment of the United States-Egypt Presidents' Council. The purpose of the Council will be to provide a forum through which American and Egyptian private sector representatives can provide advice and counsel to their respective governments that reflect their views, needs and concerns regarding private sector business development in Egypt and enhanced bilateral commercial ties. The Council will exchange information and encourage bilateral discussions that address the following areas:

—Factors that affect the growth of private sector business in Egypt, including disincentives to trade and investment and regulatory obstacles;
—Initiatives that the Government of Egypt might take to promote private sector business growth in Egypt;
—Identification and promotion of business opportunities in Egypt;
—Identifying further steps to facilitate and encourage the development of commercial expansion between the two countries.

The U.S. section of the Council, chaired by the U.S. Secretary of Commerce, will consist of ten primary members and five alternates, all drawn from the private sector. They will represent the diversity of American business with emphasis on: agribusiness and food processing, tourism, banking and investment, pharmaceuticals, services, information technology, electronics and other high technology industries, and manufacturing industries. The Commerce Department is currently seeking nominations of outstanding individuals to serve on the Council.

In order to meet eligibility requirements for membership, potential candidates must be:

—a U.S. citizen residing in the United States;
—heads of private sector companies or, in the case of very large private sector companies, heads of sizeable operating units, or heads of non-profit organizations that have a unique technical expertise and outstanding reputation;
—not a registered Foreign Agent.

In reviewing eligible candidates, the Commerce Department will consider such selection factors as:

—experience and interest in the Egyptian market;
—industry or service sector represented;
—export/investment experience;
—contribution to diversity based on industry sectors, company size, location, and demographics.

To be considered for membership, please provide the following: name or names and title(s) of the individual(s) requesting consideration; name and address of the company or organization sponsoring each individual; company's product, service or technical expertise; size of the company; export trade, investment, or international program experience and major markets; and a brief statement of why the candidate(s) should be considered for membership on the Council.

DATES: In order to receive full consideration, requests must be received no later than: January 20, 1995.

ADDRESSES: Please send your requests for consideration to Thomas Sams, Egypt Desk, Office of the Near East, either by fax on 202–482–0878 or by mail to Room H–2029B, U.S. Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION: Contact Tom Sams, Office of the Near East, Room H–2029B, U.S. Department of Commerce, Washington, D.C. 20230.

Dated: December 21, 1994.

Cherie Loustaunau,

Acting Director, Office of the Near East.

[FR Doc. 94–31911 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DA–P

[C–201–810]

Termination of Countervailing Duty Administrative Review; Cut-to-Length Carbon Steel Plate From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Countervailing Duty Administrative Review (12/7/92–12/31/93).

SUMMARY: The Department of Commerce (the Department) is terminating the administrative review of the

countervailing duty order covering cut-to-length carbon steel plate from Mexico initiated on September 8, 1994 (59 FR 46391).

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Norbert Gannon, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

On August 31, 1994, Altos Hornos de Mexico, S.A. de C.V. (AHMSA), an exporter of the subject merchandise, requested an administrative review of the countervailing duty order on cut-to-length carbon steel plate from Mexico for the period December 7, 1992 through December 31, 1993. No other interested party requested a review. On September 8, 1994, the Department published a notice initiating the administrative review for that period (59 FR 46391). On December 5, 1994, AHMSA submitted a timely withdrawal of its request for review. As a result, pursuant to 19 C.F.R. § 355.22(a)(3), the Department is terminating the review.

This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: December 19, 1994.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 94–31793 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–401–056]

Viscose Rayon Staple Fiber From Sweden; Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On October 17, 1994, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on viscose rayon staple fiber from Sweden (59 FR 52286). We have now completed the review and determine the net subsidy to be 0.26 percent *ad valorem* for the period January 1, 1991, through December 31, 1991. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Maria MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 17, 1994, the Department of Commerce (the Department) published in the **Federal Register** (59 FR 52286) the preliminary results of its administrative review of the countervailing duty order on viscose rayon staple fiber from Sweden (44 FR 19412; May 15, 1979). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). The review covers the period January 1, 1991, through December 31, 1991, and one program. The only known Swedish producer/exporter of this merchandise is Svenska Rayon AB (Svenska).

Scope of Review

Imports covered by this review are shipments of Swedish regular viscose rayon staple fiber and high-wet modulus (modal) viscose rayon staple fiber. Such merchandise is classifiable under item number 5504.10.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments Program

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

We determine the net subsidy to be the same as in the preliminary results: 0.26 percent *ad valorem* for the period January 1, 1991, through December 31, 1991. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1991, and on or before December 31, 1991.

Further, the Department will instruct the Customs Service to continue to suspend liquidation on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. As provided by section 751(a)(1) of the Act the Customs Service will collect a cash deposit of estimated countervailing duties of zero on such shipments. These instructions shall remain in effect until publication of the final results of the next administrative review.

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 355.22.

Dated: December 19, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31968 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–P

City University of New York, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

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.

Docket Number: 94–111. *Applicant:* City University of New York, Staten Island, NY 10314. *Instrument:* Electron Microscope, Model CM100. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 59 FR 52957, October 20, 1994. *Order Date:* March 17, 1994.

Docket Number: 94–116. *Applicant:* Northwestern Memorial Hospital, Chicago, IL 60611. *Instrument:* Electron Microscope, Model CM 120. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 59 FR 52958, October 20, 1994. *Order Date:* June 16, 1994.

Docket Number: 94–117. *Applicant:* University Medical Center, Jacksonville, FL 32209. *Instrument:* Electron Microscope, Model CM 100. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 59 FR 52958, October 20, 1994. *Order Date:* August 30, 1994.

Docket Number: 94–121. *Applicant:* University of Massachusetts Medical School, Worcester, MA 01655. *Instrument:* Electron Microscope, Model CM 120. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 59 FR 54437, October 31, 1994. *Order Date:* June 30, 1994.

Docket Number: 94–122. *Applicant:* Uniformed Services University of the

Health Sciences, Bethesda, MD 20814-4799. *Instrument:* Electron Microscope with Accessories, Model CM100. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 59 FR 54437, October 31, 1994. *Order Date:* July 1, 1994.

Docket Number: 94–128. *Applicant:* Virginia State University, Petersburg, VA 23806. *Instrument:* Electron Microscope, Model 1210. *Manufacturer:* JEOL, Japan. *Intended Use:* See notice at 59 FR 60607, November 25, 1994. *Order Date:* July 29, 1994.

Docket Number: 94–129. *Applicant:* University of Nebraska, Lincoln, NE 68588. *Instrument:* Scanning Electron Microscope, Model JEM2010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 59 FR 59212, November 16, 1994. *Order Date:* December 11, 1990.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–31798 Filed 12–28–94; 8:45 am]

BILLING CODE 3510–DS–F

Applications for Duty-Free Entry of Scientific Instruments

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), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–139. *Applicant:* University of California, Santa Cruz, Institute of Marine Sciences, 1156 High Street, Santa Cruz, CA 95064. *Instrument:* ICP Mass Spectrometer, Model ELEMENT. *Manufacturer:* Finnigan MAT GmbH, Germany. *Intended Use:* The instrument will be used to accurately and precisely determine the concentration of elements in marine and geological samples, such as rocks, sediments, corals, natural waters and marine biological material and to measure isotopic information, such as natural isotope ratios and "spiked" isotope ratios. The research objectives include: (1) use of minor and trace element concentrations and ratios to calcium, as paleoceanographic indications and determination of biogeochemistry and speciation of metals in natural waters. In addition, the instrument will be used in informal seminars and classes to teach students various techniques for sample preparation and proper instrument operation in thesis research. *Application Accepted by Commissioner of Customs:* December 2, 1994.

Docket Number: 94–140. *Applicant:* Penn State University, University Park, PA 16802. *Instrument:* Electron Gun for Reflection Electron Diffraction. *Manufacturer:* Staib Instrumente, Germany. *Intended Use:* The instrument will be used in conjunction with a Molecular Beam Epitaxy system to study and control the growth of oxide thin films. *Application Accepted by Commissioner of Customs:* December 1, 1994.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–31799 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–F

University of Colorado, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made 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.

Docket Number: 94–113. *Applicant:* University of Colorado, Boulder, CO 80309. *Instrument:* Mass Spectrometer, Model API III. *Manufacturer:* Perkin-Elmer Sciex Instruments, Canada. *Intended Use:* See notice at 59 FR 52957, October 20, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) triple quadrupole MS, (2) atmospheric pressure articulated ionspray, (3) multiple-charge ionization and (4) a software database for protein structure. The National Institutes of Health advised in its memorandum dated September 9, 1994 on comparable case (94-082) that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–31967 Filed 12–27–94; 8:45 am]

BILLING CODE 3510–DS–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Licensing of Private Remote Sensing Space Systems.

Agency Form Number: None.

OMB Approval Number: 0648–0174.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden 96 hours.

Avg Hours Per Response: 16 hours.

Number of Respondents: 6.

Needs and Uses; Title II of the Land Remote Sensing Act of 1992 requires that anyone who operates a private remote–sensing space system must obtain a license from the Secretary of Commerce.The information provided in the application is used to determine if U.S. security and international obligations are protected, and that the applicant will provide access to

unenhanced data on a nondiscriminatory basis.

Affected Public: Businesses or other for-profit institutions, federal agencies or employees.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 295-7340.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: December 22, 1994.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94-31956 Filed 12-27-94; 8:45 am]

BILLING CODE 3510-CW-F

National Oceanic and Atmospheric Administration

Deep Seabed Mining; Issuance of Exploration License

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of issuance of Deep Seabed Mining Exploration License USA-4 to Ocean Minerals Company (OMCO).

SUMMARY: On June 22, 1993, the National Oceanic and Atmospheric Administration (NOAA) noticed at 58 FR 33933 surrender of Deep Seabed Exploration License USA-4, which was previously issued to the Kennecott Consortium, Salt Lake City, Utah, pursuant to section 115(a) of the Deep Seabed Hard Mineral Resources Act (the Act") Public Law 96-283, and NOAA's regulations, 15 CFR 971.803(a).

On June 17, NOAA received from Ocean Minerals Company (OMCO), P.O. Box 2227, Menlo Park, California 94026, an application to conduct deep seabed mining exploration activities in license site USA-4. Notice of this action was published at 58 FR 34782 on June 29, 1993, in accordance with section 116 of the Act. NOAA has completed processing OMCO's application in accordance with the Act and 15 CFR Part 970 and announces herewith issuance of Deep Seabed Mining Exploration License USA-4 to Ocean Minerals Company, as approved by NOAA on December 22, 1994, subject to the required terms, conditions and restrictions.

Pursuant to 15 CFR 971.802, which excludes certain proprietary information from public disclosure, interested persons will be permitted to examine the materials relevant to this action at the address below.

FOR FURTHER INFORMATION CONTACT: M. Karl Jugel, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1305 East West Highway, Silver Spring, MD 20910, (301) 713-3159, Ext. 208.

Dated: December 22, 1994.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94-31879 Filed 12-27-94; 8:45 am]

BILLING CODE 3510-08-M

[Docket No. 941245-4345]

Schedule of New and Revised Fees for Access to NOAA Environmental Data and Information

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: Consistent with Office of Management and Budget (OMB) Circular A-130, the National Oceanic and Atmospheric Administration (NOAA) announces that it normally will follow a policy of providing environmental data and information at the cost of dissemination. NOAA will follow this policy except where otherwise permitted by the Director of OMB and/or otherwise directed by statute. For example, there is a statutory requirement that Landsat imagery be made available at the cost of fulfilling user request which includes costs in addition to those costs associated with dissemination; NOAA is also directed by statute to recover additional costs associated with the creation and publication of its nautical and aeronautical products. NOAA will continue to participate in international data sharing and may establish user fees at less than the cost of dissemination where the agency has determined that higher charges would constitute a significant barrier to fulfilling its information dissemination responsibilities.

DATES: December 28, 1994.

SUPPLEMENTARY INFORMATION: Section 10201(a) of Pub. L. 101-508 amended section 409 of the Act of November 17, 1988 (15 U.S.C. 1534) to authorize NOAA to charge the public fees based on fair market value for environmental data, data information, and products. In July, 1991, NOAA instituted a policy to charge fair market value for certain types of environmental data (56 FR 33260, July 19, 1991).

The Office of Management and Budget (OMB) Circular A-130 (58 FR 36070, July 2, 1993) establishes information management policies relating to information dissemination, records management, and cooperation with state and local governments. Section 8(c) of Circular A-130 states that government data and information products should be priced "at a level sufficient to recover the cost of dissemination, but no higher."

NOAA strongly supports the policy directive of Section 8(c) and believes it is in the Nation's best interest to maximize the distribution of government scientific data at the minimum cost. Accordingly, NOAA announces its pricing policy to comply with Circular A-130 and will now recover no more than the cost of disseminating its data, except where otherwise directed by statute and/or permitted by the Director of OMB.

Individual offices within NOAA will publish appropriate fee schedules that implement this revised pricing policy.

December 21, 1994.

Diana H. Josephson,

Deputy Under Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration, Department of Commerce.

[FR Doc. 94-31824 Filed 12-27-94; 8:45 am]

BILLING CODE 3510-12-M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent to Prepare an Environmental Impact Statement for a Proposed Municipal Water Supply Project Black Hawk, Colorado

AGENCY: U.S. Army Corps of Engineers, Omaha District, DOD.

ACTION: Notice of intent.

SUMMARY: The City of Black Hawk, Colorado, proposes to construct a new water supply to meet projected demand and compensate for a future reduced firm annual water supply. The Corps of Engineers has received from the City of Black Hawk a letter of intent stating that it intends to apply for a permit pursuant to Section 404 of the Clean Water Act

for construction of a water supply project. Construction of a project may also require a Special Use Permit from the U.S. Forest Service for construction on forest lands. The U.S. Forest Service action would be pursuant to the Federal Land Policy and Management Act.

ADDRESSES: U.S. Army Corps of Engineers, Omaha District, Planning Division, 215 North 17th St., Omaha, NE 68102–4978.

FOR FURTHER INFORMATION CONTACT: Ms. Candace Thomas, (402) 221–4885 or FAX (402) 221–4886.

SUPPLEMENTARY INFORMATION: since the passage of Colorado's Limited Stakes Gaming Initiative in November 1990, the city of Black Hawk has experienced a tremendous amount of growth and increased demands for water Current water demand for the city is approximately 261 acre-feet per year and future demand is project at 613 acre-feet per year. Currently, the city's firm annual supply is approximately 470 acre-feet per year. However, future firm annual yield would fall to approximately 210 acre-feet per year because of increased utilization of senior water rights.

Although the city has not applied for a 404 permit, its tentatively preferred alternative consists of a pipeline from Clear Creek along Highway 119. Diversion of Clear Creek Water would occur upstream of the confluence with North Clear Creek. Water would be pumped in a pipeline that would follow Highway 119 to four Mile Gulch Road, then to the water treatment plant. The diversions would be made under a junior water right requiring depletions to be augmented. The water quality of Clear Creek would require that the existing water treatment plant be upgraded.

Potential alternatives identified to date include: (1) acquisition and/or development of well(s) in the Four Mile Gulch basin and development of the Bates-Hunter Mine and Running Lode mine water supplies; (2) a joint project with Central City for storage in the proposed Chase Gulch Reservoir; (3) a storage reservoir on Missouri Creek; (4) an East Black Hawk Pump Station utilizing available North Clear Creek flows east of Black Hawk (includes effluent reuse); and (5) no Federal action.

Public scoping meetings have been scheduled for January 12, 1995 at the following times and locations:

1:00 p.m.—Black Hawk City Hall annex, 211 Church St., Black Hawk, CO

7:00 p.m.—Gilpin County School, Highway 119, 1 mile north of Black Hawk, CO.

The purpose of the scoping meetings is to solicit public input on issues, studies needed, alternatives to be evaluated, and potential environmental effects. Written comments will also be requested.

Significant environmental issues identified thus far include indirect and secondary impacts of development associated with the water supply project, water quality impacts, fish and wildlife impacts, wetland impacts, and effects on the National Historic Landmark status of the area.

Other applicable and pertinent environmental review and consultation requirements will be undertaken simultaneously with the NEPA process, including requirements of the Endangered Species Act, Fish and Wildlife Coordination Act, Clean Water Act, National Historic Preservation Act, Protection of Wetlands, Clean Air Act, and others.

The Draft Environmental Impact Statement is anticipated to be made available to the public in late fall 1995.

Kenneth L. Denton,

Army Federal Register Liaison Officer

[FR Doc. 94–31923 Filed 12–27–94; 8:45 am]

BILLING CODE 3710–62–M

Department of the Navy

Notice of Intent to Clarify Public Scoping for an Environmental Impact Statement for Proposed Development of Facilities to Accommodate Realignment of One Nimitz-Class Aircraft Carrier to San Diego, CA

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–508) and the Defense Base Closure and Realignment Act (DBCRA, 1990), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) for the development of facilities and infrastructure to accommodate the realignment of one Nimitz-class aircraft carrier (CVN) from Naval Air Station Alameda, CA to San Diego, CA.

This Notice of Intent (NOI) supercedes all previous notices and is intended to provide clarification of the action the Navy is proposing to implement, i.e., the mandated realignment of one CVN pursuant to the 1993 Base Realignment and Closure (BRAC) process. A decision to establish the capability to support one CVN in San Diego makes it reasonably foreseeable that future decisions on where to homeport new CVNs beyond the year 2000 could result in their being proposed for homeporting in San Diego. Therefore, this EIS will consider the potential cumulative environmental impacts of homeporting three CVNs in San Diego. The Navy is not, however, considering a proposal where to homeport new CVNs beyond the year 2000 at this time. When the Navy does make such a proposal, it will prepare the appropriate NEPA analysis.

The EIS will assess the potential environmental impacts associated with construction and operation of those facilities and infrastructure necessary to support one CVN in addition to those existing assets that currently support two conventionally- powered carriers (CVs) and one transient CVN. The additional requirements will include (1) dredging of berthing areas, turning basin, and access channel to accommodate the deeper-draft ship, (2) dredge material disposal in a bay fill site, ocean disposal, and/or various beach disposal sites, (3) construction of berthing to accommodate the larger class ship and its greater utility requirements, and (4) construction of repair facilities equipped and designed to support a homeported CVN.

A Draft EIS is planned to be available for public review and comment in mid to late 1995. The Navy would appreciate any public comments pertaining to the scope of the project as presented in this NOI and to specific environmental issues requiring particular attention. Please provide written comments no later than January 27, 1995, to: Commanding Officer, NAS North Island (ATTN: Code 00B), PO Box 357033, San Diego, CA, 92135–033.

Dated: December 22, 1994.

L.R. McNees,

Federal Register Liaison Officer.

[FR Doc. 94–31902 Filed 12–27–94; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Draft Environmental Impact Statement and Public Hearings for the Proposed York County Energy Partners Cogeneration Project at North Codorus Township, PA

AGENCY: Department of Energy.

ACTION: Notice of Continuation of Public Hearings.

SUMMARY: On November 25, 1994, the Department of Energy published a notice announcing the availability of a Draft Environmental Impact Statement and public hearings for the proposed York County Energy Partners Cogeneration Project at North Codorus

Township, PA (59 FR 60614). A notice extending the written comment period to January 31, 1995, was published on December 15, 1994, (59 FR 64653). Today's notice is to announce a continuation of these hearings. Procedures for preregistration and conduct of this continuation hearing will be similar to the procedures for the hearings conducted December 14–16, 1994.

DATES: January 18, 1995—If public interest warrants, the hearing may be carried over to January 19, 1995.

PLACE: York Fairgrounds, 334 Carlisle Avenue, York, PA 17404, (717) 848–2596.

TIME: 3:00 pm to 8:00 pm.

ADDRESSES: Written comments should be directed to: Dr. Suellen A. Van Ooteghem, Environmental Project Manager, Morgantown Energy Technology Center, U.S. Department of Energy, 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507–0880.

FOR FURTHER INFORMATION CONTACT: Dr. Suellen A. Van Ooteghem, Environmental Project Manager, Morgantown Energy Technology Center, U.S. Department of Energy, 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507–0880, (304) 285–5443.

Signed in Washington, DC, this 21st of December 1994.

Patricia Fry Godley,

Assistant Secretary for Fossil Energy.

[FR Doc. 94–31943 Filed 12–27–94; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Fernald

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), the Fernald Citizens Task Force.

DATES: Saturday, January 14, 1995: 8:30 a.m.–12:30 p.m. (public comment session, 12:00 p.m.–12:15 p.m.)

ADDRESSES: The January 14 meeting will be held at: The Joint Information Center, 6025 Dixie Highway, Route 4, Fairfield, Ohio.

FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061, or call the Fernald Citizens Task Force message line (513) 648–6478.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda

Saturday, January 14, 1995

8:30 a.m.
  Task Force Administration
8:45 a.m.
  Waste Disposal Overview
  Waste types and national disposal issues
9:15 a.m.
  Waste Disposal Options
  On site, off site, treatment
10:15 a.m.
  Break
10:30 a.m.
  Discussion
12:00 p.m.
  Public Comment
12:15 p.m.
  Planning for Public Workshop and Wrap Up
12:30 p.m.
  Adjourn

A final agenda will be available at the meeting, Saturday, January 14, 1995.

Public Participation: The meeting is open to the public. Written statements may be filed with the Task Force chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Task Force chair 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, Kenneth Morgan, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, 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. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061 or by calling the Task Force message line at (513) 648–6478.

Issued at Washington, DC on December 21 1994.

Rachel Murphy Samuel,

Acting Deputy Advisory, Committee Management Officer.

[FR Doc. 94–31946 Filed 12–27–94; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Nevada Test 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 Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Wednesday, January 4, 1995: 5:30 p.m.–10:00 p.m.

ADDRESSES: University of Las Vegas, Harry Reid Center, Room 240, Las Vegas, NV.

FOR FURTHER INFORMATION CONTACT: Don Beck, Public Participation Program Manager, Office of Public Accountability, EM–5, 1000 Independence Avenue, SW Washington, DC 20585, (202) 586–633.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* The EM SSAB provides input and recommendations to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

Wednesday, January 4, 1995

5:30 p.m.
  Call to Order
  Review Agenda
  Minutes Acceptance
  Financial Report
  Correspondence
  Reports from Committees, Delegates and Representatives
  Unfinished Business
  New Business
  Evaluation of Board and Environmental Restoration and Waste Management Programs
  Announcements
10:00 p.m.
  Adjournment

If needed, time will be allotted after public comments for old business, new business, items added to the agenda, and administrative details.

A final agenda will be available at the meeting Wednesday, January 4, 1995.

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 Don Beck'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. Due to programmatic issues that had to be resolved, this **Federal Register** notice is being published less than 15 days before the date of the meeting.

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 December 20, 1994.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 94–31944 Filed 12–27–94; 8:45 am]

BILLING CODE 6450–01–P

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 Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Savannah River Site.

DATES AND TIMES: Monday, January 23, 1995: 6:00 p.m.–7 p.m. (public comment session); Tuesday, January 24, 1995: 8:30 a.m. to 4:00 p.m.

ADDRESSES: The public comment session and board meeting will be held at: The Hilton Resort, Palmetto Dunes Plantation, Hilton Head Island, 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, S.C. 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, January 23, 1995

6:00 p.m.
Public Comment Session (5-minute rule)
7:00 p.m.
Adjourn

Tuesday, January 24, 1995

8:00 a.m.
Coffee
8:30 a.m.
Board organizational 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, January 23, 1995.

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 December 20, 1994.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer

[FR Doc. 94–31945 Filed 12–27–94; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Hanford 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 Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Hanford Site.

DATES: Thursday, January 5, 1995: 9:00 a.m.–5:00 p.m.

ADDRESS: The session will be held at: Clover Island Ramada Inn, 435 Clover Island, Richland, Washington 99352.

FOR FURTHER INFORMATION CONTACT: Jon Yerxa, Public Participation Coordinator, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352.

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

November Meeting Topics

The Hanford Advisory Board will receive information on and discuss issues related to: Press Contact Procedures, FY95 Budget Reallocation, Facilities Transition, and Off-Site Waste Acceptance. The Committee will also receive updates from various Subcommittees, including reports on: Chair Selection Process and Criteria, Medical Use of Radio Isotopes, System for Tracking Issues, an update on Natural Resource Trustees, HAB Spending Plan and the HAB Integrated Workplan.

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 Jon Yerxa'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. Due to programmatic issues that had to be resolved, the Federal Register notice

is being published less than fifteen days before the date of the meeting.

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 Ave. SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Jon Yerxa, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling him at (509) 376–9628.

Issued at Washington, DC on December 21, 1994.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 94–31947 Filed 12–27–94; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Intent To Revise Transmission Rates To Become Effective

October 1, 1995.

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Intent and Request for Comments.

SUMMARY: BPA is developing transmission rates proposed to become effective October 1, 1995. At this time, BPA announces its intent to revise its rates.

BPA expects to publish a notice of the proposed rates in the **Federal Register** in early 1995. That notice also will announce BPA's proposed schedule for formal hearings as specified in section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). A final schedule will be established by the Hearing Officer who presides over BPA's rate hearings. These hearing, and planned general public field hearings, will give interested persons an opportunity to present oral and written comments on the rate proposal. *BPA File No.:* TR–95. BPA requests that all comments and documents to become part of the Official Record compiled in the process of adjusting transmission rates contain the file number designation TR–95.

ADDRESSES: Written comments should be submitted to the Manager, Corporate Communications, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hansen, Public Involvement and Information Specialist, at the address listed above, 503–230–4328, or call 1–800–622–4519. Information may also be obtained from:

Mr. Steve Hickok, Group Vice President, Sales and Customer Service, P.O. Box 3621, Portland, Oregon 97232, 503–230–5356.

Mr. George Eskridge, Manager, SE Sales and Customer Service District, 1101 West River, Suite 250, Boise, Idaho 83702, 208–334–9137.

Mr. Ken Hustad, Manager, NE Sales and Customer Service District, Crescent Court, Suite 500, 707 Main, Spokane, Washington 99201, 509–353–2518.

Ms. Ruth Bennett, Manager, SW Sales and Customer Service District, 703 Broadway, Vancouver, Washington 98660, 206–418–8600.

Ms. Marg Nelson, Manager, NW Sales and Customer Service District, 201 Queen Anne Avenue North, Suite 400, Seattle, Washington 98109–1030, 206–553–4130.

Responsible Official: Mr. Geoff Moorman, Manager, Pricing, Marginal Cost, and Ratemaking, is the official responsible for the development of BPA's rates.

SUPPLEMENTARY INFORMATION: The Federal Columbia River Transmission System (FCRTS) is owned and operated by BPA, a Federal power marketing agency within the Department of Energy. The FCRTS encompasses approximately 80 percent of the capacity of the high-voltage electric transmission system within the Pacific Northwest. Electric power from Federal and non-Federal generating units is integrated and transmitted utilizing the FCRTS. Interregional transmission services to customers outside the Pacific Northwest also are provided by BPA.

Current rates apply to four types of transmission service: (1) firm integration of utilities' remote resources; (2) firm interregional transactions; (3) nonfirm transactions between systems both within and outside the Pacific Northwest Region; and (4) firm transmission over specified facilities. Firm transmission generally is sold pursuant to contracts for periods up to 20 years. Firm transmission on BPA's network (main grid) is available on a mileage basis as well as a postage stamp rate structure.

BPA began a Competitiveness Project in early 1993 in response to market forces and the deregulation of the electric utility industry. The project, a re-invention of the agency to make it more competitive in the new marketplace, included the development of a new business concept, a marketing plan, a structural reorganization, strategic action plans for each of BPA's major activities, an internal effort to promote leadership and employee empowerment, and proposals to eliminate unnecessary administrative and regulatory requirements.

The rates that BPA charges its customers must produce revenues that are sufficient to repay, with interest, the Federal investment in generation, conservation, and transmission facilities. Revenues also must pay BPA's operation and maintenance expenses, purchased power costs, and other miscellaneous expenses. BPA also sets rates to recover a certain amount of net revenues. These planned net revenues, combined with BPA's existing financial reserves, are intended to mitigate financial risk to help assure BPA's ability to recover costs, including its timely repayment of the Federal investment.

BPA develops a Revenue Requirement Study that set forth BPA's total costs of providing services to BPA's customers, including repayment of the Federal investment in the Federal Columbia River Power System. The revenue requirement calculation is a major input in determining the overall level of BPA's proposed rates for power and transmission.

Program levels for FY 1996 and 1997 were developed outside of BPA's rate case, and as a part of the BPA draft Strategic Business Plan, with the benefit of a public comment process. BPA has reduced programs through a combination of cost cutting, program reinvention, and reductions in government and contractor employees. Program level decisions will not be an issue in the rate case. The Revenue Requirement Study will incorporate BPA's program level decisions and implement BPA's risk mitigation, capital funding, and other financial goals in 1996–1997 rates.

In developing the 1995 transmission rate proposal, BPA plans to revise the level and changes of some of the existing transmission rate schedules and revise the General Transmission Rate Schedule Provisions as necessary. In light of BPA's business plan and continuing development of national energy policy, BPA plans to review its existing transmission rates and to implement appropriate changes, beginning with the 1995 rate case. In addition, BPA is considering new rate schedules to recover reservation fees and contributions in aid of construction, and will revise the rate for annual costs associated with non-Federal ownership rights on the Pacific Northwest AC Intertie to be consistent with the contracts for non-Federal ownership.

BPA has prepared a draft environmental impact statement (EIS)

addressing the alternatives and impacts of its proposed business direction, as expressed in its draft Strategic Business Plan. The draft EIS was released for public comment on June 1994, along with the draft Business Plan. The Business Plan EIS is designed to evaluate the proposed actions and the range of alternatives, including the impacts of the range of potential rate designs for BPA's power and transmission services. It also is intended to provide documentation of BPA's 1995 rate proposal for the purposes of the National Environmental Policy Act. A second draft of the EIS will be available for public comment in late January

Following publication of the initial proposal in the **Federal Register**, formal public hearings and planned general public field hearings will be conducted by BPA. Written comments from individuals or entities other than parties to BPA's formal rate case also will be accepted through a date established by the Hearing Officer at the prehearing conference. Oral communications should be for the purpose of requesting either status reports or procedural information. After completion of an environmental process pursuant to the National Environmental Policy Act and following the hearings, BPA will announce its final proposed transmission rates and submit them to the Federal Energy Regulatory Commission for approval.

Issued in Portland, Oregon, on December 12, 1994.

Randall W. Hardy,

Administrator and Chief Executive Officer.

[FR Doc. 94–31952 Filed 12–27–94; 8:45 am]

BILLING CODE 6450–01–M

Intent To Revise Wholesale Power Rates To Become Effective

October 1, 1995.

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Intent and Request for Comments.

SUMMARY: BPA is developing adjusted wholesale power rates proposed to become effective October 1, 1995. At this time, BPA announces its intent to revise its rates. The formal hearings will also comprehend changes to BPA charges under the Pacific Northwest Coordination Agreement. BPA expects to publish a notice of the proposed rates in the **Federal Register** in early 1995. That notice also will announce BPA's proposed schedule for formal hearings as specified in section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). A final schedule will be established by the Hearing Officer who presides over BPA's rate hearings. These hearings, and planned general public field hearings, will give interested persons an opportunity to present oral and written comments on the proposal. BPA File No: WP–95. BPA requests that all comments and documents to become part of the Official Record compiled in the process of adjusting wholesale power rates contain the file number designation WP–95.

ADDRESSES: Written comments should be submitted to the Manager, Corporate Communications, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hansen, Public Involvement and Information Specialist, at the address listed above, 503–230–4328, or call 1–800–622–4519. Information may also be obtained from:

Mr. Steve Hickok, Group Vice President, Sales and Customer Service, P.O. Box 3621, Portland, Oregon 97232, 503–230–5356.

Mr. George Eskridge, Manager, SE Sales and Customer Service District, 1101 West River, Suite 250, Boise, Idaho 83702, 208–334–9137.

Mr. Ken Hustad, Manager, NE Sales and Customer Service District, Crescent Court, Suite 500, 707 Main, Spokane, Washington 99201, 509–353–2518.

Ms. Ruth Bennett, Manager, SW Sales and Customer Service District, 703 Broadway, Vancouver, Washington 98660, 206–418–8600.

Ms. Marg Nelson, Manager, NW Sales and Customer Service District, 201 Queen Anne Avenue North, Suite 400, Seattle, Washington 98109–1030, 206–553–4130.

Responsible Official: Mr. Geoff Moorman, Manager, Pricing, Marginal Cost, and Ratemaking, is the official responsible for the development of BPA's rates.

SUPPLEMENTARY INFORMATION:

I. Background

BPA is a Federal power marketing agency in the Pacific Northwest. BPA markets hydroelectric power from 30 dams, including projects operated by the U.S. Army Corps of Engineers and the U.S. Bureau of Reclamation on the Columbia River and its tributaries, as well as projects owned by the City of Idaho Falls, Lewis County Public Utility District, and the Washington Public Power Supply System (Supply System). BPA also markets thermal power it acquires from utilities in the region. In addition, BPA owns, operates, and maintains the nation's largest high-voltage transmission system grid.

BPA currently supplies about 45 percent of the electric energy consumed in the Pacific Northwest and maintains about 80 percent of the region's high-voltage transmission capacity. Firm power is sold at wholesale to BPA utility customers in the region for resale to consumers and is sold directly to BPA's industrial and Federal agency customers for their own use. In addition, BPA sells power that is surplus to its regional firm obligations to customers within and outside the region. BPA's existing 151 long-term power sales contracts expire in 2001. BPA now is working with its customers to put new contracts in place in advance of that date.

BPA began a Competitiveness Project in early 1993 in response to market forces and the deregulation of the electric utility industry. The project, a re-invention of the agency to make it more competitive in the new marketplace, included the development of a new business concept, a marketing plan, a structural reorganization, strategic action plans for each of BPA's major activities, and internal effort to promote leadership and employee empowerment, and proposals to eliminate unnecessary administrative and regulatory requirements.

A major result of the Competitiveness Project, outlined in BPA's draft Marketing Plan and refined in subsequent process, is the set of products and services BPA could offer its customers. Once these products are offered, customers would be able to select individual items or choose among packages of products and services. The "unbundled" or separately priced power products BPA would propose to offer include power services such as control area services and resource management services. A more traditional bundled approach to firm requirements service would be offered as well.

BPA's Draft Strategic Business Plan was released in June 1994. The Draft Strategic Business Plan proposes the overall strategic direction for serving BPA's customers and meeting BPA's legislated responsibilities, includes new statements of BPA's mission and values, and enunciates strategic business objectives to guide BPA's activities. The Draft Strategic Business Plan also describes the conceptual framework for the products BPA would offer. As stated in the Draft Strategic Business Plan, BPA's pricing policies are designed to meet many objectives including: (1) providing maximum customer choice and encouraging optimal use of the

Federal Columbia River Power System (FCRPS); (2) contributing to BPA's continued viability in an increasingly competitive energy-market environment; and (3) allowing BPA to take full advantage of its responsibility and authority to manage the FCRPS, consistent with all statutory requirements.

The Draft Strategic Business Plan envisions BPA as operating three business lines: power, transmission, and energy services (includes conservation product lines), which will be self-supporting and serve customers according to their unique needs. The Draft Strategic Business Plan also outlines a number of initiatives to improve BPA's competitiveness, including strategies to close the projected gap between BPA's costs and revenues, a financial strategy, and proposals to change BPA's power rate structures. These initiatives give customers more choice and more accurately reflect BPA's costs associated with providing the discrete components of electric service selected by customers, and thereby should encourage investment in cost-effective conservation. BPA proposes to close the revenue gap by exerting strict cost management and restructuring its products and services to respond more effectively to the market.

BPA is preparing initial studies to determine the extent to which projected revenue requirements for FY 1996 and 1997 will exceed revenues projected under current rates. BPA will then prepare studies to establish proposed rates for the FY 1996 and 1997 period. The initial proposal for the 1995 rate case is among the first steps in ensuring BPA is positioned to compete in the new market environment.

BPA has prepared a draft environmental impact statement (EIS) addressing the alternatives and impacts of its proposed business direction, as expressed in its draft Strategic Business Plan. The draft EIS was released for public comment in June 1994, along with the draft Business Plan. The Business Plan EIS is designed to evaluate the proposed actions and the range of alternatives, including the impacts of the range of potential rate designs for BPA's power and transmission services. It also is intended to provide documentation of BPA's 1995 rate proposal for the purposes of the National Environmental Policy Act. A second draft of the EIS will be available for public comment in late January.

II. Major Issues

The development of BPA's rates is complex, raising numerous issues for resolution in the hearing process. The following is a brief explanation of several major issues that are expected to be addressed in the hearing. Some of these issues have been the subject of discussion in previous BPA rate cases.

A. Revenue Requirement

The rates that BPA charges its customers must produce revenues that are sufficient to repay, with interest, the Federal investment in generation, conservation, and transmission facilities. Revenues also must pay BPA's operation and maintenance expenses, purchased power costs, and other miscellaneous expenses. BPA also sets rates to recover a certain amount of net revenues. These planned net revenues, combined with BPA's existing financial reserves, are intended to mitigate financial risk to help assure BPA's ability to recover its costs, including its timely repayment of the Federal investment.

BPA develops a Revenue Requirement Study, that sets forth BPA's total costs of providing services to BPA's customers, including repayment of the Federal investment in the Federal Columbia River Power System. The revenue requirement calculation is a major input in determining the overall level of BPA's proposed rates for power and transmission.

Program levels for FY 1996 and 1997 were developed outside of BPA's rate case, and as part of the BPA Draft Strategic Business Plan, with the benefit of a public comment process. BPA has reduced programs through a combination of cost cutting, program reinvention, and reductions in government and contractor employees. Program level decisions will not be an issue in the rate case. The Revenue Requirement Study will incorporate BPA's program level decisions and implement BPA's risk mitigation, capital funding, and other financial goals in 1996–1997 rates.

B. Revenue Forecast and Risk Analysis

The Revenue Forecast provides a most likely estimate of BPA's sales and revenues for the rate period. The Revenue Forecast includes several new products and associated billing determinants. The Risk Analysis identifies and quantifies risk elements associated with this forecast. Risk factors influence the expected revenues, the revenue distribution, and the likelihood of meeting planned Treasury payments.

Historical risk categories include streamflow conditions related to precipitation, affecting quantities of hydropower produced; aluminum prices affecting the quantity and price of power purchased by the aluminum smelters in the Northwest; temperature affecting a large Northwest space heating load; fossil fuel prices affecting both the size of market for and the cost of sales and purchases; and employment affecting power consumption by durable goods industries like forest products and aircraft manufacture; among others. In its initial proposal, BPA is proposing to examine the potential revenue variability that could result from changes in its rate design, including the proposed tiered rate structure. BPA expects to increase planned net revenues to cover the revenue variability, if necessary, to ensure sufficient revenues to meet its Treasury payments.

C. Loads and Resources Determinations

The firm energy and capacity loads and resources forecasted by BPA to occur during the forthcoming rate period, along with estimated sales of unbundled products and services, determine BPA's forecasted power sales. Forecasted sales and revenue requirements determine the general level of rates that must be charged to generate sufficient revenue.

D. Cost Allocations and Rate Design

Historically, BPA has sold firm requirements power on a "bundled" basis; that is, all customers within a customer class paid for a bundled package of products even if they did not use or need all the products and services in the bundled price. BPA is planning to propose a number of rate design changes to provide purchasers information about the prices associated with a fuller selection of electric power products and services that BPA can provide. In designing the rates to be proposed in the 1995 rate proceeding, BPA also adheres to statutory ratemaking requirements, including those for allocating resource costs to customer groups. In particular, section 7 of the Northwest Power Act guides how rates are to be established and revised.

1. Cost Allocation: the rates BPA charges to each customer class reflect the classification of costs among different attributes of power and the allocation of costs to each customer class. BPA is planning to change the classification and allocation of costs in its initial proposal for the 1995 rate case to provide customers with better information on the costs associated with providing electric power and services. BPA also intends to develop a revised cost allocation construct for the 1995 rate case consistent with the separation of resource costs among the different

business lines—power, transmission, and energy services—and different product lines within each business line. The Draft Strategic Business Plan proposes three different power product lines: Tier 1 products, Tier 2 products, and unbundled products and services.

BPA plans to classify generation costs using the results of a revised Marginal Cost Analysis. Results of the Marginal Cost Analysis also will be used to determine hourly and seasonal periods for ratesetting.

2. Marginal Cost Analysis: BPA is planning to propose to reflect the changing market conditions and opportunities in which BPA operates in its approach to measuring the incremental cost of providing electricity. BPA plans to measure marginal costs based on the supply and demand conditions BPA faces in the West Coast market instead of limiting the measurement to just the incremental costs associated with acquiring additional generating resources. BPA plans to change the Marginal Cost Analysis to provide a better understanding of how BPA incurs marginal costs and how those costs vary within the year.

3. Tiered Rates and Unbundled Products: BPA is planning significant changes in the design of its rates. BPA is planning to propose to divide its rates for firm requirements service into two tiers: Tier 1 and Tier 2. The other services and products that customers may select to complement either firm requirements service provided by BPA, or power acquired from other sources, will be priced separately.

To provide customers with a price signal that encourages efficient resource investment decisions, including conservation resources, and shares the benefits of the relatively low-cost Federal power and transmission systems, BPA is planning to propose to tier its rates for requirements service and for the residential exchange. The rate for requirements service would be divided into two parts: a Tier 1 rate, and one or several alternative Tier 2 rates. BPA expects that the Tier 1 rate will be available to serve most of the existing customers' firm loads. The Tier 1 rate is expected to be a lower rate than Tier 2 because it will be based primarily on the costs associated with the existing Federal system. The Tier 2 rates will be available to serve regional firm requirements in excess of Tier 1, including future load growth, and will be based on the costs associated with supplying power to meet these loads.

To address the increasingly competitive market for power, transmission, and energy services, BPA is planning to propose to offer a limited menu of unbundled products in the 1995 rate case. BPA expects that the products offered will be available both under the current power sales contracts and under new power sales contracts. BPA expects to offer additional unbundled products in future rate cases and to price these products to meet market conditions and its cost recovery obligations. In some cases, BPA expects the market will require flexible pricing. BPA is planning to "unbundle" what it offers so customers can choose among products and services based on what they need to meet their loads and support their own resources, if any.

Following publication of the initial proposal in the **Federal Register**, formal public hearings and general public field hearings will be conducted by BPA. Written comments from individuals or entities, other than parties to BPA's formal rate case, also will be accepted through a date established by the Hearing Officer at the prehearing conference. Oral communications should be for the purpose of requesting either status reports or procedural information. After completion of an environmental process pursuant to the National Environmental Policy Act and following the hearings, BPA will announce its final proposed wholesale power rates and submit them to the Federal Energy Regulatory Commission for approval.

Issued in Portland, Oregon, on December 12, 1994.

Randall W. Hardy,

Administrator and Chief Executive Officer.

[FR Doc. 94–31951 Filed 12–27–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER94–125–000, et al.]

Western Resources, Inc. & Kansas Gas & Electric Co., et al.; Electric Rate and Corporate Regulation Filings

December 15, 1994.

Take notice that the following filings have been made with the Commission:

1. Western Resources, Inc., Kansas Gas and Electric Company

[Docket No. ER94–125–000]

Take notice that on December 9, 1994, Western Resources, Inc. (WRI) tendered for filing an amendment to its November 4, 1993, filing in this docket. The filing provides supporting workpapers for the Interconnection Agreement between WRI and Kansas City, Kansas, Board of Public Utilities (KCBPU).

Copies of the filing were served on KCBPU and the Kansas Corporation Commission.

Comment date: December 30, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. North American Energy Conservation, Inc.

[Docket No. ER94–152–003]

Take notice that on November 30, 1994, North American Energy Conservation, Inc. (NAEC) tendered for filing a letter with additional information requested by staff for the quarter ending September 30, 1994, pursuant to NAEC's Rate Schedule No. 1.

Comment date: December 30, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Puget Sound Power & Light Company

[Docket No. ER94–1506–000]

Take notice that on December 12, 1994, Puget Sound Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 30, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Company

[Docket No. ER95–35–000]

Take notice that New England Power Company, on December 8, 1994, tendered for filing an amendment to the filing letter.

Comment date: December 30, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Rochester Gas and Electric Corporation

[Docket No. ER95–268–000]

Take notice that Rochester Gas and Electric Corporation (RG&E), on December 8, 1994, tendered for filing a Service Agreement for acceptance by the Federal Energy Regulatory Commission (Commission) between RG&E and Electric Clearinghouse Incorporated. The terms and conditions of service under this Agreement are made pursuant to RG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1279–000. RG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: December 30, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc.

[Docket No. ER95-269-000]

Take notice that on December 8, 1994, Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc. (Montana Dakota) tendered for filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's regulations, several contractual documents between Montana-Dakota and United States of America acting through Western Area Power Administration (Western). Montana-Dakota proposes an effective date of February 6, 1995.

Montana-Dakota asserts that the filing has been served on Western and on interested state regulatory commissions.

Comment date: December 30, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Rochester Gas and Electric Corporation

[Docket No. ER95-270-000

Take notice that Rochester Gas and Electric Corporation (RG&E) on December 9, 1994, tendered for filing a Service Agreement for acceptance by the Federal Energy Regulatory Commission (Commission) between RG&E and New York State Electric and Gas Corporation. The terms and conditions of service under this Agreement are made pursuant to RG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94-1279. RG&E also requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: December 30, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Delmarva Power & Light Company

[Docket No. ER95-271-000

Take notice that on December 8, 1994, Delmarva Power & Light Company ("Delmarva" or the "Company"), filed an amendment to Rate Schedule No. 63. On May 31, 1994, Delmarva filed a Settlement Agreement with the Town of Berlin, Maryland (Berlin) that was approved by the Commission on August 2, 1994. Section 13.1 of the Settlement Agreement contains most favored nations provisions allowing Berlin to claim the benefit of certain notice and rate design provisions from subsequent settlements with other parties.

Berlin has notified Delmarva that Berlin elects to have Delmarva apply the "On-Peak Hour" provision of the Settlement Agreement between Delmarva and the Municipal customers that was filed with the Commission on September 14, 1992. Berlin further notified Delmarva that Berlin elects to have Delmarva apply to Berlin the notice provisions of the Settlement Agreement between Delmarva and the Municipal customers.

Pursuant to the Berlin Settlement Agreement, Delmarva has revised Leaf Nos. 18, 22, 34a and 36 of Rate Schedule No. 63 relative to notice and rate design.

Delmarva requests that these tariff modifications become effective June 3, 1993 in accordance with the provisions of the Berlin Settlement.

Comment date: December 30, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Green Mountain Power Corporation

[Docket No. ER95-272-000]

Take notice that on December 9, 1994, Green Mountain Power Corporation (GMP) tendered for filing Service Agreements and Certificates of Concurrence for InterCoast Power Marketing Company and Catex Vitol Electric Inc. under FERC Electric Tariff No. 2, known as GMP's Opportunity Transaction Tariff (Tariff). The Service Agreements and Certificates of Concurrence will allow IMPC and CVE to enter into transactions, including exchange unit transactions, in accordance with the Tariff. No terms or conditions of the Tariff are affected by the forms.

Comment date: December 30, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp

[Docket No. ER95-273-000]

Take notice that PacifiCorp, on December 9, 1994, tendered for filing Revision No. 2 of Exhibit B to the Transmission Service and Operating Agreement between Utah Associated Municipal Power Systems (UAMPS) and PacifiCorp (PacifiCorp Rate Schedule, FERC No. 297).

PacifiCorp requests that a waiver of the prior notice requirements be granted and that an effective date of November 16, 1994, be assigned to the filing.

Copies of this filing were supplied to UAMPS, the Utah Public Service Commission, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: December 30, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Osceola Power Limited Partnership

[Docket Nos. QF95-30-000 and QF95-30-001]

On December 2, 1994, Osceola Power Limited Partnership (Applicant) of 316 Royal Poinciana Plaza, Palm Beach, Florida 33480, submitted for filing an application for certification of a facility as a qualifying cogeneration facility and a small power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the Applicant, the facility will be located in Palm Beach County, Florida, and will consist of two stoker-fired boilers and a multiple extraction/condensing steam turbine generator. Steam recovered from the facility will be used for production of raw sugar. The maximum net electric power production capacity of the facility will be 55 MW. The primary energy sources will consist of bagasse, a by-product of the processing of sugar cane, wood waste and other biomass (*e.g.*, cane tops and leaves, cellulose derivatives, vegetative material). Construction of the facility is expected to be completed by June of 1996.

Comment date: January 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Praxair, Inc. and Rohm and Haas Texas Inc.

[Docket No. QF95-34-000]

On December 7, 1994, Praxair, Inc. and Rohm and Haas Texas Inc. (Applicants) of 39 Old Ridgebury Road, Danbury, Connecticut 06810-5113 and P.O. Box 672, Deer Park, Texas 77536, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the Applicants, the topping-cycle cogeneration facility will be located near Deer Park, Texas, and will consist of a combustion turbine generator and a heat recovery boiler. Steam recovered from the facility will be used by Rohm and Haas Texas Inc. in manufacturing of base chemicals. The electric power production capacity of the facility will be 40.2 MW. The primary energy source will be natural gas. Construction of the facility is expected to commence in March of 1995.

Comment date: January 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. 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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–31897 Filed 12–27–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2645–045]

Niagara Mohawk Power Corp.; Notice of Intent To Prepare an Environmental Assessment and Conduct Public Scoping Meetings

December 21, 1994.

The Federal Energy Regulatory Commission (FERC) has received an application for license (relicense) of the existing Beaver River Project No. 2645. The project consists of eight developments on a reach of the Beaver River between 11 and 29 miles upstream of the confluence with the Black River. The project is located in Herkimer and Lewis Counties, New York.

The FERC staff intends to prepare an Environmental Assessment (EA) on the hydroelectric project in accordance with the National Environmental Policy Act.

The staff's EA will objectively consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include economic, financial and engineering analyses.

A draft EA will be issued and circulated for review by all interested parties. all comments filed on the draft EA will be analyzed by the staff and considered in the final EA. The staff's conclusions and recommendations will then be presented for the consideration of the commission in reaching its final licensing decision.

Scoping Meetings

The FERC will conduct two public scoping meetings on January 10, 1995. The first meeting will be held from 1:00 to 5:00 PM and will focus on resource agency concerns. This will be followed by an evening scoping meeting from 7:00 to 10:00 PM geared primarily for public input. Both scoping meetings will be held at Watertown High School—Large Group Instruction Room, 1335 Washington Street, Watertown, New York. All interested individuals, organizations and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EA.

Everyone in attendance is encouraged to participate during the public meetings. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session. All speakers will be provided at least 5 minutes to present their views.

To help focus discussions at the meetings, a Scoping Document outlining subject areas to be addressed in the EA will be mailed to agencies and interested individuals on the FERC mailing list. Copies of the scoping document will also be available at the scoping meetings.

Objectives

At the scoping meetings, the staff will:

- Identify reasonable alternatives that should be evaluated in the EA;
- Identify significant environmental issues related to the proposed project;
- Determine the depth of analysis for issues to be addressed in the EA;
- Identify resource issues that are not important and do not require detailed analysis;
- Solicit from the meeting participants all available information, especially quantitative data on the resources at issue; and
- Encourage statements from experts and the public on issues that should be analyzed in the EA, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The meetings will be recorded by a court stenographer and all statements (oral and written) will become a part of the formal record of the Commission proceedings for the project. Individuals presenting statements at the meeting will be asked to clearly identify themselves for the record.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meeting. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 until February 10, 1995.

All written correspondence should clearly identify the project on the first page of the submittal: Beaver River Project, FERC No. 2645. Intervenors in this proceeding are reminded that if they file comments with the Commission, they must also serve a copy of their filing on the license applicant and all intervenors whose names appear on the official service list. Further, if a party or interceder files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

If you have any questions, please contact Thomas Camp at (202) 219–2832.

Lois D. Cashell,

Secretary.

[FR Doc. 94–31843 Filed 12–27–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2442–001, NY]

City of Watertown, New York; Notice of Environmental Assessment (EA) Scoping

December 21, 1994.

The Federal Energy Regulatory Commission (Commission) is reviewing an application for new license for the continued operation and expansion of the Watertown Project on the Black River, Jefferson County, New York. The Commission Staff (staff) intends to Prepare an Environmental Assessment (EA) on the Watertown Project in accordance with National Environmental Policy Act.

Scoping Document 1 issued December 15, 1994, has been sent to all parties on the project service list. Copies of Scoping Document 1 are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

The purpose of the scoping process is to identify significant issues related to the proposed action and the continued operation and expansion of the Watertown project and to determine what issues should be covered in the EA. The document entitled "Scoping Document 1" provides a brief description of the proposed action, the potential alternatives, the geographic and temporal scope of a cumulative

effects analysis, and a preliminary schedule for preparing the EA.

The staff's EA will consider both site specific and cumulative environmental effects of the proposed actions and reasonable alternatives, and will include an economic, financial and engineering analysis. A draft EA will be issued and circulated for review by all interested parties. All comments filed on the draft A will be analyzed by the Commission staff and considered in a final EA.

Written scoping comments must be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, until January 20, 1995. All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h).

All correspondence should clearly show the following captions on the first page: "Scoping Comments, Watertown Project, FERC No. 2442–001."

Further, interested persons are reminded of the Commission's Rules of Practice and Procedures, requiring parties or interceders (as defined in 18 CFR 385.2010) to file documents on each person whose name is on the official service list for this proceeding. See 18 CFR 4.34(b).

Any questions concerning the scoping process should be directed to Robert Bell (202–219–2806) or Peter Leitzke (202–219–2803) at the Federal Energy Regulatory Commission, Office of Hydropower Licensing (HL–20.1), 825 North Capitol St., NE, Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–31835 Filed 12–27–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–7–008]

Northern Natural Gas Co.; Notice of Filing

December 21, 1994.

Take notice that on December 14, 1994, Northern Natural Gas Company (Northern Natural) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2] Northern Natural states that its revised procedures implement the standards of conduct in 18 CFR 161.3 and 284.286.

Northern Natural states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before January 5, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–31836 Filed 12–27–94; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707 (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994).

[Docket No. CP95–117–000, et al.]

Transcontinental Gas Pipe Line Corporation, et al.; Natural Gas Certificate Filings

December 19, 1994.

Take notice that the following filings have been made with the Commission:

1. Transcontinental Gas Pipe Line Corporation

[Docket No. CP95–117–000]

Take notice that on December 12, 1994, Transcontinental Gas Pipe Line Corporation (Applicant), filed an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations requesting permission and approval to abandon firm and interruptible transportation service provided to El Paso Natural Gas Company (El Paso) under Applicant's Rate Schedule X–198, effective June 8, 1994. Applicant's application is on file with the Commission and open to public inspection.

Applicant states that it proposes to abandon its transportation service authorized in Docket No. CP79–230, as amended.[1] Applicant states that a February 9, 1979 transportation service agreement, as amended, forms the basis of Applicant's Rate Schedule X–198. The primary term of that agreement expired on June 8, 1994. Pursuant to that agreement, Applicant transports up to 50,075 Mcf per day for El Paso from the tailgate of the U–T Offshore System separation plant at Johnson's Bayou, Cameron Parish, Louisiana (Receipt Point) through Applicant's Southwest Louisiana Gathering System to an existing interconnection between Applicant and Houston Pipe Line Company (HPL) located near Fulshear, Fort Bend County, Texas and/or the Exxon Company, U.S.A., Katy Plant, Waller County, Texas. To the extent gas is delivered at Fulshear, HPL redelivers thermally equivalent volumes for El Paso's account at the Katy Plant and at Bammel, Harris County, Texas. All gas received at the Katy Plant from HPL and/or Applicant is redelivered by Oasis Pipe Line Company to El Paso at the Waha receipt point, Pecos County, Texas. Applicant is also authorized to transport natural gas for El Paso on an interruptible basis from the Receipt Point to its existing interconnections with (1) Northern Natural Gas Company, at Starks, Louisiana; (2) Florida Gas Transmission Company near Vinton, Louisiana; and (3) Louisiana Resources Company at Applicant's separation

[1] See, 7 FERC ¶ 61,227 (1979).

plant at Johnson's Bayou Cameron Parish, Louisiana.

By December 11, 1992 letter, El Paso requested the termination of this agreement. Applicant requests retroactive abandonment so that El Paso will not have to pay demand charges for services not provided. Applicant states that El Paso has not requested nor has Applicant provided the subject transportation service since the proposed abandonment date of June 8, 1994. No facilities are proposed to be abandoned.

Comment date: January 9, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Koch Gateway Pipeline Company

[Docket No. CP95–120–000]

Take notice that on December 14, 1994, Koch Gateway Pipeline Company (Koch Gateway), Post Office Box 1478, Houston, Texas 77251–1478, filed a prior notice request with the Commission in Docket No. CP95–120–000 pursuant to Sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization modify an existing delivery side meter station making it a bi-directional receipt and delivery point to provide service for an existing customer under the blanket certificate issued in Docket No. CP82–430–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Koch Gateway proposes to modify an existing dual 4-inch delivery meter station by reversing one of the dual meter tubes to establish a bi-directional receipt and delivery point to serve J. W. Gathering Company (J. W. Gathering). Koch Gateway states that the modification of the meter station would enable J. W. Gateway with a means to access natural gas on its system from Koch Gateway's interstate pipeline system and receive up to approximately 6,000 MMBtu per day of natural gas. Koch further states that the modification will require the abandonment of the reversed tube from delivery service. The estimated cost for the modification of the delivery point is $9,000, which J. W. Gathering would reimburse to Koch Gateway.

Comment date: February 2, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Eastern Transmission Corporation

[Docket No. CP95–122–000]

Take notice that on December 16, 1994, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–122–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new delivery point so that Texas Eastern may provide up to 200 Dekatherms per day of firm transportation service to the City of Edmonton, Kentucky (Edmonton), the end user, under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern states that Edmonton, a municipal utility, has requested Texas Eastern to install a 2-inch tap, a single ½-inch and a single 2-inch turbine meter run, electronic gas measurement equipment, and approximately 50 feet of 2-inch diameter pipe to connect Edmonton's existing 3-inch distribution pipeline system and Texas Eastern's 30-inch Line No. 15 at approximately Mile Post 354.37 in Metcalfe County, Kentucky, in order to alleviate Edmonton's pressure/operational concerns. The approximate cost of such facilities is estimated by Texas Eastern to be $190,000, including allowance for federal income tax, and will be 100% reimbursable by Edmonton.

Texas Eastern states the firm transportation service for Edmonton will be provided pursuant to Rate Schedule SCT of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. Texas Eastern states that because the transportation services for Edmonton will be performed utilizing existing capacity on Texas Eastern's system, the quantities of gas to be delivered to Edmonton are within Edmonton's certificated entitlements. Texas Eastern states that its existing tariff does not prohibit the addition of new delivery points.

Texas Eastern also states that the installation of the delivery point will have no effect on its peak day or annual deliveries, and that its proposal will be accomplished without detriment or disadvantage to Texas Eastern's other customers.

Comment date: February 2, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary,

[FR Doc. 94–31898 Filed 12–27–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94-183-005]

ANR Storage Co.; Notice of Proposed Changes in FERC Gas Tariff

December 21, 1994.

Take notice that on December 16, 1994, ANR Storage Company (ANR Storage) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the revised tariff sheets listed below:

First Revised Sheet No. 177
First Revised Sheet No. 179
First Revised Sheet No. 180
Eighth Revised Sheet No. 186
First Revised Sheet No. 203
First Revised Sheet No. 205
First Revised Sheet No. 206
Eighth Revised Sheet No. 212

ANR Storage states that the revised tariff sheets are being filed to comply with the Commission's Orders issued May 4, 1994 and September 23, 1994, in Southern Natural Gas Company and South Georgia Natural Gas Company, Docket Nos. RP94-183-000, et al. ANR Storage also states that the tariff sheets remove Atlanta Gas Light Company's volumes from ANR Storage's Rate Schedules X-9 and X-10 and reduce the monthly rate charged to Southern Natural under these Rate Schedules accordingly. Southern Natural will retain the remaining volumes under ANR Storage's Rate Schedules X-9 and X-10 to provide service to its other customers which have elected not to take assignment of the volumes.

ANR Storage requests that these sheets be accepted for filing and made effective as of November 1, 1994.

ANR Storage states that copies of the filing were served upon the Company's Jurisdictional customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 29, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-31837 Filed 12-27-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-87-001]

Cove Point LNG Limited Partnership, Notice of Tariff Filing

December 21, 1994.

Take notice that on December 16, 1994, Cove Point LNG Limited Partnership, tendered for filing as part of its FERC Gas Tariff, Volume No. 1, Substitute Original Sheet No. 1 Superseding Original Sheet No. 1.

Cove Point states that the tariff sheet has been filed to correct a mathematical error which was made in calculating the maximum Currently Effective Tariff Rate, which should have been $0.0255 rather than $0.0254.

Any person desiring to protest with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before December 29, 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 this proceeding. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-31844 Filed 12-27-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-26-012]

El Paso Natural Gas Co.; Notice of Tariff Filing

December 21, 1994.

Take notice that on December 16, 1994, El Paso Natural Gas Company (El Paso) tendered for filing and acceptance, pursuant to Part 154 of the Federal Energy Regulatory Commission's (Commission) Regulations Under the Natural Gas Act and ordering paragraph (B) of the Commission's Order on Rehearing at Docket No. RP91-26-010, et al., issued November 2, 1994, certain tariff sheets to restate its take-or-pay Throughput Surcharge (Throughput Surcharge) and Direct Bill.

El Paso states that the tendered tariff sheets provide for a restatement of El Paso's Throughput Surcharge and Monthly Direct Bill amounts resulting from the authorization to collect carrying charges on the take-or-pay costs included in its take-or-pay filing at Docket No. RP88-184-000 for the period July 1, 1988 through November 30, 1988.

El Paso states that on November 2, 1994, the Commission issued an order on rehearing of its June 16, 1994 order at Docket No. RP91-26-007, et al. El Paso states that ordering paragraph (B) permits El Paso to file revised rates to collect carrying charges on the take-or-pay costs included in its first Order No. 500 filing for the period July 1, 1988 through November 30, 1988.

El Paso states that it is tendering certain tariff sheets to revise its previously approved Throughput Surcharge and Monthly Direct Bill amounts for the indicated periods to collect carrying charges as authorized by the November 2, 1994 order.

El Paso states that the take-or-pay costs included in Docket No. RP88-184-000 were fully amortized over the period December 1, 1988 through March 31, 1992. El Paso will charge the previously unbilled portion of the restated take-or-pay Throughput Surcharge and Direct Bill amounts to those customers that paid the Throughput Surcharge and Direct Bill amounts during the December 1988 through March 1992 period. El Paso states that following the Commission's acceptance of the tendered tariff sheets, it will bill each affected customer its portion of the revised charges as a one-time charge on the customer's next normally scheduled monthly invoice including interest calculated in accordance with Section 154.67(c)(2)(iii) of the Commission's Regulations. El Paso will furnish a report to the Commission and affected customers providing the amounts that each customer was billed.

El Paso states that it is requesting waiver of the notice requirement of Section 154.22 of the Commission Regulations pursuant to Section 154.22 of the Commission Regulations pursuant to Section 154.51 to allow the tendered tariff sheets to become effective on their indicated dates as permitted by the Commission's November 2, 1994 Order on Rehearing.

El Paso states that copies of the filing were served upon all interstate pipeline system customers of El Paso and all interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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 December 29, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–31838 Filed 12–27–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–397–003]

K N Interstate Gas Transmission Co.; Notice of Filing

December 21, 1994.

Take notice that on December 16, 1994, K N Interstate Gas Transmission Co. tendered for filing with the Federal Energy Regulatory Commission Revised Tariff Sheets in compliance with the Commission's December 6, 1994 Letter Order in the above docket.

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 the Rule 211 of the Commissions' Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed before December 29, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–31840 Filed 12–27–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–94–000]

NorAm Gas Transmission Co.; Notice of Filing

December 21, 1994.

Take notice that on December 16, 1994, NorAm Gas Transmission Company (NGT) tendered for filing, pursuant to section 4 of the Natural Gas Act, a notice of termination of gathering service, and a default contract that will apply to gathering service provided by NorAm Field Services Corp. ("Field Services") upon the transfer of NGT's gathering facilities to Field Services. NGT states it was ordered to make this filing in an order on rehearing issued December 2, 1994, in Docket Nos. CP94–36–001 and CP94–36–003,[1] and that a similar default contract has been filed by NGT in Docket No. CP94–628–001, and by NorAm Field Service Corporation in Docket No. CP94–36–004.

NGT states that in accordance with the Commission's regulations, a copy of the cover letter to the filing and its attachments has been mailed to all of NGT's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 285.211). All such motions or protests should be filed on or before December 28, 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. 94–31841 Filed 12–27–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–634–000]

Pennsylvania Power & Light Company; Notice of Filing

December 15, 1994

Take notice that on December 8, 1994, Pennsylvania Power & Light Company (PP&L), tendered for filing as initial rate schedules four agreements with various shopping centers within its certified territory for sale of electricity, which the shopping centers then resell it to their tenants. Because the sales concerned are considered retail sales by the Pennsylvania Public Utility Commission (PPUC) and are conducted under retail rate schedules approved by the PPUC, PP&L requests that the Commission disclaim jurisdiction over these agreements. In accordance with the Commission's recently announced policy in the filing of jurisdictional service agreements, PP&L requests the Commission to make these agreements effective as of the date of filing.

PP&L states that copies of the filing were served on the shopping centers concerned.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 30, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–31899 Filed 12–27–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–119–000]

Steuben Gas Storage Co.; Notice of Application

December 21, 1994.

Take notice that, on December 13, 1994, Steuben Gas Storage Company (Steuben), 500 Renaissance Center, Detroit, Michigan 48243, filed an application in Docket No. CP95–119–000, pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 and Part 284 of the Commission's regulations, for a certificate of public convenience and necessity: (1) authorizing Steuben to acquire, develop, construct, and operate an underground gas storage field and related facilities, in order to provide open-access firm and interruptible storage services; (2) issuing a blanket certificate under Subpart F of Part 157 of the Commission's regulations, authorizing Steuben to construct and operate certain facilities under Section 7 of the NGA; (3) issuing a blanket certificate under Subpart G of Part 284 of the Commission's regulations, authorizing Steuben to render firm and interruptible natural gas storage service on a self-implementing basis, at market-based rates, and with pre-granted abandonment authority from the new storage field; (4) authorizing Steuben to sell storage base gas in-place to those customers who want to purchase such gas rather than pay Steuben a base gas surcharge; and (5) waiving the requirement under Section 284.8(d) of the regulations, that the reservation fee for all Section 284 storage services recover all fixed costs based on the straight fixed-variable rate design methodology, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

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[1] Arkla Gathering Service Co., 69 FERC ¶ 61,280 (1994).

The field Steuben seeks to develop as a gas storage field is the Thomas Corners Field, in Steuben County, New York. Steuben's proposal calls for the field to hold up to 5.3 Bcf of working gas capacity, in order to provide open-access firm and interruptible storage services to its customers, with firm storage services ranging from 50-day to 126-day service. Steuben proposes tariff provisions that would allow its firm and interruptible storage customers to inject or withdraw gas year round, release capacity, transfer gas in-place, and receive overrun service. In addition, each customer would have the opportunity to provide its proportionate share of the required injected base gas, or pay a base gas surcharge for the base gas otherwise provided by Steuben.

Steuben intends to utilize the requested construction certificate for the re-working and operation of two natural gas production wells, the drilling, completion, and operation of eleven new injection/withdrawal wells; and the construction and operation of a gathering system, injection/withdrawal facilities, and a 3,300 horsepower compressor station (with all ancillary facilities).

Any person desiring to be heard, or to make any protest with reference to said application should, on or before January 11, 1995, file with the Federal Energy Regulatory Commission, Washington, DC, 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application, if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity If a motion for leave to intervene is timely filed, or the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Steuben to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–31842 Filed 12–27–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–93–000]

Stingray Pipeline Co.; Notice of Request for Extension of Time

December 21, 1994.

Take notice that on December 16, 1994, Stingray Pipeline Company (Stingray) tendered for filing a request to extend its experimental market-based interruptible rate program (program) for a further one-year period under the same terms and conditions applicable to its currently effective program, except for the revenue crediting mechanism (RCM). Stingray states that the RCM has been eliminated from Stingray's tariff, pursuant to the order issued July 29, 1994 in Docket No. RP94–301

Stingray requests the Commission (1) to extend the program for a further one-year period on an experimental basis; (2) to decline to consolidate this filing with Stingray's ongoing rate proceeding and (3) to grant a waiver to permit Stingray to file this request extension three days out of time.

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 Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before December 28, 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. 94–31839 Filed 12–27–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

Pursuant to section 109.b. and section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the transfer of 125 kilograms of zircaloy tubes of United States original from the Federal Republic of Germany to the Elektrostal Nuclear Fuel Fabrication Facility, Moscow, Russia for test fabrication of fuel rods and assemblies. The fuel rods and assemblies will be returned to Siemens AG in the Federal Republic of Germany. Russia has provided assurances that these materials will not be used for any military or nuclear explosive use and that the materials will not be retransferred to the jurisdiction of any other nation or group of nations except to the Federal Republic of Germany without the prior consent of the United States. Russia, as the successor state to the Soviet Union committed to the Soviet Union's voluntary offer agreement with the International Atomic Energy Agency for the application of safeguards.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on December 20, 1994.

Edward T. Fei,

Acting Director, International and Regional Security Division, Office of Arms Control and Nonproliferation.

[FR Doc. 94–31949 Filed 12–27–94; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Basic Energy Sciences Advisory Committee; Notice of Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Date and Time: January 17, 1995—8:00 a.m.–5:00 p.m.; January 18, 1995—8:00 a.m.–5:00 p.m.;

Place: U.S. Department of Energy, James Forrestal Building, Room 1E-245, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Contact: Iran L. Thomas, Department of Energy, Office of Basic Energy Sciences (ER-10), Office of Energy Research, Washington, D.C. 20585, Telephone: 301-903-3081.

Purpose of the Committee: To provide advice on a continuing basis to the Department of Energy (DOE) on the many complex scientific and technical issues that arise in the planning, management, and implementation of the research program for the Office of Basic Energy Sciences (BES).

Tentative Agenda: Briefings and discussions of:

January 17, 1995

- Overview of Office of Energy Research
- Reports by Office of Basic Energy Sciences Division Directors
- Panel on Accelerators
- Panel on the Value of Basic Research
- Presentation on Activities of the Health & Environmental Research Advisory Committee
- Search Committee for the New Associate Director for Basic Energy Sciences
- Public Comment (10 Minute Rule)

January 18, 1995

- Panel on Major User Facilities
- Presentation on Administration's Initiatives on Sustainable Future, Partnership for New Generation Vehicles, and Environmental Technologies
- 1993/94 BESAC Report
- Public Comment (10 Minute Rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Iran L. Thomas at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on December 22, 1994.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 94-31950 Filed 12-27-94; 8:45 am]

BILLING CODE 6450-01-M

Southeastern Power Administration

Notice of Issuance of Final Power Marketing Policy, Georgia-Alabama-South Carolina System of Projects

AGENCY: Southeastern Power Administration (Southeastern), Department of Energy.

ACTION: Notice.

SUMMARY: The Administrator has adopted the attached Final Power Marketing Policy for Southeastern's Georgia-Alabama-South Carolina (Ga-Ala-SC) System of Projects. It will be effective upon publication in the **Federal Register** and will be applicable to the sale of system power when contracts can be negotiated. The policy was developed in accordance with Southeastern's Procedure for Public Participation in the Formulation of Marketing Policy published in the **Federal Register** on July 6, 1978, 43 FR 29186. The process was initiated by the Administrator with a decision that a new written marketing policy for the Ga-Ala-SC System of Projects was needed. A Notice of Intent to Formulate Power Marketing Policy was subsequently published in the **Federal Register** on September 8, 1993, 58 FR 47273, requesting, among other things proposals and recommendations for consideration by Southeastern.

On July 11, 1994, a Proposed Power Marketing Policy for the Ga-Ala-SC System of Projects was published in the **Federal Register**, 59 FR 35332. Seven comments were received relative to the proposed policy. Public Comment Forums were held in Columbia, South Carolina on September 12, 1994 and in Atlanta, Georgia on September 14, 1994. Comments were requested to be provided to the Administrator prior to September 30, 1994. Several consultations were held with representatives of entities or groups of entities interested in the proposed policy. Additionally, a number of conferences were held with representatives of the electric power companies in the area and the Southeastern Federal Power Customers, Inc. to consider matters inherent in facilitating whatever policy might be finally adopted. All of the responses and comments from whatever source and within whatever timeframe were considered.

Thereafter, a Southeastern staff committee was selected by the Administrator to prepare a Staff Evaluation of all oral and written comments and responses received by Southeastern. The Staff Evaluation was completed on November 30, 1994.

Following the Staff Evaluation, the Administrator decided to adopt the policy as modified.

SUPPLEMENTARY INFORMATION: The Final Power Marketing Policy sets forth the guidelines which Southeastern will follow in the future disposition of power from the Ga-Ala-SC System. The policy covers power from the Allatoona, Buford, Carters, J. Strom Thurmond, Hartwell, Robert F. Henry, Millers Ferry, Walter F. George, West Point and Richard B. Russell projects. The policy establishes the marketing area for system power and deals with the allocation of power to area preference customers. It also deals with utilization of area utility systems for essential purposes, wholesale rates, and energy and economic efficiency measures.

An Environmental Assessment and a Finding of No Significant Impact for the proposed policy was approved by the Assistant Secretary, Environment, Safety and Health on June 9, 1994, and is available at Southeastern's headquarters.

A recital of the primary comments regarding the proposed marketing policy brief responses of explanations to those comments, and specific decisions and changes in the proposed marketing policy approved by the Administrator, precede the text of the final policy as adopted.

Issued at Elberton, Georgia: December 8, 1994.

John A. McAllister, Jr.,

Administrator.

Final Power Marketing Policy Georgia-Alabama-South Carolina System of Projects

Introduction. The efforts to develop a new written power marketing policy for Southeastern Power Administration's (Southeastern) Ga-Ala-SC System of Porjects began on September 8, 1993. Southeastern has followed the step by step requirements of its Procedure for Public Participation in Formulation of Marketing Policy published in the **Federal Register** on July 6, 1978, 43 FR 29186. Numerous public comments have been received and evaluated. This public input, offered in an orderly and timely fashion, was carefully considered in the decision making process.

Purpose and Legal Authority. The purpose of the policy is to establish with public input written guidelines which Southeastern will follow in the future to reasonably and equitably carry out the statutory requirements set forth in section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s. Southeastern's authority to formulate the policy and perform these functions is derived from

section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152, and delegations pursuant thereto.

Reasons for Marketing Policy. The current marketing policy became effective on October 1, 1980 and the earliest contracts executed under the marketing policy commenced at midnight, January 31, 1985. Contracts negotiated under the existing marketing policy in the states of Alabama, Florida, Georgia, and Mississippi were scheduled to expire on May 31, 1994, but have been extended to expire on January 31, 1995. Contracts negotiated under the policy in the states of North and South Carolina expire at midnight, September 30, 1995. Because of the expiration of contracts as well as DOE requirements for implementation of the National Environmental Policy Act (NEPA) and the Energy Policy Act of 1992 which is causing changes in the electric industry, it was determined that a new marketing policy should be formulated.

Primary Comments and Responses. The primary comments to the proposed marketing policy were:

1. *Comment:* We have serious concern about an energy commitment exceeding 2½ hours use per day, on average. Overcommitment during drought conditions will severely impact reservoir levels and will adversely impact all users of the system. Limit contracts to a one year or interim contract pending the results of the Apalachicola-Chattahoochee-Flint/Alabama-Coosa-Tallapoosa (ACF/ACT) Comprehensive Water Resources Study.

Response: The U.S. Army Corps of Engineers (Corps or Corps of Engineers), taking into effect the minimum quantity of water needed for electric generation, navigation, water quality, etc., determines the quantity of water (energy) available for generation purposes. Energy is allocated to customers on a percentage of energy available basis taking into consideration that minimum quantities of energy are required to make peaking capacity usable. Provisions to accommodate congressionally mandated project operational changes which impact power production at the Federal projects will be included in the implementing contracts for this power marketing policy. Assuming that releases will be scheduled by the Corps in accordance with criteria established by the results of the ACF/ACT study, it was determined that a temporary contract would serve no useful purpose.

2 *Comment.* Existing preference customers within the marketing area should retain their present allocations of capacity and essentially the same energy accompaniment.

Response: For the purposes of this power marketing policy, Southeastern agrees that existing preference customers should retain their present allocations of capacity and essentially the same energy accompaniments.

3. *Comment:* The City of Oxford, Georgia, contends it should receive an allocation of "existing" power as well as an allocation of any future power. The City purchased its power from a neighboring municipality when the existing allocation of power was made. The City of Oxford received its "allocation" as part of the allocation of the municipality through which it was purchasing its power. When the City of Oxford changed its power source it no longer received an "allocation" of power. Now that the contracts are to be re-negotiated, the City of Oxford should receive an allocation of Government power in its own right.

Response: After reviewing the previous power marketing policy allocation process as applied to the City of Oxford, it has been determined that an allocation of existing power can be made to the City of Oxford. Utilizing the need to schedule generation in whole megawatt increments and the available capacity operating margin, it has been determined that capacity is available in the system to provide an allocation of power to the City of Oxford. This determination, however, is independent of and should not be considered a precedent with regard to the establishment of a marketing policy addressing allocation portability. The issue of allocation portability is currently under examination by Southeastern. (See Comment 4)

4. *Comment:* A current preference customer's allocation of SEPA power should be freely transferable from one transmission system to another.

Response: This is a very complex issue involving the nature of peaking power, different system control areas, transmission systems, industry standards, duplication of allocation, etc. Southeastern has determined that, because of the complexity of the issue, a separate marketing policy is needed to address this issue.

5. *Comment:* The Marketing Policy should include a statement that pricing for transmission integration service will conform to Federal Energy Regulatory Commission (FERC) principles that develop through implementation of the National Energy Policy Act of 1992.

Response: Southeastern has no transmission system of its own. Transmission is arranged through negotiated transmission contracts with area utilities. Southeastern has always and will continue to consider and utilize FERC guidance, however, any specific contract language will have to be viewed in the context of overall contract negotiations.

6. *Comment:* Southeastern's wholesale rates need to continue to be cost based rates.

Response: Southeastern will continue to use cost based rates, subject to Congressional, FERC, and Department of Energy mandates.

7. *Comment:* The Policy should allow for contracts with terms up to 20 years. Not all contracts should be 20 years in length, merely allow for such contract terms if appropriate.

Response: Southeastern agrees that this action will give maximum flexibility in the negotiation of contracts under this policy, and will allow for contracts to be entered into for a term greater than 10 years if necessary or if found desirable during contract negotiations.

8. *Other Comment:* It is imperative that new contracts permit real time scheduling of preference customers Southeastern declarations by the Generation and Transmission (G&T) cooperatives and public power joint action agencies for the benefit of their participants which are preference customers. Southeastern should offer both unreserved, non-firm capacity and energy and reserved, firm capacity and energy to its current preference customers as a choice. A storage arrangement to be able to maximize utilization of the available water is needed. A rating based on average water year (not adverse water year) should be used.

Response: Southeastern considers these diverse comments to be issue related to future contract negotiations to implement this policy. Traditionally, Southeastern has negotiated contracts in close coordination and consultation with our customers; Southeastern intends to continue this practice.

Changes or revisions in proposed marketing policy. It was determined to allocate existing power to the City of Oxford, Georgia, as well as to provide for an allocation of any future power which might become available (See Comment 3). It was determined to allow for contracts to be entered into for a period of time greater than 10 years if necessary or if found desirable during contract negotiations (see comment 7). It was also determined to have a separate power marketing policy on the portability of a power allocation. (See Comment 4)

The Resale Rate section has been eliminated and will be addressed in the

forthcoming power marketing policy for portability of allocations of power to preference customers. A new section, Transfer of Preference Customer Allocation Between Utility Service Areas, has been added.

Final Power Marketing Policy, Georgia-Alabama-South Carolina System of Projects

General. The projects and power subject to this policy are:

Projects	Capacity (kw) (name-plate)	Energy (mwh) (average annual)
Allatoona	74,000	156,000
Buford	86,000	193,000
Carters:		
(1)	250,000	*198,000
(2)	250,000	.....
J. Strom Thurmond	280,000	729,000
Hartwell	344,000	483,000
Robert F. Henry	68,000	343,000
Millers Ferry	75,000	397,000
Walter F. George	130,000	436,000
West Point	73,375	208,000
Richard B. Russell:		
(1)	300,000	*484,000
(2)	340,000	.....

(1) Carters has 2 generating units rated at 125,000 kw each. Russell has 4 generating units rated at 75,000 kw each.

(2) Carters has 2 pumping units rated at 125,000 kw each. Russell has 4 pumping units rated at 80,000 kw each. Based upon latest test information.

*Natural stream flow energy only.

There will be one policy for the Ga-Ala-SC System of Projects progressively implemented. It will become effective upon publication in the **Federal Register** and will be applicable to the sale of system power in respective utility areas as then existing contracts, or necessary extensions, expire.

The policy will be implemented through negotiated contracts for terms of approximately 10 years, but may be negotiated for terms of up to 20 years if found desirable or necessary.

Transmission facilities owned by utilities within the marketing area will be used for all necessary purposes including transmitting power to load centers. Deliveries may be made at the projects, at utilities interconnections or at customer substations, as determined by Southeastern. The projects will be hydraulically, electrically, and financially integrated, and will be operated to make maximum contribution to the power supply of the selected utility areas. Preference in the sale of the power shall be given to public bodies and cooperative.

Marketing area. The marketing area shall consist of the approximate 112,000 square mile area generally known as The Southern Company service area, and the approximate 40,000 square mile area generally known as the service areas of the South Carolina Public Service Authority and the South Carolina Electric and Gas Company plus that portion of the Duke Power Company's service area within a radius of 150 miles of the Hartwell, Russell or Thurmond projects. Eligible public bodies and cooperatives in this marketing area are listed in Appendix A attached hereto.

Allocations of Existing Power. Existing power available under this policy for allocation from the Ga–Ala–SC System will primarily be peaking power. The power will be allocated as follows subject to possible future adjustments to conform to a power marketing policy regarding portability of allocation, change of power suppliers, change of control areas, scheduling requirements, or other relevant factors pertaining to portability of allocations:

Customer	KW
Alabama Electric Cooperative	91,000
South Carolina Public Service Authority	215,000
South Mississippi Electric Power Association	61,000
Customers in Duke Power Company service area	238,000
Customers in S.C. Electric & Gas Co. service area	16,000
Customers in The Southern Company service area (including Oxford, GA)	*1,298,000

* Increased for scheduling purposes.

Except where duplication of allocation would result, each public body and cooperative within the marketing areas as shown in Appendix A will be eligible for an allocation of existing power. Existing preference customers within the marketing area will retain their present allocations of capacity and essentially the same energy accompaniment. The City of Oxford, Georgia, will receive an allocation of existing power. It is Southeastern's goal to allocate all available and useful system power (that power remaining after provision for an appropriate capacity operating margin and losses) to preference customers, except power that may be used for pumping.

Allocation of Power From Russell Pumped Storage Units. Currently, pump generator units at the Richard B. Russell Project are undergoing a series of environmental tests to meet the requirements of an injunction imposed by the U.S. District Court in the case of South Carolina Department of Wildlife and Marine Resources v. Marsh et al, 866 F.2d 97 (4th Cir 1989). The first opportunity for commercial operation of the pumping units is after the completion of these tests. The environmental tests and schedules were agreed upon by the Corps of Engineers and the party litigants, and the results of the tests must be approved by the district court before the units become commercially available. Should pumped storage units at the Russell project become commercially available during the tenure of contracts implementing this policy, after the approval of the district court, after further mitigating modifications required by environmental concerns, or by any other means, Southeastern will allocate this additional power to those preference customers identified in the Power Marketing Policy for the Ga–Ala–SC System of Projects promulgated on October 1, 1980 in the **Federal Register** (45 FR 65140) and the City of Oxford, Georgia. The Russell pumped storage power will be allocated as follows subject to possible future adjustments to conform to a power marketing policy regarding portability of allocation, change of power suppliers, change of control areas, scheduling requirements, or other relevant factors pertaining to portability of allocations:

Customer	KW
Alabama Electric Cooperative	9,000
South Carolina Public Service Authority	60,000
South Mississippi Electric Power Association	7,000
Customers in Duke Power Company service area	65,000
Customers in S.C. Electric & Gas Co. service area	5,000
Customers in The Southern Company service area (including City of Oxford)	114,000

Adequate capacity may be retained to provide an appropriate capacity operating margin. Russell pumped storage capacity is predicted at this time on testing accomplished to date and reflects the best estimate at this time. Energy accompaniment to the pumped storage capacity will be sufficient to provide viable peaking capacity.

Power From Pumped Water. Southeastern will utilize its combination pumped storage and generation resources to produce high-value on-peak power. Pumping power, whether generated within the system of projects or obtained by purchasing or exchange agreement, will be used in pumped storage operations, at Southeastern's discretion. Should the purchase alternative be selected, Southeastern will obtain pumping energy from utilities offering the best terms, and/or resulting in the most

benefits to the system. Should the exchange alternative be selected, pumped storage operations will be handled with public bodies, cooperatives and the utilities in a manner not involving the direct purchase and sales approach, with preference given to public bodies and cooperatives.

Utilization of Utility Systems. In the absence of transmission facilities of its own, Southeastern will use area generation and transmission systems to integrate the Government's projects, provide firming, wheeling, exchange and backup services and such other functions as may be necessary to dispose of system power under reasonable and acceptable marketing arrangements. Utilities systems providing such services shall be entitled to adequate compensation. Specific terms and conditions of all such arrangements shall be the subject of negotiations between Southeastern and the generation and transmission utilities providing the services. Individual preference agencies directly affected by the negotiations shall, through representatives selected at the outset of negotiations, be kept currently advised on the status and progress of negotiations. Southeastern also will consult with and seek advice from these affected parties.

Wholesale Rates. Rate schedules shall be drawn to recover all costs associated with producing and transmitting the power in accordance with then current repayment criteria. Production costs will be determined on a system basis and rate schedules will relate to the integrated output of the projects. Rate schedules may be revised periodically.

Energy and Economic Efficiency Measures. Each customer who purchases Southeastern's power is encouraged to participate in an integrated resource plan that considers both supply and demand side alternatives. It is recognized that some Southeastern customers are members of a power supply organization that does resource planning for its customers (i.e., power supply cooperatives and joint action agencies). Where a customer, or a power supply organization that does resource planning for a Southeastern customer, is responsible to a regulatory body or another Government agency for an integrated resource plan, the customer will make a copy of such integrated resource plan available to Southeastern. All Southeastern customers shall agree to encourage the efficient use of energy by ultimate customers.

Transfer of Preference Customer Allocation Between Utility Service Areas. This subject is being examined for formulation of a proposed marketing policy on power allocation portability. Until such time as a policy is established, Southeastern intends to include a clause in any contract negotiated under this policy to leave this matter open for negotiation after a policy has been established.

Appendix A.—Preference Agencies in the Georgia-Alabama-South Carolina System Area

Distribution—Type Preference Agencies

Alabama

Alexander City, Dothan, Evergreen, Fairhope, Foley, Hartford, LaFayette, Lanett, Luverne, Opelika, Piedmont, Robertsdale, Sylacauga, Troy, Tuskegee, Baldwin County EMC, Black Warrior EMC, Central Alabama EC, Clarke-Washington EMC, Coosa Valley EC, Dixie EC, Pea River EC, Pioneer EC, Tallapoosa River EC, Tombigbee EC, Wiregrass EC.

Florida

Choctawhatchee EC, West Florida ECA.

Georgia

Acworth, Adel, Albany, Barnesville, Blakely, Brinson, Buford, Cairo, Calhoun, Camilla, Cartersville, College Park, Commerce, Covington, Dalton, Doerun, Douglas, East Point, Elberton, Ellaville, Fairburn, Fitzgerald, Forsyth, Fort Vallley, Grantville, Griffin, Hampton, Hogansille, Jackson, LaFayette, LaGrange, Lawrenceville, Mansfield, Marietta, Monroe, Monticello, Moultrie, Newnan, Norcross, Oxford, Palmetto, Quitman, Sandersville, Sylvania, Sylvester, Thomaston, Thomasville, Washington, West Point, Whigham, Crisp County Power Commission, Altamaha EMC, Amicalola EMC, Canoochee EMC, Carroll EMC, Central Georgia EMC, Coastal EMC, Cobb EMC, Colquitt EMC, Coweta-Fayette EMC, Excelsior EMC, Flint EMC, Grady EMC, GreyStone Power Corporation, Habersham EMC, Hart EMC, Irwin EMC, Jackson EMC, Jefferson EMC, Lamar EMC, Little Ocmulgee EMC, Middle Georgia EMC, Mitchell EMC, Ocmulgee EMC, Oconee EMC, Okefenoke REMC, Pataula EMC, Planters EMC, Rayle EMC, Satilla Rural EMC, Sawnee EMC, Slash Pine EMC, Snapping Shoals EMC, Sumter EMC, Three Notch EMC, Tri-County EMC, Troup EMC, Upson County EMC, Walton EMC, Washington EMC.

Mississippi

Coast EPA, East Mississippi EPA, Singing River EPA.

North Carolina

Bostic, Cherryville, Concord, Cornelius, Dallas, Drexel, Forest City, Gastonia, Granite Falls, Huntersville, Kings Mountain, Landis, Lincolton, Maiden, Monroe, Morgantown, Newton, Pineville, Shelby, Stateville, Blue Ridge EMC, Crescent EMC, Haywood EMC, Pee Dee EMC, Rutherford EMC, Union EMC.

South Carolina

Abbeville, Bamberg, Clinton, Due West, Easley, Gaffney, Georgetown, Greenwood, Greer, Laurens, McCormick, Newberry, Orangeburg, Prosperity, Seneca, Rock Hill, Union, Westminster, Winnsboro, S.C. Public Service Authority,[1] Blue Ridge EC, Broad River EC, Laurens EC, Little River EC, York EC.

Publicly-Owned Wholesale Power Supply Agencies

Alabama Electric Cooperative, South Mississippi Electric Power Association. Central Electric Power Cooperative (S.C.), on behalf of Aiken EC, Berkeley EC, Black River EC, Coastal EC, Edisto EC, Fairfield EC, Horry EC, Lynches River EC, Marlboro EC, Mid-Carolina EC, Newberry EC, Palmetto EC, Pee Dee EC, Santee EC and Tri-County EC.22.

[FR Doc. 94–31948 Filed 12–27–94; 8:45 am]
BILLING CODE 6150–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5129–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost burden.

DATES: Comments must be submitted on or before January 27, 1995.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

[1] Also operates generation and transmission facilities and serves at wholesale.

Office of Water

Title: 1994 Screener Questionnaires for the Transportation Equipment Cleaning Industry (EPA ICR #1733.01).

Abstract: This is a new survey to support the development of technology-based effluent limitations guidelines for the transportation equipment cleaning industry (TECI). The development of effluent guidelines is part of a program established under the Federal Water Pollution Control Act of 1972, to "restore and maintain the chemical, physical and biological integrity of the Nation's waters". The development of the limitations has been placed under a court ordered schedule that requires the EPA to propose guidelines by 1996 and promulgate guidelines by 1998. The survey is being administered to a sample of the TECI population selected on the basis of data obtained from two screener questionnaires (EPA ICR No. 1660.01; OMB Control No. 2040–0166) administered earlier this year. The information is needed to ensure that guidelines are developed that accurately reflect the full set of regulatory options that may be available. Responses to this survey will be mandatory pursuant to section 308 of the Clean Water Act.

Upon approval of this ICR, the survey will be sent by mail to owners/operators of TECI operations to gather information that includes:

(1) TECI processes;

(2) water use and wastewater characteristics, and current sludge disposal and waste minimization practices;

(3) market characteristics, production levels and costs of TEC services;

(4) financial information including balance sheet and income statements;

(5) non-TECI facility activities; and (6) number of employees.

The information will be used by the EPA to properly characterize, classify and subcategorize the TECI population to perform economic, technical, and regulatory analyses for the development of the effluent guidelines.

Burden Statement: Public reporting burden for this collection of information is estimated to average 189 hours per response including time for reviewing instructions, gathering and compiling the data needed, and completing and reviewing the surveys.

Respondents: Owners/operators of transportation cleaning businesses.

Estimated Number of Respondents: 300 owners/operators.

Estimated Number of Responses per Respondent: 1.

Frequency of Collection: One-time.

Estimated Total Annual Burden on Respondents: 56,700 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch, 401 M. St. SW., Washington, DC 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: December 19, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–31938 Filed 12–27–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5129–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 27, 1995.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxics

Title: Use and Exposure Information Voluntary Project. (EPA ICR No.: 1734.01). This is a new collection.

Abstract: EPA will collect, from members of the chemical industry, use and exposure information on chemical substances in commerce that are subject to OPPT's Risk Management (RM) review process. Members of the chemical industry will report data on exposures at manufacturing sites as well as information on subsequent exposures by users of the substances in commerce.

Participation is strictly voluntary; however, EPA anticipates a high response rate because of the active participation of the major chemical industry trade associations in the development of the questionnaire.

EPA will use the information collected under this ICR to meet their responsibility under the Existing Chemicals Program to screen, assess and develop strategies for managing risks posed by chemical substances in commerce.

Burden Statement: Burden for this collection of information is estimated to average 10 hours per respondent for reporting. There is no recordkeeping requirement. This estimate includes the time needed to review instructions, gather and submit the information, and report the information.

Respondents: Manufacturers and importers of chemical substances.

Estimated number of respondents: 120 respondents.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 1,200 hours.

Frequency of collection: Twice a year.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, S.W., Washington, D.C. 20460

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: December 22, 1994.

Jane Stewart,

Acting Director, Regulatory Management Division.

[FR Doc. 94–31934 Filed 12–27–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5129–9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 27, 1995.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260–2740

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Asbestos-Containing Materials in Schools Rule and Asbestos Model Accreditation Plan Rule (MAP) (EPA ICR No. 1365.04; OMB No. 2070–0091). This is a request for renewal of a currently approved information collection.

Abstract: The Asbestos-Containing Materials in Schools Rule and Asbestos Model Accreditation Plan Rule (MAP) requires Local Education Agencies (LEAs) to inspect school buildings for friable and non-friable asbestos. The LEAs must also design and conduct response actions with respect to the presence of asbestos-containing materials in school buildings. The LEAs are also required to develop and implement asbestos management plans which must include an accreditation plan at least as stringent as the accreditation plan developed by EPA. Asbestos abatement workers and laboratories performing asbestos analysis, must be accredited under the States' approved plan.

In terms of reporting burden, the States are required to prepare and submit to EPA an application for program approval. Training providers are required: (1) to submit one-time self-certification letters to EPA, and (2) to record their training activities, and to report these to the States. The LEAs have no reporting requirements.

In terms of recordkeeping requirements, the LEAs must keep original inspection records, as well as any subsequent inspection reports. They must also keep management planner recommendations; response action records; and records of fiber release episodes, periodic surveillance, workers' training, and any operation and maintenance activities. The States use the information to ensure compliance with the Federally mandated asbestos rule.

Burden Statement: The burden for this collection of information is estimated to average 16 hours per response for reporting and 22 hours per recordkeeper annually. This estimate includes the time needed to review instructions, develop a recall plan, create and gather data, and review and store the information.

Respondents: Individual schools or local education agencies (LEAs); persons involved in inspecting for asbestos, developing asbestos management plans, or designing or conducting asbestos response actions; and state agencies.

Estimated No. of Respondents: 108,000.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,390,000 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460,
and
Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: December 22, 1994.

Jane Stewart,

Acting Director, Regulatory Management Division.

[FR Doc. 94–31935 Filed 12–27–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5129–9]

Transfer of Confidential Business Information to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of Transfer of Data and Request for Comments.

SUMMARY: EPA will transfer Confidential Business Information (CBI) to its contractor SAIC, Inc., and its subcontractor: ICF, Inc., Lockheed Analytical Services, Appl, DPRA, Inc., Research Triangle Institute, Radian Corp., Hazmed and Huntington-Twin City Testing. The Confidential Business Information (CBI) has been or will be submitted to EPA under Section 3007 of the Resource Conservation and Recovery Act (RCRA). Under RCRA, EPA is involved in activities to support, expand and implement solid and hazardous waste regulations.

DATE: Transfer of confidential data submitted to EPA will occur no sooner than January 9, 1995.

EFFECTIVE DATE: Comments should be sent to Margaret Lee, Document Control Officer, Office of Solid Waste (5303), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Margaret Lee, Document Control Officer, Office of Solid Waste (5305), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 202–260–3410.

SUPPLEMENTARY INFORMATION:

1. Transfer of Confidential Business Information

Under EPA Contract 68–W4–0042, SAIC, Inc., and its subcontractors will assist the Characterization and Assessment Division, Office of Solid Waste, by providing technical support for: the completion of hazardous waste listing determinations, the review of petitions to delist hazardous waste, the definition of hazardous waste characteristics, the development of the hazardous waste identification rule, and the development of rules and reports pertaining to the definition of solid waste, medical waste, used oil, waste generation and transportation, and universal waste. SAIC, Inc., and its subcontractors will need access to CBI submitted to the Office of Solid Waste to complete this work. Specifically, the SAIC, Inc. and its sub-contractors need access to the CBI that EPA collected with the Petroleum Refinery Survey in 1994, the National Survey of Hazardous Waste Generators in 1986, and the Industries Studies Survey in 1992. Also, the contractor will need access to CBI submitted for the Toxics Release Inventory. SAIC, Inc., and its sub-contractors will use the information to develop inputs to risk assessment models for predicting the fate and transport of contaminants from solid waste.

In accordance with 40 CFR 2.305(h), EPA has determined that SAIC, Inc., and its subcontractors require access to CBI submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is submitting this notice to inform all submitters of CBI of EPA's intent to transfer CBI to these firms on a need-to-know basis. Upon completing their review of materials submitted, SAIC, Inc., and its subcontractors will return all CBI to EPA.

EPA will authorize SAIC, Inc., and its subcontractors for access to CBI under the conditions and terms in EPA's "Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual." Prior to transferring CBI and SAIC, Inc. and its sub-contractors, EPA will review and approve their security plans and SAIC, Inc., and its subcontractors will sign non-disclosure agreements.

Dated: December 13, 1994.

Elliott P. Laws,

Assistant Administrator.

[FR Doc. 94–31933 Filed 12–27–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL-5130-2]

Gulf of Mexico Program Policy Review Board Meeting

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Meeting of the Policy Review Board of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program's Policy Review Board will hold a meeting at The Pontchartrain Hotel, 2031 St. Charles Avenue, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Lipka, Acting Director, Gulf of Mexico Program Office, Building 1103, Room 202, John C. Stennis Space Center, Stennis Space Center, MS 39529-6000, at (601) 688-3726.

SUPPLEMENTARY INFORMATION: A meeting of the Policy Review Board of the Gulf of Mexico Program will be held January 24, 1995, at The Pontchartrain Hotel, 2031 St. Charles Avenue, New Orleans, LA. The committee will meet from 8:30 to 4:30 p.m. Agenda items will include: Management Committee Report; Citizens Advisory Committee Report; Federal Participation Agreement for Gulf of Mexico Program; FY95 Project Funding Report; Proposed FY95 Schedule; Proposed FY96 Project Funding Process; Symposium Status Report; and Gulf of Mexico Business Council for Sustainable Development Presentation. The meeting is open to the public.

William D. Holland,

Acting Director, Gulf of Mexico Program.

[FR Doc. 94-31931 Filed 12-27-94; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5130-1]

Science Advisory Board Executive Committee; Notification of Public Advisory Committee Meeting Public Meeting

January 17-18, 1995.

Pursuant to the Federal Advisory Committee Act, Public law 92-463, notice is hereby given that the Science Advisory Board's (SAB) Executive Committee (EC) will conduct a meeting on Tuesday and Wednesday, January 17-18, 1994. The meeting will be held in the Administrator's Conference Room 1103 West Tower at the Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. On Tuesday, it will begin at 8:30 p.m. and adjourn not later than 5:00 p.m.; on Wednesday, it will begin at 8:30 a.m. and adjourn not later than 3:00 p.m. The meeting is open to the public and limited unreserved seating will be available.

The EC intends to review activities of and reports from its Committees, including the following: (a) Ecological Processes and Effects Committee (EPEC)—Review of Ecological Economic Modelling and Valuation of Ecosystems; (b) Environmental Health Committee (EHC)—Review of Agency's Reproductive Toxicity Guidelines; and (c) Environmental Health Committee (EHC)—Commentary on the Benchmark Dose.

Invited visitors include Deputy Administrator Fred Hansen, Deputy Assistant Administrator for Research and Development Joe Alexander, and representatives of the National Advisory Committee on Environmental Policy and Technology.

The Executive Committee will discuss the consequences of the Environmental Futures Project and plans for implementing some of the recommendations from the Report from the SAB Reinvention Committee, including the possibility for SAB workshops. In addition, they will be briefed on Agency's request for an SAB review of the Hazardous Waste Identification Rule.

Any member of the public wishing further information concerning the meeting or who wishes to submit comments should contact Dr. Donald G. Barnes, Designated Federal Official, Executive Committee, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460, or by phone at (202) 260-4126; FAX (202) 260-9232; or via the Internet at barnes.don@epamail.epa.gov.

Dated: December 16, 1994.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 94-31932 Filed 12-27-94; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180954; FRL-4922-5]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 16 States listed below. There were 14 crisis exemptions initiated by various States. These exemptions, issued during the months of April, May, June, July, August, September, and October 1994, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied four specific exemption requests. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703-308-8417).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Alabama Department of Agriculture and Industries for the use of tebufenozide on cotton to control beet armyworms; August 23, 1994, to September 30, 1994. (Margarita Collantes)

2. Arizona Department of Agriculture for the use of avermectin on lettuce to control leafminers; August 10, 1994, to August 9, 1995. (Larry Fried)

3. Arizona Department of Agriculture for the use of bifenthrin on fall melon crop to control the sweet potato, or silverleaf whitefly; August 11, 1994, to November 1, 1994. (Andrea Beard)

4. Arizona Department of Agriculture for the use of avermectin on melons to control leafminers; August 25, 1994, to August 24, 1995. Arizona had initiated a crisis exemption for this use. (Larry Fried)

5. Arizona Department of Agriculture for the use of bifenthrin on broccoli, cauliflower, cabbage, and lettuce to control the silverleaf whitefly; August 12, 1994, to May 15, 1995. (Andrea Beard)

6. Arizona Department of Agriculture for the use of imidacloprid on broccoli, cauliflower, cabbage, and lettuce to control the silverleaf whitefly; August 12, 1994, to May 15, 1995. A notice published in the **Federal Register** of July 27, 1994 (59 FR 38171). The situation was determined to be urgent and nonroutine, registered materials were not providing adequate control, and significant economic loss could occur if this pest is not adequately controlled. (Andrea Beard)

7. Arkansas Department of Agriculture for the use of fomesafen on snap beans to control weeds; June 1, 1994, to September 10, 1994. Arkansas

had initiated a crisis exemption for this use. (Larry Fried)

8. California Environmental Protection Agency for the use of imidacloprid on broccoli, cauliflower, cabbage, lettuce, and rapini to control the silverleaf whitefly; August 12, 1994 to April 30, 1995. A notice of receipt published in the **Federal Register** of June 22, 1994 (59 FR 32206). The situation was determined to be urgent and nonroutine, registered materials are not providing adequate control and significant economic loss could occur if this pest is not adequately controlled. (Andrea Beard)

9. California Environmental Protection Agency for the use of bifenthrin on broccoli, cauliflower, cabbage, lettuce, and rapini to control the silverleaf whitefly; August 12, 1994, to April 30, 1995. (Andrea Beard)

10. California Department of Pesticide Regulation for the use of methyl bromide on carrots to control nematodes; August 31, 1994, to August 30, 1995. (Libby Pemberton)

11. California Environmental Protection Agency for the use of avermectin on lettuce to control leafminers; August 10, 1994, to August 9, 1995. (Larry Fried)

12. California Environmental Protection Agency for the use of avermectin on tomatoes to control leafminers; July 20, 1994, to July 19, 1995. (Larry Fried)

13. California Environmental Protection Agency for the use of avermectin on bell peppers to control leafminers; August 19, 1994, to August 18, 1995. (Larry Fried)

14. California Environmental Protection Agency for the use of avermectin on melons to control leafminers; July 11, 1994, to November 1, 1994. (Larry Fried)

15. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of Pro-Gro (carboxim/thiram) on onion seed to control onion smut; September 7, 1994, to May 31, 1995. (Susan Stanton)

16. California Environmental Protection Agency for the use of esfenvalerate on sugar beets to control granulate cutworms; September 13, 1994, to March 1, 1995. (Andrea Beard)

17. Florida Department of Agriculture and Consumer Services for the use of imazethapyr on lettuce, escarol, and endives to control pigweed; September 1, 1994, to August 31, 1995. (Margarita Collantes)

18. Idaho Department of Agriculture for the use of pirimicarb on alfalfa grown for seed to control alfalfa aphid, pea aphid, and lygus bugs; June 13, 1994, to August 31, 1994. (Larry Fried)

19. Idaho Department of Agriculture for the use of avermectin on hops to control spider mites; April 22, 1994, to September 20, 1994. (Larry Fried)

20. Maryland Department of Agriculture for the use of metolachlor on spinach to control annual weeds; August 1, 1994, to April 1, 1995. (Margarita Collantes)

21. Montana Department of Agriculture for the use of pirimicarb on alfalfa grown for seed to control alfalfa aphid, pea aphid, and lygus bugs; August 3, 1994, to September 30, 1994. (Larry Fried)

22. Mississippi Department of Agriculture and Commerce Bureau for the use of tebufenozide on cotton to control beet armyworms; August 1, 1994, to September 7, 1994. (Margarita Collantes)

23. Nevada Department of Business and Industry, Division of Agriculture for the use of pirimicarb on alfalfa grown for seed to control alfalfa aphid, pea aphid, and lygus bugs; June 13, 1994, to August 31, 1994. (Larry Fried)

24. New York Department of Environmental Conservation for the use of fomesafen on snap beans to control weeds; June 15, 1994, to August 31, 1994. (Larry Fried)

25. Oklahoma Department of Agriculture for the use of fomesafen on snap beans to control weeds; June 1, 1994, to July 1, 1994. Oklahoma had initiated a crisis exemption for this use. (Larry Fried)

26. Oregon Department of Agriculture for the use of metolachlor on grasses grown for seed to control weeds and volunteer crop seedlings; September 9, 1994, to November 15, 1994. (Susan Stanton)

27. Oregon Department of Agriculture for the use of pirimicarb on alfalfa grown for seed to control alfalfa aphid, pea aphid, and lygus bugs; June 13, 1994, to August 31, 1994. (Larry Fried)

28. Oregon Department of Agriculture for the use of lactofen on snap beans to control weeds; May 31, 1994, to July 10, 1994. (Larry Fried)

29. Oregon Department of Agriculture for the us of avermectin on hops to control spider mites; April 22, 1994, to September 20, 1994. (Larry Fried)

30. Oregon Department of Agriculture for the use of oxyfluorfen on blackberries to control primocanes; April 5, 1994, to July 31, 1994. (Larry Fried)

31. Oregon Department of Agriculture for the use of pronamide on grass grown for seed to control grassy weeds and volunteer crop seedlings; August 18, 1994, to January 20, 1995. (Susan Stanton)

32. Oregon Department of Agriculture for the use of oxyfluorfen grass grown for seed to control grassy weeds and volunteer crop seedlings; August 18, 1994, to January 15, 1995. (Susan Stanton)

33. South Carolina Division of Regulatory and Public Service Programs, College of Agricultural Sciences, Clemson University, for the use of tralomethrin on tomatoes to control stinkbugs; September 30, 1994, to December 1, 1994. South Carolina had initiated crisis exemption for this use. (Andrea Beard)

34. Texas Department of Agriculture for the use of metolachlor on spinach to control weeds; August 1, 1994, to April 1, 1995. Texas had initiated a crisis exemption for this use. (Margarita Collantes)

35. Washington Department of Agriculture for the use of pirimicarb on alfalfa grown for seed to control alfalfa aphid, pea aphid, and lygus bugs; June 13, 1994, to August 31, 1994. (Larry Fried)

36. Washington Department of Agriculture for the use of avermectin on hops to control spider mites; April 22, 1994, to September 20, 1994. (Larry Fried)

Crisis exemptions were initiated by the:

1. Arkansas State Plant Board on August 24, 1994, for the use of paraquat on grain sorghum to control weedy vegetation. This program has ended. (Susan Stanton)

2. Colorado Department of Agriculture on August 25, 1994, for the use of cypermethrin on green onions to control leafminers. This program has ended. (Libby Pemberton)

3. Georgia Department of Agriculture on August 3, 1994, for the use of iprodione on canola to control alternaria *brassicicole*. This program has ended. (Libby Pemberton)

4. Illinois Department of Agriculture on June 22, 1994, for the use of fomesafen on lima beans to control puncture vine and black nightshade. This program has ended. (Larry Fried)

5. Louisiana Department of Agriculture and Forestry on October 7, 1994, for the use of metolachlor on spinach to control annual weeds. This program has ended. (Margarita Collantes)

6. Louisiana Department of Agriculture and Forestry on September 3, 1994, for the use of paraquat on corn to control excessive vegetation. This program has ended. (Susan Stanton)

7. Michigan Department of Agriculture on July 13, 1994, for the use of avermectin on potatoes to control the Colorado potato beetle. The applicants

authority to issue crisis exemptions for the control of the Colorado potato beetle in Michigan was revoked October 7, 1994. This program has ended. (Libby Pemberton)

8. Mississippi Department of Agriculture and Commerce on May 12, 1994, for the use of fomesafen on snap beans to control annual weeds. This program has ended. (Larry Fried)

9. Mississippi Department of Agriculture and Commerce on August 10, 1994, for the use of paraquat on grain sorghum to control weeds. This program has ended. (Susan Stanton)

10. Mississippi Department of Agriculture and Commerce on August 19, 1994, for the use of paraquat on corn to control weeds. This program has ended. (Susan Stanton)

11. Texas Department of Agriculture on September 12, 1994, for the use of metolachlor on spinach to control weeds. This program has ended. (Margarita Collantes)

12. Texas Department of Agriculture on August 12, 1994, for the use of bifenthrin on grain sorghum to control Banks grass mites. This program has ended. (Andrea Beard)

13. Texas Department of Agriculture on August 2, 1994, for the use of carbofuran on cotton to control aphids. This program has ended. (Susan Stanton)

14. Virginia Department of Agriculture and Consumer Services on August 8, 1994, for the use of avermectin on fresh market tomatoes to control leafminers. This program has ended. (Larry Fried)

EPA has denied specific exemption requests from the:

1. Oregon Department of Agriculture for the use of pendimethalin on grass grown for seed to control grassy weed and volunteer crop seedlings. This specific exemption was denied because an emergency condition does not exist. (Susan Stanton)

2. Texas Department of Agriculture for the use of lactofen on peanuts to control eclipta. This specific exemption was denied because an urgent nonroutine situation does not exist in spite of increased infestations of the weed eclipta. (Margarita Collantes)

3. Texas Department of Agriculture for the use of flowable carbofuran on cotton to control the cotton aphid. The application proposed use of a pesticide which has been the subject of Special Review and was intended for use that could pose similiar risk. This specific exemption was denied because the applicant did not demonstrate that an emergency condition existed, or was likely to develop, when it issued the crisis exemption. Because of the high risk to birds and other wildlife, EPA could not make the finding required for approval of an emergency exemption that the use of flowable carbofuran to control the cotton aphid would not cause unreasonable adverse effects on the environment. (Susan Stanton)

4. Wyoming Department of Agriculture for the use of hymexazol on sugar beet seed to control aphanomyces cochlioides. This specific exemption was denied because hymexazol is an unregistered fungicide and the Agency was not able to determine whether or not the proposed use would cause unreasonable adverse effects on the environment. (Larry Fried)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: December 15, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–31930 Filed 12–27–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Intra-Agency Appellate Process

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed guidelines; request for comments.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) solicits comments on proposed guidelines for the establishment of an independent intra-agency appellate process to review material supervisory determinations as required by the Riegle Community Development and Regulatory Improvement Act of 1994. The guidelines are intended to clarify the types of determinations that are eligible for review and to establish the process by which appeals will be considered and decided. Public comment is invited on all aspects of this proposal.

DATES: Written comments must be received on or before January 27, 1995.

ADDRESSES: Interested parties are invited to submit written comments to Robert E. Feldman, Acting Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand delivered to room F–400, 1776 F Street, N.W., Washington, D.C., on business days between 8:30 a.m. and 5:00 p.m. (FAX number (202) 898–3838). Comments may be inspected at the FDIC's Reading Room, room 7118, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: William G. Hrindac, Examination Specialist (202/898–6892), Division of Supervision; Ken A. Quincy, Acting Assistant Director (202/898–6753), Division of Compliance and Consumer Affairs; Gwen E. Factor, Counsel (202/898–8522), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) (Act) requires the FDIC (as well as the other Federal banking agencies and the National Credit Union Administration Board) to establish an independent intra-agency appellate process to review material supervisory determinations. The process is to be established within 180 days after enactment of the Act (i.e., by March 22, 1995). Section 309(c) of the Act requires public notice and opportunity for comment on proposed guidelines for the establishment of the independent appellate process.

The Act defines the term "independent appellate process" to mean a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review. In establishing the appeals process, the FDIC must ensure that: (1) any appeal of a material supervisory determination by an insured depository institution is heard and decided expeditiously; and (2) appropriate safeguards exist for protecting the appellant from retaliation by agency examiners.

The FDIC currently has in place procedures for requesting review of supervisory determinations. These procedures are set forth in FIL–11–92, dated February 7, 1992, and will be superseded by the Guidelines for Appeals of Material Supervisory Determinations.

II. Proposal for Establishment of Appeals Process

A. Independent Appellate Process

The Act requires the FDIC to establish an independent appellate process for the review of material supervisory determinations by an agency official who does not directly or indirectly

report to the agency official who made the material supervisory determination under review. To satisfy this requirement, the FDIC proposes to establish a supervisory appeals review committee consisting of the Vice Chairman and senior staff members of various divisions of the FDIC to consider and decide appeals of material supervisory determinations.

B. Institutions Eligible to Appeal

The Act requires that the FDIC's appeals process be available to review material supervisory determinations made at insured depository institutions that it supervises. The FDIC understands this to mean that its appeals process must be available to insured State nonmember banks (except District banks) and insured branches of foreign banks and proposes that the process be available as well to other insured depository institutions with respect to which it makes material supervisory determinations.

C. Material Supervisory Determinations

The Act requires the FDIC to establish an appeals process to review material supervisory determinations. The term "material supervisory determinations" is defined in the Act to include determinations relating to: (1) examination ratings; (2) the adequacy of loan loss reserve provisions; and (3) loan classifications on loans that are significant to an institution. The Act specifically excludes from the definition of "material supervisory determinations" a decision to appoint a conservator or receiver for an insured depository institution or to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o.

1. Examination Ratings

The FDIC construes the reference to "examination ratings" to mean:

(a) CAMEL ratings under the Uniform Financial Institutions Rating System;

(b) EDP ratings under the Uniform Interagency Rating System for Data Processing Operations;

(c) trust ratings under the Uniform Interagency Trust Rating System;

(d) CRA ratings under the Revised Uniform Interagency Community Reinvestment Act Assessment Rating System;

(e) consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System;

(f) registered transfer agent examination ratings;

(g) government securities dealer examination ratings; and

(h) municipal securities dealer examination ratings.

2. Adequacy of Loan Loss Reserve Provisions

The Act defines material supervisory determinations to include determinations relating to the adequacy of loan loss reserve provisions.

3. Loan Classifications

The Act also defines material supervisory determinations to include determinations relating to loan classifications on loans that are significant to an institution. The FDIC believes that classifications of other assets that are significant to an institution also should be eligible for appeal. The FDIC proposes that a classified loan or other asset may be regarded as significant to an institution if the amount of the loan or asset, individually or together with other classified loans or assets, equals or exceeds 10% of the institution's capital or 1% of its total assets. Specific comment is requested on whether some other basis for the determination of the significance of a classified loan or other asset to an institution would be more appropriate.

4. Determinations Not Eligible for Appeal

As provided in the Act, the term "material supervisory determinations" does not include a decision to appoint a conservator or receiver for an insured depository institution or to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o. The FDIC believes that the term "material supervisory determinations" also should not include: (a) determinations for which other appeals procedures exist (such as determinations relating to deposit insurance assessment risk classifications); (b) decisions to initiate formal enforcement actions under section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818 (including assessment of civil money penalties); (c) decisions to initiate informal enforcement actions (such as memoranda of understanding); (d) determinations relating to a violation of a statute or regulation; and (e) any other determinations not specified in the Act as being eligible for appeal.

D. Authority to Initiate Appeal

The FDIC believes that an institution should not be permitted to initiate an appeal of a material supervisory determination unless its board of directors has considered the merits of the appeal and authorized that it be filed. This requirement is intended to assure that an institution's board of directors not only has knowledge of a possible appeal but also has had an opportunity to consider its merits. The FDIC believes that such involvement by the board of directors in the decision to initiate an appeal is consistent with its responsibility to oversee the institution's management and may discourage insignificant or unnecessary appeals.

E. Effect on Supervisory or Enforcement Actions

Section 309(g) of the Act provides that "[n]othing in . . . section [309] shall affect the authority of an appropriate Federal banking agency or the National Credit Administration Board to take enforcement or supervisory action." To reiterate this mandate as well as to discourage any possible abuse of the appeals process, the FDIC believes that use of the appeals process by any institution should not affect, delay, or impede any formal or informal supervisory or enforcement action in progress or affect the FDIC's authority to take any supervisory or enforcement action against that institution.

F. Effect on Applications or Requests for Approval

Any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination which relates to or could affect the approval of the application or request will not be considered until a final decision concerning the appeal is made unless otherwise requested by the institution.

G. Scope of Review

The FDIC believes that the appropriate scope of review of any material supervisory determination should be limited to the facts and circumstances as they existed prior to or at the time the material supervisory determination was made and that consideration should not be given to any facts or circumstances that occur or corrective action taken after the determination was made.

H. Review Procedures

An institution may appeal any material supervisory determination but it first should make a good faith effort to resolve the dispute concerning the determination with the on-site examiner and/or the appropriate Regional Office. The on-site examiner and the Regional Office are expected to promptly respond to any concerns raised by an institution regarding a material supervisory determination.

The FDIC wishes to express that codification of its appeals process is not intended to affect its longstanding practice of affording institutions opportunities to express their views and concerns throughout the examination process. Institutions are encouraged to discuss examination findings, loan loss reserve provisions and classifications on loans and other assets during on-site examinations as well as express any concerns to senior staff of the appropriate Regional Office if a matter has not been resolved by the on-site examiner. The FDIC continues to believe that an institution is best served by raising questions or objections concerning an examination when they arise through these informal processes rather than after the close of an examination and the filing of an appeal.

If an institution is unable to resolve the dispute with the on-site examiner or the Regional Office, it may appeal the determination to the Washington Office. All appeals to the Washington Office must be initiated within 60 days following the institution's receipt of a report of examination containing a material supervisory determination or other written communication of a material supervisory determination. To initiate an appeal, the institution must submit, in writing, to the Director of the Division of Supervision, if the institution was unable to resolve the dispute with a Division of Supervision on-site examiner or Regional Office, or to the Director of the Division of Compliance and Consumer Affairs, if the institution was unable to resolve the dispute with a Division of Compliance and Consumer Affairs on-site examiner or Regional Office, a request for review. The request for review should include: (a) a detailed description of the issues in dispute, the surrounding circumstances, the institution's position regarding the dispute and any arguments to support that position, and the good faith effort to resolve the dispute with the on-site examiner and the Regional Office and the results of that effort; and (b) a statement that the institution's board of directors has considered the merits of the appeal and authorized that it be filed.

The appropriate Division Director may, in his or her discretion, promptly resolve the appeal in favor of the institution or, if he or she cannot resolve the appeal in favor of the institution, will refer the appeal to the Supervision Appeals Review Committee, together with the institution's request for review and any other relevant information concerning the dispute. The Supervision Appeals Review Committee (which is proposed to be comprised of the Vice Chairman, the Director of the Division of Supervision, the Director of the Division of Compliance and Consumer Affairs, the Ombudsman, and the General Counsel, or their designees) will review the appeal for consistency with the policies, practices and mission of the FDIC, including those of the Division of Supervision or the Division of Compliance and Consumer Affairs, as appropriate, and the overall reasonableness of and support offered for the respective positions advanced, and notify the institution, in writing, of its decision concerning the disputed material supervisory determination within 60 days of receipt by the appropriate Division Director of the institution's request for review. The notice of decision must contain at a minimum an explanation of the factual basis as well as the reason(s) for the decision and a statement that the decision constitutes the final supervisory decision of the FDIC.

If sufficient information is not provided to enable the Supervision Appeals Review Committee to make a decision concerning the disputed material supervisory determination, the 60-day period within which the Committee must notify the institution of its decision will be extended upon agreement of the institution for such additional time as it takes the institution to provide the information requested by the Committee. If the institution fails to provide the requested information, the Committee may but will not be required to consider and decide the appeal.

The decision of the Supervision Appeals Review Committee will constitute the final supervisory decision of the FDIC and will not be eligible for further appeal pursuant to the FDIC's appeals process unless new information is submitted. In such case, the Committee may, in its discretion, reconsider the decision concerning the disputed material supervisory determination if good cause is shown why such new information is material to the dispute.

The proposed composition of the Supervision Appeals Review Committee includes the Vice Chairman as a voting member and chair of the Committee. As a member of the FDIC Board of Directors, the Vice Chairman may participate in the consideration and disposition of enforcement proceedings before the Board of Directors which, on occasion, may involve matters considered by the Supervision Appeals Review Committee. While the FDIC believes that the proposed composition of the Committee should lend credibility, fairness and balance to the appeals process, it recognizes that the Vice Chairman's participation in an appeal of certain material supervisory determinations could give the Vice Chairman access to information which may not be part of the administrative record of a factually related enforcement proceeding. Although such a situation is unlikely to occur, if it does occur it may be prudent for the Vice Chairman to recuse himself from participation in the related enforcement proceeding. Accordingly, specific comment is requested on whether the Vice Chairman should be included on the Committee and, if the Vice Chairman is not included on the Committee, how the Committee otherwise might be structured.

I. Limitation on Use of Agency Ombudsman

Section 309(d) of the Act requires the FDIC to appoint an agency ombudsman to act as a liaison with respect to any problem that any person may have in dealing with the FDIC resulting from its regulatory activities. The FDIC understands that the role of the agency ombudsman is to consider issues of a general corporate nature that affect any person resulting from its regulatory activities whereas the role of the appeals process is to consider only those matters of a supervisory nature that materially affect insured depository institutions. The FDIC believes that, in order to preserve the integrity of the appeals process, the merits of any material supervisory determination for which an appeal has been initiated or a final decision made will not be eligible for consideration by the agency ombudsman. The FDIC does not intend, however, to prohibit the agency ombudsman from considering any other problems that an institution may have in dealing with the FDIC in connection with its appeals process, including consideration of the overall fairness or efficiency of the process.

J. Prohibition on Examiner Retaliation

The FDIC believes that any retaliation, abuse, or retribution by an agency examiner against an institution that appeals a material supervisory determination constitutes unprofessional conduct and should subject the examiner to appropriate disciplinary or remedial action by the appropriate Division Director. Such disciplinary or remedial action may include oral or written warning or admonishment, reprimand, or suspension, or change in assigned duties or disqualification from a particular assignment or a particular matter, including prohibition from participating in any examination of the

institution that was the subject of the retaliation, abuse, or retribution.

For the reasons set out in the Preamble, the Board of Directors proposes to adopt the Guidelines for Review of Material Supervisory Determinations as set forth below.

Guidelines for Appeals of Material Supervisory Determinations

A. Introduction

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) (Act) requires the Federal Deposit Insurance Corporation (FDIC) to establish an independent intra-agency appellate process to review material supervisory determinations made at insured depository institutions that it supervises. The FDIC has adopted these Guidelines for Appeals of Material Supervisory Determinations (Guidelines) in accordance with the Act. The Guidelines describe the types of determinations that are eligible for review and the process by which appeals will be considered and decided.

B. Independent Appellate Process

The procedures set forth in these Guidelines establish an appeals process for the review of material supervisory determinations by a supervisory appeals review committee consisting of the Vice Chairman and senior staff members of various divisions of the FDIC who do not directly or indirectly report to the staff member who made the material supervisory determination in dispute.

C. Institutions Eligible to Appeal

These Guidelines apply not only to the insured depository institutions that the FDIC supervises (i.e., insured State nonmember banks (except District banks) and insured branches of foreign banks) but also to other insured depository institutions with respect to which the FDIC makes material supervisory determinations.

D. Material Supervisory Determinations

1. Determinations Eligible for Appeal

An institution may appeal any material supervisory determination pursuant to the procedures set forth in these Guidelines. Material supervisory determinations mean:

(a) CAMEL ratings under the Uniform Financial Institutions Rating System;

(b) EDP ratings under the Uniform Interagency Rating System for Data Processing Operations;

(c) Trust ratings under the Uniform Interagency Trust Rating System;

(d) CRA ratings under the Revised Uniform Interagency Community Reinvestment Act Assessment Rating System;

(e) Consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System;

(f) Registered transfer agent examination ratings;

(g) Government securities dealer examination ratings;

(h) Municipal securities dealer examination ratings;

(i) Determinations relating to the adequacy of loan loss reserve provisions; and

(j) Classifications on loans and other assets the amount of which, individually or together with other classified loans or assets, equals or exceeds 10% of an institution's capital or 1% of its total assets.

2. Determinations Not Eligible for Appeal

Material supervisory determinations do not include: (a) decisions to appoint a conservator or receiver for an insured depository institution; (b) decisions to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o; (c) determinations for which other appeals procedures exist (such as determinations relating to deposit insurance assessment risk classifications); (d) decisions to initiate formal enforcement actions under section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818 (including assessment of civil money penalties); (e) decisions to initiate informal enforcement actions (such as memoranda of understanding); (f) determinations relating to a violation of a statute or regulation; and (g) any other determinations not specified in the Act or these Guidelines as being eligible for appeal.

E. Authority to Initiate Appeals

An institution may not initiate an appeal of a material supervisory determination pursuant to the procedures set forth in these Guidelines unless its board of directors has considered the merits of the appeal and authorized that it be filed.

F. Effect on Supervisory or Enforcement Actions

The use of the procedures set forth in these Guidelines by any institution will not affect, delay, or impede any formal or informal supervisory or enforcement action in progress or affect the FDIC's authority to take any supervisory or enforcement action against that institution.

G. Effect on Applications or Requests for Approval

Any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination which relates to or could affect the approval of the application or request will not be considered until a final decision concerning the appeal is made unless otherwise requested by the institution.

H. Scope of Review

The scope of review of any material supervisory determination pursuant to the procedures set forth in these Guidelines is limited to the facts and circumstances as they existed prior to or at the time the material supervisory determination was made and no consideration will be given to any facts or circumstances that occur or corrective action taken after the determination was made.

I. Review Procedures

An institution may appeal any material supervisory determination but it first should make a good faith effort to resolve the dispute concerning the determination with the on-site examiner and/or the appropriate Regional Office. The on-site examiner and the Regional Office are expected to promptly respond to any concerns raised by an institution regarding a material supervisory determination. If an institution is unable to resolve the dispute with the on-site examiner or the Regional Office, it may appeal the determination to the Washington Office.

All appeals to the Washington Office must be initiated within 60 days following the institution's receipt of a report of examination containing a material supervisory determination or other written communication of a material supervisory determination. To initiate an appeal, the institution must submit, in writing, to the Director of the Division of Supervision, if the institution was unable to resolve the dispute with a Division of Supervision on-site examiner or Regional Office, or to the Director of the Division of Compliance and Consumer Affairs, if the institution was unable to resolve the dispute with a Division of Compliance and Consumer Affairs on-site examiner or Regional Office, a request for review. The request for review should include: (a) a detailed description of the issues in dispute, the surrounding circumstances, the institution's position regarding the dispute and any arguments to support that position, and the good faith effort to resolve the dispute with the on-site examiner and

the Regional Office and the results of that effort; and (b) a statement that the institution's board of directors has considered the merits of the appeal and authorized that it be filed.

The appropriate Division Director may, in his or her discretion, promptly resolve the appeal in favor of the institution or, if he or she cannot resolve the appeal in favor of the institution, will refer the appeal to the Supervision Appeals Review Committee, together with the institution's request for review and any other relevant information concerning the dispute. The Supervision Appeals Review Committee (which is comprised of the Vice Chairman, the Director of the Division of Supervision, the Director of the Division of Compliance and Consumer Affairs, the Ombudsman, and the General Counsel, or their designees) will review the appeal for consistency with the policies, practices and mission of the FDIC, including those of the Division of Supervision or the Division of Compliance and Consumer Affairs, as appropriate, and the overall reasonableness of and the support offered for the respective positions advanced, and notify the institution, in writing, of its decision concerning the disputed material supervisory determination within 60 days of receipt by the appropriate Division Director of the institution's request for review. The notice of decision must contain at a minimum an explanation of the factual basis as well as the reason(s) for the decision and a statement that the decision constitutes the final supervisory decision of the FDIC.

If sufficient information is not provided to enable the Supervision Appeals Review Committee to make a decision concerning the disputed material supervisory determination, the 60-day period within which the Committee must notify the institution of the decision will be extended upon agreement of the institution for such additional time as it takes the institution to provide the information requested by the Committee. If the institution fails to provide the requested information, the Committee may but will not be required to consider and decide the appeal.

The decision of the Supervision Appeals Review Committee will constitute the final supervisory decision of the FDIC and will not be eligible for further appeal pursuant to the procedures set forth in these Guidelines unless new information is submitted. In such case, the Committee may, in its discretion, reconsider the decision concerning the disputed material supervisory determination if good cause is shown why such new information is material to the dispute.

J. Limitation on Use of Agency Ombudsman

The merits of any material supervisory determination for which an appeal has been initiated or a final decision made will not be eligible for consideration by the FDIC's Ombudsman. Any other problems, however, that an institution may have in dealing with the FDIC in connection with the procedures set forth in these Guidelines are eligible for consideration by the Ombudsman, including consideration of the overall fairness or efficiency of the process.

K. Prohibition on Examiner Retaliation

Any retaliation, abuse, or retribution by an agency examiner against an institution that appeals a material supervisory determination constitutes unprofessional conduct and will subject the examiner to appropriate disciplinary or remedial action by the appropriate Division Director. Such disciplinary or remedial action may include oral or written warning or admonishment, reprimand, or suspension, or change in assigned duties or disqualification from a particular assignment or a particular matter, including prohibition from participating in any examination of the institution that was the subject of the retaliation, abuse, or retribution.

By order of the Board of Directors.

Dated at Washington, DC this 20th day of December, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–31726 Filed 12–27–94; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Others Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. § 817(d)) and the Federal Maritime Commission's implementing regulations at 46 C.F.R. Part 540, as amended: Commodore Cruise Line, Ltd. and Argentina Caribbean Shipping Co., Ltd., 800 Douglas Road, Coral Gables, Florida 33134.

Vessel: ENCHANTED ISLE

Dated: December 21, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–31858 Filed 12–27–94; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH CARE FINANCING ADMINISTRATION

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration

The Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS), has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511).

1. *Type of Request:* Reinstatement; *Title of Information Collection:* Physician Certifications/Recertifications in Skilled Nursing Facilities (SNF); *Form No.:* HCFA-R–5; *Use:* SNFs are required to maintain records of physician certifications and recertifications of information such as, the need for care and services, estimated duration of stay, and plans for home care; *Frequency:* Recordkeeping; *Respondents:* Individuals or households, State or local governments, businesses or other for profit, and small businesses or organizations; *Estimated Number of Responses:* N/A; *Average Hours Per Response:* N/A; *Total Estimated Burden Hours:* 267,371.

2. *Type of Request:* Reinstatement; *Title of Information Collection:* Criteria for Medicare Coverage of Adult Liver Transplants; *Form No.:* HCFA-R–108; *Use:* Medicare participating hospitals must file an application to be approved for coverage and payment of adult liver transplants performed on Medicare beneficiaries. Prior to March 8, 1990, adult liver transplants were considered as "investigational;" however, now they are considered to be "reasonable and necessary," and therefore covered; *Frequency:* Annually; *Respondents:* Businesses or other for profit; *Estimated Number of Responses:* (Reporting) 8, (Recordkeeping) 41; *Average Hours Per Response:* (Reporting) 100, (Recordkeeping) 20; *Total Estimated Burden Hours:* 1,620.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 3001, Washington, D.C. 20503.

Dated: December 19, 1994.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 94–31878 Filed 12–27–94; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

RIN 0905–ZA83

Project Grants for Renovation or Construction of Non-Acute Health Care Facilities

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Bureau of Health Resources Development (BHRD), Health Resources and Services Administration (HRSA), announces that fiscal year (FY) 1995 funds are available for project grants for construction or renovation. Funds were appropriated for these purposes by the Departments of Labor, HHS, and Education and Related Agencies Appropration Act for fiscal year 1995, Pub. L. 103–333, under the authority of Section 1610 of the Public Health Service (PHS) Act.

The categories for funds are:

Category A

Outpatient medical facilities which are located apart from hospitals and which will provide services for medically underserved populations, as referenced in H. Rep. 103–553.

Category B

A non-acute care center in a former teaching hospital in a comprehensive academic health center to house state-of-the-art outpatient, outreach, and education facilities to reduce the incidence of cardiovascular and respiratory disease, as referenced in S. Rep. 103–318.

Category C

An ambulatory care facility located at a school of medicine linked to a Veterans Administration hospital that has no teaching hospital or other inpatient facility, but rather operates under collaborative agreements with community hospitals, as referenced in S. Rep. 103–318.

Category D

Projects to prevent the spread of the tuberculosis bacterium among patients with AIDS or other Human Immunodeficiency Virus (HIV) related conditions.

DATES: To receive consideration, applications for the renovation or construction of facilities must be received by the close of business February 27, 1995 by the Grants Management Officer, Ms. Glenna Wilcom, at the address below. Applications will meet the deadline if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted instead of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing. Hand delivered applications must be received by 5 p.m., February 27, 1995. Grant applications that are received after the deadline date will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Additional information related to technical and program issues may be obtained from Mrs. Charlotte G. Pascoe, Director, Division of Facilities Compliance and Recovery, Bureau of Health Resources Development, Health Resources and Services Administration, Parklawn Building, Room 7–31, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–5656. Grant applications and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this Notice may be requested from Ms. Glenna Wilcom, Grants Management Officer, Bureau of Health Resources Development, Health Resources and Services Administration, Parklawn Building, Room 7–15, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2280. Applicants for grants will use Form PHS 5161–1, approved under OMB Control Number 0937–0189.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Pub. L. 103–333 provides funds for grants under the authority of Section 1610 of the PHS Act. Section 1610(b) provides that the amount of any grant may not exceed 80 percent of the cost of the project for which the grant is made unless the project is located in an area determined by the Secretary to be an urban or rural poverty area, in which case the grant may cover up to 100 percent of such costs. (Urban or rural poverty area is defined as a medically underserved area designated by the Secretary (42 CFR 51c.102).) For information regarding the medically underserved areas, contact Evan R. Arrindell, D.S.W., Acting Director, Division of Shortage Designation, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, Maryland 20814, or telephone (301) 594–0816.

Eligible Applicants

To be eligible, an applicant must:

(1) Be a public or private non-profit entity;

(2) Have a source of funding to meet the non-Federal portion of the eligible construction cost; and

(3) Have title to a building site or have a lease which includes the time of construction plus 20 years of operation, or have a written commitment to acquire such title or lease within 6 months from the date of the grant award.

Availability of Funds

A total of $15,000,000 is available in FY 1995 to be awarded in the following categories:

Category A

Approximately $2,000,000 is available to fund between one and six outpatient medical facilities located apart from hospitals which will provide services for medically underserved populations. The amount of the awards will be between $200,000 and $2,000,000.

Category B

Approximately $8,000,000 is available for one award to fund a non-acute care center in a former teaching hospital in a comprehensive academic health center to house state-of-the-art outpatient, outreach, and education facilities to reduce the incidence of cardiovascular and respiratory disease. The center must be located in a State ranked among the 10 highest for rates of hypertension, obesity, sedentary lifestyle, and tobacco use, as measured by the Centers for Disease Control and Prevention (CDC) as of 1992 (See Appendix A). The center must be able to utilize a Positron Emission Tomography Center, two-way interactive telemedicine network, and statewide network of rural health

education sites to achieve the goals of the center.

Category C

Approximately $3,000,000 is available for one award to fund an ambulatory care facility located at a school of medicine linked to a Veterans Administration hospital that has no teaching hospital or other inpatient facility, but rather operates under collaborative agreements with community hospitals.

Category D

Approximately $2,000,000 is available to fund up to 10 awards to prevent the spread of the tuberculosis bacterium among patients with AIDS or other Human Immunodeficiency Virus (HIV) related conditions. Each project must be in a non-acute care facility which may be located in a hospital. The project must be in a metropolitan statistical area having a population over 500,000 that has a tuberculosis rate higher than 20 cases per 100,000 population, and more than 600 cumulative cases of AIDS as reported by the CDC as of December 1993 (See Appendix B).

Applicants may only request funding for one category.

Further, applicants must agree in writing to provide:

(1) An assurance that, at all times after such application is approved, the facility or portion thereof to be constructed or renovated will be made available to persons residing or employed in the area served by the facility who need the services offered by the facility, in accordance with 42 CFR Part 124, Subpart G; and

(2) An assurance that a reasonable volume of services will be available to persons unable to pay for care in the facility or the portion thereof which is to be constructed or renovated, in accordance with 42 CFR Part 124, Subpart F (OMB Clearance Number 0915–0077). This obligation continues in *perpetuity*.

In addition, before grant funds can be released, the grantee must: (1) Record the notice of the Federal interest and grant recovery rights as described in section 1622 of the PHS Act at its local land records office; and (2) Obtain a statement from the lessor (if the property is to be leased) that it is understood that there will be a notice of the Federal interest and grant recovery rights at the local land records office.

Evaluation Criteria

Applicants must demonstrate how they meet the following criteria. Projects will be selected on a competitive basis by an objective review committee based on their assessment of how well applicants meet the evaluation criteria:

(1) Clearly defined goals and objectives with the specific activities required to accomplish the goals of the proposed project;

(2) A clearly documented needs assessment which justifies the scope of services proposed by the project, including the number of persons to be served;

(3) A description of the quality and scope of medical care as well as qualifications of the staff who will ensure appropriate medical care of patients;

(4) A plan demonstrating that needs of racial and ethnic minorities have been considered, and that efforts will be made to meet such needs;

(5) The appropriateness of the project design, facility construction/renovation plans and timeframes for initiation through completion of the project. Schematic drawings must be provided with the application;

(6) The reasonableness and justification for the itemized costs in the construction budget. All requests for movable equipment must include itemization and unit price;

(7) The ability of the applicant to provide more than the minimally required matching amount of the cost for the construction project;

(8) Documentation of reimbursement sources and other funding sources sufficient to support program operations and to maintain the ongoing financial viability of the project after the construction has been completed;

(9) Demonstration of the applicant's intent to maintain the portion of the facility receiving this Federal assistance for the purpose of the grant for a period of at least 20 years; and

(10) Demonstration of how the applicant qualifies for one of the four categories designated in "Availability of Funds."

In addition to the above general evaluation criteria, if the applicant is applying for Category D funding, it must respond to the following specific criteria:

Demonstrate how it participates in local AIDS planning and document linkages with other U.S. Department of Health and Human Services funded programs and specialized State-local funded services in the community, such as the Ryan White C.A.R.E. Act Program.

Allowable Costs

A successful applicant under this Notice must spend funds it receives according to the approved application and budget; the authorizing legislation; terms and conditions of the grant award; the regulations of the Department and PHS applicable to grants; the applicable Office of Management and Budget (OMB) circular for public and private non-profit grantees; and Appendix II of the PHS Grants Policy Statement applicable to construction.

Other Award Information

Grants awarded under this notice are subject to the provisions of Executive Order 12372, as implemented under 45 CFR Part 100, which allows States the option of setting up a system for reviewing applications within their States for assistance under certain Federal programs. The application packages to be made available by HRSA will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the States for the review. Applicants (other than Federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline date for new and competing awards. The Bureau of Health Resources Development does not guarantee that it will accommodate or explain its response to State process recommendations received after the due date.

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The program announcement, "Project Grants for Renovation or Construction of Non-Acute Health Care Facilities," is related to the priority area of HIV infection. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report: Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

The OMB Catalog of Federal Domestic Assistance number for Section 1610(b) is 93.887.

Dated: November 17, 1994.

James A. Walsh,

Acting Administrator.

Appendix A

1992 PREVALENCE PERCENTAGES
(As Reported by the CDC)

	Percent
Hypertension:	
Mississippi	27.91
Kentucky	25.26
Indiana	24.67
South Carolina	23.99
West Virginia	23.77
Missouri	23.65
Oklahoma	23.49
Michigan	23.02
Tennessee	22.72
Connecticut	22.68
Current tobacco use (smoking and smokeless):	
West Virginia	33.45
Alaska	33.44
Oklahoma	31.00
Nevada	30.47
Indiana	30.13
Kentucky	27.91
Alabama	27.38
South Carolina	26.72
Kansas	26.72
Tennessee	26.58
Sedentary lifestyles:	
South Dakota	82.06
Mississippi	67.76
South Carolina	67.40
Kentucky	67.23
Georgia	66.00
West Virginia	65.48
Oklahoma	64.55
Arizona	64.51
Louisiana	63.79
Ohio	63.45
Obesity:	
Mississippi	34.74
West Virginia	34.25
Michigan	33.93
Wisconsin	33.71
Louisiana	33.49
Pennsylvania	32.86
North Dakota	32.58
Kentucky	31.96
Missouri	31.56
Iowa	31.26

Appendix B

Metropolitan statistical areas with a population over 500,000 that have a tuberculosis rate higher than 20 cases per 100,000 population and that have more than 600 cumulative cases of AIDS as reported by the CDC as of December 1993:

New York, New York
- Bronx County
- Kings County
- New York County
- Putnam County
- Queens County
- Richmond County
- Rockland County
- Westchester County

San Francisco, California
- Marin County
- San Francisco County
- San Mateo County

Jersey City, New Jersey
- Hudson County

Honolulu, Hawaii
- Honolulu County

Los Angeles—Long Beach, California
- Los Angeles County

Houston, Texas
- Chambers County
- Fort Bend County
- Harris County
- Liberty County
- Montgomery County
- Waller County

[FR Doc. 94–31880 Filed 12–27–94; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 requires an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 1995 is 7.75 percent. Discounting is to be used to convert future monetary values to present values.

DATE: This discount rate is to be used for the period October 1, 1994, through and including September 30, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Schluntz, Economist, Reclamation Law, Contracts, and Repayment, U.S. Bureau of Reclamation, Attention: D–5200, Building 67, Denver Federal Center, Denver, CO 80225–0007; telephone: (303) 236–1061, extension 236.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 7.75 percent for fiscal year 1995.

This rate has been computed in accordance with section 80(a), Pub. L. 93–251 (88 Stat. 34) and 18 CFR 704.39, which: (1) specify that the rate shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States, which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average yield to be 7.21 percent. However, application of the above mentioned limitation to the fiscal year 1994 rate of 8.00 percent limits the change in the fiscal year 1995 rate to 7.75 percent.

The rate of 7.75 percent shall be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common time basis.

Dated: December 20, 1994.

Wayne O. Deason,

Assistant Director, Program Analysis.

[FR Doc. 94–31867 Filed 12–27–94; 8:45 am]

BILLING CODE 4310–94–P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: The Lubee Foundation, Gainesville, FL, PRT–797414

The applicant has applied for a permit to export/reexport up to 100 biological samples of hair, blood, and skin of the Rodriguez fruit bat (*Pteropus rodricensis*) for the purpose of scientific study for the enhancement of the survival of the species.

Applicant: Charles Hawkey, Los Olivos, CA, PRT–797694

The applicant has applied for a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by F.W.M. Bowker at Thornkoof, Grahamstown, Republic of South Africa for the purpose of the enhancement of the survival of the species.

Emergency Exemption: Issuance

On December 9, 1994, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–797139) to Wildlife Waystation, San Fernando, California, to import a pair of captive born adult tigers (*Panthera tigris*) and a pair of captive born tiger (*Panthera tigris*) cubs from the Irish Society for the Prevention of Cruelty to Animals. The 30-day public comment period required by section 10(c) of the Endangered Species Act was waived. The Service determined that an emergency affecting the survival of the tigers existed and that no reasonable alternative was available to the applicant. The Irish authorities intended to euthanize the tigers before the 30-day comment period elapsed.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: December 22, 1994.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–31907 Filed 12–27–94; 8:45 am]

BILLING CODE 4310–55–P

Minerals Management Service

Minerals Management Advisory Board; Outer Continental Shelf (OCS); Scientific Committee (SC); Announcement of Plenary Session

This Notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget Circular A–63, Revised.

The Minerals Management Advisory Board OCS SC will meet in plenary sessions on Wednesday, March 1, and Thursday, March 2, 1995, at the Radisson Santa Barbara, 1111 East Cabrillo Boulevard, Santa Barbara, California 93103, telephone (805) 963–0744.

The SC is an outside group of scientists which advises the Director, MMS, on the feasibility, appropriateness, and scientific value of the MMS' OCS Environmental Studies Program (ESP).

Below is a schedule of meetings that will occur.

The SC will meet in plenary session on Wednesday, March 1, from 8:30 a.m. to 5:30 p.m.

The Committee will also meet in plenary session on Thursday, March 2, from 8:30 a.m. to 5 p.m. Discussion will focus on continued review of Fiscal Year 1996 and 1997 proposed ESP and OCS activities off Southern California and environmental studies to support MMS decision needs for the Southern California OCS areas.

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the plenary session.

A copy of the agenda may be requested from the MMS by writing Ms. Phyllis Clark at the address below.

Other inquiries concerning the OCS SC meeting should be addressed to Dr. Ken Turgeon, Executive Secretary to the OCS Scientific Committee, Minerals Management Service, 381 Elden Street, Mail Stop 4310, Herndon, Virginia 22070. He may be reached by telephone at (703) 787–1717.

Dated: December 19, 1994.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 94–31922 Filed 12–27–94; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Delta Region Preservation Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7:00 p.m., on Wednesday, January 11, 1995, in the Visitor Center at the Chalmette Unit of Jean Lafitte National Historical Park and Preserve, 8606 W. St. Bernard Highway, Chalmette, Louisiana 70043.

The Delta Region Preservation Commission was established pursuant to Section 907 of Public Law 95–625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—Old Business
—New Business
—Update on Park Resource Studies
—Activation of New Orleans Jazz National Historical Park
—General park Update

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Robert Belous, Superintendent, Jean Lafitte National Historical park and Preserve, 365 Canal Street, Suite 3080, New Orleans, Louisiana 70130, Telephone 504/589–3882.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: December 15, 1994.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 94–31825 Filed 12–27–94; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–701 (Final)]

Disposable Lighters From Thailand

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: December 16, 1994.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–205–3181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION: On October 24, 1994, the Commission instituted the subject investigation and established a schedule for its conduct (59 F.R. 55853, November 9, 1994). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from January 3, 1995, to March 8, 1995 (59 F.R. 59210, November 16, 1994). The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than March 3, 1995; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 8, 1995; the prehearing staff report will be placed in the nonpublic record on March 1, 1995; the deadline for filing prehearing briefs is March 8, 1995; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 14, 1995; and the deadline for filing posthearing briefs is March 22, 1995.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: December 20, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–31908 Filed 12–27–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 332–345]

U.S. Trade Shifts in Selected Industries

AGENCY: United States International Trade Commission.

ACTION: Expansion of scope of investigation to include selected service industries.

EFFECTIVE DATE: December 20, 1994.

SUMMARY: The Commission on its own motion has expanded the scope of investigation No. 332–345, U.S. Trade Shifts in Selected Industries, instituted under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)), to include selected service industries. Under the expanded scope, the Commission will publish two reports annually, one entitled U.S. Trade Shifts in Selected Industries: Merchandise, and the second entitled U.S. Trade Shifts in Selected Industries: Services. The first report pertaining to services, to be published in April 1996, will provide a brief trend analysis covering the period 1986–94 and several industry-specific discussions covering the period 1993–94.

FOR FURTHER INFORMATION: Information on the service industries report may be obtained from Mr. Richard Brown, Office of Industries (202–205–3438) or Mr. Christopher Melly, Office of Industries (202–205–3461); merchandise report, from Mr. Ralph Watkins, Office of Industries (202–305–3492) or Mr. Carl Seastrum, Office of Industries (202–305–3493); economic aspects, from Mr. Joseph Flynn, Office of Economics (202–305–3251); and legal aspects, from Mr. William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Ms. Margaret O'Laughlin, Office of Public Affairs (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

BACKGROUND: The Commission has published a Trade Shifts report, covering trade in manufactures and agricultural products, since 1981 (Commission investigation No. 332–345, see notice published in the **Federal Register** of September 8, 1993 (58 F.R. 47287)). These merchandise reports summarize trade developments and provide brief analyses of major commodity and bilateral trade shifts that occurred during the year immediately preceding each report's publication. The Commission is expanding the scope of the Trade Shifts program to cover services trade in order to provide more comprehensive coverage of U.S. trade performance and overall economic competitiveness.

SUPPLEMENTARY INFORMATION: The Commission anticipates that the first report pertaining to services, U.S. Trade Shifts in Selected Industries: Services, 1996 Annual Report, will be available from the Government Printing Office in April 1996. The next report pertaining to merchandise, U.S. Trade Shifts in Selected Industries: Merchandise, 1994 Annual Report, will be available from the Government Printing Office in July 1995. Inquiries or suggestions from the public regarding report coverage are welcome and should be addressed to the Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

By order of the Commission.

Issued: December 21, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–31909 Filed 12–27–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub No. 5) (95–1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved a first quarter 1995 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter RCAF (Unadjusted) is 1.058. The first quarter RCAF (Adjusted) is 0.822, equal to the fourth quarter 1994 RCAF (Adjusted). As the RCAF (Adjusted) remains unchanged, no rate actions are ordered and maximum first quarter 1995 rate levels are unchanged.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek, (202) 927–6239 or H. Jeff Warren (202) 927–6243. TDD for the hearing impaired (202) 927–5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423, or telephone (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have an adverse economic impact on a substantial number of small entities. The economic impact on small entities is not likely to be significant within the meaning of the Regulatory Flexibility Act.

Decided: December 20, 1994.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 94–31861 Filed 12–27–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated September 22, 1994, and published in the Federal Register on September 30, 1994 (59 FR 50001), Sanofi Winthrop Inc., 200 East Oakton Street, Des Plaines, Illinois 60018, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Hydromorphone (9150)	II
Meperidine (9230)	II
Morphine (9300)	II

A comment was received, but a hearing was not requested because it was determined that the imports would consist of small amounts of Schedule II controlled substances initially manufactured in the United States. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: December 12, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–31860 Filed 12–27–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

December 21, 1994.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (P.L. 96–511). Copies may be obtained by calling the Department of Labor Departmental Clearance Officer, Kenneth A. Mills ([202] 219–5095). Comments and questions about the ICRs listed below should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10102, Washington, DC 20503 ([202] 395–7316).

Type of Review: *REINSTATEMENT*
Agency: Bureau of Labor Statistics
Title: National Longitudinal Survey of Women
OMB Number: 1220–0110
Frequency: Biennially
Affected Public: Individuals or households
Number of Respondents: 7,370
Estimated Time Per Respondent: 54.48 minutes
Total Burden Hours: 6,693

Description: The information provided in this survey will be used by the Department of Labor and other government agencies to help understand and explain the employment, unemployment, retirement and related problems faced by two groups of women: those aged 41–51 and those aged 58–72. The 41–51 year old women were 14–24 years of age when they were first interviewed in 1968. The 58–72 year old women were 30–44 years of age when they were first interviewed in 1967.

Type of Review: *NEW COLLECTION*
Agency: Bureau of Labor Statistics
Title: Survey of Employer Provided Training (SEPT), Phase 2
OMB Number: (not assigned to date)
Frequency: One-time collection

Form No.	Affected	Respondents	Average time per respondent (minutes)
BLS–SEPT9501	Establishments	1,800	20
BLS–SEPT9502	Establishments	1,800	40
BLS–SEPT9503	Employees	3,600	20
BLS–SEPT9504	Employees	4,600	25
Total Burden Hours			4,500

Description: The lack of nationally representative information on the provision and intensity of training, the reliance on formal versus on-the-job training methods of training delivery, and the relationship between these measures and the characteristics of establishments is a serious handicap to the implementation of effective public policy. The Bureau of Labor Statistics proposes to conduct a survey of establishments and employees to collect such information and will report on the provision and intensity of training by industry and size of establishment.

Type of Review: *EXTENSION*
Agency: Employment and Training Administration
Title: Administrative Procedures—20 CFR 601
OMB Number: 1205–0222
Agency Number: MA–7
Frequency: As needed
Affected Public: State or local governments
Number of Respondents: 53
Estimated Time Per Respondent: 1 hour
Total Burden Hours: 3

Description: Requires States to submit copies of their unemployment compensation laws for approval by the Secretary of Labor, as well as all relevant State materials which allow the Secretary to make findings by the Internal Revenue Code, Social Security Act and Wagner-Peyser Act.

Type of Review: *NEW COLLECTION*
Agency: Employment and Training Administration
Title: Capacity Building Consultation
Review/Approval Request: OMB has been requested to review/approve

this information request by January 22, 1995.
OMB Number: N/A
Frequency: One-time
Affected Public: Not-for-profit institutions; State, Local or Tribal Government; Federal Government
Number of Respondents: 1,600 program managers; 1,200 front line staff
Estimated Time Per Respondent: 45 minutes for program managers; 30 minutes for front line staff
Total Burden Hours: 1,800

Description: The Department of Labor Employment and Training Administration is conducting a survey of employment and training professions in the Job Training Partnership Act (JTPA), Job Opportunities and Basic Skills (JOBS), One-Stop, and Employment Services Programs. The survey will be used to identify capacity building needs of relevant staff.

Type of Review: *NEW COLLECTION*
Agency: Pension Welfare Benefits Administration
Title: Market Rate Alternatives Investment Clearinghouse
OMB Number: N/A
Affected Public: Businesses or other for-profit; Non-profit institutions

Request	Frequency	Number of respondents	Average time per response
Initial	One time.	500	.166 hours
Follow-up	Annually.	400	.5 hours

Total Burden Hours: 283

Description: The Department of Labor is sponsoring the creation of a market rate alternative investment clearinghouse, a database concerning market rate alternative investments made by pension funds. Data will be made available to the pension community.

Type of Review: *EXTENSION*
Agency: Occupational Safety and Health Administration
Title: The Supplementary Record of Occupational Injuries and Illnesses
OMB Number: 1218–0176
Agency Number: OSHA No. 101 The Log and Summary of Occupational Injuries and Illnesses, OSHA No. 200 Brief Guide to Recordkeeping Requirements for Occupational Injuries and Illnesses
Frequency: On occasion
Affected Public: Businesses or other for-profit; Not-for-profit institutions; Farms; State, Local or Tribal Government
Number of Respondents: 40,000
Estimated Time Per Respondent: 37.32 hours
Total Burden Hours: 1,492,710

Description: The Supplementary Record of Occupational Injuries and Illnesses, OSHA No. 101, and the OSHA No. 200, Log and Summary, and the recordkeeping guidelines provide employers with the means and specific instructions needed to maintain records of work-related injuries and illnesses.

Type of Review: *NEW COLLECTION*
Agency: Employment and Training Administration
Title: Worker Profiling and Reemployment Services Activity and Worker Profiling and Reemployment Services Outcomes
OMB Number: N/A
Agency Number: ETA 9048, ETA 9049
Affected Public: State or local governments

Form	Frequency	Respondents	Average time per respondent
ETA 9048	Start-up	25	4,000 hours.
ETA 9049	Start-up	25	8 hours.
ETA 9048	Quarterly	53	15 minutes.
ETA 9049	Quarterly	53	15 minutes.

Total Burden Hours: 105,106

Description: Data is needed to monitor Profiling and Reemployment Services programs. This program identifies those likely to exhaust Unemployment Insurance benefits early in the claims series and refers them to reemployment services.

December 21, 1994.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 94–31846 Filed 12–27–94; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Thermal Systems: Notice of Meetings

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Chemical and Transport Systems
Date and Time: January 13, 1995; 8:30 a.m. to 5:00 p.m.
Place: NSF, Room 580, 4201 Wilson Blvd., Arlington, VA 22230
Agenda: To review and evaluate nominations for the NSF Research Equipment Grant and Career Award
Contact Person: Dr. Maria K. Burka, Program Director (703) 306–1371

Date and Time: January 13, 1995; 8:30 a.m. to 5:00 p.m.
Place: NSF, Room 365, 4201 Wilson Blvd., Arlington, VA 22230
Agenda: To review and evaluate nominations for the NSF Research Equipment Grant
Contact Person: Dr. Farley Fisher, Program Director, (703) 306–1371

Date and Time: January 20, 1995; 8:30 a.m. to 5:00 p.m.
Place: NSF, Room 580, 4201 Wilson Blvd., Arlington, VA 22230
Agenda: To review and evaluate nominations for the NSF Career Program
Contact Person: Dr. Farley Fisher, Program Director, (703) 306–1371

Date and Time: January 23, 1995; 8:30 a.m. to 5:00 p.m.
Place: NSF, Room 580, 4201 Wilson Blvd., Arlington, VA 22230
Agenda: To review and evaluate nominations for the NSF Career Program
Contact Person: Dr. John Howell, Program Director, (703) 306–1371

Date and Time: January 27, 1995; 8:30 a.m. to 5:00 p.m.
Place: NSF, Room 365, 4201 Wilson Blvd., Arlington, VA 22230
Agenda: To review and evaluate nominations for the NSF Career Program
Contact Person: Dr. Milton J. Linevsky, Program Director, (703) 306–1371

Purpose of Meeting: To provide advice and recommendation to NSF for financial support.
Type of Meetings: Closed.
Reason for Closing: The nominations and proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal

information concerning individuals associated with the nominations and proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 22, 1994.

Linda Allen-Benton,

Deputy Director, HRM.

[FR Doc. 94-31906 Filed 12-27-94; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Nuclear Safety Research Review Committee; Meeting of Materials and Engineering Subcommittee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The NSRRC Materials and Engineering Subcommittee will hold a meeting on January 24, 1995 in Room T-2B1, Two White Flint North (TWFN) Building, 11545 Rockville Pike, Rockville, MD.

The entire meeting will be open to public attendance.

The review to be conducted by this newly formed Subcommittee will address seismic, containment structure, and materials issues of prominent current interest. The agenda will be as follows:

January 24

8:30–9:00 Introductory remarks (Chairman; Members; Director, Division of Engineering Technology, Office of Nuclear Regulatory Research)

9:00–10:30 Seismic issues (seismic hazard methodology; new ASME code criteria for seismic design of piping)

10:45–11:15 Subcommittee discussion (seismic issues)

11:15–12:00 Containment corrosion, inspection, and safety margins

1:15–2:45 Materials issues (pressurized thermal shock; cracking of BWR core shroud materials)

3:00–5:00 Subcommittee discussion (issues other than seismic)

The Subcommittee will report to the full Committee on the facts and analyses discussed at the meeting.

A detailed agenda will be made available at the meeting.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Subcommittee. Questions may be asked only by members of the Committee and the staff. Persons desiring to make oral statements should notify the Nuclear Regulatory Commission staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to Mr. George Sege (telephone 301/415-6593) between 8:00 a.m. and 4:30 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: December 20, 1994.

George Sege,

Technical Assistant to the Director, Office of Nuclear Regulatory Research.

[FR Doc. 94-31856 Filed 12-27-94; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on January 12–14, 1995, in Conference Room T2B3, 11545 Rockville Pike, Rockville, Maryland.

Thursday, January 12, 1995

8:30 a.m.–8:45 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–10:45 a.m.: General Electric Nuclear Energy (GENE) Simplified Boiling Water Reactor (SBWR) Test and Analysis Programs (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and GENE regarding the results of the NRC staff evaluation of the test and analysis programs being conducted by GENE in support of the certification of the SBWR passive plant design.

A portion of this session may be closed to discuss GENE proprietary information applicable to this matter.

11:00 a.m.–12:00 Noon: Status of AP600 Design Certification Review (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the status of the AP600 design certification review.

Representatives of Westinghouse will participate, as appropriate.

2:00 p.m.–3:00 p.m.: CANDU3 Application Acceptance Review (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding staff findings resulting from its CANDU3 application acceptance review.

Representatives of the Atomic Energy of Canada Limited Technologies (AECLT) will participate, as appropriate.

3:00 p.m.–4:00 p.m.—Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business and internal organizational and personnel matters relating to the ACRS staff members.

A portion of this session may be closed to discuss matters that relate solely to internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

4:15 p.m.–4:45 p.m.: Future ACRS Activities (Open)—The Committee will discuss topics proposed for consideration during future ACRS meetings.

4:45 p.m.–5:00 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations to ACRS comments and recommendations included in recent ACRS reports.

5:00 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on certain matters considered during this meeting, including a possible report on Performance-Based Regulation.

Friday, January 13, 1995

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–10:45 a.m.: Meeting with the Director of the NRC Office of Nuclear Regulatory Research (Open)—

The Committee will hear presentations by and hold discussions with the Director of the NRC Office of Nuclear Regulatory Research regarding items of mutual interest.

11:00 a.m.–12:00 Noon: Turbine Overspeed Study (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the results of the Turbine Overspeed Study performed by the NRC Office for Analysis and Evaluation of Operational Data (AEOD).

1:00 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on certain matters considered during this meeting.

Saturday, January 14, 1995

8:30 a.m.–11:00 a.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on certain matters considered during this meeting.

11:15 a.m.–11:45 a.m.: New Research Needs (Open)—The Committee will discuss new research needs, if any, identified during this meeting.

11:45 a.m.–12:00 Noon: Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and complete discussions of topics that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 5, 1994 (59 FR 50780). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Dr. John T. Larkins, at least five days before the meeting if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss proprietary information per 5 U.S.C. 552b(c)(4); information that involves the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2); and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the ACRS Executive Director, Dr. John T. Larkins (telephone 301–415–7361), between 7:30 A.M. and 4:15 P.M. EST.

Proposed ACRS Meeting Dates for CY 1995—The proposed ACRS meeting dates for CY 1995 are provided below.

ACRS meeting No.	1995 ACRS meeting dates
418	February 9–11, 1995.
419	March 9–11, 1995.
420	April 6–8, 1995.
421	May 4–6, 1995.
422	June 8–10, 1995.
423	July 13–15, 1995.
424	August 10–12, 1995.
425	September 7–9, 1995.
426	October 5–7, 1995.
427	November 2–4, 1995.
428	December 7–9, 1995.

Dated December 21, 1994.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 94–31954 Filed 12–27–94; 8:45 am]

BILLING CODE 7590–01–M

Docket Nos. 50–261; 50–325 and 50–324; 50–400

Carolina Power & Light Co.; (H.B. Robinson Steam Electric Plant, Unit No. 2, Brunswick Steam Electric Plant, Units 1 and 2; Shearon Harris Nuclear Power Plant, Unit 1); Exemption

I

Carolina Power & Light Company (CP&L or the licensee) is the holder of Facility Operating License Nos. DPR–71 and DPR–62 for Brunswick Steam Electric Plant, Units 1 and 2, (Brunswick) located in Brunswick County, North Carolina; Facility Operating License No. DPR–23 for H.B. Robinson Steam Electric Plant, Unit No. 2, (Robinson) located in Darlington County, South Carolina; and Facility Operating License No. NPF–63 for Shearon Harris Nuclear Power Plant, Unit 1, (Harris) located in Wake and Chatham Counties, North Carolina. The licenses authorize the operation of the above facilities.

The licenses provide, among other things, that the licensee is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facilities consist of two boiling water reactors located at the licensee's Brunswick site, and two pressurized water reactors, one located at the Robinson site and one at the Harris site.

Paragraph (a) of Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," of Title 10 of the *Code of Federal Regulations* (10 CFR) states, in part, that "the licensee shall establish and maintain an onsite physical protection system and security organization that will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

Paragraph (1) of Section 73.55(d), "Access Requirement," specifies that "The licensee shall control all points of personnel and vehicle access into a protected area." Section 73.55(d)(5) requires that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." Section 73.55(d)(5) also states that an individual not employed by the licensee (i.e., a contractor) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area . . . ."

The licensee proposed to implement an alternative unescorted access control system that would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badge with them when departing the site.

An exemption from certain requirements of 10 CFR 73.55(d)(5) is required to allow contractors who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letters dated July 29, 1994, and December 5, 1994, and December 5, 1994, the licensee requested an exemption from certain

requirements of 10 CFR 73.55(d)(5) for this purpose.

III

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are (1) authorized by law and will not endanger life or property or the common defense and security, and (2) are otherwise in the public interest.

Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have "the same high assurance objective" and meet "the general performance requirements" of the regulation, and "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Currently, unescorted access into protected areas of the Harris unit is controlled through the use of a photograph on a badge and a separate keycard. At Brunswick and Robinson, unescorted access into protected areas is controlled through the use of a photograph on a combination badge and keycard (hereafter, referred to as badge). The security officers at each entrance station use the photograph on the badge to visually identify the individual requesting access. The individual is then given the badge to allow access. The badges for both licensee employees and contractor personnel who have been granted unescorted access are issued upon entrance at each entrance/exit location and are returned upon exit. The badges are stored and are retrievable at each entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractor individuals are not allowed to take badges offsite. In accordance with the plants' physical security plans, neither licensee employees nor contractors are allowed to take badges offsite.

Under the proposed system, each individual who is authorized for unescorted entry into protected areas would have the physical characteristics of his/her hand (hand geometry) registered with his/her badge number in the access control computer. Access is then controlled by the individual requesting access placing his/her badge into the card reader and his/her hand on a measuring surface, the computer then compares the hand geometry to the registered badge number. If the characteristics of the hand geometry stored in the computer match the badge number, access is granted. If the characteristics do not match, access is denied. This provides a nontransferable means of identifying that the individual possessing the badge is the individual who was granted unescorted access. It also provides a positive means of assuring that a stolen or lost badge could not be used to gain access, thus eliminating the need to issue and retrieve the badges while maintaining the same high level of assurance that access is granted to only authorized individuals. All other access processes, including search function capability, would remain the same. The system will not be used for persons requiring escorted access (i.e., visitors). The access process will continue to be under the observation of security personnel located within a hardened cubicle who have final control over the release of the entrance station turnstiles. A numbered picture badge identification system will continue to be used for all individuals who are authorized access to the protected area with escorts. Badges will continue to be displayed by all individuals while inside the protected area.

The licensee will use the hand geometry equipment which will meet the detection probability of 90 percent with a 95 percent confidence level. Testing evaluated by Sandia National Laboratory (Sandia report entitled "A Performance Evaluation of Biometric Identification Devices," SAND91–0276 UC–906 Unlimited Release, Printed June 1991) demonstrated that the proposed hand geometry system is capable of meeting the proposed detection probability and confidence level. Based upon the results of the Sandia report and on its experience with the current photo-identification system, the proposed system will have a false acceptance rate that is at least as low as that of the current system. The Physical Security Plans for the sites will be revised to include implementation and testing of the hand geometry access control system and to allow licensee employees and contractors to take their badges offsite.

IV

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet "the same high assurance objective," and "the general performance requirements" of the regulation and that "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Carolina Power & Light Company an exemption from those requirements of 10 CFR 73.55(d)(5) relating to the returning of picture badges upon exit from the protected area such that individuals not employed by the licensee, i.e., contractors, who are authorized unescorted access into the protected area, can take their badges offsite. Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (59 FR 65545).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 20th day of December 1994.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–31857 Filed 12–27–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8968–ML; ASLBP No. 95–706–01–ML]

Hydro Resources, Inc.; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register,** 37 F.R. 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the presiding officer to conduct the hearing in the event that an informal adjudicatory hearing is ordered in the following Materials License proceeding.

Hydro Resources, Inc., 12750 Merit Drive, Suite 1210 LB12, Dallas, TX 75251

The Presiding Officer is being designated pursuant to 10 CFR 2.1207 of the Commission's Regulations, "Informal Hearing Procedures for Materials Licensing Adjudications," published in the **Federal Register,** 54 FR 8269 (1989). This action is in response to hearing requests submitted by the Zuni Mountain Coalition, Bernadine Martin, Water Information Network, Dine CARE (Navajo Nation), Southwest

Research and Information Center, Mervyn Tilden, and Grace and Marilyn Sam. The petitioners request a hearing in response to the notice published by the Office of Nuclear Material Safety and Safeguards entitled "Notice of Availability of Draft Environmental Impact Statement; Notice of Opportunity for Hearing." The notice was published in the **Federal Register** 59 FR 56557, November 14, 1994.

The presiding officer in this proceeding is Administrative Judge B. Paul Cotter, Jr.

Pursuant to the provisions of 10 CFR 2.722, the Presiding Officer has appointed Administrative Judge Thomas D. Murphy to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Cotter and Judge Murphy in accordance with 10 CFR 2.701. Their addresses are:

Administrative Judge B. Paul Cotter, Jr., Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555;

Administrative Judge Thomas D. Murphy, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Rockville, Maryland, this 21st day of December 1994.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 94–31955 Filed 12–27–94; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia Paige, (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on December 7, 1994 (59 FR 63132). Individual authorities established or revoked under Schedules A and B and established under Schedule C between November 1 and November 30, 1994, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, will also be published.

Schedule A

The following exception was established:

Utah Reclamation Mitigation and Conservation Commission

(a) Executive Director. Effective November 17, 1994.

The following exception was revoked:

Department of Commerce

Not to exceed 40 positions of Manager and Deputy Managers of International Trade Fairs and Exhibit Programs in foreign countries when the duties require a considerable portion of the employee's time to be spent in foreign countries. Effective November 15, 1994.

Schedule B

National Endowment for the Humanities

Professional positions at Grades GS–11 through GS–15 engaged in the review, evaluation, and administration of grants supporting scholarship, education, and public programs in the humanities, the duties of which require indepth knowledge of a discipline of the humanities. Effective November 22, 1994.

The following exception was revoked:

National Endowment for the Humanities

Fifty-five individual authorities covering Humanities Administrator positions. Effective November 22, 1994.

Schedule C

Corporation for National and Community Service

Special Assistant to the Chief Financial Officer. Effective November 25, 1994.

Department of Agriculture

Staff Assistant to the Administrator, Farmers Home Administration. Effective November 7, 1994.

Confidential Assistant to the Acting Administrator, Rural Development Administration. Effective November 7, 1994.

Staff Assistant to the Secretary of Agriculture. Effective November 7, 1994.

Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service. Effective November 18, 1994.

Department of the Army (DOD)

Secretary (Office Automation) to the Assistant Secretary of the Army (Research, Development and Acquisition). Effective November 23, 1994.

Department of Commerce

Deputy Press Secretary to the Deputy Director, Office of Public Affairs. Effective November 4, 1994.

Special Assistant to the Deputy Assistant Secretary for Technology Policy. Effective November 4, 1994.

Confidential Assistant to the Deputy Under Secretary for Technology. Effective November 4, 1994.

Special Assistant for Public Affairs to the Under Secretary for Travel and Tourism. Effective November 10, 1994.

Department of Defense

Special Assistant to the Director, Program Analysis and Evaluation. Effective November 7, 1994.

Department of Education

Confidential Assistant to the Senior Advisor on Education Reform. Effective November 4, 1994.

Special Assistant to the Chief of Staff. Effective November 4, 1994.

Special Assistant to the Chief of Staff. Effective November 25, 1994.

Department of Energy

Special Assistant to the Director, Office of Nuclear Energy. Effective November 4, 1994.

Director, Office of Natural Gas Policy to the Principal Deputy Assistant Secretary for Policy. Effective November 4, 1994.

Special Assistant to the Director, Office of Economic Impact and Diversity. Effective November 4, 1994.

Staff Assistant to the Principal Deputy Assistant Secretary for Policy. Effective November 14, 1994.

Special Assistant to the Deputy Secretary of Energy. Effective November 30, 1994.

Department of Health and Human Services

Director, Office of Scheduling to the Chief of Staff, Office of the Secretary. Effective November 9, 1994.

Special Assistant to the Principal Executive Officer. Effective November 10, 1994.

Department of Housing and Urban Development

Staff Assistant to the Director, Office of Executive Scheduling. Effective November 10, 1994.

Deputy Assistant Secretary for Plan and Policy to the Assistant Secretary,

Office of Congressional and Intergovernmental Relations. Effective November 22, 1994.

Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity. Effective November 28, 1994.

Department of Justice

Staff Assistant to the Director, Office of Public Affairs. Effective November 2, 1994.

Attorney Advisor (Special Counsel) to the Director, Executive Office for United States Attorney's Office. Effective November 4, 1994.

Staff Assistant to the Director, Office of Public Affairs. Effective November 14, 1994.

Department of Labor

Special Assistant to the Deputy Assistant Secretary for Program Economics and Research and Technical Support. Effective November 25, 1994.

Department of the Navy (DOD)

Special Assistant to the Principal Deputy Assistant Secretary of the Navy for Installations and Environment. Effective November 10, 1994.

Department of State

Special Assistant to the Assistant Secretary, Bureau for Population, Refugees and Migration. Effective November 25, 1994.

Department of Veterans Affairs

Executive Assistant to the Secretary of Veterans Affairs. Effective November 28, 1994.

Environmental Protection Agency

Special Assistant to the Associate Administrator for Communications, Education, and Public Affairs. Effective November 14, 1994.

Equal Employment Opportunity Commission

Confidential Assistant to the Director, Office of Communications and Legislative Affairs. Effective November 10, 1994.

Farm Credit Administration

Special Assistant to the Chairman. Effective November 15, 1994.

Special Assistant to a Member. Effective November 15, 1994.

Federal Deposit Insurance Corporation

Secretary to the Chairman. Effective November 4, 1994.

General Services Administration

Special Assistant to the Associate Administrator for Public Affairs. Effective November 4, 1994.

National Transportation Safety Board

Confidential Assistant to the Chairman. Effective November 30, 1994.

Small Business Administration

Regional Administrator, Region X, Seattle, WA, to the Administrator, Small Business Administration. Effective November 9, 1994.

Chief of Staff to the Administrator Effective November 17, 1994.

Regional Administrator, Region IX, San Francisco, to the Administrator, Small Business Administrator, Effective November 23, 1994.

U.S. Arms Control and Disarmament Agency

Secretary (Steno O/A) to the Deputy Director, U.S. Arms Control and Disarmament Agency. Effective November 30, 1994.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954—1958 Comp., P.218.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director

[FR Doc. 94-31821 Filed 12-27-94; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Priority Foreign Countries: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public concerning acts, policies, and practices to be considered with respect to identification of countries under section 182 of the Trade Act of 1974, as amended (Trade Act).

SUMMARY: Section 182 of the Trade Act requires the United States Trade Representative (USTR) to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. 19 U.S.C. 2242. In addition, the USTR is required to determine which of the countries identified should be designated as priority foreign countries. Priority foreign countries typically are subject to a "special" 301 investigation of the acts, policies or practices which led to their designation.

USTR requests written submissions from the public concerning foreign countries' acts, policies, and practices that are relevant to the decision whether particular trading partners should be identified under section 182 of the Trade Act.

DATES: Submissions must be received on or before 12:00 noon on Monday, February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph Papovich, Deputy Assistant USTR for Intellectual Property (202) 395-6864; Diane Markowitz, Director for Intellectual Property (202) 395-6864; or Thomas Robertson, Assistant General Counsel (202) 395-6800, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: Pursuant to section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988, the USTR must identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are to be identified as priority foreign countries.

USTR may not identify a country as a priority foreign country if it is entering into good faith negotiations, or making significant progress in bilateral or multilateral negotiations, to provide adequate and effective protection of intellectual property rights.

USTR must decide whether to identify countries as priority foreign countries each year and issue a decision within 30 days after publication of the National Trade Estimate (NTE) report, i.e., no later than April 30, 1995. Priority foreign countries typically are subject to a "special" 301 investigation of the acts, policies or practices which led to their designation.

Requirements for Submissions

Submissions should include a description of the problems experienced and the effect of the acts, policies, and practices on U.S. industry. Submissions should be as detailed as possible and should provide all necessary information for assessing the effect of the acts, policies and practices. Any submissions that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses. Comments must be filed in accordance with the requirements set forth in 15 CFR § 2006.8(b) (55 FR 20593) and must be sent to Sybia Harrison, Special Assistant to the Section 301 Committee, room 223, 600 17th Street, NW., Washington, DC 20506, no later than 12:00 noon on

Monday, February 13, 1995. Because submissions will be placed in a file open to public inspection at USTR, business-confidential information should not be submitted.

Public Inspection of Submissions

Within one business day of receipt, submissions will be placed in a public file, open for inspection at the USTR Reading Room, in room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC. An appointment to review the file may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 10:00 a.m. to 12:00 noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday.

Donald Abelson,

Assistant USTR for Services, Investment and Intellectual Property.

[FR Doc. 94–31855 Filed 12–27–94; 8:45 am]

BILLING CODE 3190–01–M

Supplementary Time Period for Submission of Public Comment: Deregulation Measures in Japan

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written comments regarding deregulation measures in Japan.

SUMMARY: On November 22, 1994, the United States Trade Representative ("USTR") issued a request for public comments (59 FR 60175) regarding the five-year plan for deregulation measures in Japan which the Government of Japan currently is preparing and expects to finalized by the end of March, 1995. The deadline for submitting public comments was December 21, 1994. Persons with a significant interest in deregulation in Japan have requested that USTR provide additional time to submit comments. In response to these requests, USTR has decided to provide for a supplementary time period for interested persons to submit comments. USTR solicits comments from interested parties regarding specific laws, regulations, or regulatory practices in Japan, the removal or modification of which would improve market access for United States products or services.

DATES: Comments are due on or before noon on January 19, 1995.

ADDRESS: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Barbara Weisel, Director of Policy Planning for Japan, (202) 395–3900, or James Southwick, Assistant General Counsel, (202) 395–7203.

SUPPLEMENTARY INFORMATION: As explained further in the notice of November 22, the Government of Japan currently is in the process of preparing a five-year plan of deregulation, which it expects to complete by the end of March, 1995. The United States Government is consulting with the Government of Japan regarding the deregulation plan. In response to an invitation by the Government of Japan, the United States Government, under the coordination of USTR, prepared and presented to the Government of Japan, on November 15, 1994, an initial list of deregulation requests and comments for consideration in connection with Japan's five-year deregulation plan. This list is available for public inspection and copying in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506. An appointment to review the list may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

The United States Government intends to continue consultations with the Government of Japan in various fora regarding the issues in the list and regarding the preparation and implementation of the five-year plan. The United States Government intends to submit to Japan, as appropriate, additional requests or comments regarding the action plan and other deregulation issues.

Request for Public Comment

Interested persons are invited to submit written comments on specific laws, regulations, or regulatory practices in Japan, the removal or modification of which would improve market access for United States products or services. Comments may address any sector. Comments should identify and explain the laws, regulations, and regulatory practices in sufficient detail to allow a full understanding of the regulatory issues and market access concerns.

In addition to comments regarding specific laws, regulations, or regulatory practices, USTR is interested in receiving comments from interested persons regarding regulatory processes and procedures, for example regarding transparency or review of administrative actions, which affect market access.

Comments are due no later than noon on January 19, 1994. Comments must be in English and provided in twenty copies to: Office of Japan and China Affairs, Attn: Japan Deregulation Issues, Room 322, USTR, 600 17th Street, NW, Washington, DC 20506.

Comments will be placed on a file open to public inspection, except confidential business information. Parties requesting that confidential business information they submit be exempt from disclosure must mark the confidential business information in the same manner as described in 15 CFR 2006.15(b), i.e., it must be clearly marketed "BUSINESS CONFIDENTIAL" in contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the file that is open to public inspection.

Barbara Weisel,

Director of Policy Planning for Japan.

[FR Doc. 94–31891 Filed 12–27–94; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35127; File No. SR–Amex–94–52]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to S&P MidCap 400 Depositary Receipts

December 20, 1994

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 22, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. 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 list and trade under Amex Rules 1000 *et seq.* Standard & Poor's ("S&P") MidCap 400 Depositary Receipts. In addition, the Exchange proposes to amend Amex Rule 1000 (b)(1) to include reference to the alternative reinvestment of periodic cash payments to holders, and to amend Amex Rule 1004 to extend it to the S&P MidCap 400 Index.

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

[1] 15 U.S.C. 78s(b)(1) (1982).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Portfolio Depositary Receipts

On December 11, 1992, the Commission approved Amex Rules 1000 *et seq.*[2] to accommodate trading on the Exchange of Portfolio Depositary Receipts ("PDRs"). PDRs are securities that represent interests in a unit investment trust ("Trust") operating on an open-end basis and holding a portfolio of securities. The Trust sponsor ("Sponsor") of each series of PDRs is PDR Services Corporation, a wholly-owned subsidiary of the Amex.[3] Each Trust is intended to provide investors with an instrument that closely tracks the underlying securities portfolio, that trades like a share of common stock, and that pays to PDR holders periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses, as described in the applicable Trust prospectus. The first Trust to be formed in connection with the issuance of PDRS was based on the S&P 500 Index ("S&P Index"), known as Standard & Poor's Depositary Receipts ("SPDRs"). SPDRs have been trading on the Exchange since January 29, 1993.

The Exchange now proposes to list and trade under Rules 1000 *et seq.* Standard & Poor's Midcap 400 Depositary Receipts ("MidCap SPDRs").[4] The Sponsor will enter into a trust agreement with a trustee in accordance with Section 26 of the Investment Company Act of 1940. PDR Distributors, Inc. ("Distributor") will act as underwriter of MidCap SPDRs on an agency basis. All orders to create MidCap SPDRs in Creation Unit size aggregations must be placed with the Distributor, and it will be the responsibility of the Distributor to transmit such orders to the Trustee. The Distributor is a registered broker-dealer, a member of the National Association of Securities Dealers, Inc., and a wholly-owned subsidiary of Signature Financial Group, Inc.

To be eligible to place orders to create MidCap SPDRs as described below, an entity or person either must be a participant in the Continuous Net Settlement ("CNS") system of the National Securities Clearing Corporation ("NSCC") or a Depository Trust Company ("DTC") participant. Upon acceptance of an order to create MidCap SPDRs, the Distributor will instruct the Trustee to initiate the book-entry movement of the appropriate number of MidCap SPDRs to the account of the entity placing the order. MidCap SPDRs will be registered in book-entry only, which records will be kept by DTC.

Payment with respect to creation orders placed through the Distributor will be made by (1) the "in-kind" deposit with the Trustee of a specified portfolio of securities that is formulated to mirror, to the extent practicable, the component securities of the underlying index or portfolio, and (2) a cash payment sufficient to enable the Trustee to make a distribution to the holders of beneficial interests in the Trust on the next dividend payment date as if all the securities had been held for the entire accumulation period for the distribution ("Dividend Equivalent Payment"), subject to certain specified adjustments.[5] The securities and cash accepted by the Trustee are referred to, in the aggregate, as a "Portfolio Deposit."

It is anticipated that the term of the MidCap SPDR Trust will be 25 years.

2. Issuance of MidCap SPDRs

Upon receipt of a Portfolio Deposit in payment for a creation order placed through the Distributor as described above, the Trustee will issue a specified number of MidCap SPDRs, which aggregate number is referred to as a "Creation Unit." The Exchange anticipates that, with respect to MidCap SPDRs, a Creation Unit will be made up of 25,000 MidCap SPDRs. Individual MidCap SPDRs can then be traded in the secondary market like other equity securities. It is expected that Portfolio Deposits will be made primarily by institutional investors, arbitragers, and the Exchange specialist. As of November 17, 1994, it is estimated that the value of an individual MidCap SPDR would be approximately $34.37.

It is expected that the Trustee or Sponsor will make available (a) on a daily basis, a list of the names and required number of shares for each of the securities in the current Portfolio Deposit; (b) on a minute-by-minute basis throughout the day, a number representing the value (on a per MidCap SPDR basis) of the securities portion of a Portfolio Deposit in effect on such day and (c) on a daily basis, the accumulated dividends, less expenses per outstanding MidCap SPDR.

Transactions in MidCap SPDRs may be effected on the Exchange until 4:15 p.m. New York time each business day The minimum fractional change for MidCap SPDRs shall be 1/32 of $1.00.

3. Redemption

MidCap SPDRs in Creation Unit size aggregations will be redeemable in kind by tendering them to the Trustee. While holders may sell MidCap SPDRs in the secondary market at any time, they must accumulate at least 25,000 (or multiples thereof) to redeem them through the Trust. MidCap SPDRs will remain outstanding until redeemed or until the termination of the Trust. Creation Units will be redeemable on any business day in exchange for a portfolio of the securities held by the Trust identical in weighting and composition to the securities portion of a Portfolio Deposit in effect on the date request is made for redemption, together with a "Cash Component" (as defined in the Trust prospectus), including accumulated dividends, less expenses, through the date of redemption. The number of shares of each of the securities transferred to the redeeming holder will be the number of shares of each of the component stocks in a Portfolio Deposit on the day a redemption notice is received by the Trustee, multiplied by the number of Creation Units being redeemed. Nominal service fees may be charged in connection with the creation and redemption of Creation Units. The Trustee will cancel all tendered Creation Units upon redemption.

4. Distributions

The MidCap SPDR Trust will pay dividends quarterly. The regular quarterly ex-dividend date for MidCap SPDRs will be the third Friday in March, June, September, and December, unless such day is a New York Stock

[2] See Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253.

[3] Portfolio Depositary Receipts and PDRs are service marks of PDR Services Corporation.

[4] "Standard & Poor's 500," "Standard & Poor's MidCap 400 Index," "Standard & Poor's Depositary Receipts," "SPDRs," "Standard & Poor's MidCap 400 Depositary Receipts," and "MidCap SPDRs" are trademarks of McGraw-Hill, Inc., and are being used by the Exchange and the Sponsor under license among Standard & Poor's, a division of McGraw-Hill, Inc., the Exchange, and the Sponsor

[5] See "Distributions," *infra*.

Exchange holiday, in which case the ex-dividend date will be the preceding Thursday (the "ex-dividend date"). Holders of MidCap SPDRs on the business day preceding the ex-dividend date will be entitled to receive an amount representing dividends accumulated through the quarterly dividend period preceding such ex-dividend date net of fees and expenses for such period. The payment of dividends will be made on the last Exchange business day in the calendar month following the ex-dividend date ("Dividend Payment Date"). On the Dividend Payment Date, dividends payable for those securities with ex-dividend dates falling within the period from the ex-dividend date most recently preceding the current ex-dividend date through the business day preceding the current ex-dividend date will be distributed. The Trustee will compute on a daily basis the dividends accumulated within each quarterly dividend period. Dividend payments will be made through DTC and its participants to all such holders with funds received from the Trustee. The MidCap SPDR Trust intends to make the DTC Dividend Reinvestment Service available for use by MidCap SPDR holders through DTC Participant brokers for reinvestment of their cash proceeds. An interested investor would have to commit his or her broker to ascertain the availability of dividend reinvestment through such broker.

5. Criteria for Initial and Continued Listing

Because of the open-end nature of the Trust upon which a series of PDRs is based, the Exchange believes it is necessary to maintain appropriate flexibility in connection with listing a specific Trust. In connection with initial listing, the Exchange establishes a minimum number of PDRs required to be outstanding at the time of commencement of Exchange trading. For MidCap SPDR, it is anticipated that a minimum of 75,000 MidCap SPDR (i.e., three Creation Units of 25,000 MidCap SPDR each), will be required to be outstanding when trading begins.

The MidCap SPD Trust will be subject to the initial and continued listing criteria of Rule 1002(b). Rule 1002(b) provides that, following twelve months from the formation of a Trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of, a Trust when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) If the Trust on which the PDRs are based has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the PDRs for 30 or more consecutive trading days; or

(b) If the index on which the Trust is based is no longer calculated; or

(c) If such other event shall occur or condition exists which in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

A Trust shall terminate upon removal from Exchange listing and its PDRs redeemed in accordance with provisions of the Trust prospectus. A Trust may also terminate under such other conditions as may be set forth in the Trust prospectus. For example, the Sponsor, following notice to PDR holders, shall have discretion to direct that the Trust be terminated if the value of securities in such Trust falls below a specified amount.[6] The MidCap SPD Trust will also terminate if the license agreement with S&P terminates.

6. Trading Halts

Prior to commencement of trading in MidCap SPDRs, the Exchange will issue a circular to members informing them of exchange policies regarding trading halts in such securities. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Rule 918C(b) in exercising its discretion to halt or suspend trading. These factors would include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value;[7] or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[8]

7. Terms and Characteristics

Under Amex Rule 1000, Commentary .01, Amex members and member organizations are required to provide to all purchasers of MidCap SPDRs a written description of the terms and characteristics of such securities, in a form prepared by the Exchange, not later than the time a confirmation of the first transaction in each series is delivered to such purchaser. The Exchange also requires that such a description be included with any sales material on MidCap SPDRs that is provided to customers or the public. In addition, the Exchange requires that members and member organizations provide customers the prospectus for MidCap SPDRs upon request.

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase MidCap SPDRs for that omnibus account will be deemed to constitute agreement by the non-member to make the written description available to its customers on the same terms as are directly applicable to members and member organizations.

Prior to commencement of trading MidCap SPDRs, the Exchange will distribute to exchange members and member organizations an Information Circular calling attention to characteristics of the MidCaps SPDR Trust and to applicable Exchange rules.

8. Amendments to Rules 1000(b) and 1004

The Exchange proposes to amend the definition of Portfolio Depositary Receipt in Rule 1000(b) to add a reference to the possible provision by a Trust of reinvestment of periodic cash proceeds corresponding to the regular cash dividends or declarations declared with respect to the underlying stock index securities or portfolio of securities.

The Exchange proposes to amend Rule 1004, S&P 500 Index, to add appropriate references to the S&P MidCap 400 Index.

9. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act. Specifically, the Exchange believes that its proposal is consistent with the objectives of Section 6(b)(5) of the Act 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, and in general to protect investors and the public interest. The Exchange believes that Portfolio Depositary Receipts, generally, and SPDRs and MidCap SPDRs specifically, have the potential to benefit the markets by providing an alternate trading instrument, such as those encouraged by the Division of Market Regulation in its

[6] With respect to the MidCap SPDR Trust, the Sponsor has the discretionary right to terminate the Trust if the value of Trust Securities (as defined in the Trust registration statement) falls below $25,000,000 at any time after six months following, and prior to three years following, inception of the Trust. Following such time, the Sponsor has the discretionary right to terminate if Trust Securities fall below $100,000,000 in value, adjusted annually for inflation.

[7] Amex Rule 918C(b)(3).

[8] Amex Rule 918C(b)(4).

report, The October 1987 Market Break, that may help temper market volatility and reduce stress on individual index component stocks during unusual market conditions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington DC. 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 File No. SR–Amex–94–52 and should be submitted by January 17, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–31881 Filed 12–27–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35130; International Series Release No. 763, File No. SR–CBOE–94–47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing of Options and Long-Term Options on a Reduced-Value of the Deutsche Aktien Index ("DAX Index")

December 20, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 18, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 CBOE proposes to amend certain of its rules to provide for the listing and trading on the Exchange of options and long-term options on a reduced-value of the Deutsche Aktien Index ("DAX Index" or "Index") computed at one-tenth of the full-value of the DAX Index. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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 CBOE has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style[3] stock index options on a reduced-value of the DAX Index. The DAX Index is a capitalization-weighted index of 30 German blue-chip equity securities listed on the Frankfurt Stock Exchange ("FSE").[4] The Exchange represents that options on the reduced-value of the DAX Index will provide investors with a low-cost means of participating in the German economy and hedging against the risk of investing in that economy

Index Design

The 30 stocks comprising the DAX Index were selected by the FSE for their high market capitalization and high degree of liquidity. The DAX Index stocks are drawn from a broad base of industries and are representative of the industrial composition of the broader German equity market. The CBOE represents that the stocks contained in the Index account for 70% of the trading volume on the FSE.

The DAX Index is weighted by the market capitalization of the component stocks. The capitalization of a particular stock in the Index is calculated by multiplying the listed capital[5] by the price of the stock and a multiple determined by the FSE.

As of August 31, 1994, the CBOE represents that the 30 stocks contained in the Index ranged in market capitalization from DM 1.8 billion (US$1.14 billion)[6] to DM 50.1 billion (US$31.7 billion) with the median capitalization of the firms in the Index of DM 9.9 billion (US$6.3 billion). Also

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[9] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] A European-style option can be exercised only during a specified time period before the option expires.

[4] The components of the Index are as follows: Allianz AG Holdings, BASF AG, Bayer AG, Bayer Hypo/Wech, BMW, Bayer Vereinsbank AG, Commerzbank AG, Continental AG, Daimler-Benz AG, Deutsche Babcock AG; Deutsche Bank AG, Degussa AG, Dresdner Bank AG, Henkel KGAA–Pfd, Hoechst AG, Karstadt AG, Kaufhof Holdings AG, Lufthansa AG, Linde AG, Man AG, Metallgesellsch, Mannesmann AG, Preussag AG, RWE AG, Schering AG, Siemens AG, Thyssen AG, Veba AG, Viag AG, and Volkswagen AG.

[5] Listed capital is determined based on the issuer's preferred and common shares registered for trading on the FSE. The CBOE notes that domestic indexes, such as the S&P 500 Index, are calculated based on the shares of common stock only.

[6] Based on the exchange rate of DM 1.5815/US$1 prevailing on August 31, 1994).

as of that date, the largest 13 stocks in the Index accounted for approximately 75% of the total weight of the Index with no single security accounting for more than 10.87% or less than 0.37% of the total weight of the Index. Average daily trading volume in the components of the Index for the period from March 1, 1994, through August 31, 1994, ranged from a low of 50,981 shares to a high of 820,738 shares, with an average daily trading volume for all components during that period of approximately 295,000 shares. The Index is composed of ten broad industry groups, including, among others, chemicals, automobile, and insurance companies which, the CBOE represents, reflect the industry composition of the German equity market.

Calculation

The DAX Index reflects changes in the capitalization of the component stocks relative to the base value of 1,000 on December 30, 1987. The base value was reached by multiplying the price of each stock by the number of listed shares of that stock, obtaining the sum for all components, and then dividing by a divisor determined to give the Index an initial value of 1,000. The Index had a closing value of 2,212.85 on August 31, 1994.

The value of the DAX Index is calculated every minute by the FSE from 9:30 a.m. to 1:30 p.m., Frankfurt time (3:30 a.m. to 7:30 a.m. Eastern time), based on last sale prices of the component stocks. The value of the Index is not disseminated by the FSE until opening prices are available for at least 15 components of the Index representing at least 70% of the capitalization of the Index. Thereafter, with respect to any stock that has not yet opened for trading, the Index value is calculated using the previous day's closing price for those components.

Maintenance

The Index is maintained by the FSE. The value of the Index is calculated by the FSE and disseminated over Reuters News Service, among others.

In order to maintain continuity of the value of the Index, the FSE adjusts the Index to reflect certain events relating to the component stocks. For example, the FSE adjusts the Index value to reflect cash dividends paid on the component securities.[7] An adjustment is also applied by the FSE whenever a company issues new shares for which the shareholders have preemptive rights, or when other intra-year events, such as mergers and spinoffs, occur.

The number of listed shares of each stock used in the calculation of the value of the Index is updated by the FSE annually in September. At that time, the adjustment factors mentioned above, which reflect the dividend payments and/or intra-year adjustments, are rescaled to one, with an additional adjustment made to maintain continuity in the value of the Index.[8]

In addition, the composition of the Index is reviewed periodically by the FSE. It is the FSE's policy not to alter the composition of the DAX Index unless a stock fails to meet certain criteria, *e.g.*, market capitalization and trading volume. Replacements are usually made from a list of substitute stocks. If it is not possible to substitute a stock from the same industry group, a stock from another industry may be substituted.

Index Option Trading

The Exchange proposes to establish the "trading value" of the Index for options trading purposes at one-tenth of the Index value as calculated by the FSE. For instance, if the DAX Index value was 2,080.21, the trading value will be calculated by the CBOE by dividing the Index value by 10, and then rounding to the nearest one-hundredth. In this example, the options trading value of the DAX Index would be 208.02. The U.S. dollar value underlying one DAX Index option would therefore be US$20,802—that is, 208.02 multiplied by $100.

In addition to regular options on the reduced-value of the DAX Index, the Exchange may provide for the listing of long-term index option series ("Index LEAPS") and reduced-value Index LEAPS on the trading value of the DAX Index. For reduced-value Index LEAPS, the underlying value would be computed at one-tenth of the trading value of the DAX Index, *i.e.*, 1/100th of the value of the DAX Index as calculated by the FSE. The current and closing reduced-value of the trading value of the Index for purposes of reduced-value Index LEAPS will, after such initial computation, be rounded to the nearest hundredth.

The trading hours for options on the reduced-value of the DAX Index, including Index LEAPS, will be from 9:00 a.m. to 4:15 p.m. Eastern time. Currently, the trading hours of the Exchange and the FSE do not overlap. The Exchange, therefore, will disseminate the trading value of the Index based on the most recent closing value of the Index as calculated by the FSE. After the close of the FSE, however, trading continues in the 30 stocks comprising the DAX-Index on the FSE's Integrated Stock Exchange Trading and Information System ("IBIS").[9] The trading hours of IBIS and the Exchange will overlap for the two hour period between 9:00 a.m. to 11:00 a.m. Eastern time. During this two hour period, the Exchange will disseminate an Index trading value based on the "indicative" DAX Index value disseminated by IBIS. When trading on IBIS has concluded, the exchange will disseminate an Index trading value based on the last indicative DAX Index level as disseminated by IBIS. To avoid any confusion, the trading value based on the IBIS indicative DAX Index value will have a different ticker symbol from the trading value based on the actual DAX Index value as reported by the FSE.

The option premium values for the reduced-value Index options, including Index LEAPS, will be quoted in U.S. dollars and, therefore, trading accounts will be denominated in U.S. dollars. The CBOE represents that all systems of the Exchange, The Options Clearing Corporation ("OCC"), and Exchange clearing members can accommodate trading, clearance and settlement of the reduced-value Index options, including Index LEAPS, without alteration, thus facilitating the trading of reduced-value DAX Index options by U.S. retail customers.

For strike prices under $200, the Exchange proposes to reserve the right to list series in 2½ point intervals.

[7] The CBOE represents that the FSE makes this adjustment because German companies usually pay their dividends only once per year (generally in June or July). If not adjusted, the annual dividend payment would result in a significant drop in the value of the Index at the time when the dividends are paid. As a result, the CBOE represents that the FSE calculates the dividend adjustment such that share prices reflect full dividend reinvestment. As calculated by the FSE, adjustments are made by multiplying each stock's capitalization by an adjustment factor (related to the amount of the dividend) that is particular to each stock. The resulting "adjusted" capitalization for each of the 30 stocks is summed and divided by the base date capitalization.

[8] The FSE also multiplies the ratio of capitalization (current capitalization divided by base date capitalization) by the "chain index factor." The FSE employs the "chain index factor" to reflect all previous dividend and capitalization adjustments made during the year. In this manner, continuity in the value of the Index is maintained despite changes in the shares and rescaling of the individual adjustment factors back to one.

[9] The CBOE represents that IBIS is a screen-based trading and information system that is available for trading from 8:30 a.m. to 5:00 p.m. Frankfurt time (2:30 a.m. to 11:00 a.m. Eastern time). IBIS, as part of the FSE, is subject to the same rules and regulations as floor trading on the FSE. IBIS began operating in April 1991.

Exercise and Settlement

The proposed options on the reduced-value of the Index will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 4:15 p.m. Eastern time on the immediately preceding Thursday. The CBOE represents that the FSE will normally calculate the Index value used for the exercise settlement value based on an average of the values of the DAX Index between 1:21 p.m. and 1:30 p.m. Frankfurt time (7:21 a.m. to 7:30 a.m. Eastern time),[10] on the Friday following the last day of trading of the options on the CBOE.[11] As a result, the reduced-value DAX Index options will normally cease trading on the CBOE on the Thursday before expiration but the exercise settlement value will be based on the closing prices (reported by the FSE) of the component securities of the Index on the Friday before expiration.[12] If a component stock does not trade during this interval, or if it fails to open for trading, the last available price on the stock will be used by the FSE in the calculation of the Index value, as is done, according to the CBOE, for other indexes for which options are presently listed and traded on the Exchange. When the last trading day for the reduced-value Index options is moved because of Exchange holidays (such as when the CBOE is closed on the Friday before expiration), the last trading day for expiring reduced-value Index options, including Index LEAPS, will be the Wednesday before expiration and the exercise settlement trading value of the reduced-value Index options at expiration will be determined by the CBOE at the close of the regular Thursday trading session on the FSE, even if the FSE is open on Friday.[13] If the FSE is closed on the Friday before expiration, the last trading day for expiring reduced-value Index options will be the Wednesday immediately prior to expiration.

Surveillance

The Exchange expects to apply its existing index options surveillance procedures to reduced-value Index options, including Index LEAPS. The Exchange has a market surveillance agreement with the FSE. The Exchange represents that this agreement will enable the Exchange to carry out its regulatory responsibilities with respect to the surveillance of trading in the stocks comprising the Index.

In addition, the German legislature recently adopted new laws that criminalize insider trading and provide for the creation, on or around January 1995, of an independent securities regulatory authority. The Exchange believes that these developments will facilitate Commission approval of options trading based on the DAX Index because they will enhance the surveillance of trading in the stocks comprising the Index.

Position Limits

The Exchange proposes to establish position limits for options on the reduced-value DAX Index, including Index LEAPS, of 50,000 contracts on either side of the market, provided that no more than 30,000 on such contracts are in the series in the nearest expiration month. Pursuant to CBOE rules,[14] positions in reduced-value Index options will be aggregated with positions in Index LEAPS. For these purposes, ten reduced-value Index LEAPS (*i.e.*, Index LEAPS based on 1/100th of the value of the DAX Index calculated by the FSE) will be the equivalent of one regular reduced-value Index option contract.

Exchange Rules Applicable

Except as modified herein, the Rules in Chapter XXIV will be applicable to reduced-value DAY Index options, including Index LEAPS.

CBOE represents that it has the necessary systems capacity to support new series that would result from the introduction of reduced-value DAX Index options, including Index LEAPS. CBOE also represents that it has been informed that the Options Price Reporting Authority ("OPRA") has the capacity to support such new series.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it will permit the trading of options based on the DAX Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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, N.W., Washington, D.C. Copies of such filing

[10] The FSE will calculate this average Index trading value based on the average of 10 separate DAX levels taken once per minute during this period.

[11] The CBOE will divide this number by 10 to determine the exercise settlement value of reduced-value Index options and Index LEAPS, and by 100 to determine the exercise settlement value for reduced-value Index LEAPS.

[12] Telephone conversation between Eileen Smith, Director, Product Development, Research Department, CBOE, and Brad Ritter, Senior Counsel, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, on December 2, 1994.

[13] In this case, the CBOE will collect the values of the Index reported by the FSE during the period from 1:21 p.m. to 1:30 p.m. Frankfurt time, on the Thursday before expiration, and will average these values for purposes of determining the exercise settlement value for the expiring Index options, including full and reduced-value Index LEAPS. Telephone conversation between Eileen Smith, Director, Product Development, Research Department, CBOE, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on December 2, 1994.

[14] *See* CBOE Rule 24.4.

[15] 15 U.S.C. § 78f(b)(5) (1988).

will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–94–47 and should be submitted by [insert date 21 days after the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–31882 Filed 12–27–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35129; File No. SR–DGOC–94–05]

Self-Regulatory Organizations; Delta Government Options Corp.; Order Approving Proposed Rule Change Relating to Procedures for Emergency Contingencies and Disaster Recovery

December 20, 1994.

On September 9, 1994, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] the Delta Government Options Corp. ("Delta") filed with the Securities and Exchange Commission ("Commission") a proposed rule change to establish procedures for emergency contingencies and disaster recovery. On September 23, 1994, Delta filed an amendment to the proposed rule change.[2] On November 10, 1994, the Commission published notice of the proposed rule change in the **Federal Register** to solicit comments from interested persons.[3] No comments were received. This order approves the proposal.

I. Description

The proposed rule change modifies Delta's Over-The-Counter Options Trading System Procedures ("Procedures") to establish emergency contingencies and disaster recovery procedures. In particular, the proposal adopts a new Article XIX to Delta's Procedures. Article XIX contains provisions governing (1) the waiver or suspension of Delta's procedures (Section 1901); (2) action on behalf of Delta by Delta's management (Section 1902); and (3) interpretation by Delta's management of Delta's rules (Section 1903).

Section 1901 permits Delta's Board of Directors, Chairman of the Board, President, Vice President, Chief Financial Officer, Secretary, or Controller (1) to extend the time fixed by any provision of Delta's Procedures or any regulations issued by Delta for the doing of any act or acts or (2) to waive or to suspend any provision of Delta's Procedures or any regulations issued by Delta if they judge such extensions, waiver, or suspension to be necessary or expedient. The extension, waiver, or suspension may remain in effect only for sixty days unless approved by Delta's Board of Directors.

Section 1901 requires that a written report of the extension, waiver, or suspension be filed with Delta and be available for inspection by any participant. The written report must set forth the pertinent facts, the identity of the person who authorized the extension, waiver, or suspension, and the reason the extension, waiver, or suspension was deemed necessary or expedient. No written report will be required for extensions of time of less than eight hours.

Section 1902 permits Delta's Board of Directors, Chairman of the Board, President, Vice President, Chief Financial Officer, Secretary, Controller, or other persons designated by Delta's Board of Directors to act on behalf of Delta except where Delta's Procedures require action by the Board of Directors. Section 1903 authorizes Delta's Board of Directors, Chairman of the Board, President, any committee of the Board of Directors, or any designee of the Board of Directors to interpret Delta's Procedures.

II. Discussion

Section 17A(b)(3)(F) of the Act provides that the rules of a clearing agency must promote the prompt and accurate clearance and settlement of securities transactions and must assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[4] The proposed rule change establishes contingency planning and disaster recovery procedures that can be used in the event of an emergency, market disruption, or other unanticipated event in order to permit Delta to maintain continuous operations while safeguarding the assets under its custodianship. The Commission believes that the proposed rule change strikes an appropriate balance between permitting management to respond quickly to emergencies without giving upper management unwarranted discretion.

III. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DGOC–94–05) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–31883 Filed 12–27–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35126; File No. SR–MSTC–94–16]

Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Technical Correction to MSTC's Rules

December 20, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 10, 1994, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by MSTC. 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 proposed rule change involves a technical correction to Section 3(i) of Rule 1 of Article IV of MSTC's rules in that it changes the term "depository free position" to "segregated position."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, MSTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in sections (A), (B),

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[16] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letter from Barry E. Silverman, President, Delta, to Jerry W. Carpenter, Assistant Director, Securities Processing Regulation, Division of Market Regulation, Commission (September 22, 1994).

[3] Securities Exchange Act Release No. 34939 (November 3, 1994), 59 FR 56099.

[4] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[1] 15 U.S.C. § 78d(b)(1) (1988).

and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make a technical correction to Section 3(i) of Rule 1 of Article IV of MSTC's rules. The correction will change the term "depository free position" to "segregated position" throughout Section 3(i). In a prior rule filing, MSTC made significant changes to its securities processing operations. Among other things, that rule filing instituted both real-time and twenty-four hour processing of securities transactions.[2] In connection with these enhancements, it was necessary to change the terminology for certain MSTC deposits. Specifically, MSTC redefined the term "depository free position" as "segregated position" throughout MSTC's rules.[3] The prior rule filing and all amendments thereto,[4] however, did not change this term in Section 3(i) of Rule 1 of Article IV of MSTC's rules. Accordingly, this rule filing makes this technical correction to MSTC's rules.

B. Self-Regulatory Organization's Statements on Burden on Competition

MSTC believes that no burden will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

MSTC has not solicited or received any comments. MSTC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i)[5] of the Act and Rule 19b-4(e)(4)(1)[6] thereunder in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing MSTC rule. At any time within sixty days of the filing of this proposed rule change, the Commission summarily may abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication 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, N.W., Washington, D.C. 20549. Copies of the filing also will be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR-MSTC-94-16 and should be submitted by January 17, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-31884 Filed 12-27-94; 8:45 am]

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[2] For a description of these changes, refer to Securities Exchange Act Release No. 28877 (February 12, 1991), 56 FR 6892 [File No. SR-MSTC-90-01] (order approving proposed rule change).

[3] A segregated position means the position of a participant with respect to securities credited to the depository account of such participant on the books of MSTC, other than securities in transfer positions. Article I, Definitions and General Provisions, MSTC Rules.

[4] Securities Exchange Act Release No. 34039 (May 11, 1994), 59 FR 25975 (order making technical correction to certain MSTC rules).

[5] 15 U.S.C. § 78s(b)(3)(A)(i) (1988).

[6] 17 CFR 240.19b-4(e)(1) (1994).

[7] 17 CFR 200.30-3(a)(12) (1994).

[Release No. 34-35128; File No. SR-MSRB-94-16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business

December 20, 1994.

On December 6, 1994, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-MSRB-94-16), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Board has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board under Section 19(b)(3)(A) of the Act, which renders the proposal effective upon receipt of this filing by the Commission. 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 Board is filing herewith a notice of interpretation concerning rule G-37 on political contributions and prohibitions on municipal securities business.

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 Board 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 Board has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On April 7, 1994, the Commission approved Board rule G-37, concerning political contributions and prohibitions on municipal securities business.[1] Since that time, the Board has received numerous inquiries concerning the application of the rule. In order to assist the municipal securities industry and, in particular, brokers, dealers and municipal securities dealers in understanding and complying with the provisions of the rule, the Board

[1] Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621. The rule applies to contributions made on and after April 25, 1994.

published two prior notices of interpretation which set forth, in question-and-answer format, general guidance on rule G–37.[2] In prior filings with the Commission, the Board stated that it will continue to monitor the application of rule G–37, and, from to time, will publish additional notices of interpretations, as necessary.[3] In light of questions recently received from market participants concerning certain provisions of the rule, the Board has determined that it is necessary to provide further guidance to the municipal industry. Accordingly, the Board is publishing this third set of questions and answers which focus on those provisions of the rule relating to solicitation of municipal securities business and the proscription of indirect activities that may result in violations of the rule.

(b) The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act which provides that the Board's rules shall be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all brokers, dealers, and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 under the Act because the rule change constitutes an interpretation with respect to the meaning, administration, or enforcement of an existing rule of the MSRB. At any time within 60 days of the filing of a rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the MSRB. All submissions should refer to the file number in the caption above and should be submitted by January 17, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–31885 Filed 12–27–94; 8:45 am]

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[2] *See* Securities Exchange Act Release No. 34161 (June 6, 1994), 59 FR 30379; Securities Exchange Act Release 34603 (August 25, 1994), 59 FR 45049; *see also MSRB Reports* Vol. 14, No. 3 at 11–16 (June 1994) and Vol. 14, No. 4 at 31–32 (August 1994).

[3] File No.'s SR–MSRB–94–6 and 94–15.

[Release No. 34–35131; File No. SR–Phlx–94–64]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Listing of Options on the Phlx Airlines Sector Index

December 20, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 13, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on December 15, 1994.[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 Exchange, pursuant to Rule 19b–4 of the Act, proposes to list and trade options on the Phlx Airline Sector Index ("Index"), a new stock index developed by the Phlx and composed of 12 domestic airline stocks. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to list for trading, cash-settled, European-style[2] options on the Phlx Airline Sector Index, a new index developed by the Exchange. The Index is composed of the stocks of 12 domestic passenger air carriers which, the Exchange represents, effectively represent the available domestic air transportation industry.[3] The Exchange

[1] In Amendment No. 1, the Exchange proposes that options on the Phlx Airline Sector Index will be European-style instead of American-style as originally proposed. *See* Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Brad Ritter, Senior Counsel, Office of Market Supervision, Division of Market Regulation, Commission, dated December 14, 1994 ("Amendment No. 1").

[2] A European-style option can be exercised only during a specified period immediately prior to expiration of the option.

[3] The components of the Index are: Alaska Air Group, Inc.; AMR Corporation; Atlantic Southeast Airlines, Inc.; Continental Airlines, Inc.; Comair Holdings Inc.; Delta Air Lines, Inc.; Southwest

also represents that the Index meets the generic criteria for listing options on narrow-based indexes as set forth in Exchange Rule 1009A, as approved by the Commission.[4] Accordingly, the Phlx is submitting this proposed rule change pursuant to and in accordance with the procedures set forth in the Generic Index Approval Order.[5] The Phlx proposes to list and trade options on the Index no sooner than 30 days after December 13, 1994, the filing date of this proposed rule change. The contract specifications for options on the proposed Index are as follows:

Underlying Index: The Index is an equal-dollar weighted sector index composed of stocks from 12 domestic, passenger, air carriers. Seven of the stocks are traded on the New York Stock Exchange ("NYSE") and the other five are national market securities traded through Nasdaq. The Exchange represents that 11 out of 12 stocks in the Index presently satisfy the Exchange's listing criteria for equity options contained in Exchange Rule 1009. Moreover, the Phlx notes that all 11 of such stocks are currently the subject of standardized options trading in the U.S.

As of December 9, 1994, the market capitalization of each of the stocks in the index exceeded $75 million. The Exchange represents that the market capitalizations ranged from a low of $98 million to a high of $3.8 billion. Eleven of the 12 component issues in the Index had monthly trading volumes in excess of one million shares over each of the past six months and the remaining component, accounting for 8.33% of the value of the Index, had monthly trading volume in excess of 500,000 shares in each of the prior six months. Accordingly, the Exchange represents that with respect to the criteria for market capitalization and trading volume, the Index satisfies the generic listing standards as stated in Phlx Rule 1009A and in the Generic Index Approval Order.[6]

Index Calculation: The methodology used to calculate the Index is an equal dollar-weighting method, meaning that each of the component stocks is represented in the Index in approximately equal dollar amounts. The Exchange believes that this method of calculation is important because it will provide each component issue with equivalent influence on the movement of the Index value instead of allowing one highly capitalized stock to dominate the movement of the Index. To determine the initial dollar weighting of the stocks, the Exchange calculated the number of shares of each stock that would represent an investment of approximately $10,000 in each of those stocks comprising the Index based on closing prices on December 1, 1994. The value of the Index equals the current market value of the sum of the assigned number of shares of all of the stocks in the Index divided by the current Index divisor. the Index divisor was set to yield an initial Index value of 200 at the opening of November 28, 1994.

Index Maintenance: The Exchange will rebalance the Index quarterly, following the close of trading on the third Friday of each March, June, September, and December by changing the number of shares of each component stock so that each company is again represented in $10,000 "equal" dollar amounts. If it becomes necessary, a divisor adjustment will be made when rebalancing occurs to ensure continuity of the Index's value. The newly adjusted portfolio will then become the basis for the Index's value on the first trading day following the quarterly adjustment.

The number of shares of each component stock in the Index will remain fixed between quarterly reviews except in the event of certain types of corporate action such as the payment of a dividend (other than an ordinary cash dividend), stock distribution, stock split, rights offering, recapitalization, reorganization or similar event with respect to the component stocks. In the case of a merger or consolidation of the issuer of a component stock, if the stock remains in the index, the number of shares of that security in the portfolio may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index prior to the merger. Should a stock replacement occur, the average dollar value of the remaining portfolio components will be calculated and that amount invested in the stock of the new component, to the nearest whole share. In selecting replacement components for the Index, the Phlx will take into account the capitalization, liquidity, volatility, and name recognition of any proposed replacement stock, and will assure that the maintenance criteria in Rule 1009A(c) continue to be met by the Index. In each of the above cases the divisor will be adjusted, if necessary, to ensure the continuity of the Index. If the Index fails at any time to satisfy the maintenance criteria set forth in the Generic Index Approval Order,[7] the Exchange will immediately notify the Commission of that fact and will not open for trading any additional series of options on the Index unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination or unless the continued listing of options on the Phlx Airline Sector Index has been approved by the Commission under Section 19(b)(2) of the Exchange Act.

Pursuant to the Generic Index Approval Order,[8] absent prior Commission approval, the Exchange will not increase to more than 15, or decrease to fewer than 9, the number of stocks in the Index, nor will the Phlx make any change in the composition of the Index that would cause fewer than 90% of the stocks, by weight, or fewer than 80% of the total number of stocks in the Index to qualify as stocks eligible for equity options trading under Phlx Rule 1009.

The Index value will be updated dynamically and disseminated at least once every 15 seconds during the trading day. The Phlx has retained Bridge Data, Inc. to compute and do all necessary maintenance of the Index. Pursuant to Phlx Rule 1100A, updated Index values will be disseminated and displayed by means of primary market prints reported by the Consolidated Tape Association and over the facilities of the Options Price Reporting Authority ("OPRA").[9] The Index value will also be available on broker/dealer interrogation devices to subscribers of the option information.

Unit of Trading: Each options contract will represent $100, the index multiplier, times the Index value. For example, an Index value of 200 will result in an option contract value of $20,000 ($100 × 200).

Exercise Price: The exercise prices for Index options will be set at 5 point intervals in terms of the current value of the Index. Additional exercise prices will be added in accordance with Phlx Rule 1101A(a).

Aggregate Exercise Price: The aggregate exercise price is found by multiplying the Index multiplier ($100) by the exercise price.

Settlement Price Determination: The Index option settlement value will be

Airlines Co.; Mesa Airline Inc.; Northwest Airlines Corp.; Skywest, Inc.; USAir Group Inc.; and UAL Corporation.

[4] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994) ("Generic Index Approval Order").

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] The Phlx represents that the Phlx and the OPRA have the necessary systems capacity to support those new series of options that would result from the introduction of options and long-term options on the Index. *See* Letter from Joseph Corrigan, Executive Director, OPRA, to Jamie Farmer, New Product Development, Phlx, dated November 29, 1994.

determined by using the opening prices of the component stocks of the Index on the third Friday of each month.

Last Trading Day: The Thursday prior to the third Friday of the month for options which expire on the Saturday following the third Friday of that month.

Trading Hours: 9:30 a.m. to 4:10 p.m. EST.

Position and Exercise Limits: The Phlx Airline Sector Index is an industry index such that the Phlx will employ position and exercise limits pursuant to Phlx Rules 1001A(b)(i) and 1002A, respectively.

Expiration Cycles: Three months from the March, June, September, December, cycle plus two additional near-term months.

Premium Quotations: Premiums will be expressed in terms of dollars and fractions of dollars pursuant to Phlx Rule 1033A. For example, a bid or offer of 1½ will represent a premium per options contract of $150 (1½ × 100). The minimum change in a premium under $3 will be 1/16 and ⅛ for a quote of $3 or greater.

The options will be traded pursuant to current Phlx rules governing the trading of index options.[10] The Exchange also represents that surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Index. These procedures include having complete access to trading activity in the underlying securities which are all traded on either the NYSE or as national market securities traded through Nasdaq. In addition, the Intermarket Surveillance Group Agreement ("ISG Agreement") dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index. The Exchange also requests the ability to list long-' options on the Index pursuant to Ex e Rule 1101A(b)(iii).

The . ..ix represents that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5)[11] in particular in that it will permit trading in options based on the Phlx Airline Sector Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market.

[10] *See* Phlx Rules 1000 through 1072 and 1000A through 1102A.

[11] 15 U.S.C. § 78f(b)(5) (1988).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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 solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended, complies with the standards set forth in the Generic Index Approval Order,[12] it has become effective pursuant to Section 19(b)(3)(A) of the Act. Pursuant to the Generic Index Approval Order, the Exchange may not list Phlx Airline Index options for trading prior to 30 days after December 13, 1994, the date the proposed rule change was filed with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the propo- ' ule change that are filed wit Commission, and all wri. 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, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-94-64 and should be submitted by January 17, 1995.

[12] *See supra* note 4.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-31887 Filed 12-27-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No 34-35125; File No. SR-PHILADEP-94-04]

Self-Regulatory Organizations; The Philadelphia Depository Trust Company; Order Approving Proposed Rule Change to Amend Rules to Require Execution of a Participant's Agreement by Participants and Pledgees

December 20, 1994.

On August 8, 1994, the Philadelphia Depository Trust Company ("PHILADEP") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-PHILADEP-94-04) under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to amend PHILADEP Rule 2, Section 1. Notice of the proposal was published in the **Federal Register** on August 24, 1994.[2] No comment letters were received regarding the proposed rule change. On September 27, 1994, PHILADEP amended the proposed rule filing by adding language whereby PHILADEP participants agree to be bound by certain provisions set forth under Rule 2.[3] The amendment was technical in nature and did not require republication of notice of filing. For the reasons discussed below, the Commission is approving the proposed rule changes.

I. Description

PHILADEP is amending Rule 2, Section 1 with respect to its participants' and pledgees' obligations to PHILADEP The amended Rule 2 adds language codifying PHILADEP's existing but unwritten policy and practice of requiring participants to execute a Participant's Agreement and language stating that PHILADEP's by-laws, rules, and procedures shall supersede any conflicting provision of the Participant's Agreement. The

[13] 17 CFR 200.30-3(a)(12) (1993).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 34540 (August 17 1994), 59 FR 43607

[3] Letter from Sharon Metzker, Staff Counsel, PHILADEP to Peggy Robb, Staff Attorney, Division of Market Regulation, Commission (September 27, 1994). For the complete text of those provisions, refer to PHILADEP Rule 2, Section 1 (a)-(n) (1993).

proposed rule change deletes language requiring participants to execute and deliver a written instrument specifying their adherence to certain obligations set forth in PHILADEP Rule 2. Such a second written agreement is unnecessary because once a Participant's Agreement is signed, the participant has agreed to abide by all of the rules and obligations of PHILADEP, including those set forth in PHILADEP Rule 2. Accordingly, all provisions of Rule 2 will be directly enforceable against participants without the necessity of executing a separate written agreement specifying selected provisions of PHILADEP's Rule 2.

II. Discussion

The Commission believes that the proposed rule change is consistent with Section 17A of the Act and specifically with Section 17A(b)(3)(F).[4] Section 17A(b)(3)(F) requires that a clearing agency's rules assure the safe guarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. Amended PHILADEP Rule 2 complies with the requirements of Section 17A(b)(3)(F) in that it requires all participants of PHILADEP to sign a Participant's Agreement setting forth their rights and obligations. Requiring a signed Participant's Agreement should help assure the safekeeping of securities and funds which are in the custody or control of PHILADEP by creating a contract which binds participants to the provisions of PHILADEP's By-Laws and Rules.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular with the requirements of Section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File Nos. SR–PHILADEP–94–04) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–31886 Filed 12–27–94; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[5] 17 CFR 200.30–3(a)(12) (1994).

[Rel. No. IC–20791; International Series Release No. 764; File No. 812–9316]

Creditanstalt-Bankverein; Notice of Application

December 21, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Creditanstalt-Bankverein ("Creditanstalt").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act that would exempt applicant from section 17(f) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order to permit Creditanstalt Rt. ("Creditanstalt (Hungary)") to act as custodian for investment company assets in Hungary.

FILING DATE: The application was filed on November 7, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 17, 1995 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Schottengasse 6, A–1010 Vienna, Austria; c/o Bruce E. Clubb, Esq., Baker & and McKenzie, 815 Connecticut Avenue, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Law Clerk, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulations).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Creditanstalt is an Austrian commercial bank which provides a broad range of banking and financial services, including custody services. Creditanstalt currently holds assets belonging to registered investment companies. It is regulated in Austria by the Banking Supervisory Authority, the government authority which regulates banks in Austria. As of December 31, 1993, Creditanstalt had shareholders' equity in excess of the equivalent of U.S. $2 billion.

2. Creditanstalt (Hungary) is a wholly-owned direct subsidiary of Creditanstalt. It is authorized to engage in commercial banking and is supervised by the State Banking Supervision, the government authority which regulates banks in Hungary. It currently provides comprehensive banking services, including trust operations and custody services.

3. Applicant requests an order to (a) permit Creditanstalt as custodian or subcustodian for investment companies registered under the Act, other than those registered under section 7(b) of the Act ("U.S. Investment Companies"), or a U.S. Investment Company, to deposit its Foreign Securities, cash, and cash equivalents ("Assets") with Creditanstalt (Hungary) as delegate for Creditanstalt, or (b) permit Creditanstalt (Hungary) (as custodian or subcustodian) to receive and hold the Assets of a U.S. Investment Company directly from such U.S. Investment Company, its custodian or subcustodian (other than Creditanstalt). As used herein, "Foreign Securities" includes (a) securities issued and sold primarily outside the United States by a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country; and (b) securities issued or guaranteed by the government of the United States or by any state or any political subdivision thereof or by any agency thereof or by any entity organized under the laws of the United States or any state thereof which have been issued and sold primarily outside the United States.

4. Creditanstalt (Hungary) would accept deposits of Assets in Hungary pursuant to a written, three-party agreement (the "Agreement"). The Agreement would be entered into by (a) Creditanstalt (Hungary), (b) Creditanstalt, and (c) a U.S. Investment Company or its custodian. The Agreement would provide that Creditanstalt will assume liability for any loss caused by Creditanstalt (Hungary) directly or as Creditanstalt's delegate. There will be no difference in the nature or extent of Creditanstalt's liability based on whether such services

are provided by Creditanstalt (Hungary) directly or as Creditanstalt's delegate.

Applicant's Legal Analysis

1. Section 17(f) of the Act provides that a registered investment company may maintain securities and similar assets in the custody of a bank meeting the requirements of section 26(a) of the Act, a member firm of a national securities exchange, the investment company itself, or a system for the central handling of securities established by a national securities exchange. Section 2(a)(5) of the Act defines "bank" to include banking institutions organized under the laws of the United States, member banks of the Federal Reserve System, and certain banking institutions or trust companies doing business under the laws of any state or of the United States. Creditanstalt (Hungary) does not fall within the definition of "bank" as defined in the Act and, under section 17(f), may not act as custodian for registered investment companies.

2. Rule 17f–5 under the Act permits certain entities located outside the United States to serve as custodians for investment company assets. One such entity is a banking institution or trust company that is incorporated or organized under the laws of a country other than the United States, that is regulated as such by that country's government or an agency thereof, and that has shareholders' equity in excess of U.S. $200 million. Creditanstalt qualifies as an eligible foreign custodian under rule 17f–5. Creditanstalt (Hungary), however, does not qualify as an eligible foreign custodian because it does not meet the minimum shareholders' equity requirement.

3. Applicant requests an order under section 6(c) of the Act that would exempt it from section 17(f) to the extent necessary for Creditanstalt (Hungary) to maintain custody of U.S. Investment Company Assets. Applicant believes that the exemption is necessary and appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because the Agreement provides U.S. Investment Companies with the safety and security of an eligible foreign custodian under section 17(f) and rule 17f–5.

Applicant's Conditions:

Applicant agrees that any order granting the requested relief shall be subject to the following conditions:

1. The foreign custody arrangements proposed regarding Creditanstalt (Hungary) will satisfy the requirements of rule 17f–5 in all respects, other than Creditanstalt (Hungary)'s level of shareholder's equity.

2. Creditanstalt, any U.S. Investment Company, and any custodian for a U.S. Investment Company, will deposit Assets with Creditanstalt (Hungary) only in accordance with the Agreement required to remain in effect at all times during which Creditanstalt (Hungary) fails to satisfy the requirements of rule 17f–5 (and during which such Assets remain deposited with Creditanstalt (Hungary)). Each Agreement will be a three-party agreement among Creditanstalt, Creditanstalt (Hungary), and the U.S. Investment Company or the custodian for a U.S. Investment Company pursuant to which Creditanstalt or Creditanstalt (Hungary), as the case may be, will undertake to provide specified custody services. If Creditanstalt is to provide such services, the Agreement will authorize Creditanstalt to delegate to Creditanstalt (Hungary) such of the duties and obligations of Creditanstalt as will be necessary to permit Creditanstalt (Hungary) to hold in custody the U.S. Investment Company's Assets. If Creditanstalt (Hungary) is to provide services directly, no such delegation will be necessary. However, in either case, the Agreement will provide that Creditanstalt will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by Creditanstalt (Hungary) of its responsibilities under the Agreement to the same extent as if Creditanstalt had itself been required to provide custody services under the agreement. Further, the Agreement will provide that, in the event of a loss, a U.S. Investment Company may pursue a claim for recovery against Creditanstalt, regardless of whether Creditanstalt (Hungary) acted as Creditanstalt's delegate or as direct custodian or subcustodian.

3. Creditanstalt currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f–5(c)(2)(i).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–31888 Filed 12–27–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20790; No. 812–9174]

The Travelers Insurance Company, et al.

December 21, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: The Travelers Insurance Company ("Travelers"); The Travelers Growth and Income Stock Account for Variable Annuities ("Account GIS"), The Travelers Quality Bond Account for Variable Annuities ("Account QB"), The Travelers Money Market Account for Variable Annuities ("Account MM"), The Travelers Timed Growth and Income Stock Account for Variable Annuities ("Account TGIS"), The Travelers Timed Short-Term Bond Account for Variable Annuities ("Account TSTB"), The Travelers Timed Aggressive Stock Account for Variable Annuities ("Account TAS"), The Travelers Timed Bond Account for Variable Annuities ("Account TB"), The Travelers Fund U for Variable Annuities ("Fund U"), The Travelers Fund BD for Variable Annuities, The Travelers Fund UL for Variable Life Insurance ("Fund BD") (collectively, "Separate Accounts"); Copeland Financial Services, Inc ("Copeland")(together with Travelers and the Separate Accounts, "Original Applicants"); and Travelers Equities Sales, Inc. ("TESI").

RELEVANT 1940 ACT SECTION: Order requested under Section 6(c) to amend existing orders granting exemptions from the provisions of 2(a)(32), 11, 12(b), 14(a), 15(a), 16(a), 17(d), 17(f), 22(c), 22(d), 22(e), 26(a)(2), 27(a)(2), 27(a)(4), 27(c)(1), 27(c)(2), 27(d), 32(a)(2), and Rules 17d–1, 17f–2, 22c–1, 12b–1, 6e–3(T)(b)(12), 6e–3(T)(b)(13) and 6e–3(T)(c)(2) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would amend existing orders to specify that TESI acts as principal underwriter with respect to certain variable annuity and variable life insurance contracts ("Contracts") issued by Travelers and to grant TESI exemptive relief in accordance with the relief previously granted to Travelers in its capacity as principal underwriter of the Contracts.

FILING DATE: The application was filed on August 18, 1994, and amended and restated on December 5, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the

Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 16, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicant(s), c/o Ernest J. Wright, Esq., General Counsel, Life and Annuities Division, The Travelers Insurance Company, Financial Services Legal Division, 6 SHS, One Tower Square, Hartford, Connecticut 06183.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Counsel, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Travelers is a stock life insurance company engaged primarily in a life insurance and annuity business in all states and certain other jurisdictions. Travelers, an indirect wholly owned subsidiary of The Travelers Inc., a publicly-held company, is a broker-dealer registered under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc. ("NASD").

2. The Separate Accounts, all of which are registered under the 1940 Act, were established by Travelers to fund certain variable annuity and variable life insurance contracts ("Contracts"). Variable annuity Contracts are funded through Accounts GIS, QB, MM, TGIS, TSB, TAS, and TB, each a managed separate account, and through Funds U and BD, each a unit investment trust. Fund UL, a unit investment trust, funds certain flexible premium variable life insurance Contracts. Travelers, the principal underwriter of the Contracts, provides all administrative services relative to the Separate Accounts and the Contracts pursuant to Distribution and Management Agreements ("Agreements") between it and the Separate Accounts.

3. TESI, a member of NASD, and Copeland are registered investment advisers under the Investment Advisers Act of 1940. Copeland offers market timing services to owners of certain Travelers' variable annuity contracts. Copeland has not been, nor will it be, a participant in the principal underwriter functions involving the Separate Accounts or the Contracts. Copeland and TESI are indirect wholly-owned subsidiaries of Travelers and, as such, affiliates of Travelers and of each other.

4. Applicants have obtained the following exemptive orders ("Existing Orders") in connection with the issuance and distribution of the Contracts: *Travelers and Account GIS (formerly, The Travelers Fund for Variable Annuities)*, Release Nos. IC–5185 (Dec. 6, 1967) (Notice), and IC–5212 (Dec. 29, 1967) (Order) (File No. 812–2191);[1] *Travelers and Account GIS*, Release Nos. IC–5724 (June 27, 1969) (Notice), and IC–5753 (July 28, 1969) (Order) (File No. 812–2495); *Travelers, Account GIS and Account QB (formerly The Travelers Fund A–1 for Variable Annuities)*, Release Nos. IC–9054 (Nov. 25, 1975) (Notice), and IC–9096 (Dec. 24, 1975) (Order) (File No. 812–3811); *Travelers, Account GIS and Account QB*, Release Nos. IC–10701 (May 16, 1979) (Notice), and IC–10739 (June 18, 1979) (Order) (File No. 812–4437); *Travelers and Account MM (formerly The Travelers Fund MM for Variable Annuities)*, Release Nos. IC–12736 (Oct. 14, 1982) (Notice), and IC–12796 (Nov. 9, 1982) (Order) (File No. 812–5149); *Travelers, Account GIS, Account QB, Account MM and Fund U*, Release Nos. IC–13130 (Mar. 31, 1983) (Notice), (File No. 812–5329); *Travelers, Account MM and Fund U*, Release Nos. IC–13470 (Aug. 30, 1983) (Notice), and IC–13532 (Sept. 26, 1983) (Order) (File No. 812–5577); *Travelers and Fund UL*, Release Nos. IC–15748 (May 20, 1987) (Notice), and IC–15814 (June 17, 1987) (Order) (File No. 812–6623); *Travelers, and Accounts TGIS and TSB (each formerly, The Travelers Timed Growth Stock Account for Variable Annuities)*, Release Nos. IC–15947 (Aug. 21, 1987) (Notice) and IC–15983 (Sept. 17, 1987) (Order) (File No. 812–6671); *Travelers, Accounts TGIS, TSB, TAS, and TB, TESI and Copeland*, Release No. IC–17299 (Jan. 9, 1990) (Notice) and IC–17335 (Feb. 7, 1990) (Order) (File No. 812–7218); and *Travelers and Fund BD*, TRelease Nos. IC–20274 (May 3, 1994) (Notice) and IC–20334 (June 2, 1994) (Order) (File No. 812–8782).

In summary, the Existing Orders approve, among other things: (a) deduction of specified charges under the Contracts; (b) exemptions from various operational requirements of the 1940 Act; (c) certain transactions and the deduction of certain charges relating to market timing services; and (d) treatment of a premium waiver in a flexible premium variable life insurance policy to be considered as "incidental insurance benefit" for purposes of Rule 6e–3(T) under the 1940 Act.

5. Management of Travelers and of TESI have determined that it no longer remains useful or practical to maintain travelers' registration as a broker-dealer for the following reasons. Travelers' vast insurance operations makes it burdensome to update its broker-dealer registration. TESI, a registered broker-dealer, is capable of performing as the principal underwriter and has, in fact, become the principal underwriter for new variable products developed by Travelers and its affiliate insurance companies. Travelers, however, is the principal underwriter for existing products. Thus, the potential for inconsistency in distribution of Travelers' variable products business is created by the use of TESI and Travelers as principal underwriters for new and existing Travelers variable insurance products, respectively. If TESI became principal underwriter for all new and existing Travelers products, Travelers would be able to deregister as a broker-dealer.

6. Management to Travelers has proposed, and TESI management has agreed, that TESI replace Travelers as principal underwriter for existing Travelers' insurance products. Accordingly, new Distribution and Management Agreements between Travelers, TESI and Accounts GIS, QB, MM, TGIS, TSB, TAS and TB were approved by the Board of Managers of the Separate Accounts, specifying TESI as principal underwriter in connection with these variable annuity contracts. Approval of the new Agreements by the Board of Managers has eliminated the need for Contractowner approval. Similar new Distribution and Management Agreements have been or will be entered into between Travelers, TESI and Funds U, UL and BD. The new Agreements will become effective upon granting of exemptive relief herein. The proposed transactions will not result in

[1] The Order also granted temporary exemptions under Section 6(c) from the net asset and shareholder requirements of Sections 14(a), 15(a), and 32(a) of the 1940 Act because Account GIS could have neither tax sheltered assets nor shareholders until after registration and sale of the contracts to be funded by the separate account. The shareholder and net asset requirements have been met and the temporary exemptive relief is no longer required.

change in the terms of the existing Contracts or in the operation of the Separate Accounts funding such Contracts. Upon receipt of the exemptive relief requested, Travelers will begin to discontinue its activities and registration as a broker-dealer, and TESI will become a party to all the Agreements and the principal underwriter for the Contracts.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the Investment Company Act of 1940 ("1940 Act") amending existing orders that granted exemptions from Sections 2(a)(32), 11, 12(b) 14(a), 15(a), 16(a), 17(d), 17(f), 22(c), 22(d), 22(e), 26(a)(2), 27(a)(2), 27(a)(4), 27(c)(1), 27(c)(2), 27(d), 32(a)(2), and Rules 17d–1, 17f–2, 22c–1, 12b–1, 6e–3(T)(b)(12), 6e–3(T)(b)(13) and 6e–3(T)(c)(2) thereunder, to: (a) add TESI as a party to the exemptive relief granted in the Existing Orders (if TESI was not a party to the Existing Order); (b) specify that TESI acts as principal underwriter of the Contracts described in the Existing Orders; and (c) deem each Existing Order to provide exemptive relief to TESI in accordance with the relief previously granted to Travelers in its capacity as principal underwriter of the Contracts

2. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. The Existing Orders provide for a variety of circumstances where special treatment of Contract payments and Separate Account assets is authorized. Contracts grant to Contract owners, in nearly all situations, certain rights and obligations predicated upon the applicable Existing Orders. The continued effective administration of any Contract issued pursuant to the terms of the Existing Orders requires the continuance of the Existing Orders. Accordingly, the legal and factual basis and justification for the initial granting of such Existing Orders continues during the existence of such Contracts.

4. Applicants incorporate by reference the legal analysis included in the applications for the Existing Orders to serve as a basis for the request that the exemptive relief should continue to be granted under the various statutory provisions in connection with the exemptions now requested. Applicants represent that all of the facts asserted in the applications of the Existing Orders remain true and accurate in all materials respects to the extent that such facts are relevant to any relief on which Applicants continue to rely. Applicants further represent that they will continue to comply with any conditions set forth in those applications in connection with the exemptions now requested to the extent that Applicants continue to rely on such relief granted in those applications.

Applicants also state in support of this application that the change in the principal underwriter will have no effect on Contract owners or in the terms of any Contracts or on the operation of the Separate Accounts, but will eliminate the duplicative cost of continuing to register both TESI and Travelers as broker-dealers and will simplify such registration process in that the remaining broker-dealer will be an entity that does not conduct vast other operations, as does Travelers, making it easier to maintain and keep such registration updated.

Conclusion

Applicants submit that, for the reasons and upon the facts set forth above, the exemptive relief requested under Section 6(c) of the 1940 Act is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–31889 Filed 12–27–94; 8:45 am]

BILLDING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings: Agreements filed during the Week Ended December 16, 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: 49957
Date filed: December 12, 1994
Parties: Members of the International Air Transport Association
Subject: TC3 Reso/P 0600 dated December 9, 1994
Expedited TC Resolutions
r–1—043c r–3—063c
r–2—053c r–4—033y
Proposed Effective Date: Expedited January 1, 1995

Docket Number: 49958
Date filed: December 12, 1994
Parties: Members of the International Air Transport Association
Subject: Telex COMP Mail Vote 721
Amend Rounding Units for Russian Federation
r–1—024d r–2—033d
Proposed Effective Date: January 1, 1995

Docket Number: 49959
Date filed: December 12, 1994
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1631 dated December 2, 1994
Mid Atlantic-Europe Resos 002(r–1) & LA145(r–2)
Proposed Effective Date: February 1, 1995

Docket Number: 49960
Date filed: December 12, 1994
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1606 dated October 14, 1994
North Atlantic-Mideast Resos r–1 to r–14
Proposed Effective Date: April 1, 1995

Docket Number: 49961
Date filled: December 12, 1994
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1620 dated Nov 4, 1994 r–1 to r–21
TC12 Reso/P 1621 dated Nov. 4, 1994 r–22 to r–30
TC12 Reso/P 1622 dated Nov. 4, 1994 r–31 to r–45
North/Mid/South Atlantic-Africa Resos
Proposed Effective Date: April 1, 1995

Docket Number: 49962
Date filed: December 12, 1994
Parties: Members of the International Air Transport Association
Subject: PSC/Reso/077 dated December 5, 1994
Finally Adopted Resolutions r–1 to r–71
(Note: Resolution 762 contained in this memorandum will be filed separately for DOT approval/antitrust immunity at a later date and will be assigned a separate docket number at that time.)
Proposed Effective Date: June 1, 1995 (except as noted)

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–31849 Filed 12–27–94; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Files Under Subpart Q During the Week Ended December 16, 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: 49963

Date filed: December 12, 1994

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 9, 1995

Description: Application of Virgin Islands Airways Ltd., pursuant to Section 41301 Title 49 of U.S.C. and Subpart Q of the Regulations, for a foreign air carrier permit for authority to engage in scheduled foreign air transportation of persons, property and mail between United Kingdom Gateway Points, Intermediate Points, and Points in U.S. Territory authorized by UK Route Number 9 as specified in Annex 1 to the Agreement Between the Government of the United States and the government of the United Kingdom.

Docket Number: 49965

Dated filed: December 12, 1994

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 10, 1995

Description: Application of Haytian Aviation Lines, S.A. d/b/a Halisa Air, pursuant to Section 41301 of U.S.C., requests foreign air carrier permit to engage in foreign air transportation utilizing a wet lease arrangement with a United States certificated air carrier between Port-au-Prince, in the Republique of Haiti and Miami and Fort Lauderdale, in the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–31848 Filed 12–27–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[AC 120–27C]

Proposed Revision to Advisory Circular—Aircraft Weight and Balance Control

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC), and request for comments.

SUMMARY: This notice announces the availability of proposed AC 120–27C, Aircraft Weight and Balance Control, for review and public comments. The proposed AC 120–27C provides guidance on acceptable means, but not the only means, for certain certificate holders to obtain approval of a weight and balance control system.

DATES: Comments must be received on or before February 27, 1995.

ADDRESSES: Copies of proposed AC 120–27C can be obtained from and comments may be returned to: Federal Aviation Administrtion, Flight Standards National Field Office, P.O. Box 20034, Washington, DC 20041; telephone (703) 661–0333, extension 5009.

FOR FURTHER INFORMATION CONTACT: Mr. Benjamin J. Burton, Jr., Federal Aviation Administration, Aircraft Maintenance Division, AFS–300, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3797.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC 120–27C by submitting such written data, views, or arguments as they desire to the address specified above. Commenters must identify the title of the proposed AC and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Flight Standards National Field Office before issuing the final AC.

Comments received on the proposed AC 120–27C may be examined before and after the comment closing date at the Federal Aviation Administration, Flight Standards National Field Office, Gateway Building, suite 131, Washington Dulles International Airport, Washington, DC 20041; weekdays between 8 a.m. and 4 p.m., except on Federal holidays.

Background

On October 25, 1990, the FAA issued AC 120–27B, Aircraft Weight and Balance Control, which canceled AC 120–27A, Aircraft Weight and Balance Control, dated May 14, 1980. The FAA requested that the Aviation Rulemaking Advisory Committee (ARAC) review the existing methods by which standard weights for passengers, carry-on baggage, and checked baggage are established and recommend any necessary revisions to AC 120–27B. The ARAC was chartered in February 1991, to provide recommendations to the FAA on issues related to aviation safety.

Discussion

Based on the ARAC's recommendations, the FAA proposes to revise AC 120–27B as AC 120–27C. Proposed AC 120–27C recommends standard average passenger weights for conventional airline adult passenger groups (60 percent male/40 percent female mix), male passenger groups, and female passenger groups. The recommended adult passenger group averages provide for two types of operations: (1) Aircraft used by airlines that permit carry-on baggage; and (2) Aircraft with limited cabin stowage capability (i.e., aircraft used by regional airlines) where approved carry-on baggage programs limit each passenger to one carry-on bag. Please note that the weight table recommended by ARAC for aircraft with limited cabin stowage did not contain the three explanatory paragraphs included in the FAA proposal. The FAA has determined that these paragraphs are necessary to fully explain the requirements that must be met in order to use this table.

Proposed AC 120–27C also recommends new standard average weights for crewmembers, baggage loaded on domestic flights, baggage loaded on international flights, and baggage loaded on flights by supplemental operators.

Appendix 1 of the proposed AC 120–27C provides guidance on acceptable methods for an operator to conduct surveys and to establish male/female ratios of passenger groups or standard average weights of passengers, checked baggage, carry-on baggage, mail, or other normal items in that operator's approved weight and balance control system.

Issued in Washington, DC, on December 20, 1994.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 94–31912 Filed 12–27–94; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss transport airplane and engine issues.

DATES: The meeting will be held on January 24 and 25, 1995 beginning at 8:00 a.m. on January 24. Arrange for oral presentations by January 12, 1995.

ADDRESSES: The meeting will be held at Douglas Aircraft Company, 3855 Lakewood Blvd., Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Office of Rulemaking, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9682.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held January 24 and 25, 1995 at Douglas Aircraft Company, 3855 Lakewood Blvd., Long Beach, California. The agenda for the meeting will include:

- Opening remarks.
- Review of action items.
- Reports of working groups.
- A vote will be taken whether to recommend to the FAA a draft Notice of Proposed Rulemaking and associated Advisory Circular on Revised Structural Loads Requirements for Transport Category Airplanes.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by January 12, 1995, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine Issues or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on December 21, 1994.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–31918 Filed 12–27–94; 8:45 am]

BILLING CODE 4910–13–M

Civil Tiltrotor Development Advisory Committee; Aircraft Subcommittee

Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act, Public Law (72–362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) Aircraft Subcommittee that will held on January 12–13, 1995 at the National Aeronautics and Space Administration (NASA) Ames Research Center, Building 219, Room 203, Moffett Field, CA. The meeting on January 12 will begin at 10:00 a.m. and conclude by 5:00 p.m. The January 13 meeting will begin at 8:00 a.m. and conclude by 4:45 p.m.

The agenda for the first Aircraft Subcommittee meeting will include the following:

(1) Review Draft 3 of the Subcommittee Report.

(2) NASA Briefings and Tour of NASA facilities.

(3) Formulate Concepts for a Civil Tiltrotor Demonstration.

(4) Review Subcommittee Assumptions.

(5) Review the Aircraft Subcommittee Work Plans and Schedule.

Security arrangements require that persons who plan to attend the meeting must notify Ms. Deborah Ogunshakin (202) 267–9451 or Mrs. Karen Braxton at 202–267–8759 *by January 3, 1995.* Attendance is open to the interested public, but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting.

Members of the public may provide a written statement to the Subcommittee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Deborah Ogunshakin not later than January 3, 1995.

Issued in Washington, DC, December 19, 1994.

Richard A. Weiss,

Designated Federal Official, Civil Tiltrotor Development Advisory Committee.

[FR Doc. 94–31917 Filed 12–27–94; 8:45 am]

BILLING CODE 4910–13–M

Civil Tiltrotor Development Advisory Committee Economics Subcommittee

Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act Public Law (72–362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) Economics Subcommittee that will be held on January 6, 1995 in New York City at the Port Authority of New York and New Jersey at One World Trade Center in the conference room located on the 67th floor.

The meeting will begin at 10:00 a.m. and conclude by 5:00 p.m.

The agenda for the third Economics Subcommittee meeting will include the following:

(1) Detailed Briefings on the Civil Tiltrotor Economic Feasibility Analysis being conducted by VNTSC.

(2) Review of the Economics Subcommittee assumptions.

(3) Discuss the Structure of the Subcommittee Final Report.

(4) Revise the Economics Subcommittee Work Plan.

Persons who plan to attend the meeting should notify Ms. Deborah Ogunshakin on 202–267–9451 or Ms. Karen Braxton on 202–267–8759. Attendance is open to the interested public, but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting.

Members of the public may provide a written statement to the Subcommittee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Deborah Ogunshakin at least three days prior to the meeting.

Issued in Washington, DC, December 21, 1994.

Richard A. Weiss,

Designated Federal Official, Civil Tiltrotor Development Advisory Committee.

[FR Doc. 94–31919 Filed 12–27–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 183; Fourth Meeting; Standards for Airport Security Access Control Systems

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C. Appendix I), notice is hereby given for Special Committee 183 meeting to be held January 18–19, 1995. Starting at 1:30 p.m.–4:30 p.m. on the first day, NOTE: ASAC meets at 9:00 a.m.–12:00 p.m. at FAA on the 10th floor. On the second day 9:00 a.m.–4:30

p.m. The meeting will beheld at the Air Transport Association, 1301 Pennsylvania Avenue, NW., suite 1100, Washington, DC.

Agenda will be as follows: (1) Administrative remarks; (2) General introductions; (3) Approval of agenda; (4) Approval of the minutes of the third meeting held December 13–14, 1994; (5) SC–183 meeting schedule February–September 1995; (6) Survey of airports access control; (7) Review of manufacturer technologies; (8) Revised product structure outline—MASPS format; (9) Work group progress reports; (10) Other business; (11) Establish agenda for next meeting; (12) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connectuct Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Wasington, D.C., on December 19, 1994.

David W. Ford,

Designated Officer.

[FR Doc. 94–31916 Filed 12–27–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 177; Thirteenth Meeting; Test Criteria and Guidance Relative to Portable Electronic Devices Carried on Board Aircraft

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 177 meeting to be held January 11–12, 1995 starting at 9:00 a.m. The meeting will be held at the Airline Pilots Association, 1625 Massachusetts Avenue, NW., 8th Floor Conference Room Washington DC, 20036. Please Note the Location

Agenda will be as follows: (1) Chairman's remarks; (2) Review of meeting agenda; (3) Approval of the summary of the twelfth meeting; (4) Presentations of subcommittees: (a) PED testing update (b) susceptibility analysis and testing (c) In-aircraft test results; (5) Computer modeling status; (6) Report review; (7) Perception questionnaire discussion; (8) New/other business; (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on December 19, 1994.

David W. Ford,

Designated Officer.

[FR Doc. 94–31916 Filed 12–27–94; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 94–100; Notice 1]

Excalibur Automobile Corporation; Receipt of Application for Temporary Exemption From Motor Vehicle Safety Standard No. 208

Excalibur Automobile Corporation of West Allis, Wisconsin, has applied for a temporary exemption of its JAC 427 Cobra passenger car for three years from compliance with paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection*. The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.

Notice of receipt of the application is published in accordance with agency regulations on the subject (49 CFR part 555) and does not represent any judgment of the agency on the merits of the application.

The applicant seeks an exemption for its JAC 427 Cobra passenger car, of which it has produced 59 between January 1993 and September 1994. Thirty-six of these "are presently in the control of Excalibur's dealers", and the applicant asks that the exemption cover these vehicles so that they may be offered for sale and sold in compliance with the law. It plans increased production in 1995, of which 60 to 108 would be sold in the United States.

Excalibur is a small company with 37 employees and net assets of $3,000,000. The company has had cumulative net losses of $4,493,000 from January 1, 1992 to September 30, 1994. If it were required to comply immediately with the automatic restraint requirements of Standard No. 208, it would have to raise the retail price by more than 300 per cent which "is likely to deemed (sic) to be prohibitive by potential purchasers (and dealers), thereby significantly reducing the line's desirability, if not ending the demand entirely . . ." Denial of the petition would result in a reduction of the work force to 8 employees.

Excalibur has been owned since 1991 by German residents, who changed the company's management in August 1994. The new management has not been able to trace the company's efforts to comply beyond December 1993 when the then Vice President of Production informed the then President that he had "just located a potential source for a retrofit driver's as well as passenger air bag system." Compliance was anticipated "within weeks." NHTSA was likewise informed of this possibility in December 1993. On May 31, 1994, in an incomplete petition for exemption from Standard No. 208, Excalibur informed the agency that its efforts to work with companies in Arizona and Florida had ended in frustration and failure and that it was currently unable to find a source for an adequate, workable airbag system.

According to its application, Excalibur will use the exemption period "to accommodate a fully-complying airbag system." It is investigating the possibility of installing Ford Mustang steering columns and airbag systems, as well as whether its existing column could accept an airbag produced by Breed Technologies. Exempted vehicles would be provided with a three-point restraint system as well as with a "clearly visible warning label reminding the vehicle's occupants of the importance of wearing their safety belts.

The company argues that an exemption would be in the public interest and consistent with the objectives of motor vehicle safety because it presently has 17 dealers in 12 states, and "a thriving manufacturing business and dealer network not only provides employment, but will generate federal and state tax revenues." The small number of vehicles that the exemption will cover and the limited mileage they will be driven ensure that an exemption "will not materially affect overall motor vehicle safety in the U.S."

Interested persons are invited to submit comments on the application described above. Comments should refer to the docket and notice number referenced above, and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh St. SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below 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. Notice of final action on the application will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 27, 1995.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 21, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–31853 Filed 12–27–94; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 94–79; Notice 2]

General Motors Corporation; Grant of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) of Warren, Michigan, determined that some of its vehicles failed to comply with 49 CFR 571.209, Federal Motor Vehicle Safety Standard (FMVSS) No. 209, "Seat Belt Assemblies," and filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." GM also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on October 3, 1994, and an opportunity afforded for comment (59 FR 50329). This notice grants the application.

Paragraph S4.6(b) of FMVSS No. 209 states that a seat belt assembly shall be labeled with the following statement:

This seat belt assembly is for use only in [insert specific seating position(s), e.g., 'front right'] in [insert specific vehicles make(s) and model(s)].

GM produced two different populations of vehicles which do not meet the labeling requirements stated in the standard. The first population of vehicles, 68,405 1994 model year Chevrolet and GMC G-vans, were built with left-side seat belt assemblies that were labeled as right-side assemblies.

The second population of vehicles, 31, 978 1992–94 model year Chevrolet and GMC K20753 extended cab pickups, were built with front outboard seat belt assemblies with the appropriate model designation omitted. The model designation is K20753.

GM supported its application for inconsequential noncompliance with the following:

For both these issues, the GM part numbers and manufacturer's model numbers correctly identify the affected seat belt assemblies. In addition, the service parts manuals correctly specify the proper part number if replacement parts were needed. In the case of the G-van seat belt assemblies, it is not possible to install the left front seat belt assembly at the right front position. For the K 20753 models, the issue is the omission of an appropriate model. Usage of the seat belt assembly in any of the models identified on the label is appropriate, as would be usage in the K 20753.

It is GM's understanding that the purpose of the subject requirement was to provide the person *replacing* a seat belt assembly in a vehicle with appropriate seat position and vehicle model information. However, original equipment seat belt assemblies have already been installed in the appropriate models and positions at the assembly plant. The Agency stated in a recent rulemaking proposal (Docket 74–14; Notice 81, dated May 10, 1993), ". . . that seat belt assemblies installed as original equipment in new motor vehicles need not be required to be labeled with position model information. This information is only useful if the assembly is removed with the intention of using the assembly as a replacement in another vehicle. NHTSA does not believe this is a common practice." GM agrees and believes that the removal of original equipment seat belt assemblies for the purposes of replacement installation in another vehicle is rare. The Agency finalized that rulemaking action April 15, 1994, eliminating the required label verbiage on seat belt assemblies installed as original equipment by vehicle manufacturers.

No comments were received on the petition. In view of the reasoning set forth in the agency's proposal to eliminate the requirement that the applicant did not originally meet and in view of the agency's final adoption (59 Fed. Reg. 17992; April 15, 1994) of that proposal, it is hereby found that the applicant has met its burden of persuasion that the noncompliance herein described is inconsequential to safety. Accordingly, General Motors is hereby exempted from the requirements of 49 U.S.C. 30118 that it provide notification of the noncompliance herein described, and of 49 U.S.C. 30120 that it remedy such noncompliance.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and NHTSA Order 800–2)

Issued on: December 22, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–31953 Filed 12–27–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–82; Notice 2]

Decision That Nonconforming 1989 Audi 100 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT

ACTION: Notice of decision by NHTSA that nonconforming 1989 Audi 100 passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1989 Audi 100 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1989 Audi 100), and they are capable of being readily altered to conform to the standards.

DATE: This decision is effective as of December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA

publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors, Inc. of Kingsville, Maryland ("J.K.") (Registered Importer R–90–006) petitioned NHTSA to decide whether 1989 Audi 100 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on October 3, 1994 (59 FR 50332) to afford an opportunity for public comment.

As stated in that notice, the vehicle which J.K. claimed to be substantially similar is the version of the 1989 Audi 100 that was manufactured for importation into and sale in the United States and certified as conforming to all applicable Federal motor vehicle safety standards. The petitioner alleged that it had carefully compared the two vehicles, and found them to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Specifically, the petitioner claimed that the non-U.S. certified 1989 Audi 100 is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 Transmission Shift Lever Sequence * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 214 *Side Door Strength*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Petitioner also contended that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model taillamp lenses which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component

Standard No. 114 *Theft Protection :* Installation of a key microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 108 *Occupant Crash Protection:* Installation of a seat belt warning buzzer, wired to the seat belt latch.

Additionally, the petitioner stated that the bumpers on the non-U.S. certified 1989 Audi 100 must be reinforced to comply with the Bumper Standard found in 49 CFR 581.102.

One comment was received in response to the notice of the petition, from Volkswagen of America, Inc. ("Volkswagen"), the United States representative of Audi A.G., the vehicle's manufacturer. In its comment, Volkswagen stated that different engine compartment and instrument cluster wiring assemblies are used in the U.S. certified and non-U.S. certified versions of the 1989 Audi 100, and that compliance with Standard Nos. 101 and 108 therefore cannot be achieved by merely replacing lamp assemblies on the non-U.S. certified vehicle, as the petitioner has claimed. Volkswagen also noted that the petitioner did not address compliance with Standard No. 118, *Power-Operated Window Systems*, but the power window control system does not comply with that standard because it can be operated when the key is not in the ignition and when the vehicle doors are open. Volkswagen further stated that body shell modifications were made and additional bracing was added in the engine compartment area of the U.S. certified 1989 Audi 100 so that it complied with the Bumper Standard found in 49 CFR part 581, and that contrary to the petitioner's claim, reinforcement of the bumper assembly alone is insufficient to assure conformity to that standard. Finally, Volkswagen stated that NHTSA designated the Audi 100 as a high theft carline under the Federal Motor Vehicle Theft Prevention Standard found in 49 CFR part 541, but exempted those vehicles from the standard's parts marking requirements under 49 CFR part 543 because they are equipped with a theft deterrent system. Volkswagen contends that the theft deterrent system on the non-U.S. certified 1989 Audi 100 has a different acoustic and light signal output than that on the U.S. certified version of the vehicle, and that NHTSA would have to approve that system to exempt the non-U.S. certified vehicle from the standard's parts marking requirements. Volkswagen further asserted that compliance with those requirements is required before a non-exempt vehicle can be imported, and in absence of such compliance, the non-U.S. certified 1989 Audi is ineligible for importation into the United States.

NHTSA accorded J.K. an opportunity to respond to Volkswagen's comment. In its response, J.K. stated that it modifies the wiring harness when it installs U.S.-model headlamps in the non-U.S. certified 1989 Audi 100. This is necessary because the bulbs in the U.S.-model headlamps will not fit into the European harness. J.K. also stated that the running lights that normally show forward in the European headlamps become the marker lights when the assembly is modified to meet U.S. standards. J.K. further stated that it makes minor modifications to the mounting points, center, and sides of the vehicle's bumper to bring it into compliance with the Bumper Standard in 49 CFR part 591. As described by the petitioner, these modifications consist of welding gussets and a plate between the mounting points to prevent them from collapsing in the event of a minor frontal impact. J.K. further stated that all body and associated panel components are marked with the vehicle's VIN before importation to comply with the Theft Prevention Standard. Finally, J.K. stated that it adds a relay to the vehicle's power window system to prevent the window transport from operating when the ignition is turned off, thereby achieving compliance with Standard No. 118.

NHTSA has reviewed each of the issues that Volkswagen has raised regarding J.K.'s petition. NHTSA believes that J.K.'s response adequately addresses each of those issues. NHTSA further notes that the modifications describes by J.K. have been performed with relative ease on thousands of

nonconforming vehicles imported over the years, and would not preclude the non-U.S. certified 1989 Audi 100 from being found "capable of being readily modified to comply with all Federal motor vehicle safety standards." NHTSA finally observes that compliance with the Theft Prevention Standard in 49 CFR part 541 has no bearing on an import eligibility decision, which is instead concerned with whether a vehicle is capable of being readily modified to conform to the safety standards. As a matter of law, a vehicle covered by the Theft Prevention Standard may not be conformed after its entry into the United States, but must comply at the time of its importation.

NHTSA has accordingly decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 93 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1989 Audi 100 not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1989 Audi 100 originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 21, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–31974 Filed 12–27–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–98; Notice 1]

Notice of Receipt of Petition for Decision that Nonconforming 1973 Ferrari Dino 246 GTS Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1973 Ferrari Dino 246 GTS passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1973 Ferrari Dino 246 GTS that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is January 27, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm].

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer 90–007) has petitioned NHTSA to decide whether 1973 Ferrari Dino 246 GTS passenger cars are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1973 Ferrari Dino 246 GTS that was manufactured for importation into and sale in, the United States and certified by its manufacturer, Ferrari Automobile Sefac, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1973 Ferrari Dino 246 GTS to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the non-U.S. certified 1973 Ferrari Dino 246 GTS, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1973 Ferrari Dino 246 GTS is identical to is U.S. certified counterpart with respect to compliance with Standards Nos. 101 *Controls and Displays*, 102 *Transmission Shift Lever Sequence* * * * 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 111 *Rearview Mirror*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 105 *Hydraulic Brake Systems:* inscription of the word "Brake" on the lens of the brake failure indicator lamp.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp lenses and rear sidemarkers.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 116. *Brake Fluid*: placement of a label with the required information on or near the brake fluid cap.

Standard No. 208 *Occupant Crash Protection*: installation of a seat belt warning system with a lighted symbol. The petitioner states that the vehicle is equipped with a lap belt and upper torso restraint in each of its two designated seating positions.

Standard No. 214 *Side Door Strength*: installation of reinforcing beams.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1973 Ferrari Dino 246 GTS must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above 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. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on December 21, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–31852 Filed 12–27–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–99; Notice 1]

Notice of Receipt of Petition for Decision that Nonconforming 1988 Honda CB10000F Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1988 Honda CB1000F motorcycles are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1988 Honda CB1000F motorcycle that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer are complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 27, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm].

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency than publishes this decision in the **Federal Register.**

J.K. Motors, Inc. of Kingsville, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether 1988 Honda CB1000F motorcycles are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1988 Honda CB1000F that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

J. K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1988 Honda CB1000F, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1988 Honda CB1000F is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars*, 122 *Motorcycle Brake Systems*, 123 *Motorcycle Controls and Displays*, and 205 *Glazing Materials*.

Petitioner also contends that the non-U.S. certified 1988 Honda CB1000F is capable of being readily modified to meet the following standards in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) by installing U.S.-model headlamps and front sidemarker lights; (b) by installing U.S.-model taillamp assemblies that incorporate rear sidemarkers.

Standard No. 115 *Vehicle Identification Number:* by installing a vehicle identification plate on the frame under the seat.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room

5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above 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. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 21, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–31853 Filed 12–27–94; 8:45 am]

BILLING CODE 4910–59–M

Maritime Administration

[Docket S–905, Sub 1]

Gulfcoast Transit Co.; Notice of Application for Temporary Written Consent Pursuant to Section 506 of the Merchant Marine Act, 1936, as amended, for the transfer of the JANIS GUZZLE to the domestic coastwise trade

Notice is hereby given that Gulfcoast Transit Company (Gulfcoast), a U.S. company, by letter dated December 7, 1994, renewed its request for temporary written consent pursuant to section 506 of the Merchant Marine Act, 1936, as amended (Act), for transfer of the construction-differential subsidy built (CDS) tug M/V JANIS GUZZLE to domestic coastwise trade for not more than six months during a 12-month period.

Gulfcoast's original request of April 15, 1994, for section 506 consent was Noticed on May 4, 1994, (59 F.R. 23253), Docket S–905, with a closing date of May 18, 1994. Gulfcoast contends that since then, there have been protracted rounds of comments concerning its request. In this connection, Gulfcoast points out that while this exchange has enabled the Maritime Administration (MARAD) to ascertain the full range of facts and issues concerning its request, the dialogue has also consumed seven months time without resolution. Moreover, Gulfcoast believes that it has rendered its original request moot to the extent that Gulfcoast sought a temporary six month transfer within the calendar year 1994. Thus, Gulfcoast points out that there are no longer six months remaining in calendar year 1994.

In view of the aforementioned, Gulfcoast requests that MARAD consider its original request for six months approval be granted from the date MARAD issues its decision. Gulfcoast states that there has been no change in its request, its proposed use of the M/V JANIS GUZZLE, the lack of other suitable Artubar tugs or its safety concerns.

Further, Gulfcoast avers that it has made an adequate showing for the use of the tug in its coal phosphate operations by virtue of its operational suitability. Additionally, it has demonstrated that the adverse impact on other domestic vessels would be de minimis due to its proprietary coal business and long term backhaul phosphate contracts and that MARAD's approval of its request would further the purposes of the Act.

Any person, firm, or corporation having any interest in the application for section 506 consent and desiring to submit comments concerning Gulfcoast's request must by the close of business on Jan. 11, 1995, file written comments in triplicate, to the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street, SW., Washington, DC. 20590. The Maritime Administration, as a matter of discretion, will consider any comments submitted and take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.800 Construction-Differential Subsidies (CDS)).

By Order of the Maritime Administrator.

Dated: December 21, 1994.

Joel C. Richard,

Secretary.

[FR Doc. 94–31854 Filed 12–27–94; 8:45 am]

BILLING CODE 4910–81–P

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of Re[illegible] Requirements Submit[illegible] OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256. USIA is requesting approval for a three-year extension as well as approval for revisions made to the Fulbright Teacher Exchange Program, United States Information Agency Application for Teaching Positions/Seminars Abroad under OMB control number 3116–0181 which expires March 31, 1995. The proposed revisions are suggested to ensure readability and clarity of instructions for applicants. Estimated burden hours per response is two (2) hours. Respondents will be required to respond only one time.

DATE: Comments are due on or before January 27, 1995.

COPIES: Copies of the Request for Clearance (OMB 83–1), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547, telephone (202) 619–5503; and OMB review: Mr. Jefferson Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503, Telephone (202) 395–7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–0181) is estimated to average two (2) hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New

Executive Office Building, Washington, D.C. 20503.

TITLE: Fulbright Teacher Exchange Program, United States Information Agency Application for Teaching Positions/Seminars Abroad.

FORM NUMBER: IAP–92.

ABSTRACT: To be used by applicants under the Fulbright Teacher Exchange Program which provided opportunities for U.S. teachers to exchange positions for designated periods with foreign counterparts, or to attend one of a number of short-term seminars abroad on a variety to topics.

PROPOSED FREQUENCY OF RESPONSES: No. of Respondents—940; Total Annual Burden—1880.

Dated: December 21, 1994.

Rose Royal,

Federal Register Liaison.

[FR Doc. 94–31830 Filed 12–27–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 248
Wednesday, December 28, 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).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the following Board meeting and staff briefing:

TIME AND DATE: 1:30 p.m., January 19, 1995.

PLACE: Board Conference Room, Suite 700, 625 Indiana Ave. NW., Washington, D.C. 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Secretary of Energy's response and Implementation Plan for Board Recommendation 94–1.

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

SUPPLEMENTARY INFORMATION: The staff will brief the Board on the Secretary's Implementation Plan for Board Recommendation 94–1 and related topics, including, but not limited to, the DNFSB Staff's report "Plutonium Storage Safety at Major Department of Energy Facilities"; DOE's studies on vulnerabilities associated with the DOE's storage of Plutonium; and the current status of DOE remediation of conditions identified in Board Recommendation 94–1.

The Board intends to convene additional public hearings on DOE's Implementation Plan in the near future. The time and place of those hearings will be noticed in the **Federal Register**.

The Board specifically reserves its right to further schedule and otherwise regulate the course of this public meeting, to recess, reconvene, postpone or adjourn the meeting, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: December 23, 1994.

John T. Conway,

Chairman.

[FR Doc. 94–32106 Filed 12–23–94; 1:56 pm]

BILLING CODE 6820–KD–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: January 10, 1995, 2:00 P.M. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, N.W., Washington, D.C. 20507.

STATUS: Part of the Meeting will be open to the public and part of the Meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes
2. Status Reports from Commission Task Forces
   a. Charge Processing
   b. Alternative Dispute Resolution
   c. Relationship with State & Local Agencies
3. Status Report On Outreach Activities by the Office of Program Operations

Closed Session

Litigation Authorization: General Counsel Recommendations

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4077 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: December 22, 1994.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 94–32044 Filed 12–23–94; 10:39 am]

BILLING CODE 6750–06–M

AGENCY HOLDING THE MEETING: BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, January 3, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding conflicts of interest policies and financial disclosure forms for Federal Reserve Bank supervisory personnel.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 23, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–32042 Filed 12–23–94; 10:35 am]

BILLING CODE 6210–01–P

AGENCY HOLDING THE MEETING: NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 26, 1994, January 2, 9, and 16, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed

MATTERS TO BE CONSIDERED:

Week of December 26

There are no Commission meetings scheduled for the Week of December 26.

Week of January 2—Tentative

There are no Commission meetings scheduled for the Week of January 2.

Week of January 9—Tentative

Thursday, January 12

10:00 a.m.
Briefing on Status of Activities with the Center for Nuclear Waste Regulatory Analysis (CNWRA) (Public Meeting) (Contact: Shirley Fortuna, 301–415–7804)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Briefing by ICRP/NCRP on the Principles of Radiological Protection and Their Application in Setting Limits and Constraints for the Public from Radiation Sources (Public Meeting)

Week of January 16—Tentative

Tuesday, January 17

10:00 a.m.

Briefing by Executive Branch (Closed—Ex. 1)

ADDITIONAL INFORMATION: By a vote of 3–0 on December 21, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Georgia Power Company—Intervenor's Petition for Review of LBP–94–37" (Public Meeting) be held on December 21, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: Dr. Andrew Bates (301) 504–1963.

Andrew L. Bates,

Chief, Operations Branch Office of the Secretary.

[FR Doc. 94–32090 Filed 12–23–94; 11:59 am]

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federal register

Wednesday
December 28, 1994

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 1, et al.
Federal Acquisition Regulations; Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 90–23; Introduction

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules with request for comment, and technical amendments.

SUMMARY: This document summarizes the FAR rules which follow it in the order listed below. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing Federal Acquisition Circular (FAC) 90–23 to amend the Federal Acquisition Regulation (FAR).

Item	Subject	FAR Case	DAR Case	Analyst
I	Training for contracting personnel	93–604		DeStefano.
II	Storage of contract files	91–101	91–46	Klein.
III	National security	93–8		Scott.
IV	Acquisition of utility services	91–13	90–471	Loeb.
V	Lease with option to purchase	91–6	90–413	DeStefano.
VI	Procurement from people who are blind or severely disabled	93–610		Scott.
VII	Acquisition of helium	91–9	90–415	Klein.
VIII	Paper and envelopes	92–622		Klein.
IX	Debarment, suspension, and ineligibility	89–89	88–96	DeStefano.
X	Revision to optional form 17, sealed bid label	92–602		Scott.
XI	Notification of ownership changes	91–20	89–117	Olson.
XII	Certificates of competency	91–107	91–88	Scott.
XIII	Small business competitiveness demonstration program (interim)	92–302		Scott.
XIV	Small business concern representation	91–61	90–46	Scott.
XV	Prohibition of DOL implementation/administration of Davis-Bacon helper regulations pursuant to fiscal year 1994 appropriation act.	93–618		O'Neill
XVI	Walsh-Healey definitions	92–36		O'Neill
XVII	Section 4(c) price adjustments	93–609		O'Neill
XVIII	Collective Bargaining agreement, contingency clauses	92–7		O'Neill
XIX	Cost accounting standards	92–18		Olson.
XX	CAS applicability and thresholds	93–27		Olson
XXI	Advance agreements, composition of total cost, and accounting for unallowable costs.	91–45	90–23	Olson
XXII	Postretirement benefits-transition costs	91–42	91–5	Olson
XXIII	Advance payment reporting	93–309		Olson
XXIV	Defense production act amendments (interim)	93–304		O'Neill
XXV	Defense Technical Information Center	93–29		O'Neill
XXVI	Construction contracting	90–62	90–448	O'Neill
XXVII	Child care services (Interim)	91–106	91–328	Scott.
XXVIII	Final indirect cost agreements	91–103	91–81	Olson
XXIX	Consent to subcontract	91–68	90–516	Klein
XXX	Contractors' purchasing systems reviews	90–53	90–453	Klein
XXXI	Transfers of government property	90–34	90–454	Klein
XXXII	Commercial bills of lading under cost-reimbursement contracts audit by GSA	88–56	86–102	Klein
XXXIII	Qualification requirements	92–612		O'Neill
XXXIV	Small business and small disadvantaged subcontracting plan	92–628		Scott
XXXV	Shipments to ports and air terminals	91–11	90–457	O'Such
XXXVI	Standard form 18, request for quotations	91–84	91–36	Scott
XXXVII	Revisions to standard forms 1414 and 1415	92–9		O'Such
XXXVIII	Technical amendments			
XXXIX	Looseleaf amendments			
XL	Annual notice of rates of inflation			Olson

DATES: For effective dates and comment dates, see separate documents which follow. Please cite FAC 90–23 and the appropriate FAR case number(s) in all correspondence related to the following documents.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears (in the table above) in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, room 4037 GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–23 and specific FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90–23 amends the Federal Acquisition Regulation (FAR) as specified below.

Item I—Training for Contracting Personnel (FAR Case 93–604)

Subpart 1.6 is revised by, among other things, adding language at FAR 1.603-1, General, that addresses the requirements of the Office of Federal Procurement Policy (OFPP) Policy Letter No. 92–3, 'Procurement Professionalism Program Policy—

Training for Contracting Personnel, dated June 24, 1992. OFPP Policy Letter No. 92–3, contains OFPP's standards for skill-based training in performing contracting and purchasing duties. The above changes will implement in the FAR, policies established by the OFPP Policy Letter.

Item II—Storage of Contract Files (FAR Case 91–101)

This final rule revises FAR Subparts 4.7 and 4.8 to permit the use of various media (paper, electronic, microfilm, etc.) for the storage of official contract files by contractors and contracting and contract administration offices.

Item III—National Security (FAR Case 93–8)

FAR 5.303(a) is revised to clarify that the requirement for public announcement of contract awards over $3 million does not apply to contracts exempted from synopsis in the Commerce Business Daily for reasons of national security

Item IV—Acquisition of Utility Services (FAR Case 91–13)

A new Part 41, Acquisition of Utility Services, is added and replaces the existing language now located at FAR Subpart 8.3. Part 41 provides uniform language pertaining to the acquisition of utilities service which is applicable to all Executive agencies and will enable agencies to delete most of their regulatory guidance on utilities from their agency FAR supplements. The part includes additional guidance for contracting officers in acquiring and administering contracts for utility service and includes additional definitions applicable to utility service contracts. Language was added delineating existing statutory and delegated authority for utility service contracting and providing for use of the standard forms to acquire utility services "Standard" specification formats and annual utility service review formats have been established for use in acquiring utility services

Item V—Lease with Option to Purchase (FAR Case 91–6)

This final rule amends the FAR by adding paragraph 7 402(b)(4), section 7 404, and clause 52.207–5, based on the Defense Management Review, to include information required to support a contracting officer's decision to use a lease with an option to purchase, and to outline the Government's right to purchase at any time during the performance of the contract

Item VI—Procurement From People Who Are Blind or Severely Disabled (FAR Case 93–610)

FAR 8.001, 8.603, Subpart 8.7, and 9.107 are amended to reflect the Committee for Purchase From the Blind and Other Severely Handicapped name change and revisions to the Committee's regulations.

Item VII—Acquisition of Helium (FAR Case 91–9)

The FAR is being revised at 8.002; a new subpart is being added at Subpart 8.5; and a new clause is being added at 52.208–8, to provide guidance on the acquisition of helium. The Helium Act (50 U.S.C. 167a *et seq.*; Pub. L. 86–777) requires that all major helium requirements be purchased from the Secretary of the Interior. The coverage will assist Government agencies and contractors in complying with the Helium Act by ensuring that contracting officers and contractors are aware of the requirements for using Bureau of Mines' helium in Government contracts.

Item VIII—Paper and Envelopes (FAR Case 92–622)

Paragraph (c) of 8.802, Policy, has been revised to specify that paper and envelopes for use by Executive agencies outside the District of Columbia, and which are stocked by the General Services Administration (GSA), shall be requisitioned by agencies from GSA.

Item IX—Debarment, Suspension, and Ineligibility (FAR Case 89–89)

This final rule revises Subpart 9.4 to clarify to what extent, absent a termination by the issuing agency an individual may place orders against an existing contract notwithstanding a debarment, suspension, or proposed debarment of the contractor. The rule also clarifies that an optional (permissive) user may elect to place a delivery order; a compelling reason determination is not required.

Item X—Sealed Bid Label (FAR Case 92–602)

FAR 14 202–3 15.408, 53.214 and 53 215–1 are amended to permit use of the Optional Form 17, Offer Label, to identify offers for sealed bid and negotiated acquisitions. Use of the label is limited to envelopes larger than 6⅛ inches by 11½ inches to comply with U S Postal Service requirements for automation-compatible mail

Item XI—Notification of Ownership Changes (FAR Case 91–20)

FAR 15 804–8(g) and 52 215–40, Notification of Ownership Changes, are added to require contractors to notify the Government of changes in contractor ownership and their effects, and to emphasize existing recordkeeping requirements. These changes are intended to enable audit determinations that cost increases related to contractor ownership changes are not charged to Government contracts. The clause at 52.215–40 requires contractors to: (i) Notify the contracting officer when a change in contractor ownership, or a change in asset valuation or in any other costs related to an ownership change, occurs or is pending; and (ii) retain and continue to maintain, through successive changes in company ownership, asset inventory records currently required under the FAR.

Item XII—Certificates of Competency (FAR Case 91–107)

FAR 19.000(b) and 19.601 are revised to clarify the applicability of Certificate of Competency procedures, making it clear that the statutory requirement to refer nonresponsibility determinations to the Small Business Administration is unrelated to a contracting agency's location.

Item XIII—Small Business Competitiveness Demonstration Program (FAR Case 92–302)

This interim rule implements Title II of Pub. L. 102–366, the Small Business Credit and Business Opportunity Enhancement Act of 1992, which revises Title VII of Pub. L. 100–656, the Small Business Competitiveness Demonstration Program. Editorial amendments are made to FAR 19.1001 FAR 19 1006(b)(2) is amended to specify that agencies may reinstate the use of small business set-asides as necessary to meet assigned goals, but only within the organizational unit(s) that failed to meet the small business goals. FAR 19.1005(a)(3) is amended to revise the description of Architect and Engineering services as a Designated Industry Group

Item XIV—Small Business Concern Representation (FAR Case 91–61)

FAR 19 502–4(b) is amended to clarify that questions regarding the size status of offerors are matters of eligibility—not responsiveness—and must be referred to the SBA FAR 52 219–1 is amended to remove the requirement for offerors to certify that all supplies to be furnished will be manufactured by a small business in the United States and to add a sentence to clarify that set-aside clauses contain restrictions on the source of end items to be furnished

Item XV—Prohibition of Department of Labor Implementation/Administration of Davis-Bacon Helper Regulations Pursuant to Fiscal Year 1994 Appropriation Act (FAR Case 93–618)

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are implementing in the FAR the Department of Labor (DOL) suspension of its Davis-Bacon Act "Helper" regulations. The DOL regulations were suspended on October 21, 1993. A notice of suspension was published in the **Federal Register** at 58 FR 58954, November 5, 1993.

Item XVI—Walsh-Healey Definitions (FAR Case 92–36)

FAR 22.606–2(b) is revised to add a reference to the alternate "regular dealer" qualification requirements for information systems integrators found in DOL regulations (41 CFR 50–201 101).

Item XVII—Section 4c Price Adjustments (FAR Case 93–609)

This final rule revises the FAR coverage at 22.1002–3, 22.1012–3, and 22.1012–5 to clarify that the requirement for successor contractors on contracts over $2,500, for substantially the same services performed in the same locality, to pay wages and fringe benefits at least equal to those contained in any bona fide collective bargaining agreement entered into under the predecessor contract, is self-executing. The requirement is not contingent upon incorporating a wage determination or the wage and fringe benefit terms of the predecessor contractor's collective bargaining agreement in the successor contract. However, the contracting officer shall incorporate the wage and fringe benefit terms of the collective bargaining agreement itself in contract solicitations and may incorporate the terms or the agreement itself in other contract actions

Item XVIII—Collective Bargaining Agreement, Contingency Clauses (FAR Case 92–7)

This final rule revises the coverage at FAR 22.1002–3, 22 1008–3, and 22 1021 These changes are necessary to implement the direction contained in DOL Memorandums No. 159 and 166 concerning contingencies in collective bargaining agreements subject to section 4(c) of the Service Contract Act and requests for substantial variance hearing This rule also makes editorial changes to more accurately reflect DOL regulations on the Service Contract Act

Item XIX—Cost Accounting Standards (FAR Case 92–18)

The interim rule issued in FAC 90–12, which amended the FAR based on the Cost Accounting Standards Board's recodification of the Cost Accounting Standards in 48 CFR Chapter 99, is converted to a final rule with revisions.

Item XX—CAS Applicability and Thresholds (FAR Case 93–27)

The revisions to the cost accounting standards made by the Cost Accounting Standards Board at 48 CFR Chapter 99 are incorporated into the FAR.

Item XXI—Advance Agreements, Composition of Total Cost, and Accounting for Unallowable Costs (FAR Case 91–45)

This final rule amends FAR 31.109, Advance agreements; 31.201–1, Composition of total cost; and 31.201–6, Accounting for unallowable costs. Language is added at 31.109(a) to address the use of advance agreements to clarify allowability issues under the specific cost principles, in order to minimize subsequent disputes. The current phrase in 31.109(a), "particularly for firms or their divisions that may not be under effective competitive constraints," is deleted because the determination of the reasonableness, allocability, or allowability of a cost under the specific cost principles is not significantly impacted by the business environment in which the industry operates. Changes in FAR 31.201–1 include deleting the word "allowable" in its first sentence; redesignating the existing paragraph as "(a)", and inserting a new paragraph "(b)" which makes it clear that while the total cost of a contract includes all allocable costs, the total allowable costs on a Government contract are limited to those allocable costs which are allowable pursuant to Part 31 and agency supplements. FAR 31.201–6(c) is revised to clarify that there is no intended difference in the accounting and presentation of unallowable costs between contracts which are covered by the Cost Accounting Standards and those which are not

Item XXII—Postretirement Benefits—Transition Costs (FAR Case 91–42)

This item converts the interim rule concerning the treatment of costs for postretirement benefits other than pensions (PRB) which are attributable to employees' past service to a final rule The interim rule was published in the **Federal Register** at 56 FR 41738, August 22, 1991 as Item IX of FAC 90–7 The interim rule changed FAR 31 205–6 to add a new paragraph (j)(3)(v), revised the first sentence of paragraph (j)(4), redesignated the existing paragraph (o)(4) as (o)(5), and added a new paragraph (o)(4). The final rule differs from the interim rule in that it amends FAR 31.205–6(o)(2) to allow costs generated using the terminal funding method permitted for CAS-covered contractors. Both terminal funding method and cash basis (pay-as-you-go) accounting are allowable assignment methods under CAS but are not sanctioned by Generally Accepted Accounting Principles. It is intended that the methods allowed by CAS for prefunding retiree insurance programs be allowable for all contractors. Subsequent paragraphs are redesignated as (o)(3) through (o)(6) with minor clarifications made in paragraphs (o)(3) and (5). A change is made in the clause at 52.215–39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB), to reflect the change in paragraph numbering at 31.205–6(o).

The amended cost principle provides guidance for any transfer of pension funds to another employee benefit fund. In effect, the cost principle requires any increase in current or future Government costs for the pension fund due to such a withdrawal to be offset by equivalent decreases in Government costs for the employee benefit fund receiving the transfer Transfers made without an advance agreement shall be treated as if the contractor withdrew the funds and are subject to 31.205–6(j)(4), and the deposit to the receiving fund is subject to the cost allowability rules governing the receiving fund in regards to measurement and assignment of costs Under 31 205–6(j)(4), the Government is entitled to its equitable share of the gross amount withdrawn from pension fund assets. FAR 31 205–6(o)(5) limits the allowable amount of contractor PRB transition costs for any fiscal year to the amount which would be assigned to that year using the amortization method described in Financial Accounting Standards Board Statement 106 This limitation is necessary because Government fiscal policy dictates that the past service cost element be amortized rather than immediately recognized

Item XXIII—Advance Payment Reporting (FAR Case 93–309)

FAR 32 402(a) is revised to delete the requirement for submitting an advance notice to Congress prior to making an advance payment exceeding $25 million

Item XXIV—Defense Production Act Amendments (FAR Case 93–304)

This interim rule amends the FAR by adding FAR Subpart 34.1, Testing, qualification and use of industrial resources developed under Title III, Defense Production Act (DPA), to implement pertinent provisions of the Defense Production Act Amendments of 1992 (Public Law 102–558). Title III of the DPA of 1950 authorizes various forms of Government assistance to encourage expansion of production capacity and supply of industrial resources essential to national defense. The DPA Amendments of 1992 provide for the testing, qualification, and use of industrial resources manufactured or developed with assistance provided under Title III of the DPA. This rule expresses Government policy to pay for such testing, and provides definitions, procedures, and a contract clause to implement the policy.

Item XXV—Defense Technical Information Center (FAR Case 93–29)

FAR 35.010, Scientific and technical reports, is revised to delete address information and language instructing DoD contractors to send copies of scientific and technical reports resulting from DoD contracts to Defense Technical Information Center (DTIC). In addition, the address for the National Technical Information Service is updated.

Item XXVI—Construction Contracting (FAR Case 90–62)

This final rule revises FAR Parts 36 and 52 by including a new section at 36.212, Preconstruction orientation, inserting a new clause at 52.236–26, Preconstruction conference, and a new provision at 52.236–27, Site Visit (Construction). The new clause and provision have previously been used by military activities and are considered to be beneficial to contractors as well as civilian and defense agencies.

Item XXVII—Child Care Services (FAR Case 91–106)

This interim rule amends FAR Part 37 to implement 42 U.S.C. 13041 by adding a definition of "child care services" at 37 101 and adding language at 37 103(d) requiring contracting officers to ensure that contracts for child care services include requirements for criminal history background checks on employees who will perform child care services

Item XXVIII—Final Indirect Cost Agreements (FAR Case 91–103)

FAR 42 705–2 and 52 216–13 are amended to eliminate the requirements for contractors to execute a Certificate of Current Cost or Pricing Data in conjunction with final indirect cost agreements on facilities contracts and for auditors to obtain a certificate under auditor determination procedures for final indirect cost rates.

Item XXIX—Consent to Subcontract (FAR Case 91–68)

FAR 44.201, 44.204, 52.244–1, and 52.244–2 are revised to eliminate the exception for contracting officer consent for major systems and subsystems. Instead, contracting officers are allowed to specify in the contract schedule all subcontracts for major systems, subsystems, or components needing special surveillance, for which consent to subcontract must be obtained by the prime contractor.

Item XXX—Contractors' Purchasing Systems Reviews (FAR Case 90–53)

This final rule provides revisions to 44.302(b) and paragraphs (a) and (b) of 44.304. These revisions are in keeping with efforts to streamline the acquisition process and eliminate regulatory burdens on both contracting officers and contractors.

Item XXXI—Transfers of Government Property (FAR Case 90–34)

This final rule revises the FAR at 45.311 and 45.603 to ensure that Government property is transferred and documented properly

Item XXXII—Commercial Bills of Lading Under Cost-Reimbursement Contracts Audit by GSA (FAR Case 88–56)

FAR 47 104–4 is amended to prescribe the added clause at 52.247–67, Submission of Commercial Transportation Bills to the General Services Administration for Audit, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract or a first-tier cost-reimbursement subcontract thereunder will authorize reimbursement of transportation as a direct charge to the contract or subcontract

Item XXXIII—Qualification Requirements (FAR Case 92–612)

FAR 52 209–1(e) is revised to allow offerors to submit evidence of qualification prior to award of the contract, rather than with their offers. This change corrects an inconsistency between paragraphs (b) and (e) of the clause highlighted by the decision in *Gardner Zemke Company* Comptroller General Decision B–238334, April 5, 1990

Item XXXIV—Small Business and Small Disadvantaged Business Subcontracting Plan (FAR Case 92–628)

FAR 52.219–9 is amended to state that a firm may rely on the information contained in the SBA Procurement Automated Source System (PASS) as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list and as its source list.

Item XXXV—Shipments to Ports and Air Terminals (FAR Case 91–11)

The provision at 52.247–51, Evaluation of Export Offers, now requires contracting officers to publish, with the solicitation, any available information on port handling and ocean charges for DoD water terminals. Several editorial and minor technical changes were also made to the provision.

Item XXXVI—Standard Form 18, Request for Quotation (FAR Case 91–84)

Standard Form 18, Request for Quotations, at 53.301–18, is revised by deleting the Small Business Concern Representation and the Notice of Small Business Small Purchase Set-Aside from the reverse of the form, and by adding the Standard Industrial Classification Code and small business size standard to the face of the form. Corresponding changes were made to the face of the form for the contracting officer to indicate whether the Request for Quotations is a small business small purchase set-aside and whether additional provisions and representations are attached. Current versions of the two provisions should be attached, when appropriate.

Item XXXVII—Revisions to Standard Form 1414 and 1415 (FAR Case 92–9)

Standard Form 1414, Consent of Surety, and Standard Form 1415, Consent of Surety and Increase of Penalty, are revised to accommodate consents by individual sureties and to provide space for dates of execution.

Item XXXVIII—Technical Amendments

Technical amendments have been made to FAR 1 105 to update the list of OMB approvals under the Paperwork Reduction Act

Item XXXIX—Looseleaf Amendments

The following amendments are to the looseleaf edition of the FAR

1. In 52.301, the Provision and Clause Matrix is reissued in its entirety with the following amendments

Provision or clause	Amendment to matrix
52.215–30	In "UCF" Column , remove "I", insert "L".
52.216–1	In "IBR column" remove "Yes", insert "No".
52.219–15	In "IBR column" remove "Yes", insert "No".
52.219–22	In "UCF" column, remove "K", insert "L".
Alternate I following 52.222–35.	In "Prescribed In" column, remove "22.1308(c)" and insert "22.1308(a)".
52.225–8 and 52.225–9.	In "Prescribed In" columns, remove "25.407(a)(1)" and "25.407(a)(2)", and insert "25.408(a)(1) and 25.408(a)(2), respectively.
52.225–16	In "P or C" column, remove "C", insert "P"; and in "UCF" column, remove "I", insert "k".
52.225–18 and 52.225–19.	In "SP" column, remove "A" both times it appears.
52.227–2	In "FP Con" column, add "A".
52.232–1	In "LMV" column, remove "R".
52–233–1	In "Prescribed in" column remove "33.214" and insert" 33.215".

2. The Corrections and Subscriptions Problems page found at the end of the FAR is reissued due to revisions in references and format.

Item XL—Annual Notice of Rates of Inflation

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to publish as an information item, the rates of inflation which are used in conjunction with other factors to determine the allowability of IR&D/B&P costs for major contractors under 31.205–18(c)(2)(i)(C)(2). These rates were issued by the Department of Defense Principal Deputy Comptroller in January 1994.

Federal Acquisition Circular 90–13, FAR Case 91–37, Item VII, published in the **Federal Register** at 57 FR 44264, September 24, 1992, provided the rates of inflation which were to be used to determine the allowability of IR&D/B&P costs for major contractors during the 3-year transition period FY 1993 through 1995. FAR 31.205–18(c)(2)(i)(C)(2) states that the annual rates of inflation will be published in the **Federal Register** on an annual basis

FAC 90–20, published in the **Federal Register** at 59 FR 11370, March 10, 1994, provided the rates of inflation for FY 1993 through 1996 The following rates of inflation are effective immediately, supersede those published in the **Federal Register** on March 10, 1994, and shall remain in effect until superseded by the next publication:

Fiscal year	Annual percentage rate
1993	2.6
1994	2.7
1995	2.9
1996	3.0
1997	3.0

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

Number 90–23

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–23 are effective February 27, 1995, except for the following items:

Items XIII, XXIV, XXVII, and XXXVIII, which are effective December 28, 1994; and

Item XX, which is effective February 27, 1995, except for specific amendments, effective November 4, 1993, which are noted in the EFFECTIVE DATE.

Dated: September 19, 1994.

Arthur E. Ronkovich,

Acting Associate Administrator, Office of Acquisition Policy, (GSA).

Dated: September 16, 1994.

Deidre A. Lee,

Associate Administrator for Procurement, NASA.

Dated: October 4, 1994.

Eleanor R. Spector,

Director, Defense Procurement

[FR Doc. 94–30669 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1

[FAC 90–23; FAR Case 93–604; Item I]

RIN 9000–AF90

Federal Acquisition Regulation; Training for Contracting Personnel

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) by, among other things, adding language that addresses the requirements of the Office of Management and Budget's Office of Federal Procurement Policy (OFPP) Policy Letter No. 92–3, Procurement Professionalism Program Policy—Training for Contracting Personnel, dated June 24, 1992. OFPP Policy Letter No. 92–3 contains standards for skill-based training in performing contracting and purchasing duties. This regulatory action was not subject to OMB review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR case 93–604 in correspondence.

SUPPLEMENTARY INFORMATION:

A. Background

OFPP Policy Letter 92–3, Procurement Professionalism Program Policy—Training for Contracting Personnel, dated June 24, 1992, requires the CAAC and the DARC to conduct a thorough review of relevant parts of the FAR to (1) assure that the FAR contains no unintended encumbrances to the Policy Letter, and (2) that the FAR fully reflects the policies established by the Policy Letter. This amendment to FAR 1.603–1 implements in the FAR the policies established by the policy letter.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–23, FAR case 93–604), in correspondence

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public

which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 1 is amended as set forth below:

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citation for 48 CFR part 1 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. The heading of subpart 1.6 is revised to read as follows:

Subpart 1.6—Career Development, Contracting Authority, and Responsibilities

2. Section 1.603–1 is revised to read as follows:

1.603–1 General.

Subsection 414(4) of title 41, United States Code, requires agency heads to establish and maintain a procurement career management program and a system for the selection, appointment, and termination of appointment of contracting officers. Agency heads or their designees may select and appoint contracting officers and terminate their appointments. These selections and appointments shall be consistent with Office of Federal Procurement Policy's (OFPP) standards for skill-based training in performing contracting and purchasing duties as published in OFPP Policy Letter No. 92–3, Procurement Professionalism Program Policy—Training for Contracting Personnel, June 24, 1992.

[FR Doc. 94–30668 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 4

[FAC 90–23; FAR Case 91–101; Item II]

RIN 9000–AF67

Federal Acquisition Regulation; Storage of Contract Files

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) have approved language in the Federal Acquisition Regulation (FAR) to permit the use of various media (paper, electronic, microfilm, etc.) for the storage of official contract files by contractors and contracting and contract administration offices. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755 Please cite FAC 90–23, FAR case 91–101

SUPPLEMENTARY INFORMATION:

A. Background

FAR Subparts 4.7 and 4.8 are revised to permit contractors and agencies to retain contract files in any medium (paper, electronic, microfilm, etc.) or any combination of media as long as the requirements of FAR Subpart 4.8 are satisfied We also changed the title of Subpart 4.8 from "Contract Files" to "Government Contract Files" to better describe the contents of the subpart This change will permit contractors and the Government to minimize the space required for storage of contract files and will provide ease of handling and retrieval of the records.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1 501 and Public Law 98–577, because the rule affects internal Government operating procedures in that it permits agencies to retain contract files in any medium (paper, electronic, microfilm, etc.) or any combination of media, as long as the requirements of FAR Subpart 4.8 are satisfied, and also allows contractors to adopt the same methods of storing contract files if they so desire. Publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.*, (FAC 90–23, FAR case 91–101) in correspondence.

C. Paperwork Reduction Act

This rule does not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 4

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy

Therefore, 48 CFR part 4 is amended as set forth below:

PART 4—ADMINISTRATIVE MATTERS

1 The authority citation for 48 CFR part 4 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U S.C. chapter 137 and 42 U S.C. 2473(c).

2. Section 4.703 is amended by redesignating paragraph (d) as (e) and adding a new paragraph (d) to read as follows

4.703 Policy.

* * * * *

(d) Contractors may retain records in any medium (paper, electronic, microfilm, etc) or any combination of media, as long as the requirements of this subpart are satisfied. The process used to create and store records must record and reproduce the original document, including signatures and other written or graphic images, completely, accurately, and clearly Data transfer storage, and retrieval procedures shall protect the original data from alteration.

* * * * *

Subpart 4.8—Government Contract Files

3. The heading of Subpart 4.8 is revised to read as set forth above.

4. Section 4.802 is amended by adding a new paragraph (f) to read as follows:

4.802 Contract files.

* * * * *

(f) Agencies may retain contract files in any medium (paper, electronic, microfilm, etc.) or any combination of media, as long as the requirements of this subpart are satisfied.

5. Section 4.805 is amended by—

(a) revising the section heading;

(b) redesignating the introductory paragraph as paragraph (a) and revising the text;

(c) adding paragraph (b) before the table and (c) after the table;

(d) removing from the table under the "Document" column paragraph (c), and redesignating paragraphs (a) through (n) as (b)(1) through (13), respectively; and paragraphs (n)(1) and (2) as (b)(13)(i) and (ii), respectively;

(e) removing from newly-designated paragraph (b)(10) the reference "4.805(a)–(j)" and inserting "4.805(b)(1)–(9)" in its place;

(f) removing from newly-designated paragraph (b)(11) the reference "4.805(a)–(k)" and inserting "4.805(b)(1)–(10)" in its place; and

(g) removing from newly-designated paragraph (b)(1) under the "Retention Period" column the words "(b) through (n)" and inserting "(b)(2) through (13)" in their place.The revised text reads as follows:

4.805 Storage, handling, and disposal of contract files.

(a) Agencies shall prescribe procedures for the handling, storing, and disposing of contract files. Such procedures shall take into account documents held in other than paper format, such as microfilm and various electronic media The original medium on which the document was created may be changed to facilitate storage as long as the requirements of part 4, law and other regulations are satisfied. The process used to create and store records must record and reproduce the original document, including signatures and other written and graphic images completely, accurately, and clearly Data transfer, storage, and retrieval procedures shall protect the original data from alteration Unless law or other regulations require signed originals to be kept, they may be destroyed after the record copies on alternate media and copies reproduced from the record copy are verified to be accurate, complete and clear representations of the originals. Agency procedures for contract file disposal shall include provisions that the documents specified in paragraph (b) of this section shall not be destroyed before the times indicated. When original documents have been converted to alternate media for storage, the requirements in paragraph (b) of this section shall apply to the record copies on the alternate media instead of the original documents.

(b) If administrative records are mixed with program records and cannot be economically segregated, the entire file should be kept for the period of time approved for the program records. Similarly, if documents, specified below, are part of a subject or case file which documents activities different from those specified below, they should be treated in the same manner as the files of which they are a part.

* * * * *

(c) Documents listed in paragraph (b)(1) under "Document" shall not be destroyed until final clearance or settlement.

[FR Doc. 94–30667 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 5

[FAC 90–23; FAR Case 93–8; Item III]

RIN 9000–AF87

Federal Acquisition Regulation; National Security

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to clarify that the requirement for public announcement of contract awards over $3 million does not apply to contracts classified for national security purposes. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR case 93–8.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 5.303(a) requires contracting officers to make information available on awards over $3 million (unless another dollar amount is specified in agency regulations) in sufficient time for the agency concerned to announce it by 5:00 p.m. Washington, DC time on the date of award. This final rule revises FAR 5.303(a) to indicate that the requirement for public announcement does not apply to contracts exempted from synopsis in the Commerce Business Daily for reasons of national security.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–23, FAR case 93–8), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq*

List of Subjects in 48 CFR Part 5

Government procurement

Dated: December 7 1994

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy

Therefore, 48 CFR part 5 is amended as set forth below:

PART 5—PUBLICIZING CONTRACT ACTIONS

1 The authority citation for 48 CFR part 5 continues to read as follows:

Authority: 40 U S C 486(c); 10 U.S.C chapter 137 and 42 U S.C 2473(c)

2. Section 5.303(a) is revised to read as follows:

5.303 Announcement of contract awards.

(a) *Public announcement.* Contracting officers shall make information available on awards over $3 million (unless another dollar amount is specified in agency acquisition regulations) in sufficient time for the agency concerned to announce it by 5:00 p.m. Washington, DC time on the day of award. Contracts excluded from this reporting requirement include (1) those placed with the Small Business Administration under Section 8(a) of the Small Business Act, (2) those placed with foreign firms when the place of delivery or performance is outside the United States or its possessions, and (3) those for which synopsis was exempted under 5.202(a)(1). Agencies shall not release information on awards before the public release time of 5:00 p.m. Washington, DC time.

* * * * *

[FR Doc. 94–30666 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 8, 15, 41, and 52

[FAC 90–23; FAR Case 91–13; Item IV]

RIN 9000–AE48

Federal Acquisition Regulation; Acquisition of Utility Services

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule revising the FAR coverage dealing with utility services. This rule will replace the existing coverage concerning acquisition of utility services and will provide more comprehensive coverage applicable to all executive agencies. The current FAR coverage, in large measure, did not apply to the Department of Defense, and it also exempted agency regulatory requirements in the utility area that predated the establishment of the FAR. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb at (202) 501–4547 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–23, FAR case 91–13.

SUPPLEMENTARY INFORMATION:

A. Background

In response to the need to provide more comprehensive utility coverage in the FAR, a major rewrite of the existing FAR coverage was undertaken. The principal changes are as follows:

(1) FAR Part 41 applies to all Executive agencies and will enable agencies to delete most utilities provisions from their agency FAR supplements. The current FAR Subpart 8.3 permitted agencies' procedures predating the FAR to continue to be used. In addition, Subpart 8.3 previously exempted DOD from much of the FAR coverage.

(2) Substantial additional guidance for contracting officers in acquiring and administering utility service contracts are included.

(3) Additional definitions applicable to utility service contracts are established.

(4) Coverage is established delineating the existing statutory and delegated authority for utility service contracting.

(5) FAR clauses to be used on a "substantially the same as" basis are established.

(6) Substantive coverage providing for handling rate changes by the agencies is established This coverage enables agencies to handle such matters without automatically referring them to GSA for action.

(7) Coverage is added providing generally for the use of standard forms for acquisition of utility services.

(8) "Standard" specification formats have been established for use in acquiring utility services. Such formats will not be included in the FAR but will be available for agency use

(9) "Standard" annual utility service review formats have been established for use in acquiring utility services. Such formats will not be included in the FAR but will be available for agency use.

B. Regulatory Flexibility Act

The changes may 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 a number of public utilities, especially rural electrical cooperatives, are small businesses. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C 601, *et seq.* (FAC 90–23, FAR case 91–13) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies because the final rule contains information collection requirements. A request for approval of a new information collection requirement concerning OMB Control Numbers 9000–0122 through 9000–0126, Acquisition of Utility Services, was submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* The information collection was approved through March 31, 1995. Public comments concerning this request were invited through a **Federal Register** notice published on January 9, 1992.

D. Public Comments

On May 24, 1991, a proposed rule was published in the **Federal Register** (56 FR 23982). In response to the notice of proposed rulemaking, 263 public comments were received. The comments of all respondents were considered in developing this final rule. As a result, the following changes have been made:

(1) Changes have been made to the definitions of connection charge and franchise service territory and the definition of shared savings project has been deleted.

(2) The policies governing delegation of authority to contract for utility services have been revised.

(3) Changes have been made to the coverage dealing with a utility's refusal to enter into a contract

(4) Changes have been made to the coverage providing for monthly and annual reviews of the utility invoices and or services

(5) A number of the prescriptions for the solicitation provision and contract clauses have been modified.

(6) Numerous changes have been made to the contract clauses to address specific comments and to provide more flexibility for the contracting officer to tailor specific aspects to reflect the practices in that area

(7) Other miscellaneous changes have been made.

List of Subjects in 48 CFR Parts 6, 8, 15, 41, and 52

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 6, 8, 15, 41, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 6, 8, 15, 41, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 6—COMPETITION REQUIREMENTS

2. Section 6.302–1 is amended by revising paragraph (b)(3) to read as follows:

6.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

* * * * *

(b) * * *

(3) When acquiring utility services (see 41.101), circumstances may dictate that only one supplier can furnish the service (see 41.202); or when the contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system.

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

3 Section 8.002 is amended by revising paragraph (b) to read as follows

8.002 Use of other Government supply sources.

* * * * *

(b) Public utility services (see part 41 of this title)

* * * * *

Subpart 8.3 [Removed and Reserved]

4 Subpart 8.3, consisting of sections 8.300 through 8.309, is removed and reserved

PART 15—CONTRACTING BY NEGOTIATION

15.812–2 [Amended]

5 Section 15.812–2 is amended in paragraph (a)(3) by removing the words "subpart 8.3" and inserting "part 41" in its place

PART 41—ACQUISITION OF UTILITY SERVICES

6. Part 41, consisting of sections 41.100 through 41.702, is added to read as follows:

Sec.

Subpart 41.1—General

41.100 Scope of part.
41.101 Definitions.
41.102 Applicability
41.103 Statutory and delegated authority

Subpart 41.2—Acquiring Utility Services

41.201 Policy
41.202 Procedures.
41.203 GSA assistance.
41.204 GSA areawide contracts.
41.205 Separate contracts.
41.206 Interagency agreements.

Subpart 41.3—Requests for Assistance

41.301 Requirements.

Subpart 41.4—Administration

41.401 Monthly and annual review
41.402 Rate changes and regulatory intervention.

Subpart 41.5—Solicitation Provision and Contract Clauses

41.501 Solicitation provision and contract clauses.

Subpart 41.6—Forms

41.601 Utility services forms

Subpart 41.7—Formats

41.701 Formats for utility service specifications.
41.702 Formats for annual utility service review

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137, and 42 U.S.C. 2473(c)

Subpart 41.1—General

41.100 Scope of part.

This part prescribes policies, procedures, and contract format for the acquisition of utility services (See 41.102(b) for services that are excluded from this part.)

41.101 Definitions.

As used in this part,

Areawide contract means a contract entered into between the General Services Administration (GSA) and a utility service supplier to cover utility service needs of Federal agencies within the franchise territory of the supplier. Each areawide contract includes an "Authorization" form for requesting service connection, disconnection, or change in service.

Authorization means the document executed by the ordering agency and the utility supplier to order service under an areawide contract.

Connection charge means all nonrecurring costs, whether refundable or nonrefundable, to be paid by the Government to the utility supplier for the required connecting facilities, which are installed, owned, operated, and maintained by the utility supplier (see Termination liability).

Delegated agency means an agency that has received a written delegation of authority from GSA to contract for utility services for periods not exceeding ten years (see 41.103(b)).

Federal Power and Water Marketing Agency means a Government entity that produces, manages, transports, controls, and sells electrical and water supply service to customers.

Franchise territory means a geographical area that a utility supplier has a right to serve based upon a franchise, a certificate of public convenience and necessity, or other legal means.

Intervention means action by GSA or a delegated agency to formally participate in a utility regulatory proceeding on behalf of all Federal executive agencies.

Multiple service locations means the various locations or delivery points in the utility supplier's service area to which it provides service under a single contract.

Rates may include rate schedules, riders, rules, terms and conditions of service, and other tariff and service charges, e.g., facilities use charges.

Separate contract means a utility services contract (other than a GSA areawide contract, an Authorization under an areawide contract, or an interagency agreement) to cover the acquisition of utility services.

Termination liability means a contingent Government obligation to pay a utility supplier the unamortized portion of a connection charge and any other applicable nonrefundable service charge as defined in the contract in the event the Government terminates the contract before the cost of connection facilities has been recovered by the utility supplier (see "Connection charge").

Utility service means a service such as furnishing electricity, natural or manufactured gas, water, sewerage, thermal energy, chilled water, steam, hot water, or high temperature hot water. The application of part 41 to other services (e.g., rubbish removal, snow removal) may be appropriate when the acquisition is not subject to the Service Contract Act of 1965 (see 37.107).

41.102 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to the acquisition of utility services for the

Government, including connection charges and termination liabilities.

(b) This part does not apply to—

(1) Utility services produced, distributed, or sold by another Federal agency. In those cases, agencies shall use interagency agreements (see 41.206);

(2) Utility services obtained by purchase, exchange, or otherwise by a Federal power or water marketing agency incident to that agency's marketing or distribution program;

(3) Cable television (CATV) and telecommunications services;

(4) Acquisition of natural or manufactured gas when purchased as a commodity;

(5) Acquisition of utilities services in foreign countries;

(6) Acquisition of rights in real property, acquisition of public utility facilities, and on-site equipment needed for the facility's own distribution system, or construction/maintenance of Government-owned facilities; or

(7) Third party financed shared-savings projects authorized by 42 U.S.C. 8287. However, agencies may utilize part 41 for any energy savings or purchased utility service directly resulting from implementation of a third party financed shared-savings project under 42 U.S.C. 8287 for periods not to exceed 25 years.

41.103 Statutory and delegated authority.

(a) *Statutory authority.* (1) The General Services Administration (GSA) is authorized by section 201 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481), to prescribe policies and methods governing the acquisition and supply of utility services for Federal agencies. This authority includes related functions such as managing public utility services and representing Federal agencies in proceedings before Federal and state regulatory bodies. GSA is authorized by section 201 of the Act to contract for utility services for periods not exceeding ten years.

(2) The Department of Defense (DOD) is authorized by 10 U.S.C. 2301, 2304, and 40 U.S.C. 474(3) to acquire utility services for military facilities.

(3) The Department of Energy (DOE) is authorized by the Department of Energy Organization Act (42 U.S.C. 2751, *et seq.*) to acquire utility services. DOE is authorized by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2204), to enter into new contracts or modify existing contracts for electric services for periods not exceeding 25 years for uranium enrichment installations.

(b) *Delegated authority.* GSA has delegated its authority to enter into utility service contracts for periods not exceeding ten years to DOD and DOE, and for connection charges only to the Department of Veteran Affairs. Contracting pursuant to this delegated authority shall be consistent with the requirements of this part. Other agencies requiring utility service contracts for periods over one year, but not exceeding ten years, may request a delegation of authority from GSA at the address specified in 41.301(a). In keeping with its statutory authority, GSA will, as necessary, conduct reviews of delegated agencies' acquisitions of utility services to ensure compliance with the terms of the delegation and applicable laws and regulations.

(c) Requests for delegations of contracting authority from GSA shall include a certification from the acquiring agency's Senior Procurement Executive that the agency has—

(1) An established acquisition program;

(2) Personnel technically qualified to deal with specialized utilities problems; and

(3) The ability to accomplish its own pre-award contract review.

Subpart 41.2—Acquiring Utility Services

41.201 Policy.

(a) Subject to paragraph (d) of this section, it is the policy of the Federal Government that agencies obtain required utility services from sources of supply which are most advantageous to the Government in terms of economy, efficiency, reliability, or service.

(b) Except for acquisitions below the small purchase limitation (see 13.000), agencies shall acquire utility services by a bilateral written contract, which must include the clauses required by 41.501, regardless of whether rates or terms and conditions of service are fixed or adjusted by a regulatory body. Agencies may not use the utility supplier's forms and clauses to avoid the inclusion of provisions and clauses required by 41.501 or by statute. (See 41.202(c) for procedures to be used when the supplier refuses to execute a written contract.)

(c) Specific operating and management details, such as procedures for internal agency contract assistance and review, delegations of authority, and approval thresholds, may be prescribed by an individual agency subject to compliance with applicable statutes and regulations.

(d)(1) Section 8093 of the Department of Defense Appropriations Act of 1988, Pub. L. 100-202, provides that none of the funds appropriated by that Act or any other Act with respect to any fiscal year by any department, agency, or instrumentality of the United States, may be used for the purchase of electricity by the Government in any manner that is inconsistent with state law governing the providing of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements.

(2) The Act does not preclude—

(i) The head of a Federal agency from entering into a contract pursuant to 42 U.S.C. 8287 (which pertains to the subject of shared energy savings including cogeneration);

(ii) The Secretary of a military department from entering into a contract pursuant to 10 U.S.C. 2394 (which pertains to contracts for energy or fuel for military installations including the provision and operation of energy production facilities); or

(iii) The Secretary of a military department from purchasing electricity from any provider when the utility or utilities having applicable state-approved franchise or other service authorizations are found by the Secretary to be unwilling or unable to meet unusual standards for service reliability that are necessary for purposes of national defense.

(3) Additionally, the head of a Federal agency may—

(i) Consistent with applicable state law, enter into contracts for the purchase or transfer of electricity to the agency by a non-utility, including a qualifying facility under the Public Utility Regulatory Policies Act of 1978;

(ii) Enter into an interagency agreement, pursuant to 41.206 and 17.5 with a Federal power marketing agency or the Tennessee Valley Authority for the transfer of electric power to the agency, and

(iii) Enter into a contract with an electric utility under the authority or tariffs of the Federal Energy Regulatory Commission.

(e) Prior to acquiring electric utility services on a competitive basis, the contracting officer shall determine, with the advice of legal counsel, by a market survey or any other appropriate means e.g. consultation with the state agency responsible for regulating public utilities, that such competition would not be inconsistent with state law governing the provision of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved

territorial agreements. Proposals from alternative electric suppliers must provide a representation that service can be provided in a manner not inconsistent with section 8093 of Public Law 100–202 (see 41.201(d)). The representation must be supported with appropriate legal and factual rationale.

41.202 Procedures.

(a) Prior to executing a utility service contract, the contracting officer shall comply with parts 6 and 7 and 41.201 (d) and (e). In accordance with parts 6 and 7, agencies shall conduct market surveys and perform acquisition planning in order to promote and provide for full and open competition provided that the contracting officer determines that any resultant contract would not be inconsistent with applicable state law governing the provision of electric utility services. If competition for an entire utility service is not available, the market survey may be used to determine the availability of competitive sources for certain portions of the requirement. The scope of the term "entire utility service" includes the provision of the utility service capacity, energy, water, sewage, transportation, standby or back-up service, transmission and/or distribution service, quality assurance, system reliability, system operation and maintenance, metering, and billing.

(b) In performing a market survey (see 7 101), the contracting officer shall consider, in addition to alternative competitive sources, use of the following:

(1) GSA areawide contracts (see 41 204);

(2) Separate contracts (see 41 205), and

(3) Interagency agreements (see 41 206)

(c) When a utility supplier refuses to execute a tendered contract as outlined in 41 201(b), the agency shall obtain a written definite and final refusal signed by a corporate officer or other responsible official of the supplier (or if unobtainable, document any unwritten refusal), and transmit this document, along with statements of the reasons for the refusal and the record of negotiations, to GSA at the address specified at 41 301(a) Unless urgent and compelling circumstances exist, the contracting officer shall notify GSA prior to acquiring utility services without executing a tendered contract After such notification, the agency may proceed with the acquisition and pay for the utility service under the provisions of 31 U S C 1501(a)(8)—

(1) By issuing a purchase order in accordance with subpart 13 5 or

(2) By ordering the necessary utility service and paying for it upon the presentation of an invoice, provided that a determination is approved by the head of the contracting activity that a written contract cannot be obtained and that the issuance of a purchase order is not feasible.

(d) When obtaining service without a bilateral written contract, the contracting officer shall establish a utility history file on each acquisition of utility service provided by a contractor. This utility history file shall contain, in addition to applicable documents in 4.803, the following information:

(1) The unsigned, tendered contract and any related letter of transmittal.

(2) The reasons stated by the utility supplier for not executing the tendered contract, the record of negotiations, and a written definite and final refusal by a corporate officer or other responsible official of the supplier (or if unobtainable, documentation of unwritten refusal).

(3) Services to be furnished and the estimated annual cost.

(4) Historical record of any applicable connection charges.

(5) Historical record of any applicable ongoing capital credits.

(6) A copy of the applicable rate schedule

(e) If the Government obtains utility service pursuant to paragraph (c) of this section, the contracting officer shall, on an annual basis beginning from the date of final refusal, take action to execute a bilateral written contract. The contracting officer shall document the utility history file with the efforts made and the agency shall notify GSA, in writing, if the utility continues to refuse to execute a bilateral contract

41.203 GSA assistance.

(a) GSA will, upon request, provide technical and acquisition assistance, or will delegate its contracting authority for the furnishing of the services described in this part for any Federal agency, mixed-ownership Government corporation, the District of Columbia, the Senate, the House of Representatives, or the Architect of the Capitol and any activity under the Architect's direction

(b) Agencies seeking assistance shall provide, upon request by GSA, the information listed in 41 301

41.204 GSA areawide contracts.

(a) *Purpose* GSA enters into areawide contracts (see 41 101) for use by Federal agencies Areawide contracts provide a pre-established contractual vehicle for ordering utility services under the conditions in paragraph (c)(1) of this section

(b) *Features.* (1) Areawide contracts generally provide for ordering utility service at rates approved and/or established by a regulatory body and published in a tariff or rate schedule. However, agencies are permitted to negotiate other rates and terms and conditions of service with the supplier (see paragraph (c) of this section). Rates other than those published may require the approval of the regulatory body

(2) Areawide contracts are negotiated with utility service suppliers for the provision of service within the supplier's franchise territory or service area.

(3) Due to the regulated nature of the utility industry, as well as statutory restrictions associated with the procurement of electricity (see 41 201(d)), competition is typically not available within the entire geographical area covered by an areawide contract, although it may be available at specific locations within the utility's service area. When competing suppliers are available, the provisions of paragraph (c)(1) of this section apply

(c) *Procedures for obtaining service* (1) Any Federal agency having a requirement for utility services within an area covered by an areawide contract shall acquire services under that areawide contract unless—

(i) Service is available from more than one supplier; or

(ii) The head of the contracting activity or designee otherwise determines that use of the areawide contract is not advantageous to the Government If service is available from more than one supplier, service shall be acquired using competitive acquisition procedures (see 41 202(a)) The determination required by paragraph (c)(1)(ii) of this section shall be documented in the contract file with an information copy furnished to GSA at the address in 41 301(a)

(2) Each areawide contract includes an authorization form for ordering service, connection, disconnection, or change in service Upon execution of an authorization by the contracting officer and utility supplier, the utility supplier is required to furnish services, without further negotiation, at the current, applicable published or unpublished rates unless other rates, and/or terms and conditions are separately negotiated by the Federal agency with the supplier

(3) The contracting officer shall execute the Authorization, and attach it to a Standard Form (SF) 26, Award/Contract, along with any modifications such as connection charges, special facilities, or service arrangements The contracting officer shall also attach any specific fiscal, operational, and

administrative requirements of the agency, applicable rate schedules, technical information and detailed maps or drawings of delivery points, details on Government ownership, maintenance, or repair of facilities, and other information deemed necessary to fully define the service conditions in the Authorization/contract.

(d) *List of areawide contracts.* A list of current GSA areawide contracts is available from the GSA office specified at 41.301(a). The list identifies the types of services and the geographic area served. A copy of the contract may also be obtained from this office.

(e) *Notification.* Agencies shall provide GSA at the address specified at 41.301(a) a copy of each SF 26 and executed Authorization issued under an areawide contract within 30 days after execution.

41.205 Separate contracts.

(a) In the absence of an areawide contract or interagency agreement (see 41.206), agencies shall acquire utility services by separate contract subject to this part, and subject to agency contracting authority

(b) If an agency enters into a separate contract, the contracting officer shall document the contract file with the following information:

(1) The number of available suppliers

(2) Any special equipment, service reliability, or facility requirements and related costs.

(3) The utility supplier's rates, connection charges, and termination liability

(4) Total estimated contract value (including costs in subparagraphs (b) (2) and (3) of this subsection).

(5) Any technical or special contract terms required

(6) Any unusual characteristics of services required

(7) The utility's wheeling or transportation policy for utility service

(c) If requesting GSA assistance with a separate contract, the requesting agency shall furnish the technical and acquisition data specified in 41 205(b), 41 301, and such other data as GSA may deem necessary

(d) A contract exceeding a 1-year period, but not exceeding ten years (except pursuant to 41 103), may be justified, and is usually required, where any of the following circumstances exist

(1) The Government will obtain lower rates, larger discounts, or more favorable terms and conditions of service,

(2) A proposed connection charge, termination liability or any other facilities charge to be paid by the Federal Government will be reduced or eliminated or

(3) The utility service supplier refuses to render the desired service except under a contract exceeding a 1-year period.

41.206 Interagency agreements.

Agencies shall use interagency agreements (e.g., consolidated purchase, joint use, or cross-service agreements) when acquiring utility service or facilities from other Government agencies and shall comply with the policies and procedures at subpart 17.5, Interagency Acquisitions under the Economy Act.

Subpart 41.3—Requests for Assistance

41.301 Requirements.

(a) Requests for delegations of GSA contracting authority, assistance with a proposed contract as provided in 41.203, and the submission of other information required by this part, shall be sent or submitted to the General Services Administration (GSA) region in which service is required. The names and locations of GSA regional offices are available from the Public Utilities Division (PPU), Public Buildings Service, Washington, DC 20405

(b) Requests for contracting assistance for utility services shall be sent not later than 120 days prior to the date new services are required to commence an existing contract will expire. Requests for assistance shall contain the following information:

(1) A technical description or specification of the type, quantity, and quality of service required, and a delivery schedule

(2) A copy of any service proposal or proposed contract

(3) Copies of all current published or unpublished rates of the utility supplier

(4) Identification of any unusual factors affecting the acquisition.

(5) Identification of all available sources or methods of supply, an analysis of the cost effectiveness of each, and a statement of the ability of each source to provide the required services, including the location and a description of each available supplier's facilities at the nearest point of service, and the cost of providing or obtaining necessary backup and other ancillary services

(c) For new utility service requirements, the agency shall furnish the information in paragraph (a) of this section and the following as applicable

(1) The date initial service is required

(2) For the first 12 months of full service estimated maximum demand, monthly consumption, other pertinent information (e g demand side management, load or energy management, peak shaving, on site generation, load shaping), and annual cost of the service.

(3) Known or estimated time schedule for growth to ultimate requirements.

(4) Estimated ultimate maximum demand and ultimate monthly consumption.

(5) A simple schematic diagram or line drawing showing the meter locations, the location of the new utility facilities to be constructed on Federal property by the Federal agency, and any required new connection facilities on either side of the delivery point to be constructed by the utility supplier to provide the new services.

(6) Accounting and appropriation data to cover the required utility services and any connection charges required to be paid by the agency receiving such utility services.

(7) The following data concerning proposed facilities and related charges or costs:

(i) Proposed refundable or nonrefundable connection charge, termination liability, or other facilities charge to be paid by the agency, together with a description of the supplier's proposed facilities and estimated construction costs, and its rationale for the charge (e.g., tariff provisions or policies).

(ii) A copy of the acquiring agency's estimate to make its own connection to the supplier's facilities through use of its own resources or by separate contract When feasible, the acquiring agency shall provide its estimates to construct and operate its own utility facilities in lieu of participating in a cost-sharing construction program with the proposed utility supplier

(d) For existing utility service, the agency shall furnish GSA the information in paragraph (b) of this section and the following, as applicable

(1) A copy of the most recent 12-months' service invoices

(2) A tabulation, by month, for the most recent 12 months, showing the actual utility demands, consumption connection charges, fuel adjustment charges, and the average monthly cost per unit of consumption

(3) An estimate, by month, for the next 12 months, showing the estimated maximum demands, monthly consumption, other pertinent information (e g., demand side management, load or energy management, peak shaving, on site generation, load shaping), and annual cost of the service

(4) Accounting and appropriation data to cover the costs for the continuation of utility services

(5) A statement noting whether the transformer, or other system components, on either side of the delivery point are owned by the Federal agency or the utility supplier, and if the metering is on the primary or secondary side of the transformer.

Subpart 41.4—Administration

41.401 Monthly and annual review.

Agencies shall review utility service invoices on a monthly basis and all utility accounts, with annual values exceeding the small purchase threshold, on an annual basis. Annual reviews of accounts with annual values beneath the small purchase dollar threshold shall be conducted when deemed advantageous to the Government. The purpose of the monthly review is to ensure the accuracy of utility service invoices. The purpose of the annual review is to ensure that the utility supplier is furnishing the services to each facility under the utility's most economical, applicable rate and to examine competitive markets for more advantageous service offerings. The annual review shall be based upon the facility's usage, conditions and characteristics of service at each individual delivery point for the most recent 12 months. If a more advantageous rate is appropriate, the Federal agency shall request the supplier to make such rate change immediately.

41.402 Rate changes and regulatory intervention.

(a) When a change is proposed to rates or terms and conditions of service to the Government, the agency shall promptly determine whether the proposed change is reasonable, justified, and not discriminatory.

(b) If a change is proposed to rates or terms and conditions of service that may be of interest to other Federal agencies, and intervention before a regulatory body is considered justified, the matter shall be referred to GSA. The agency may request from GSA a delegation of authority for the agency to intervene on behalf of the consumer interests of the Federal executive agencies (see 41.301).

(c) Pursuant to 52.241–7, Change in Rates or Terms and Conditions of Service for Regulated Services, if a regulatory body approves a rate change, any rate change shall be made a part of the contract by unilateral contract modification or otherwise documented in accordance with agency procedures. The approved applicable rate shall be effective on the date determined by the regulatory body and resulting rates and charges shall be paid promptly to avoid late payment provisions. Copies of the modification containing the approved rate change shall be sent to the agency's paying office or office responsible for verifying billed amounts (see 41.401).

(d) If the utility supplier is not regulated and the rates, terms, and conditions of service are subject to negotiation pursuant to the clause at 52.241–8, Change in Rates or Terms and Conditions of Service for Unregulated Services, any rate change shall be made a part of the contract by contract modification, with copies sent to the agency's paying office or office responsible for verifying billed amounts.

Subpart 41.5—Solicitation Provision and Contract Clauses

41.501 Solicitation provision and contract clauses.

(a) Because the terms and conditions under which utility suppliers furnish service may vary from area to area, the differences may influence the terms and conditions appropriate to a particular utility's contracting situation. To accommodate requirements that are peculiar to the contracting situation, this section prescribes provisions and clauses on a "substantially the same as" basis (see 52.101) which permits the contracting officer to prepare and utilize variations of the prescribed provision and clauses in accordance with agency procedures.

(b) The contracting officer shall insert in solicitations for utility services a provision substantially the same as the provision at 52.241–1, Electric Service Territory Compliance Representation, when proposals from alternative electric suppliers are sought.

(c) The contracting officer shall insert in solicitations and contracts for utility services clauses substantially the same as the clauses at—

(1) 52.241–2, Order of Precedence—Utilities;

(2) 52.241–3, Scope and Duration of Contract;

(3) 52.241–4, Change in Class of Service;

(4) 52.241–5, Contractor's Facilities; and

(5) 52.241–6, Service Provisions.

(d) The contracting officer shall insert clauses substantially the same as the clauses listed below in solicitations and contracts under the prescribed conditions—

(1) 52.241–7, Change in Rates or Terms and Conditions of Service for Regulated Services, when the utility services are subject to a regulatory body. (Except for GSA areawide contracts, the contracting officer shall insert in the blank space provided in the clause the name of the contracting officer. For GSA areawide contracts, the contracting officer shall insert the following: "GSA and each areawide customer with annual billings that exceed $250,000.")

(2) 52.241–8, Change in Rates or Terms and Conditions of Service for Unregulated Services, when the utility services are not subject to a regulatory body.

(3) 52.241–9, Connection Charge, when a refundable connection charge is required to be paid by the Government to compensate the contractor for furnishing additional facilities necessary to supply service. (Use Alternate I to the clause if a nonrefundable charge is to be paid. When conditions require the incorporation of a nonrecurring, nonrefundable service charge or a termination liability, see paragraphs (f) and (i) of this section.)

(4) 52.241–10, Termination Liability, when payment is to be made to the contractor upon termination of service in conjunction with or in lieu of a connection charge upon completion of the facilities.

(5) 52.241–11, Multiple Service Locations (as defined in 41.101), when providing for possible alternative service locations, except under areawide contracts, is required.

(6) 52.241–12, Nonrefundable, Nonrecurring Service Charge, when the Government is required to pay a nonrefundable, nonrecurring membership fee, a charge for initiation of service, or a contribution for the cost of facilities construction. The Government may provide for inclusion of such agreed amount or fee as a part of the connection charge, a part of the initial payment for services, or as periodic payments to fulfill the Government's obligation.

(7) 52.241–13, Capital Credits, when the Federal Government is a member of a cooperative and is entitled to capital credits, consistent with the bylaws and governing documents of the cooperative.

(e) Depending on the conditions that are appropriate for each acquisition, the contracting officer shall also insert in solicitations and contracts for utility services the provisions and clauses prescribed elsewhere in the FAR.

Subpart 41.6—Forms

41.601 Utility services forms.

(a) If acquiring utility services under other than an areawide contract, a purchase order, or an interagency agreement, the Standard Form (SF) 33, Solicitation, Offer and Award; SF 26, Award/Contract; or SF 1447, Solicitation/Contract, shall be used.

(b) The contracting officer shall incorporate the applicable rate schedule in each contract, purchase order or modification.

Subpart 41.7—Formats

41.701 Formats for utility service specifications.

(a) The following specification formats for use in acquiring utility services are available from the address specified at 41.301(a) and may be used and modified at the agency's discretion:

(1) Electric service.

(2) Water service.

(3) Steam service.

(4) Sewage service.

(5) Natural gas service.

(b) Contracting officers may modify the specification format referenced in paragraph (a) of this section and attach technical items, details on Government ownership of facilities and maintenance or repair obligations, maps or drawings of delivery points, and other information deemed necessary to fully define the service conditions.

(c) The specifications and attachments (see paragraph (b) of this section) shall be inserted in Section C of the utility service solicitation and contract.

41.702 Formats for annual utility service review.

(a) Formats for use in conducting annual reviews of the following utility services are available from the address specified at 41.301(a) and may be used at the agency's discretion:

(1) Electric service.

(2) Gas service.

(3) Water and sewage service.

(b) Contracting officers may modify the annual utility service review format as necessary to fully cover the service used.

PART 52 SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.208–3 [Removed and Reserved]

6. Section 52.208–3 is removed and reserved.

7. Sections 52.241 through 52.241–13 are added to read as follows:

52.241 Utility services provisions and clauses.

52.241–1 Electric service territory compliance representation.

As prescribed in 41.501(b), insert a provision substantially the same as the following:

Public Law 100–202, Electric Service Territory Compliance Representation (Feb. 1995)

(a) The Offeror represents as part of its offer that the Offeror's sale of electricity in accordance with the terms and conditions of this solicitation is [ ] is not [ ] consistent with Public Law 100–202, section 8093.

(b) The Offeror's supporting rationale is as follows:

_____

_____

_____

_____

(End of provision)

52.241–2 Order of precedence-utilities.

As prescribed in 41.501(c)(1), insert a clause substantially the same as the following:

Order of Precedence-Utilities (Feb. 1995)

In the event of any inconsistency between the terms of this contract (including the specifications) and any rate schedule, rider, or exhibit incorporated in this contract by reference or otherwise, or any of the Contractor's rules and regulations, the terms of this contract shall control.

(End of clause)

52.241–3 Scope and duration of contract.

As prescribed in 41.501(c)(2), insert a clause substantially the same as the following:

Scope And Duration of Contract (Feb. 1995)

(a) For the period _____, [insert period of service] the Contractor agrees to furnish and the Government agrees to purchase _____ [insert type of service] utility service in accordance with the applicable tariff(s), rules, and regulations as approved by the applicable governing regulatory body and as set forth in the contract.

(b) It is expressly understood that neither the Contractor nor the Government is under any obligation to continue any service under the terms and conditions of this contract beyond the expiration date.

(c) The Contractor shall provide the Government with one complete set of rates, terms, and conditions of service which are in effect as of the date of this contract and any subsequently approved rates.

(d) The Contractor shall be paid at the applicable rate(s) under the tariff and the Government shall be liable for the minimum monthly charge, if any, specified in this contract commencing with the period in which service is initially furnished and continuing for the term of this contract. Any minimum monthly charge specified in this contract shall be equitably prorated for the periods in which commencement and termination of this contract become effective.

(End of clause)

52.241–4 Change in class of service.

As prescribed in 41.501(c)(3), insert a clause substantially the same as the following:

Change in Class of Service (Feb. 1995)

(a) In the event of a change in the class of service, such service shall be provided at the Contractor's lowest available rate schedule applicable to the class of service furnished.

(b) Where the Contractor does not have on file with the regulatory body approved rate schedules applicable to services provided, no clause in this contract shall preclude the parties from negotiating a rate schedule applicable to the class of service furnished.

(End of clause)

52.241–5 Contractor's facilities.

As prescribed in 41.501(c)(4), insert a clause substantially the same as the following:

Contractor's Facilities (Feb. 1995)

(a) The Contractor, at its expense, unless otherwise provided for in this contract, shall furnish, install, operate, and maintain all facilities required to furnish service hereunder, and measure such service at the point of delivery specified in the Service Specifications. Title to all such facilities shall remain with the Contractor and the Contractor shall be responsible for loss or damage to such facilities, except that the Government shall be responsible to the extent that loss or damage has been caused by the Government's negligent acts or omissions.

(b) Notwithstanding any terms expressed in this clause, the Contractor shall obtain approval from the Contracting Officer prior to any equipment installation, construction, or removal. The Government hereby grants to the Contractor, free of any rental or similar charge, but subject to the limitations specified in this contract, a revocable permit or license to enter the service location for any proper purpose under this contract. This permit or license includes use of the site or sites agreed upon by the parties hereto for the installation, operation, maintenance, and repair of the facilities of the Contractor required to be located upon Government premises. All applicable taxes and other charges in connection therewith, together with all liability of the Contractor in construction, operation, maintenance and repair of such facilities, shall be the obligation of the Contractor.

(c) Authorized representatives of the Contractor will be allowed access to the facilities on Government premises at reasonable times to perform the obligations of the Contractor regarding such facilities. It is expressly understood that the Government may limit or restrict the right of access herein granted in any manner considered necessary (e.g., national security, public safety).

(d) Unless otherwise specified in this contract, the Contractor shall, at its expense, remove such facilities and restore Government premises to their original condition as near as practicable within a reasonable time after the Government terminates this contract. In the event such termination of this contract is due to the fault of the Contractor, such facilities may be retained in place at the option of the Government for a reasonable time while the Government attempts to obtain service elsewhere comparable to that provided for hereunder.

(End of clause)

§ 52.241–6 Service provisions.

As prescribed in 41.501(c)(5), insert a clause substantially the same as the following:

Service Provisions (Feb 1995)

(a) *Measurement of service.* (1) All service furnished by the Contractor shall be measured by suitable metering equipment of standard manufacture, to be furnished, installed, maintained, repaired, calibrated, and read by the Contractor at its expense. When more than a single meter is installed at a service location, the readings thereof may be billed conjunctively, if appropriate. In the event any meter fails to register (or registers incorrectly) the service furnished, the parties shall agree upon the length of time of meter malfunction and the quantity of service delivered during such period of time. An appropriate adjustment shall be made to the next invoice for the purpose of correcting such errors. However, any meter which registers not more than ____ percent slow or fast shall be deemed correct.

(2) The Contractor shall read all meters at periodic intervals of approximately 30 days or in accordance with the policy of the cognizant regulatory body or applicable bylaws. All billings based on meter readings of less than ____ days shall be prorated accordingly.

(b) *Meter test.* (1) The Contractor, at its expense, shall periodically inspect and test Contractor-installed meters at intervals not exceeding ____ year(s). The Government has the right to have representation during the inspection and test.

(2) At the written request of the Contracting Officer, the Contractor shall make additional tests of any or all such meters in the presence of Government representatives. The cost of such additional tests shall be borne by the Government if the percentage of errors is found to be not more than percent slow or fast.

(3) No meter shall be placed in service or allowed to remain in service which has an error in registration in excess of ____ percent under normal operating conditions.

(c) *Change in volume or character.* Reasonable notice shall be given by the Contracting Officer to the Contractor regarding any material changes anticipated in the volume or characteristics of the utility service required at each location.

(d) *Continuity of service and consumption.* The Contractor shall use reasonable diligence to provide a regular and uninterrupted supply of service at each service location, but shall not be liable for damages, breach of contract or otherwise, to the Government for failure, suspension, diminution, or other variations of service occasioned by or in consequence of any cause beyond the control of the Contractor, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, or other catastrophe, strikes, or failure or breakdown of transmission or other facilities. If any such failure, suspension, diminution, or other variation of service shall aggregate more than ____ hour(s) during any billing period hereunder, an equitable adjustment shall be made in the monthly billing specified in this contract (including the minimum monthly charge).

(End of clause)

52.241–7 Change in rates or terms and conditions of service for regulated services.

As prescribed in 41.501(d)(1), insert a clause substantially the same as the following:

Change In Rates or Terms and Conditions of Service for Regulated Services (Feb 1995)

(a) This clause applies to the extent services furnished under this contract are subject to regulation by a regulatory body. The Contractor agrees to give *_____ written notice of (1) the filing of an application for change in rates or terms and conditions of service concurrently with the filing of the application and (2) any changes pending with the regulatory body as of the date of contract award. Such notice shall fully describe the proposed change. If, during the term of this contract, the regulatory body having jurisdiction approves any changes, the Contractor shall forward to the Contracting Officer a copy of such changes within 15 days after the effective date thereof. The Contractor agrees to continue furnishing service under this contract in accordance with the amended tariff, and the Government agrees to pay for such service at the higher or lower rates as of the date when such rates are made effective.

(b) The Contractor agrees that throughout the life of this contract the applicable published and unpublished rate schedule(s) shall not be in excess of the lowest cost published and unpublished rate schedule(s) available to any other customers of the same class under similar conditions of use and service.

(c) In the event that the regulatory body promulgates any regulation concerning matters other than rates which affects this contract, the Contractor shall immediately provide a copy to the Contracting Officer. The Government shall not be bound to accept any new regulation inconsistent with Federal laws or regulations.

(d) Any changes to rates or terms and conditions of service shall be made a part of this contract by the issuance of a contract modification unless otherwise specified in the contract. The effective date of the change shall be the effective date by the regulatory body. Any factors not governed by the regulatory body will have an effective date as agreed to by the parties.

(End of clause)

*Note: Insert language prescribed in 41.501(d)(1)

52.241–8 Change in rates or terms and conditions of service for unregulated services.

As prescribed in 41.501(d)(2), insert a clause substantially the same as the following:

Change in Rates or Terms and Conditions of Service For Unregulated Services (Feb 1995)

(a) This clause applies to the extent that services furnished hereunder are not subject to regulation by a regulatory body.

(b) After _____ [insert date], either party may request a change in rates or terms and conditions of service, unless otherwise provided in this contract. Both parties agree to enter in negotiations concerning such changes upon receipt of a written request detailing the proposed changes and specifying the reasons for the proposed changes.

(c) The effective date of any change shall be as agreed to by the parties. The Contractor agrees that throughout the life of this contract the rates so negotiated will not be in excess of published and unpublished rates charged to any other customer of the same class under similar terms and conditions of use and service.

(d) The failure of the parties to agree upon any change after a reasonable period of time shall be a dispute under the Disputes clause of this contract.

(e) Any changes to rates, terms, or conditions as a result of such negotiations shall be made a part of this contract by the issuance of a contract modification.

(End of clause)

52.241–9 Connection charge.

As prescribed in 41.501(d)(3), insert a clause substantially the same as the following:

Connection Charge (Feb. 1995)

(a) *Charge.* In consideration of the Contractor furnishing and installing at its expense the new connection facilities described herein, the Government shall pay the Contractor a connection charge. The payment shall be in the form of progress payments, advance payments or as a lump sum, as agreed to by the parties and as permitted by applicable law. The total amount payable shall be either the estimated cost of $_____ less the agreed to salvage value of $_____, or the actual cost less the salvage value, whichever is less. As a condition precedent to final payment, the Contractor shall execute a release of any claims against the Government arising under or by the virtue of such installation.

(b) *Ownership, operation, maintenance and repair of new facilities to be provided.* The facilities to be supplied by the Contractor under this clause, notwithstanding the payment by the Government of a connection charge, shall be and remain the property of the Contractor and shall, at all times during the life of this contract or any renewals thereof, be operated, maintained, and repaired by the Contractor at its expense. All taxes and other charges in connection therewith, together with all liability arising out of the construction, operations, maintenance, or repair of such facilities, shall be the obligation of the Contractor.

(c) *Credits.* (1) The Contractor agrees to allow the Government, on each monthly bill for service furnished under this contract to the service location, a credit of _____ percent of the amount of each such bill as rendered until the accumulation of credits shall equal the amount of such connection charge, provided that the Contractor may at any time allow a credit up to 100 percent of the amount of each such bill.

(2) In the event the Contractor, before any termination of this contract but after

completion of the facilities provided for in this clause, serves any customer other than the Government (regardless of whether the Government is being served simultaneously, intermittently, or not at all) by means of these facilities, the Contractor shall promptly notify the Government in writing. Unless otherwise agreed by the parties in writing at that time, the Contractor shall promptly accelerate the credits provided for under subparagraph (c)(1) of this clause, up to 100 percent of each monthly bill until there is refunded the amount that reflects the Government's connection costs for that portion of the facilities used in serving others.

(3) In the event the Contractor terminates this contract, or defaults in performance, prior to full credit of any connection charge paid by the Government, the Contractor shall pay to the Government an amount equal to the uncredited balance of the connection charge as of the date of the termination or default.

(d) *Termination before completion of facilities.* The Government reserves the right to terminate this contract at any time before completion of the facilities with respect to which the Government is to pay a connection charge. In the event the Government exercises this right, the Contractor shall be paid the cost of any work accomplished, including direct and indirect costs reasonably allocable to the completed work prior to the time of termination by the Government, plus the cost of removal, less the salvage value.

(e) *Termination after completion of facilities.* In the event the Government terminates this contract after completion of the facilities with respect to which the Government has paid a connection charge, but before the crediting in full by the Contractor of any connection charge in accordance with the terms of this contract, the Contractor shall have the following options:

(1) To retain in place for _____ months after the notice of termination by the Government such facilities on condition that—

(i) If, during such _____ month period, the Contractor serves any other customer by means of such facilities, the Contractor, shall, in lieu of allowing credits, pay the Government during such period installments in like amount, manner, and extent as the credit provided for under paragraph (c) of this clause before such termination; and

(ii) Immediately after such _____ month period the Contractor shall promptly pay in full to the Government the uncredited balance of the connection charge.

(2) To remove such facilities at the Contractor's own expense within _____ months after the effective date of the termination by the Government. If the Contractor elects to remove such facilities, the Government shall then have the option of purchasing such facilities at the agreed salvage value set forth herein; and provided further, that the Contractor shall, at the direction of the Government, leave in place such facilities located on Government property which the Government elects to purchase at the agreed salvage value.

(End of clause)

Alternate I (Nov 1994). If the Contracting Officer determines that a nonrefundable charge is to be paid and no credits are due the Government, delete paragraphs (c) and (e), renumber paragraph (d) as (c) and add the following as paragraph (d):

(d) *Termination after completion of facilities.* In the event the Government terminates this contract after completion of the facilities with respect to which the Government is to pay a connection charge, the Contractor shall have the following options:

(1) To retain in place for _____ months after the notice of termination by the Government. If the Contractor and the Government have not agreed on terms for retention in place beyond _____ months, then the Contractor must remove the facilities pursuant to the terms of subparagraph (d)(2) of this clause.

(2) To remove such facilities at the Contractor's own expense within _____ months after the effective date of the termination by the Government. If the Contractor elects to remove such facilities, the Government shall then have the option of purchasing such facilities at the agreed salvage value set forth herein; and provided further, that the Contractor shall, at the direction of the Government, leave in place such facilities located on Government property which the Government elects to purchase at the agreed salvage value.

52.241–10 Termination liability.

As prescribed in 41.501(d)(4), insert a clause substantially the same as the following:

Termination Liability (Feb 1995)

(a) If the Government discontinues utility service under this contract before completion of the facilities cost recovery period specified in paragraph (b) of this clause, in consideration of the Contractor furnishing and installing at its expense, the new facility described herein, the Government shall pay termination charges, calculated as set forth in this clause.

(b) *Facility cost recovery period.* The period of time, not exceeding the term of this contract, during which the net cost of the new facility, shall be recovered by the Contractor is—

_____ months. [*Insert negotiated duration.*]

(c) *Net facility cost.* The cost of the new facility, less the agreed upon salvage value of such facility, is—

$_____. [*Insert appropriate dollar amount.*]

(d) *Monthly facility cost recovery rate.* The monthly facility cost recovery rate which the Government shall pay the Contractor whether or not service is received is—

$_____. [*Divide the net facility cost in paragraph (c) of this clause by the facility's cost recovery period in paragraph (b) of this clause and insert the resultant figure.*]

(e) *Termination charges.* Termination charges = $[*Multiply the remaining months of the facility's cost recovery period specified in paragraph (b) of this clause by the monthly facility cost recovery rate in paragraph (d) of this clause and insert the resultant figure.*]

(f) If the Contractor has recovered its capital costs at the time of termination there will be no termination liability charge.

(End of clause)

52.241–11 Multiple service locations.

As prescribed in 41.501(d)(5), insert a clause substantially the same as the following:

Multiple Service Locations (Feb 1995)

(a) At any time by written order, the Contracting Officer may designate any location within the service area of the Contractor at which utility service shall commence or be discontinued. Any changes to the service specifications shall be made a part of the contract by the issuance of a contract modification to include the name and location of the service, specifying any different rate, the point of delivery, different service specifications, and any other terms and conditions.

(b) The applicable monthly charge specified in this contract shall be equitably prorated from the period in which commencement or discontinuance of service at any service location designated under the Service Specifications shall become effective.

(End of clause)

52.241–12 Nonrefundable, nonrecurring service charge.

As prescribed in 41.501(d)(6), insert a clause substantially the same as the following:

Nonrefundable, Nonrecurring Service Charge (Feb 1995)

As provided herein, the Government will pay a nonrefundable, nonrecurring charge when the rules and regulations of a Contractor require that a customer pay (1) a charge for the initiation of service, (2) a contribution in aid of construction, or (3) a nonrefundable membership fee. This charge may be in addition to or in lieu of a connection charge. Therefore, there is hereby added to the Contractor's schedule a nonrefundable, nonrecurring charge for _____ in the amount of $_____ dollars payable [*specify dates or schedules*].

(End of clause)

52.241–13 Capital credits.

As prescribed in 41.501(d)(7), insert a clause substantially the same as the following:

Capital Credits (Feb 1995)

(a) The Government is a member of the _____ [*insert cooperative name*], and as any other member, is entitled to capital credits consistent with the bylaws of the cooperative, which states the obligation of the Contractor to pay capital credits and which specifies the method and time of payment.

(b) The Contractor shall furnish to the Contracting Officer, or the designated representative of the Contracting Officer, in writing, on an _____ basis [insert period of time] a list of accrued credits by contract number, year, and delivery point.

(c) Payment of capital credits will be made by check, payable to the _____ [insert

agency name], and forwarded to the Contracting Officer at _____ [insert agency address], unless otherwise directed in writing by the Contracting Officer. Checks shall cite the current or last contract number and indicate whether the check is partial or final payment for all capital credits accrued. (End of clause)

[FR Doc. 94-30665 Filed 12-27-94; 8:45 am]

BILLING CODE 6820-34-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7 and 52

[FAC 90-23; FAR Case 91-6; Item V]

RIN 9000-AE86

Federal Acquisition Regulation; Lease with Option to Purchase

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR), based on the Defense Management Review (DMR), to include information required to support a contracting officer's decision to use a lease with an option to purchase, and to outline the Government's right to purchase at any time during the performance of the contract. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501-1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-23, FAR case 91-6.

SUPPLEMENTARY INFORMATION:

A. Background

The Secretary of Defense directed that the Defense Federal Acquisition Regulation Supplement (DFARS) be streamlined and rewritten as part of the DMR Regulatory Reform initiative. This initiative resulted in movement of some DFARS language and language from lower level supplements to the FAR.

FAR 7.402(b)(2) states that if a lease is justified, a lease with option to purchase is preferable. However, there is no FAR coverage to implement this requirement. This proposed rule implements FAR 7.402(b)(2) and outlines the Government's right to purchase at any time during the performance of the contract.

A proposed rule was published in the **Federal Register** at 56 FR 37404, August 6, 1991. Ten comments received from five individuals and organizations were considered, and changes were made in the development of the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify 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 change does not impose any new requirements on contractors, large or small, and serves only to clarify existing regulatory coverage. No public comments were received which addressed the statement to that effect which was published as a proposed rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 7 and 52

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 7 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 7 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 7—ACQUISITION PLANNING

2. Section 7.402 is amended by adding paragraph (b)(4) to read as follows:

7.402 Acquisition methods.

* * * * *

(b) * * *

(4) If a lease with option to purchase is used, the contract shall state the purchase price or provide a formula which shows how the purchase price will be established at the time of purchase.

3. Section 7.404 is added to read as follows:

7.404 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause in 52.207-5, Option to Purchase Equipment, in solicitations and contracts involving a lease with option to purchase.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.207-5 is added to read as follows:

52.207-5 Option to purchase equipment.

As prescribed in 7.404, insert a clause substantially the same as the following:

Option to Purchase Equipment (Feb 1995)

(a) The Government may purchase the equipment provided on a lease or rental basis under this contract. The Contracting Officer may exercise this option only by providing a unilateral modification to the Contractor. The effective date of the purchase will be specified in the unilateral modification and may be any time during the period of the contract, including any extensions thereto.

(b) Except for final payment and transfer of title to the Government, the lease or rental portion of the contract becomes complete and lease or rental charges shall be discontinued on the day immediately preceding the effective date of purchase specified in the unilateral modification required in paragraph (a) of this clause.

(c) The purchase conversion cost of the equipment shall be computed as of the effective date specified in the unilateral modification required in paragraph (a) of this clause, on the basis of the purchase price set forth in the contract, minus the total purchase option credits accumulated during the period of lease or rental, calculated by the formula contained elsewhere in this contract.

(d) The accumulated purchase option credits available to determine the purchase conversion cost will also include any credits accrued during a period of lease or rental of the equipment under any previous Government contract if the equipment has been on continuous lease or rental. The movement of equipment from one site to another site shall be "continuous rental." (End of clause)

[FR Doc. 94-30664 Filed 12-27-94; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 9

[FAC 90–23; FAR Case 93–610; Item VI]

RIN 9000–AF92

Federal Acquisition Regulation; Procurement From People Who Are Blind or Severely Disabled

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule that amends the Federal Acquisition Regulation (FAR) to reflect changes in the regulations of the Committee for Purchase from People Who Are Blind or Severely Disabled. Changes are also made in other sections of the FAR which mention the Committee's program. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR case 93–610.

SUPPLEMENTARY INFORMATION

A. Background

Extensive changes in 1991 to the regulations governing procurement from the blind and severely disabled, and legislation in 1992 (Section 911(a) of Public Law 102–569, 106 Stat. 4486) changing the name of the Committee for Purchase From People Who Are Blind or Severely Disabled have made FAR Subpart 8.7 and other FAR references to the Committee's program outdated. FAR Subpart 8.7 also is revised to reflect a change in the Committee's method of distributing its Procurement List.

The intent of the Committee in revising its regulations was to clarify them to reflect actual practice in its program and terminology now being used by the community the program serves. Similar terminology changes have been made by other Government agencies and private organizations in the disability field. For example, the terms "workshop" and "severely handicapped", which appeared in the former Committee regulations and the FAR, are now considered offensive in the disability community and have been replaced in the revised Committee regulations by "nonprofit agency" (the statutory term) and "people with severe disabilities," respectively.

A statute, 41 U.S.C. 48 requires Federal agencies intending to procure supplies and services on the Procurement List to do so in accordance with the Committee's regulations. FAR Subpart 8.7 incorporates into the FAR those provisions of the Committee's regulations most relevant to Government procurement personnel.

B. Regulatory Flexibility Act

This final rule implements the Committee for Purchase from People Who Are Blind or Severely Disabled 1991 regulatory revisions published in the **Federal Register** at 56 FR 48974, September 26, 1991, and the statutory change in the Committee's name. The Committee certified in its 1991 final rule that the revisions to its regulation, which are the basis of this final rule, will not have a significant economic impact on a substantial number of small entities because they do not essentially change the impact of the Committee regulations upon small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 8 and 9

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 8 and 9 are amended as set forth below:

1. The authority citation for 48 CFR parts 8 and 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Section 8.001 paragraphs (a)(1)(iv) and (a)(2)(i) are revised to read as follows:

8.001 Priorities for use of Government supply sources.

(a) * * *

(1) * * *

(iv) Products available from the Committee for Purchase from People Who Are Blind or Severely Disabled (see subpart 8.7);

* * * * *

(2) * * *

(i) Services available from the Committee for Purchase from People Who Are Blind or Severely Disabled (see subpart 8.7);

* * * * *

3. Section 8.603 is amended by revising paragraph (a) to read as follows:

8.603 Purchase priorities.

(a) FPI and nonprofit agencies participating in the Javits-Wagner-O'Day (JWOD) Program (see subpart 8.7) may produce identical supplies or services. When this occurs, ordering offices shall purchase supplies and services in the following priorities:

(1) Supplies:

(i) Federal Prison Industries, Inc. (41 U.S.C. 48).

(ii) JWOD participating nonprofit agencies.

(iii) Commercial sources.

(2) Services:

(i) JWOD participating nonprofit agencies.

(ii) Federal Prison Industries, Inc., or commercial sources.

* * * * *

4. Subpart 8.7 is amended by revising the heading and sections 8.700 through 8.703 to read as follows:

Subpart 8.7—Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled

8.700 Scope of subpart.

This subpart prescribes the policies and procedures for implementing the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c), referred to in this subpart as "the JWOD Act," and the rules of the Committee for Purchase from People Who Are Blind or Severely Disabled (41 CFR chapter 51).

8.701 Definitions.

Allocation, as used in this subpart, means an action taken by a central nonprofit agency to designate the JWOD participating nonprofit agencies that will furnish definite quantities of

supplies or perform specific services upon receipt of orders from ordering offices.

Central nonprofit agency, as used in this subpart, means National Industries for the Blind (NIB), which has been designated to represent people who are blind; or NISH, which has been designated to represent JWOD participating nonprofit agencies serving people with severe disabilities other than blindness.

Committee, as used in this subpart, means the Committee for Purchase from People Who Are Blind or Severely Disabled.

Government or *entity of the Government* means any entity of the legislative or judicial branch, any executive agency, military department, Government corporation, or independent establishment, the U.S. Postal Service, or any nonappropriated-fund instrumentality of the Armed Forces.

Ordering office means any activity in an entity of the Government that places orders for the purchase of supplies or services under the JWOD Program.

Procurement List, as used in this subpart, means a list of supplies (including military resale commodities) and services that the Committee has determined are suitable for purchase by the Government under the Javits-Wagner-O'Day Act.

Nonprofit agency serving people who are blind or *nonprofit agency serving people with other severe disabilities* (referred to jointly as JWOD participating nonprofit agencies) means a qualified nonprofit agency employing people who are blind or have other severe disabilities approved by the Committee to furnish a commodity or a service to the Government under the Act.

8.702 General.

The Committee is an independent Government activity with members appointed by the President of the United States. It is responsible for—

(a) Determining those supplies and services to be purchased by all entities of the Government from JWOD participating nonprofit agencies;

(b) Establishing prices for the supplies and services; and

(c) Establishing rules and regulations to implement the JWOD Act.

8.703 Procurement list.

The Committee maintains a Procurement List of all supplies and services required to be purchased from JWOD participating nonprofit agencies. Questions concerning whether a supply item or service is on the Procurement List should be referred to the Committee offices at the following address and telephone number: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, Room 403, 1735 Jefferson Davis Highway, Arlington, VA 22202–3461, (703) 603–7740.

Many items on the Procurement List are identified in the General Services Administration (GSA) Supply Catalog and GSA's Customer Service Center Catalogs with a black square and the words "NIB/NISH Mandatory Source," and in similar catalogs issued by the Defense Logistics Agency (DLA) and the Department of Veterans Affairs (VA). GSA, DLA, and VA are central supply agencies from which other Federal agencies are required to purchase certain supply items on the Procurement List.

5. Section 8.704 is amended by revising the first sentence in paragraph (a), paragraph (a)(1)(ii), (a)(2)(i), and in paragraph (c) by removing the word "workshops" and inserting "JWOD participating nonprofit agencies" in its place to read as follows:

8.704 Purchase priorities.

(a) The JWOD Act requires the Government to purchase supplies or services on the Procurement List, at prices established by the Committee, from JWOD participating nonprofit agencies if they are available within the period required. * * *

(1) * * *

(ii) JWOD participating nonprofit agencies.

* * * * *

(2) * * *

(i) JWOD participating nonprofit agencies.

* * * * *

6. Section 8.705–1(a) is revised to read as follows:

8.705–1 General.

(a) Ordering offices shall obtain supplies and services on the Procurement List from the central nonprofit agency or its designated JWOD participating nonprofit agencies, except that supplies identified on the Procurement List as available from DLA, GSA, or VA supply distribution facilities shall be obtained through DLA, GSA, or VA procedures. If a distribution facility cannot provide the supplies, it shall inform the ordering office, which shall then order from the JWOD participating nonprofit agency designated by the Committee.

* * * * *

7. Section 8.705–4 is amended by revising paragraph (c), and in paragraph (d) by removing the amount "$2,500" and inserting "$25,000" to read as follows:

8.705–4 Compliance with orders.

* * * * *

(c) When a JWOD participating nonprofit agency fails to perform under the terms of an order, the ordering office shall make every effort to resolve the noncompliance with the nonprofit agency involved and to negotiate an adjustment before taking action to cancel the order. If the problem cannot be resolved with the nonprofit agency, the ordering office shall refer the matter for resolution first to the central nonprofit agency and then, if necessary, to the Committee.

* * * * *

8. Section 8.706 is amended in paragraph (a) by removing the word "listed"; and by revising paragraph (b)(1) to read as follows:

8.706 Purchase exceptions.

* * * * *

(b) * * *

(1) The JWOD participating nonprofit agencies cannot provide the supplies or services within the time required, and commercial sources can provide them significantly sooner in the quantities required; or

* * * * *

9. Section 8.707 is amended by revising the first sentence of paragraph (a) to read as follows:

8.707 Prices.

(a) The prices of items on the Procurement List are fair market prices established by the Committee. * * *

* * * * *

10. Section 8.708 is amended by revising paragraph (d) to read as follows:

8.708 Shipping.

* * * * *

(d) JWOD participating nonprofit agencies shall include transportation costs for small shipments paid by the nonprofit agencies as an item on the invoice. The ordering office shall reimburse the nonprofit agencies for these costs.

11. Section 8.709 is revised to read as follows:

8.709 Payments.

The ordering office shall make payments for supplies or services on the Procurement List within 30 days after shipment or after receipt of a proper invoice or voucher.

12. Section 8.711 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

8.711 Quality complaints.

(a) * * *

(1) For supplies received from DLA supply centers, GSA supply distribution facilities, or Department of Veterans Affairs distribution division, notify the supplying agency.

(2) For supplies or services received from JWOD participating nonprofit agencies, address complaints to the individual nonprofit agency involved, with a copy to the appropriate central nonprofit agency.

* * * * *

13. Section 8.712 is amended by revising paragraph (a) to read as follows:

8.712 Specification changes.

(a) The contracting activity shall notify the JWOD participating nonprofit agency and appropriate central nonprofit agency of any change in specifications or descriptions. In the absence of such written notification, the JWOD participating nonprofit agency shall furnish the supplies or services under the specification or description cited in the order.

* * * * *

14. Section 8.714 is revised to read as follows:

§ 8.714 Communications with the central nonprofit agencies and the Committee.

(a) The addresses of the central nonprofit agencies are:

(1) National Industries for the Blind, 1901 N. Beauregard St., Suite 200, Alexandria, VA 22311–1727, (703) 998–0770; and

(2) NISH, 2235 Cedar Lane, Vienna, VA 22182–5200, (703) 560–6800.

(b) Any matter requiring referral to the Committee shall be addressed to the Executive Director of the Committee at 1735 Jefferson-Davis Highway, Crystal Square 3, Suite 403, Arlington, VA 22202–3461.

15. Section 8.715 is amended by revising the first sentence to read as follows:

§ 8.715 Replacement commodities.

When a commodity on the Procurement List is replaced by another commodity which has not been previously acquired, and a qualified JWOD participating nonprofit agency can furnish the replacement commodity in accordance with the Government's quality standards and delivery schedules and at a fair market price, the replacement commodity is automatically on the Procurement List and shall be acquired from the JWOD participating nonprofit agency designated by the Committee.* * *

Subpart 8.7 [Amended]

16. In addition to the amendments set forth above, Subpart 8.7 is further amended in the list below. For each section listed in the left column, remove the word indicated in the middle column and insert the words indicated in the right column:

Section	Remove	Insert
8.705–1(b)	"workshops"	"JWOD participating nonprofit agency"
8.705–2, first sentence	"workshop"	"JWOD participating nonprofit agency"
8.705–2, third sentence	"workshop"	"nonprofit agency"
8.705–3(a), first sentence	"workshop"	"JWOD participating nonprofit agency"
8.705–3(a), second sentence	"workshop"	"nonprofit agency"
8.705–3(c), first sentence	"workshop"	"JWOD participating nonprofit agency"
8.705–4(a)	"workshops"	"JWOD participating nonprofit agencies"
8.705–4(b)	"workshop"	"JWOD participating nonprofit agency"
8.706(b)(2)	"workshops"	"JWOD participating nonprofit agencies"
8.707(d), first sentence	"workshop"	"JWOD participating nonprofit agency"
8.707(d), second sentence	"workshop"	"JWOD participating nonprofit agency"
8.707(e), first sentence	"workshop's"	"nonprofit agency's"
8.707(e), second sentence	"workshop"	"nonprofit agency"
8.710, introductory text	"workshops"	"JWOD participating nonprofit agencies"
8.711(b)	"workshop"	"JWOD participating nonprofit agency"
8.712(c)	"workshop"	"JWOD participating nonprofit agency"
8.712(d)	"workshop"	"JWOD participating nonprofit agency"
8.713(a)	"workshop"	"JWOD participating nonprofit agency"
8.713(b)	"workshops"	"JWOD participating nonprofit agencies"

PART 9—CONTRACTOR QUALIFICATIONS

17. Section 9.107 is revised to read as follows:

§ 9.107 Surveys of nonprofit agencies serving people who are blind or have other severe disabilities under the Javits-Wagner-O'Day (JWOD) Program.

(a) The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee), as authorized by 41 U.S.C. 46–48c, determines what supplies and services Federal agencies are required to purchase from JWOD participating nonprofit agencies serving people who are blind or have other severe disabilities (see subpart 8.7). The Committee is required to find a JWOD participating nonprofit agency capable of furnishing the supplies or services before the nonprofit agency can be designated as a mandatory source under the JWOD Program. The Committee may request a contracting office to assist in assessing the capabilities of a nonprofit agency.

(b) The contracting office, upon request from the Committee, shall request a capability survey from the activity responsible for performing preaward surveys, or notify the Committee that the JWOD participating nonprofit agency is capable, with supporting rationale, and that the survey is waived. The capability survey will focus on the technical and production capabilities and applicable preaward survey elements to furnish specific supplies or services being considered for addition to the Procurement List.

(c) The contracting office shall use the Standard Form 1403 to request a capability survey of organizations employing people who are blind or have other severe disabilities.

(d) The contracting office shall furnish a copy of the completed survey, or notice that the JWOD participating nonprofit agency is capable and the survey is waived, to the Executive Director, Committee for Purchase from People Who Are Blind or Severely Disabled.

[FR Doc. 94–30663 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 52

[FAC 90–23; FAR Case 91–9; Item VII]

RIN 9000–AE58

Federal Acquisition Regulation; Acquisition of Helium

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to provide guidance on the acquisition of helium. The Helium Act requires that all major helium requirements be purchased from the Secretary of the Interior. This includes the procurement of helium by Federal agencies as well as by contractors for use in Federal contracts. This final rule will assist Government agencies and contractors in complying with the Helium Act by ensuring that contracting officers and contractors are aware of the requirements for using Bureau of Mines helium in Government contracts. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–23, FAR case 91–9.

SUPPLEMENTARY INFORMATION:

A. Background

The Helium Act (50 U.S.C. 167a *et seq.* (Pub. L. 86–777)), and the Department of the Interior's implementing regulations (30 CFR Parts 601 and 602) require Federal agencies to procure all major helium requirements from the Bureau of Mines, Department of the Interior. This requirement may be satisfied by ordering against a GSA Federal Supply Schedule. For requirements not covered by a Federal Supply Schedule contract, this requirement may be satisfied by purchasing from the Bureau of Mines or a Bureau helium distributor. A major helium requirement has been defined as a requirement for 5,000 or more standard cubic feet of helium in a calendar month. The only exception provided is for helium acquired before contract award. The guidance adds one new clause.

B. Regulatory Flexibility Act

While no comments were received regarding the Initial Regulatory Flexibility Analysis, it is believed that the changes may 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 will impose additional requirements on both Federal agencies and contractors in the procurement of helium. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C 601, *et seq.* (FAC 90–23, FAR Case 91–9), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the final rule contains information collection requirements. Accordingly, on June 6, 1994, OMB approved this information collection through June 30, 1997, under OMB control number 9000–0113.

D. Public Comments

A proposed rule was published in the **Federal Register** at 56 FR 21532, May 9, 1991. Thirteen responses were received from individuals and organizations, five of which were considered substantive.

The proposed rule has been revised as follows:

(1) The requirement for the contractor to furnish a helium requirement forecast has been made a post-award requirement;

(2) The provision at 52.208–8 and the clause at 52.208–9 have been merged, resulting in the clause at 52.208–8;

(3) FAR 8.500 has been amended to include a reference to the U.S. Department of the Interior's regulations;

(4) FAR 8.501 and 52.208–8(a) have been updated to reflect the current address of the Bureau of Mines;

(5) FAR 8.502 and 52.208–8(b)(2) have been amended in order to add flexibility for the contracting officer when contracting for the use of helium overseas; and

(6) FAR 8.502(b) has been amended for clarification.

List of Subjects in 48 CFR Parts 8 and 52

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 8 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 8 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Section 8.002 is amended by revising paragraph (g) to read as follows:

§ 8.002 Use of other Government supply sources.

* * * * *

(g) Helium (see subpart 8.5—Acquisition of Helium).

3. Subpart 8.5 is added to read as follows:

Subpart 8.5—Acquisition of Helium

Sec.
8.500 Scope of subpart.
8.501 Definitions.
8.502 Policy.
8.503 Exception.
8.504 Procedures.
8.505 Contract clause.

Subpart 8.5—Acquisition of Helium

8.500 Scope of subpart.

This subpart implements the requirements of the Helium Act (50 U.S.C. 167a, *et seq.*) concerning the acquisition of liquid or gaseous helium by Federal agencies or by Government contractors or subcontractors for use in the performance of a Government contract (also see 30 CFR Parts 601 and 602).

8.501 Definitions.

Bureau helium distributor means a private helium distributor which has established and maintains eligibility to distribute helium purchased from the Bureau of Mines, as specified in 30 CFR part 602.

Bureau of Mines, as used in this subpart, means the Department of the Interior, Bureau of Mines, Helium Field

Operations, located at 801 South Fillmore Street, Amarillo, TX 79101–3545.

Helium requirement forecast means an estimate by the contractor or subcontractor of the amount of helium required for performance of the contract or subcontract.

Major helium requirement means a helium requirement during a calendar month of 5,000 or more standard cubic feet (measured at 14.7 pounds per square inch absolute pressure and 70 degrees Fahrenheit temperature), including liquid helium gaseous equivalent. In any month in which the major requirement threshold is met, all helium purchased during that month is considered part of the major helium requirement.

8.502 Policy.

To the extent that supplies are readily available, all major helium requirements purchased by a Government agency or used in the performance of a Government contract shall be purchased from the Bureau of Mines. This requirement may be satisfied as follows:

(a) By ordering against a GSA Federal Supply Schedule contract (for contractor use and authorization procedures, see subpart 51.1).

(b)(1) For requirements not covered by a Federal Supply Schedule contract, by purchasing from—

(i) The Bureau of Mines; or

(ii) A Bureau helium distributor

(2) A copy of the "List by Shipping Points of Private Distributors Eligible to Sell Helium to Federal Agencies" may be obtained from the Bureau of Mines.

8.503 Exception.

The requirements of this subpart do not apply to contracts or subcontracts in which the helium was acquired by the contractor prior to award of the contract or subcontract

8.504 Procedures.

(a) Upon receipt of the helium requirement forecast, point of contact, and telephone number from the contractor, the contracting officer shall forward this information, along with a copy of the contract, to the Bureau of Mines

(b) Upon notification by the Bureau of Mines of an apparent discrepancy between helium sales data and the contractor's helium requirement forecast, the contracting officer shall determine appropriate action and inform the Bureau of Mines

8.505 Contract clause.

The contracting officer shall insert the clause at 52.208–8, Helium Requirement Forecast and Required Sources for Helium, in solicitations and contracts if it is anticipated that performance of the contract involves a major helium requirement.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.208–8 is added to read as follows:

52.208–8 Helium requirement forecast and required sources for helium.

As prescribed in 8.505, insert the following clause:

Helium Requirement Forecast and Required Sources for Helium (Feb 1995)

(a) *Definitions*—

Bureau helium distributor means a private helium distributor which has established and maintains eligibility to distribute helium purchased from the Bureau of Mines, as specified in 30 CFR part 602.

Bureau of Mines, as used in this clause, means the Department of the Interior, Bureau of Mines, Helium Field Operations, located at 801 South Fillmore Street, Amarillo, TX 79101–3545.

Helium requirement forecast means an estimate by the Contractor or subcontractor of the amount of helium required for performance of the contract or subcontract.

Major helium requirement means a helium requirement during a calendar month of 5,000 or more standard cubic feet (measured at 14 7 pounds per square inch absolute pressure and 70 degrees Fahrenheit temperature), including liquid helium gaseous equivalent In any month in which the major requirement threshold is met, all helium purchased during that month is considered part of the major helium requirement

(b) *Requirements*—(1) *Helium Requirement Forecast* The Contractor shall provide to the Contracting Officer a helium requirement forecast point of contact, and telephone number within ten days of award

(2) *Sources of Helium* Except for helium acquired by the Contractor before the award of this contract, and to the extent that supplies are readily available, the Contractor shall purchase all major requirements of helium from—

(i) The Department of the Interior's Bureau of Mines.

(ii) A Bureau helium distributor (a copy of the "List by Shipping Points of Private Distributors Eligible to Sell Helium to Federal Agencies" may be obtained from the Bureau of Mines) or

(iii) A General Services Administration Federal Supply Schedule contract, if use is authorized by the Contracting Officer (see FAR Subpart 51 1)

(3) Promptly upon award of any subcontract or order that involves a major helium requirement the Contractor shall provide to the Bureau of Mines, and to the Contracting Officer written notification that includes

(i) The prime contract number

(ii) The name, address and telephone number of the subcontractor, including a point of contact; and

(iii) A copy of the subcontractor's helium requirement forecast.

(c) *Subcontracts*—(1) The Contractor shall insert this clause, including this paragraph (c), in any subcontract or order that involves furnishing of a major helium requirement.

(2) When a subcontract involves a major helium requirement, the following statement shall be included: Helium furnished under this contract or order shall be helium that has been purchased from the Bureau of Mines, or a listed Bureau helium distributor.

(End of clause)

[FR Doc. 94–30662 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 8

[FAC 90–23; FAR Case 92–622; Item VIII]

RIN 9000–AF86

Federal Acquisition Regulation; Paper and Envelopes

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to clarify agency requisitioning responsibilities for paper and certain envelopes in common use under 44 U S C 1121 and Federal Property Management Regulations (FPMR) Subpart 101–26 3 The revision specifies that paper and envelopes for use by executive agencies outside the District of Columbia and stocked by the General Services Administration (GSA) shall be requisitioned from GSA. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993

EFFECTIVE DATE: February 27, 1995

ADDRESSES: Interested parties should submit written comments to General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW Room 4037 Attn Ms Beverly Fayson, Washington, DC 20405

Please cite FAC 90–23, FAR case 92–622 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR case 92–622.

SUPPLEMENTARY INFORMATION:

A. Background

A statute, 44 U.S.C. 1121, referenced in FAR 8.802(c), allows the Public Printer to acquire and furnish paper and certain envelopes commonly used by two or more Government departments, establishments, or services within the District of Columbia. FPMR's, at Subpart 101–26.3, direct Executive agencies to requisition items stocked by GSA; paper and envelopes are GSA stock items.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, because the rule clarifies agency requisitioning responsibilities for paper and certain envelopes. Publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite FAC 90–23, FAR case 92–622 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 8

Government procurement

Dated December 7 1994

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy

Therefore, 48 CFR part 8 is amended as set forth below

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1 The authority citation for 48 CFR part 8 continues to read as follows:

Authority 40 U S C 486(c), 10 U S C chapter 137 and 42 U S C 2473(c)

2. Section 8.802 is amended by redesignating paragraph "(c)" as "(c)(1)" and adding "(c)(2)" to read as follows:

8.802 Policy.

* * * * *

(c)(1) * * *

(2) Paper and envelopes for use by Executive agencies outside the District of Columbia and stocked by GSA shall be requisitioned from GSA in accordance with the procedures listed in Federal Property Management Regulations (FPMR) 41 CFR part 101, subpart 101–26.3.

[FR Doc. 94–30661 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 9

[FAC 90–23; FAR Case 89–89; Item IX]

RIN 9000–AD72

Federal Acquisition Regulation; Debarment, Suspension, and Ineligibility

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to clarify to what extent, absent a termination by the issuing agency, an individual may place orders against an existing contract notwithstanding a debarment, suspension, or proposed debarment of the contractor. The final rule also clarifies that an optional (permissive) user may elect to place a delivery order and a compelling reason determination would not be required. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr Ralph DeStefano at (202) 501–1758 in reference to this FAR case For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755 Please cite FAC 90–23, FAR case 89–89.

SUPPLEMENTARY INFORMATION:

A. Background

This revision was initiated as a result of a report from the General Accounting Office (GAO) dated February, 1987. GAO identified a number of areas for improvement concerning debarment and suspension procedures. One of the GAO's recommendations was that the FAR be revised to clarify to what extent orders may be placed against indefinite delivery contracts notwithstanding the fact that the contractor has been debarred or suspended.

The proposed rule was published in the **Federal Register** at 55 FR 416, January 4, 1990. The proposed rule invited comments. Twenty-one comments were received. All comments received were considered during development of the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify 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 change does not impose any new requirements on contractors, large or small, and serves only to clarify existing regulatory coverage. The rule was published as a proposed rule in the **Federal Register** at 55 FR 516, January 4, 1990, and invited comments from small entities concerning the affected FAR subpart. No comments were received relating to the Regulatory Flexibility Act.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 9

Government procurement.

Dated December 7, 1994

Albert A. Vicchiolla,

Director Office of Federal Acquisition Policy

Therefore, 48 CFR part 9 is amended as set forth below

PART 9—CONTRACTOR QUALIFICATIONS

1 The authority citation for 48 CFR part 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

9.405 [Amended]

2. Section 9.405 is amended by removing the words "acquiring agency's head or designee" and inserting "agency head or a designee" in the following places:

(a) 9.405(a); and

(b) 9.405(d)(2) and 9.405(d)(3).

3. Section 9.405–1 is amended in the first sentence of paragraph (a) by removing the words "acquiring agency's" and inserting "agency" in its place; by redesignating paragraph (b) as (c) and revising it; and adding a new paragraph (b) to read as follows:

9.405–1 Continuation of current contracts.

* * * * *

(b) Ordering activities may continue to place orders against existing contracts, including indefinite delivery contracts, in the absence of a termination.

(c) Agencies shall not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment, unless the agency head or a designee authorized representative states, in writing, the compelling reasons for renewal or extension.

9.405–2 [Amended]

4. Section 9.405–2 is amended in paragraph (a) by removing the words "acquiring agency's" and inserting "agency" in their place.

* * * * *

9.406–1 [Amended]

5. Section 9.406–1 is amended in paragraph (c) by removing the words "an acquiring agency's" and inserting "the agency" in their place

* * * * *

9.406–3 [Amended]

6 Section 9.406–3 is amended in paragraph (e)(1)(iv) by removing the word "acquiring"

9.407–1 [Amended]

7 Section 9 407–1 is amended in paragraph (d) by removing the words "an acquiring agency's" and inserting "the agency" in their place

* * * * *

[FR Doc 94–30660 Filed 12–27–94 8 45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 14, 15, and 53

[FAC 90–23; FAR Case 92–602; Item X]

RIN 9000–AF84

Federal Acquisition Regulation; Revision to Optional Form 17, Sealed Bid Label

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to revise Optional Form 17, Sealed Bid Label, and amend the Federal Acquisition Regulation (FAR) to provide one standard label for offers, regardless of whether the offer is submitted under sealed bid or negotiated procedures. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755 Please cite FAC 90–23, FAR case 92–602

SUPPLEMENTARY INFORMATION:

A. Background

Some Government agencies have changed their security requirements when handling mail deliveries to their installation (*e.g.*, mail is x-rayed before delivery to the designated office). The use of a standard label for sealed bid and negotiated acquisitions would provide ready identification of offers and alert internal mail handlers that proper handling and prompt delivery is required at all times

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1 501 and Public Law 98–577 and publication for public comments is not required Therefore the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–23, FAR case 92–602), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 14, 15, and 53

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy

Therefore, 48 CFR parts 14, 15, and 53 are amended as set forth below:

1. The authority citation for 48 CFR parts 14, 15, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 14—SEALED BIDDING

14.202–3 [Amended]

2. Section 14.202–3 is amended in the first sentence of paragraph (b) by removing the words "Sealed Bid" and inserting "Offer" in their place.

PART 15—CONTRACTING BY NEGOTIATION

3. Section 15.408 is amended by adding paragraph (e) to read as follows.

15.408 Issuing solicitations.

* * * * *

(e) To provide for ready identification and proper handling of proposals, Optional Form 17, Offer Label, may be furnished with each request for proposals. The form may be obtained from the General Services Administration (see 53 107)

PART 53—FORMS

4 Section 53.214 is amended by revising paragraph (g) to read as follows

53.214 Sealed bidding.

* * * * *

(g) *OF 17 (REV 12/93), Offer Label* OF 17 may be furnished with each invitation for bids to facilitate identification and handling of bids, as specified in 14.202–3(b)

* * * * *

5. Section 53.215–1 is amended by adding paragraph (h) to read as follows:

53.215–1 Solicitation and receipt of proposals and quotations.

* * * * *

(h) *OF 17 (REV. 12/93), Offer Label.* OF 17 may be furnished with each request for proposals to facilitate identification and handling of proposals, as specified in 15.408(e).

6. Section 53.302–17 is revised to read as follows:

53.302–17 Optional Form 17, Offer Label.

BILLING CODE 6820–34–P

OF-17 (12/93)
Offer Label

FAR (48) CFR 53.214(g))
FAR (48) CFR 53.215–1(h))

NOTICE TO OFFEROR

1. THIS LABEL MAY ONLY BE USED ON ENVELOPES LARGER THAN 156 mm (6⅛ INCHES) IN HEIGHT AND 292 mm (11½ INCHES) IN LENGTH.
2. Print or type your name and address in the UPPER left corner of the envelope containing your offer.
3. Complete the bottom portion of this form and paste it on the LOWER left corner of the envelope, unless the envelope is 156 mm by 292 mm (6⅛ inches by 11½ inches) or smaller.

OFFER

SOLICITATION NO.	
DATE FOR RECEIPT OF OFFERS	
TIME FOR RECEIPT OF OFFERS	AM / PM
OFFICE DESIGNATED TO RECEIVE OFFERS	

★GPO:1994-367-101

[FR Doc. 94–30659 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15 and 52

[FAC 90–23; FAR Case 91–20; Item XI]

RIN 9000–AE72

Federal Acquisition Regulation; Notification of Ownership Changes

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to add the clause, Notification of Ownership Changes, to require contractors to notify the Government of changes in contractor ownership and of their effects, and to emphasize existing recordkeeping requirements. This regulatory action was not subject to Office of Management and Budget (OMB) review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR case 91–20.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** at 56 FR 23762, May 23, 1991, because the CAAC and the DARC determined that the FAR did not contain sufficient safeguards to assure that, consistent with FAR 31.205–52, Asset valuations resulting from business combinations, Government contracts do not absorb increased costs resulting from changes in contractor ownership. This rule reflects a resolution agreement between the Director of Defense Procurement and the DOD Inspector General under Audit Report 89–095 dated July 26, 1989, on the cost impact to contracts as a result of business combinations.

The rule is intended to facilitate enforcement of the cost principle at FAR 31.205–52 on allowability of costs resulting from business combinations by enabling audit determinations that cost increases related to contractor ownership changes are not charged to Government contracts. A contract clause is added at 52.215–40, Notification of Ownership Changes, which requires contractors to provide timely notice to the Government and to retain and maintain asset inventory records through successive changes in contractor ownership. A clause prescription is added at 15.804–8(g) to require use of the clause in all solicitations and contracts for which certified cost or pricing data are expected to be required or for which any preaward or postaward cost determination will be subject to FAR Subpart 31.2.

While several editorial changes were made in the final rule, the major difference between the final rule and the proposed rule is that the final rule requires notification in instances of cost decreases as well as cost increases.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify 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 an analysis of data available for fiscal years 1989 through 1991 reveals that, in the Department of Defense, the number of contract actions awarded to small businesses which required the submission of certified cost or pricing data averaged less than 1 percent of the total number of small business actions during the 3-year period. In other words, during the 3-year period, the majority of actions awarded to small businesses were awarded on a competitive, fixed-price basis, for which the submission of cost or pricing data is not required and the cost principles do not apply.

For affected contractors, whenever a change in contractor ownership occurs or is pending, the rule only requires contractors to retain and maintain asset inventory records already required to be maintained by generally accepted accounting principles (GAAP) and rules promulgated by the Cost Accounting Standards Board. As virtually all contractors' accounting systems are automated, any incremental effort and cost will likely be nominal. Similarly the additional requirement for contractors to notify the Government, in writing, of a pending or completed ownership change imposes no significant administrative burden or complexity. No comments on any aspect

of the subject were received from small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96–511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a request for extension of an approval of the information collection requirements concerning Notification of Ownership Changes, OMB Control Number 9000–0115, was submitted to OMB under 44 U.S.C. 3501, *et seq.*, and approved through September 30, 1997. Public comments concerning this request were invited through a **Federal Register** notice published at 59 FR 36169, July 15, 1994.

List of Subjects in 48 CFR Parts 15 and 52

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy

Therefore, 48 CFR parts 15 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 15 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

2. Section 15.804–8 is amended by adding paragraph (g) to read as follows:

15.804–8 Contract clauses.

* * * * *

(g) *Notification of ownership changes* The contracting officer shall insert the clause at 52.215–40, Notification of Ownership Changes, in solicitations and contracts for which it is contemplated that certified cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to subpart 31.2

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3 Section 52.215–40 is added to read as follows

52.215–40 Notification of ownership changes.

As prescribed in 15.804–8(g), insert the following clause:

Notification of Ownership Changes (Feb. 1995)

(a) The Contractor shall make the following notifications in writing.

(1) When the Contractor becomes aware that a change in its ownership has occurred or is certain to occur which could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall: (1) maintain current, accurate, and complete inventory records of assets and their costs; (2) provide the ACO or designated representative ready access to the records upon request; (3) ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and (4) retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirement of FAR 15.804–8(g).

(End of clause)

[FR Doc. 94–30658 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 90–23; FAR Case 91–107; Item XII]

Federal Acquisition Regulation; Certificates of Competency

RIN 9000–AF70

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to revise the Federal Acquisition Regulation (FAR) to clarify the applicability of Certificates of Competency procedures. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993

EFFECTIVE DATE: February 27, 1995

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755 Please cite FAC 90–23, FAR case 91–107.

SUPPLEMENTARY INFORMATION:

A. Background

A contracting agency is required to refer small business nonresponsibility determinations to the Small Business Administration (SBA), even if the contracting agency is located outside the United States. The statutory requirement for referral to the SBA is unrelated to an agency's location. FAR 19.000(b) currently states that "part [19] applies only inside the United States, its territories * * *". It is not clear that overseas buying activities must comply with FAR 19.601, Certificates of Competency and Determinations of Eligibility. This rule clarifies that the statutory requirement for referral to SBA is unrelated to an agency's location.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–23, FAR case 91–107), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 19

Government procurement.

Dated December 7, 1994

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy

Therefore, 48 CFR part 19 is amended as set forth below

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

The authority citation for 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C 486(c). 10 U.S.C. chapter 137, and 42 U.S.C 2473(c)

2. Section 19.000 is amended by revising paragraph (b) to read as follows

19.000 Scope of part.

* * * * *

(b) This part, except for subpart 19.6, applies only inside the United States, its territories and possessions, Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia. Subpart 19.6 applies worldwide.

3. Section 19.601 is amended by adding paragraph (d) to read as follows:

19.601 General.

* * * * *

(d) Contracting officers, including those located overseas, are required to comply with this subpart for U.S. small business concerns.

[FR Doc. 94-30657 Filed 12-27-94; 8:45 am]

BILLING CODE 6820-34-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 90-23; FAR Case 92-302; Item XIII]

RIN 9000-AG10

Federal Acquisition Regulation; Small Business Competitiveness Demonstration Program

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule that amends the Federal Acquisition Regulation (FAR) to specify that agencies may reinstate the use of small business set-asides as necessary to meet assigned goals, but only within the organizational unit(s) that failed to meet the small business goals, and revises the description of Architect and Engineering Services as a designated industry group. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: *Effective Date.* December 28, 1994.

Comment Date. Comments should be submitted to the FAR Secretariat at the address shown below on or before February 27, 1995, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90-23, FAR case 92-302 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501-0168 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-23, FAR case 92-302.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Title II of Pub. Law 102-366, the Small Business Credit and Business Opportunity Enhancement Act of 1992, which revised Title VII of Pub. Law 100-656, Small Business Competitiveness Demonstration Program. The Office of Federal Procurement Policy (OFPP) published an interim Policy Directive in the **Federal Register** at 58 FR 19849, April 16, 1993, revising the current Directive dated August 31, 1989, to include revisions based on Title II.

B. Regulatory Flexibility Act

This rule implements statutory revisions and resulting revisions to the OFPP Policy Directive. OFPP prepared the appropriate regulatory flexibility analysis as part of the revisions to the OFPP Policy Directive published in the **Federal Register** at 58 FR 19849, April 16, 1993.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because Title II of Pub. Law 102-366, the Small Business Credit and Business Opportunity Enhancement Act of 1992, which revises Title VII of Pub. Law 100-656, Small Business Competitiveness Demonstration Program, extended the program through 1996 and made other changes in the program. However, pursuant to Pub. Law 98-577 and FAR 1.501, public comment received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 19 is amended as set forth below:

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1. The authority citation for 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137, and 42 U.S.C. 2473(c).

2. Section 19.1001 is amended by revising the introductory paragraph and paragraph (b) to read as follows:

19.1001 General.

The Small Business Competitiveness Demonstration Program was established by Title VII of the "Business Opportunity Development Reform Act of 1988", Pub. L. 100-656, as amended by Title II of Pub. L. 102-366 and implemented by an OFPP Policy Directive and Test Plan, dated August 31, 1989, as amended on April 16, 1993. The program will be conducted over the period from January 1, 1989, through September 30, 1996. Pursuant to Section 713(a) of Pub. L. 100-656, the requirements of the FAR that are inconsistent with the program procedures are waived. The program consists of two major components—

* * * * *

(b) A test of enhanced small business participation in 10 agency targeted industry categories.

3. Section 19.1005 is amended by revising paragraph (a)(3) to read as follows:

19.1005 Applicability.

(a) * * *

(3) Architectural and engineering services (including surveying and mapping) under SIC codes 7389, 8711, 8712, or 8713, which are awarded under the qualification-based selection procedures required by 40 U.S.C. 541 *et seq.* (see subpart 36.6) (limited to FPDS service codes C111 through C216, C219

T002, T004, T008, T009, T014, and R404).

* * * * *

4. Section 19.1006 is amended by revising paragraph (b)(2) to read as follows:

19.1006 Procedures.

* * * * *

(b) * * *

(2) Agencies may reinstate the use of small business set-asides as necessary to meet their assigned goals, but only within organizational unit(s) that failed to meet the small business participation goal.

* * * * *

[FR Doc. 94–30656 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAC 90–23; FAR Case 91–61; Item XIV]

RIN 9000–AE84

Federal Acquisition Regulation; Small Business Concern Representation

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to revise the Federal Acquisition Regulation (FAR) to clarify language regarding an offeror's size status and to remove the requirement for offerors to certify that all supplies to be furnished will be manufactured by a small business in the United States. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR case 91–61.

SUPPLEMENTARY INFORMATION:

A. Background

The revisions are considered necessary to eliminate confusion and clarify that questions regarding the size status of offerors are matters of eligibility, not responsiveness, and must be referred to the Small Business Administration. Small business set-aside clauses will continue to require that manufacturers or dealers furnish only end items manufactured or produced by a small business inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. A sentence has been added to the provision to clarify that set-aside clauses of the solicitation contain restrictions on the source of end items to be furnished.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify 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 merely clarifies language regarding an offeror's size status and removes the requirement for offerors to certify that all supplies to be furnished will be manufactured by a small business in the United States. The rule was published as a proposed rule in the **Federal Register** at 57 FR 2820, January 23, 1992, with a request for comments. No comments were received from small businesses.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 19 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 19 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. Section 19.502–4 is amended in paragraph (b) by adding a sentence at the end of the paragraph to read as follows:

19.502–4 Methods of conducting set-asides.

* * * * *

(b) * * * However, before rejecting an offer otherwise eligible for award because of questions concerning the size representation, an SBA determination must be obtained (see subpart 19.3).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.219–1 is amended in the provision title by removing "(JAN 1991)" and inserting "(FEB 1995)" in its place; by revising paragraph (a); redesignating paragraphs (c)(1), (c)(2), and (c)(3) as (c)(2)(i), (ii), and (iii), respectively; redesignating the introductory text of paragraph (c) as (c)(2), and by adding a new paragraph (c)(1) to read as follows:

52.219–1 Small business concern representation.

* * * * *

Small Business Concern Representation (Feb. 1995)

(a) *Representation.* The offeror represents and certifies as part of its offer that it is: ( ) a small business concern, ( ) not a small business concern.

* * * * *

(c) *Notice.* (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) * * *

(i) * * *

(ii) * * *

(iii) * * *

(End of provision)

[FR Doc. 94–30655 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAC 90–23; FAR Case 93–618; Item XV]

RIN 9000–AF93

Federal Acquisition Regulation; Prohibition of Department of Labor Implementation/Administration of Davis-Bacon Helper Regulations Pursuant to Fiscal Year 1994 Appropriation Act

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to implement in the Federal Acquisition Regulation (FAR) the Department of Labor's (DOL's) suspension of its Davis-Bacon Act "Helper" regulations. DOL's regulations were suspended on October 21, 1993. A notice of suspension was published in the **Federal Register** at 58 FR 58954, November 5, 1993. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993

EFFECTIVE DATE: February 27, 1995

FOR FURTHER INFORMATION CONTACT: Mr Jack O'Neill at (202) 501–3856 in reference to this FAR case For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755 Please cite FAC 90–23, FAR case 93–618

SUPPLEMENTARY INFORMATION:

A. Background

The suspension of the Davis-Bacon "Helper" regulations has been extended through the President's Fiscal Year 1995 budget request In order to keep the FAR current through that period of time, the Councils have agreed to amend the regulation to implement the suspension

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1 501 and Public Law 98–577 and publication for public comments is not required The rule merely implements the DOL suspension on Davis-Bacon Act "Helper regulations. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–23, FAR case 93–618), in correspondence.

C. Paperwork Reduction Act

The final rule does not impose any recordkeeping requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Therefore, the requirements of the Paperwork Reduction Act do not apply.

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy

Therefore, 48 CFR parts 22 and 52 are amended as set forth below:

1 The authority citation for 48 CFR parts 22 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137, and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2 Section 22.401 is amended in the definition of *Laborers or mechanics*, in the introductory text of paragraph (b) by revising the second sentence, and by removing paragraph (b)(3) to read as follows:

22.401 Definitions.

* * * * *

Laborers or mechanics * * *

* * * * *

(b) * * * The terms "apprentice" and "trainee" are defined as follows

* * * * *

22.406–3 [Amended]

3 Section 22 406–3 is amended in paragraph (b)(1) by removing the phrase ", except with respect to helpers as defined in section 22.401," and by removing paragraph (b)(4)

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4 Section 52 222–6 is amended in the clause heading by removing "(NOV 1992)" and inserting "(FEB 1995)" in the introductory text of paragraph (b)(1) by removing the phrase ", including helpers", and by revising paragraphs (b)(1) (i) and (iii) to read as follows

52.222–6 Davis-Bacon Act.

* * * * *

Davis-Bacon Act (Feb 1995)

* * * * *

(b)(1) * * *

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

* * * * *

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

* * * * *

[FR Doc. 94–30654 Filed 12–27–94, 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 22

[FAC 90–23; FAR Case 92–36; Item XVI]

RIN 9000–AF34

Federal Acquisition Regulation; Walsh-Healey Definitions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to add a reference to the alternative "regular dealer" qualification requirements for information systems integrators found in Department of Labor (DOL) regulations. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993

EFFECTIVE DATE: February 27 1995

FOR FURTHER INFORMATION CONTACT: Mr Jack O'Neill at (202) 501–3856 in reference to this FAR case For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755 Please cite FAC 90–23, FAR case 92–36

SUPPLEMENTARY INFORMATION:

A. Background

On July 16, 1992, DOL published, in the **Federal Register** at 57 FR 31566 a revision to 41 CFR 50–201 101 establishing criteria which an information systems integrator must

meet in order to qualify as a regular dealer under the Walsh-Healey Public Contracts Act. This final rule revises the regular dealer requirements at FAR 22.606–2(b) to be consistent with 41 CFR 50–201.101.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required; therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–23, FAR case 92–36), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 22

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 22 is amended as set forth below:

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

1. The authority citation for 48 CFR part 22 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 22.606–2 is amended by revising paragraph (b) to read as follows:

22.602–2 Regular dealer.

* * * * *

(b) For certain specific products (lumber and timber products, machine tools, hay, grain, feed or straw, raw cotton, green coffee, petroleum, agricultural liming materials, tea, raw or unmanufactured cotton linters, certain uranium products, used automatic data processing equipment, speciality advertising products, and products provided by information systems integrators), there are alternate qualifications for regular dealers in which the dealer need not physically maintain a stock. The requirements under the alternative qualifications are set forth at 41 CFR 50–201.101(a)(2) and 50–201.604.

* * * * *

[FR Doc. 94–30653 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 22

[FAC 90–23; FAR Case 93–609; Item XVII]

RIN 9000–AF91

Federal Acquisition Regulation; Section 4c Price Adjustments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to clarify that the requirement for successor contractors on contracts over $2,500, for substantially the same services performed in the same locality, to pay wages and fringe benefits at least equal to those contained in any bona fide collective bargaining agreement entered into under the predecessor contract, is self-executing. The requirement is not contingent upon incorporating a wage determination or the wage and fringe benefit terms of the predecessor contractor's collective bargaining agreement in the successor contract. However, the contracting officer shall incorporate the wage and fringe benefit terms of the collective bargaining agreement itself in contract solicitations and may incorporate the terms or the agreement itself in other contract actions. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR case 93–609.

SUPPLEMENTARY INFORMATION:

A. Background

The CAAC and DARC, in order to eliminates confusion that exists regarding applicability of Section 4(c) of the Service Contract Act to contract actions other than solicitations, are amending the FAR at 22.1002–3, 22.1012–3, and 22.1012–5.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–23, FAR case 93–609), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 22

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 22 is amended as set forth below:

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

1. The authority citation for 48 CFR part 22 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 22.1002–3 is amended by revising paragraph (a) to read as follows:

§ 22.1002–3 Wage determinations based on collective bargaining agreements.

(a) Successor contractors performing on contracts in excess of $2,500 for substantially the same services performed in the same locality must pay wages and fringe benefits (including accrued wages and benefits and prospective increases) at least equal to those contained in any bona fide collective bargaining agreement entered into under the predecessor contract. This requirement is self-executing and

is not contingent upon incorporating a wage determination or the wage and fringe benefit terms of the predecessor contractor's collective bargaining agreement in the successor contract. This requirement will not apply if the Secretary of Labor determines (1) after a hearing, that the wages and fringe benefits are substantially at variance with those which prevail for services of a similar character in the locality or (2) that the wages and fringe benefits are not the result of arm's length negotiations.

* * * * *

3. Section 22.1012–3 is amended in paragraph (d)(1) by adding a sentence at the end of the paragraph to read as follows:

§ 22.1012–3 Response to timely submission of Notice—with collective bargaining agreement.

* * * * *

(d) * * *

(1) * * * The contracting officer may incorporate the wage and fringe benefit terms of the collective bargaining agreement, or the collective bargaining agreement itself, in other contract actions such as the exercise of options in order to facilitate price adjustments in fixed-price type contracts (but see 22.1008–3(e) and 22.1013(a)).

* * * * *

4. Section 22.1012–5 is amended by adding a sentence at the end of the paragraph to read as follows:

§ 22.1012–5 Response to late submission of Notice—with collective bargaining agreement.

* * * The contracting officer may incorporate the wage and fringe benefit terms of the collective bargaining agreement, or the collective bargaining agreement itself, in other contract actions such as the exercise of options in order to facilitate price adjustments for options in fixed-price type contracts (but see 22.1008–3(e) and 22.1013(a)).

[FR Doc. 94–30652 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 22

[FAC 90–23; FAR Case 92–7; Item XVIII]

RIN 9000–AF75

Federal Acquisition Regulation; Collective Bargaining Agreement, Contingency Clauses

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement the direction contained in Department of Labor (DOL) Memorandum Nos. 159 and 166 concerning contingencies in collective bargaining agreements subject to section 4(c) of the Service Contract Act and requests for substantial variance hearings. This rule also makes editorial changes to more accurately reflect the DOL regulations on the Service Contract Act. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR case 92–7.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule incorporates guidance from two memorandums which the DOL's Wage and Hour Division has issued to all contracting agencies of the Federal Government and the District of Columbia concerning collective bargaining agreements (CBA's) subject to section 4(c) of the Service Contract Act. Memorandum No. 159 explains a DOL conclusion that certain contingencies in CBA's generally reflect a lack of arm's length negotiations. Memorandum No. 166 amplifies the DOL's regulatory requirements for substantial variance hearings. This final rule also includes changes to more accurately reflect the DOL's regulations on the Service Contract Act at 29 CFR Part 4.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–23, FAR case 92–7), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 22

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy

Therefore, 48 CFR part 22 is amended as set forth below:

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

1. The authority citation for 48 CFR part 22 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. and 3. Section 22.1008–3 is amended by revising paragraph (e) to read as follows:

22.1008–3 Section 4(c) successorship with incumbent contractor collective bargaining agreement.

* * * * *

(e) Section 4(c) of the Act will not apply if the Secretary of Labor determines (1) after a hearing, that the wages and fringe benefits in the predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a similar character in the locality, or (2) that the wages and fringe benefits in the predecessor contractor's collective bargaining agreement are not the result of arm's length negotiations (see 22.1013 and 22.1021). The

Department of Labor (DOL) has concluded that contingent collective bargaining agreement provisions that attempt to limit a contractor's obligations by means such as requiring issuance of a wage determination by the DOL, requiring inclusion of the wage determination in the contract, or requiring the Government to adequately reimburse the contractor, generally reflect a lack of arm's length negotiations.

* * * * *

3. Section 22.1021 is revised to read as follows:

22.1021 Requests for hearing.

(a) A contracting agency or other interested party may request a hearing on an issue presented in 22.1013(a). To obtain a hearing for the contracting agency, the contracting officer shall submit a written request through appropriate channels (ordinarily the agency labor advisor) to: Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

(b) A request for a substantial variance hearing shall include sufficient data to show that the rates at issue vary substantially from those prevailing for similar services in the locality. The request shall also include—

(1) The number of the wage determinations at issue;

(2) The name of the contracting agency whose contract is involved;

(3) A brief description of the services to be performed under the contract;

(4) The status of the procurement and any estimated procurement dates, such as bid opening, contract award, and commencement date of the contract or its follow-up option period;

(5) A statement of the applicant's case, setting forth in detail the reasons why the applicant believes that a substantial variance exists with respect to some or all of the wages and/or fringe benefits;

(6) Names and addresses (to the extent known) of interested parties; and

(7) Any other data required by the Administrator.

(c) A request for an arm's length hearing shall include—

(1) A statement of the applicant's case setting forth in detail the reasons why the applicant believes that the wages and fringe benefits contained in the collective bargaining agreement were not reached as a result of arm's length negotiations;

(2) A statement regarding the status of the procurement and any estimated procurement dates, such as bid opening, contract award, and commencement date of the contract or its follow-up option period; and

(3) Names and addresses (to the extent known) of interested parties.

(d) Unless the Administrator determines that extraordinary circumstances exist, the Administrator will not consider requests for a hearing unless received as follows:

(1) For sealed bid contracts, more than 10 days before the award of the contract; or

(2) For negotiated contracts and for contracts with provisions exceeding the initial term by option, before the commencement date of the contract or the follow-up option period.

[FR Doc. 94–30651 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 28, 30, 32, 42, 44, and 52

[FAC 90–23; FAR Case 92–18; Item XIX]

RIN 9000–AF04

Federal Acquisition Regulation; Cost Accounting Standards

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the interim rule, published in the **Federal Register** at 57 FR 39586, August 31, 1992, to a final rule with changes, based on an analysis of public comments. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–23, FAR case 92–18.

SUPPLEMENTARY INFORMATION:

A. Background

The Cost Accounting Standards Board issued a final rule in the **Federal Register** on April 17, 1992, recodifying the Cost Accounting Standards (CAS) at 48 CFR Chapter 99 (57 FR 14148). The CAS previously appeared in both 48 CFR Part 30 and 4 CFR Parts 331 through 420. An interim rule was published in the **Federal Register** at 57 FR 39586, August 31, 1992 as FAC 90–12, to amend the FAR based on the recodification. The interim rule removed the CAS rules and regulations from FAR Subpart 30.3 and the standards from FAR Subpart 30.4. It also implemented revised CAS provisions and clauses.

Several editorial revisions were made to the interim rule based on public comments.

FAR 30.201–4(d)(2) was revised to refer to the clause at 52.230–5, rather than the clause at 52.230–2. FAR 30.601(b) was revised by substituting the word "after" for "of," so that it reads "Within 30 days after the award of any new contract * * *" FAR 30.602–2(a)(4) was revised to add a new second sentence reading: "If the ACO determines that the contractor's practices are in noncompliance, a written explanation shall be provided as to why the ACO disagrees with the contractor's rationale." FAR 30.602–3(a) was revised to refer to voluntary changes to disclosed or established cost accounting practices rather than to voluntary change to disclosure statements. Minor editorial amendments or corrections were made to the introductory paragraph of the clause at 52.230–5, to paragraphs (a)(1), (b)(1), (d) and (f) of the clause, and to Parts 28, 32, 42, and 44.

B. Regulatory Flexibility Act

This 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 small businesses are exempt from the application of the Cost Accounting Standards. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR Case 92–18), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public

which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

The information collection associated with the Cost Accounting Standards was approved by the Office of Management and Budget and assigned Control Number 0348–0051.

List of Subjects in 48 CFR Parts 28, 30, 32, 42, 44, and 52

Government procurement.

Words of Issuance

Interim Rule Adopted as Final with Changes.

For reasons set out in the preamble, the interim rule published in the **Federal Register** of August 31, 1992 (57 FR 39586) (amending 48 CFR parts 15, 30, 31, and 52) is adopted as final with the changes set forth in FAC 90–23, FAR case 93–27, item XX, which immediately follows this document.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 94–30650 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 28, 30, 32, 42, 44, and 52

[FAC 90–23; FAR Case 93–27; Item XX]

RIN 9000–AG01

Federal Acquisition Regulation; Cost Accounting Standards Applicability and Thresholds

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final FAR rule implements the final rule, issued by the Cost Accounting Standards (CAS) Board, which was published in the **Federal Register** at 58 FR 58798, November 4, 1993, and which revised the CAS applicability criteria, thresholds, and procedures for Government contractors. This document also amends the interim rule published in the **Federal Register** at 57 FR 39586, August 31, 1992. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1994, except for amendments to the following sections, which are effective November 4, 1993: 30.201–4 (b)(1) and (b)(2), 30.601(b), 52.230–1 "Note" statement, (c)(1) and (c)(3), (c)(4) "Caution" statement, and 52.230–3.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR case 93–27.

SUPPLEMENTARY INFORMATION:

A. Background

On November 4, 1993, the Office of Federal Procurement Policy, Cost Accounting Standards (CAS) Board, issued a final rule revising 48 CFR Chapter 99 concerning the applicability criteria, thresholds, and procedures for the application of the CAS to negotiated Government contracts The Board's final rule was effective upon publication in the **Federal Register** at 58 FR 58798, November 4, 1993. The Board's action adjusted the CAS applicability requirements and dollar thresholds to levels reflecting experience with price inflation since the thresholds were last promulgated by the previous Board on September 12, 1977. The Board also changed the criteria for determining which Standards apply at different threshold levels, the concept of what constitutes modified coverage, and the criteria that trigger full CAS coverage.

This final rule revises FAR 30.201–4 and the clauses at 52.230–1, and 52 230–3, as well as the FAR looseleaf edition of Appendix B, to incorporate the CAS Board's final rule published in 48 CFR Chapter 99. Major changes include establishing a $25 million threshold for full CAS coverage, along with $1 million "trigger contract" mechanism; revising modified CAS coverage by expanding it to include CAS 405, Accounting for Unallowable Costs, and CAS 406, Cost Accounting Standard—Cost Accounting Period, eliminating the alternative "10 percent or more" Government sales criterion for full coverage; and broadening the CAS exemption criteria in instances where the agency has waived the requirement for submission of certified cost or pricing data. The FAR is also revised to incorporate revisions to disclosure requirements for business segments which are otherwise subject to modified CAS coverage but which are required to disclose their cost accounting practices (normally a requirement only for full CAS coverage) because they are affiliated with other business segments which are subject to full CAS coverage. The CAS rules now provide that the business segment has to file a disclosure statement only if, in its most recently completed cost accounting period, that segment's CAS-covered awards are 30 percent or more of total segment sales for the period and total $10 million or more.

B. Regulatory Flexibility Act

The revisions in this final FAR rule will eliminate certain requirements associated with the administration of the Cost Accounting Standards. This rule does not 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 small businesses are exempt from the application of the Cost Accounting Standards. A Regulatory Flexibility Analysis has, therefore, not been performed.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose any reporting or recordkeeping requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Public Comments

Public comments on this final FAR rule are not solicited because the policies and procedures contained in these amendments have already been publicized in the **Federal Register** by the Office of Federal Procurement Policy, Cost Accounting Standards Board's Notice of Proposed Rulemaking, made available for public comment in the **Federal Register** at 58 FR 18363, April 9, 1993 The FAR final rule simply mirrors the final rule published by the CAS Board in the **Federal Register** at 58 FR 58798, November 4, 1993.

List of Subjects in 48 CFR Parts 30 and 52

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy

Words of Issuance

Interim Rule Adopted As Final With Changes

For reasons set out in the preambles of FAR cases 92–18 and 93–27, 48 CFR Parts 28, 30, 32, 42, 44, and 52 are amended as set forth below

1. The authority citation for 48 CFR parts 28, 30, 32, 42, 44 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 28—BONDS AND INSURANCE

2. Section 28.301 is amended by revising paragraph (a)(1) as follows:

28.301 Policy.

* * * * *

(a)(1) The Government requires any contractor subject to Cost Accounting Standard (CAS) 416 (48 CFR 9004.416 (appendix B, FAR loose-leaf edition)) to obtain insurance, by purchase or self-coverage, for the perils to which the contractor is exposed, except when (i) the Government, by providing in the contract in accordance with law, agrees to indemnify the contractor under specified circumstances or (ii) the contract specifically relieves the contractor of liability for loss of or damage to Government property.

* * * * *

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

3. Section 30.201–4 is amended in paragraph (b)(1) by removing "$10 million" and inserting "$25 million" in its place; and by revising paragraphs (b)(2) and (d)(2) to read as follows:

30.201–4 Contract clauses.

* * * * *

(b) * * *

(2) The clause at 52.230–3 requires the contractor to comply with 48 CFR chapter 99 (Appendix B, FAR loose-leaf edition), subparts 9904.401, 9904.402, 9904.405, and 9904.406, to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently its established cost accounting practices.

* * * * *

(d) * * *

(2) The clause at 52.230–5 specifies rules for administering CAS requirements and procedures to be followed in cases of failure to comply.

30.601 [Amended]

4. Section 30.601(b) is amended by removing the first use of the word "of" and inserting "after" in its place.

30.602–1 [Amended]

5. Section 30.602–1(c)(1) is amended in the second sentence by removing the word "offices" and inserting "officers" in its place.

6. Section 30.602–2(a)(4) is amended by adding a new sentence after the first to read as follows:

30.602–2 Noncompliance with CAS requirements.

* * * * *

(4) * * * If the ACO determines that the contractor's practices are in noncompliance, a written explanation shall be provided as to why the ACO disagrees with the contractor's rationale.

* * * * *

7. Section 30.602–3(a) is revised to read as follows:

30.602–3 Voluntary changes.

(a) *General.* (1) The contractor may voluntarily change its disclosed or established cost accounting practices.

(2) The contract price may be adjusted for voluntary changes. However, increased costs resulting from a voluntary change may be allowed only if the ACO determines that the change is desirable and not detrimental to the interest of the Government.

* * * * *

PART 32—CONTRACT FINANCING

8. Section 32.503–7 is amended by revising the introductory paragraph to read as follows:

32.503–7 Limitations on general and administrative expenses (G&A) for progress payments.

If the contractor established an inventory suspense account under Appendix A of Cost Accounting Standard (CAS) 410, Allocation of Business Unit General and Administrative Expenses to Final Cost Objectives (48 CFR 9904.410 (appendix B, FAR loose-leaf edition)), and the account is $5 million or more, the following limitations shall apply to progress payments:

* * * * *

PART 42—CONTRACT ADMINISTRATION

9. Section 42.203 paragraph (a) is revised to read as follows:

42.203 Retention of contract administration.

(a) Contracting offices shall retain for administration any contract (1) not requiring the performance of contract administration functions (see 42.302) at or near contractor facilities, or (2) for which retention by the contracting office is prescribed by agency acquisition regulations. However, 30.601(a) and (b) require that retained contracts to which Cost Accounting Standards (CAS) apply be assigned for CAS administration only. Instructions for marking and distributing these contracts are provided in 4.201(c).

* * * * *

10. In section 42.302, the introductory text of paragraph (a)(11) and paragraph (a)(11)(iv) are revised to read as follows:

42.302 Contract administration functions.

(a) * * *

(11) In connection with Cost Accounting Standards (see part 30 and 48 CFR chapter 99)—

* * * * *

(iv) Negotiate price adjustments and execute supplemental agreements under the Cost Accounting Standards clauses at 52.230–2, 52.230–3, and 52.230–5.

* * * * *

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

11. and 12. Section 44.305–3 paragraph (a)(2) is revised to read as follows:

44.305–3 Withholding or withdrawing approval.

(a) * * *

(2) Implementation of cost accounting standards (see 48 CFR chapter 99 (Appendix B, FAR loose-leaf edition);

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

13. Section 52.230–1 is amended in the provision by:

(a) Revising the provision date to read "(NOV 1993)";

(b) Removing in the provision's Note the word "four" and inserting "three" in its place, and by removing the Roman numeral "IV" and inserting "III" in its place;

(c) Revising paragraphs (c)(1) and (3);

(d) Removing in the CAUTION statement in paragraph (c)(4) "$10 million" and inserting "$25 million" in its place; and

(e) Removing part II and redesignating parts III and IV as II and III, respectively, and revising the newly designated part II.

The revised text reads as follows:

52.230–1 Cost Accounting Standards Notices and Certification.

* * * * *

Cost Accounting Standards Notices and Certification (Nov 1993)

* * * * *

(c) Check the appropriate box below:

☐ (1) Certificate of Concurrent Submission of Disclosure Statement. The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) Original and one copy to the cognizant Administrative Contracting Officer (ACO), and (ii) One copy to the cognizant contract auditor.

(Disclosure must be on Form No. CASB DS–1. Forms may be obtained from the cognizant ACO or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement _____

Name and Address of Cognizant ACO where filed _____

The offeror further certifies that practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

* * * * *

☐ (3) Certificate of Monetary Exemption. The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling more than $25 million (of which at least one award exceeded $1 million) in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately

* * * * *

II. Cost Accounting Standards—Eligibility for Modified Contract Coverage

If the offeror is eligible to use the modified provisions of 48 CFR subpart 9903.201–2(b) and elects to do so, the offeror shall indicate by checking the box below Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR subpart 9903.201–2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than $25 million in awards of CAS-covered prime contracts and subcontracts, or the offeror did not receive a single CAS-covered award exceeding $1 million. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately

CAUTION: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of $25 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of $25 million or more.

* * * * *

14. Section 52.230–3 is amended in the clause by revising the clause date to read "(NOV 1993)"; and by revising paragraph (a)(1) to read as follows:

52.230–3 Disclosure and Consistency of Cost Accounting Practices.

* * * * *

Disclosure and Consistency of Cost Accounting Practices (Nov 1993)

* * * * *

(a) * * *

(1) Comply with the requirements of 48 CFR subpart 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR subpart 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR subpart 9904.405, Accounting for Unallowable Costs; and 48 CFR subpart 9904.406, Cost Accounting Standard—Cost Accounting Period, in effect on the date of award of this contract as indicated in 48 CFR part 9904.

* * * * *

52.230–5 [Amended]

15. Section 52.230–5 is amended in the clause by revising the clause date to read "(DEC 1994)"; in the introductory paragraph by removing "(f)" and inserting "(g)" in its place; in paragraph (a)(1) by inserting after "new" the words "or modified"; in paragraph (b)(1) by removing the words "each additional" and inserting "the applicable" in their place; in paragraph (d) by removing the second reference to "CAS"; and in paragraph (f) by removing the word "contractor's" and inserting "contract" in its place.

[FR Doc. 94–30649 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 90–23; FAR Case 91–45; Item XXI]

RIN 9000–AE81

Federal Acquisition Regulation; Advance Agreements, Composition of Total Cost, and Accounting for Unallowable Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) have agreed on revisions of the Federal Acquisition Regulation (FAR) concerning advance agreements, cost principles, composition of total cost, and accounting for unallowable costs. This final rule represents the first in a series resulting from the Councils' ongoing review of industry recommendations concerning the FAR's contract cost principles and procedures. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995

FOR FURTHER INFORMATION CONTACT: Mr Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR case 91–45

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** at 56 FR 43739, September 4, 1991. The proposed rule, which amends FAR 31.109, Advance agreements; 31.201–1, Composition of total cost; and 31.201–6, Accounting for unallowable costs, is being adopted as a final rule without change.

This rule is the first in a series resulting from the Councils' ongoing review of industry recommendations, submitted as part of the Defense Management Review, concerning FAR Part 31, Contract Cost Principles and Procedures. After considering public comments, the Councils have agreed to finalize and publish FAR changes as the deliberations on each increment are completed.

Language is added at FAR 31.109(a) to address the use of advance agreements to clarify allowability issues under the specific cost principles, in order to minimize subsequent disputes. The phrase in FAR 31.109(a), "particularly for firms or their divisions that may not be under effective competitive constraints," is deleted because the determination of the reasonableness, allocability, or allowability of a cost under the specific cost principles is not significantly impacted by the business environment in which the industry operates. Changes in FAR 31.201–1 include deleting the word "allowable" in its first sentence; redesignating the existing paragraph as "(a)"; and inserting a new paragraph "(b)" which makes it clear that while the total cost of a contract includes all allocable costs, the total allowable costs on a Government contract are limited to those allocable costs which are allowable pursuant to Part 31 and agency supplements. FAR 31.201–6(c) is revised to clarify that there is no intended difference in the accounting and presentation of unallowable costs between contracts which are covered by the Cost Accounting Standards and those which are not.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify 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 most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.109 is amended by revising paragraph (a) to read as follows:

31.109 Advance agreements.

(a) The extent of allowability of the costs covered in this part applies broadly to many accounting systems in varying contract situations. Thus, the reasonableness, the allocability and the allowability under the specific cost principles at subparts 31.2, 31.3, 31.6, and 31.7 of certain costs may be difficult to determine. To avoid possible subsequent disallowance or dispute based on unreasonableness, unallocability or unallowability under the specific cost principles at subparts 31.2, 31.3, 31.6, and 31.7, contracting officers and contractors should seek advance agreement on the treatment of special or unusual costs. However, an advance agreement is not an absolute requirement and the absence of an advance agreement on any cost will not, in itself, affect the reasonableness, allocability or the allowability under the specific cost principles at subparts 31.2, 31.3, 31.6, and 31.7 of that cost.

3. Section 31.201–1 is amended by revising the first sentence of the existing paragraph and designating the paragraph as paragraph (a); and adding paragraph (b) to read as follows:

31.201–1 Composition of total cost.

(a) The total cost of a contract is the sum of the direct and indirect costs allocable to the contract, incurred or to be incurred, less any allocable credits, plus any allocable cost of money pursuant to 31.205–10. * * *

(b) While the total cost of a contract includes all costs properly allocable to the contract, the allowable costs to the Government are limited to those allocable costs which are allowable pursuant to part 31 and applicable agency supplements.

4. Section 31.201–6 is amended by revising paragraph (c) to read as follows:

31.201–6 Accounting for unallowable costs.

* * * * *

(c) The practices for accounting for and presentation of unallowable costs will be those as described in 48 CFR 9904.405–50, Accounting for Unallowable Costs.

* * * * *

[FR Doc. 94–30648 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31 and 52

[FAC 90–23; FAR Case 91–42; Item XXII]

RIN 9000–AE69

Federal Acquisition Regulation; Postretirement Benefits-Transition Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) have agreed to convert the interim rule published in the **Federal Register** at 56 FR 41738, August 22, 1991, as Item IX of FAC 90–7, to a final rule with minor modifications. The final rule addresses the treatment of costs for postretirement benefits other than pensions (PRB) which are attributable to employees' past service. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR Case 91–42.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published in the **Federal Register** at 56 FR 41738, August 22, 1991, as item IX of FAC 90–7. This interim rule changed FAR 31.205–6 to add a new paragraph (j)(3)(v), revised the first sentence of paragraph (j)(4), redesignated the existing paragraph (o)(4) as (o)(5), and added a new paragraph (o)(4).

The final rule differs from the interim rule in that it also amends FAR 31.205–6(o)(2) to allow costs generated using the terminal funding method allowed for CAS-covered contractors. Both the terminal funding method and cash basis (pay-as-you-go) accounting are allowable assignment methods under CAS but are not sanctioned by the Generally Accepted Accounting Principles. It is intended that the methods allowed by CAS for prefunding retiree insurance programs be allowable for all contractors. Subsequent paragraphs are redesignated as (o)(3) through (o)(6) with minor clarifications made in paragraphs (o)(3) and (o)(5). A change is made in the clause at 52.215–39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB), to reflect the change in paragraph numbering at FAR 31.205–6(o).

The amended cost principle provides guidance for any transfer of pension funds to another employee benefit fund. In effect, the cost principle requires any increase in current or future Government costs for the pension fund due to such a withdrawal to be offset by equivalent decreases in Government costs for the employee benefit fund receiving the transfer. Transfers made without an advance agreement shall be treated as if the contractor withdrew the funds and are subject to FAR 31.205–6(j)(4), and the deposit to the receiving fund is subject to the cost allowability rules governing the receiving fund in regard to measurement and assignment of costs. Under 31.205–6(j)(4), the Government is entitled to its equitable

share of the gross amount withdrawn from pension fund assets. FAR 31.205–6(o)(5) limits the allowable amount of contractor PRB transition costs for any fiscal year to the amount which would be assigned to that year using the amortization method described in Financial Accounting Standards Board Statement 106. This limitation is necessary because Government fiscal policy dictates that the past service cost element be amortized rather than immediately recognized.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify 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 most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 31 and 52

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 31 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 31 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 31.205–6 is amended by revising paragraph (o)(2); redesignating paragraphs (o)(3) through (o)(5) as (o)(4) through (o)(6) and adding a new paragraph (o)(3); and amending the newly designated paragraph (o)(5) by inserting the words "in paragraph (o)(2)(iii) of this section" after "benefits" to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(o) * * *

(2) To be allowable, PRB costs must be reasonable and incurred pursuant to law, employer-employee agreement, or an established policy of the contractor. In addition, to be allowable, PRB costs must also be calculated in accordance with paragraphs (o)(2)(i), (ii), or (iii) of this section.

(i) *Cash basis.* Cost recognized as benefits when they are actually provided, must be paid to an insurer, provider, or other recipient for current year benefits or premiums.

(ii) *Terminal funding.* If a contractor elects a terminal-funded plan, it does not accrue PRB costs during the working lives of employees. Instead, it accrues and pays the entire PRB liability to an insurer or trustee in a lump sum upon the termination of employees (or upon conversion to such a terminal-funded plan) to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The lump sum is allowable if amortized over a period of 15 years.

(iii) *Accrual basis.* Accrual costing other than terminal funding must be measured and assigned according to Generally Accepted Accounting Principles and be paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The accrual must also be calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board.

(3) To be allowable, costs must be funded by the time set for filing the Federal income tax return or any extension thereof. PRB costs assigned to the current year, but not funded or otherwise liquidated by the tax return time, shall not be allowable in any subsequent year.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.215–39 [Amended]

3. Section 52.215–39 is amended in the clause heading by revising the date to read "(FEB 1995)"; and in the second sentence of the clause by removing the reference "31.205–6(o)(5)" and inserting "31.205–6(o)(6)" in its place.

[FR Doc. 94–30647 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 32

[FAC 90–23; FAR Case 93–309; Item XXIII]

RIN 9000–AG12

Federal Acquisition Regulation; Advance Payment Reporting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an amendment to the Federal Acquisition Regulation (FAR) to remove an obsolete reporting requirement associated with advance payments under 10 U.S.C. 2307. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR case 93–309 in correspondence.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 50.203(b)(4) currently requires advance notice to Congress and a subsequent 60-day waiting period prior to obligating the Government under Public Law 85–804 for an amount in excess of $25 million. The advance notice to Congress requirement currently is imposed on advance payments under 10 U.S.C. 2307, by reference in FAR 32.402(a) to the requirement in 50.203(b)(4). Section 1322(a)(4) of the 1991 Defense Authorization Act (Public Law 101–510) deleted 10 U.S.C. 2307(d), which had contained the notification and waiting period requirements for advance payments made under the authority of 10 U.S.C. 2307. FAR 32.402(a) has been revised to delete the second sentence concerning the limitation on advance payments prescribed at 50.203(b)(4).

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–23, FAR case 93–309), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 32

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 32 is amended as set forth below:

PART 32—CONTRACT FINANCING

1. The authority citation for 48 CFR part 32 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

32.402 [Amended]

2. Section 32.402(a) is amended by removing the second sentence.

[FR Doc. 94–30646 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 34 and 52

[FAC 90–23; FAR Case 93–304; Item XXIV]

RIN 9000–AG11

Federal Acquisition Regulation; Defense Production Act Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule amending the Federal Acquisition Regulation (FAR) to add policy and procedures for testing and qualification of industrial resources developed under Title III, Defense Production Act Amendments of 1992 (Public Law 102–558). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: *Effective Date:* December 28, 1994.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 27, 1995, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90–23, FAR case 93–304 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–23, FAR case 93–304.

SUPPLEMENTARY INFORMATION:

A. Background

Title III of the Defense Production Act (DPA) of 1950 authorizes various forms of Government assistance to encourage expansion of production capacity and supply of industrial resources essential to national defense. The DPA Amendments of 1992 provide for the testing, qualification, and use of industrial resources manufactured or developed with assistance provided under Title III of the DPA. This interim rule expresses Government policy to pay for such testing, and provides definitions, procedures, and a contract clause to implement the policy.

B. Regulatory Flexibility Act

The addition of FAR Subpart 34.1 may 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 small entities are sometimes asked to perform the qualification testing required under the rule.

An Initial Regulatory Flexibility Analysis has been prepared and is summarized as follows:

The change is required to implement amendments to the Defense Production Act of 1950 made by Public Law 102–558. This rule clarifies the Government policy to pay for testing of industrial resources manufactured or developed with assistance provided under Title III of the Defense Production Act. The rule will apply to any small entity that has Government contracts that require qualification testing under the Act. A reporting requirement is in the rule that requires contractors who perform this testing to provide the test results to the Government. The rule does not duplicate, overlap, or conflict with other existing Federal rules and there are no significant alternatives to it.

A copy of the IRFA may be obtained from the FAR Secretariat. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite FAR case 93–610 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning 9000–0133, Defense Production Act Amendments, was submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq* and approved through September 30, 1997. Public comments concerning this request were invited through a subsequent **Federal Register** notice published at 59 FR 42823, August 19, 1994.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the Defense Production Act Amendments of 1992 (Pub. L. 102–558) require implementation by July 26, 1993. However, pursuant to Public Law 98–577 and Federal Acquisition Regulation 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 34 and 52

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 34 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 34 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 34—MAJOR SYSTEM ACQUISITION

2. The subpart heading "34.0—General" is added immediately above section 34.000.

3. Part 34 is amended by adding Subpart 34.1 to read as follows:

Subpart 34.1—Testing, Qualification and Use of Industrial Resources Developed Under Title III, Defense Production Act

Sec.

34.100 Scope of subpart.
34.101 Definitions.
34.102 Policy.
34.103 Testing and qualification.
34.104 Contract clause.

Subpart 34.1—Testing, Qualification and Use of Industrial Resources Developed Under Title III, Defense Production Act

§ 34.100 Scope of subpart.

This subpart prescribes policies and procedures for the testing, qualification, and use of industrial resources manufactured or developed with assistance provided under section 301, 302, or 303 of the Defense Production Act (50 U.S.C. App. 2091–2093). Title III of the Defense Production Act authorizes various forms of Government assistance to encourage expansion of production capacity and supply of industrial resources essential to national defense.

§ 34.101 Definitions.

Item of supply, for the purpose of this subpart, means any individual part, component, subassembly, assembly, or subsystem integral to a major system, and other property which may be replaced during the service life of the system. The term includes spare parts and replenishment parts, but does not include packaging or labeling associated with shipment or identification of an "item."

§ 34.102 Policy.

It is the policy of the Government, as required by section 126 of Public Law 102–558, to pay for any testing and qualification required for the use or incorporation of the industrial resources manufactured or developed with assistance provided under Title III of the Defense Production Act of 1950.

§ 34.103 Testing and qualification.

(a) Contractors receiving requests from a Title III project contractor for testing and qualification of a Title III industrial resource shall refer such requests to the contracting officer. The contracting officer shall evaluate the request in accordance with agency procedures to determine whether: (1) the Title III industrial resource is being or potentially may be used in the development or manufacture of a major system or item of supply; and (2) for major systems in production, remaining quantities to be acquired are sufficient to justify incurring the cost of testing and qualification. In evaluating this request, the contracting officer shall consult with the Defense Production Act Office, Title III Program, located at Wright Patterson Air Force Base, Ohio 45433–7739.

(b) If the determination at 34.103(a) is affirmative, the contracting officer shall modify the contract to require the contractor to test the Title III industrial resource for qualification.

(c) The Defense Production Act Office, Title III Program, shall provide to the contractor the industrial resource produced by the Title III project contractor in sufficient amounts to meet testing needs.

§ 34.104 Contract clause.

Insert the clause at 52.234–1, Industrial Resources Developed under Defense Production Act, Title III, in all contracts for major systems and items of supply.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.234–1 is added to read as follows:

52.234–1 Industrial Resources Developed Under Defense Production Act Title III.

As prescribed at 34.104, insert the following clause:

Industrial Resources Developed Under Defense Production Act Title III (Feb. 1995)

(a) *Definitions.*

Title III industrial resource means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) established or maintained under the authority of Title III, Defense Production Act (50 U.S.C. App. 2091–2093).

Title III project contractor means a Contractor that has received assistance for the development or manufacture of an industrial resource under 50 U.S.C. App. 2091–2093, Defense Production Act.

(b) The Contractor shall refer any request from a Title III project contractor for testing and qualification of a Title III industrial resource to the Contracting Officer.

(c) Upon the direction of the Contracting Officer, the Contractor shall test Title III industrial resources for qualification. The Contractor shall provide the test results to the Defense Production Act Office, Title III Program, located at Wright Patterson Air Force Base, Ohio 45433–7739.

(d) When the Contracting Officer modifies the contract to direct testing pursuant to this clause, the Government will provide the Title III industrial resource to be tested and will make an equitable adjustment in the contract for the costs of testing and qualification of the Title III industrial resource.

(e) The Contractor agrees to insert the substance of this clause, including paragraph (e), in every subcontract issued in performance of this contract.

(End of clause)

[FR Doc. 94–30645 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 35

[FAC 90–23; FAR Case 93–29; Item XXV]

RIN 9000–AF89

Federal Acquisition Regulation; Defense Technical Information Center

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) by removing guidance and address information that applies solely to DOD contractors for more appropriate insertion into the Defense FAR Supplement (DFARS). The language being removed provides Defense Technical Information Center (DTIC) address information, and instructs contractors to submit copies of scientific and technical reports resulting from DOD contracts to DTIC. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–23, FAR case 93–29.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–23, FAR case 93–29), in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 35

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 35 is amended as set forth below:

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

1. The authority citation for 48 CFR part 35 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 35.010 is amended by revising paragraph (b) to read as follows:

§ 35.010 Scientific and technical reports.

* * * * *

(b) Agencies should make R&D contract results available to other Government activities and the private sector. Contracting officers shall follow agency regulations regarding such matters as national security, protection of data, and new-technology dissemination policy. Reports should be sent to the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161. When agencies require that completed reports be covered by a report documentation page, Standard Form (SF) 298, Report Documentation Page, the contractor should submit a copy with the report.

[FR Doc. 94–30644 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 36 and 52

[FAC 90–23; FAR Case 90–62; Item XXVI]

RIN 9000–AE30

Federal Acquisition Regulation; Construction Contracting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule which will add to the Federal Acquisition Regulation (FAR) a new clause, Preconstruction Conference, and a new solicitation provision, Site Visit (Construction). Prescriptions for the provision and clause are included in the FAR. Preconstruction Orientation is added and includes information previously in several other paragraphs in the proposed rule. The most significant change from the proposed rule is the deletion of Alternate III to the current clause, Specifications and Drawings for Construction. The proposed rule was published in the **Federal Register** at 56 FR 3954, January 31, 1991. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR case 90–62.

SUPPLEMENTARY INFORMATION:

A. Background

Similar versions of the provision at 52.236–27 and the clause at 52.236–26 have been used by various military activities in fixed price construction contracts, and in contracts for dismantling, demolition, or removal of improvements. The Councils determined they would be beneficial to contractors and civilian and defense agencies.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify 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 changes merely provide information to offerors and contractors concerning details of preconstruction conferences and site visits.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 36 and 52

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 36 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 36 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

2. Section 36.212 is added to read as follows:

36.212 Preconstruction orientation.

(a) The contracting officer will inform the successful offeror of significant matters of interest, including—(1) statutory matters such as labor standards (subpart 22.4), and subcontracting plan requirements (subpart 19.7); and (2) other matters of significant interest, including who has authority to decide matters such as contractual, administrative (e.g., security, safety, and fire and environmental protection), and construction responsibilities.

(b) As appropriate, the contracting officer may issue an explanatory letter or conduct a preconstruction conference.

(c) If a preconstruction conference is to be held, the contracting officer shall—

(1) Conduct the conference prior to the start of construction at the work site;

(2) Notify the successful offeror of the date, time, and location of the conference (see 36.522); and

(3) Inform the successful offeror of the proposed agenda and any need for attendance by subcontractors.

§ 36.305 [Removed]

3. Section 36.305 is removed.

4. Sections 36.522 and 36.523 are added to read as follows:

§ 36.522 Preconstruction conference.

If the contracting officer determines it may be desirable to hold a preconstruction conference, the contracting officer shall insert a clause substantially the same as the clause at 52.236–26, Preconstruction Conference, in solicitations and fixed price contracts for construction or for dismantling, demolition or removal of improvements.

§ 36.523 Site visit.

The contracting officer shall insert a provision substantially the same as the provision at 52.236–27, Site Visit (Construction), in solicitations which include the clauses at 52.236–2, Differing Site Conditions, and 52.236–3, Site Investigations and Conditions Affecting the Work. Alternate I may be used when an organized site visit will be conducted.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Sections 52.236–26 and 52.236–27 are added to read as follows:

§ 52.236–26 Preconstruction Conference.

As prescribed in 36.522, insert the following clause:

Preconstruction Conference (Feb. 1995)

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

(End of clause)

§ 52.236–27 Site Visit (Construction).

As prescribed in 36.523, insert a provision substantially the same as the following:

Site Visit (Construction) (Feb. 1995)

(a) The clauses at 52.236–2, Differing Site Conditions, and 52.236–3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.

(b) Site visits may be arranged during normal duty hours by contacting:

Name: _____

Address: _____

_____

Telephone: _____

(End of provision)

Alternate I (FEB 1995). If an organized site visit will be conducted, substitute a paragraph substantially the same as the following for paragraph (b) of the basic provision:

(b) An organized site visit has been scheduled for—

_____

(Insert date and time)

(c) Participants will meet at—

_____

(Insert location)

(End of provision)

[FR Doc. 94–30643 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 37

[FAC 90–23; FAR Case 91–106; Item XXVII]

RIN 9000–AF31

Federal Acquisition Regulation; Child Care Services

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule amending the Federal Acquisition Regulation (FAR) to add a definition of "child care services", and to require contracting officers to ensure that contracts for child care services include requirements for criminal history background checks of employees in accordance with 42 U.S.C. 13041. This regulatory action was not subject to Office of Management and Budget review under Executive Order 13866, dated September 30, 1993.

DATES: *Effective Date:* December 28, 1994.

Comment Date: Comments should be submitted to the FAR Secretariat on or before February 27, 1995, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90–23, FAR case 91–106 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR case 91–106.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Subtitle E, section 231 of the Crime Control Act of 1990 (Pub. L. 101–647), codified at 42 U.S.C. 13041, as amended by section 1094 of the Fiscal Year 1992 Defense Authorization Act (Pub. L. 102–190). The effective date for compliance with Pub. L. 101–647 was May 29, 1991. Pub. L. 102–190 was effective upon enactment on December 5, 1991.

In part, section 231 of Pub. L. 101–647 requires that child care employees, hired to provide child care services at a facility operated by the Government or under contract with the Government, undergo a criminal history background check. The statute broadly defines "child care services" as child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child day care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services. Subsequently, section 1094 of Pub. L. 102–190 amended 42 U.S.C. 13041 to provide for the provisional supervised employment of child care employees prior to the completion of the required criminal history background check and specified additional safety measures for Federal child care service facilities.

B. Regulatory Flexibility Act

This interim rule implements Subtitle E, Section 231 of the Crime Control Act of 1990, Pub. L. 101–647 (42 U.S.C. 13041), which may 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 Act requires child care employees hired under contract to undergo a criminal history background check. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration.

The IRFA is summarized as follows:

The rule applies to both large and small businesses and implements the statute by requiring contracting officers to ensure that Federal contracts for child care services include the requirement for criminal history background checks. It is impossible to accurately estimate the number of small businesses or employees that may be impacted because the statutory definition of child care services covers a broad range of services for which detailed award and personnel data is unavailable.

A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601 *et seq.* (FAC 90–23, FAR Case 91–106), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that, pursuant to 41 U.S.C. 418b, urgent and compelling reasons exist to publish an interim rule having a significant impact on the public, prior to affording the public an opportunity to comment. However, public comments received in response to this interim rule will be considered in formulating the final rule. The rule is necessary because the effective date for compliance with Pub. L. 101–647 was May 19, 1991, while Pub. L. 102–190 was effective upon enactment on December 5, 1991.

List of Subjects in 48 CFR Part 37

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 37 is amended as set forth below:

PART 37—SERVICE CONTRACTING

1. The authority citation for 48 CFR part 37 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 37.101 is amended by adding, in alphabetical order, the definition "Child care services" to read as follows:

37.101 Definitions.

Child care services means child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services.

* * * * *

3. Section 37.103 is amended by adding paragraph (d) to read as follows:

37.103 Contracting officer responsibility.

* * * * *

(d) Ensure that contracts for child care services include requirements for criminal history background checks on employees who will perform child care services under the contract in accordance with 42 U.S.C. 13041, as amended, and agency procedures.

[FR Doc. 94–30642 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 42 and 52

[FAC 90–23; FAR Case 91–103; Item XXVIII]

RIN 9000–AF68

Federal Acquisition Regulation; Final Indirect Cost Agreements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend the Federal Acquisition Regulation (FAR) to eliminate the requirements for contractors to execute a Certificate of Current Cost or Pricing Data in conjunction with final indirect cost agreements on facilities contracts and for auditors to obtain a certificate under auditor determination procedures for final indirect cost rates. This regulatory action was not subject to Office of Management and Budget review under Executive Order No. 12866 dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr Jeremy F. Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR case 91–103 in correspondence.

SUPPLEMENTARY INFORMATION:

A. Background

Proposed amendments to FAR 42.705–2 and the clause at 52.216–13 were published in the **Federal Register** at 59 FR 14459, March 28, 1994, requesting comments. Three responses were received. Each supported the proposed rule. One commentator made a recommendation for additional revisions, which the Councils considered unnecessary. The Councils agreed to a final rule, with no change to the proposed rule previously published

B. Regulatory Flexibility Act

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 most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the requirements for certified cost or pricing data do not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the revisions do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Existing approvals of information collection requirements under OMB control numbers 9000–0013 and 9000–0069 correspond to this rule. The rule merely deletes a certificate requirement. Certifications are exempt under 5 CFR 1320.7(j)(1) from the requirement.

List of Subjects in 48 CFR Parts 42 and 52

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 42 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 42 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 42—CONTRACT ADMINISTRATION

42.705–2 [Amended]

2. Section 42.705–2 is amended by removing paragraph (b)(2)(ii) and redesignating paragraphs (b)(2)(iii) through (b)(2)(vi), as (b)(2)(ii) through (b)(2)(v), respectively.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.216–13 [Amended]

3. Section 52.216–13 is amended by revising the date in the heading of the clause to read "(FEB 1995)", and in paragraph (c)(2) of the clause by removing the last sentence.

[FR Doc. 94–30641 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 44 and 52

[FAC 90–23; FAR Case 91–68; Item XXIX]

RIN 9000–AF63

Federal Acquisition Regulation; Consent to Subcontract

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to revise the Federal Acquisition Regulation (FAR) to eliminate the exception for contracting officer consent for major systems and subsystems. Instead, contracting officers are allowed to specify in the contract schedule all subcontracts for major systems, subsystems, or components needing special surveillance, for which consent to subcontract must be obtained by the prime contractor. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR case 91–68.

SUPPLEMENTARY INFORMATION:

A. Background

The councils have agreed that there is a need to revise the FAR to allow the Government to take maximum advantage of the "systems" approach, i.e., by applying the "systems" approach to "consent to subcontract" requirements with respect to major systems, subsystems and components. The revised coverage will allow the Government to rely on the contractor's approved purchasing system to control routine procurements.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, because the addition of the word "critical" in the text at FAR 44.201 narrows the field of major systems items involved as well as the number of small businesses who may be involved with major systems items. This small business involvement is expected to be minimal. Therefore, publication for public comment is not required and the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 90–23, FAR case 91–68), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 44 and 52

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 44 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 44 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

2. Section 44.201–1 is amended by revising paragraph (b) to read as follows:

44.201–1 Fixed-price prime contracts.

* * * * *

(b) If the contractor has an approved purchasing system—

(1) Consent to subcontracts is not required under other fixed-price prime contracts (but see paragraph (b)(2) of this section); and

(2) Consent is required for subcontracts identified in the subcontracts clause of the contract. These can be subcontracts for critical systems, subsystems, or components, or other subcontracts selected by the contracting officer as needing special surveillance. Subcontracts may be identified by subcontract number or by class of items (*e.g.*, subcontracts for engines on a prime contract for airframes).

* * * * *

3. Section 44.201–2 is amended by revising paragraph (c) and removing paragraph (d) to read as follows:

44.201–2 Cost-reimbursement and letter prime contracts.

* * * * *

(c) If the contractor has an approved purchasing system—

(1) Consent is not required for the subcontracts identified in paragraph (b) of this section (but see paragraph (c)(2) of this section). However, advance notification is still required by 10 U.S.C. 2306(e) or 41 U.S.C. 254(b); and

(2) Consent is required for subcontracts identified in the subcontracts clause of the contract. These can be subcontracts for critical systems, subsystems, or components, or other subcontracts selected by the contracting officer as needing special surveillance. Subcontracts may be identified by subcontract number or by class of items (*e.g.*, subcontracts for engines on a prime contract for airframes).

4. Section 44.204 is amended by revising paragraph (a)(3) to read as follows:

44.204 Contract clauses.

(a) * * *

(3) If the contracting officer elects to delete the requirement for advance notification of, or consent to, any subcontracts that were evaluated during negotiations, the contracting officer shall use the clause with its Alternate I.

* * * * *

44.205 [Removed]

5. Section 44.205 is removed.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.244–1 is amended by revising the date of the clause to read "(FEB 1995)" and paragraph (e) to read as follows:

52.244–1 Subcontracts (Fixed-Price Contracts).

* * * * *

Subcontracts (Fixed-Price Contracts) (Feb. 1995)

* * * * *

(e) Even if the Contractor's purchasing system has been approved, the Contractor shall obtain the Contracting Officer's written consent before placing subcontracts identified below:

_____

_____

* * * * *

7. Section 52.244–2 is amended by revising the date of the clause to read "(FEB 1995)" and paragraphs (d) and (e) to read as follows:

52.244–2 Subcontracts (Cost-Reimbursement and Letter Contracts).

* * * * *

Subcontracts (Cost-Reimbursement and Letter Contracts) (Feb. 1995)

* * * * *

(d) If the Contractor has an approved purchasing system and the subcontract is within the scope of such approval, the Contractor may enter into the subcontracts described in subparagraphs (a)(1) and (a)(2) of this clause without the consent of the Contracting Officer.

(e) Even if the Contractor's purchasing system has been approved, the Contractor shall obtain the Contracting Officer's written consent before placing subcontracts identified below:

_____

_____

* * * * *

[FR Doc. 94–30640 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 44

[FAC 90–23; FAR Case 90–53; Item XXX]

RIN 9000–AE22

Federal Acquisition Regulation; Contractors' Purchasing Systems Reviews

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule revising the Federal Acquisition Regulation (FAR) concerning the procedures for performing Contractors' Purchasing Systems Reviews (CPSR). The revision and amendments help streamline the acquisition process, reduce contractor oversight, and eliminate or reduce regulatory burdens on both contracting officers and contractors. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR case 90–53.

SUPPLEMENTARY INFORMATION

A. Background

The proposed rule recommended revisions to FAR 44.302(b) and 44.304(a) and (b). The revision to 44.302(b) extended the reasons a special review may be conducted to include a major change or deficiency in the contractor's policy, procedures, or key personnel and removed the parenthetical. The revision to FAR 44.304(a) removed the requirement for Administrative Contracting Officers (ACO's) to make an annual determination concerning whether to continue purchasing system approval based on formal surveillance, or to request a CPSR or special review as a basis for continuing or withdrawing approval. The revision to 44.304(b) substituted the words "should include" for the words "shall include" when referring to what needs to be included in an ACO's surveillance plan, thus permitting the contracting officer more latitude and discretion in the development, approach and scope of the plan. In addition, the last sentence of 44.304(b) was removed as unnecessary

The proposed rule was published in the **Federal Register** at 55 FR 42810, October 23, 1990, with a request for comments. Sixteen responses were received, consisting of eleven concurrences and no comment, and five comments. After evaluating the comments, the councils approved a change to the proposed rule. The last sentence in 44.304(b) was reinstated and revised to read: "Duplicative reviews of the same areas by CPSR and other surveillance monitors should be avoided." The sentence also was revised to provide the contracting officer greater flexibility in cases where additional surveillance or special reviews are warranted.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify 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 changes to FAR 44.302 and FAR 44.304 are designed to streamline the acquisition process, reduce contractor oversight, and to eliminate or reduce regulatory burdens on both contracting officers and contractors. No responses were received which commented on the proposed rule's Regulatory Flexibility Act statement.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 44

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy

Therefore, 48 CFR part 44 is amended as set forth below:

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

1. The authority citation for 48 CFR part 44 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 44.302 is amended by revising paragraph (b) to read as follows:

44.302 Requirements.

* * * * *

(b) A CPSR shall be conducted by the cognizant contract administration agency (see subpart 42.3) at least every 3 years for contractors that continue to meet the requirements of paragraph (a) of this section. This review may be accomplished at one time or on a continuing basis. A more frequent review cycle may be established if warranted and special reviews may be conducted when information reveals a deficiency or major change in the contractor's purchasing system, policy, procedures or key personnel.

44.304 [Amended]

3. Section 44.304 is amended in paragraph (a) by removing the second sentence; and in paragraph (b) by removing in the second, third, and fourth sentences the word "shall" and inserting "should" in its place.

[FR Doc. 94–30639 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 45

[FAC 90–23; FAR Case 90–34; Item XXXI]

RIN 9000–AE06

Federal Acquisition Regulation; Transfers of Government Property

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to ensure that Government property is transferred and documented properly. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR case 90–34.

SUPPLEMENTARY INFORMATION:

A. Background

An amendment to FAR 45.508–1, Inventories upon termination or completion, initiated by the DARC and subsequently approved by the councils, was published in the **Federal Register** at 55 FR 26345, June 27, 1990, as a proposed rule, together with a request for comments. The purpose of the proposed rule was to ensure that Government property would be transferred and documented properly upon termination or completion of a contract. The 16 responses that were received consisted of 11 concurrences and no comments, and five comments.

As a result of the comments, the following substantive changes have been made to the final rule:

(1) The rule has been relocated to FAR 45.311 and a sentence has been added to FAR 45.603;

(2) The language has been modified to specifically refer to Government-furnished property;

(3) The language has been modified to require that transfers be documented by a modification to the gaining contract and a modification or other documentation listing all items of property transferred to the losing contract; and

(4) A sentence has been added to FAR 45.603 to clarify that delivery of any contractor inventory includes transfers of Government-furnished property.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify 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 is considered a clarification of existing Government policy and does not impose burdens on the small business community.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 45

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy

Therefore, 48 CFR part 45 is amended as set forth below:

PART 45—GOVERNMENT PROPERTY

1. The authority citation for 48 CFR part 45 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 45.311 is added to read as follows:

45.311 Providing Government property by transfer.

Government property shall be transferred only if there is a requirement under the gaining contract. Transfers of Government property, as Government-furnished property, shall be documented by a modification to the gaining contract. A modification or other documentation listing all items of property transferred is required for the losing contract.

3. Section 45.603 is amended in the introductory paragraph by adding a new sentence after the first sentence to read as follows:

45.603 Disposal methods.

* * * This includes transfers of Government property to another Government contract. * * *

* * * * *

[FR Doc. 94–30638 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 47 and 52

[FAC 90–23; FAR Case 88–56; Item XXXII]

RIN 9000–AC67

Federal Acquisition Regulation; Commercial Bills of Lading Under Cost-Reimbursement Contracts Audit by GSA

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend the Federal Acquisition Regulation (FAR) to add a clause requiring contractors to submit to the General Services Administration (GSA), for audit, copies of all paid freight bills/invoices, commercial bills of lading, passenger coupons, and other supporting documents for transportation services under cost-reimbursement contracts. This regulatory action was not subject to Office of Management and Budget (OMB) review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR case 88–56.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule implements the requirements of the Federal Property Management Regulations, 41 CFR 101–41.807–4, Submission of paid freight bills/invoices, commercial bills of lading, passenger coupons, and supporting documentation covering transportation services by contractors under cost-reimbursement type contracts, which was published by GSA as a final rule on August 14, 1991.

A FAR proposed rule was published in the **Federal Register** at 59 FR 14467, March 28, 1994. Two sources submitted public comments. No changes were made as a result of those comments.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify 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 vast majority of contracts held by these entities are not subject to Public Law 87–653 or civilian agency defective pricing rules. An Initial Regulatory Flexibility Analysis was not performed. No comments were received that indicated substantial economic impact on small entities as a result of this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply because the final rule imposes information collection requirements on contractors. The FAR rule implements the requirements of the Federal Property Management Regulations at 41 CFR 101–41.807–4, Submission of paid freight bills/invoices, commercial bills of lading, passenger coupons, and supporting documentation covering transportation services by contractors under cost-reimbursement type contracts. GSA is considered the agency with primary responsibility for this requirement the OMB clearance. The information collection requirement on contractors is currently cleared under GSA's OMB control number 3090–0242, Documentation and Payment of Transportation Bills.

List of Subjects in 48 CFR Parts 47 and 52

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Parts 47 and 52 are amended as set forth below:

1. The authority citation for Parts 47 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 47—TRANSPORTATION

2. Section 47.104–4 is amended by revising the section title and adding paragraph (c) to read as follows:

47.104–4 Contract clauses.

* * * * *

(c) The contracting officer shall insert the clause at 52.247–67, Submission of Commercial Transportation Bills to the General Services Administration for Audit, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract or a first-tier cost-reimbursement subcontract thereunder will authorize reimbursement of transportation as a direct charge to the contract or subcontract.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.247–67 is added to read as follows:

52.247–67 Submission of Commercial Transportation Bills to the General Services Administration for Audit.

As prescribed in 47.104–4(c), insert the following clause:

Submission of Commercial Transportation Bills to the General Services Administration for Audit (Feb 1995)

(a)(1) In accordance with paragraph (a)(2) of this clause, the Contractor shall submit to the General Services Administration (GSA) for audit, legible copies of all paid freight bills/invoices, commercial bills of lading (CBL's), passenger coupons, and other supporting documents for transportation services on which the United States will assume freight charges that were paid (i) by the Contractor under a cost-reimbursement contract, and (ii) by a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

(2) Cost-reimbursement Contractors shall only submit for audit those CBL's with freight shipment charges exceeding $50.00. Bills under $50.00 shall be retained on-site by the Contractor and made available for GSA on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

(b) The Contractor shall forward copies of paid freight bills/invoices, CBL's, passenger coupons, and supporting documents as soon as possible following the end of the month, in one package to the General Services Administration, ATTN: FWATS, 18th & F Streets, NW, Washington, DC 20405. The Contractor shall include the paid freight bills/invoices, CBL's, passenger coupons, and supporting documents for first-tier subcontractors under a cost-reimbursement contract. If the inclusion of the paid freight bills/invoices, CBL's, passenger coupons, and supporting documents for any subcontractor in the shipment is not practicable, the documents may be forwarded to GSA in a separate package.

(c) Any original transportation bills or other documents requested by GSA shall be forwarded promptly by the Contractor to GSA. The Contractor shall ensure that the name of the contracting agency is stamped or written on the face of the bill before sending it to GSA.

(d) A statement prepared in duplicate by the Contractor shall accompany each shipment of transportation documents. GSA will acknowledge receipt of the shipment by signing and returning the copy of the statement. The statement shall show—

(1) The name and address of the Contractor;

(2) The contract number including any alpha-numeric prefix identifying the contracting office;

(3) The name and address of the contracting office;

(4) The total number of bills submitted with the statement; and

(5) A listing of the respective amounts paid or, in lieu of such listing, an adding machine tape of the amounts paid showing the Contractor's voucher or check numbers.

(End of clause)

[FR Doc. 94–30635 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 90–23; FAR Case 92–612; Item XXXIII]

RIN 9000–AF56

Federal Acquisition Regulation; Qualification Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) have agreed on a final rule to amend the Federal Acquisition Regulation's (FAR) clause, Qualification Requirements, to preclude rejection of a bid solely because the bidder has not submitted evidence of qualification at the time of bid opening. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR case 92–612.

SUPPLEMENTARY INFORMATION:

A. Background

Paragraph (e) of the current clause at 52.209–1 may be inconsistent with the ruling of the General Accounting Office (GAO) in *Gardner Zemke Company*, Comptroller General Decision B–238334, April 5, 1990. In order to remove the inconsistencies between paragraphs (b) and (e) of the clause in light of the GAO decision, the CAAC and DARC have revised paragraph (e) to make it clear that a contracting officer may not reject a bid solely for the reason that the bidder has not provided evidence of qualification at the time of bid opening.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify 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 simply removes inconsistencies in the clause at 52.209–1, Qualification Requirements. Comments submitted in response to the proposed rule did not raise any issues that demonstrate potentially significant impact.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 52 is amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.209–1 is amended by revising the date of the clause and paragraph (e) to read as follows:

52.209–1 Qualification Requirements.

* * * * *

Qualification Requirements (Feb. 1995)

* * * * *

(e) If an offeror, manufacturer, source, product or service has met the qualification requirement but is not yet on a qualified products list, qualified manufacturers list, or qualified bidders list, the offeror must submit evidence of qualification prior to award of this contract. Unless determined to be in the Government's interest, award of this contract shall not be delayed to permit an offeror to submit evidence of qualification.

* * * * *

[FR Doc. 94–30636 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 90–23; FAR Case 92–628; Item XXXIV]

RIN 9000–AG09

Federal Acquisition Regulation; Small Business and Small Disadvantaged Business Subcontracting Plan

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) have agreed to amend the Federal Acquisition Regulation (FAR) to state that a firm may rely on the information contained in the Procurement Automated Source System (PASS) as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list and as its source list. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR case 92–628.

SUPPLEMENTARY INFORMATION:

A. Background

The Small Business Administration (SBA) amended its size regulations in the **Federal Register** at 58 FR 47371, September 9, 1993, to make a general policy statement that prime contractors may rely on the information contained in SBA's Procurement Automated

Source System (PASS) as an accurate representation of a concern's size and ownership characteristics for the purpose of maintaining a small business source list.

The current regulation, while not specifically requiring an annual certification, is apparently being interpreted as requiring one. A number of large businesses are under the impression that as a part of a subcontracting plan, they are required to obtain certifications as to the size and socio-economic status of their potential subcontractors on an annual basis. This has resulted in substantial effort and the expenditure of several million dollars each year by contractors in trying to keep their small business source lists up to date. It has also resulted in small businesses on those lists receiving numerous requests from different companies for the same type of information.

The current wording of the FAR clause at 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan, does not clearly indicate that a prime contractor's use of the PASS will meet the requirement to both establish and maintain a mailing list for potential small, small disadvantaged, and women-owned businesses. This rule will clarify that contractor's can meet the requirement to maintain a current bidders list through use of the SBA PASS.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite FAC 90–23, FAR Case 92–628 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the final rule do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 52 is amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.219–9 is amended by revising the clause date to read "(Feb 1995)"; and adding three sentences to the end of paragraph (d)(5) and revising (d)(11)(i) to read as follows:

52.219–9 Small Business and Small Disadvantaged Business Subcontracting Plan.

* * * * *

Small Business and Small Disadvantaged Business Subcontracting Plan (Feb 1995)

(d) * * *

(5) * * * A firm may rely on the information contained in PASS as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. A firm may rely on PASS as its small business source list. Use of the PASS as its source list does not relieve a firm of its responsibilities (i.e., outreach, assistance, counseling, publicizing subcontracting opportunities) in this clause.

* * * * *

(11) * * *

(i) Source lists, e.g., PASS guides and other data that identify small and small disadvantaged business concerns.

* * * * *

[FR Doc. 94–30637 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 90–23; FAR Case 91–11; Item XXXV]

RIN 9000–AE57

Federal Acquisition Regulation; Shipments to Ports and Air Terminals

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) concerning the provision, Evaluation of Export Offers, to require contracting officers to publish, with the solicitation, available information on port handling and ocean charges for DOD water terminals. Several editorial and minor technical changes were also made to the provision. This regulatory action was not subject to Office of Management and Budget (OMB) review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such at (202) 501–1759 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR case 91–11

SUPPLEMENTARY INFORMATION:

A. Background

This change was recommended as a result of the Defense Management Review Regulatory Reform initiative. The Councils determined that language in FAR supplements would be useful for all Federal contracting activities. The proposed rule was published in the **Federal Register** at 56 FR 20573, May 6, 1991. We received and evaluated public comments and made revisions to the proposed rule based on public comments.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this 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 it prescribes Government responsibilities for furnishing port handling and ocean charges in the solicitation.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require OMB approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 52 is amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.247–51 is amended by revising the introductory paragraph, the date in the title of the provision, paragraphs (a) and (d), and paragraph (a) of Alternate I, and by removing "(R 7–2003.20 1968 JUN)" following both the provision and Alternate I to read as follows:

52.247–51 Evaluation of Export Offers.

As prescribed in 47.305–6(e), insert the following provision:

Evaluation of Export Offers (Feb. 1995)

(a) *Port handling and ocean charges—other than DOD water terminals.* Port handling and ocean charges in tariffs on file with the Bureau of Domestic Regulation, Federal Maritime Commission, or other appropriate regulatory authorities as of the date of bid opening (or the closing date specified for receipt of offers) and which will be effective for the date of the expected initial shipment will be used in the evaluation of offers.

* * * * *

(d) *Ports of loading for evaluation of offers.* Terminals to be used by the Government in evaluating offers are as follows: *(For the information of the offerors, ocean and port handling charges are set forth if the terminal named is a DOD water terminal.)*

Ports/Terminals of Loading	Combined Ocean and Port Handling Charges to (Indicate Country)	Unit of Measure: i.e. metric ton, measurement ton, cubic foot, etc.

* * * * *

Alternate I (FEB 1995). * * *

(a) *Port handling and ocean charges—DOD water terminals.* The port handling and ocean charges are set forth in paragraph (d) of this provision for the information of offerors and are current as of the time of issuance of the solicitation. For evaluation of offers, the Government will use the port handling and ocean charges made available by the Directorate of International Traffic, Military Traffic Management Command rate information letters, on file as of the date of bid opening (or the closing date specified for receipt of offers) and which will be effective for the date of the expected initial shipment.

* * * * *

[FR Doc. 94–30634 Filed 12–27–94; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 53

[FAC 90–23; FAR Case 91–84; Item XXXVI]

RIN 9000–AF29

Federal Acquisition Regulation; Standard Form 18, Request for Quotations

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend Standard Form 18, Request for Quotations, by deleting the Small Business Concern Representation and the Notice of Small Business Small-Purchase Set-Aside from the reverse side of the form and adding the Standard Industrial Classification Code and small business size standard to the face of the form. Corresponding changes are made to the face of the form for clarification. The deleted provisions will be attached to the form along with other applicable provisions and representations. This regulatory action was not subject to Office of Management and Budget (OMB) review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR case 91–84.

SUPPLEMENTARY INFORMATION:

A. Background

The changes to the form were determined to be necessary by the two Councils because of the frequency of changes to the provisions on the reverse of the form.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify 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 amendment imposes no requirements of any kind upon small entities; it is a change to internal Government procedures.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 53

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 53 is amended as set forth below:

PART 53—FORMS

1. The authority citation for 48 CFR part 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

53.213 [Amended]

2. Section 53.213 is amended in paragraph (a) by removing the words "SF 18, Request for Quotation" and inserting "SF 18 (REV 5/93), Request for Quotations" in their place.

53.215–1 [Amended]

3. Section 53.215–1 is amended in paragraph (a) by removing the date "(REV. 10/83)" and inserting "(REV. 5/93)" in its place.

4. Section 53.301–18 is revised to read as follows:

53.301–18 SF 18 (REV 5/93), Request for Quotations.

BILLING CODE 6820–34–P

REQUEST FOR QUOTATIONS *(THIS IS NOT AN ORDER)*

THIS RFQ ☐ IS ☐ IS NOT A SMALL BUSINESS-SMALL PURCHASE SET- ASIDE (52.219–4)

PAGE OF PAGES

1. REQUFST NO.	2. DATE ISSUED	3. REQUISITION/PURCHASE REQUEST NO.	4. CERT. FOR NAT. DEF. UNDER BDSA REG. 2 AND/OR DMS REG. 1 ▶	RATING

5A. ISSUED BY

6. DELIVER BY *(Date)*

5B. FOR INFORMATION CALL: *(Name and telephone no.) (No collect calls)*

7. DELIVERY ☐ FOB DESTINATION ☐ OTHER *(See Schedule)*

8. TO: NAME AND ADDRESS, INCLUDING ZIP CODE

9. DESTINATION *(Consignee and address, including ZIP Code)*

10. PLEASE FURNISH QUOTATIONS TO THE ISSUING OFFICE IN BLOCK 5A ON OR BEFORE CLOSE OF BUSINESS *(Date)*

11. BUSINESS CLASSIFICATION *(Check appropriate boxes)*

a. STANDARD INDUSTRIAL CLASSIFICATION CODE _____

b. SMALL BUSINESS SIZE STANDARD _____

c. ☐ SMALL ☐ OTHER THAN SMALL ☐ DISADVANTAGED ☐ WOMEN-OWNED

IMPORTANT: This is a request for information, and quotations furnished are not offers. If you are unable to quote, please so indicate on this form and return it to the address in Block 5A. This request does not commit the Government to pay any costs incurred in the preparation of the submission of this quotation or to contract for supplies or services. Supplies are of domestic origin unless otherwise indicated by quoter. Any representations and/or certifications attached to this Request for Quotations must be completed by the quoter.

12. SCHEDULE *(Include applicable Federal, State and local taxes)*

ITEM NO. (a)	SUPPLIES/SERVICES (b)	QUANTITY (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)

13. DISCOUNT FOR PROMPT PAYMENT ▶	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %

NOTE: Additional provisions and representations ☐ are ☐ are not attached.

14. NAME AND ADDRESS OF QUOTER *(Street, city, county, State and ZIP Code)*	15. SIGNATURE OF PERSON AUTHORIZED TO SIGN QUOTATION	16. DATE OF QUOTATION
	17. NAME AND TITLE OF SIGNER *(Type or print)*	18. TELEPHONE NO. *(Include area code)*

NSN 7540–01–152–8084
PREVIOUS EDITION NOT USABLE

18–120

STANDARD FORM 18 (Rev. 5–93)
Prescribed by GSA
FAR (48 CFR) 53.215–1(a)

[FR Doc. 94–30633 Filed 12–27–94; 8:45 am]
BILLING CODE 6820–34–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 53

[FAC 90–23; FAR Case 92–9; Item XXXVII]

RIN 9000–AF76

Federal Acquisition Regulation; Revisions to Standard Forms 1414 and 1415

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to revise Standard Form 1414, Consent of Surety, and Standard 1415, Consent of Surety and Increase of Penalty, to accommodate consents by individual sureties and to provide space for entry of dates of execution. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such at (202) 501–1759 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–23, FAR Case 92–9.

SUPPLEMENTARY INFORMATION:

A. Background

Standard Form (SF) 1414 is used to obtain the consent of surety when a contract is modified. SF 1415 is used when additional bond coverage is required from the original surety. Changes to these forms were determined to be necessary to accommodate consents by individual, as well as corporate, sureties and to provide space to enter dates of execution.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–23, FAR case 92–9), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 53

Government procurement.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 53 is amended as set forth below:

PART 53—FORMS

1. The authority citation for 48 CFR part 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 53.228 is amended by revising paragraph (k); and revising the heading in paragraph (l) to read as follows:

53.228 Bonds and insurance.

* * * * *

(k) *SF 1414 (Rev. 10/93), Consent of Surety.* SF 1414 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the loose-leaf edition of the FAR.

(l) *SF 1415 (Rev. 7/93), Consent of Surety and Increase of Penalty.* * * *

* * * * *

3. Sections 53.301–1414 and 53.301–1415 are revised to read as follows:

53.301–1414 SF 1414 (Rev. 10/93) Consent of Surety.

BILLING CODE 6820–34–P

CONSENT OF SURETY	1. CONTRACT NUMBER	2. MODIFICATION NUMBER	3. DATED

The Surety (Co-Sureties) consents (consent) to the foregoing contract modification and agrees (agree) that its (their) bond or bonds shall apply and extend to the contract as modified or amended.

4. INDIVIDUAL PRINCIPAL	a. BUSINESS ADDRESS	b. SIGNATURE c. TYPED NAME AND TITLE d. DATE THIS CONSENT EXECUTED	*(Affix Seal)*
5. CORPORATE PRINCIPAL	a. CORPORATE NAME AND BUSINESS ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE d. DATE THIS CONSENT EXECUTED	*(Affix Corporate Seal)*

6. CORPORATE/INDIVIDUAL SURETY (CO-SURETIES)

The Principal or authorized representative shall execute this Consent of Surety with the modification to which it pertains. If the representative (e.g., attorney-in-fact) that signs the consent is not a member of the partnership, or joining venture, or an officer of the corporation involved, a Power-of-Attorney or a Certificate of Corporate Principal must accompany the consent.

A	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE d. DATE THIS CONSENT EXECUTED	*(Affix Seal)*
B	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE d. DATE THIS CONSENT EXECUTED	*(Affix Seal)*
C	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE d. DATE THIS CONSENT EXECUTED	*(Affix Seal)*
D	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE d. DATE THIS CONSENT EXECUTED	*(Affix Seal)*

(Add similar signature blocks on the back of this form if necessary for additional co-Sureties)

Authorized for Local Reproduction
(Previous edition not usable)

STANDARD FORM 1414 (Rev. 10-93)
Prescribed by GSA, FAR (48 CFR) 53.225(k)

BILLING CODE 6820-34-C

53.301–1415 SF 1415 (Rev. 7/93) Consent of Surety and Increase of Penalty.

BILLING CODE 6820–34–P

CONSENT OF SURETY AND INCREASE OF PENALTY	1. CONTRACT NUMBER	2. MODIFICATION NUMBER	3. DATED

4. The surety (co-sureties) consents (consent) to the foregoing contract modification and agrees (agree) that its (their) bond or bonds shall apply and extend to the contract as modified or amended. The principal and surety (co-sureties) further agree that on or after the execution of this consent, the penalty of the performance bond or bonds is increased by _____ dollars ($_____) and the penalty of the payment bond or bonds is increased by _____ dollars ($_____). However, the increase of the liability of each co-surety resulting from this consent shall not exceed the sums shown below.

5. NAME OF SURETY(IES)	6. INCREASE IN LIABILITY LIMIT UNDER PERFORMANCE BOND	7. INCREASE IN LIABILITY LIMIT UNDER PAYMENT BOND
a.	$	$
b.		
c.		

8. INDIVIDUAL PRINCIPAL	a. BUSINESS ADDRESS	b. SIGNATURE*	(Affix Seal)
		c. TYPED NAME AND TITLE	
		d. DATE THIS CONSENT EXECUTED	
9. CORPORATE PRINCIPAL	a. CORPORATE NAME AND BUSINESS ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)** BY	(Affix Corporate Seal)
		c. TYPED NAME AND TITLE	
		d. DATE THIS CONSENT EXECUTED	

*The Principal or authorized representative shall execute this Consent of Surety and Increase of Penalty with the modification to which it pertains. If the representative (e.g., attorney-in-fact) that signs the consent is not a member of the partnership, or joint venture, or an officer of the corporation involved, a Power-of-Attorney or a Certificate of Corporate Principal must accompany the consent.

10. CORPORATE/INDIVIDUAL SURETY (CO-SURETIES)

A	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY	(Affix Seal)
		c. TYPED NAME AND TITLE	
		d. DATE THIS CONSENT EXECUTED	
B	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY	(Affix Seal)
		c. TYPED NAME AND TITLE	
		d. DATE THIS CONSENT EXECUTED	
C	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY	(Affix Seal)
		c. TYPED NAME AND TITLE	
		d. DATE THIS CONSENT EXECUTED	

Add similar signature blocks on the back of this form if necessary for additional co-sureties.

Previous editions not usable
AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 1415 (REV. 7-93)
Prescribed by GSA - FAR (48 CFR) 53.228(

[FR Doc. 94–30632 Filed 12–27–94; 8:45 am]
BILLING CODE 6820–34–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1

[Federal Acquisition Circular 90–23; Item XXXVIII]

Federal Acquisition Regulation; OMB Control Numbers

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendment.

SUMMARY: The list of Office of Management and Budget approvals under the Paperwork Reduction Act has been updated to incorporate numerous additions and deletions which resulted from recent changes to the Federal Acquisition Regulation.

DATES: *Effective Date:* December 28, 1994.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–23, Technical Amendment.

Dated: December 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

48 CFR Part 1 is amended as set forth below:

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citation for 48 CFR part 1 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 1.105 is revised to read as follows:

1.105 OMB Approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from ten or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply:

FAR segment	OMB control No.
3.103	9000–0018
3.104–9	9000–0103
3.104–12(a)(12)	9000–0103
3.4	9000–0003
4.102	9000–0033
4.7	9000–0034
4.9	9000–0097
5.405	9000–0036
7.2	9000–0082
8.203–2	9000–0017
8.5	9000–0113
9.1	9000–0011
9.2	9000–0020
9.5	9000–0111
14.201	9000–0034
14.202–4	9000–0040
14.202–5	9000–0039
14.205	9000–0002
14.205–4(c)	9000–0037
14.214	9000–0105
14.406	9000–0038
14.5	9000–0041
15.106	9000–0034
15.404	9000–0037
15.7	9000–0078
15.8	9000–0013
15.804–8	9000–0115
15.812–1(b)	9000–0080
15.813–1	9000–0105
15.813–2	9000–0105
15.813–3	9000–0105
15.813–6	9000–0105
19.7	9000–0006
22.103	9000–0065
22.606–2(b)	1215–0157
22.8	1215–0072
22.11	9000–0066
22.13	1215–0072
22.14	1215–0072
22.15	9000–0127
23.602	9000–0107
27.3	9000–0095
27.4	9000–0090
28.1	9000–0045
28.106–1(b)	9000–0119
28.2	9000–0045
29.304	9000–0059
30	9000–0093
30.6	9000–0129
31.205–2	9000–0072
31.205–46	9000–0079
31.205–46(a)(3)	9000–0088
32	9000–0035
32.1	9000–0070
32.4	9000–0073
32.5	9000–0010
32.7	9000–0074
32.9	9000–0102
33	9000–0035
34.1	9000–0132
36.302	9000–0037
36.603	9000–0004 and 9000–0005
36.701	9000–0037
41.004–2(c)	9000–0125
42.203	9000–0026
42.7	9000–0013
42.12	9000–0076
42.13	9000–0076
42.14	9000–0056
45	9000–0075
46	9000–0077
47	9000–0061
48	9000–0027
49	9000–0028
50	9000–0029
51.1	9000–0031
51.2	9000–0032
52.203–2	9000–0018
52.203–4	9000–0003
52.203–7	9000–0091
52.203–8	9000–0103
52.203–9	9000–0103
52.204–3	9000–0097
52.207–3	9000–0114
52.208–1	9000–0017
52.214–14	9000–0047
52.214–15	9000–0044
52.214–16	9000–0044
52.214–17	9000–0018
52.214–21	9000–0039
52.214–26	9000–0034
52.214–28	9000–0013
52.215–1	9000–0034
52.215–2	9000–0034
52.215–6	9000–0046
52.215–11	9000–0048
52.215–19	9000–0044
52.215–20	9000–0047
52.215–21	9000–0078
52.215–24	9000–0013
52.215–25	9000–0013
52.215–26	9000–0080
52.215–32	9000–0105
52.215–40	9000–0015
52.216–2	9000–0068
52.216–3	9000–0068
52.216–4	9000–0068
52.216–5	9000–0071
52.216–6	9000–0071
52.216–7	9000–0069
52.216–10	9000–0067
52.216–13	9000–0069
52.216–15	9000–0069
52.216–16	9000–0067
52.216–17	9000–0067
52.219–9	9000–0006
52.219–10	9000–0006
52.219–19	9000–0100
52.219–20	9000–0100
52.219–21	9000–0100
52.222–2	9000–0065
52.222–4	1215–0119
52.222–6	1215–0140
52.222–8	1215–0149 and 1215–0017
52.222–11	9000–0014
52.222–18	9000–0127
52.222–21	1215–0072
52.222–22	1215–0072
52.222–23	1215–0072
52.222–25	1215–0072
52.222–26	1215–0072
52.222–27	1215–0072
52.222–35	1215–0072
52.222–36	1215–0072
52.222–41	1215–0017 and 1215–0150
52.222–46	9000–0066
52.223–1	9000–0021

FAR segment	OMB control No.
52.223–6(b)(5)	9000–0101
52.233–7	9000–0117
52.225–1	9000–0024
52.225–6	9000–0023
52.225–8	9000–0025
52.225–10	9000–0022
52.225–20	9000–0130
52.228–1	9000–0045
52.228–2	9000–0045
52.228–3	9000–0045
52.229–2	9000–0059
52.230–5	9000–0129
52.232–5	9000–0070
52.232–7	9000–0070
52.232–10	9000–0070
52.232–12	9000–0073
52.232–13	9000–0010
52.232–14	9000–0010
52.232–15	9000–0010
52.232–16	9000–0010
52.232–20	9000–0074
52.232–21	9000–0074
52.232–22	9000–0074
52.232–27	9000–0102
52.233–1	9000–0035
52.234–1	9000–0133
52.236–5	9000–0062
52.236–13	1220–0029 and 9000–0060
52.236–15	9000–0058
52.236–19	9000–0064
52.237–9	9000–0103
52.241–2	9000–0122
52.241–6	9000–0123
52.241–11	9000–0126
52.241–13	9000–0124
52.242–12	9000–0056
52.243–1	9000–0026
52.243–2	9000–0026
52.243–3	9000–0026
52.243–4	9000–0026
52.243–6	9000–0026
52.243–7	9000–0026
52.245–2	9000–0075
52.245–3	9000–0075
52.245–5	9000–0075
52.245–7	9000–0075
52.245–8	9000–0075
52.245–9	9000–0075
52.245–10	9000–0075
52.245–11	9000–0075
52.245–16	9000–0075
52.245–17	9000–0075
52.245–18	9000–0075
52.246–2	9000–0077
52.246–3	9000–0077
52.246–4	9000–0077
52.246–5	9000–0077
52.246–6	9000–0077
52.246–7	9000–0077
52.246–8	9000–0077
52.246–10	9000–0077
52.246–12	9000–0077
52.246–15	9000–0077
52.247–2	9000–0053
52.247–29	9000–0061
52.247–30	9000–0061
52.247–31	9000–0061
52.247–32	9000–0061
52.247–33	9000–0061
52.247–34	9000–0061
52.247–35	9000–0061
52.247–36	9000–0061
52.247–37	9000–0061
52.247–38	9000–0061
52.247–39	9000–0061
52.247–40	9000–0061
52.247–41	9000–0061
52.247–42	9000–0061
52.247–43	9000–0061
52.247–44	9000–0061
52.247–51	9000–0057
52.247–53	9000–0055
52.247–57	9000–0061
52.247–63	9000–0054
52.247–64	9000–0054
52.248–1	9000–0027
52.248–2	9000–0027
52.248–3	9000–0027
52.249–2	9000–0028
52.249–3	9000–0028
52.249–5	9000–0028
52.249–6	9000–0028
52.249–11	9000–0028
52.250–1	9000–0029
52.253–1	9000–0104
53.105	9000–0104
53.236–1(a)	9000–0037
SF 24	9000–0045
SF 25	9000–0045
SF 25–A	9000–0045
SF 28	9000–0001
SF 34	9000–0045
SF 35	9000–0045
SF 119	9000–0003
SF 129	9000–0002
SF 254	9000–0004
SF 255	9000–0005
SF 273	9000–0045
SF 274	9000–0045
SF 275	9000–0045
SF 294	9000–0006
SF 295	9000–0007
SF 1403	9000–0011
SF 1404	9000–0011
SF 1405	9000–0011
SF 1406	9000–0011
SF 1407	9000–0011
SF 1408	9000–0011
SF 1411	9000–0013
SF 1412	9000–0013
SF 1413	9000–0014
SF 1416	9000–0045
SF 1417	9000–0037
SF 1418	9000–0119
SF 1423	9000–0015
SF 1424	9000–0015
SF 1426	9000–0015
SF 1427	9000–0015
SF 1428	9000–0015
SF 1429	9000–0015
SF 1430	9000–0015
SF 1431	9000–0015
SF 1432	9000–0015
SF 1433	9000–0015
SF 1434	9000–0015
SF 1435	9000–0012
SF 1436	9000–0012
SF 1437	9000–0012
SF 1438	9000–0012
SF 1439	9000–0012
SF 1440	9000–0012
SF 1443	9000–0010
SF 1444	9000–0089
SF 1445	9000–0089
SF 1446	9000–0089
All other requirements	9000–0063

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 27 and 29

Rotorcraft Regulatory Changes Based on European Joint Airworthiness Requirements Proposals; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No. 28008; Notice No. 94–36]

RIN: 2120–AC27

Rotorcraft Regulatory Changes Based on European Joint Airworthiness Requirements Proposals

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes changes to the type certification requirements for both normal and transport category rotorcraft. The changes would revise airworthiness standards for performance, systems, propulsion, and airframes. The changes would increase the regulatory safety level, clarify existing regulations, and standardize terminology. The changes are based on standards that are being incorporated by the European Joint Aviation Authorities for the Joint Aviation Requirements (JAR) 27 and 29. These proposed changes are intended to harmonize the Federal Aviation Regulations rotorcraft type certification requirements and the European JAR.

DATES: Comments must be received on or before March 28, 1995.

ADDRESSES: Comments on this notice should be mailed in triplicate to: Federal Aviation Administration (FAA), Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 28008; 800 Independence Avenue SW, Washington, DC 20591. Comments delivered must be marked Docket No. 28008. Comments may be examined in Room 915G weekdays between 9 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Carroll Wright, Rotorcraft Directorate, Aircraft Certification Service, Regulations Group, ASW–111, FAA, Fort Worth, Texas 76193–0111, telephone number (817) 222–5120.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit written data, views, or arguments on this proposed rule. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All comments received on or before the closing date for comments will be considered before taking action on this proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments on Docket No. 28008." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of Public Affairs, Attention: Public Inquiry Center, APA–200, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, NPRM Distribution System, which describes the application procedure.

Background

At a meeting between FAA representatives and the European Airworthiness Authorities Steering Committee (AASC) in Washington, DC, in April 1983, the aviation manufacturing industry requested that the certification rules of Europe and the United States be standardized. The AASC agreed to provide the FAA with a comprehensive list of recommended changes for the regulations in part 29 of Title 14 of the Code of Federal Regulations (CFR). These changes would make part 29 acceptable to AASC members for adoption as airworthiness standards. The AASC subsequently established a Joint Aviation Requirements (JAR) 29 group to develop transport category rotorcraft airworthiness standards for the issuance of European type certificates. The JAR 29 group was tasked with providing a list of recommended changes for part 29. The FAA solicited comments on key issues. The initial responses to that solicitation were published in the **Federal Register** (49 FR 19309, May 7, 1984). On September 15, 1984, the AASC submitted a more comprehensive list of 92 suggested changes to part 29. An FAA review found that 34 of these proposals had either been incorporated, in whole or in part, in part 29 or were being considered in active rulemaking projects. Of the 58 proposals remaining, 25 were rejected for various reasons involving failure to meet Executive Order or Department of Transportation rulemaking requirements. The FAA provided the results of the review to the JAR 29 group including a summary of the status of the proposals being considered in active rulemaking projects.

During further review of the remaining AASC proposals not included in existing rulemaking projects, the FAA determined that several of the proposals warranted public discussion. Accordingly, the FAA held a public meeting in Fort Worth, Texas, May 1–2, 1986 (51 FR 4504, February 5, 1986). Over 50 persons attended the meeting, which remained in session until each proposal not already in rulemaking had been discussed. The FAA subsequently issued NPRM No. 89–10 (54 FR 17396; April 25, 1989), which addressed the AASC proposals and resulted in the issuance of Amendments 27–27 and 29–31 (55 FR 38964; September 21, 1990).

The AASC activities were absorbed by the Joint Aviation Authorities (JAA), and the JAA established the Helicopter Airworthiness Study Group (HASG) to formulate JAR 27 and 29 for use by the 19 JAA countries. The JAA invited the FAA and industry groups to participate in HASG meetings on March 20–21, 1990. Members of Association Europeene des Constructeurs de Materiel Aerospatial (AECMA) represented the European manufacturers at the HASG Meetings, and AECMA invited members of the Aerospace Industries Association of America (AIA) to represent U.S. manufacturers. The HASG was chartered to formulate JAR 29, and subsequently JAR 27, to parallel as closely as possible part 29 as amended through Amendment 29–31 effective September 21, 1990, and part 27 as amended through Amendment 27–27 effective September 21, 1990. The JAR 29 includes FAA NPRM's 89–26 (54 FR 39086, September 22, 1989) which proposes a new 30 second/2 minute One Engine Inoperative power rating, 89–29 (54 FR 42716, October 17, 1989) which proposes rotorburst protection, 90–1 (55 FR 698, January 8, 1990) which proposes new performance requirements, and 90–24 (55 FR 41000, October 5, 1990) which proposes a Crash Resistant Fuel System; JAR 27 is

to also include NPRM's 89–26 and 90–24.

Aviation Rulemaking Advisory Committee (ARAC) Considerations

By announcement in the **Federal Register** (57 FR 58846, December 11, 1992), the JAR–FAR 27 and 29 Harmonization Working Group was chartered by the ARAC. The working group included representatives from four major rotorcraft manufacturers (normal and transport) and representatives from AIA, AECMA, Helicopter Association International (HAI), JAA, and the FAA Rotorcraft Directorate. This broad participation is consistent with FAA policy to have all known interested parties involved as early as practicable in the rulemaking process.

The Harmonization Working Group was tasked with making recommendations to the ARAC concerning the FAA acceptance or rejection of JAA Notice of Proposed Amendments (NPA's) recently coordinated between the JAA and the FAA. The ARAC subsequently recommended that the FAA revise the certification standards for normal and transport category rotorcraft as now contained in JAR 27 and 29.

FAA Evaluations of ARAC and JAA Proposals

The FAA has evaluated the ARAC recommendations and proposes changes to the rotorcraft certification rules in both parts 27 and 29. These proposed changes have evolved from the FAA–JAA industry meetings of 1990–1992 and the ARAC recommendations of 1993. These proposed changes would (1) incorporate current design and testing practices into the rules by requiring additional performance data, additional powerplant and rotor brake controls, and bird-strike protection, and (2) harmonize the certification requirements between Title 14 and the JAR. The proposals for part 27 include JAA's harmonized NPA's 27-basic and 27–1; and the proposals for part 29 include NPA's 29-basic and 29–1 through 29–5. All sections of the harmonized NPA's are included in these proposals except for § 27.602 of NPA 27-basic and § 29.602 of NPA 29–4. Those JAR sections include a critical parts plan that would control the design, substantiation, manufacture, maintenance, and modification of critical parts. While the JAA prescribes manufacturing and maintenance requirements in JAR 29, the FAA does not do the same in part 29. Part 21 of Title 14 addresses manufacturing requirements; part 43 of Title 14 prescribes maintenance requirements. Part 29 contains the airworthiness requirements for rotorcraft certification; part 29 addresses maintenance standards only to the extent that it mandates that the type certificate holder prepare Instructions for Continued Airworthiness, which includes the maintenance manual or section and maintenance instructions, and the Airworthiness Limitations section. Accordingly, the FAA may propose critical parts requirements in a separate rulemaking, which may also propose changes to parts 21 and 43.

General Discussion of the Proposals

These proposals would introduce safety improvements, clarify existing regulations, and standardize terminology with the JAR's by revising the airworthiness standards for rotorcraft performance, systems, propulsion, and airframes. These proposed changes are based on requirements that have been adopted by JAA for JAR 27 and 29. The part 27 proposals would require all-engines-operating (AEO) climb performance data, powerplant controls to maintain any set position, and rotor brake control standards. The proposals would also provide an option for the certification of part 27 rotorcraft to Category A; i.e., one engine inoperative (OEI) requirements. The part 29 proposals would provide standards for electrical bonding of airframe components to protect against lightning and precipitation static discharge, a design assessment of rotors and drive train, and bird-strike protection. Additional powerplant instruments are proposed. The part 29 proposals would also clarify performance requirements for Category A, flutter and divergence applicability, and emergency electrical power supply requirements.

Discussion of Specific Proposals

Section 27.1 Applicability

Proposed new § 27 1(c) would provide an optional basis for normal category multiengine rotorcraft to be certificated to Category A requirements by meeting those design and performance requirements of part 29 as specified in a new appendix C to part 27

Section 27.65 Climb: all engines operating

This proposed revision of § 27.65(b)(2) would require a determination of AEO climb performance for all rotorcraft. Currently rotorcraft AEO climb performance is required only for ambient conditions where the never-exceed speed (V_{ne}) is less than the speed for the best rate of climb (V_y). Climb performance information is necessary for operational planning for rotorcraft, e.g., planning for obstacle clearance. Manufacturers have historically provided this information even though it is not required by the existing regulations. This change would incorporate that current practice as a requirement in the FAR.

Section 27.1141 Powerplant controls: general

This proposed new § 27.1141(d) would add to part 27 the requirement of § 29.1141(d) that powerplant controls must maintain any set position. The proposed requirement states that each control "must be able to maintain any set position without constant attention or tendency to creep due to control loads or vibration." "Must be able to," in this regard, would require that the rotorcraft have identifiable design features that keep the controls from moving. This requirement would improve safety by reducing pilot work load for part 27 rotorcraft. Because most rotorcraft manufacturers already comply voluntarily with this standard, this should require no significant design or manufacturing effort.

Section 27.1151 Rotor brake controls

This proposed new section would add to part 27 the requirements of § 29.1151 on rotor brake controls. These proposed requirements are necessary for the safe operation of any rotorcraft equipped with a rotor brake. Requirements to prevent inadvertent application of rotor brakes in flight are necessary to prevent possible damage or fire due to rotor brake application. Current rotorcraft rotor brake installations normally incorporate these design features; no significant design or manufacturing effort should be necessary.

Appendix C to Part 27

This proposed new appendix would provide a list of part 29 Category A standards that are directly related to the continued safe powered flight capability of a multiengine rotorcraft in the event of engine or other system failure. The proposed standards would be required to be met for an optional Category A approval for a part 27 rotorcraft.

Section 29.547 Main and tail rotor structures

Proposed new § 29.547(b) would require a design assessment that identifies the critical components of the main and tail rotor structures. The design assessment must also identify the means (such as scheduled inspection, removal, and replacement of

components) that minimize the likelihood of failure for each critical component.

Section 29.610 Lightning and static electricity protection

The word "structure" would be added to current § 29.610(a) to clarify that these requirements address the rotorcraft structure and not equipment, systems, and installations that are adequately covered under the requirements of § 29.1309. The proposed addition of the word "structure" to paragraph (a) is intended to clarify that the metallic components and nonmetallic components of paragraphs (b) and (c) are structural components. Proposed new paragraph (d) would require electrical bonding of the rotorcraft components for protection against hazardous effects from lightning and discharge of static electricity. In this regard, the reference to the bonding and protection "be[ing] such as to" would require that the rotorcraft have identifiable design features that achieve the standards required in paragraphs (d)(1) through (4). Part 29 does not currently provide electrical bonding requirements, and experience has shown that inadequate bonding can result in hazardous conditions due to discharge of static electricity. The proposed new paragraph (d)(4) would require electrical bonding and protection against lightning and static electricity that would reduce the effects on the functioning of essential electrical and electronic equipment to an acceptable level (as determined by §§ 29.1309 and 29.1431).

Section 29.629 Flutter and divergence

This proposed revision of § 29.629 would add the words "and divergence" to the title and text of the section. This proposal would extend the requirements to cover aeroelastic instability other than flutter of aerodynamic surfaces. This proposal would require the use of rational analysis, tests, or a combination of analysis and tests to demonstrate freedom from aeroelastic instability for the basic design. Most manufacturers currently do this type of analysis or test; this change would require formal documentation and approval of that analysis or test.

Section 29.631 Bird strike

This proposed new section would require bird-strike protection for transport rotorcraft. Rotorcraft, as well as airplanes, are exposed to the possibility of collision with a bird. With the potential for higher speeds by modern transport rotorcraft designs and the changes in material technology, the possibility of increased damage from bird strikes exists. In addition, the effects of bird strikes on new materials used in rotorcraft must be evaluated. The FAA has determined that a requirement for protection against catastrophic effects from impact with a 2.2 pound (1 kilogram) bird is reasonable for rotorcraft certificated in the transport category (part 29). A 2.2 pound bird represents the typical size for intended structural capability; therefore, such protection is being proposed. Proposed § 29.631 would require that the rotorcraft be designed to assure capability of continued safe flight and landing (for Category A) or safe landing (for Category B) after bird strike. In this regard, "capability" means that the design has features that assure continued safe flight and/or landing, as would be required. Proposed § 29.631 would also require that substantiation of the design be based on tests or analysis of tests carried out on sufficiently representative structures of design similar to that of the design to be approved. In this regard, "sufficiently" means that the structures at least represent the design to be approved.

Section 29.917 Design

A new § 29.917(b) is proposed for this section, and redesignation of existing paragraph (b) as (c) is proposed. This proposed new § 29.917(b) would require a design assessment that identifies critical components of the rotor drive system. The design assessment would also identify the means that minimize the likelihood of failure for each critical component (such as scheduled inspection, removal, and replacement of components). This proposed section is a companion to the rotor structure proposal of § 29.547.

Section 29.923 Rotor drive system and control mechanism tests

This proposed revision to § 29.923(b)(3)(i) would increase the testing for 2 minute OEI power from one to two runs per cycle. The JAA are concerned that a possible inconsistency exists in the current rule. Using one run per cycle, a higher and potentially more damaging power rating could be substantiated by less testing at the 2-minute OEI power than at the 2½ minute OEI power. The FAA agrees and increased testing for 2 minute OEI power is proposed.

Section 29.1305 Powerplant instruments

The current rule requires an oil pressure warning device, which could be a simple light, for each pressure-lubricated gearbox. Proposed new § 29.1305(a)(6) would add a requirement for an oil pressure indicator for each pressure-lubricated gearbox. This change would provide the crew with an early warning of oil pressure problems and confirm that the oil pressure warning is valid. The proposed addition of a new § 29.1305(a)(6) would necessitate renumbering of existing paragraphs (a)(6) through (a)(25) as (a)(7) through (a)(26).

Section 29.1309 Systems, equipment, and installations

Section 29.610 was referenced in § 29.1309(h) to require protection against a catastrophic systems failure due to lightning. Since § 29.1309(h) applies to lightning protection of systems and equipment, it is unnecessary to reference § 29.610, which applies to lightning protection of structures, Therefore, this proposed change would delete the reference to § 29.610 in § 29.1309(h).

Section 29.1351 General

The proposed changes to §§ 29.1351(d) and 29.1351(d)(1) would clarify that the regulation applies to the normal electrical power generating system and would editorially change the § 29.1351(d) heading. The § 29.1351(d) heading would change from, "Operation without normal electrical power" to "Operation with the normal electrical power generating system inoperative," and "generating system" would be added after electrical power in § 29.1351(d)(1).

The proposed additions to § 29.1351(d)(2) would provide requirements for the emergency electrical power system for Category A rotorcraft. Section 29.1351(d)(2) is entitled "Category A Aircraft." The proposed new § 29.1351(d)(2)(i) would require that emergency electrical power be provided to those systems necessary for continued safe flight and landing for rotorcraft certificated to Category A requirements. Consideration of the possible duration of flight time to reach a suitable landing site and make a safe landing would be required. A minimum of 30 minutes flight time is necessary for continued safe flight and landing for Category A rotorcraft. Proposed new § 29.1351(d)(2)(ii) would require that loss of both normal and emergency electrical power systems be shown to be extremely improbable. This will ensure that no single failure (such as effects of fire or loss of junction box) will result in the disabling of both the normal and emergency electrical power systems. Finally, a new § 29.1351(d)(2)(iii) would require that the emergency electrical power system include independent,

automatic features for electrical load shedding to conserve the emergency electrical power (batteries) after loss of the normal electrical power generating system. The intent is to allow the flight crew time to take corrective actions for engine fire, cockpit fire, or other in-flight emergencies common to situations resulting in loss of the normal electrical power generating system without being distracted by a need to manually switch off or shed electrical power. In this regard, "immediate" refers to those systems that, if they did not continue to operate, would necessitate the attention of the flight crew.

Section 29.1587 Performance information

Proposed new § 29.1587(a)(6) would require that the climb gradient information necessary for the pilot to determine the allowable maximum takeoff weight to clear any obstacle in the takeoff path be added to the Rotorcraft Flight Manual for Category A rotorcraft. Because the data are already available from the other requirements, the only additional requirement would be to incorporate this data into the Rotorcraft Flight Manual.

Appendix B to Part 29 Airworthiness Criteria for Helicopter Instrument Flight

The proposed addition of a section VIII(b)(6) to Appendix B would provide a reference to new § 29.1351(d)(2) to clarify that requirements for operation with the normal electrical power generating system inoperative apply to Instrument Flight Rules (IFR) certificated rotorcraft. When the emergency electrical power source provided for an IFR certificated rotorcraft is time limited; e.g., a battery, the required duration will depend on the type and role of the rotorcraft. However, an endurance of less than 30 minutes would not be acceptable.

Regulatory Evaluation Summary

Introduction

Proposed changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society outweigh the potential costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Finally, the Office of Management and Budget has directed agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule (1) would generate benefits exceeding its costs and is neither a significant regulatory action as defined in the Executive Order nor significant as defined in DOT's Policies and Procedures, (2) would not have a significant impact on a substantial number of small entities, and (3) would lessen restraints on international trade. These analyses, available in the docket, are summarized below.

Costs and Benefits

All of the proposed changes to part 27 and all but four of the proposed changes to part 29 would impose no or significant costs on rotorcraft manufacturers because they reflect current design practices. In recent years, manufacturers have incorporated engineering and structural improvements into rotorcraft designs that exceed the minimum regulatory requirements with the aim of increasing operating efficiencies, payload capabilities, and marketability in world markets. Most new rotorcraft designs are based on existing designs. Many of these improvements have also improved safety. Codification of these improvements and other proposed changes would ensure that these features are incorporated in all future rotorcraft designs.

Additionally, adoption of the proposed changes would increase harmonization and commonality between U.S. and European airworthiness standards. Harmonization would eliminate differences between airworthiness requirements, thus reducing manufacturers' cost for dual certification. Based on experience in a recent certification, one rotorcraft manufacturer indicated that complying with different FAA/JAA requirements resulted in several hundred thousand dollars in excessive certification costs. Aside from the benefits of enhanced safety levels as described above, the benefits of certification cost savings would, by themselves, outweigh the relatively modest increase in certification costs that the amendments would impose.

Following is a brief summary of the four proposed changes to part 29 that would impose additional costs totalling approximately $150,000 per type certification. The safety benefits of these proposed changes are expected to easily exceed the incremental costs.

Section 29.547—Main and tail rotor structure. While manufactures currently perform the proposed design assessment as an integral part of the design requirements of § 29.917, there would be some incremental costs to formalize the existing information. These costs are included in the cost estimates of proposed § 29 917 summarized below. Formal identification and assessment of critical component failures would increase safety by providing more comprehensive maintenance information to operators. The benefits of averting a single catastrophic accident would exceed the relatively low incremental costs of compliance.

Section 29.631—Bird strike. Manufacturers indicate that present rotorcraft structures can withstand impacts from a 2.2 pound bird; therefore, no incremental manufacturing costs are anticipated to implement new designs. Nonrecurring testing and analysis costs of the proposed requirement are estimated to be $100,000 per type certification. A review of National Transportation Safety Board (NTSB) data for the period 1983–1991 reveals two rotorcraft accidents caused by bird strikes. One accident resulted in one serious injury, one minor injury, and substantial damage to the rotorcraft (tail rotor separation); in the other accident the rotorcraft was destroyed but there were no injuries. There is at least an equal probability of such accidents and the resultant damage in the future, given the tendencies toward higher operating speeds and use of composite materials. The benefits of averting a single catastrophic accident would exceed the incremental costs.

Section 29.917—Design. The incremental costs to formalize existing design information for the rotor structure (proposed § 29.547 above) and drive system are estimated to total $44,000 per type certification. Formal assessment and identification of critical components of the rotor drive system would increase safety by providing more comprehensive maintenance information to operators. The benefits of averting a single catastrophic accident caused directly or indirectly by a lack of relevant data would easily exceed the incremental costs of providing that data.

Section 29.1587—Performance information. Because the required climb gradient data would already be available from the results of flight tests required to obtain performance information, the only additional costs would be those associated with incorporating the data into the Rotorcraft Flight Manual, estimated to total $5,500 per certification. Although NTSB accident records do not include any accidents directly attributable to lack of performance data, there were a few accidents in which such data were ignored or misinterpreted. The availability and accuracy of such data would enhance operational safety The

benefits of averting a single catastrophic accident caused directly or indirectly by a lack of relevant performance information would easily exceed the incremental costs of providing that data.

International Trade Impact Analysis

The proposed rule would not constitute a barrier to international trade, including the export of American rotorcraft to foreign countries and the import of foreign rotorcraft into the United States. Instead, the proposed changes on rotorcraft certification procedures, harmonized with those of the JAA, would lower dual certification costs, thereby enhancing free trade.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. Based on the criteria of FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, the FAA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Conclusion

For the reasons discussed above, including the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the Office of Information and Regulatory Affairs (OIRA) in conjunction with the FAA has determined that this proposed regulation is not a significant regulatory action under Executive Order 12866 and, therefore, was not subject to centralized regulatory review by the OIRA. In addition, the FAA certifies that this regulation 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. This proposal is considered to be nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under FOR FURTHER INFORMATION CONTACT

List of Subjects in 14 CFR Parts 27 and 29

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

The Proposed Amendments

Accordingly, the FAA proposes to amend parts 27 and 29 of the Federal Aviation Regulations (14 CFR parts 27 and 29) as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g).

2. Section 27.1 is amended by adding a new paragraph (c) to read as follows:

§ 27.1 Applicability.

* * * * *

(c) Multiengine rotorcraft may be type certificated as Category A provided the requirements of appendix C of this part are met.

3. Section 27.65 is amended by revising paragraphs (b)(2) and (b)(2)(ii) to read as follows:

§ 27.65 Climb: all engines operating.

* * * * *

(b) * * *

(2) The steady rate of climb must be determined—

* * * * *

(ii) Within the range from sea level up to the maximum altitude for which certification is requested;

* * * * *

4. Section 27.1141 is amended by redesignating existing paragraphs (c) and (d) as paragraphs (d) and (e) and by adding a new paragraph (c) to read as follows:

§ 27.1141 Powerplant controls: general.

* * * * *

(c) Each control must be able to maintain any set position without—

(1) Constant attention; or

(2) Tendency to creep due to control loads or vibration.

* * * * *

5. Section 27.1151 is added to read as follows:

§ 27.1151 Rotor brake controls.

(a) It must be impossible to apply the rotor brake inadvertently in flight.

(b) There must be means to warn the crew if the rotor brake has not been completely released before takeoff.

6. Part 27 is amended by adding a new appendix C to read as follows:

Appendix C to Part 27—Criteria for Category A

C27.1 General.

A small multiengine rotocraft may not be type certificated for Category A operation unless it meets the design installation and performance requirements contained in this appendix in addition to the requirements of this part.

C27.2 Applicable part 29 sections.

The following sections of part 29 of this chapter must be met in addition to the requirements of this part:

29.45(a) and (b)(2)—General.
29.49(a)—Performance at minimum operating speed.
29.51—Takeoff data: General.
29.53—Takeoff: Category A.
29.55—Takeoff decision point: Category A.
29.59—Takeoff path: Category A.
29.60—Elevated heliport takeoff path: Category A.
29.61—Takeoff distance: Category A.
29.62—Rejected takeoff: Category A.
29.64—Climb: General.
29.65(a)—Climb: AEO.
29.67(a)—Climb: OEI.
29.75—Landing: General.
29.77—Landing decision point: Category A.
29.79—Landing: Category A.
29.81—Landing distance (Ground level sites): Category A.
29.85—Balked landing: Category A.
29.87(a)—Height-velocity envelope.
29.547(a) and (b)—Main and tail rotor structure.
29.571—Fatigue evaluation of structure. AC Material only: AC29-2A Item 230 Paragraph 10.
29.861(a)—Fire protection of structure, controls, and other parts.
29.901(c)—Powerplant: Installation.
29.903(b)(c) and (e)—Engines.
29.908(a)—Cooling fans.
29.917(b) and (c)(1)—Rotor drive system: Design.
29.927(c)(1)—Additional tests.
29.953(a)—Fuel system independence.
29.1027(a)—Transmission and gearboxes: General.
29.1045(a)(1), (b), (c), (d), and (f)—Climb cooling test procedures.
29.1047(a)—Takeoff cooling test procedures.
29.1181(a)—Designated fire zones: Regions included.
29.1187(e)—Drainage and ventilation of fire zones.
29.1189(c)—Shutoff means.
29.1191(a)(1)—Firewalls.
29.1193(e)—Cowling and engine compartment covering.
29.1195(a) and (d)—Fire extinguishing systems (one shot).
29.1197—Fire extinguishing agents.
29.1199—Extinguishing agent containers.
29.1201—Fire extinguishing system materials.
29.1305(a)(6) and (b)—Powerplant instruments.
29.1309(b)(2)(i) and (d)—Equipment, systems, and installations.
29.1323(c)(1)—Airspeed indicating system.
29.1331(b)—Instruments using a power supply.

29.1351(d)(2)—Electrical systems and equipment: General (operation without normal electrical power).
29.1587(a)—Performance information.

3. In complying with the paragraphs listed in paragraph 2 above, relevant material in AC 29–2A should be used.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

7. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g).

8. Section 29.547 is amended by revising the heading; revising paragraph (a); adding a new paragraph (b); removing the word "main" in the introductory text of paragraphs (c), (d), and (e); and revising paragraph (e)(1)(ii) to read as follows:

§ 29.547 Main and tail rotor structure.

(a) A rotor is an assembly of rotating components, which includes the rotor hub, blades, blade dampers, the pitch control mechanisms, and all other parts that rotate with the assembly.

(b) Each rotor assembly must be designed as prescribed in this section and must function safely for the critical flight load and operating conditions. A design assessment must be performed, including a detailed failure analysis to identify all failures that will prevent continued safe flight or safe landing, and must identify the means to minimize the likelihood of their occurrence.

* * * * *

(e) * * *

(1) * * *

(ii) For the main rotor, the limit engine torque specified in § 29.361.

* * * * *

9. In § 29.610 the heading is revised; the word "structure" is added between the words "rotorcraft" and "must" in paragraph (a); and a new paragraph (d) is added to read as follows:

§ 29.610 Lightning and static electricity protection.

* * * * *

(d) The electrical bonding and protection against lightning and static electricity must be such as to—

(1) Minimize the accumulation of electrostatic charge;

(2) Minimize the risk of electrical shock to crew, passengers, and service and maintenance personnel using normal precautions;

(3) Provide an electrical return path, under both normal and fault conditions, on rotorcraft having grounded electrical systems; and

(4) Reduce to an acceptable level the effects of lightning and static electricity on the functioning of essential electrical and electronic equipment.

10. Section 29.629 is revised to read as follows:

§ 29.629 Flutter and divergence.

Each aerodynamic surface of the rotorcraft must be free from flutter and divergence under each appropriate speed and power condition.

11. A new § 29.631 is added to read as follows:

§ 29.631 Bird strike.

The rotorcraft must be designed to assure capability of continued safe flight and landing (for Category A) or safe landing (for Category B) after impact with a 2.2 lb (1.0 kg) bird when the velocity of the rotorcraft (relative to the bird along the flight path of the rotorcraft) is equal to V_{NE} or V_H (whichever is the lesser) at altitudes up to 8,000 feet. Compliance must be shown by tests or by analysis based on tests carried out on sufficiently representative structures of similar design.

12. Section 29.917 is amended by redesignating existing paragraph (b) as (c) and adding a new paragraph (b) to read as follows:

§ 29.917 Design.

* * * * *

(b) *Design assessment.* A design assessment must be performed to ensure that the rotor drive system functions safely over the full range of conditions for which certification is sought. The design assessment must include a detailed failure analysis to identify all failures that will prevent continued safe flight or safe landing and must identify the means to minimize the likelihood of their occurrence.

* * * * *

13. Section 29.923 is amended by revising paragraph (b)(3)(i) to read as follows:

§ 29.923 Rotor drive system and control mechanism tests.

* * * * *

(b) * * *

(3) * * *

(i) Immediately following any one 5-minute power-on run required by paragraph (b)(1) of this section, simulate a failure for each power source in turn, and apply the maximum torque and the maximum speed for use with 30-second OEI power to the remaining affected drive system power inputs for not less than 30 seconds. Each application of 30-second OEI power must be followed by two applications of the maximum torque and the maximum speed for use with the 2 minute OEI power for not less than 2 minutes each; the second application must follow a period at stabilized continuous or 30 minute OEI power (whichever is requested by the applicant). At least one run sequence must be conducted from a simulated "flight idle" condition.

* * * * *

14. Section 29.1305 is amended by redesignating existing paragraphs (a)(6) through (a)(25) as paragraphs (a)(7) through (a)(26) and adding a new paragraph (a)(6) to read as follows:

§ 29.1305 Powerplant instruments.

* * * * *

(a) * * *

(6) An oil pressure indicator for each pressure-lubricated gearbox;

* * * * *

15. Section 29.1309 is amended by revising paragraph (h) to read as follows:

§ 29.1309 Equipment, systems, and installations.

* * * * *

(h) In showing compliance with paragraphs (a) and (b) of this section, the effects of lightning strikes on the rotorcraft must be considered.

16. Section 29.1351 is amended by revising the heading of paragraph (d), redesignating the introductory text of paragraph (d) as (d)(1) and adding the words "generating system" after the words "normal electrical power" in new (d)(1), redesignating paragraphs (d)(1), (d)(2), and (d)(3) as (d)(1)(i), (d)(1)(ii), and (d)(1)(iii), and adding a new paragraph (d)(2) to read as follows:

§ 29.1351 General.

* * * * *

(d) *Operation with the normal electrical power generating system inoperative.* * * *

* * * * *

(2) *Additional requirements for Category A Rotorcraft.*

(i) Unless it can be shown that the loss of the normal electrical power generating system is extremely improbable, an emergency electrical power system, independent of the normal electrical power generating system, must be provided, with sufficient capacity to power all systems necessary for continued safe flight and landing.

(ii) Failures, including junction box, control panel, or wire bundle fires, which would result in the loss of the normal and emergency systems, must be shown to be extremely improbable.

(iii) Systems necessary for immediate safety must continue to operate

following the loss of the normal electrical power generating system, without the need for flight crew action.

17. Section 29.1587 is amended by adding a new paragraph (a)(6), removing "and" from end of paragraph (a)(4), and adding "and" to end of paragraph (a)(5).

§ 29.1587 Performance information.

* * * * *

(a) * * *

(6) The steady gradient of climb for each weight, altitude, and temperature for which takeoff data are to be scheduled, along the takeoff path determined in the flight conditions required in § 29.67 (a)(1) and (a)(2):

(i) In the flight conditions required in § 29.67(a)(1) between the end of the takeoff distance and the point at which the rotorcraft is 200 feet above the takeoff surface (or 200 feet above the lowest point of the takeoff profile for elevated heliports).

(ii) In the flight conditions required in § 29.67(a)(2) between the points at which the rotorcraft is 200 and 1000 feet above the takeoff surface (or 200 and 1000 feet above the lowest point of the takeoff profile for elevated heliports).

* * * * *

18. Part 29 Appendix B is amended by adding a new paragraph VIII(b)(6).

Appendix B to Part 29—Airworthiness Criteria for Helicopter Instrument Flight

* * * * *

VIII. * * *

(b) * * *

(6) In determining compliance with the requirements of § 29.1351(d)(2), the supply of electrical power to all systems necessary for flight under IFR must be included in the evaluation.

Issued in Washington, DC, on December 12, 1994.

Thomas E. McSweeny,

Director, Aircraft Certification Service.

[FR Doc. 94–31311 Filed 12–27–94; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday,
December 28, 1994

Part IV

Department of Health and Human Services

Public Health Service; Office of the Assistant Secretary for Health; Agency for Health Care Policy and Research; Substance Abuse and Mental Health Services Administration; Centers for Disease Control; Agency for Toxic Substances and Disease Registry; Health Resources and Services Administration; and Food and Drug Administration

Privacy Act of 1974; Annual Publication of Systems of Records

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Office of the Assistant Secretary for Health; Privacy Act of 1974; Annual Publication of Systems of Records Notices

AGENCY: Public Health Service, HHS.

ACTION: Publication of minor changes to systems of records notices.

SUMMARY: In accordance with Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," the Office of the Assistant Secretary for Health (OASH) in the Public Health Service (PHS) has reviewed its system notices and determined that there are no changes.

SUPPLEMENTARY INFORMATION: OASH has completed the annual review of its systems of records. Since the publication of December 29, 1993, OASH has made no changes to its inventory of systems of records that affect the public's right or need to know. A Table of Contents of active systems of records is published below. The complete text of the system notices was last published in the Office of the Federal Register's 1991 biennial Compilation of Privacy Act Issuances.

Dated: November 7, 1994.

Ellen Wormser,

Director, Office of Organization and Management System.

Table of Contents

09–37–0001 Office of the Assistant Secretary for Health Correspondence Control System, HHS/OASH/OM.
09–37–0002 PHS Commissioned Corps Personnel Records, HHS/OASH/OSG.
09–37–0003 PHS Commissioned Corps Medical Records, HHS/OASH/OSG.
09–37–0005 PHS Commissioned Corps Board Proceedings, HHS/OASH/OSG.
09–37–0006 PHS Commissioned Corps Grievance, Investigatory, and Disciplinary Files, HHS/OASH/OSG.
09–37–0008 PHS Commissioned Corps Unofficial Personnel Files and Other Station Files, HHS/OASH/OSG.
09–37–0017 Proceedings of the Board for Correction of Public Health Service Commissioned Corps Records, HHS/OASH/OM.
09–37–0020 Office of Minority Health Grants Records System, HHS/OASH/OMH.
09–37–0021 Public Health Service Records Related to Inquiries and Investigations of Scientific Misconduct, HHS/OASH/ORI.
09–37–0022 Records of Health Experts Maintained by the Office of International Health, HHS/OASH/OIH.

[FR Doc. 94–29522 Filed 12–27–94; 8:45 am]
BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Department of Health and Human Services (HHS); Public Health Service (PHS); Agency for Health Care Policy and Research (AHCPR).

ACTION: Annual Publication of Revisions to PHS Privacy Act System Notices.

SUMMARY: The Agency for Health Care Policy and Research (AHCPR) is publishing this notice in accordance with Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," which requires that agencies review each system of records annually and publish any minor changes in the **Federal Register.**

The AHCPR has completed the annual review of its systems of records and is publishing below (1) a table of contents which lists all active systems of records in AHCPR, and (2) those minor changes which an individual needs to know to obtain his or her records, such as changes in the system location of records or the address of system managers.

Dated: November 4, 1994.

Clifton R. Gaus,

Administrator.

Table of Contents

09–35–0001 Agency for Health Care Policy and Research, Grants Information and Tracking System with Contracts Component (GIAnT), HHS/AHCPR/OM.
09–35–0002 National Medical Expenditure Survey, HHS/AHCPR/CGHSIR.
09–35–0003 AIDS Cost and Service Utilization Survey (ACSUS), HHS/AHCPR/CGHSER.
09–35–0004 Medical Treatment Effectiveness Program (MEDTEP) Research, HHS/AHCPR.

09–35–0004

SYSTEM NAME:

Agency for Health Care Policy and Research, Medical Treatment Effectiveness Program (MEDTEP), HHS/AHCPR.

Minor changes have been made to this system notice. The following categories are hereby revised:

SYSTEM NAME:

Agency for Health Care Policy and Research, Medical Treatment Effectiveness Program (MEDTEP), HHS/AHCPR/OFQEHC and CMER.

SYSTEM LOCATION:

Agency for Health Care Policy and Research, Office of the Forum for the Quality and Effectiveness in Health Care (OFQEHC), Cost Analysis and Evaluation Research Team, Suite 310, 6000 Executive Boulevard, Rockville, Maryland 20852

Health Care Financing Administration, Bureau of Data Management and Strategy (BDMS), Office of Computer Operations, 6325 Security Boulevard, Baltimore, Maryland 21218

National Institutes of Health, Division of Computer Research and Technology (DCRT), Building 12A, Room 4037, 9000 Rockville Pike, Bethesda, Maryland 20852

Public Health Service, Parklawn Computer Center (PCC), Rockville, Maryland 20857

Inactive records will be stored at Washington National Records Center, Room 125, 4205 Suitland Road, Suitland, Maryland 20409. Medical records for Medicare Accuracy Studies are located at the Federal Records Center, 100 Dan Fox Drive, Pittsfield, Massachusetts 01201.

A current list of contractors is available by writing to the System Manager at the address below: Agency for Health Care Policy and Research, Office of the Forum for the Quality and Effectiveness in Health Care (OFQEHC), Cost Analysis and Evaluation Research Team, Suite 310, 6000 Executive Boulevard, Rockville, Maryland 20852.

SAFEGUARDS:

1. *Authorized users:* These records will be maintained at the following sites: The Health Care Financing Administration (HCFA) computer in Baltimore, Maryland; the National Institutes of Health (NIH) DCRT mainframe computer in Bethesda, Maryland; the PHS Parklawn Computer Center (PCC) in Rockville, Maryland; or the AHCPR contractor computers. Access is by password known only to authorized users who are AHCPR OFQEHC and Center for Medical Effectiveness Research (CMER) staff or contractors or their employees responsible for the conduct of authorized research, and who are authorized access to these data.

2. *Physical safeguards:* Access to computer systems where data are stored electronically is restricted to individuals with special identification codes and accounts. The data set names are known

only to those individuals with a need to know for authorized research. Inactive records in hard copy or on magnetic media are stored at the Federal Records Storage Facility with Records Management approval and with the safeguards and security provided by the facility. Rooms where records are stored are double locked when not in use. During regular business hours, rooms are unlocked but access is controlled by on-site personnel.

3. *Procedural and technical safeguards:* Approval for access and use of the HCFA, NIH, PCC, and AHCPR contractors mainframe computers is required prior to issuing user ID and account. A password is required to access the terminal and a data set name controls the release of data only to authorized users. All users of confidential information in connection with the performance of their research (see Authorized Users, above) protect information from public view and from unauthorized personnel entering an unsupervised office. Records maintained at the Federal Records Storage Facility cannot be released without adhering to proper procedure and only to authorized individuals in AHCPR OFQEHC and CMER.

The AHCPR staff monitors contractor compliance with the provisions of the Privacy Act, as well as compliance with the confidentiality protection in 42 U.S.C. 229a–1(c). Contractor system security must be commensurate with the use and sensitivity of the records.

RETENTION AND DISPOSAL:

After completion of the proposed studies, AHCPR OFQEHC and CMER staff and contractors will retire hard copy records and/or records on magnetic media to a Federal Records Center. The AHCPR contractors will delete all records from their computer systems upon completion of the specified studies and retain no copies of any of these records. Records may be retired to a Federal Records Center and subsequently disposed of in accordance with the AHCPR Records Disposition Schedule. The records disposition schedule and disposal standard for these records may be obtained by writing to the system manager at the address below.

Policy-Coordinating Official

Director, Cost Analysis and Evaluation Research Team, Office of the Forum for the Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Suite 310, 6000 Executive Boulevard, Rockville, Maryland 20852, (301) 594–4015

SYSTEM MANAGER(S) AND ADDRESS:

Director, Cost Analysis and Evaluation Research Team, Agency for Health Care Policy and Research, Office of the Forum for the Quality and Effectiveness in Health Care, Suite 310, 6000 Executive Boulevard, Rockville, Maryland 20852, Telephone (301) 594–4015

Project Officer, Pediatric Gastroenteritis Research, Agency for Health Care Policy and Research, Center for Medical Effectiveness Research, Suite 605, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1485

Project Officer, C–Section Research, Agency for Health Care Policy and Research, Center for Medical Effectiveness Research, Suite 605, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1485

Project Officer, Schizophrenia Research, Agency for Health Care Policy and Research, Center for Medical Effectiveness Research, Suite 605, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1485

Project Officer, Low Birth Weight Research, Agency for Health Care Policy and Research, Center for Medical Effectiveness Research, Suite 605, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1485

Project Officer, Stroke Research, Agency for Health Care Policy and Research, Center for Medical Effectiveness Research, Suite 605, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1485

Project Officer, Guidelines Evaluation Contracts, Agency for Health Care Policy and Research, Office of Program Development, Suite 603, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1455.

[FR Doc. 94–28115 Filed 12–27–94; 8:45 am]
BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Privacy Act of 1974: Annual Publication of Revisions to Systems Notices

AGENCY: Public Health Service, DHHS.

ACTION: Privacy Act: Annual Publication of Revisions to Systems Notices.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) is publishing this document in accordance with the Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records about Individuals," which requires that agencies annually review each system of records and publish minor changes in the **Federal Register**. SAMHSA is publishing (1) a table of contents listing all active systems of records and (2) a list of minor changes to these systems.

Table of Contents

The following is a list of system notices which SAMHSA maintains:

09–30–0023—Records of Contracts Awarded to Individuals, HHS/SAMHSA/OA; published **Federal Register**, Vol. 58, No. 248, p. 68994.

09–30–0027—Grants and Cooperative Agreements: Research, Research Training, Research Scientist Development, Service, Education, Demonstration, Prevention, Fellowships, Clinical Training, Community Services Programs, HHS/SAMHSA/OA; published **Federal Register**, Vol. 58, No. 248, p. 68995.

09–30–0029—Records of Guest Workers, HHS/SAMHSA/OA; published **Federal Register**, Vol. 58, No. 248, p. 68997.

09–30–0033—Correspondence Files, HHS/SAMHSA/OA; published **Federal Register**, Vol. 58, No. 248, p. 68998.

09–30–0036—Alcohol, Drug Abuse, and Mental Health Epidemiologic Data, HHS/SAMHSA/OA; published **Federal Register**, Vol. 58, No. 248, p. 68999.

09–30–0047—Patient Records on Chronic Mentally Ill Merchant Seamen Treated at Nursing Homes in Lexington, Kentucky (1942 to the Present), HHS/SAMHSA/CMHS; published **Federal Register**, Vol. 58, No. 248, p. 69001.

09–30–0049—Consultant Records Maintained by SAMHSA Contractors, HHS/SAMHSA/OA; published **Federal Register**, Vol. 58, No. 248, p. 69002.

Changes

The following minor changes have been made to systems of records as follows:

09–30–0027

System name:

Grants and Cooperative Agreements: Research, Research Training, Research Scientist Development, Service, Education, Demonstration, Prevention, Fellowships, Clinical Training, Community Services Programs, HHS/SAMHSA/OA.

Minor alterations have been made to this system of records notice. The following categories should be revised in their entirety:

System location:

Center for Substance Abuse Prevention, Office of the Director, Room 9D10, Rockwall II Building, 5600 Fishers Lane, Rockville, Maryland 20857
Center for Substance Abuse Treatment, Office of the Director, Room 10–75, Rockwall II Building, 5600 Fishers Lane, Rockville, Maryland 20857
Center for Mental Health Services, Office of the Director, Room 15–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

1. Disclosure may be made to qualified experts not within the definition of Department employees for opinion during the application review process.

2. Disclosure may be made to SAMHSA contractors for the purpose of providing services related to the grant review or for carrying out quality assessment, program evaluation, and management reviews. Contractors are required to maintain Privacy Act safeguards with respect to the records.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal (e.g., the Department of Justice) or State (e.g., the State's Attorney's Office), charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto for litigation.

4. Disclosure may be made to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

5. Where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department will make such records available.

6. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

7. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

8. A record from this system may be disclosed to the following entities in order to help collect a debt owed the United States:

(a) To another Federal agency so that agency can effect a salary offset;

(b) To another Federal agency so that agency can effect an administrative offset under common law or under 31 U.S.C. 3716 (withholding from money payable to, or held on behalf of, the individual);

(c) To the Treasury Department to request his/her mailing address under I.R.C. 6103(m)(2) in order to locate him/her or in order to have a credit report prepared;

(d) To agents of the Department and to other third parties to help locate him/her in order to help collect or compromise a debt;

(e) To debt collection agents under 31 U.S.C. 3718 or under common law to help collect a debt; and

(f) To the Justice Department for litigation or further administrative action.

Disclosure under part (d) of this routine use is limited to the individual's name, address, social security number and other information necessary to identify him/her. Disclosure under parts (a)–(c) and (e) is limited to those items; the amount, status, and history of the claim; and the agency or program under which the claim arose. An address obtained from IRS may be disclosed to a credit reporting agency under part (d) only for the purpose of preparing a commercial credit report on the individual. Part (a) applies to any claims or debts arising or payable under the Social Security Act if and only if the employee consents in writing to the offset.

9. SAMHSA may disclose information from its records in this system to consumer reporting agencies in order to obtain credit reports to verify credit worthiness of grant/cooperative agreement applicants. Permissible disclosures include name, address, Social Security number or other information necessary to identify the individual; the funding being sought; and the program for which the information is being obtained.

10. When a debt becomes partly or wholly uncollectible, either because the time period for collection under the statute of limitations has expired or because the Government agrees with the individual to forgive or compromise the debt, a record from this system of records may be disclosed to the Internal Revenue Service to report the written-off amount as taxable income to the individual.

11. A record from this system may be disclosed to another Federal agency that has asked the Department to effect an administrative offset under common law or under 31 U.S.C. 3716 to help collect a debt owed the United States.

Disclosure under this routine use is limited to: name, address, Social Security number, and other information necessary to identify the individual, information about the money payable to or held for the individual, and other information concerning the administrative offset.

12. SAMHSA may disclose from this system of records to the Department of Treasury, Internal Revenue Service (IRS): (1) A delinquent debtor's name, address, Social Security number, and other information necessary to identify the debtor; (2) the amount of the debt; and (3) the program under which the debt arose, so that IRS can offset against the debt any income tax refunds which may be due to the debtor.

System manager(s) and address:

Same as System Location.

09–30–0029

SYSTEM NAME:

Record of Guest Workers, HHS/SAMHSA/OA.

Minor alterations have been made to this system of records notice. The following categories should be revised in their entirety:

SYSTEM LOCATION:

Substance Abuse and Mental Health Services Administration, Division of Personnel Management, Room 14C–24, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Personnel Management, Substance Abuse and Mental Health Services Administration, Office of Management, Planning, and Communications, Room 14C–24, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

09–30–0033

SYSTEM NAME:

Correspondence Files, HHS/SAMHSA/OA.

Minor alterations have been made to this system of records notice. The following category should be revised in its entirety:

SAFEGUARDS:

1. *Authorized users:* Authorized correspondence control staff in each location and managers and supervisors on a need-to-know basis.

2. *Physical safeguards:* Records are maintained in file cabinets in a locked, secure location; computer system records are secured through the use of passwords which are changed frequently.

3. *Procedural safeguards:* Only authorized personnel have access to files and passwords.

4. *Implementation Guidelines:* DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual and Part 6, "Automated Information Systems Security" in the HHS Information Resources Management Manual.

09–30–0036

SYSTEM NAME:

Alcohol, Drug Abuse, and Mental Health Epidemiologic and Biometric Research Data, HHS/SAMHSA/OA.

Minor alterations have been made to this system of records notice. The following categories should be revised in their entirety:

SAFEGUARDS:

1. *Authorized users:* Access to identifiers and to link files is strictly limited to those authorized personnel whose duties require such access. Procedures for determining authorized access to identified data are established as appropriate for each location. Personnel, including contractor personnel, who may be so authorized include those directly involved in data collection and in the design of research studies, e.g., interviewers and interviewer supervisors; project managers; and statisticians involved in designing sampling plans.

2. *Physical safeguards:* Records are stored in locked rooms, locked file cabinets, and/or secured computer facilities. Personal identifiers and link files are separated as much as possible and stored in locked files. Computer data access is limited through the use of key words known only to authorized personnel.

3. *Procedural safeguards:* Collection and maintenance of data is consistent with legislation and regulations in the protection of human subjects, informed consent, confidentiality, and confidentiality specific to drug and alcohol abuse patients where these apply. When a SAMHSA component or a contractor provides anonymous data to research scientists for analysis, study numbers which can be matched to personal identifiers will be eliminated, scrambled, or replaced by the agency or contractor with random numbers which cannot be matched. Contractors who maintain records in this system are instructed to make no further disclosure of the records. Privacy Act requirements are specifically included in contracts for survey and research activities related to this system. The HHS project directors, contract officers, and project officers oversee compliance with these requirements.

4. *Implementation guidelines:* DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual and Part 6, "Automated Information Systems Security" of the HHS Information Resources Management Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Applied Studies, Office of the Director, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Center for Substance Abuse Prevention, Office of the Director, Room 9D10, Rockwall II Building, 5600 Fishers Lane, Rockville, Maryland 20857

Center for Substance Abuse Treatment, Office of the Director, Room 10–75, Rockwall II Building, 5600 Fishers Lane, Rockville, Maryland 20857

Center for Mental Health Services, Office of the Director, Room 15–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

09–30–0047

SYSTEM NAME:

Patient Records on Chronic Mentally Ill Merchant Seamen Treated at Nursing Homes in Lexington, Kentucky, (1942 to the Present), HHS/SAMHSA/CMHS.

Minor alterations have been made to this system of records notice. The following categories should be revised in their entirety:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. In the event of litigation where the defendant is (a) the Department, a component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

2. Disclosure may be made to the Center for Mental Health Services (CMHS) contractors and subcontractors, including nursing home staff, for the purpose of carrying out and maintaining quality care. Contractors maintain, and are also required to ensure that the subcontractors maintain, Privacy Act safeguards with respect to the records.

3. Disclosure may also be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual or his legally authorized representative.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy files stored in locked file cabinets in the State office. In the nursing homes, hard copy records are maintained at nursing stations.

SYSTEM MANAGER(S) AND ADDRESS:

James E. Pittman, Division of Program Development, Special Populations and Projects, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

09–30–0049

SYSTEM NAME:

Consultant Records Maintained By SAMHSA Contractors, HHS/SAMHSA/OA.

Minor alterations have been made to this system of records notice. The following categories should be revised in their entirety:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

2. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

3. SAMHSA proposes to contract with private firms for the purposes of handling logistics for conferences, reviews, development of training materials, and of obtaining the services of consultants. Relevant records will be disclosed to such a contractor or may be developed by the contractor for use in the project. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. Information in this system of records is used routinely to prepare W–2 and 1099 Forms to submit to the Internal Revenue Service and applicable State and local governments those items to be included as income to an individual.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location. Each site implements personnel, physical, and procedural safeguards such as the following:

1. *Authorized users:* Only SAMHSA personnel working on these projects and personnel employed by SAMHSA contractors to work on these projects are authorized users as designated by the system managers.

2. *Physical safeguards:* Records are stored in locked rooms, locked file cabinets, and/or secured computer facilities.

3. *Procedural safeguards:* Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts and in agreements with grantees or collaborators participating in research activities supported by this system. HHS project directors, contract officers, and project officers oversee compliance with these requirements.

4. *Implementation guidelines:* DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual, and Part 6, "Automated Information Systems Security" in the HHS Information Resources Management Manual.

Readers who notice any errors or omissions in the SAMHSA systems of records notices are invited to bring them to my attention at the following address: Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 12–105, Rockville, Maryland 20857.

Dated: October 13, 1994.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–27615 Filed 12–27–94; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Privacy Act of 1974: Annual Publication of Systems of Records

AGENCY: Centers for Disease Control and Prevention (CDC), HHS.

ACTION: Publication of minor changes to notices of systems of records.

SUMMARY: In accordance with the Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," the Centers for Disease Control and Prevention (CDC) is publishing the table of contents and minor changes to its notices of systems of records.

SUPPLEMENTARY INFORMATION: CDC has completed the annual review of its systems of records and is publishing below the table of contents and those minor changes which affect the public's right or need to know, such as clarification of categories of individuals covered by systems, and changes in the storage, retention and disposal, system location of records, or the designation and address of system managers. CDC is also deleting one of its systems of records.

1. Table of Contents

A. The following CDC active system of records was last published in the **Federal Register**, 57 FR 62812, December 31, 1992:

09–20–0136 Epidemiologic Studies and Surveillance of Disease Problems, HHS/CDC/NCID.

B. The following CDC active systems of records were last published in the **Federal Register**, 51 FR 42449, November 24, 1986:

09–20–0001 Certifying Interpreting Physician File, HHS/CDC/NIOSH.
09–20–0055 Administrative Files for Research/Demonstration and Training Grants, and Cooperative Agreements Applications, HHS/CDC/PGO.
09–20–0059 Division of Training Mailing List, HHS/CDC/NIOSH.
09–20–0089 Studies of Treatment of Tuberculosis and Other Mycobacterioses, HHS/CDC/NCPS.
09–20–0090 Studies of Testing for Tuberculosis and Other Mycobacterioses, HHS/CDC/NCPS.
09–20–0096 Records of Tuskegee Study Health Benefit Recipients, HHS/CDC/NCPS.
09–20–0102 Alien Mental Waiver Program, HHS/CDC/NCPS.
09–20–0103 Alien Tuberculosis Follow-up Program, HHS/CDC/NCPS.
09–20–0106 Specimen Handling for Testing and Related Data, HHS/CDC/NCID.
09–20–0112 Fellowship Program and Guest Researcher Records, HHS/CDC/HRMO.
09–20–0113 Epidemic Investigation Case Records, HHS/CDC/NCID.
09–20–0117 Medical and Test Record Results of Individuals Involved in NIOSH Laboratory Studies, HHS/CDC/NIOSH.
09–20–0118 Study at Work Sites Where Agents Suspected of Being Occupational Hazards Exist, HHS/CDC/NIOSH.
09–20–0137 Passport File, HHS/CDC/IHPO.
09–20–0138 Epidemic Intelligence Service Officers Files, HHS/CDC/EPO.
09–20–0147 Occupational Health Epidemiological Studies, HHS/CDC/NIOSH.
09–20–0149 Morbidity Studies in Coal Mining, Metal and Non-metal Mining and General Industry, HHS/CDC/NIOSH.

09–20–0153 Mortality Studies in Coal Mining, Metal and Non-metal Mining and General Industry, HHS/CDC/NIOSH.
09–20–0154 Medical and Laboratory Studies, HHS/CDC/NIOSH.
09–20–0157 Clinical Laboratory Personnel Proficiency Test Results (Medicare), HHS/CDC/PHPPO.
09–20–0159 Records of Subjects in Certification, Testing, Studies of Personal Protective Devices, and Accident Investigations, HHS/CDC/NIOSH.
09–20–0160 Records of Subjects in Health Promotion and Education Studies, HHS/CDC/NCCDPHP.
09–20–0161 Records of Health Professionals in Disease Prevention and Control Training Programs, HHS/CDC/NCPS.
09–20–0162 Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies, HHS/CDC/NCEH.

C. The following active CDC systems were last published in the **Federal Register**, 51 FR 42368, November 24, 1986:

09–20–0163 Applicants for National Center for Health Statistics Technical Assistance, HHS/CDC/NCHS. (Formerly numbered 09–37–0009.)
09–20–0168 Curricula Vitae of Consultants to the National Center for Health Statistics, HHS/CDC/NCHS. (Formerly numbered 09–37–0014.)
09–20–0169 Users of Health Statistics, HHS/CDC/NCHS. (Formerly numbered 09–37–0016.)

D. The following CDC active systems were last published in the **Federal Register**, 49 FR 37692, September 25, 1984:

09–20–0164 Health and Demographic Surveys Conducted in Probability Samples of the United States Population, HHS/CDC/NCHS. (Formerly numbered 09–37–0010.)
09–20–0165 Health Manpower Inventories and Surveys, HHS/CDC/NCHS. (Formerly numbered 09–37–0011.)
09–20–0166 Vital Statistics for Births, Deaths, Fetal Deaths, Marriages, and Divorces Occurring in the United States During Each Year, HHS/CDC/NCHS. (Formerly numbered 09–37–0012.)
09–20–0167 Health Resources Utilization Statistics, HHS/CDC/NCHS. (Formerly numbered 09–37–0013.)

2. Delected System of Records

CDC is deleting system 09–20–0000, Cooperative Mycoses Study, a system covering individuals with miscellaneous fungal infections who participated in the cooperative mycoses study conducted between 1947 and 1973 at the former CDC Kansas City Field Station, Ecological Investigations Division, Kansas City, Kansas, to evaluate treatment of systemic fungal diseases by the Public Health Service and clinicians in selected hospitals and sanitoriums. The last portion of the records from the year 1973 have now been maintained for the prescribed 20 year retention period. Because of the potential need for further analysis and studies, the records are being retained and subsumed under CDC's umbrella system 09–20–0136, "Epidemiologic Studies and Surveillance of Disease Problems."

3. The following systems are amended to reflect changes in the system location of records or the system manager and address category:

09–20–0001

SYSTEM NAME:

Certifying Interpreting Physician File, HHS/CDC/NIOSH.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, 1095 Willowdale Road, Morgantown, WV 26505–2845.

Data are also occasionally located at contractor sites as studies are developed, data collected, and reports written. A list of contractor sites where individually identified data are currently located is available upon request to the system manager.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 1095 Willowdale Road, MS 217, Morgantown, WV 26505–2845.

Chief, Examinations Processing Branch, DRDS, NIOSH, Receiving Center, Post Office Box 4258, MS 122, Morgantown, WV 26504–4258.

Policy coordination is provided by: Director, Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, 1095 Willowdale Road, MS 220, Morgantown, WV 26505–2845.

* * * * *

09–20–0055

SYSTEM NAME:

Administrative Files for Research/Demonstration and Training Grants, and Cooperative Agreements Applications, HHS/CDC/PGO.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

Division of Research Grants, National Institutes of Health, Westbard Bldg., Westbard Avenue, Bethesda, MD 20014.

Grants Management Office, Procurement and Grants Office, Rm. 300, Buckhead Bldg., Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Office of Extramural Coordination and Special Projects, National Institute for Occupational Safety and Health (NIOSH), Bldg. 1, Rm. 3053, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Division of Training and Manpower Development, Division of Biomedical and Behavioral Science, Division of Physical Sciences and Engineering, and Division of Surveillance, Hazard Evaluations, and Field Studies, NIOSH, 4676 Columbia Parkway, Cincinnati, OH 45226.

Division of Respiratory Disease Studies and Division of Safety Research, NIOSH, 1095 Willowdale Road, Morgantown, WV 26505–2845.

Federal Records Center, 4205 Suitland Road, Suitland, MD 20409, and 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identified data are currently located is available upon request to the system manager.

Data are also occasionally located at grantee sites as studies are developed, data collected, and reports written. A list of grantee sites where individually identified data are currently located is available upon request to the system manager.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Grants Management Officer, Procurement and Grants Office, Buckhead Bldg., Rm. 300, MS E09, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Associate Director for Extramural Programs, NIOSH, Bldg. 1, Rm. 3053, MS D30, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Policy coordination is provided by: Associate Director for Management and Operations, Bldg. 1, Rm. 2011, MS D15, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

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09–20–0112

SYSTEM NAME:

Fellowship Program and Guest Researcher Records, HHS/CDC/HRMO.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

Recruitment Branch, Human Resources Management Office, Bldg. 1, Rm. B237, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

National Personnel Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Recruitment Branch, Human Resources Management Office, Bldg. 1, Rm. 1043, MS D45, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

* * * * *

09–20–0136

SYSTEM NAME:

Epidemiologic Studies and Surveillance of Disease Problems, HHS/CDC/NCID.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

National Center for Infectious Diseases, Bldg. 1, Rm. 6013, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

National Center for Prevention Services, Corporate Square, Bldg. 11, Rm. 2106, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

National Center for Environmental Health, Chamblee Bldg. 101, Rm. 3116, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341–3724.

National Center for Injury Prevention and Control, Koger Davidson Bldg., Rm. 1078, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341–3724.

Epidemiology Program Office, Bldg. 1, Rm. 5009, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Public Health Practice Program Office, Executive Park, Bldg. 24, Rm. 110, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

National Center for Chronic Disease Prevention and Health Promotion, Rhodes Bldg., Rm. 4000, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341–3724.

National Immunization Program, Corporate Square, Bldg. 12, Rm. 5113, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identifiable data are currently located is available upon request to the appropriate system manager.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Infectious Diseases, Bldg. 1, Rm. 6013, MS C12, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Director, National Center for Prevention Services, Corporate Square, Bldg. 11, Rm. 2106, MS E07, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Director, National Center for Environmental Health, Chamblee Bldg. 101, Rm. 3116, MS F29, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341–3724.

Director, National Center for Injury Prevention and Control, Koger Davidson Bldg., Rm. 1078, MS F36, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341–3724.

Director, Epidemiology Program Office, Bldg. 1, Rm. 5009, MS C08, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Director, Public Health Practice Program Office, Executive Park, Bldg. 24, Rm. 110, MS E20, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Director, National Center for Chronic Disease Prevention and Health Promotion, Rhodes Bldg., Rm. 4000, MS K40, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341–3724.

Director, National Immunization Program, Corporate Square, Bldg. 12, Rm. 5113, MS E05, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Policy coordination is provided by: Associate Director for Management and Operations, Bldg. 1, Rm. 2011, MS D15, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

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09–20–0149

SYSTEM NAME:

Morbidity Studies in Coal Mining, Metal and Non-metal Mining and General Industry, HHS/CDC/NIOSH.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 1095 Willowdale Road, Morgantown, WV 26505–2845.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

Also, occasionally data may be located at the facilities of collaborating researchers where analyses are performed, data collected and reports written. A list of these facilities is available upon request to the system manager. Data may be located only at those facilities that have an adequate data security program and the collaborating researcher must return the data to NIOSH or destroy individual identifiers at the conclusion of the project.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 1095 Willowdale Road, MS 217, Morgantown, WV 26505–2845.

Epidemiologist, Epidemiological Investigations Branch, DRDS, NIOSH, 1095 Willowdale Road, MS 234, Morgantown, WV 26505–2845.

Policy coordination is provided by: Director, Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, 1095 Willowdale Road, MS 220, Morgantown, WV 26505–2845.

* * * * *

09–20–0153

SYSTEM NAME:

Mortality Studies in Coal Mining, Metal and Non-metal Mining and General Industry, HHS/CDC/NIOSH.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

Division of Respiratory Disease Studies, National Institute for

Occupational Safety and Health, 1095 Willowdale Road, Morgantown, WV 26505–2845.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

Also, occasionally data may be located at the facilities of collaborating researchers where analyses are performed, data collected and reports written. A list of these facilities is available upon request to the system manager. Data may be located only at those facilities that have an adequate data security program and the collaborating researcher must return the data to NIOSH or destroy individual identifiers at the conclusion of the project.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 1095 Willowdale Road, MS 217, Morgantown, WV 26505–2845.

Epidemiologist, Epidemiological Investigations Branch, DRDS, NIOSH, 1095 Willowdale Road, MS 234, Morgantown, WV 26505–2845.

Policy coordination is provided by: Director, Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, 1095 Willowdale Road, MS 220, Morgantown, WV 26505–2845.

* * * * *

09–20–0154

SYSTEM NAME:

Medical and Laboratory Studies, HHS/CDC/NIOSH.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, 1095 Willowdale Road, Morgantown, WV 26505–2845.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

Also, occasionally data may be located at the facilities of collaborating researchers where analyses are performed, data collected and reports written. A list of these facilities is available upon request to the system manager. Data may be located only at those facilities that have an adequate data security program and the collaborating researcher must return the data to NIOSH or destroy individual identifiers at the conclusion of the project.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 1095 Willowdale Road, MS 217, Morgantown, WV 26505–2845.

Health Science Administrator, Clinical Investigations Branch, DRDS, NIOSH, 1095 Willowdale Road, MS 245, Morgantown, WV 26505–2845.

Policy coordination is provided by: Director, Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, 1095 Willowdale Road, MS 220, Morgantown, WV 26505–2845.

* * * * *

09–20–0161

SYSTEM NAME:

Records of Health Professionals in Disease Prevention and Control Training Programs, HHS/CDC/NCPS.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

National Center for Prevention Services, Corporate Square, Bldg. 12, Rm. 3308, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Public Health Practice Program Office, Bldg. 2, Rm. B50, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

National Center for Injury Prevention and Control, Koger Davidson Bldg., Rm. 1078, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341–3724.

Division of Health Education, Executive Park, Bldg. 4, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE, Atlanta, GA 30333.

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identifiable data are currently located is available upon request to the appropriate system manager.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Prevention Services, Corporate Square, Bldg. 11, Rm. 2106, MS E07, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Director, Public Health Practice Program Office, Executive Park, Bldg. 24, Rm. 110, MS E20, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Director, National Center for Injury Prevention and Control, Koger Davidson Bldg., Rm. 1078, MS F36, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341–3724.

Director, Division of Health Education, Executive Park, Bldg. 4, Rm. 2220D, MS E33, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE, Atlanta, GA 30333.

Policy coordination is provided by: Associate Director for Management and Operations, Bldg. 1, Rm. 2011, MS D15, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

* * * * *

4. The following system notices are amended to clarify and more accurately describe the categories of individuals, purpose, storage, retrievability, retention and disposal categories:

09–20–0001

SYSTEM NAME:

Certifying Interpreting Physician File, HHS/CDC/NIOSH.

Minor alterations have been made to this system notice. The following category is revised in its entirety:

* * * * *

PURPOSE(S):

The main purpose is to certify physicians as qualified to interpret X-rays using the ILO system of classification for pneumoconiosis.

* * * * *

09–20–0149

SYSTEM NAME:

Morbidity Studies in Coal Mining, Metal and Non-metal Mining and General Industry, HHS/CDC/NIOSH.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

STORAGE:

Computer tapes/disks and printouts, CD ROM; microfiche, and manual files.

* * * * *

RETRIEVABILITY:

Name and/or assigned numerical identifier, plant name, and study name are some of the indices used to retrieve

records from this system. Social Security numbers, supplied on a voluntary basis may occasionally be used for data retrieval.

* * * * *

Retention and disposal:

Master records for completed studies are maintained in agency until transferred to the National Archives, which will occur within five years of completion. Source documents for computer data are disposed of when no longer needed in the study, as determined by the system manager, and as provided in the signed consent form, as appropriate. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Electronic records are maintained according to the provisions of the Records Control Schedule for NIOSH Electronic Records, which is consistent with the records maintenance requirements for other forms of records. Copies of notifications to workers/private physicians of needed medical attention and/or medical treatment are destroyed when no longer needed for administrative purposes, but may be retained for as long as seventy years. Paper records are destroyed by paper recycling process when 20 years old, unless needed for further study.

* * * * *

09–20–0153

SYSTEM NAME:

Mortality Studies in Coal Mining, Metal and Non-metal Mining and General Industry, HHS/CDC/NIOSH.

Minor alterations have been made to this system notice. The following category is revised in its entirety:

* * * * *

STORAGE:

Computer tapes/disks and printouts, CD ROM; microfiche, and manual files.

* * * * *

RETRIEVABILITY:

Name and/or assigned numerical identifier, plant name, and study name are some of the indices used to retrieve records from this system. Social Security numbers, supplied on a voluntary basis may occasionally be used for data retrieval.

* * * * *

RETENTION AND DISPOSAL:

Master records for completed studies are maintained in agency until transferred to the National Archives, which will occur within five years of completion. Source documents for computer data are disposed of when no longer needed in the study, as determined by the system manager, and as provided in the signed consent form, as appropriate. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Electronic records are maintained according to the provisions of the Records Control Schedule for NIOSH Electronic Records, which is consistent with the records maintenance requirements for other forms of records. Copies of notifications to workers/private physicians of needed medical attention and/or medical treatment are destroyed when no longer needed for administrative purposes, but may be retained for as long as seventy years. Paper records are destroyed by paper recycling process when 20 years old, unless needed for further study.

* * * * *

09–20–0154

SYSTEM NAME:

Medical and Laboratory Studies, HHS/CDC/NIOSH.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have had examinations at Division of Respiratory Disease Studies (DRDS) or submitted medical information in cooperation with a DRDS study.

* * * * *

STORAGE:

Computer tapes/disks and printouts, CD ROM; microfiche, and manual files.

* * * * *

RETENTION AND DISPOSAL:

Master records for completed studies are maintained in agency until transferred to the National Archives, which will occur within five years of completion. Source documents for computer data are disposed of when no longer needed in the study, as determined by the system manager, and as provided in the signed consent form, as appropriate. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Electronic records are maintained according to the provisions of the Records Control Schedule for NIOSH Electronic Records, which is consistent with the records maintenance requirements for other forms of records. Copies of notifications to workers/private physicians of needed medical attention and/or medical treatment are destroyed when no longer needed for administrative purposes, but may be retained for as long as seventy years. Paper records are destroyed by paper recycling process when 20 years old, unless needed for further study.

* * * * *

5. The following system notice is amended to reflect the deletion of a routine use to the Department of Labor which is not needed.

09–20–0001

SYSTEM NAME:

Certifying Interpreting Physician File, HHS/CDC/NIOSH.

Minor alterations have been made to this system notice. The following category is revised in its entirety:

* * * * *

ROUTINE USE(S) OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES:

Name and address supplied to coal operators and X-ray facilities so that they may contact physicians to do work for them.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act are disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintain Privacy Act safeguards.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected. The only types of litigative proceedings that NIOSH is authorized to request are (1) enforcement of a subpoena issued to an employer to provide relevant information, or (2) contempt citation against an employer for failure to comply with a warrant obtained by the Institute.

Dated: November 16, 1994.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Center for Disease Control and Prevention (CDC).

[FR Doc. 94–28883 Filed 12–27–94; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Agency for Toxic Substances and Disease Registry, HHS.

ACTION: Publication of minor change to notice of system of records.

SUMMARY: In accordance with the Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," the Agency for Toxic Substances and Disease Registry (ATSDR) is publishing the table of contents and two minor changes to its notice of system of records.

SUPPLEMENTARY INFORMATION: ATSDR has completed the annual review of its system of records and is publishing below the table of contents and the minor changes which affect the public's right or need to know: a clarification of the purpose, and retention and disposal categories of the system.

1. Table of Contents

The following system notice currently maintained by ATSDR was published in the **Federal Register**, 53 FR 30720, August 15, 1988:

09–19–0001 Records of Persons Exposed or Potentially Exposed to Toxic or Hazardous Substances, HHS/ATSDR/DHS.

2. System 09–19–0001 is amended to reflect a clarification of the purpose and retention and disposal sections of the system:

09–19–0001

SYSTEM NAME:

Records of Persons Exposed or Potentially Exposed to Toxic or Hazardous Substances, HHS/ATSDR/DHS.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

PURPOSE(S):

Records in this system are used to carry out the legislated environmental public health mandates of the Agency for Toxic Substances and Disease Registry (ATSDR). Specifically this information is used to: (1) Identify the public health threat caused by exposure to toxic and hazardous substances utilizing health outcome studies, epidemiologic studies, and other health effects studies; and (2) establish and maintain national registries of persons exposed to toxic substances and persons with serious diseases and illnesses associated or potentially associated with exposure to toxic substances. Registries will have the additional purposes of tracking exposed individuals, keeping them informed of health effects of exposure, preventive measures and possible breakthroughs in treatment, along with serving as a centralized location for research data on these exposed individuals.

Records may be disclosed to the National Center for Environmental Health, Centers for Disease Control and Prevention, for laboratory analysis of samples and for collaborative efforts (i.e., providing staff, performing statistical analysis, etc.) in coordinating investigations.

Records (i.e., name, Social Security number, date of birth) may be disclosed to the National Center for Health Statistics to obtain a determination of vital status. Death certificates with the cause of death will then be obtained from Federal, State, or local agencies to enable ATSDR (1) to determine whether excess mortality is occurring among individuals exposed to toxic or hazardous substances, and (2) to notify similarly exposed persons. Records may also be disclosed to the Social Security Administration for additional sources of locating information.

* * * * *

RETENTION AND DISPOSAL:

A Comprehensive Records Control Schedule has been approved for ATSDR which designates the procedures which allow the system managers to retain records for their designated life. Registry records will be actively maintained as long as funding is provided for by legislation. Contractors will retain the records only as long as necessary to complete data collection and verify ATSDR's receipt of the data in usable form. Record copy of study reports is maintained in the agency from two to three years in accordance with retention schedules. Source documents for computer tapes or disks are disposed of when no longer needed in the study as specified by the records control schedule.

Records may be transferred to a Federal Records Center for storage when no longer needed for evaluation or analysis. Disposal methods include the paper recycling process, burning or shredding hard copy records, and erasing computer tapes and disks.

* * * * *

Dated: November 17, 1994.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94–28882 Filed 12–27–94; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Department of Health and Human Services; Public Health Service (PHS); Health Resources and Services Administration (HRSA).

ACTION: Publication of minor changes to system-of-records notices.

SUMMARY: In accordance with Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," HRSA is publishing minor changes to its notices of systems of records.

SUPPLEMENTARY INFORMATION: HRSA has completed the annual review of its systems of records and is publishing below those minor changes which affect the public's right or need to know, such as system deletions, title changes, and

changes in the system location of records, or the addresses of systems managers.

1. HRSA has deleted the following system of records since the last annual review:

09–15–0029 PHS Beneficiary-Contract Medical/Health Care Records, HHS/HRSA/BPHC. The Beneficiary Health Program was transferred to the Office of the Assistant Secretary for Health effective February 23, 1994 (59 FR 10135, March 3, 1994).

2. Other minor system-notice changes affecting individual categories are published below.

Dated: November 8, 1994.

James P. Purvis,

Acting Associate Administrator for Operations and Management.

Table of Contents

The following table of contents lists all currently active Privacy Act systems of records maintained by the Health Resources and Services Administration:

09–15–0001 Division of Federal Occupational Health Medical and Counseling Records, HHS/HRSA/BPHC.
09–15–0002 Record of Patients' Personal Valuables and Monies, HHS/HRSA/BPHC.
09–15–0003 Contract Physicians and Consultants, HHS/HRSA/BPHC.
09–15–0004 Federal Employee Occupational Health Data System, HHS/HRSA/BPHC.
09–15–0007 Patients Medical Records System PHS Hospitals/Clinics, HHS/HRSA/BPHC.
09–15–0022 Accounts Receivable, HHS/HRSA/OA.
09–15–0026 Medical Fellowships and Educational Loans, HHS/HRSA/OA.
09–15–0028 PHS Clinical Affiliation Trainee Records, HHS/HRSA/BPHC.
09–15–0037 Public Health Service (PHS) and National Health Service Corps (NHSC) Scholarship/Loan Repayment Participant Records System, HHS/HRSA/BPHC.
09–15–0038 Disability Claims of the Nursing Student Loan Program, HHS/HRSA/BHPr.
09–15–0039 Disability Claims in the Health Professions Student Loan Program, HHS/HRSA/BHPr.
09–15–0040 Health Professions Student Loan Repayment Program, HHS/HRSA/BHPr.
09–15–0041 Health Professions Student Loan Cancellation, HHS/HRSA/BHPr.
09–15–0042 Physician Shortage Area Scholarship Program, HHS/HRSA/BPHC.
09–15–0043 Cuban Loan Program, HHS/HRSA/OA.
09–15–0044 Health Educational Assistance Loan Program (HEAL) Loan Control Master File, HHS/HRSA/BHPr.
09–15–0045 Health Resources and Services Administration Loan Repayment/Debt Management Records Systems, HHS/HRSA/OA.
09–15–0046 Health Professions Planning and Evaluation, HHS/HRSA/OA.
09–15–0052 Nurse Practitioner and Nurse Midwifery Traineeship Program, HHS/HRSA/BHPr.
09–15–0054 National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners, HHS/HRSA/BHPr.
09–15–0055 Organ Procurement and Transplantation Network (OPTN) Data System, HHS/HRSA/BHRD.
09–15–0056 National Vaccine Injury Compensation Program, HHS/HRSA/BHPr.
09–15–0057 Scholarships for the Undergraduate Education of Professional Nurses Grant Programs, HHS/HRSA/BHPr.
09–15–0058 Faculty Loan Repayment Program, HHS/HRSA/BHPr.
09–15–0059 Health Resources and Services Administration Correspondence Control System, HHS/HRSA/OA.

Changes

09–15–0039

System name:

Disability Claims in the Health Professions Student Loan Program, HHS/HRSA/BHPr.

A minor change has been made to this system-of-records notice. The following category should be revised:

* * * * *

Authority for maintenance of the system:

Section 722(d) of the Public Health Service Act, as amended (42 U.S.C. 292r), Health Professions Student Loan Program provisions.

* * * * *

09–15–0044

System name:

Health Education Assistance Loan Program (HEAL) Loan Control Master File, HHS/HRSA/BHPr.

Minor changes have been made to this system-of-records notice. The following category should be revised:

* * * * *

Authority for maintenance of the system:

Sections 701 and 702 of the Public Health Service Act, as amended (42 U.S.C. 292), which authorize the establishment of a Federal program of student loan insurance;

Section 715 of the Public Health Service Act, as amended (42 U.S.C. 292n), which directs the Secretary to require institutions to provide information for each student who has a loan;

Debt Collection Act of 1982 (5 U.S.C. 5514 note); and

Section 222 of the Health Professions Training Assistant Act of 1985 (50 U.S.C. App. 462 note), which provides for a study on compliance with the Selective Service Act.

* * * * *

09–15–0054

System name:

National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners, HHS/HRSA/BHPr.

Minor changes have been made to this system-of-records notice. The following category should be changed:

* * * * *

System location:

The Unisys Corporation (the Contractor) operates the National Practitioner Data Bank (the Bank) under contract with the Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA). Records are located at the following addresses: (1) National Practitioner Data Bank, PO Box 6050, Camarillo, California 93011–6050; (2) Unisys Corporation, 12010 Sunrise Valley Drive, Reston, Virginia 22091–3498; and (3) York Business Records Storage, 4121 South Bank Road, Oxnard, California 93032.

* * * * *

09–15–0055

System name:

Organ Procurement and Transplantation Network (OPTN) Data System, HHS/HRSA/BHRD.

Minor changes have been made to this system-of-records notice. The following category should be revised:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Operations and Analysis Branch, Division of Organ Transplantation, Bureau of Health Resources Development, HRSA, 5600 Fishers Lane, Room 7–18, Rockville, Maryland 20857.

* * * * *

09–15–0056

SYSTEM NAME:

National Vaccine Injury Compensation Program, HHS/HRSA/BHPr.

Minor changes have been made to this system-of-records notice. The following categories should be revised:

* * * * *

SYSTEM LOCATION:

Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), 5600 Fisheries Lane, Room 8A–35, Rockville, Maryland 20857.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Health Professions, HRSA, 5600 Fishers Lane, Room 8A–35, Rockville, Maryland 20857.

* * * * *

[FR Doc. 94–28585 Filed 12–27–94; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Publication of minor changes to systems of records notices.

SUMMARY: The Food and Drug Administration (FDA) is publishing this document in accordance with Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records about Individuals."

SUPPLEMENTARY INFORMATION: FDA has completed the annual review of its systems of records and is publishing below (1) a table of contents which lists all active systems of records in FDA, and (2) minor changes which affect the public's right or need to know.

Dated: November 9, 1994.

James A. O'Hara III,

Associate Commissioner for Public Affairs.

Table of Contents

09–10–0002 Regulated Industry Employee Enforcement Records, HHS/FDA/OC
09–10–0003 FDA Credential Holder File, HHS/FDA/OC
09–10–0004 Communications (Oral and Written) With the Public, HHS/FDA/OC
09–10–0005 State Food and Drug Official File HHS/FDA/ORA
09–10–0007 Science Advisor Research Associate Program (SARAP), HHS/FDA/ORA
09–10–0008 Radiation Protection Program Personnel Monitoring System, HHS/FDA/CDRH
09–10–0009 Special Studies and Surveys on FDA-Regulated Products, HHS/FDA/OM
09–10–0010 Bioresearch Monitoring Information System, HHS/FDA
09–10–0011 Certified Retort Operators, HHS/FDA/CFSAN
09–10–0013 Employee Conduct Investigative Records, HHS/FDA/OC
09–10–0017 Epidemiological Research Studies of the Center for Devices and Radiological Health, HHS/FDA/CDRH
09–10–0018 Employee Identification and Security Card Key Records, HHS/FDA/OC

Minor alterations have been made to the following system notices;

09–10–0002

SYSTEM NAME:

Regulated Industry Employee Enforcement Records, HHS/FDA/OC. The system location and system manager(s) portions have been revised to include the addition of a system location and system manager in the Office of Criminal Investigations.

SYSTEM LOCATION:

FDA Employees:

Administrative Services Branch (HFA–210), 5600 Fishers Lane, Rockville, MD 20857

Investigations Operations Branch (HFC–132), 5600 Fishers Lane, Rockville, MD 20857

Office of Criminal Investigations (HFC–300), 7500 Standish Place, Suite 250N, Rockville, MD 20855

Administrative, Investigations, and Compliance Branches at Field/District Offices. For the location of Field/District Offices, see Appendix A.

For the location of Federal Records Centers, see Appendix B.

SYSTEM MANAGER(S) AND ADDRESS:

The policy coordinating official for this system of records is also the system manager for the Investigations Operations Branch.

Chief, Administrative Services Branch (HFA–210), 5600 Fishers Lane, Rockville, MD 20857

Assistant to the Director, Investigations Operations Branch (HFC–132), Office of Regulatory Affairs, 5600 Fishers Lane, Rockville, MD 20857

Director, Office of Criminal Investigations, Office of Regulatory Affairs (HFC–300), 7500 Standish Place, Suite 250N, Rockville, MD 20855

Administrative, Investigative and Compliance Branches at Field/District Offices, see Appendix A.

09–10–0005

SYSTEM NAME:

State Food and Drug Official File, HHS/FDA/ORA. The system location and system manager(s) portions have been revised to reflect new locations and system managers for this system.

SYSTEM LOCATION:

Regional Food and Drug Offices (See Appendix A).

SYSTEM MANAGER(S) AND ADDRESS:

Regional Food and Drug Directors (See Appendix A for Address).

09–10–0009

SYSTEM NAME:

Special Studies and Surveys on FDA-Regulated Products, HHS/FDA/OM. The system location and system manager(s) portions have been revised to reflect current location and organizational changes.

SYSTEM LOCATION:

Division of Contracts and Procurement Management, Office of Contracts and Grants Management, 5600 Fishers Lane, Park Building, Room 3–32, Rockville, MD 20857.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Contracts and Procurement Management (HFA–510), 5600 Fishers Lane, Park Building, Room 3–32, Rockville, MD 20857.

Office of Epidemiology and Biostatistics (HFD–700), Rockville, MD 20857

09–10–0013

SYSTEM NAME:

Employee Conduct Investigative Records, HHS/FDA/OC. The system notice has been revised to reflect transfer of responsibility for maintenance of this system from the Division of Ethics and Program Integrity, Office of Management to the Office of Internal Affairs, Office of the Commissioner.

SYSTEM LOCATION:

Office of Internal Affairs (HF–9), Office of the Commissioner, 1801 Rockville Pike, Suite 405, Rockville, MD 20852.

SYSTEM MANAGER(S) AND ADDRESS:

Special Agent in Charge, Office of Internal Affairs (HFD–9), Office of the Commissioner, 1801 Rockville Pike, Suite 405, Rockville, MD 20852.

09–10–0017

SYSTEM NAME:

Epidemiology Research Studies of the Center for Devices and Radiological Health, HHS/FDA/CDRH. The system location and system manager portions have been revised to reflect current locations and organizational changes.

SYSTEM LOCATION:

Epidemiology Branch (HFZ–541), Division of Postmarket Surveillance, Center for Devices and Radiological

Health, 1350 Piccard Drive, Rockville, MD 20850.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Epidemiology Branch (HFZ-541), Division of Postmarket surveillance, Center of Devices and Radiological Health, 1350 Piccard Drive, Rockville, MD 20850.

09-10-0018

SYSTEM NAME:

Employee Identification and Security Card Key Records, HHS/FDA/OC. The system location and system manager(s) portions have been revised to reflect current location.

SYSTEM LOCATION:

Personal Property Management Section, Services Unit (HFA-227), 5600 Fishers Lane, Rockville, MD 20857

Metropolitan Office Services Unit (HFA-216), 200 C Street, SW., Washington, DC 20204

Physical Security Staff (HFA-204), 7500 Standish Place, MPN, Rm. N-378, Rockville, MD 20855.

Administrative Branch at Field/District Offices. For the location of Field/District Offices, see Appendix A to system notice 09-10-0002, Regulated Industry Employee Enforcement Records, HHS/FDA/OC.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Administrative Services Branch (HFA-210), 5600 Fishers Lane, Rockville, MD 20857

Chief, Physical Security Staff (HFA-204), 7500 Standish Place, MPN II, Rm. N-378, Rockville, MD 20855.

[FR Doc. 94-28383 Filed 12-27-94; 8:45 am]

BILLING CODE 4160-01-M

federal register

Wednesday
December 28, 1994

Part V

Federal Communications Commission

47 CFR Part 0 et al.
Emergency Broadcast System, Final Rules and Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 11, 73, and 76

[FO Docket No. 91–171/91–301, FCC 94–288]

Emergency Broadcast System

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This *Report and Order* replaces the current Emergency Broadcast System (EBS) with an Emergency Alert System (EAS) to alert the public of emergencies. This *Report and Order* requires broadcast stations and many cable TV systems to participate, creates a new generation of alerting equipment and streamlines operational procedures for system participants. Furthermore, the *R&O* removes the Part of the FCC's rules concerning EBS in its entirety and incorporates it into a new Part of the FCC's Code of Federal Regulations. The purpose of the rules in this part is to prescribe how communication services such as broadcasting, cable, and other public service providers will function under the technical standards and operational procedures of the new System.

EFFECTIVE DATE: January 27, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Helena Mitchell or Frank Lucia, Compliance and Information Bureau, (202) 418–1220.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in FO Docket 91–171/91–301, adopted November 10, 1994, and released December 9, 1994.

The full text of this Commission *Report and Order*, which is in the same document as a *Further Notice of Proposed Rulemaking*, is available for inspection and copying during normal business hours in the FCC's Public Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of the *Report and Order* also may be purchased from the Commission's duplication contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Synopsis of Report and Order

The Federal Communications Commission (FCC) adopted a *Report and Order* to create a new Emergency Alert System (EAS) to replace the more than 40 year old Emergency Broadcast System (EBS). EBS was no longer able to accommodate advances in communications. The advent of digital technology and the expansion of cable, satellite, microwave distribution, and fiber optics, very few of which currently participate in the EBS, will enable the new system to offer better and faster alerting to the public.

The *Report and Order* removes Subpart G, Part 73, of the FCC's rules concerning EBS in its entirety, and incorporates it into a new Part 11 of the rules dealing with EAS. 47 CFR Subpart G, Part 73, and Part 11. The rule changes are provided at the end of this synopsis.

Furthermore, the *Report and Order* requires participation by broadcast stations and cable systems in the new EAS, and encourages voluntary participation by others. Cable systems must participate, and the *Further Notice of Proposed Rulemaking* asks for comments regarding whether a defined class of smaller systems should be exempted from participation. Cable systems will for the first time be required to participate in the emergency alerting process because numerous Americans now depend on cable for news and information and because Congress has directed the Commission to ensure that cable subscribers have access to emergency information on the same basis as broadcast viewers and listeners. Most Americans receive one or both of these sources. The *Report and Order* requires broadcast stations and cable systems to install and operate new equipment for national alerts, while relaxing certain equipment requirements for noncommercial educational Class D FM stations and low power television stations. Other transmission media, such as satellite, telephone, paging and public service providers, are also encouraged to participate.

Technically, the new equipment will have many advanced features currently unavailable with the EBS, such as multiple monitoring of alerting sources, ability to operate by remote control, compatibility with other communications media, the option for automated operation, and the ability to target emergency specific information to exact geographic areas that are at risk. Operationally, EAS will allow audiences to receive quick and accurate access to emergency information. Unlike the old EBS, the new equipment and procedures will also minimize the risk of failure or confusion due to human error.

The new equipment can be programmed to provide automatic alerts for specific types of emergencies such as tornadoes or nuclear accidents. Automatic interrupt capability will allow immediate suspension of programming and will transmit both national EAS alerts as well as state or local emergency alerts. Broadcast stations and cable systems can choose when they want their programming interrupted automatically, as, for example, when they are operating unattended.

The new digital EAS equipment will allow participants to relay news of emergencies only to affected geographic areas so that unaffected areas are not alarmed. The new equipment also allows for coding to identify special kinds of alerts, such as for power outages, nuclear power plant incidents, and release of harmful chemicals.

The new equipment will also be capable of monitoring several sources of emergency information, such as broadcast stations or emergency management offices. This multiple input system replaces the old single station "daisy chain" system of monitoring in which emergency messages were relayed from one station to another. The multiple input system is significantly more reliable because stations are not dependent on one station to receive an emergency alert.

In addition, the new technology will make it possible to transmit emergency information to the public regardless of listening or viewing habits. It will no longer be necessary to be watching broadcast television or listening to the radio in order to receive an emergency alert. Specially equipped consumer end products, such as televisions, car radios, pagers, CD players and other devices will be able to receive an EAS alert and provide a warning even when the device is shut off.

The new EAS will have other capabilities. The EAS protocol can be used to develop alert messages in the primary language of the station's or cable channel's programming, thus increasing the chance that the listening public will comprehend emergency information.

New operational procedures will enhance the public's ability to receive emergency information. For example, the new rules require visual alerts on television stations and participating cable systems which will quickly provide the hearing impaired with emergency information. Piercing tones will alert the blind or preoccupied listener.

New testing procedures can assure the equipment is functioning properly without causing the public to "tune out." All EAS participants have the option to continue weekly tests with on-air messages or to perform three of the four weekly tests during the month unobtrusively. Such testing will be almost unnoticeable to the listener. A

monthly on-air test will still be required, however. During the monthly on-air test, each State or local Emergency Communications Committee will develop a script and test the system as if it were an actual alert. A shorter EAS two-tone signal lasting only 8 seconds can be used. During an actual emergency, however, a longer tone of up to 25 seconds is encouraged to attract the blind and hard-of-hearing. A new rule also prohibits false or misleading use of the EAS two-tone or alert codes.

The standard protocol for the activation of the EAS is compatible with the new digitized NOAA Weather Radio (NWR) system. Each year there are several hundred lives lost, several thousand injuries sustained and billions of dollars in property damaged due to weather related and man-made emergencies. EAS will continue to work with the National Weather Service to provide emergency weather information to the public more quickly while at the same time complementing the NWR.

The FCC will terminate the Emergency Broadcast System Advisory Committee and the National Business and Industry Advisory Council which had served the old EBS. In its stead, the FCC will establish a smaller National Advisory Committee (NAC) to provide coordination and direction in the implementation of the new rules and regulations for the EAS. The NAC will advise the Commission on EAS policies, rules, and procedures. It will develop training and education initiatives to explain the EAS to participants and the public. It will be comprised of volunteer government and industry personnel who will be appointed by the Commission for two-year terms.

The cost to broadcasters of the new EAS devices is comparable to the cost of replacing existing EBS equipment which is nearing the end of its useful operational life. The EAS devices will have significantly more features than the old equipment and will be much cheaper to operate. Cost to cable systems is expected to be higher, but they will have an extended time to implement EAS.

In designing a timetable for the system, the Commission balanced the lead time needed by industry to begin the new service against the need to ensure the public's safety. Both radio and television broadcasters will be required to replace EBS equipment with EAS equipment by July 1, 1996 in accordance with the following timetable: (1) Existing EBS decoders at broadcast stations must be modified by July 1, 1995 to be capable of decoding a shortened, eight second version of the two-tone alerting signal currently used in the EBS; (2) after July 1, 1995, stations may transmit the shortened two-tone attention signal for not less than eight seconds nor more than 25 seconds; (3) use of the new EAS digital equipment is optional until July 1, 1996 for broadcast stations and mandatory thereafter; (4) key EAS sources are advised to begin using the new digital signal as soon as equipment is available; (5) after July 1, 1997, the two-tone signal may be used only as an audio alert signal to announce to the public either the monthly test or actual emergency messages; and (6) Class D FM and low power television stations must have decoders according to the timetable used by broadcasters. There will be a one year overlap between the old EBS and new EAS equipment to ensure that the new system is effective before the older EBS two-tone signalling technique used to alert stations is retired. Because cable is a new entrant, cable systems will have until July 1, 1997, to install the new equipment.

The following is a summary of other features of the Emergency Alert System.

- EAS will utilize a standard, non-proprietary protocol that includes a digital header code, the Attention Signal, the emergency message, and an End Of Message (EOM) code.
- It will be permissible to transmit only the header and EOM coded for state and local emergencies.
- The protocol can be received by any radio or television receiver.
- The protocol can be sent on transmission systems such as, but not limited to, radio and television stations, cable systems, satellite, computer networks, and paging systems.
- The new equipment may combine decoder and encoder functions in a single unit.
- The equipment can be controlled from a remote location.
- Broadcast station and cable system owners can program the equipment to interrupt their programming in the event of specific codes contained in EAS messages. Codes can, for example, be matched for the message Originator (who), Event (what) and Location (where).
- All EAS messages will have Universal Coordinated Time (UTC) codes to assure that expired messages are not transmitted.
- Specially equipped radios, televisions and other consumer products can be turned on and off by the EAS protocol to receive emergency messages.
- The existing State and Local Emergency Communications Committees can create their own monthly test announcements.
- EAS state and local plans will need to be created to reflect the new capabilities of equipment for multiple monitoring and identification of EAS sources.
- The rules prohibit false use of the EAS protocol.
- The rules employ new and more easily understandable terminology for use by EAS participants.

In the same document as the *Report and Order*, the Commission issued a *Further Notice of Proposed Rulemaking* asking for comments related to whether the Multipoint Distribution Service (MDS), Satellite Master Antenna TV (SMATV) systems and Video Dial Tone should also be required to participate in EAS. Comments were also sought on several cable related issues. This *Further Notice of Proposed Rulemaking* is summarized elsewhere in the **Federal Register.**

The Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. Section 603, the *Report and Order* contained a final regulatory flexibility analysis. The analysis concluded that the new EAS will be a significant improvement over EBS in providing emergency messages to the public. There were no comments submitted in response to the initial Regulatory Flexibility Analysis.

Legal Basis

The *Report and Order* is issued under authority contained in Sections 1, 4 (i) and (o), 303(r), 624(g) and 706 of the Communications Act of 1934, as amended. 47 U.S.C. Sections 151, 154 (i) and (o), 303(r), 544(g) and 606.

List of Subjects

47 CFR Part 0

Delegation of authority, Organization and functions (Government agencies)

47 CFR Part 11

Emergency alert system

47 CFR Part 73

Radio broadcasting, Television broadcasting

47 CFR Part 76

Cable television

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 0, 11, 73 and 76 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.182 is amended by revising the heading and paragraph (d) to read as follows:

§ 0.182 Chief, Compliance and Information Bureau.

* * * * *

(d) Provides administrative support for the National Advisory Committee (NAC).

* * * * *

3. Section 0.183 is revised to read as follows:

§ 0.183 Emergency Communications Administration.

The Compliance and Information Bureau coordinates the National Security and Emergency Preparedness (NSEP) activities of the Federal Communications Commission including Continuity of Government Planning, the Emergency Alert System (EAS) and other functions as may be delegated during a national emergency or activation of the President's war emergency powers as specified in section 706 of the Communications Act; maintains liaison with FCC Bureaus/Offices, and other government agencies, the telecommunications industry and FCC licensees on NSEP matters; and, as requested, represents the Commission at NSEP meetings and conferences.

§ 0.284 [Amended]

4. Section 0.284 is amended by removing paragraph (a)(4) and redesignating paragraphs (a)(5) through (a)(10) as (a)(4) through (a)(9), respectively.

5. Section 0.311 is amended by revising paragraphs (g) and (h) to read as follows:

§ 0.311 Authority delegated.

* * * * *

(g) The Chief, Compliance and Information Bureau is delegated authority to grant waivers of the requirements of Part 11 of this Chapter to participants required to install, operate or test Emergency Alert System (EAS) equipment. The Chief, Compliance and Information Bureau is further authorized to delegate this authority. Waiver requests must made in writing and forwarded to the FCC's EAS office 1919 M Street, NW Washington, DC 20054. Such requests must state the reason why the waiver is necessary and provide sufficient information such as, statements of fact regarding the financial status of the broadcast station, the number of other broadcast stations providing coverage in its service area or the likelihood of hazardous risks to justify a grant of the waiver.

(h) The Chief, Compliance and Information Bureau is delegated authority to execute in the name of the Commission all agreements pertaining to the loan of United States Government property to broadcast stations or other entities participating in the Emergency Alert System (EAS) for national defense purposes. The Chief, Compliance and Information Bureau is authorized to delegate this authority.

PART 11—EMERGENCY ALERT SYSTEM (EAS)

6. A new Part 11 is added to read as follows:

Part 11—[Added]

Subpart A—General

Sec.

11.1 Purpose.
11.11 The Emergency Alert System (EAS).
11.12 Two-tone Attention Signal Encoder and Decoder.
11.13 Emergency Action Notification (EAN) and Emergency Action Termination (EAT).
11.14 EAN Network and Primary Entry Point (PEP) System.
11.15 EAS Operating Handbook.
11.16 National Control Point Procedures.
11.17 Authenticator Word Lists.
11.18 EAS Designations.
11.19 EAS Non-participating National Authorization Letter.
11.20 State Relay Network.
11.21 State and Local Area Plans and FCC Mapbook.

Subpart B—Equipment Requirements

11.31 EAS protocol.
11.32 EAS Encoder.
11.33 EAS Decoder.
11.34 Acceptability of the equipment.
11.35 Equipment operational readiness.

Subpart C—Organization

11.41 Participation in EAS.
11.42 Participation by communications common carriers.
11.43 National level participation.
11.44 EAS message priorities.
11.45 Prohibition of false or deceptive EAS transmissions.
11.46 EAS public service announcements.

Subpart D—Emergency Operations

11.51 EAS code and Attention Signal Transmission requirements.
11.52 EAS code and Attention Signal Monitoring requirements.
11.53 Dissemination of Emergency Action Notification.
11.54 EAS operation during a National Level emergency.
11.55 EAS operation during a State or Local Area emergency.

Subpart E—Tests

11.61 Tests of EAS procedures.
11.62 Closed Circuit Tests of National Level EAS facilities.

Authority: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g) and 606.

Subpart A—General

§ 11.1 Purpose.

This part contains rules and regulations providing for an Emergency Alert System (EAS). The EAS provides the President with the capability to provide immediate communications and information to the general public at the National, State and Local Area levels during periods of national emergency. The rules in this part describe the required technical standards and operational procedures of the EAS for AM, FM and TV broadcast stations, cable systems and other participating entities. The EAS may be used to provide the heads of State and local government, or their designated representatives, with a means of emergency communication with the public in their State or Local Area.

§ 11.11 The Emergency Alert System (EAS).

(a) The EAS is composed of broadcast networks; cable networks and program suppliers; AM, FM and TV broadcast stations; Low Power TV (LPTV) stations; cable systems; and other entities and industries operating on an organized basis during emergencies at the National, State, or local levels. It requires that at a minimum all participants use a common EAS protocol, as defined in § 11.31, to send and receive emergency alerts in accordance with the effective dates in the following tables:

TIMETABLE—BROADCAST STATIONS

Requirement	Until 7/1/95	7/1/95	7/1/96	7/1/97
Two-tone encoder timing	20–25 seconds	8–25 seconds	8–25 seconds	8–25 seconds.[1]
Two-tone decoder timing	8–16 seconds required 3–4 seconds optional	All decoders at 3–4 seconds.	3–4 seconds	Two-tone decoder no longer used.
Digital decoder and encoder.	Use is optional	Use is optional	Use is required	Use is required.

[1] Two-tone signal used only to provide audio alert to audience before EAS emergency messages and required monthly test.

CABLE SYSTEMS

Requirement	Until 7/1/97	7/1/97[2]
Two-tone signal from storage device[1].	Use is optional, 8–25 seconds.	Use is required, 8–25 seconds.

CABLE SYSTEMS—Continued

Requirement	Until 7/1/97	7/1/97[2]
Digital decoder and encoder.	Use is optional.	Use is required.[2]

[1] Two-tone signal used only to provide audio alert to audience before EAS emergency messages and required monthly test.

[2] On this date, subject cable systems shall provide: (1) a video message on all channels or other alerting techniques to hearing impaired and deaf subscribers, (2) an audio message and video interruption on all channels, and (3) a video message on at least one channel to all subscribers.

NOTE: Class D FM and low power TV stations are not required to have two-tone or digital encoders. LPTV stations that operate as television broadcast translator stations are exempt from the requirement to have EAS equipment.

EAS TIMETABLE AND REQUIREMENTS

Requirement	AM	FM	FM class D	TV	LPTV[1]
Broadcast stations					
Two-tone decoder (until 7/1/97)	Y	Y	Y	Y	Y
Two-tone encoder	Y	Y	N	Y	N
Digital decoder (7/1/96)	Y	Y	Y	Y	Y
Digital encoder (7/1/96)	Y	Y	N	Y	N
Audio message (7/1/96)	Y	Y	Y	Y	Y
Video message (7/1/96)	.....	.....	.....	Y	Y

[1] LPTV stations that operate as television broadcast translator stations are exempt from the requirement to have EAS equipment.

CABLE SYSTEMS

Requirement	
Two-tone decoder	N
Two-tone encoder	N
Digital decoder (7/1/97)	Y
Digital encoder (7/1/97)	Y
Audio message on all channels (7/1/97)	Y[2]
Video interruption on all channels, video message on one channel (7/1/97)	Y[3]

[2] Shall transmit two-tone signal, but it may be from a storage device.

[3] Shall provide video on all channels or other alerting techniques to certified hearing impaired and deaf subscribers.

(b) Class D non-commercial educational FM stations as defined in § 73.506 of this chapter and LPTV stations as defined in § 74.701(f) of this chapter are not required to comply with § 11.32. LPTV stations that operate as television broadcast translator stations, as defined in § 74.701(b) of this chapter are not required to comply with the requirements of this part.

(c) Organizations using other communications systems or technologies such as, Direct Broadcast Satellite (DBS), low earth orbit satellite systems, paging, computer networks, etc. may join the EAS on a voluntary basis by contacting the FCC. Organizations that choose to voluntarily participate must comply with the requirements of this part.

§ 11.12 Two-tone Attention Signal Encoder and Decoder.

Existing two-tone Attention Signal Encoder and Decoder equipment type accepted for use as Emergency Broadcast System equipment under Part 73 may be used by broadcast stations until July 1, 1997, provided that such equipment meets the requirements of §§ 11.32(a)(9) and 11.33(b). Effective July 1, 1997, the two-tone Attention Signal Decoder will no longer be required and the two-tone Attention Signal will be used to provide an audio alert.

§ 11.13 Emergency Action Notification (EAN) and Emergency Action Termination (EAT).

(a) The Emergency Action Notification (EAN) is the notice to all broadcast stations, subject cable systems, other regulated services of the FCC, participating industry entities, and to the general public that the EAS has been activated for a national emergency.

(b) The Emergency Action Termination (EAT) is the notice to all broadcast stations, subject cable systems, other regulated services of the FCC, participating industry entities, and to the general public that the EAN has terminated.

§ 11.14 EAN Network and Primary Entry Point (PEP) System.

(a) The EAN network is a dedicated communications service connecting industry networks, wire services and common carriers with government activation points. It is used to distribute EAN and EAT messages. The industry control locations retransmit the EAN message, the Presidential message, and the EAT message on their facilities to their affiliates.

(b) The PEP system is a nationwide network of broadcast stations connected with government activation points. It can also be used to distribute EAN and EAT.

§ 11.15 EAS Operating Handbook.

The EAS Operating Handbook states in summary form the actions to be taken by personnel at broadcast stations, and other participating entities upon receipt of an EAN, subject cable systems and other participating entities upon receipt

of an EAN, an EAT, tests, or State and Local Area alerts. It is issued by the FCC and contains instructions for the above situations, monitoring guidelines, and EAS message examples. A copy of the Handbook must be located at normal duty positions or EAS equipment locations when an operator is required to be on duty and be immediately available to staff responsible for authenticating messages and initiating actions.

§ 11.16 National Control Point Procedures.

The National Control Point Procedures are written instructions issued by the FCC to national level EAS control points. They are for use by the participating radio and television networks, cable networks and program suppliers, common carriers and wire services. The procedures are divided into sections as follows:

(a) National Level EAS Activation. This section contains the activation and termination instructions for Presidential messages.

(b) EAS Test Transmissions. This section contains the instructions for testing the EAS at the National level.

(c) National Information Center (NIC). This section contains instructions for distributing United States Government official information messages after completion of the National Level EAS activation and termination actions.

§ 11.17 Authenticator Word Lists.

There are three lists issued by the FCC annually. The lists are to be used by EAS participants to ensure that the National level alerts and tests are legitimate. The lists must be used in accordance with directions in the EAS Operating Handbook and the National Control Point Procedures. LPTV stations do not receive authenticator lists.

(a) Red Envelope Authenticator List. This list is used for authentication purposes in accordance with instructions in the EAS Operating Handbook and National Control Point Procedures. It is issued to all broadcast stations and specified control points of the radio and television networks, cable networks and program suppliers, common carriers, wire services and other specified entities. A current copy of this list must be located in the pocket on the inside front cover of the EAS Operating Handbook. This list should be opened only to authenticate receipt of an EAN message and an EAT message from the above control pints. The FCC may request immediate return of the Red Envelope at any time.

(b) White Envelope Authenticator List. This list is used for caller identification purposes in accordance with instructions in the National Control Point Procedures. It is issued only to specified control points.

(c) NIC Authenticator List. This booklet is used for authentication purposes in accordance with instructions in the National Control Point Procedures. It is issued only to participating control points.

§ 11.18 EAS Designations.

(a) National Primary (NP) is a source of EAS Presidential messages.

(b) Local Primary (LP) is a source of EAS Local Area messages. An LP source is responsible for coordinating the carriage of common emergency messages from sources such as the National Weather Service or local emergency management offices as specified in its EAS Local Area Plan. If it is unable to carry out this function, other LP sources in the Local Area may be assigned the responsibility as indicated in State and Local Area Plans. LP sources are assigned numbers (LP–1, 2, 3, etc.) in the sequence they are to be monitored by other broadcast stations in the Local Area.

(c) State Primary (SP) is a source of EAS State messages. These messages can originate from the Governor or a designated representative in the State Emergency Operating Center (EOC) or State Capital. Messages are sent via the State Relay Network.

(d) State Relay (SR) is a source of EAS State messages. It is part of the State Relay Network and relays National and State common emergency messages into Local Areas.

(e) Participating National (PN) sources transmit EAS National, State or Local Area messages. The EAS transmissions of PN sources are intended for direct public reception.

(f) Non-participating National (NN) sources have elected not to participate in the National level EAS and hold an authorization letter to that effect. Upon activation of the national level EAS, NN sources are required to broadcast the EAS codes, Attention Signal, the sign-off announcement in the EAS Operating Handbook and then stop operating. All NN sources are required to comply with § 11.51, § 11.52 and § 11.61. They may transmit EAS State or Local Area messages at any time without prior notice.

§ 11.19 EAS Non-participating National Authorization Letter.

This authorization letter is issued by the FCC to broadcast station licensees. It states that the licensee has agreed to go off the air during a national level EAS message. This authorization will remain in effect through the period of the initial license and subsequent renewals from the time of issuance unless returned by the holder or suspended, modified or withdrawn by the Commission.

§ 11.20 State Relay Network.

This network is composed of State Relay (SR) sources, leased common carrier communications facilities or any other available communication facilities. The network distributes State EAS messages originated by the Governor or designated official. In addition to EAS monitoring, satellites, microwave, FM subcarrier or any other communications technology may be used to distribute State emergency messages.

§ 11.21 State and Local Area Plans and FCC Mapbook.

EAS plans contain guidance for broadcast personnel, emergency officials and NWS personnel to activate the EAS. The plans include the EAS header codes and messages that will be transmitted by key EAS sources (NP, LP, SP and SR).

(a) The State plan contains procedures for State emergency management and other State officials, the NWS, broadcast personnel to transmit emergency information to the public during a State emergency using the EAS.

(b) The Local Area plan contains procedures for local officials or the NWS to transmit emergency information to the public during a local emergency using the EAS. Local plans may be a part of the State plan. A Local Area is a geographical area of contiguous communities or counties that may include more than one state.

(c) The FCC Mapbook is based on the above plans. It organizes all broadcast stations and cable systems according to their State, EAS Local Area and EAS designation.

Subpart B—Equipment Requirements

§ 11.31 EAS protocol.

(a) The EAS uses a four part message for an emergency activation of the EAS. The four parts are: Preamble and EAS Header Codes; audio Attention Signal; message; and, Preamble and EAS End Of Message (EOM) Codes.

(1) The Preamble and EAS Codes must use Audio Frequency Shift Keying at a rate of 520.83 bits per second to transmit the codes. Mark frequency is 2083.3 Hz and space frequency is 1562.5 Hz. Mark and space time must be 1.92 milliseconds. Characters are ASCII seven bit characters as defined in ANSI X3.4–1977.

(2) The Attention Signal must be made up of the fundamental frequencies of 853 and 960 Hz. The two tones must

be transmitted simultaneously. The Attention Signal must be transmitted after the EAS header codes.

(3) The message may be audio, video or text.

(b) The ASCII dash and plus symbols are required and may not be used for any other purpose. Unused characters must be ASCII space characters. FM or TV call signs must use a backslash ASCII character (/) in lieu of a dash.

(c) The EAS protocol, including any codes, must not be amended, extended or abridged without FCC authorization. The EAS protocol and message format are specified in the following representation. Examples are also provided in the EAS Operating Handbook.

[PREAMBLE] ZCZC-ORG-EEE-PSSCCC+TTTT+JJJHHMM-LLLLLLLL-
(one second pause)
[PREAMBLE] ZCZC-ORG-EEE-PSSCCC+TTTT-JJJHHMM-LLLLLLLL-
(one second pause)
[PREAMBLE] ZCZC-ORG-EEE-PSSCCC+TTTT-JJJHHMM-LLLLLLLL-
(at least a one second pause)
(transmission of 8 to 25 seconds of Attention Signal)
(transmission of audio, video or text messages)
(at least a one second pause)
[PREAMBLE] NNNN
(one second pause)
[PREAMBLE] NNNN
(one second pause)
[PREAMBLE] NNNN
(at least one second pause)

[PREAMBLE] This is a consecutive string of bits (sixteen bytes of AB hexadecimal [8 bit byte 10101011]) sent to clear the system, set AGC and set asynchronous decoder clocking cycles. The preamble must be transmitted before each header and End Of Message code.

ZCZC- This is the identifier, sent as ASCII characters ZCZC to indicate the start of ASCII code.

ORG- This is the Originator code and indicates who originally initiated the activation of the EAS. These codes are specified in paragraph (d) of this section.

EEE- This is the Event code and indicates the nature of the EAS activation. The codes are specified in paragraph (e) of this section. The Event codes must be compatible with the codes used by the NWS Weather Radio Specific Area Message Encoder (WRSAME).

PSSCCC- This is the Location code and indicates the geographic area affected by the EAS alert. There may be 31 Location codes in an EAS alert. There may be 31 Location codes in an EAS alert. The Location code uses the Federal Information Processing System (FIPS) numbers as described by the U.S. Department of Commerce in National Institute of Standards and Technology publication 772. Each state is assigned an SS number as specified in paragraph (f) of this section. Each county is assigned a CCC number. A CCC number of 000 refers to an entire State or Territory. P defines county subdivisions as follows: 0=all or an unspecified portion of a county, 1=Northwest, 2=North Central, 3=Northeast, 4=West Central, 5=Central, 6=East Central, 7=Southwest, 8=South Central, 9=Southeast. Other numbers may be designated later for special applications. The use of county subdivisions will probably be rare and generally for oddly shaped or unusually large counties. Any subdivisions must be defined and agreed to by the local officials prior to use.

+TTTT- This indicates the valid time period of a message in 15 minute segments up to one hour and then in 30 minute segments beyond one hour; i.e., +0015, +0030, +0045, +100, +0430 and +0600.

JJJHHMM- This is the day in Julian Calendar days (JJJ) of the year and the time in hours and minutes (HHMM) when the message was initially released by the originator using 24 hour Universal Coordinated Time (UTC). These codes must remain unchanged for retransmitted messages.

LLLLLLLL- This is the call sign or other identification of the broadcast station, or NWS office transmitting or retransmitting the message. These codes will be automatically affixed to all outgoing messages by the EAS encoder.

NNNN- This is the End of Message (EOM) code sent as a string of four ASCII N characters.

(d) The only originator codes are:

Originator	ORG code
Broadcast station or cable system	EAS
Civil authorities	CIV
Emergency Action Notification Network.	EAN
National Weather Service	WXR
Primary Entry Point System	PEP

(e) The following Event (EEE) codes are presently authorized:

Nature of activation	Event codes
National Codes:	
Emergency Action Notification (National only).	EAN
Emergency Action Termination (National only).	EAT
National Information Center	NIC
National Periodic Test	NPT
Required Monthly Test	RMT
Required Weekly Test	RWT
Local Codes:	
Administrative Message	ADR
Blizzard Warning	BZW
Civil Emergency Message	CEM
Evacuation Immediate	EVI
Flash Flood Statement	FFS
Flash Flood Warning	FFW
Flash Food Watch	FFA
Flood Statement	FLS
Flood Warning	FLW
Flood Watch	FLA
High Wind Warning	HWW
High Wind Watch	HWA
Hurricane Statement	HLS
Hurricane Warning	HUW
Hurricane Watch	HUA
Practice/Demo Warning	DMO
Severe Thunderstorm Warning	SVR
Severe Thunderstorm Watch	SVA
Severe Weather Statement	SVS
Special Weather Statement	SPS
Tornado Warning	TOR
Tornado Watch	TOA
Tsunami Warning	TSW
Tsunami Watch	TSA
Winter Storm Warning	WSW
Winter Storm Watch	WSA

(f) The State and Territory FIPS number codes (SS) are as follows. County FIPS numbers (CCC) are contained in the State EAS Mapbook.

State	FIPS #
AL	01
AK	02
AZ	04
AR	05
CA	06
CO	08
CT	09
DE	10
FL	12
GA	13
HI	15
ID	16
IL	17
IN	18
IA	19
KS	20
KY	21
LA	22
ME	23
MD	24
MA	25
MI	26
MN	27
MS	28
MO	29
MT	30
NE	31
NV	32
NH	33
NJ	34
NM	35
NY	36
NC	37
ND	38
OH	39
OK	40
OR	41
PA	42
RI	44
SC	45
SD	46
TN	47
TX	48
UT	49
VT	50
VA	51
WA	53
WV	54
WI	55
WY	56

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Terr.	FIPS #
AS	60
PR	72
FM	64
PW	70
GU	66
UM	74
MH	68
VI	78
MP	69

§ 11.32 EAS Encoder.

(a) EAS Encoders must at a minimum be capable of encoding the EAS protocol described in § 11.31 and providing the EAS code transmission requirements described in § 11.51. EAS encoders must additionally provide the following minimum specifications:

(1) Encoder programming. Access to encoder programming shall be protected by a lock or other security measures and be configured so that authorized personnel can readily select and program the EAS Encoder with Originator, Event and Location codes for either manual or automatic operation.

(2) Inputs. The encoder shall have two inputs, one for audio messages and one for data messages (RS–232C with standard protocol and 1200 baud rate).

(3) Outputs. The encoder shall have two outputs, one audio port and one data port (RS–232C with standard protocol and 1200 baud rate).

(4) Calibration. EAS Encoders must provide a means to comply with the modulation levels required in § 11.51(f).

(5) Day-Hour-Minute and Identification Stamps. The encoder shall affix the JJJHHMM and LLLLLLLL codes automatically to all initial messages.

(6) Program Data Retention. Program data and codes shall be retained even with the power removed.

(7) Indicator. An aural or visible means that it activated when the Preamble is sent and deactivated at the End of Message code.

(8) Spurious Response. All frequency components outside 200 to 4000 Hz shall be attenuated by 40 dB or more with respect to the output levels of the mark or space frequencies.

(9) Attention Signal generator. The encoder must provide an attention signal that complies with the following:

(i) Tone Frequencies. The audio tones shall have fundamental frequencies of 853 and 960 Hz and not vary over ± 0.5 Hz.

(ii) Harmonic Distortion. The total harmonic distortion of each of the audio tones may not exceed 5% at the encoder output terminals.

(iii) Minimum Level of Output. The encoder shall have an output level capability of at least +8 dBm into a 600 Ohm load impedance at each audio tone. A means shall be provided to permit individual activation of the two tones for calibration of associated systems.

(iv) Time Period for Transmission of Tones. The encoder shall have timing circuitry that automatically generates the two tones simultaneously for a time period of not less than 8 nor longer than 25 seconds. NOTE: Prior to July 1, 1995, the Attention Signal must be at least 20 and not more than 25 seconds.

(v) Inadvertent activation. The switch used for initiating the automatic generation of the simultaneous tones shall be protected to prevent accidental operation.

(vi) Indicator Display. The encoder shall be provided with a visual and/or aural indicator which clearly shows that the Attention Signal is activated.

(b) Operating Temperature and Humidity. Encoders shall have the ability to operate with the above specifications within an ambient temperature range of 0 to +50 degrees C and a range of relative humidity of up to 95%.

(c) Primary Supply Voltage Variation. Encoders shall be capable of complying with the requirements of this section during a variation in primary supply voltage of 85 percent to 115 percent of its rated value.

(d) Testing Encoder Units. Encoders not covered by § 11.34(e) of this part shall be tested in a 10 V/m minimum RF field at an AM broadcast frequency and a 0.5 V/m minimum RF field at an FM or TV broadcast frequency to simulate actual working conditions.

§ 11.33 EAS Decoder.

(a) An EAS Decoder must at a minimum be capable of decoding the EAS protocol described in § 11.31, provide the EAS monitoring functions described in § 11.52, and the following minimum specifications:

(1) Inputs. Decoders must have the capability to receive at least 2 audio inputs from EAS monitoring assignments, and one data input (RS–232C with standard protocol and 1200 baud rate). The data input may be used to monitor other communications modes such as Radio Broadcast Data System (RBDS), NWR, satellite, public switched telephone network, or any other source that uses the EAS protocol.

(2) Valid codes. There must be a means to determine if valid EAS header codes are received and to determine if preselected header codes are received.

(3) Storage. Decoders must provide the means to:

(i) Record and store at least two minutes of audio or text messages.

(ii) Store at least 10 preselected header codes for comparison with incoming header codes. A non-preselected header code that is manually transmitted must be stored for comparison with later incoming header codes. The header codes of the last ten received valid messages which still have valid time periods must be stored for comparison with the incoming valid header codes of later messages. The header codes will be deleted from storage as their valid time periods expire.

(4) Display. A visual message shall be developed from any valid EAS header codes received. The message will include the Originator, Event, Location, the valid time period of the message and the local time the message was transmitted. The message shall be in the primary language of the broadcast station or cable system and be fully displayed on the decoder and readable in normal light and darkness.

(5) Indicators. EAS Decoders must have a distinct aural or visible means to show that it is activated when:

(i) any valid EAS header codes are received as specified in § 11.33(a)(10).

(ii) preprogrammed header codes, such as those selected in accordance with § 11.52(d) are received.

(iii) a signal is present at each audio input that is specified in § 11.33(a)(1).

(6) Program Data Retention. The program data must be retained even with power removed.

(7) Outputs. Decoders shall have the following outputs: a data port or ports (RS–232C with standard protocol and 1200 baud rate) where received valid EAS header codes and received preselected header codes are available; one audio port that is capable of monitoring each decoder audio input; and, an internal speaker to enable personnel to hear audio from each input.

(8) Decoder Programming. Access to decoder programming shall be protected by a lock or other security measures and be configured so that authorized personnel can readily select and program the EAS Decoder with preselected Originator, Event and Location codes for either manual or automatic operation.

(9) Reset. There shall be a method to automatically or manually reset the decoder to the normal monitoring condition. If an end of message code (EOM) is not received for an EAS message, operators shall be able to select an automatic reset time which may not be less than two minutes. Messages received with the EAN Event codes

shall disable the reset function so that lengthy audio messages can be handled. The last message received with valid header codes shall be displayed as required by § 11.33(a)(4) of this section before the decoder is reset.

(10) Message Validity. An EAS Decoder must provide error detection and validation of the header codes of each message to ascertain if the message is valid. Header code comparisons may be accomplished through the use of a bit-by-bit compare or any other error detection and validation protocol. A header code must only be considered valid when two of the three headers match exactly. Duplicate messages must not be relayed automatically.

(11) A header code with the EAN Event code specified in § 11.31(c) that is received through either of the two audio inputs must override all other EAS messages.

(b) Attention Signal. EAS Decoders at broadcast stations shall have detection and activation circuitry that will demute a receiver upon detection of the two audio tones of 853 Hz and 960 Hz. To prevent false responses, decoders designed to use the two tones for broadcast receiver demuting shall comply with the following:

(1) Time Delay. A minimum time delay of 8 but not more than 16 seconds of tone reception shall be incorporated into the demuting or activation process to insure that the tones will be audible for a period of at least 4 seconds. After July 1, 1995, the time delay shall be 3–4 seconds.

(2) Operation Bandwidth. The decoder circuitry shall not respond to tones which vary more than ± 0.5 Hz from each of the frequencies, 853 Hz and 960 Hz.

(3) Reset Ability. The decoder shall have a means to manually or automatically reset the associated broadcast receiver to a muted state.

(c) Decoders shall be capable of operation within the tolerances specified in this section as well as those in §§ 11.32(b), (c) and (d).

§ 11.34 Acceptability of the equipment.

(a) An EAS Encoder used for generating the EAS codes and the Attention Signal must be Certified in accordance with the procedures in Part 2, Subpart J, of this chapter. The data and information submitted must show the capability of the equipment to meet the requirements of this Part as well as the requirements contained in Part 15 of this chapter for digital devices.

(b) Decoders used for the detection of the EAS codes and receiving the Attention Signal must be Certified in accordance with the procedures in Part 2, Subpart J, of this chapter. The data and information submitted must show the capability of the equipment to meet the requirements of this Part as well as the requirements contained in Part 15 of this chapter for digital devices.

(c) The functions of the EAS decoder, Attention Signal generator and receiver, and the EAS Encoder specified in §§ 11.31, 11.32 and 11.33 may be combined and notified as a single unit provided that the unit complies with all specifications in this rule section.

(d) Manufacturers must include instructions and information on how to install, operate and program an EAS Encoder, EAS Decoder, or combined unit and a list of all State and county FIPS numbers with each unit sold or marketed in the U.S.

(e) Waiver requests of the Certification requirements for EAS Encoders or EAS Decoders which are constructed for use at a broadcast station or subject cable system, but are not offered for sale will be considered on an individual basis in accordance with Part 1, Subpart G, of this chapter.

§ 11.35 Equipment operational readiness.

(a) Broadcast stations and subject cable systems are responsible for ensuring that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS is installed so that the monitoring and transmitting functions are available during the times the broadcast station or cable system is in operation. Additionally, broadcast stations and subject cable systems must determine the cause of any failure to receive the required tests or activations specified in §§ 11.61(a) (1) and (2). Appropriate entries must be made in the broadcast station log as specified in § 73.1820 and § 73.1840 of this chapter, cable system record in § 76.305 of this chapter indicating reasons why any tests were not received.

(b) If the EAS Encoder or EAS Decoder becomes defective the broadcast station or subject cable system may operate without the defective equipment pending its repair or replacement for a period not in excess of 60 days without further FCC authority. Entries shall be made in the broadcast station log or subject cable system records showing the date and time the equipment was removed and restored to service. For personnel training purposes, the required monthly test script must still be transmitted even though the equipment for generating the EAS message codes, Attention Signal and EOM code is not functioning.

(c) An informal request may be made to the Engineer-in-charge of the FCC field office serving area in which the broadcast station or subject cable system is located for additional time to complete repairs to the defective equipment. These requests must explain what steps have been taken to repair or replace the defective equipment, the alternative procedures being used while the defective equipment is out of service, and when the defective equipment will be repaired or replaced.

Subpart C—Organization

§ 11.41 Participation in EAS.

(a) All broadcast stations and cable systems specified in § 11.11 are categorized as Participating National (PN) sources unless authorized by the FCC to be Non-Participating National (NN) sources.

(b) A broadcast station or cable system may submit a written request to the FCC asking to be a Non-Participating National (NN) source. The FCC may then issue a Non-participating National Authorization letter. NN sources must go off the air during a national EAS activation.

(1) Any existing station that is a Non-participating National (NN) source under § 11.18(f) that wants to become a Participating National (PN) source in the national level EAS must submit a written request to the FCC.

(2) NN sources may voluntarily participate in the State and Local Area EAS. Participation is at the discretion of broadcast station and cable system management and will be in accordance with the provisions of State and Local Area EAS Plans.

(c) All sources, including NN, must have immediate access to an EAS Operating Handbook and a Red Envelope Authenticator List and be placed on the EAS mailing list maintained by the FCC.

§ 11.42 Participation by communications common carriers.

(a) During activation of the National level EAS, communications common carriers which have facilities available in place may, without charge, connect:

(1) An originating source from the nearest service area to a selected Test Center and then to the radio and television broadcast networks, and cable networks and program suppliers for the duration of the emergency, provided an Emergency Action Notification is issued by the White House and the originating source has a local channel from the originating point to the nearest service area.

(2) An independent broadcast station to the radio and television broadcast networks, and cable networks and

program suppliers provided the station has in service a local channel from the station's studio or transmitter directly to the broadcast source.

(b) Upon receipt of the Emergency Action Termination, the common carriers shall disconnect the originating source and the participating independent stations and restore the networks and program suppliers to their original configurations.

(c) During a National level EAS Closed Circuit Test, common carriers which have facilities in place may, without charge, connect an originating source from the nearest service area to a selected Test Center and then to the radio networks and, if participating, any television networks and cable networks and program suppliers. Independent stations will not be connected during the test unless authorized by the FCC. Upon test termination, participants shall be restored to their original configurations.

(d) A common carrier rendering free service shall file with the FCC, on or before July 31st and January 31st of each year, reports covering the six months ending on June 30th and December 31st respectively. These reports shall state what free service was rendered under this rule and the charges in dollars which would have accrued to the carrier for this service if charges had been collected at the published tariff rates if such carriers are required to file tariffs.

§ 11.43 National level participation.

The industry entities voluntarily participating in the national level EAS are:

(a) Radio Networks.

(1) ABC.

(2) Associated Press (APR).

(3) CBS.

(4) CNN.

(5) Jones Satellite Audio.

(6) Moody Broadcasting Network.

(7) Mutual Broadcasting System (MBS).

(8) MUZAK.

(9) NBC.

(10) National Public (NPR).

(11) Unistar.

(12) United Press International (UPIR).

(13) USA.

(b) Television Networks.

(1) ABC.

(2) CBS.

(3) FOX.

(4) NBC.

(5) PBS.

(c) Cable Program Suppliers.

(1) Cable News Network (CNN) and CNN Headline News.

(2) Cinemax.

(3) Disney Channel.

(4) Entertainment and Sports Programming Network (ESPN).

(5) Home Box Office (HBO).

(6) Movie Channel.

(7) MTV.

(8) The Nashville Network.

(9) Nickelodeon.

(10) Showtime.

(11) VH–1.

(12) Weather Channel.

(d) Wire Services.

(1) Associated Press (AP).

(2) Reuters.

(3) United Press International (UPI).

(e) Common Carriers.

(1) American Telephone and Telegraph (AT&T).

(2) [Reserved]

(f) Entities that wish to voluntarily participate in the national level EAS may submit a written request to the FCC.

§ 11.44 EAS message priorities.

(a) A national activation of the EAS for a Presidential message with the Event code EAN as specified in § 11.31 must take priority over any other message and preempt it if it is in progress.

(b) EAS participants should transmit other EAS messages in the following order: first, Local Area Messages; second, State Messages; and third, National Information Center (NIC) Messages.

(c) Key EAS sources (NP, LP, SP and SR) and Participating National (PN) sources that remain on the air during a National emergency must carry Presidential Messages "live" at the time of transmission or immediately upon receipt. Activation of the National level EAS must preempt State and Local Area EAS operation.

(d) During a national emergency, the radio and television broadcast network program distribution facilities must be reserved exclusively for distribution of Presidential Messages. NIC messages received from national networks which are not broadcast at the time of original transmission must be recorded locally by LP sources for transmission at the earliest opportunity consistent with the message priorities in paragraph (b) of this section.

§ 11.45 Prohibition of false or deceptive EAS transmissions.

No person may transmit or cause to transmit the EAS codes or Attention Signal, or a recording or simulation thereof, in any circumstance other than in an actual National, State or Local Area emergency or authorized test of the EAS. Broadcast station licensees should also refer to § 73.1217 of this chapter.

§ 11.46 EAS public service announcements.

Broadcast stations may use Public Service Announcements or obtain commercial sponsors for announcements, informercials, or programs explaining the EAS to the public. Such announcements and programs may not be a part of alerts or tests, and may not simulate or attempt to copy alert tones or codes.

Subpart D—Emergency Operations

§ 11.51 EAS code and Attention Signal Transmission requirements.

(a) Broadcast stations must transmit, either automatically or manually, national level EAS messages and required tests by sending the EAS header codes, Attention Signal, emergency message and End of Message (EOM) using the EAS Protocol. The Attention Signal must precede any emergency audio message. After July 1, 1997, the shortened Attention Signal may only be used as an audio alert signal and the EAS codes will become the minimum signalling requirement for National level messages and tests.

(b) Broadcast stations may transmit only the EAS header codes and the EOM code without the Attention Signal and emergency message for State and local emergencies. Television stations and cable systems should ensure that pauses in video programming before EAS message transmission do not cause television receivers to mute EAS audio messages.

(c) Effective July 1, 1996, all radio and television stations shall transmit EAS messages in the main audio channel.

(d) By the above date, television stations shall transmit a visual message containing the Originator, Event, Location and the valid time period of an EAS message. If the message is a video crawl, it shall be displayed at the top of the television screen or where it will not interfere with other visual messages.

(e) Class D non-commercial educational FM stations as defined in § 73.506 of this chapter and low power TV stations as defined in § 74.701(f) of this chapter are not required to have equipment capable of generating the EAS codes and Attention Signal specified in § 11.31.

(f) Broadcast stations may additionally transmit EAS messages through other communications means other than the main audio channel. For example, FM stations may transmit the EAS codes on subcarriers including 57 kHz using the RBDS standard produced by the National Radio Systems Committee (NRSC) and television

stations may use subsidiary communications services.

(g) Broadcast stations are responsible for ensuring that the equipment for generating the EAS codes and the Attention Signal shall modulate a broadcast station transmitter so that the signal broadcast to other broadcast stations and cable systems alerts them that the EAS is being activated or tested at the National, State or Local Area level. The minimum level of modulation for EAS codes, measured at peak modulation levels using the internal calibration output specified in § 11.32(a)(4) shall modulate the transmitter at no less than 80% of full channel modulation limits. Measured at peak modulation levels, each of the Attention Signal tones shall be calibrated separately to modulate the transmitter at no less than 40%. These two calibrated modulation levels shall have values that are within 1 dB of each other.

(h) Effective July 1, 1997, cable systems shall transmit EAS audio messages in the same order specified in paragraph (a) of this section. The Attention Signal may be produced from a storage device. Additionally, subject cable systems must:

(1) Install, operate, and maintain equipment capable of generating the EAS codes. The modulation levels for the EAS codes and Attention Signal for cable systems shall comply with the aural signal requirements in § 76.605 of this chapter. This will provide sufficient signal levels to operate cable subscriber television or radio receivers equipped with EAS decoders and to audibly alert subscribers.

(2) Provide a video interruption and an audio EAS message on all channels. The audio message must state which channel is carrying the visual EAS message.

(3) Subject cable systems shall transmit a visual EAS message on at least one channel. The message shall contain the Originator, Event, Location and the valid time period of the EAS message. If the visual message is a video crawl, it shall be displayed at the top of the subscriber's television screen or where it will not interfere with other visual messages.

(4) Cable systems shall provide a method to alert hearing impaired or deaf subscribers to EAS messages. Methods may include: a box that displays EAS messages and activates other alerting mechanisms or lights; visual messages on all channels; etc.

(5) Cable systems may elect not to interrupt EAS messages from broadcast stations based on a written agreement between all concerned.

(i) Other technologies and public service providers, such as DBS, low earth orbiting satellites, etc., that wish to participate in the EAS may contact the FCC's EAS office or their State Emergency Communication Committee for information and guidance.

(j) If manual interrupt is used as specified in paragraph (l) of this section, EAS Encoders must be located so that station or cable staff, at normal duty locations, can initiate the EAS code and Attention Signal transmission.

(k) Broadcast stations or cable systems that are co-owned and co-located with a combined studio or control facility (such as an AM and FM licensed to the same entity and at the same location or a cable headend serving more than one system) may provide the EAS transmitting requirements contained in this section for the combined station or cable system with one EAS Encoder. The requirements of § 11.32 must be met for both the broadcast station and cable system.

(l) Broadcast stations and cable systems are required to transmit all received EAS messages in which the header code contains the Event codes for Emergency Action Notification (EAN), Emergency Action Termination (EAT), and Required Monthly Test (RMT), with the accompanying location codes for their State and State/county. These EAS messages shall be retransmitted unchanged except for the LLLLLLLL– code which identifies the broadcast station or cable system retransmitting the message. See § 11.31(c). If an EAS source originates any EAS messages with the above Event codes, it must include the location codes for the State and counties in its service area. When transmitting the required weekly test, broadcast stations and subject cable systems will use the event code RWT. The location codes will be the state and county for the broadcast station city of license or subject cable system community. Other location codes may be included upon approval of station or cable system management approval. EAS code requirements and examples are provided in the EAS Operating Handbook. Operations may be conducted automatically or manually.

(1) *Automatic* interrupt of programming and transmission of EAS messages is required when facilities are unattended and must include a permanent record that contains at a minimum the following information: Originator, Event, Location and valid time period of the message. The decoder performs the functions necessary to determine which EAS messages are automatically transmitted by the encoder.

(2) *Manual* interrupt of programming and transmission of EAS messages may be used. EAS messages with the EAN and EAT Event codes must be transmitted immediately and Monthly EAS test messages within 15 minutes. All actions must be logged or recorded.

(m) Broadcast stations and cable systems may employ a minimum delay feature, not to exceed 15 minutes, for automatic interrupt of EAS codes but not for the EAN Event which must be transmitted immediately.

(n) Either manual or automatic operation of EAS equipment may be used at broadcast stations or cable systems that use remote control. If manual operation is used, an EAS decoder must be located at the remote control location and directly monitor the signals of the two assigned EAS sources. If direct monitoring of the assigned EAS sources is not possible at the remote location, automatic operation is required. If automatic operation is used, the remote control location may be used to override the transmission of an EAS message. Broadcast stations and cable systems may change back and forth between automatic and manual operation.

§ 11.52 EAS code and Attention Signal Monitoring requirements

(a) Before July 1, 1997, broadcast stations must be capable of receiving the Attention Signal required by § 11.32(a)(9) and emergency messages of other broadcast stations during their hours of operation. Effective July 1, 1996, all broadcast stations must install and operate during their hours of operation, equipment capable of receiving and decoding, either automatically or manually, the EAS header codes, emergency messages and EOM code. The effective date for subject cable systems is July 1, 1997. NOTE: after July 1, 1997, the two-tone Attention Signal will not be used to actuate two-tone decoders but will be used as an aural alert signal.

(b) If manual interrupt is used as specified in § 11.51(l)(2), decoders must be located so that operators at their normal duty stations at broadcast stations and cable systems can be alerted immediately when EAS messages are received.

(c) Broadcast stations or cable systems that are co-owned and co-located with a combined studio or control facility, (such as an AM and FM licensed to the same entity and at the same location or a cable headend serving more than one system) may provide the EAS monitoring requirements contained in

this section for the combined station or cable system with one EAS Decoder. The requirements of § 11.33 must be met for the combined station or cable system.

(d) Broadcast stations and subject cable systems must monitor the two EAS sources assigned in accordance with the monitoring priorities in the EAS Operating Handbook. The off-air monitoring assignments of each broadcast station and cable system are specified in the State EAS Plan and FCC Mapbook.

(1) If the required EAS sources cannot be received, alternate arrangements or a waiver may be obtained by written request to the FCC's EAS office. In an emergency, a waiver may be issued over the telephone with a follow up letter to confirm temporary or permanent reassignment.

(2) Broadcast station and cable system management will determine which header codes will automatically interrupt their programming for State and Local Area emergency situations affecting their audiences.

(e) A broadcast station or cable system is required to interrupt normal programming either automatically or manually when it receives an EAS message in which the header code contains the Event codes for Emergency Action Notification (EAN), Emergency Action Termination (EAT), or Required Monthly Test (RMT) for its State or State/county location.

(1) *Automatic* interrupt of programming is required when facilities are unattended. Automatic operation must provide a permanent record of the EAS message that contains at a minimum the following information: Originator, Event, Location and valid time period of the message.

(2) *Manual* interrupt of programming and transmission of EAS messages may be used. EAS messages with the EAN Event code must be transmitted immediately and Monthly EAS test messages within 15 minutes. All actions must be logged or recorded. Decoders must be programmed for the EAN and EAT Event header codes for EAS National level emergencies and the RMT and RWT Event header codes for required monthly and weekly tests, with the appropriate accompanying State and State/county location codes.

§ 11.53 Dissemination of Emergency Action Notification.

Initiation of the EAN by any one of the following sources is sufficient to begin the emergency actions in § 11.54.

(a) National Level. The EAN is issued by the White House. The EAN message is sent from an origination point to control points of the participating radio and television networks, cable networks and program suppliers, wire services, communications common carriers and other entities. It is then disseminated via:

(1) Radio and television broadcast networks to all affiliates with the use of internal alerting facilities.

(2) Cable networks and program suppliers to cable systems and subscribers.

(3) Wire services to all subscribers (AM, FM, TV, LPTV and other stations).

(4) Off-air monitoring of EAS sources.

(b) State level and Local Area levels. EAN dissemination arrangements at these levels originate from State and local governments in accordance with State and Local Area plans.

(c) Broadcast stations must, prior to commencing routine operation or originating any emissions under program test, equipment test, experimental, or other authorizations, determine whether the EAS has been activated by any of the following methods:

(1) Monitor the radio and TV networks and cable systems.

(2) Check the wire services.

(3) Monitor the assigned EAS sources.

§ 11.54 EAS operation during a National Level emergency.

(a) The EAS Operating Handbook summarizes the procedures to be followed upon receipt of a National level EAN or EAT Message.

(b) Immediately upon receipt of an EAN message, broadcast stations and cable systems must:

(1) Monitor the radio and television networks, cable networks and program suppliers, and wire services for further instructions.

(2) Verify the authenticity of the EAN message with the current Red Envelope Authenticator List (broadcast stations only).

(3) Monitor the two EAS sources assigned in the State or Local Area plan or FCC Mapbook for any further instructions.

(4) Discontinue normal programming and follow the transmission procedures in the appropriate section of the EAS Operating Handbook. Announcements may be made in the same language as the primary language of the station.

(i) Key EAS sources (National Primary (NP), Local Primary (LP), State Primary (SP), State Relay (SR) and Participating National (PN) sources) follow the transmission procedures and make the announcements in the National Level Instructions of the EAS Operating Handbook.

(ii) Non-participating National (NN) sources follow the transmission procedures and make the sign-off announcement in the EAS Operating Handbook's National Level Instructions section for NN sources. After the sign-off announcement, NN sources are required to remove their carriers from the air and monitor for the Emergency Action Termination message. NN sources using automatic interrupt under § 11.51(l)(1) must transmit the header codes, Attention Signal, sign-off announcement and EOM code after receiving the appropriate EAS header codes for a national emergency.

(5) After completing the above transmission procedures, key EAS and Participating National sources must transmit a common emergency message until receipt of the Emergency Action Termination Message. Message priorities are specified in § 11.44. If LP or SR sources of a Local Area cannot provide an emergency message feed, any source in the Local Area may elect to provide a message feed. This should be done in an organized manner as designated in State and Local Area EAS Plans.

(6) The Standby Script shall be used until emergency messages are available. The text of the Standby Script is in the EAS Operating Handbook's section for Participating sources.

(7) TV broadcast stations shall display an appropriate EAS slide and then transmit all EAS announcements visually and aurally as specified in § 73.1250(h) of this chapter.

(8) Announcements may be made in the same language as the primary language of the station.

(9) Broadcast Stations in the International Broadcast Service must cease broadcasting immediately upon receipt of an Emergency Action Notification and must maintain radio silence until an EAT is issued. Such stations may be issued an emergency authorization by the FCC with concurrence of the Director, Office of Science and Technology Policy, to transmit Federal government broadcasts or communications.

(10) Broadcast stations may transmit their call letters and cable systems may transmit the names of the communities they serve during an EAS activation. EAS State and Local Area identifications must be given as provided in State and Local Area EAS plans.

(11) All broadcast stations and cable systems operating and identified with a particular Local Area must transmit a common national emergency message until receipt of the Emergency Action Termination.

(12) Broadcast stations, except those holding an EAS Non-participating

National Authorization letter, are exempt from complying with § 73.62 and § 73.1560 of this chapter (operating power maintenance) while operating under this part.

(13) National Primary (NP) sources must operate under the procedures in the National Control Point Procedures.

(14) The time of receipt of the EAN and Emergency Action Termination messages shall be entered in the broadcast station logs (as specified in § 73.1820 and § 73.1840 of this chapter), or the cable system records (as specified in § 76.305 of this chapter).

(c) Upon receipt of an Emergency Action Termination Message, broadcast stations and cable systems must follow the termination procedures in the EAS Operating Handbook.

(d) Broadcast stations and cable systems originating emergency communications under this section shall be considered to have conferred rebroadcast authority, as required by Section 325(a) of the Communications Act of 1934, 47 U.S.C. § 325(a), to other participating broadcast stations and cable systems.

§ 11.55 EAS operation during a State or Local Area emergency.

(a) The EAS may be activated at the State or Local Area levels by broadcast stations and cable systems at their discretion for day-to-day emergency situations posing a threat to life and property. Examples of natural emergencies which may warrant activation are: tornadoes, floods, hurricanes, earthquakes, heavy snows, icing conditions, widespread fires, etc. Man-made emergencies may include: toxic gas leaks or liquid spills, widespread power failures, industrial explosions, and civil disorders.

(b) EAS operations must be conducted as specified in State and Local Area EAS Plans. The plans must list all authorized entities participating in the State or Local Area EAS.

(c) Immediately upon receipt of a State or Local Area EAS message, participating broadcast stations and cable systems must do the following:

(1) State Relay (SR) sources monitor the State Relay Network or follow the State EAS plan for instructions from the State Primary (SP) source.

(2) Local Primary (LP) sources monitor the Local Area SR sources or follow the State EAS plan for instructions.

(3) Participating National (PN) and Non-participating National (NN) sources monitor the Local Area LP sources for instructions.

(4) Broadcast stations and cable systems participating in the State or Local Area EAS must discontinue normal programming and follow the procedures in the State and Local Area Plans. Television stations must comply with § 11.54(b)(7). Broadcast stations providing foreign language programming shall comply with § 11.54(b)(8).

(5) Upon completion of the State or Local Area EAS transmission procedures, resume normal programming until receipt of the cue from the SR or LP sources in your Local Area. At that time begin transmitting the common emergency message received from the above sources.

(6) Resume normal operations upon conclusion of the message.

(7) The times of the above EAS actions must be entered in the broadcast station or cable system records as specified in § 11.54(b)(15), FCC Form 201 may be used to report EAS activations.

(8) Use of the EAS codes or Attention Signal automatically grants rebroadcast authority as specified in § 11.54(d).

Subpart E—Tests

§ 11.61 Tests of EAS procedures.

(a) Tests shall be made at regular intervals as indicated below. Additional tests may be performed anytime. EAS activations and special tests may be performed in lieu of required tests as specified in paragraph (a)(6) of this section. All tests will conform with the procedures in the EAS Operating Handbook.

(1) Required Monthly Tests of the EAS header codes, Attention Signal, Test Script and EOM code.

(i) Effective July 1, 1996, AM, FM and TV stations.

(ii) Effective July 1, 1997, cable systems.

(iii) Tests in odd numbered months shall occur between 8:30 a.m. and local sunset. Tests in even numbered months shall occur between local sunset and 8:30 a.m. They will originate from Local or State Primary sources. Time and script content will be developed by State Emergency Communications Committees in cooperation with affected broadcast stations, cable systems, and other participants. Script content can be in the primary language of the broadcast station or cable system. These monthly tests must be transmitted within 15 minutes of receipt by broadcast stations and cable systems in an EAS Local Area or State. Class D non-commercial educational FM and LPTV stations need to transmit only the test script.

(2) Required Weekly Tests:

(i) Attention Signal. Until July 1, 1996, broadcast stations must conduct tests of the Attention Signal and Test Script at least once a week at random days and times between 8:30 a.m. and local sunset. Class D non-commercial educational FM and LPTV stations do not need to transmit the Attention Signal. Script content can be in the primary language of the station.

(ii) EAS Header Codes and EOM Codes:

(A) Effective July 1, 1996, AM, FM and TV stations must conduct tests of the EAS header and EOM codes at least once a week at random days and times.

(B) Effective July 1, 1997, subject cable systems must conduct tests of the EAS header and EOM codes at least once a week at random days and times.

(iii) Class D non-commercial educational FM and LPTV stations are not required to transmit this test but must log receipt.

(iv) The EAS weekly test is not required during the week that a monthly test is conducted.

(3) Periodic Wire Service Tests. AP, Reuters and UPI shall separately conduct test transmissions to broadcast stations and cable systems on their wire networks. Tests may occur no more than once a month at random times selected by the wire services. These tests shall conform with the procedures in the EAS Operating Handbook and the National Control Point Procedures.

(4) Weekly Emergency Action Notification (EAN) network transmissions. Tests of the National level interconnection facilities shall be conducted on a random basis once each week. They shall originate from the Federal government over a dedicated network to specified control points of the radio and television networks, cable networks and program suppliers, wire services, common carriers and other organizations. The tests shall conform with the National Control Point Procedures.

(5) Periodic National Tests. National Primary (NP) sources shall participate in tests as appropriate. The FCC may request a report of these tests.

(6) EAS activations and special tests. The EAS may be activated at the State or Local Area level by a broadcast station or cable system in lieu of the monthly or weekly tests required by this section. Such activation must include transmission of the EAS header codes, Attention Signal, emergency message and EOM code for substitution of the monthly test. Activation must include transmission of the Attention Signal and emergency message for substitution of the weekly test in paragraph (a)(2)(i) of this section. Activation must include transmission of the EAS header and EOM codes for substitution of the

weekly test in paragraph (a)(2)(ii) of this section. Television stations and cable systems shall comply with the visual message requirements in § 11.51 of this part. Special EAS tests at the State and Local Area levels may be conducted on a day-to-day basis following procedures in State and Local Area EAS plans.

(b) Entries shall be made in the broadcast station or cable system records as specified in § 11.54(b)(14) concerning EAS tests received and transmitted.

§ 11.62 Closed Circuit Tests of National Level EAS facilities.

(a) Closed Circuit Tests (CCT) of National Level EAS facilities shall be conducted on a random or scheduled basis not more than once a month and not less than once every three months. Test times will be selected by the White House in coordination with participating industry personnel, the Federal Emergency Management Agency (FEMA), and the FCC. The FCC will notify the participating networks, wire services, cable networks and program suppliers and common carriers of the selected time window for the test at least four working days (holidays excluded) before the test.

(b) The EAS Operating Handbook and National Control Point Procedures contain the CCT procedures.

(c) The control points of the participating radio and television networks, cable networks and program suppliers, wire services and common carriers will receive notification of a CCT by a "Closed Circuit Test Activation Message".

(d) Test announcements will originate from a point selected by the White House with program feed circuitry connected to the telephone company Toll Test Center at points coordinated for each test. Participating common carriers will connect, as required, the facilities of the radio networks and other test participants. Telephone companies are not authorized to add any participating independent broadcast stations unless authorized by the FCC. Authentication will be provided to the Toll Test Center or other program entry location responsible for test arrangements. Authentication used in the CCT Message will be the test words on the outside of the Red Envelope Authenticator List.

(e) CCT procedures for radio network affiliates, wire service subscribers, and, if participating, television network affiliates and cable systems are as follows:

(1) Notification of a CCT will be disseminated as specified in § 11.53 (a)(1) and (a)(3) and the EAS Operating Handbook.

(2) Recipients immediately monitor their radio network, and if participating, their television network or cable system, and check their wire service for the receipt of the CCT Activation Message. Verify authenticity using the current Red Authenticator List.

(3) Continue to monitor for the CCT audio talkup and program.

(4) Enter the time of receipt of the CCT message in the broadcast station log or cable system records.

(5) The CCT terminates on the following aural closing cue in the text of the test program: "This concludes the Closed Circuit Test of the EAS."

(6) Following the closing cue, wire service subscribers will receive a "Closed Circuit Test Termination Message". Record the time of receipt as indicated above.

(f) The FCC may request a CCT report in a prescribed format.

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334.

8. Part 73, Subpart G, is amended by removing §§ 73.901 through 73.962, revising the subpart heading, removing all centered headings and adding Section 73.900 to read as follows:

Subpart G—Emergency Broadcast System

§ 73.900 Cross references.

The Emergency Broadcast System (EBS) rules have been renamed the Emergency Alert System (EAS) and revised. The new EAS rules are contained in a new Part 11. Equipment type accepted for EBS use under the old Subpart G rules may continue to be used at broadcast stations until July 1, 1996, provided that it meets all applicable requirements of Part 11.

Old section	New section
73.901	11.1
73.902	11.1
73.903	11.11
73.904	Removed
73.905	11.13
73.906	11.12
73.907	11.13
73.908	11.15
73.909	11.16
73.910	11.17
73.912	11.43
73.913	11.18
73.914	11.19
73.915	11.19
73.916	11.19
73.917	11.19
73.918	11.19
73.919	11.20
73.920	11.21(b)
73.921	11.21
73.922	11.44
73.926	11.41
73.927	11.42
73.931	11.14, 11.53
73.932	11.35, 11.51, 11.52
73.933	11.54
73.935	11.55
73.936	11.55
73.937	11.55
73.940	11.32
73.941	11.33
73.942	11.34
73.943	11.34
73.961	11.61
73.962	11.62

9. Section 73.1207 is amended by revising paragraph (b)(1) and adding a new paragraph (c)(4) to read as follows:

§ 73.1207 Rebroadcasts.

* * * * *

(b) * * *

(1) Stations originating emergency communications under a State EAS plan are considered to have conferred rebroadcast authority to other participating stations.

* * * * *

(c) * * *

(4) Emergency communications originated under a State EAS plan.

* * * * *

10. Section 73.1250 is amended by revising paragraph (c) and revising the last sentence of paragraph (h) to read as follows:

§ 73.1250 Broadcasting emergency information.

* * * * *

(c) If the Emergency Alert System (EAS) is activated for a national emergency while a Local Area or State emergency operation is in progress, the national level EAS operation must take precedence. If, during the broadcasting of Local Area or State emergency information, the EAS codes or Attention Signal described in § 11.12 of this chapter are used, the broadcasts are considered as being carried out under a Local Area or State EAS plan.

* * * * *

(h) * * * However, when an emergency operation is being conducted under a national, State or Local Area Emergency Alert System (EAS) plan, emergency information shall be transmitted both aurally and visually unless only the EAS codes are transmitted as specified in § 11.51 of this chapter.

11. Section 73.1820 is amended by revising paragraph (a)(1)(iii) to read as follows.

§ 73.1820 Station log.

(a) * * *

(1) * * *

(iii) An entry of each test and activation of the Emergency Alert System (EAS) pursuant to the requirement of part 11 of this chapter and the EAS Operating Handbook. Stations may keep EAS data in a special EAS log which shall be maintained at a convenient location; however, this log is considered a part of the station log.

* * * * *

12. Section 73.3549 is amended by revising the heading and the first sentence to read as follows.

§ 73.3549 Requests for extension of authority to operate without required monitors, indicating instruments, and EAS encoders and decoders.

Requests for extension of authority to operate without required monitors, transmission system indicating instruments, or encoders and decoders for monitoring and generating the EAS codes and Attention Signal should be made to the Engineer in Charge of the Field Office in which the station is operating. * * *

* * * * *

13. Section 73.4097 is amended by revising the heading to read as follows:

§ 73.4097 EBS (now EAS) attention signals on automated programming systems.

* * * * *

14. The alphabetical index following Part 73 is amended by removing the entries for "EBS (Emergency Broadcast System)," "EBS signal tests—automated systems," and "Emergency information, Broadcasting," and adding the following entries:

ALPHABETICAL INDEX—PART 73

* * * * *

E

* * * * *

EAS (Emergency Alert System—11.1–11.62

EAS signal test-automated systems—73.4097(*)

* * * * *

Emergency Alert System (EAS)—11.1–11.62

PART 76—CABLE TELEVISION SERVICE

15. The authority Citation for Part 76 continues to read:

Authority: Sec. 2, 3, 4, 301, 303., 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309; 532; 533; 535; 542; 543; 552; 554, as amended, 106 Stat. 1460.

16. Section 76.3 is amended by adding a new entry in numerical order to read as follows:

§ 76.3 Other pertinent rules.

* * * * *

Part 11—Emergency Alert System (EAS)

* * * * *

17. Section 76.5 is amended by adding a new paragraph (qq) to read as follows:

§ 76.5 Definitions.

* * * * *

(qq) Emergency Alert System (EAS). The EAS is composed of broadcast networks; cable networks and program suppliers; AM, FM and TV broadcast stations; Low Power TV (LPTV) stations; subject cable systems; and other entities and industries operating on an organized basis during emergencies at the National, State, or local levels.

18. Section 76.301 is revised to read as follows:.

§ 76.301 Copies of rules.

The operator of a cable television system shall have a current copy of Part 76 and, if subject to the Emergency Alert System (EAS) rules contained in Part 11 of this chapter, an EAS Operating Handbook, and is expected to be familiar with the rules governing cable television systems and the EAS. Copies of the Commission's Rules may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, at nominal cost. Copies of the EAS Operating Handbook may be obtained from the Commission's EAS staff, in Washington, DC.

19. Section 76.305 is amended by adding a new paragraph (a)(1) and adding and reserving paragraph (a)(2) to read as follows:

§ 76.305 Records to be maintained locally by cable system operators for public inspection.

(a) * * *

(1) A record shall be kept of each test and activation of the Emergency Alert System (EAS) procedures pursuant to the requirement of part 11 of this chapter and the EAS Operating Handbook. These records shall be kept for three years.

(2) [Reserved]

* * * * *

[FR Doc. 94–31317 Filed 12–27–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 11, 21, 63 and 76

[FO Docket No. 91-171/91-301; FCC 94-288]

Emergency Broadcast System

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: This *Further Notice of Proposed Rulemaking* seeks additional information regarding certain aspects of the new Emergency Alert System (EAS). In the same document that the Commission issued this *Notice*, it issued a *Report and Order* which created EAS to replace the Emergency Broadcast System (EBS) as a means of using communication facilities to alert the public of emergencies. EAS requires cable TV systems in addition to broadcast stations to participate, and encourages the voluntary participation in EAS by satellite carriers, Direct Broadcast Satellite vendors, and public service providers. It also establishes new technical standards and operational procedures. This *Notice* ask for comments related to whether the Multipoint Distribution Service (MDS), Satellite Master Antenna TV (SMATV) systems, and Video Dial Tone should also be required to participate in EAS. Comments are also sought on several cable issues such as whether a defined class of small cable systems should be exempted from participation in EAS, and how the Commission should define small cable systems.

DATES: Comments are due on or before February 22, 1995. Reply comments are due on or before March 24, 1995.

ADDRESSES: Comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dr. Helena Mitchell, Compliance and Information Bureau, (202) 418-1220.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Further Notice of Proposed Rulemaking* in FO Docket 91-171/91-301, adopted November 10, 1994, and released December 9, 1994.

The full text of the Commission's *Further Notice of Proposed Rulemaking*, which is in the same document as a *Report and Order*, is available for inspection and copying during normal business hours in the FCC's Public Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this *Notice* also may be purchased from the Commission's duplication contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

Synopsis of Further Notice of Proposed Rulemaking

The Commission issued a *Further Notice of Proposed Rulemaking (Notice)* seeking additional information on certain aspects of the Emergency Alert System (EAS). In the same document that the Commission issued the *Notice*, it issued a *Report and Order* which created the Emergency Alert System to replace the Emergency Broadcast System (EBS) as a means of using communication facilities to alert the public of emergencies. In the *Report and Order*, the Commission created a new Part 11 of its rules to regulate the Emergency Alert System. 47 CFR Part 11. The Commission in its *Notice* requested comments on whether the Multipoint Distribution Service (MDS), Satellite Master Antenna TV (SMATV) systems and Video Dial Tone should be required to participate in the Emergency Alert System.

The Commission also asked for comments concerning whether small cable systems should be exempted from participation in EAS and how small cable systems should be defined. One option would be to use the Small Business Administration's (SBA) definition which defines a small cable system as one with less than $11 million in gross revenues. Another option would be to define a small system based on the number of its subscribers such as no more than 5,000 or 1,000 subscribers, or a combination of these criteria. The Commission also asked for comments on whether it should exempt all cable systems meeting certain size criteria or grant waivers on a case-by-case basis instead. Comments were also requested on the costs and benefits of participation by small cable systems in EAS. The Commission, moreover, asked whether there are alternative sources of emergency information available to small cable system subscribers, and whether the Commission should take this into consideration in any waiver policy.

With regard to all cable systems, the Commission requested comments whether its Emergency Alert System rules can coexist with local regulations governing transmission of emergency communications by cable systems, and whether the Commission should preempt the regulation of emergency communications by cable systems.

The Commission, furthermore, proposed to require Multipoint Distribution Service (MDS) providers to have an EAS decoder, and to provide during an alert (1) an all channel audio message override; (2) momentary video interrupt on all channels; (3) at least one video message override channel; and (4) either all channel override or an alternative means of providing emergency information to hearing impaired subscribers. In addition, the Commission asked for comments on the appropriate role for MDS providers in EAS; how MDS participation should be structured; the costs and benefits of MDS participation in EAS; whether any MDS systems, such as smaller systems, should be exempted; and if they are required to provide EAS, the timetable for MDS participation.

For Satellite Master Antenna TV (SMATV) systems, the Commission requested comments regarding whether their participation in EAS should be mandatory or voluntary, and on the costs and benefits of their participation. In addition, comments were requested concerning a timetable for participation if SMATV systems are required to provide EAS.

The Commission also sought comments on whether Video Dial Tone should be subject to EAS requirements, and, if so, whether these requirements should be similar to those the Commission mandated for cable systems. In discussing the application of EAS to Video Dial Tone, comments were requested regarding the similarities and differences between Video Dial Tone and cable systems.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 applies to this proceeding. 5 U.S.C. Section 603. If small cable systems, MDS, SMATV and Video Dial Tone are required to participate in EAS, they would have to make an initial capital investment that could be substantial for some systems. They would also be required to keep certain records.

Legal Basis

This *Further Notice of Proposed Rulemaking* is issued in accordance with Sections 1, 4(i) and (o), 303(r) and 624(g) of the Communications Act of 1934, as amended. 47 U.S.C. Sections 151, 154(i) and (o), 303(r) and 544(g).

Comment Provision

In response to this *Further Notice of Proposed Rulemaking*, interested parties may file comments on or before February 22, and reply comments may be submitted on or before March 24, 1995. To file formally in this

proceeding, Docket 91–171/91–301, an original and six copies of all comments must be submitted. If each Commissioner is to receive a personal copy of comments, an original plus eleven copies must be filed. All comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. All comments will be available for public inspection during regular business hours at the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554.

Ex Parte Rules

This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. Sections 1.1202, 1.1203 and 1.1206(a).

List of Subjects

47 CFR Part 11

Emergency alert system.

47 CFR Part 21

Multipoint distribution service, Television.

47 CFR Part 63

Telephone.

47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–31318 Filed 12–27–94; 8:45 am]

BILLING CODE 6712–01–M

federal register

Wednesday
December 28, 1994

Part VI

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

December 13, 1994.

The White House, Washington

The Honorable Albert Gore, Jr.,
President of the Senate
Washington, D.C. 20510

Dear Mr. President: In accordance with the Congressional Budget and Impoundment Control Act of 1974, I report herewith one revised deferral of budgetary resources, totaling $1.2 billion.

This deferral affects the International Security Assistance program. The details of this deferral are contained in the attached report.

Sincerely,

William J. Clinton.

Note: Identical letter sent to the Speaker of the House of Representatives.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(In thousands of dollars)

DEFERRAL NO.	ITEM	BUDGETARY RESOURCES
	Funds Appropriated to the President:	
	International Security Assistance:	
D95-1A	Economic support fund	1,227,248
	Total, deferral	1,227,248

Deferral No. D95-1A

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D95-1, which was transmitted to Congress on October 18, 1994.

This revision increases by $1,173,948,360 the previous deferral of $53,300,000 in the Economic support fund, resulting in a total deferral of $1,227,248,360. The increase results from a greater-than-anticipated level of unobligated funds being carried over from FY 1994.

Deferral No. 95-1A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority** (P.L. 103-306) 2,349,000,000
BUREAU: International Security Assistance	**Other budgetary resources** * 578,418,211
Appropriations title and symbol: Economic support fund 1/ 115/61037* 114/51037* 11X1037*	**Total budgetary resources** * 2,927,418,211
	Amount to be deferred: Part of year * 1,227,248,360 2/
	Entire year _____
OMB identification code: 11-1037-0-1-152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [X] Yes [ ] No	[ ] Other _____
Type of account or fund: [ ] Annual; [X] Multi-year: * September 30, 1995 September 30, 1996 (expiration date); [X] No-Year	**Type of budget authority:** [X] Appropriation; [ ] Contract authority; [ ] Other _____

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Economic support fund	11X1037	11-1037-0-1-152	* 17,448,360
Economic support fund	114/51037	11-1037-0-1-152	* 60,800,000
Economic support fund	115/61037	11-1037-0-1-152	* 1,149,000,000
			* 1,227,248,360

JUSTIFICATION: The President is authorized by the Foreign Assistance Act of 1961, as amended, to furnish assistance to countries and organizations, on such terms and conditions as he may determine, in order to promote economic or political stability. Section 531(b) of the Act makes the Secretary of State, in cooperation with the Administrator of the Agency for International Development, responsible for policy decisions and justifications for economic support programs, including whether there will be an economic support program for a country and the amount of the program for each country.

Funds are deferred pending the development of country-specific plans that assure that aid is provided in an efficient manner and are reserved for unanticipated program needs. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

* Revised from previous report.
1/ This account was the subject of a similar deferral in FY 1994 (D94-1B).
2/ This deferred amount has been reduced to $1,204,048,360 due to subsequent releases.

[FR Doc. 94-31868 Filed 12-27-94; 8:45 am]
BILLING CODE 3110-01-C

federal register

Wednesday
December 28, 1994

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 23

Powerplant Instruments; Fuel Pressure Indication; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 28011; Notice No. 94–37]

RIN 2120–AF41

Powerplant Instruments; Fuel Pressure Indication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to amend the certification requirement for fuel pressure indicators on pump fed engines of small airplanes to permit regulatory alternatives to warn pilots of fuel system problems. A fuel pressure indicator is not the only means available to the pilot of indicating a fuel system problem. The proposed change would allow airplanes to be certificated with means that indicate fuel flow, or that monitor the fuel system and warn the pilot of a trend that could lead to engine failure. New technology that would be incorporated as means of compliance with the revised rule could improve engine operation and reduce airplane operating costs.

DATES: Comments must be received on or before February 27, 1995.

ADDRESSES: Comments on this document should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 28011, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 28011. Comments may be inspected in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

In addition, the FAA is maintaining an information docket of comments in the Office of the Assistant Chief Counsel, ACE–7, Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106. Comments in the information docket may be inspected in the Office of the Assistant Chief Counsel weekdays, except Federal holidays, between the hours of 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT:

J. Lowell Foster, Standards Office, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

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. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 28011." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–200, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRMs should request, from the above office, a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Statement of the Problem

The FAA proposes to amend Title 14 of the Code of Federal Regulations (CFR), § 23.1305(b)(4), which currently requires a fuel pressure indicator for each pump fed engine. The pressure indicator gives continuous fuel pressure readings to the pilot. This information provides an advance warning of engine failure only when a pilot notices that the pressure reading has deviated from the norm, and the pilot can diagnose what those deviations mean in terms of potential engine failure. This proposal would allow the options of a fuel pressure indicator, a fuel flow indicator, or a means that continuously monitors the fuel system and warns the pilot of any engine trend that could cause engine failure. A fuel flow indicator would give continuous fuel flow readings to the pilot; fuel flow information can be more meaningful to the pilot during critical phases of flight. The proposed continuous fuel system monitoring would alert the pilot to any trend that could lead to engine failure.

History

The first requirement for a fuel pressure indicator was found in Civil Air Regulation (CAR) 4b, the predecessor to part 25 of Title 14 for transport airplanes. That requirement applied to all reciprocating engine airplanes. CAR 3, applicable to small airplanes, followed CAR 4b and was the predecessor to part 23 of Title 14. Amendment 1 to CAR 3, adopted December 15, 1946, required fuel pressure indicators on airplanes with pump-fed engines. Many small airplanes of that era used gravity-fed fuel systems, which made a fuel pressure indication unnecessary. Also, a fuel pressure indication was not required if the fuel pump was certificated as part of the engine. Since early fuel pumps were less reliable, the intent of the CAR requirements was to provide the pilot with advance warning of a fuel pump failure. This allowed the pilot to diagnose the problem and prevent engine failure or determine the cause after the engine quit.

Engines of the CAR 3 era were designed with carburetors. Carburetors were replaced by fuel injection. At the same time, radial engines were being replaced with horizontally opposed engines, the configurations currently used in the majority of light airplanes.

As horizontally opposed engines gained popularity and grew in displacement, two different types of fuel injection systems emerged. One consisted of a fuel injector or fuel metering unit that relied on a separate constant pressure pump to supply fuel to the injector. Since the metering (regulating) was done at the injector, the fuel pressure required was not critical as long as the pump could provide a specific range of pressures. For example, if the injector had a 20 psi requirement, 23–30 psi pump pressure was

acceptable because the fuel pressure on the outlet side of the injector was 20 psi. But, if the pressure out of the pump fell below 20 psi, the injector would fail to provide adequate fuel to the engine.

The second type of fuel injection system used a fuel pump in which pressure was proportional to engine RPM. This pump is still referred to as a speed-sensing integral fuel pump. Any change in pump pressure resulted in a change in engine operation.

Regulatory interpretation resulted in confusion over what was acceptable for fuel pressure monitoring, including the requirements for the content of indicated information and the pressure pick-up location. Some installations utilizing the constant pressure pump were required to have a pressure indicator measuring unmetered fuel pressure at the fuel pump output. On the other hand, installations using the speed-sensing integral pump system were approved with a fuel pressure indicator measuring metered fuel pressure at the fuel distribution valve. Airplanes utilizing this system have a fuel pressure indicator labeled in fuel used per hour or fuel flow. Agency policy, briefing paper from Central Region dated October 7, 1981, accepted these fuel pressure indicators as an equivalent means of compliance if the engine was certificated with an integral speed-sensing pressure pump.

The Aircraft Owners and Pilots Association (AOPA) petitioned the FAA for new standards that would allow, on all pump-fed engines, a fuel flow system employing a differential pressure transducer to be accepted as an equivalent means of compliance to the current fuel pressure indicator requirements (55 FR 39299; September 26, 1990). The AOPA believes that adopting its petition would open the door for the development of new and valuable engine monitoring equipment, while potentially reducing the instrument panel clutter.

In its petition, the AOPA states that one of the reasons for current § 23.1305(b)(4) is to give the pilots sufficient warning of any decreasing trend that could lead to partial or total engine failure. The AOPA also states that differential pressure indicators should be accepted as a means of compliance with § 23.1305(b)(4), not that direct sensing systems should be removed from part 23.

Following receipt of the AOPA's petition for rulemaking, the FAA requested that the Aviation Rulemaking Advisory Committee (ARAC) review the petition and recommended a course of action to the FAA. The ARAC was chartered in February 1991, under the Federal Advisory Committee Act, to provide recommendations to the FAA Administrator on FAA rulemaking activity relating to aviation safety issues.

In January 1992, the Fuel Indicators Working Group of the ARAC on General Aviation and Business Airplane Issues began review of the AOPA's petition. Subsequently, the ARAC, recommended that the FAA revise the certification standards for fuel pressure indicators. The ARAC agreed with the AOPA's petition to allow a pressure-based fuel flow system, but felt that there may be other options in the future, and that the AOPA's language regarding a differential pressure transducer would be too restrictive. Technical advances in the automobile industry with engine systems and controls may offer improvements over the current warning systems. The ARAC did not want the proposed rule to be limited to a fuel pressure or pressure-based fuel flow gauge.

General Discussion of the Proposals

Section 23.1305

The intent of the fuel pressure indicator requirement for pump-fed engines is to advise the pilot of a fuel pressure deficiency before total engine failure. The term "indicator" in § 23.1305(b)(4) implies that the fuel pressure be constantly displayed.

This proposal would change the current requirements in that a fuel pressure indicator or a fuel flow indicator would be acceptable. The fuel flow indicator would constantly display information that the pilot could use to evaluate engine power, fuel mixture, and other engine performance factors. Furthermore, it is technologically possible to have a microprocessor that monitors engine operation and triggers a warning if the fuel system operation does not match the other monitored engine trends. Therefore, this proposal would also change the rule to accept a means that monitors the fuel system and warns the pilot of any trend that could lead to engine failure.

Accordingly, this proposal would adopt a performance standard, instead of a requirement for specific equipment. In this way, the designer could show compliance with paragraph (b) of the proposal by developing any design that monitors the fuel system and warns the pilot of any trend that could lead to engine failure. The ARAC did not believe this would reduce the level of safety originally intended by the requirement. A warning light system could possibly alert the pilot sooner than if the pilot relied on an instrument panel scan to notice a trend in the fuel pressure indication.

Microprocessing units that monitor engine operation and warn of fuel system problems have already been incorporated in transport aircraft and automobiles. Furthermore, pilots are not monitoring gauges like they use to; instead, they are increasingly relying on warnings to alert them. Late model automobiles, computers and other equipment are designed to protect the operators from mistakes by using built-in warnings. It is important to note that this NPRM does not propose to allow "idiot lights" to replace fuel pressure gauges. A light that comes on at the same time that the engine quits is useless. A warning light system that would comply with this proposal would be sophisticated enough to read transients and trends, and would give a useful warning to the pilot. The FAA expects this proposal to result in fuel systems that provide the pilot with useful engine operating information; thereby, it would offer more value to the operator.

Today, fuel pumps are more reliable than those built in the 1940's and 50's. Consequently, airplane operators are more concerned about reducing engine operating costs than they are about the probability of a fuel pump failure.

A fuel flow indicator offers additional value compared to a fuel pressure indicator. It enables the operator to monitor the engine's fuel consumption and compare it to fuel consumption listed in the airplane flight manual. If a fuel monitoring system is installed that automatically controls the engine or helps the pilot to properly lean the fuel mixture, then engine operation would be optimized and the direct operating costs would go down through reduced fuel consumption. Reciprocating engines run better if the fuel to air mixture is leaned out according to the optimum (manufacturer's) specified setting. Furthermore, fuel flow also relates to power, and pilots can use fuel flow readings to quickly assess the health of their engine during critical phases of flight, such as takeoff.

Comprehensive engine monitors and redesigned electronic engine instrument displays are also being used in experimental aircraft. The FAA should encourage airplane manufacturers to utilize new technology to improve operation and reduce operating costs. New engine monitoring systems may improve reliability and engine life, resulting in increased safety.

The proposal would achieve the same safety objective as the current rule; the crew would have sufficient warning of any negative trend that could lead to

partial or total engine failure. However, the proposal recognizes that this objective can be achieved by measuring fuel pressure, fuel flow, or with a "smart" fuel monitoring system.

International Compatibility

The agency has reviewed corresponding International Civil Aviation Organization international standards and recommended practices and Joint Aviation Authorities requirements for compatibility.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1990 (44 U.S.C. 3501 *et seq.*), there are no reporting or recordkeeping requirements associated with this proposed rule.

Regulatory Evaluation Summary

Proposed changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society outweigh the potential costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory change son small entities. Finally, the Office of Management and Budget directs agencies to assess the effects of regulatory change son international trade. In conducting these analyses, the FAA has determined that this rule: (1) Would generate benefits exceeding its costs and is not significant as defined in Executive Order 12866; (2) is not significant as defined in DOT's Policies and Procedures; (3) would not have a significant economic impact on small entities; and (4) would not affect international trade. These analyses, available in the docket, are summarized below.

Cost-Benefit Analysis

Since the proposed rule would permit but not require alternative means of warning pilots of fuel system problems, it is inherently cost-beneficial. To the extent that it would encourage the development and utilization of comprehensive engine control, monitoring and diagnostic systems in the future, it would contribute benefits in the form of enhanced safety, improved fuel efficiency, power output, and engine life.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. Based on criteria in FAA Order 2100.14A, Regulatory Flexibility Criteria and guidance, the FAA has determined that the proposed rule would not have a significant economic impact on a substantial number of small manufacturers or operators.

International Trade Impact Assessment

The proposed rule would not constitute a barrier to international trade, including the export of U.S. airplanes to foreign markets or the import of foreign airplanes into the United States.

Federalism Implications

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 12866, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA proposes to amend the airworthiness standards to allow airplane manufacturers to utilize new technology for fuel system monitoring to improve the operation and economy of part 23 airplanes powered by pump-fed engines. The current requirements provide for a fuel pressure indication; it, thus, limits the means of compliance. The advances in automobile engine monitoring systems and electronics offer technology that should be utilized by the aviation community. By broadening this airworthiness standard, fuel flow indicators or new fuel system monitors may be utilized that will provide more useful information to the pilot.

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not significant under Executive Order 12866. In addition, the FAA certifies that this proposal, if adopted, 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. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 23

Aircraft, Air transportation, Aviation safety, Safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 23 of the Federal Aviation Regulations (14 CFR part 23) as follows:

PART 23—AIRWORTHINESS STANDARDS; NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g).

2. Section 23.1305 is amended by revising paragraph (b)(4) to read as follows:

§ 23.1305 Powerplant instruments.

* * * * *

(b) * * *

(4) For each pump-fed engine, a means:

(i) That continuously indicates, to the pilot, the fuel pressure or fuel flow; or

(ii) That continuously monitors the fuel system and warns the pilot of any trend that could lead to engine failure.

* * * * *

Issued in Washington D.C. on December 21, 1994.

Elizabeth Yoest,

Acting Director, Aircraft Certification Service.

[FR Doc. 94–31913 Filed 12–27–94; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
December 28, 1994

Part VIII

The President

Notice of December 22—Continuation of Libyan Emergency

Federal Register
Vol. 59, No. 248
Wednesday, December 28, 1994

Presidential Documents

Title 3—

The President

Notice of December 22, 1994

Continuation of Libyan Emergency

On January 7, 1986, by Executive Order No. 12543, President Reagan declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Libya. On January 8, 1986, by Executive Order No. 12544, the President took additional measures to block Libyan assets in the United States. The President has transmitted a notice continuing this emergency to the Congress and the **Federal Register** every year since 1986.

The crisis between the United States and Libya that led to the declaration of a national emergency on January 7, 1986, has not been resolved. The Government of Libya has continued its actions and policies in support of terrorism, despite the calls by the United Nations Security Council, in Resolutions 731 (1992), 748 (1992), and 883 (1993) that it demonstrate by concrete actions its renunciation of such terrorism. Such Libyan actions and policies pose a continuing unusual and extraordinary threat to the national security and vital foreign policy interest of the United States. For these reasons, the national emergency declared on January 7, 1986, and the measures adopted on January 7 and January 8, 1986, to deal with that emergency, must continue in effect beyond January 7, 1995. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Libya. This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
December 22, 1994.

[FR Doc. 94–32043
Filed 12–23–94; 10:53 am]
Billing code 3195–01–P

Editorial note: For the President's letter to Congress transmitting the notice on continuation of the Libyan emergency, see issue 51 of the *Weekly Compilation of Presidential Documents*.

Reader Aids

Federal Register

Vol. 59, No. 248

Wednesday, December 28, 1994

INFORMATION AND ASSISTANCE

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A cumulative list of Public Laws for the 103d Congress, Second Session, was published in Part II of the **Federal Register** on Monday, December 19, 1994.

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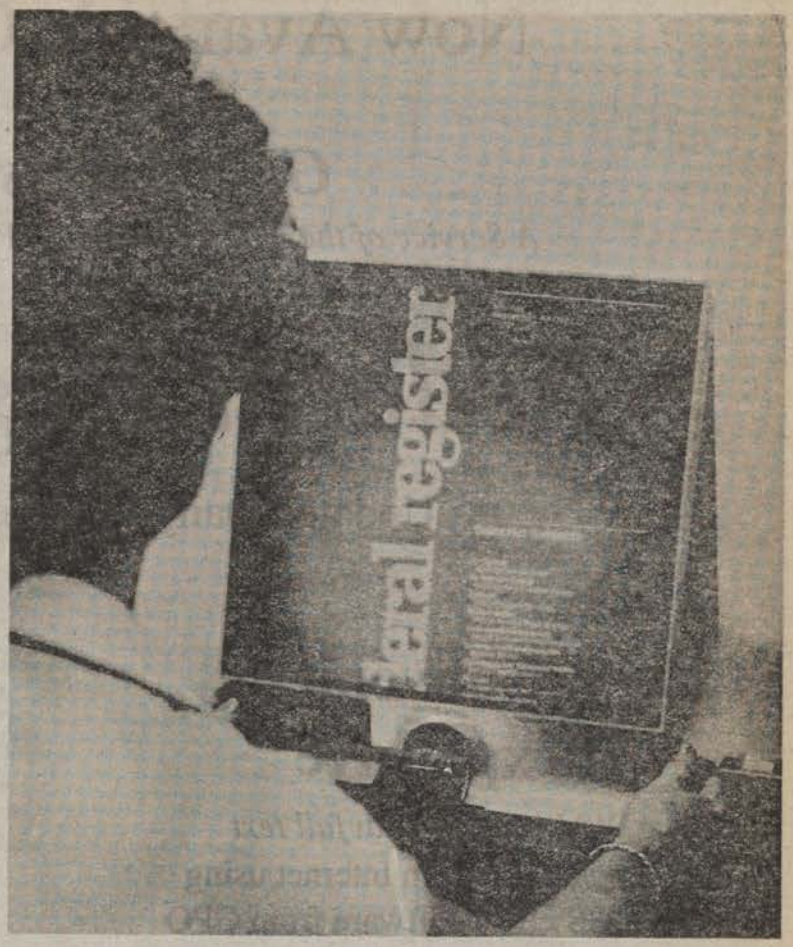

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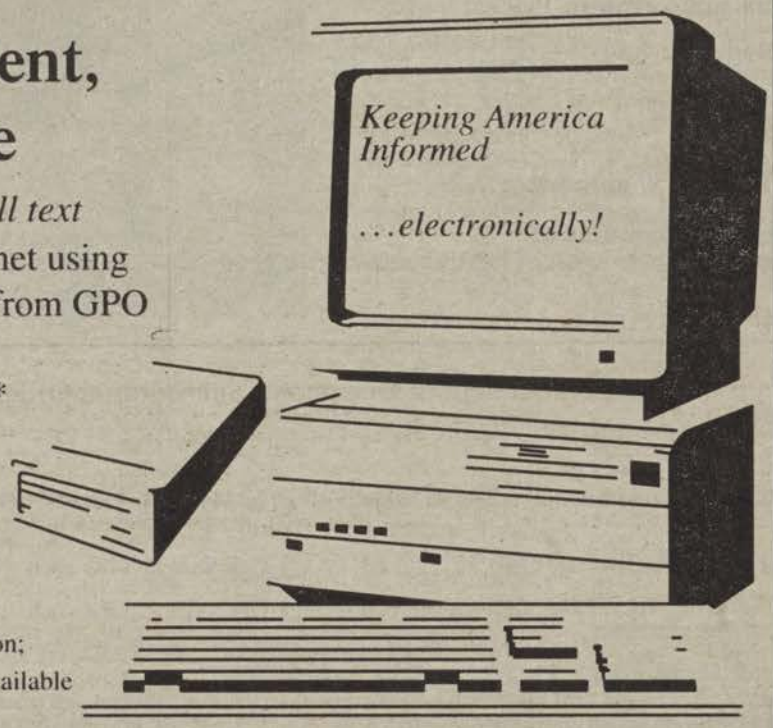

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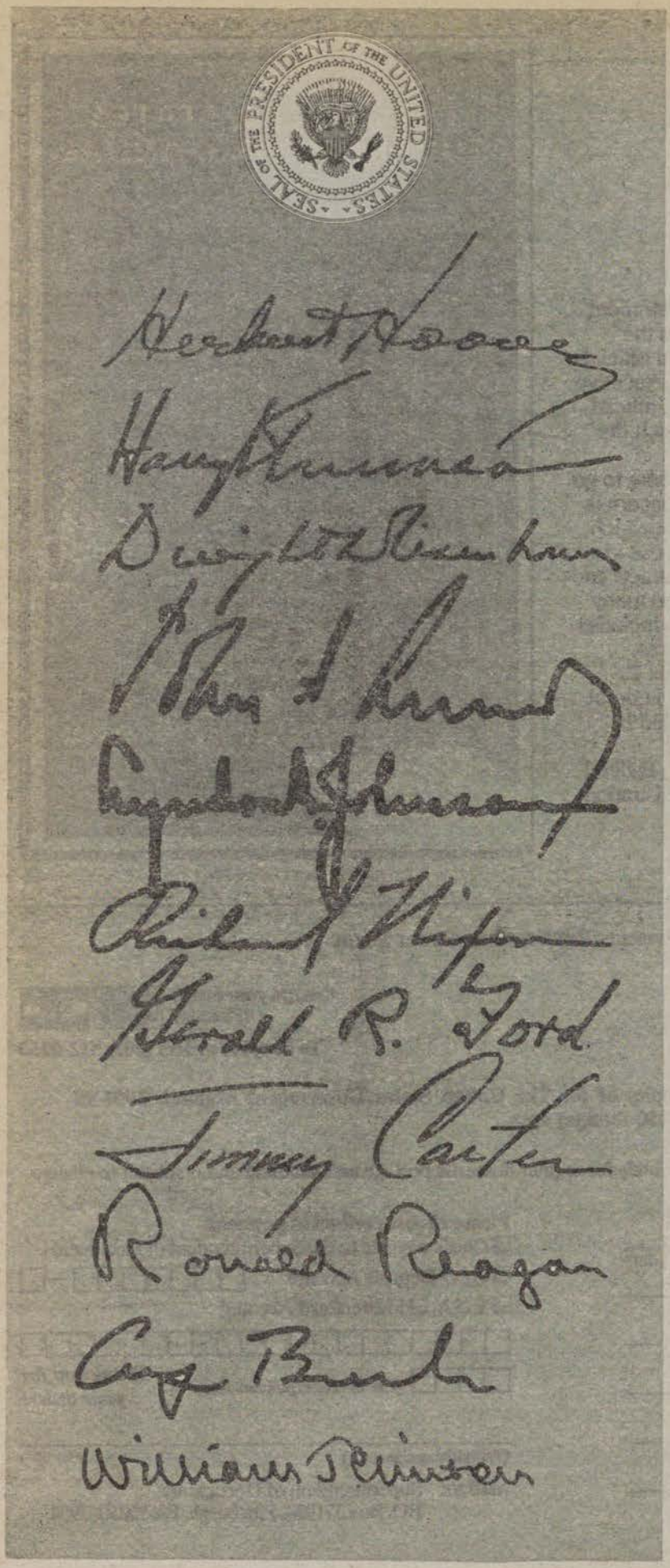

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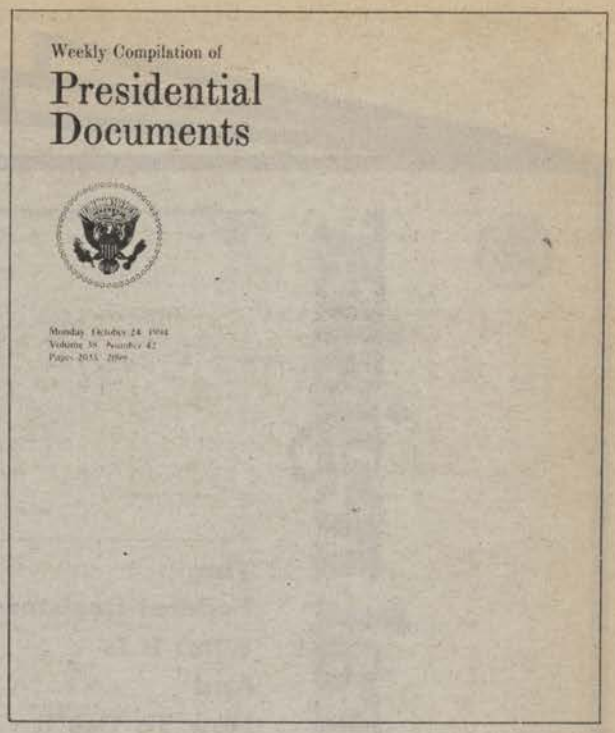

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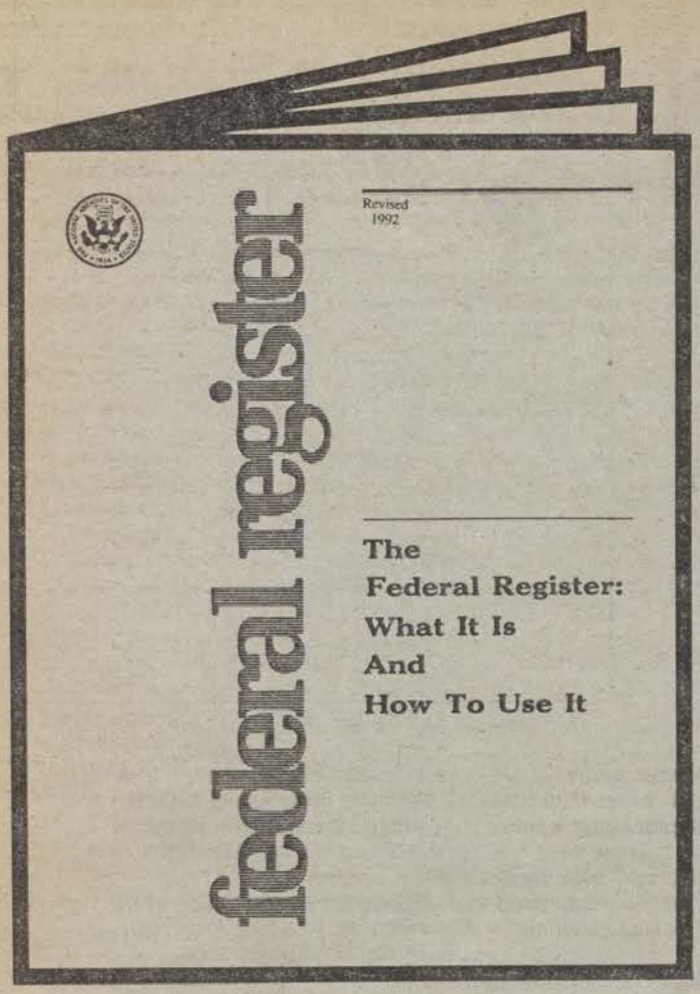

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