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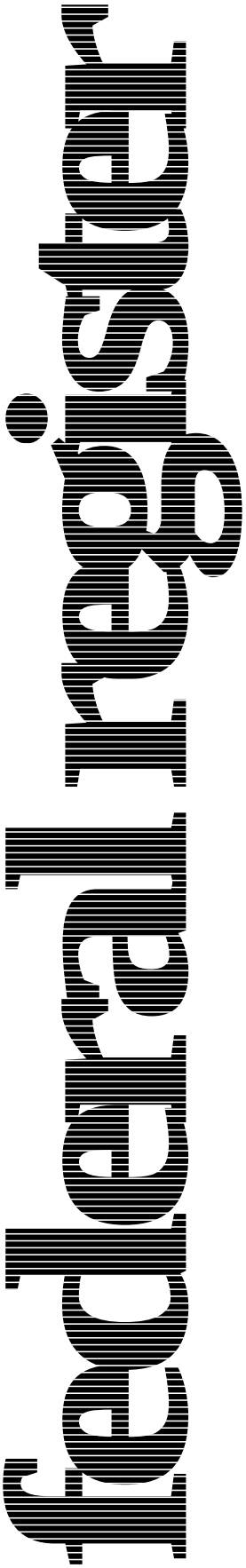

Thursday
May 4, 1995

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 208, 210, 214, 240, 242, 245a, and 274a

[INS No. 1719–95]

RIN 1115 AE16

Rules and Procedures for Filing an Application for Employment Authorization

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: The Immigration and Naturalization Service (INS) publishes this rule to inform the public of a change in procedures for filing certain employment authorization applications. At present, persons seeking work authorization apply either by mailing an application to an INS service center or by delivering it to an INS district office. The INS intends to expand its direct mailing program, so that more categories of applicants can file their work authorization applications by mail directly with the service centers. The expansion will enhance the agency's ability to adjudicate work authorization applications efficiently. This final rule revises the regulations to reflect the changed filing procedures. It also makes a technical amendment to the regulatory provisions governing work authorization for persons applying for suspension of deportation and two technical amendments to the regulatory provision governing interim work authorization for asylum reform applicants. The instructions that accompany an application for work authorization are being revised simultaneously to provide comprehensive general information on filing procedures.

EFFECTIVE DATE: This rule is effective June 3, 1995.

FOR FURTHER INFORMATION CONTACT: Jack Tabaka, Senior Examiner Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, (202) 616–7432.

SUPPLEMENTARY INFORMATION: The INS announced the expansion of its direct mail program in an interim rule published in the **Federal Register** on July 1, 1994 at 59 FR 33903. In that interim rule, the INS announced its intent to reduce processing time and the need for personal visits to the INS by permitting applicants to file certain applications by mail to the service centers. Under INS regulations, an applicant generally should file an application in accordance with the instructions that accompany the application form. 8 CFR 103.2(a). The regulations required employment authorization applicants to file their applications with the district director. Many of the references to filing with the district director were removed with the publication of the July 1, 1994 interim rule to permit applicants to mail applications to the service centers. Certain employment authorization regulations continue to require that an applicant file an application with the district director having jurisdiction over the applicant's place of residence. While the interim rule removed many of the references to district director and replaced those references with the term ''director'' so that service center directors could accept such applications, further changes to the regulations are necessary to accomplish the expansion of the direct mail program. This rule eliminates the remaining references to ''district director'' filing, consistent with the change in filing procedures announced in the interim rule.

On July 1, 1994 the INS also announced the implementation of a pilot direct mail program for persons applying at the Baltimore District Office in a **Federal Register** notice published at 59 FR 33985. The INS is reviewing the comments it has received from the public on both the interim rule and the direct mail pilot program notice and will publish a response in the future.

Based in part on the addition of new personnel, INS service centers are able to accept a greater volume of applications from a greater number of categories of employment authorization applicants. This change to the employment authorization filing procedures will reduce the number of visits to district offices now required to obtain work authorization and will permit the INS to further streamline its procedures and to improve overall efficiency to its customers. To explain more fully the changed filing procedures, the INS has revised the instructions that accompany Form I–765, Application for Employment Authorization. The INS has received Office of Management and Budget approval under the Paperwork Reduction Act for the revised set of instructions and is in the process of having the new I–765 package published and distributed to its district offices and its form distribution centers. The corresponding regulations are revised below to direct employment authorization applicants to follow the instructions that accompany the employment authorization application when determining where to file.

El Salvadoran and Guatemalan nationals who are eligible for benefits under the *American Baptist Church* v. *Thornburgh*, 760 F.Supp. 796 (N.D. Cal. 1991) (''*ABC*'') should refer to special filing instructions which will supplement the I–765 instructions. Those instructions can be obtained visiting local INS offices or by calling 1–800–755–0777. Under this change in filing procedures, asylum applicants generally will file future employment authorization applications at the service centers and will no longer be required to file at district offices.

The change in filing procedures is, in the view of the INS, a rule of agency procedure or practice. Therefore, it is not subject to the notice and comment requirements of 5 U.S.C. 553. The INS publishes this rule of procedure or practice in the **Federal Register** for the guidance of the public under 5 U.S.C. 552. The INS intends to provide information to the public regarding the new filing procedures through its public outreach programs in addition to publication of this rule.

This rule also makes three technical corrections. On August 23, 1991, the INS eliminated the requirement under 8 CFR 274a.12(c)(10) that applicants for suspension of deportation establish economic necessity as a condition of

obtaining work authorization. 56 FR 41767. Nevertheless, the phrase ''if the alien establishes the economic need to work'' was not removed in that section and continued to appear in the Code of Federal Regulations. The final rule revising the asylum regulations on December 5, 1994 perpetuated that mistake. 59 FR 62284. The December 5, 1994 regulations also refer mistakenly to asylum applications rather than employment applications in a sentence having to do with the availability of interim employment authorization. This final rule corrects these two technical errors. In addition, the INS has made a technical correction to § 274a.13(a)(2), which concerns applications for employment authorization filed in connection with an asylum application. The last sentence of that section was amended at the publication of the December 5, 1994 final rule to state that ''[t]he Service Center shall adjudicate the application within 30 days of receipt.'' This is correct insofar as it reiterates the period under asylum reform for adjudicating an initial request by an asylum applicant for employment authorization under § 208.7(a)(1). It is incorrect, however, to the extent that it appears to apply to applications for renewal or replacement of employment authorization, which are discussed in the sentence immediately preceding it. As is clear from the preamble to the December 5, 1994 final rule, specifically at 59 FR 62291, and from § 274a.13(d), the INS is to adjudicate requests for renewal or replacement of employment authorization within 90 days, not 30. Therefore, the last sentence of § 274a.13(a)(2) has been removed.

Regulatory Flexibility Act

The Commissioner of the INS, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This regulation merely provides notice to the public of change in filing procedures for employment authorization applications by correcting the remaining regulatory references to filing with the district director and makes two technical corrections to recently published INS regulations. It does not change the amount of the application fee though it corrects the figure listed currently in the regulations.

Executive Order 12866

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

Executive Order 12612

This final rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the INS certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation will not have an impact on family well-being.

Paperwork Reduction Act

The information collection requirement contained in this rule has been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The clearance number for this collection is 1115–0163.

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8 CFR Part 103

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

8 CFR Part 208

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8 CFR Part 210

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8 CFR Part 214

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8 CFR Part240

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8 CFR Part 242

Administrative practice and procedure, Aliens.

8 CFR Part 245a

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

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

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

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

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

§ 103.6 [Amended]

2. Section 103.6(a)(2)(ii) is amended by removing the phrase ''District Director'' and adding the term ''INS'' in its place.

3. In § 103.6(a)(2)(iii) the first sentence is amended by removing ''§ 109.1(b)'' and adding ''§ 274a.12'' in its place.

* * * * *

4. In § 103.7 (b)(1), the entry for Form I–765 is revised to read as follows:

§ 103.7 Fees.

* * * * *

(b)(1) * * *

Form I–765. For filing an application for employment authorization pursuant to 8 CFR 274a.13—$70, unless otherwise noted on the instructions attached to the application form.

* * * * *

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF DEPORTATION

5. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 31 U.S.C. 9701; 8 CFR part 2.

6. Section 208.7 is amended by:

a. In paragraph (a)(1), the sixth sentence, removing the word ''asylum'' and adding the word ''employment'' in its place;

b. In paragraph (c), the first sentence of the introductory text, removing the phrase ''asylum officer, or district director where appropriate'' and adding in its place the phrase ''INS, in accordance with the instructions on or attached to the employment authorization application'';

c. In paragraph (c), in the second sentence, removing the phrase ''asylum

officer'' and adding in its place the term ''INS''; and

d. In paragraph (e) remove the phrase ''district director, in his discretion,'' and add the term ''INS''.

7. PART 210—SPECIAL AGRICULTURAL WORKERS

8. The authority citation for part 210 continues to read as follows:

Authority: 8 U.S.C. 1103, 1160, 8 CFR part 2.

§ 210.2 [Amended]

9. In § 210.2(c)(4)(iii), the third sentence is amended by removing the words ''A district director'' and adding the words ''The INS'' in their place.

10. Section 210.4(b) is amended by:

a. Removing in paragraph (b)(1), in the first sentence, the phrase ''may only be granted by a Service legalization office'' and adding in its place the phrase ''be granted by the INS'';

b. Revising in paragraph (b)(2), the fourth and fifth sentences; and

c. Revising in paragraph (b)(3), the second sentence, to read as follows:

§ 210.4 Status and benefits.

* * * * *

(b) * * *

(2) *Employment and travel authorization prior to the granting of temporary resident status.* * * * Employment and travel authorization subsequent to an interview will be granted on the employment authorization document, and will be restricted to 6 months duration, pending final determination on the application for temporary resident status. If a final determination has not been made on the application prior to the expiration date of the employment authorization document, that date may be extended upon return of the employment authorization document by the applicant to the INS office. * * *

(3) *Employment and travel authorization upon grant of temporary resident status.* * * * The applicant may appear at an INS office, and upon surrender of the previously issued Form I–688A or employment authorization document will be issued Form I–688, Temporary Resident Card. * * *

* * * * *

PART 214—NONIMMIGRANT CLASSES

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

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

12. Section 214.2 is amended by:

a. Revising in paragraph (f)(11), introductory text the fourth sentence;

b. Removing in paragraph (f)(11), introductory text the fifth sentence;

c. Removing in paragraph (f)(12), in the second sentence the term ''director'';

d. Removing in paragraph (f)(16)(i), introductory text the phrase ''A Service Director'' and adding in its place the phrase ''The Service'';

e. Removing in paragraph (f)(16)(i)(A), the word ''director'';

f. Revising paragraph (f)(16)(ii);

g. Removing in paragraph (j)(1)(v)(A), in the second sentence, the phrase ''8 CFR 274a.12(c)(5)'' and adding the phrase ''the Service'' in its place;

h. Removing in paragraph (m)(14)(ii), the second and third sentences; and

i. Removing in paragraph (m)(15), the term ''district director'' and adding the term ''Service'' in its place.

The revised text reads as follows:

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

* * * * *

(f) * * *

(11) * * * An F–1 student must apply to the INS for the EAD by filing the Form 1–765. * * *

* * * * *

(16) * * * * *

(ii) *Decision.* If the Service reinstates the student, the Service shall endorse the Form I–20 A–B to indicate that the student has been reinstated, return the I–20 ID to the student, and forward the school copy of the form to the Service's processing center for data entry. If the Service does not reinstate the student, the student may not appeal that decision.

* * * * *

PART 240—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

13. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254a, 1254a note.

§ 240.12 [Amended]

14. In § 240.12 paragraphs (a) and (c) are amended by removing the term ''district director'' and adding in its place the term ''INS''.

§ 240.17 [Amended]

15. In § 240.17(a) the first and third sentences are amended by removing the term ''District Office'' and adding in its place the words ''INS designated office''.

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING AND APPEAL

16. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252b, 1254, 1362; 8 CFR part 2.

17. In Section 242.6, paragraph (e)(5) is revised to read as follows:

§ 242.6 Family Unity Program.

* * * * *

(e) * * *

(5) *Employment authorization.* An alien granted benefits under the Family Unity Program is authorized to be employed in the United States and may apply for an employment authorization document in accordance with the instructions accompanying Form I–765, Application for Employment Authorization.

* * * * *

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUBLIC LAW 99–603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AND PUBLIC LAW 100–204, SECTION 902

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

Authority: 8 U.S.C 1101, 1103, 1255a and 1255a note.

§ 245a.2 [Amended]

19. Section 245a.2 is amended by:

a. Removing in paragraph (j), in the first sentence the word ''Legalization'' and also by removing the phrase ''Forms I–688 and I–688A'' and adding in its place the words ''an employment authorization document and Form I–688'';

b. Removing in paragraph (n)(1), in the first and last sentences, the word ''Legalization'';

c. Revising in paragraph (n)(2)(ii) the third sentence to read as set forth below;

d. Removing in paragraph (n)(3), in the last sentence, the word ''Legalization''.

§ 245a.2 Application for temporary residence.

* * * * *

(n) * * *

(2) * * *

(ii) * * *

The employment authorization document will be given to the applicant after an interview has been completed by an immigration officer unless a formal denial is issued by the appropriate INS office. * * *

* * * * *

20. Section 245a.4 is amended by:

a. Removing in paragraph (b)(10), in the first sentence the phrase ''Forms I–688A and I–688'' and adding in its place the phrase ''an employment authorization document and Form I–688'';

b. Removing in paragraph (b)(14)(ii)(b), in the third sentence the phrase ''Form I–688A, Employment Authorization,'' and adding in its place the phrase ''An employment authorization document''; and

c. Revising in paragraph (b)(14)(iii) the second sentence to read as follows:

§ 245a.4 Adjustment to lawful resident status of certain nationals of countries for which extended voluntary departure has been made available.

* * * * *

(b) * * *

(14) * * *

(iii) * * * The alien will be required to return to the appropriate INS office, surrender the I–688A or employment authorization document previously issued, and obtain Form I–688, Temporary Resident Card, authorizing employment and travel abroad.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

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

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

§ 274a.12 [Amended]

22. In § 274a.12 paragraph (c)(10), in the first sentence is amended by removing the phrase '', if the alien establishes the economic need to work''.

23. In § 274a.13, paragraph (a) is revised to read as follows:

274a.13 Application for employment authorization.

(a) *General.* Aliens authorized to be employed under § 274a.12(a)(3)–(8) and (10)–(13) must file an Application for Employment Authorization (Form I–765) in order to obtain documentation evidencing this fact.

(1) Aliens who may apply for employment authorization under § 274a.12(c) of this part, except for those who may apply under § 274a.12(c)(8), shall file a Form I–765 with the director having jurisdiction over applicant's residence, or the director having jurisdiction over the port of entry at which the alien applies, or with such other Service office as the Commissioner may designate. The approval of applications filed under § 274a.12(c) of this part, except for § 274a.12(c)(8), shall be within the discretion of the director or such other officer as the Commissioner may designate. Where economic necessity has been identified as a factor, the alien must provide information regarding his or her assets, income, and expenses in accordance with instructions on Form I–765.

(2) An initial Application for Employment Authorization (Form I–765) for asylum applicants under 274a.12(c)(8) of this part shall be filed in accordance with instructions on or attached to Form I–765 with the appropriate Service Center or with such other Service office as the Commissioner may designate. The applicant also must submit a copy of the underlying application for asylum or withholding of deportation, together with evidence that the application has been filed in accordance with §§ 208.3 and 208.4 of this chapter. An application for an initial employment authorization or for a renewal of employment authorization filed in relation to a pending claim for asylum shall be adjudicated in accordance with § 208.7 of this chapter. An application for renewal or replacement of employment authorization submitted in relation to a pending claim for asylum, as provided in § 208.7 of this chapter, shall be filed, with fee or application for waiver of such fee, in accordance with the instructions on or attached to Form I–765 with the appropriate Service Center or with such other Service office as the Commissioner may designate.

* * * * *

Dated: May 1, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–11058 Filed 5–2–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–ASW–28; Amendment 39–9209; AD 95–09–06]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 206A, 206B, 206L, 206L–1, and 206L–3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI) Model 206A, 206B, 206L, 206L–1, and 206L–3 helicopters, that requires installing a protective mechanical fuel valve switch guard on the fuel valve switch. This amendment is prompted by reports of airmen inadvertently placing the fuel valve switch to the ''OFF'' position. The actions specified by this AD are intended to prevent the fuel valve switch from being inadvertently placed in the ''OFF'' position, which could result in an engine failure and a subsequent power-off landing.

DATES: Effective June 8, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 8, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., Attention: Customer Support, P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Lance Gant, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5141, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (BHTI) Model 206A, 206B, 206L, 206L–1, and 206L–3 helicopters was published in the **Federal Register** on November 14, 1994 (59 FR 56436).

That action proposed to require installing a protective mechanical fuel valve switch guard on the fuel valve switch.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed, except for editorial changes.

The FAA estimates that 5,192 helicopters of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost nothing for these helicopters since the manufacturer is providing full warranty compensation for the parts. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $311,520.

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.

For the reasons discussed above, I certify that this action (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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it 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 a new airworthiness directive to read as follows:

95–09–06 Bell Helicopter Textron, Inc.: Amendment 39–9209. Docket No. 91–ASW–28.

Applicability: Model 206A, 206B, 206L, 206L–1, and 206L–3 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters 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 (b) 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 helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the fuel valve switch from being inadvertently placed in the ''OFF'' position, which could result in an engine failure and a subsequent power-off landing, accomplish the following:

(a) Within the next 50 hours time-in-service after the effective date of this airworthiness directive (AD), modify the fuel valve switch to add a protective mechanical fuel valve switch guard as follows:

(1) For the Model 206A, serial numbers (S/N) 1 through 153, modify in accordance with Part I of the Accomplishment Instructions in BHTI Alert Service Bulletin (ASB) No. 206–90–54, dated May 31, 1990.

(2) For the Model 206A, S/N 154 through 660 and 672 through 715, and Model 206B, S/N 661 through 671 and 716 through 913, modify in accordance with Part II of the Accomplishment Instructions in ASB No. 206–90–54, dated May 31, 1990.

(3) For the Model 206B, S/N 914 through 4069 and 4071 through 4074, modify in accordance with Part III of the Accomplishment Instructions in ASB No. 206–90–54, dated May 31, 1990.

(4) For the visual flight rule-equipped Model 206L, S/N 45001 through 45153 and 46601 through 46617, Model 206L–1, S/N 45154 through 45790, and Model 206L–3, S/N 51001 through 51319, modify in accordance with Part I of the Accomplishment Instructions in BHTI ASB No. 206L–90–67, Revision A, dated August 5, 1991.

(5) For the Model 206L–1, S/N 45154 through 45790, and Model 206L–3, S/N 51001 through 51319, equipped with instrument flight rule kit, part number 206–705–001–101, installed per BHTI Service Instructions No. 206–2030, modify in accordance with Part II of the Accomplishment Instructions in ASB No. 206L–90–67, Revision A, dated August 5, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

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

(d) The modification shall be done in accordance with Bell Helicopter Textron, Inc. ASB 206–90–54, dated May 31, 1990, and ASB 206L–90–67, Revision A, dated August 5, 1991. 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 Bell Helicopter Textron, Inc., Attention: Customer Support, P.O. Box 482, Fort Worth, Texas 76101. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 8, 1995.

Issued in Fort Worth, Texas, on April 24, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–10589 Filed 5–3–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–NM–68–AD; Amendment 39–9213; AD 95–09–10]

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 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 DC–9–80 series airplanes and Model MD–88 airplanes. This action requires an inspection to detect chafing of or damage to the wire bundle in the overhead switch panel of the cockpit, application of spiral wrap to the wire bundle, and corrective actions, if necessary. This amendment is prompted by reports of chafed and shorted wires that resulted in smoke emanating from the overhead switch panel of the cockpit. The actions specified in this AD are intended to prevent the potential for fire and uncontrolled smoke throughout the cockpit as a result of chafing and shorting in the electrical wire bundles.

DATES: Effective May 19, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 1995.

Comments for inclusion in the Rules Docket must be received on or before July 3, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–68–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, Dept. L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 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: J. Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (310) 627–5345; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: Recently, the FAA has received reports of smoke emanating from the overhead switch panel of the cockpit of Model DC–9–80 series airplanes and Model MD–88 airplanes. Investigation revealed that the cause of the smoke may be attributed to chafing of a wire bundle in the overhead switch panel of the cockpit. This chafed wire bundle made contact with the electrical connector of the cabin temperature indicator, which resulted in a short circuit. This condition, if not corrected, could result in the potential for fire and uncontrolled smoke throughout the cockpit.

The FAA has reviewed and approved McDonnell Douglas DC–9 Alert Service Bulletin DC9–24A157, dated April 11, 1995, which describes procedures for a one-time visual inspection to detect chafing of the wire bundle in the overhead switch panel of the cockpit, application of spiral wrap, repair of chafed wire insulation, and splicing of damaged wires. The effectivity listing of this service bulletin includes certain Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes. This service bulletin recommends a compliance time of 6 months.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent the potential for fire and uncontrolled smoke throughout the cockpit. This AD requires a one-time visual inspection to detect chafing of or damage to the wire bundle in the overhead switch panel of the cockpit, application of spiral wrap to the wire bundle, repair of chafed wire insulation, and splicing of damaged wires. The actions are required to be accomplished in accordance with the service bulletin described previously.

Operators should note that, although the service bulletin recommends that the inspection be performed within 6 months, this AD requires that it be performed within 90 days. In light of the consequences of fire or smoke in the cockpit, the FAA finds that the 90-day compliance time is appropriate to ensure the safety of this group of airplanes.

This AD does not apply to Model DC–9 and C–9 (military) series airplanes because the wires/wire bundles on these airplanes are manufactured of a stronger material than those on Model DC–9–80 series airplanes and Model MD–88 airplanes, and are therefore less susceptible to the subject damage. Additionally, this AD does not apply to Model MD–90–30 series airplanes. Since these airplanes are relatively new, the FAA does not anticipate that the wire bundles on these airplanes would be chafed as severely as those on the Model DC–9 series airplanes, which have been in service for a much longer period of time. Further, the reported incidents of smoke in the cockpit occurred only on Model DC–9–80 series airplanes and Model MD–88 airplanes. Therefore, the FAA is considering further rulemaking action to revise this AD to require modification of the wire bundles on Model DC–9–80 series airplanes and Model MD–88 airplanes. However, the proposed compliance time for the modification is sufficiently long so that notice and time for public comment would not be impracticable.

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional 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 long-standing 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 95–NM–68–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:

95–09–10 McDonnell Douglas: Amendment 39–9213. Docket 95–NM–68–AD.

Applicability: Model DC–9–80 series airplanes and Model MD–88 airplanes; as listed in McDonnell Douglas DC–9 Alert Service Bulletin DC9–24A157, dated April 11, 1995; 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 (b) 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 the potential for fire and uncontrolled smoke throughout the cockpit, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a visual inspection to detect chafing of or damage to the wire bundle in the overhead switch panel of the cockpit, in accordance with McDonnell Douglas Alert Service Bulletin DC9–24A157, dated April 11, 1995.

(1) If no chafing or damage is detected, prior to further flight, apply spiral wrap to the wire bundle in accordance the alert service bulletin.

(2) If the wire insulation is chafed, prior to further flight, repair it and then apply spiral wrap to the wire bundle, in accordance with the alert service bulletin.

(3) If the wire conductor is damaged, prior to further flight, splice the wires and then apply spiral wrap to the wire bundle, in accordance with the alert service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal 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.

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

(d) The inspection, application of spiral wrap, repair, and splicing shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC9–24A157, dated April 11, 1995. 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, Dept. 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, Los Angeles ACO, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on May 19, 1995.

Issued in Renton, Washington, on April 25, 1995.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–10588 Filed 5–3–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–ANE–14; Amendment 39–9211; AD 95–09–08]

Airworthiness Directives; McCauley Model 2A37C223/90RB Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to McCauley Model 2A37C223/90RB propellers. This action requires installation of internal steel components, replacement of a balance ring, replacement of cylinder mounting screws, and modification to an oil-filled configuration with red dye. Replacement of the identified components redistributes propeller weight while the red dye oil-filling provides an ''on-condition'' (in-service)

means of early crack detection of the propeller assembly and also improves lubrication and corrosion protection. Any screw failures or cracks found during the accomplishment of this AD must be reported to the FAA. This amendment is prompted by a report of a propeller found with at least one cylinder screw that had failed due to fatigue. The actions specified in this AD are intended to prevent cylinder screw failure that could result in loss of propeller control and subsequent loss of aircraft control.

DATES: Effective May 19, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 1995.

Comments for inclusion in the Rules Docket must be received on or before July 3, 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–14, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from McCauley Accessory Division, The Cessna Aircraft Company, 3535 McCauley Drive, P.O. Drawer 5053, Vandalia, OH 45377–5053; telephone (513) 890–5246, fax (513) 890–6001. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia Bonnen, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Ave., Room 232, Des Plaines, IL 60018; telephone (708) 294–7134, fax (708) 294–7834.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) received a report that a McCauley Model 2A37C223/90RB propeller installed on a Beech Bonanza that crashed on October 2, 1992, had at least one cylinder screw that had failed due to fatigue. Though the screw failure was not associated with the cause of the accident since the cylinder remained attached until impact, continued operation of a propeller with failed cylinder screws could lead to additional screw failures and ultimately loss of propeller control. This condition, if not corrected, could result in cylinder screw failure that could result in loss of propeller control and subsequent loss of aircraft control.

The FAA has reviewed and approved the technical contents of McCauley Service Letter (SL) No. 1993–13, dated September 15, 1993, that describes procedures for the installation of internal steel components, replacement of a balance ring, and for conversion of non-oil filled propeller models to an oil filled configuration.

Since an unsafe condition has been identified that is likely to exist or develop on other McCauley Model 2A37C223/90RB propellers of the same type design, this airworthiness directive (AD) is being issued to prevent cylinder screw failure that could result in loss of propeller control and subsequent loss of aircraft control. This AD requires, within the next 50 hours time in service (TIS), at the next annual inspection, or within 12 calendar months after the effective date of this AD, whichever occurs first, installing internal steel components, replacing balance ring part number C–6440–[X] with part number C–6560, replacing cylinder mounting screws with new screws, part number A–1635–70, and modifying the propeller to a red dye oil-filled configuration. The modification of the propeller hub assembly to contain oil with a red dye provides an ''on-condition'' (in-service) means of early crack detection and also improves lubrication and corrosion protection. The propeller weight increase from the addition of the internal steel components, together with the addition of the lubricating oil, permit the replacement of the C–6440–[X] balance ring without affecting propeller weight. The new balance ring is reduced in weight to reduce loading on the propeller cylinder mounting screws. Any screw failures or cracks found during the accomplishment of this AD must be reported. This information is necessary for the FAA to assess the long term effectiveness of the corrective actions described in this AD. The actions are required to be accomplished in accordance with the SL described previously.

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 should 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 notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–ANE–14.'' 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 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:

95–09–08 McCauley: Amendment 39–9211. Docket 94–ANE–14.

Applicability: McCauley Model 2A37C223/90RB two bladed propellers with the following Propeller Serial Numbers:

901074–901092, 901094–901099, 901315–901320, 901322–901336, 901338–901340, 902816, 902818–902821;

910044, 910046–910051, 910161–910164, 910166, 910169–910170, 910172, 910174, 910176–910181, 911694, 911696, 912019, 912057, 912060, 912062, 912912;

920256–920260, 920262, 920264, 920266.

The above McCauley Model 2A37C223/90RB serial-numbered propellers are installed on but not limited to Beech Debonair 35–33, –A33, –B33, –C33, –C33A; E33, E33A, E33C, F33, F33A, F33C, and G33; and Beech Bonanza 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, 36, and A36 aircraft.

Note: The above is not an exhaustive list of aircraft which may contain the affected serial-numbered McCauley Model 2A37C223/90RB propellers. It is not possible to identify all aircraft using the affected propeller model because of installation approvals made by Supplemental Type Certificate or FAA Form 337 ''Major Repair and Alteration,'' etc. It is the responsibility of the owner, operator, and person returning the aircraft to service to determine if an aircraft has an affected propeller.

Compliance: Required as indicated, unless accomplished previously.

To prevent cylinder screw failure that could result in loss of propeller control and subsequent loss of aircraft control, accomplish the following:

(a) Within the next 50 hours time in service (TIS), at the next annual inspection, or within 12 calendar months after the effective date of this AD, whichever occurs first, install internal steel components, replace balance ring part number C–6440–[X] with part number C–6560, replace cylinder mounting screws with new screws, part number A–1635–70, and modify the propeller to an oil-filled configuration with red dye, all in accordance with McCauley SL No. 1993–13, dated September 15, 1993. Any propeller marked as 2A37C223/90RB–C that has an oil-fill plug in the side of the hub has complied with paragraph (a) of this AD.

Note: The modification of the propeller hub assembly to contain oil with a red dye provides an ''on-condition'' (in-service) means of early crack detection of the propeller assembly and also improves lubrication and corrosion protection. The oil will add approximately 2.8 lbs. to the weight of the propeller assembly.

(b) If leakage of oil containing red dye is detected in service (whether during flight or while on the ground), determine, prior to further flight, the source of leakage in accordance with McCauley SL No. 1993–13, dated September 15, 1993. Remove from service, prior to further flight, propeller assemblies that exhibit cracks and replace with a serviceable unit, modified in accordance with paragraph (a) of this AD, or with an equivalent initial production propeller that has incorporated a hub with oil containing red dye. Oil-filled propellers are identified by a letter C in the model designation and an oil-fill plug on the side of the hub.

(c) The ''calendar month'' compliance times stated in this AD allow the performance of the required action up to the last day of the month in which compliance is required.

(d) Report in writing any screw failures or cracks found during the accomplishment of paragraphs (a) or (b) of this AD to the Manager, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Ave., Room 232, Des Plaines, IL 60018; telephone (708) 294–7134, fax (708) 294–7834, within 10 days of the inspection. Information collection requirements contained in the regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and has been assigned OMB Control Number 2120–0056.

(e) 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, Chicago Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(f) 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 aircraft to a location where the requirements of this AD can be accomplished.

(g) The replacement and modifications shall be done in accordance with the following McCauley service document:

Document No.	Pages	Date
SL No. 1993–13	1–25	Sept. 15, 1993.
Total pages: 25.		

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 McCauley Accessory Division, The Cessna Aircraft Company, 3535 McCauley Drive, P.O. Drawer 5053, Vandalia, OH 45377–5053; telephone (513) 890–5246, fax (513) 890–6001. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on May 19, 1995.

Issued in Burlington, Massachusetts, on April 24, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–10590 Filed 5–3–95; 8:45 am]

BILLING CODE 4910–13–U

RAILROAD RETIREMENT BOARD

20 CFR Part 344

RIN 3220–AB13

Contributions Under Special Transition Rule for Public Commuter Railroads

AGENCY: Railroad Retirement Board.

ACTION: Final rule; removal.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its regulations to remove a temporary rule regarding the computation and payment of contributions under the Railroad Unemployment Insurance Act for commuter railroads. The rule is now obsolete.

EFFECTIVE DATE: May 4, 1995.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 7102(a) of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (Title VII, Subtitle A of Pub. L. 100–647) enacted a special transition rule regarding computation and payment of contributions by public commuter railroads for calendar years 1989 and 1990. Under the special transition rule, each public commuter

railroad paid contributions under section 8(a) of the Railroad Unemployment Insurance Act in an amount equal to the amount of unemployment and sickness benefits paid to its employees, plus an additional amount for administrative expenses. The Board promulgated Part 344 as a temporary rule (see 54 FR 25846, June 20, 1989) to explain how it would apply the special transition rule. Effective with calendar year 1991, public commuter railroads have been paying experience-rated contributions on the same basis as other railroad employers. Thus, Part 344 is obsolete.

The Board has determined that this is not a major rule for purposes of Executive Order 12866. Therefore, no regulatory impact analysis is required.

List of Subchapter in 20 CFR Part 344

Railroad employees, Railroad employers, Railroad unemployment benefits.

For the reasons set out in the preamble, part 344 of title 20, chapter II of the Code of Federal Regulations is amended as follows:

PART 344—[REMOVED AND RESERVED]

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

Authority: 45 U.S.C. 362(i) and 362(l).

2. Part 344, consisting of §§ 344.1 through 344.6, is hereby removed and reserved.

Dated: April 26, 1995.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–11007 Filed 5–3–95; 8:45 am]

BILLING CODE 7905–01–M

20 CFR Part 217

RIN 3220–AB08

Application for Annuity or Lump Sum

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations to enable the Board to pay the following benefits without requiring additional applications therefor: (1) An accrued annuity due at the death of a spouse or former spouse to a railroad employee receiving an annuity based on the same earnings record; and (2) a full-time student's annuity if the student was entitled to a child's annuity in the month before the month the child attained age 18.

EFFECTIVE DATE: May 4, 1995.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4929, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 217.8 of the Board's regulations specifies a list of benefits paid by the Board which may be paid based on a previously-filed application (*i.e.*, where a new application is not required). The rule adds to that list the cases where an accrued annuity is due at the death of a spouse or former spouse to a railroad employee receiving an annuity based on the same earnings record as the spouse or former spouse and where a full-time student's annuity is payable if the student was entitled to a child's annuity in the month before the month the child attained age 18. In those cases there is no additional information contained in the applications and there is no utility to the Board in requiring additional applications. Using the earlier application reduces paperwork and the burden on persons claiming benefits.

On February 9, 1995, the Board publishes this rule as a proposed rule (60 FR 7728), inviting comments on or before March 13, 1995. No comments were received.

The Board, in conjunction with the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 217

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, title 20, chapter II, part 217 of the Code of Federal Regulations is amended as follows:

PART 217—APPLICATION FOR ANNUITY OR LUMP SUM

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

Authority: 45 U.S.C. 231d and 45 U.S.C. 231f.

2. Section 217.8 is amended by adding paragraphs (t) and (u) to read as follows:

§ 217.8 When one application satisfies the filing requirement for other benefits.

* * * * *

(t) An accrued annuity due at the death of a spouse or divorced spouse if the claimant is entitled to an employee annuity on the same claim number.

(u) A full-time student's annuity if the student was entitled to a child's annuity in the month before the month the child attained age 18.

Dated: April 26, 1995.

By Authority of the Board.

For the Board,

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–11008 Filed 5–3–95; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–95–015]

RIN 2115–AE46

Special Local Regulations for Marine Events; the Great Chesapeake Bay Swim Event, Chesapeake Bay, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This document implements 33 CFR 100.507 for the Great Chesapeake Bay Swim Event to be held on June 11, 1995. These special local regulations are needed to provide for the safety of participants and spectators on the navigable waters during this event. The effect will be to restrict general navigation in the regulated area for the safety of participants in the swim, and their attending personnel.

EFFECTIVE DATE: The regulations in 33 CFR 100.507 are effective from 6:30 a.m. until 1 p.m., on June 11, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Baltimore (410) 576–8516.

SUPPLEMENTARY INFORMATION: The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LCDR C.A. Abel, project attorney, Fifth Coast Guard District Legal Staff.

Discussion: Mr. Charles Nabit, a representative of the March of Dimes, submitted an application to hold the Great Chesapeake Bay Swim Event on June 11, 1995. Approximately 600 swimmers will start from Sandy Point State Park and swim between the

William P. Lane Jr. Memorial Twin Bridges to the Eastern Shore. This is the type of event contemplated by these regulations and the safety of the participants depends upon control of vessel traffic, therefore the regulations in 33 CFR 100.507 are implemented and effective from 6:30 a.m. until 1 p.m., on June 11, 1995. During the swim itself, all vessel traffic will have to be stopped. However, vessel traffic will be permitted to transit the regulated area as the swim progresses. As a result, commercial traffic should not be severely disrupted.

Dated: April 14, 1995.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 95–10923 Filed 5–3–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 110

[CGD09–93–033]

Special Anchorage Area, Lake Superior, La Pointe Harbor, Madeline Island, WI; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the final rule (CGD09–93–033), which was published Wednesday, March 22, 1995 (60 FR 15052). The regulation established a Special Anchorage Area on Lake Superior, La Pointe Harbor, Madeline Island, Wisconsin.

EFFECTIVE DATE: May 4, 1995.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Second Class Jeffrey M. Yunker, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, Room 2083, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, (216) 522–3990.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Lieutenant Junior Grade Byron D. Willeford, Project Officer, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, and Lieutenant Karen E. Lloyd, Project Attorney, Ninth Coast Guard District Legal Office.

Background

The final rule that is the subject of these corrections, established a Special Anchorage Area on Lake Superior, La Pointe Harbor, Madeline Island, Wisconsin.

Need for Correction

As published, the final rule contained errors which incorrectly state the coordinates of the Special Anchorage Area. This may cause a mariner to anchor his or her vessel in an inappropriate area and must therefore be corrected.

Correction of Publication

Accordingly, the publication on March 22, 1995, of the final rule [CGD09–93–033] which was the subject of FR Doc. 95–6955, is corrected as follows:

§ 110.775 [Corrected]

1. The coordinates in § 110.77b, on page 15053 in the first column should be corrected to read as follows:

Latitude	*Longitude*
46°46′21.5″ N	090°46′59″ W, to
46°46′36″ N	090°47′13″ W, to
46°46′41″ N	090°47′13″ W, thence along the natural shoreline and structures to:
46°46′21.5″ N	090°46′59″ W.

Dated: April 18, 1995.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 95–10924 Filed 5–3–95; 8:45 am]

BILLING CODE 4910–14–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 95–4]

Modification of Appeal Procedure

AGENCY: Library of Congress, Copyright Office.

ACTION: Notice of policy decision.

SUMMARY: The Copyright Office of the Library of Congress issues this Policy Decision modifying the appeal procedure regarding refusals to register a copyright claim. Currently, this procedure is specified in Compendium II of Copyright Office Practices and an applicant whose claim is rejected is entitled to two reconsiderations, each handled within the Examining Division. The modified procedure establishes an interim system with a Board of Appeals to reconsider the second appeal that is the final agency action.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

One of the most significant responsibilities assigned the Copyright Office by Title 17 of the U.S. Code is the registration of copyright claims. Currently, the Copyright Office registers slightly more than 600,000 copyright claims annually, and refuses to register a small percentage of these.

Subsections 410(a) and (b) of the copyright law determine the parameters of the registration system:

(a) When, after examination, the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements of this title have been met, the Register shall register the claim and issue to the applicant a certificate of registration under the seal of the Copyright Office. The certificate shall contain the information given in the application, together with the number and effective date of the registration.

(b) In any case in which the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason, the Register shall refuse registration and shall notify the applicant in writing of the reasons for such refusal.

In administering these provisions, the Copyright Office usually accepts as true the facts given by the applicant.[1] The decision to register or not rests on a determination of whether a prima facie valid copyright claim has been submitted under the provisions of the Copyright Act.

An applicant may appeal a refusal to register using the appeal procedure specified in the Compendium of Copyright Office Practices. Under this practice, an applicant whose claim has been denied registration is entitled to two reconsideration, each handled within the Examining Division. Specifically, the procedure provides:

Refusal to register: request for reexamination. When the Copyright Office has refused a claim as submitted, it notifies the applicant in writing of the refusal to register. After such notification, the applicant may set forth in writing his or her objections to the refusal and request that the Office reconsider its action. If the claim is refused

[1] Section 108.05 of Compendium II of Copyright Office Practices provides: ''Factual determinations. In connection with its examining and related activities, the Copyright Office does not ordinarily make findings of fact with respect to publication or any other thing done outside the Copyright Office.'' This practice is qualified by section 108.05(b) providing: ''Administrative notice. The Copyright Office may take notice of matters of general knowledge. It may use such knowledge as the basis for questioning applications that appear to contain or be based upon inaccurate or erroneous information.''

after reconsideration, the head of the appropriate Examining Division section will send the applicant written notification of the reasons for refusal. The applicant may again request reconsideration. If the claim is refused again, the Chief of the Examining Division will notify the applicant in writing of the reasons. The Division Chief's decision constitutes final agency action.

Section 606.04 Compendium II of Copyright Office Practices.

II. Circumstances Leading to Modification

Although the Office's practice concerning appeals is long-standing, we have periodically considered modifying it. A number of commentators have criticized the current practice on the grounds that containment within the Examining Division leads to an overly closed system. Even under the existing practice, however, there has been some discussion of particular cases with the General Counsel or the Register. More recently, the Library of Congress appointed an Advisory Committee on Copyright Registration and Deposit, (ACCORD); in their meetings, members of this Committee criticized the appeals procedure and suggested that it be changed. Library of Congress, Advisory Committee on Copyright Registration and Deposit, 31 (1993).

The Copyright Office is committed to improving this procedure and will be publishing a Notice of Proposed Rulemaking seeking public comment on legal and administrative issues associated with establishing a more formal procedure at a later date. Meanwhile, as a first step, the Office has decided to establish a Board of Appeals within the Copyright Office as an interim system. By instituting this Board, we will gain experience in administering an alternative system.

After the Office has some practical experience with the new system, we will make a detailed proposal and seek public comment. Following review of these comments, the Copyright Office will publish the new appeal procedure as a regulation. Although we are now adopting as an interim system the Board of Appeals described below, the precise nature of the final appeal procedure will not be established until we publish final rules. Anyone who wishes to suggest specific guidelines for our consideration before the proposed rulemaking should submit them to the Board of Appeals, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024.

III. Policy Decision

The Copyright Office's appeal procedure set out in § 606.04 of the Compendium is amended to read as follows:

Appeals of refusal to register: request for reconsideration. When the Copyright Office has refused to register a claim as submitted, it notifies the applicant in writing of the refusal to register. After such notification, the applicant may set forth in writing his or her objections to the refusal and request that the Office reconsider its action. The appeal letter should be addressed to the appropriate section of the Examining Division, Copyright Office, Washington, D.C. 20559. The first request for reconsideration must be received in the Copyright Office within 120 days of the date of the Office's first refusal to register, and the envelope containing the request should be clearly marked: FIRST APPEAL/ EXAMINING DIVISION.

If the claim is refused after reconsideration, the head of the appropriate section of the Examining Division sends the applicant written notification of the reasons for refusal. The applicant may again request reconsideration in writing. This second appeal must be received in the Copyright Office within 120 days of the date of the Office's refusal of the first appeal, and be directed to the Board of Appeals at the following address: Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C., 20024. The Board of Appeals shall consist of the Register of Copyrights, the General Counsel, and the Chief of the Examining Division, or their respective designees. The Board shall consider the second appeal and render a final decision. The designated Chair of the Board of Appeals will write the applicant setting out the reasons for acceptance or denial of the claim. The Appeals Board's decision constitutes final agency action.

Dated: April 27, 1995.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 95–11045 Filed 5–3–95; 8:45 am]

BILLING CODE 1410–30–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7138

[CO–930–1920–00–4355; COC–51843]

Transfer of Public Land for the Slick Rock Disposal Site; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order permanently transfers 61.25 acres of public land to the Department of Energy in accordance with the terms of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7916 (1988)), as amended.

EFFECTIVE DATE: May 4, 1995.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7916 (1988)), as amended, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby permanently transferred to the Department of Energy, and as a result of this transfer, the land is no longer subject to the operation of the general land laws, including the mining and the mineral leasing laws, for the Slick Rock Disposal Site:

New Mexico Principal Meridian

T. 44 N., R. 18 W.,
Sec. 21, S½S½SE¼SW¼;
Sec. 28, NE¼NW¼, N½NE¼SE¼NW, N½S½NE¼SE¼NW¼, NE¼NW¼SE¼NW¼, and N½SE¼NW¼SE¼NW¼.

The area described contains approximately 61.25 acres of public land in San Miguel County.

2. The transfer of the above-described land to the Department of Energy vests in that Department full management, jurisdiction, responsibility, and liability for such land and all activities conducted therein, except as provided in paragraph 3.

3. The Secretary of the Interior shall retain the authority to administer any existing claims, rights, and interests in this land established before the effective date of the transfer.

Dated: April 21, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–10992 Filed 5–3–95; 8:45 am]

BILLING CODE 4310–JB–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 90

[ET Docket 93–235; FCC 95–148]

Additional Frequencies for Cordless Telephones

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this action, the Commission makes available 15 new channel pairs for cordless telephones. This action is taken to relieve

congestion on existing channels and is intended to improve the operation and convenience of cordless telephones, making it easier for consumers to obtain improved wireless access to telephone service.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: Anthony Serafini, Office of Engineering and Technology, (202) 776–1628.

SUPPLEMENTARY INFORMATION: This is a summary of the background to the Commission's *Report and Order,* in ET Docket 93–235, Adopted April 5, 1995 and released April 10, 1995. The complete *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

1. On August 20, 1992, the Personal Communications Section of the Telecommunications Industry Association (TIA) submitted a Petition for Rule Making (RM–8094) seeking additional frequencies for cordless telephones. TIA stated that additional cordless telephone channels are needed to relieve channel-crowding problems, due to the widespread popularity of these devices. TIA suggested that an additional 15 channel pairs using 30 frequencies near 44 and 49 MHz be made available for cordless telephone use.

2. On August 20, 1993, the Commission adopted a *Notice of Proposed Rule Making* (*Notice*), 58 FR 51299 (October 1, 1993), in this proceeding. In the *Notice*, the Commission proposed to make available for cordless telephone use the additional 15 channel pairs suggested by TIA. These frequencies are currently allocated to the Private Land Mobile Radio Service (PLMRS). The Commission also proposed to require that cordless telephones operating on these new frequencies incorporate a mechanism for automatically monitoring and preventing activation on any occupied channel. The proposed frequencies in the 44 MHz band are used internally by TV receivers. The Commission therefore proposed to designate the lower frequencies near 44 MHz, for base units in order to minimize interference to TV receivers and not to require any specific pairing of frequencies. It further requested comment on certain other technical aspects associated with cordless telephone operation. Namely, it requested comment on whether to continue to allow cordless telephone operating frequencies to be offset from the center of cordless telephone channels and whether 20 kHz is the appropriate bandwidth for operation on the new frequencies.

3. The commenting parties representing cordless telephone manufacturers agreed that there is a need for additional cordless telephone frequencies to relieve channel congestion. Some of these parties raised concerns with respect to specific technical requirements and implementation procedures. Other parties, generally representing land mobile and broadcast interest, expressed concern about potential interference problems and questioned the need for additional cordless telephone spectrum.

4. Based on these comments, the Commission adopted the *Report and Order* to allow new cordless telephone frequencies. Accordingly, it is ordered that Parts 15 and 90 of the Commission's rules are amended as specified below, effective 30 days after publication in the **Federal Register**. Furthermore, it is ordered that the Petitions for Reconsideration filed by the Telecommunications Industry Association and Uniden America Corporation in GEN Docket No. 89–626 are granted with regard to the offset channel rule. This action is taken pursuant to the authority contained in sections 4(i), 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended.

List of Subjects

47 CFR Part 15

Communications equipment.

47 CFR Part 90

Communications equipment.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

A. Title 47 of the Code of Federal Regulations, parts 15 and 90, as amended to read as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: Secs. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304, and 307.

2. Section 15.233 is amended by revising the section heading and paragraphs (b) and (d), to read as follows:

§ 15.233 Operation within the bands 43.71–44.49 MHz, 46.60–46.98 MHz, 48.75–49.51 MHz and 49.66–50.0 MHz.

* * * * *

(b) An intentional radiator used as part of a cordless telephone system shall operate centered on one or more of the following frequency pairs, subject to the following conditions:

(1) Frequencies shall be paired as shown below, except that channel pairing for channels one through fifteen may be accomplished by pairing any of the fifteen base transmitter frequencies with any of the fifteen handset transmitter frequencies.

(2) Cordless telephones operating on channels one through fifteen must:

(i) Incorporate an automatic channel selection mechanism that will prevent establishment of a link on any occupied frequency; and

(ii) The box or an instruction manual which is included within the box which the individual cordless telephone is to be marketed shall contain information indicating that some cordless telephones operate at frequencies that may cause interference to nearby TVs and VCRs; to minimize or prevent such interference, the base of the cordless telephone should not be placed near or on top of a TV or VCR; and, if interference is experienced, moving the cordless telephone farther away from the TV or VCR will often reduce or eliminate the interference. A statement describing the means and procedures used to achieve automatic channel selection shall be provided in any application for equipment authorization of a cordless telephone operating on channels one through fifteen.

Channel	Base transmitter (MHz)	Handset transmitter (MHz)
1	43.720	48.760
2	43.740	48.840
3	43.820	48.860
4	43.840	48.920
5	43.920	49.020
6	43.960	49.080
7	44.120	49.100
8	44.160	49.160
9	44.180	49.200
10	44.200	49.240
11	44.320	49.280
12	44.360	49.360
13	44.400	49.400
14	44.460	49.460
15	44.480	49.500
16	46.610	49.670
17	46.630	49.845
18	46.670	49.860
19	46.710	49.770
20	46.730	49.875
21	46.770	49.830
22	46.830	49.890

Channel	Base transmitter (MHz)	Handset transmitter (MHz)
23	46.870	49.930
24	46.930	49.990
25	46.970	49.970

* * * * *

(d) The fundamental emission shall be confined within a 20 kHz band and shall be centered on a carrier frequency shown above, as adjusted by the frequency tolerance of the transmitter at the time testing is performed. Modulation products outside of this 20 kHz band shall be attenuated at least 26 dB below the level of the unmodulated carrier or to the general limits in § 15.209, whichever permits the higher emission levels. Emissions on any frequency more than 20 kHz removed from the center frequency shall consist solely of unwanted emissions and shall not exceed the general radiated emission limits in § 15.209. Tests to determine compliance with these requirements shall be performed using an appropriate input signal as prescribed in § 2.989 of this chapter.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. secs. 154, 303, and 332, unless otherwise noted.

2. In § 90.65, the table in paragraph (b) is amended, to add a new limitation ''44'' to the entries for frequencies 48.76, 48.84, 48.86, 48.92, 49.02, 49.08, 49.10, 49.16, 49.20, 49.24, 49.28, 49.36, 49.40, 49.46 and 49.50 MHz, and a new paragraph (c)(44) is added, to read as follows:

§ 90.65 Petroleum Radio Service.

* * * * *

(b) * * *

PETROLEUM RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* *	*	* *
Megahertz:		
* *	*	* *
48.76	.....do	10, 44.
* *	*	* *
48.84	.....do	10, 44.
48.86	.....do	10, 44.
* *	*	* *
48.92	.....do	10, 44.
* *	*	* *
49.02	.....do	10, 44.

PETROLEUM RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations
* *	*	* *
49.08	.....do	10, 44.
49.10	.....do	10, 44.
* *	*	* *
49.16	.....do	10, 44.
* *	*	* *
49.20	.....do	10, 44.
* *	*	* *
49.24	.....do	10, 44.
* *	*	* *
49.28	.....do	10, 44.
* *	*	* *
49.36	.....do	10, 44.
* *	*	* *
49.40	.....do	10, 44.
* *	*	* *
49.46	.....do	10, 44.
* *	*	* *
49.50	.....do	10, 44.
* *	*	* *

(c) * * *

(44) This frequency is also used on a secondary basis by cordless telephones under part 15 of this chapter.

* * * * *

3. In § 90.67, the table in paragraph (b) is amended, to add a new limitation ''38'' to the entries for frequencies 48.76, 48.84, 48.86, 48.92, 49.02, 49.08, 49.10, 49.16, 49.20, 49.24, 49.28, 49.36, 49.40, 49.46 and 49.50 MHz, and a new paragraph (c)(38) is added, to read as follows:

§ 90.67 Forest Products Radio Service.

* * * * *

(b) * * *

FOREST PRODUCTS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* *	*	* *
Megahertz:		
* *	*	* *
48.76	.....do	2, 38.
* *	*	* *
48.84	.....do	2, 38.
48.86	.....do	2, 38.
* *	*	* *
48.92	.....do	2, 38.
* *	*	* *
49.02	.....do	2, 38.
* *	*	* *
49.08	.....do	2, 38.
49.10	.....do	2, 38.
* *	*	* *
49.16	.....do	2, 38.

FOREST PRODUCTS RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations
* *	*	* *
49.20	.....do	2, 38.
* *	*	* *
49.24	.....do	2, 38.
* *	*	* *
49.28	.....do	2, 38.
* *	*	* *
49.36	.....do	2, 38.
* *	*	* *
49.40	.....do	2, 38.
* *	*	* *
49.46	.....do	2, 38.
* *	*	* *
49.50	.....do	2, 38.
* *	*	* *

(c) * * *

(38) This frequency is also used on a secondary basis by cordless telephones under part 15 of this chapter.

* * * * *

4. In § 90.89, the table in paragraph (b) is amended, to add a new limitation ''23'' to the entries for frequencies 43.72, 43.74, 43.82, 43.84, 43.92, 43.96, 44.12, 44.16, 44.18, 44.20, 44.32, 44.36, 44.40, 44.46 and 44.48 MHz, and a new paragraph (c)(23) is added, to read as follows:

§ 90.89 Motor Carrier Radio Service.

* * * * *

(b) * * *

MOTOR CARRIER RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* *	*	* *
Megahertz:		
* *	*	* *
43.72	..... do	4, 23.
43.74	..... do	4, 23.
* *	*	* *
43.82	..... do	4, 23.
43.84	..... do	4, 23.
* *	*	* *
43.92	..... do	5, 6, 23.
* *	*	* *
43.96	..... do	5, 23.
* *	*	* *
44.12	..... do	5, 23.

MOTOR CARRIER RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations
* * * * *		
44.16	do	5, 23.
44.18	do	5, 23.
44.20	do	5, 20, 23.
* * * * *		
44.32	do	5, 23.
* * * * *		
44.36	do	5, 6, 23.
* * * * *		
44.40	do	5, 6, 23.
* * * * *		
44.46	do	1, 23.
44.48	do	1, 23.
* * * * *		

(c) * * *

(23) This frequency is also used on a secondary basis for cordless telephones under part 15 of this chapter.

* * * * *

[FR Doc. 95–11012 Filed 5–3–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 90

[PR Docket No. 89–553, GN Docket No. 93–252, PP Docket No. 93–253, FCC 95–159]

Service Rules for SMR Systems in the 900 MHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted a *Second Report and Order,* implementing final service rules to complete the licensing of the 900 MHz Specialized Mobile Radio (SMR) service. This Order implements the Commission's decision in the *Third Report & Order* in GN Docket No. 93–252, (*CMRS Third Report & Order*), to license the 900 MHz band on a Major Trading Area (MTA) basis. The *Second Report and Order* also establishes technical and operational rules for the new MTA licensees, and defines the rights of SMR licensees already operating in the 900 MHz band. This Second Report and Order also addresses issues raised on reconsideration of the *CMRS Third Report & Order* pertaining specifically to the 900 MHz SMR service.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: Amy Zoslov, (202) 418–0620, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Second Report and Order,* adopted April 14, 1995, released April 17, 1995. The complete text of this *Second Report and Order* is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 239, 1919 M Street NW., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street NW., Suite 140, Washington, D.C. 20037.

Synopsis of the Second Report and Order

Adopted: April 14, 1995
Released: April 17, 1995
Comment Date: May 24, 1995
Reply Comment Date: June 1, 1995

I. Background

1. When the Commission established the 900 MHz SMR service in 1986, it elected to use a two-phase licensing process. In Phase I, licenses were assigned in 46 ''Designated Filing Areas'' (DFAs) comprised of the top 50 markets. Phase II licensing, for facilities outside the DFAs, was frozen after 1986, when the Commission opened its filing window for the DFAs. In 1989, the Commission adopted a *Notice of Proposed Rule Making* in PR Docket 89–553, proposing to begin Phase II licensing of SMR facilities nationwide. In 1993, the Commission adopted a *First Report & Order & Further Notice of Proposed Rule Making* in PR Docket 89–553 (*Phase II First R&O & Further Notice*), 58 FR 12176 (March 3, 1993), modifying its Phase II proposal and seeking comment on whether to license the 900 MHz SMR band to a combination of nationwide, regional and local systems. Shortly thereafter, Congress amended the Communications Act to reclassify most SMR licensees as Commercial Mobile Radio Service (CMRS) providers and establish the authority to use competitive bidding to select from among mutually exclusive applicants for certain licensed services. The Commission deferred further consideration of Phase II and incorporated the 900 MHz SMR docket into its CMRS proceeding.

2. In the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), the Commission further revised its Phase II proposals and established the broad outlines for the completion of licensing in the 900 MHz SMR band. The Commission left the specific service rules for the Phase II *Order,* which the Commission adopted herein. This Order also considers petitions for reconsideration of the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994) and *ex parte* presentations concerning, *inter alia,* secondary sites, loading requirements, treatment of incumbents *vis a vis* the MTA licensees, and coverage requirements. The Commission also affirms its rules governing channel blocks and MTA service areas; addresses coverage requirements for MTA licensees; provides incumbent licensees protection from interference by MTA licensees through geographic separation and short-spacing rules; provides for co-channel interference protection between adjacent MTA licensees, including signal level limitation, coordination of frequency usage, and emission mask rules; partially reconsiders its rules governing primary site protection; affirms its rules regarding loading requirements; provides channel block allocation for MTA licensees in Mexican and Canadian border areas; and modifies its rule regarding discontinuance of operation. Finally, the Commission applies the CMRS spectrum cap to 900 MHz SMR licensees, and establish rules grandfathering incumbent PMRS licensees and foreign-ownership of private land mobile providers.

II. Second Report and Order

A. Service Rules

3. *Service Areas.* In the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), the Commission found that MTAs are the preferable service area for future 900 MHz SMR licensing. The limited success of existing 900 MHz SMR systems confined to providing service in DFAs weighs against the use of more numerous Basic Trading Areas (BTAs) or similarly small service areas. The Commission also found that MTA licensing is more likely to create opportunities for both existing licensees and new entrants to meet customer demands for wide-area service, and unlike larger regional or nationwide service areas, will not unnecessarily restrict entry to a small number of licensees. *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994). For those reasons, the Commission affirms its initial decision to license 900 MHz SMR licenses on an MTA basis.

4. The Commission notes that Rand McNally & Company is the copyright owner of MTA listings, and an agreement in principal for a blanket copyright license has been reached between Rand McNally and the American Mobile Telecommunications Association. MTA licensees would

obtain a license to use Rand McNally's copyrighted material pursuant to this agreement upon payment to Rand McNally of $125.00 per each ten-channel block MTA license a grantee obtains. The agreement, along with the MTA listings and map, are available for public inspection at the Wireless Telecommunications Bureau's public reference room, Room 628, 1919 M Street NW., Washington, D.C. 20554. Copies also can be obtained by contacting Kim McLean, Marketing Coordinator, Rand McNally & Company, 8255 North Central Park, Skokie, IL 60076 (tel. (800) 333–0134) or AMTA, 1150 18th Street N.W., Suite 250 Washington, D.C. 20036 (tel. (202) 331–7773). Grantees are free to negotiate their own licensing arrangement with Rand McNally. Grantees may not, however, rely on grant of an MTA–based SMR license as a defense to any claim of copyright infringement brought by Rand McNally.

5. *Channel Blocks.* The 900 MHz SMR band is comprised of 20 blocks of 10 contiguous channels each, interleaved with channels assigned to other Part 90 services. The *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), provides that each 10-channel block would be separately licensed and that applicants would be permitted to aggregate blocks. Eligibility for any channel block would not be restricted, and both incumbents and new entrants would be allowed to bid without restriction for one or more 900 MHz blocks. An MTA licensee will be authorized to construct stations anywhere in its MTA on unoccupied channels that are available for construction, and to expand or modify facilities throughout its MTA provided that the system remains in compliance with the Commission's technical and operational rules, protects incumbents, and the licensee notifies the Commission of such changes. *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994). These rules will afford 900 MHz SMR MTA licensees the same flexibility afforded cellular and PCS licensees.

6. *Coverage Requirements.* The *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), provides MTA licensees five years to construct and operate their systems, but deferred adoption of interim requirements to this proceeding. In this *Second Report and Order,* the Commission will require that MTA licensees provide coverage to one-third of the population of their service area within three years of initial license grant and to two-thirds of the population of their service area within five years. Alternatively, at the five-year mark, MTA licensees may submit a showing to the Commission demonstrating that they are providing substantial service. In addition, licenses may resell party of their geographic area to help them fulfill coverage requirements. An MTA licensee must satisfy its coverage requirements regardless of the extent of the presence of incumbents within its MTA block, and failure to comply with these requirements will result in forfeiture of the entire MTA license. These standards are similar to those imposed on other wide-area CMRS licensees such as cellular and broadband PCS. The Commission states that these standards will allow for ubiquitous wide-area service to the public and protect incumbents, while deterring competitors from seeking MTA licenses for anticompetitive warehousing.

7. *Treatment of Incumbents.* In the *CMRS Third Report & Order,* 59 FR 59,945, (Nov. 21, 1994), the Commission determined that incumbent SMR systems in the 900 MHz MTA blocks are entitled to co-channel protection by MTA licensees, and that mandatory relocation of incumbents was not feasible in the 900 MHz band because no alternative 900 MHz SMR channels were available for relocation. The Commission instead stated that MTA licensees could negotiate mergers, buyouts, frequency swaps, or similar arrangements with incumbent systems on a voluntary basis. In furtherance of that policy, this *Second Report & Order* requires that MTA licensees afford protection to incumbent SMR systems pursuant to 47 C.F.R. § 90.621(b), by locating their stations at least 113 km (70 mi.) from the facilities of any incumbent, by complying with the co-channel separation standards set forth in our ''short-spacing'' rule, or by negotiating an even shorter distance with the incumbent licensee. *See* 47 C.F.R. § 90.621(b)(4). This will adequately protect incumbent operations without hampering the ability of MTA licensees to construct stations throughout their authorized service area.

8. While the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), provides full co-channel interference protection for existing facilities, incumbent systems may not expand beyond existing service areas unless they obtain the MTA license for the relevant channels; the Commission did not, however, specifically define an incumbent's ''existing service area.'' To provide incumbent licensees with additional flexibility, the Commission is defining an incumbent licensee's existing service area by its originally-licensed 40 dBu signal strength contour.

9. Thus, incumbent licensees may add new transmitters in their existing service area without prior notification to the Commission, so long as their original 40 dBu signal strength contour is not expanded. Incumbent licensees will be required to notify the Commission of any changes in technical parameters or additional stations constructed through a minor modification of their license, including agreements with an MTA licensee to expand beyond their signal strength contour. These minor modification applications, however, will not be subject to public notice and petition to deny requirements or mutually exclusive applications. These rules will allow incumbents to continue existing operations without harmful interference and give them flexibility to modify or augment their systems so long as they do not encroach on the MTA licensee's operations.

10. *Interference Between Adjacent MTA Licensees.* In the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), the Commission concluded that co-channel interference criteria for adjacent MTA licensees would be similar to those imposed on the cellular and PCS services in that they would only apply to transmitting locations near the boundaries of each licensee's MTA. Consistent with that objective, this *Second Report and Order* prohibits MTA licensees from exceeding a signal level of 40 dBuV/M at their service area boundaries, unless all affected parties agree to a higher level. Co-channel adjacent MTA licensees and other affected parties must coordinate frequency usage. To the extent that a single licensee obtains licenses for adjacent MTAs on the same channel block, it will not be required to coordinate its operations in this manner. This approach provides MTA licensees a signal strength level sufficient to operate their systems up to the borders of their MTA licenses while protecting adjacent operations.

11. *Secondary Sites.* In the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), the Commission determined that incumbent systems are entitled to full co-channel interference protection for existing facilities, but are not allowed to expand beyond existing service areas unless they obtain the MTA license for the relevant channels. Several incumbent 900 MHz licensees have been granted authorizations to construct facilities outside of their DFAs on a secondary (*i.e.,* unprotected) basis to link their facilities in different markets. As a practical matter, these

sites developed on an interference-free basis due to the freeze on primary licensing outside the DFAs. To prevent unnecessary disruption of existing operations, the Commission concluded that 900 MHz secondary sites licensed on or before August 9, 1994, would be afforded primary status, thus requiring new MTA licensees to afford them full co-channel interference protection.

12. On reconsideration, the Commission amends its rules to extend protected status to all secondary sites filed on or before August 9, 1994, even if they were not granted until after August 9. Granting primary site protection for these sites will promote uninterrupted service, and protect only a *de minimis* amount of new spectrum. Moreover, the Commission's delays in processing secondary site applications in the 900 MHz SMR service appear to have produced an inequitable result for applicants who otherwise would have been entitled to protection under the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994). Therefore, this *Second Report and Order* provides that all MTA licensees provide complete co-channel protection to all sites for which applications were filed on or before August 9, 1994. Secondary sites based on applications filed after August 9, 1994, however, will not be afforded such protection.

13. *Loading Requirements.* In the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), the Commission determined that loading requirements, which were adopted in the SMR services to protect against spectrum warehousing, are not necessary for MTA-based licensing of 900 MHz SMR, provided that licensees are subject to strict construction and coverage requirements. However, the Commission retained the loading/automatic cancellation requirement for 900 MHz SMR incumbent licensees. *See* 47 C.F.R. § 90.631(i). Because the 900 MHz SMR market is less mature than the 800 MHz SMR market, and because incumbent licensees are not required to achieve significant coverage of their service areas, the Commission found that loading requirements continue to serve a public interest purpose in the former.

14. Based on the unique history and nature of the 900 MHz service as it has developed to date, the Commission affirms its decision in the *CMRS Third Report & Order* to retain loading requirements for incumbent 900 MHz SMR licensees. The 900 MHz service is not a mature service, both because it was licensed more recently than 800 MHz and because Phase I licensing has been confined to limited service areas. Based on these factors, the Commission has already granted special relief to 900 MHz licensees by providing them an additional two years to load their systems, on top of the five years originally granted. *Report & Order,* PR Docket No. 92–17, 57 FR 37731 (August 20, 1992). Having granted this relief, eliminating loading requirements for incumbent licensees who have failed to fully load their systems would not be in the public interest. Incumbents may overcome this obstacle by obtaining an MTA license, which exempts them from all previously applicable loading requirements. Moreover our policy of retaining loading requirements for incumbents will prevent the warehousing of spectrum, as once the Commission takes back channels from an incumbent who has not met loading requirements, the spectrum covered by the incumbent's authorization will automatically revert to the MTA licensee who has obtained the contingent rights to that spectrum. *See, e.g., Further Notice of Proposed Rule Making,* PR Docket No. 83–144, 59 FR 60111 (November 22, 1994).

15. *Emission Masks.* The Commission generally subjects mobile radio services to emission mask rules to restrict transmitter emissions on spectrum adjacent to the licensee's adjacent channel. In the *CMRS Third Report & Order,* 59 FR 59,945 (November 21, 1994), the Commission affirmed that the out-of-band emission rules should apply only where emissions have the potential to affect other licensees' operations. Consistent with the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), the Commission will only apply emission mask rules to ''outer'' MTA channels in each block (*i.e.,* channels on the outer edges of an MTA licensee's channel block that may present adjacent channel interference to other MTA licensees) and to ''interior'' MTA channels (*i.e.* channels inside of the MTA licensee's channel block assignment that are adjacent only to the licensee's channels and not to other licensees) where there are incumbent SMR licensees who will be affected by the MTA licensee's operations.

16. These channels alone have the potential to affect operations outside of the MTA licensee's authorized bandwidth, and that the emission mask established in this Order will adequately protect other MTA licensees. Specifically, for wide-area licensees in the 900 MHz SMR band on any frequency outside the MTA licensee's frequency block, the peak power of any emission shall be attenuated below the transmitter power (P) by at least 43 plus 10 $\log_{10}$(P) decibels or 80 decibels, whichever is the lesser attenuation. As an exception to this requirement, if a single entity aggregates adjacent channel blocks, it will not be required to mask its emissions at the band edge of each ten-channel block.

17. *Mexican/Canadian Border Areas.* In the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), the Commission noted that 900 MHz channel availability is limited in the Mexican and Canadian border areas and that limitations on ERP and antenna height have been placed on a number of the channels. *See* 47 C.F.R. §§ 90.619(b)(2), 90.619(d). Consequently, some channels may not be available to MTA licensees operating in border areas, and restrictions on ERP or antenna height will make them less attractive for MTA licensees. The creation of different channel allocations in border areas is administratively unworkable. Because applicants can assess the impact of border requirements in their valuation of these blocks for competitive bidding purposes, the Commission will use the same allocation of MTA channel blocks in border areas as in non-border areas. Therefore, use of channels in MTAs that encompass border areas will be subject to the relevant rules regarding international assignments and coordination of such channels.

18. *Discontinuance of Operation.* Section 90.631(f) of the Commission's rules, 47 CFR § 90.631(f), provides that SMR licenses cancel automatically if a licensee discontinues station operations for more than 60 consecutive days, unless the Commission authorizes additional time for station operations to remain discontinued. If additional time is not authorized, the license cancels automatically unless the station resumes operations within five days after the licensee receives the Commission's letter declining to authorize additional time. The Omnibus Budget Reconciliation Act of 1993, however, requires the Commission to modify its rules, to the extent ''necessary and practical,'' to ensure that substantially similar services are subject to ''comparable technical requirements.'' 47 U.S.C. § 332(d)(3). Because the Commission concluded in the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), that 900 MHz SMR services compete or have the potential to compete with existing wide-area CMRS service providers, the rules governing MTA licensees must be substantially similar to the rules governing cellular and PCS providers. Therefore, the Commission modifies Section 90.631(f) to include provisions comparable to those contained in

Section 22.317 for cellular operations. This will permit licensees to discontinue operations for 90 continuous days and removes any provisions for licensees to request an additional extension of this period.

B. Miscellaneous Matters

19. *Spectrum Cap and Attribution.* An entity may hold up to 45 MHz of spectrum in the three radio services (broadband PCS, cellular, and SMR) in any geographic area. *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994). The Commission will also apply a 20 percent cross-ownership attribution rule for purposes of the spectrum aggregation limit. For example, an entity with 20 percent or greater ownership of a 900 MHz SMR license who has 40 MHz of broadband PCS spectrum in a geographic market would reach the spectrum cap with 5 MHz of SMR spectrum in an MTA within that geographic market. Where cellular, broadband PCS and SMR licensees are held indirectly through intervening corporate entities, attribution will be determined through a multiplier. *Memorandum Opinion & Order,* GEN Docket No. 90–314, 60 FR 13915 (March 15, 1995). Finally, 900 MHz SMR channels count toward the 10 percent population overlap threshold adopted in the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994). Thus, a 900 MHz SMR provider's spectrum counts toward the spectrum cap if the carrier is licensed to serve ten percent or more of the population of the MTA.

20. *Grandfathering—Regulatory Classification.* In the *CMRS Second Report & Order,* 59 FR 59,945 (Nov. 21, 1994), the Commission stated that SMR licensees are classified as CMRS if they offer interconnected service, and are otherwise classified as PMRS. All 900 MHz MTA licensees presumptively will be classified as CMRS providers. An MTA licensee, however, who was an incumbent in the 900 MHz service before August 10, 1993, is not subject to CMRS regulation until August 10, 1996. 47 U.S.C. § 332(c)(2)(B)).

21. *Foreign Ownership Waivers.* The Budget Act amendments to the Communications Act permit the Commission to waive the application of Section 310(b) to any foreign ownership that lawfully existed before May 24, 1993, of any provider of a private land mobile service that will be treated as a common carrier, as a result of the Budget Act amendments, on the condition that the extent of foreign ownership not increase above the pre-May 24, 1993, level, and that no subsequent transfer of ownership is made to anyone in violation of Section 310(b). 47 U.S.C. § 332(b)(6). The Commission's decision to treat incumbent licensees as new applicants raise the question as to whether a waiver filed by an incumbent licensee will cover the MTA license, in the event that the incumbent wins the MTA license. The Commission will grandfather any timely filed waiver petitions with respect to the MTA license. Although the MTA license is considered a ''new'' license, the provider's existing facilities will be entirely subsumed in the new license. Thus, the Commission believes it is unnecessary to require an additional filing by an incumbent who wins the MTA license.

III. Procedural Matters

22. *Final Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making in GN Docket No. 93–252. Written comments on the IRFA were requested. The Commission's final analysis is as follows:

A. *Need for and purpose of the action.* This rulemaking proceeding was initiated to implement Sections 332 and 3(n), respectively, of the Communications Act, as amended. The rules adopted herein will carry out Congress's intent to establish a consistent regulatory framework for all commercial mobile radio service (CMRS).

B. *Issues raised in response to the IRFA.* No comments were submitted in response to the IRFA in GN Docket No. 93–252.

C. *Significant alternatives considered and rejected.* All significant alternatives have been addressed in the *Second Report & Order,* and the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994).

23. *Ordering Clauses.* Accordingly, IT IS ORDERED, That the petitions for reconsideration ARE GRANTED to the extent described above and DENIED in all other respects.

24. It is further ordered that Part 90 of the Commission's rules, 47 C.F.R. Part 90, IS AMENDED, as indicated below. It is ordered that the rule changes herein will become effective 30 days after publication in the **Federal Register**.

List of Subjects in 47 CFR Part 90

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 is revised to read as follows:

Authority: 47 U.S.C. 154, 303, 309 and 332.

2. Section 90.7 is amended by adding the definition for ''MTA license'' following the definition for ''Mobile station'' to read as follows:

§ 90.7 Definitions.

* * * * *

MTA-based license or MTA license. A license authorizing the right to use a specified block of SMR spectrum within one of the 51 Major Trading Areas (''MTAs''), as embodied in Rand McNally's Trading Area System MTA Diskette and geographically represented in the map contained in Rand McNally's Commercial Atlas & Marketing Guide (the ''MTA Map.'') The MTA Listings, the MTA Map and the Rand McNally/AMTA license agreement are available for public inspection at the Wireless Telecommunications Bureau's public reference room, Room 628, 1919 M Street NW., Washington, DC 20554.

* * * * *

3. Section 90.617 is amended by revising paragraph (d) introductory text, to read as follows:

§ 90.617 Frequencies in the 809.750–824/854.750–869 MHz, and 896–901/935–940 MHz bands available for trunked or conventional system use in non-border areas.

* * * * *

(d) The channels listed in Tables 4A and 4B are available only to eligibles in the SMR category, which consists of Specialized Mobile Radio (SMR) stations and eligible end users. The frequencies listed in Table 4B are available to SMR eligibles desiring to be authorized on MTA service areas in accordance with Section 90.661. SMR licensees licensed on the channels listed in Table 4B on or before August 9, 1994 may continue to utilize these frequencies within their existing service areas, as provided in Section 90.661. This paragraph deals with the assignment of frequencies only in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 140 km (87 miles) from the U.S./Canada border. See § 90.619 for the assignment

of SMR frequencies in these border areas. For stations located within 113 km (70 miles) of Chicago, channels 401–600 will be assigned in groups as outlined in Table 4C.

* * * * *

4. Section 90.631 is amended by revising paragraphs (f) and (i) to read as follows:

§ 90.631 Trunked systems loading, construction and authorization requirements.

* * * * *

(f) If a station is not placed in permanent operation, in accordance with the technical parameters of the station authorization, within one year, except as provided in § 90.629, its license cancels automatically and must be returned to the Commission. For purposes of this section, a base station is not considered to be placed in operation unless at least two associated mobile stations, or one control station and one mobile station, are also placed in operation. An SMR licensee with facilities that have discontinued operations for 90 continuous days is presumed to have permanently discontinued operations, unless the licensee notifies the FCC otherwise prior to the end of the 90 day period and provides a date on which operation will resume, which date must not be in excess of 30 additional days.

* * * * *

(i) For SMRS category trunked systems licensed in the 896–901/935–940 MHz band (other than MTA-licensed systems), if at the end of the initial five-year license term the licensee of such a trunked system has not satisfied the loading requirements of paragraph (b) of this section, the licensee requesting renewal of its license will be granted a renewal for only a two-year period. Regardless of the date of grant of the two-year renewal, the licensee will be required to comply fully with the minimum requirements set forth in paragraph (b) of this section at the end of the two-year renewal term. As an exception to this requirement, if the licensee obtains the MTA license covering its assigned spectrum in accordance with Sections 90.661 through 90.671, these loading requirements will no longer be applicable and the coverage requirements of Section 90.665 will govern.

5. Subpart S is amended by adding a new heading following § 90.659 to read as follows:

Policies Governing the Licensing and Use of MTA-Based SMR Systems in the 896–901/935–940 MHZ Band

6. A new § 90.661 is added to Subpart S to read as follows:

§ 90.661 MTA-based SMR service areas.

MTA licenses for SMR spectrum blocks in the 896–901/935–940 MHz band listed in Table 4B of Section 90.617(d) are available in 51 Major Trading Areas (MTAs) as defined in Section 90.7. Within these MTAs, licenses will be authorized in ten channel blocks as specified in Table 4B of Section 90.617(d) through the competitive bidding procedures described in Subpart U of this Part.

7. A new § 90.663 is added to Subpart S to read as follows:

§ 90.663 MTA-based SMR system operations.

(a) MTA-based licensees authorized in the 896–901/935–940 MHz band pursuant to Section 90.661 may construct and operate base stations using any frequency identified in their spectrum block anywhere within their authorized MTA, provided that:

(1) The MTA licensee affords protection, in accordance with Section 90.621(b), to all sites for which applications were filed on or prior to August 9, 1994.

(2) The MTA licensee complies with any rules and international agreements that restrict use of frequencies identified in their spectrum block, including the provisions of Section 90.619 relating to U.S./Canadian and U.S./Mexican border areas.

(3) The MTA licensee limits its field strength at any location on the border of the MTA service area in accordance with Section 90.671 and masks its emissions in accordance with Section 90.669.

(b) In the event that the authorization for a previously authorized co-channel station within the MTA licensee's authorized spectrum block is terminated or revoked, the MTA licensee's co-channel obligations to such station will cease upon deletion of the facility from the Commission's licensing record. The MTA licensee then will be able to construct and operate base stations using such frequency.

8. A new § 90.665 is added to Subpart S to read as follows:

§ 90.665 Authorization, construction and implementation of MTA licenses.

(a) MTA licenses in the 896–901/935–940 MHz band will be issued for a term not to exceed ten years.

(b) MTA licensees in the 896–901/935–940 MHz band will be permitted five years to construct their stations. This five-year period will commence with the issuance of the MTA-wide authorization and will apply to all of the licensee's stations within the MTA spectrum block, including any stations that may have been subject to an earlier construction deadline arising from a pre-existing authorization.

(c) MTA licensees in the 896–901/935–940 MHz band must, within three years, construct and place into operation a sufficient number of base stations to provide coverage to at least one-third of the population of the MTA. Further, each MTA licensee must provide coverage to at least two-thirds of the population of the MTA within five years or, alternatively, submit a showing to the Commission demonstrating that they are providing substantial service.

(d) MTA licensees who fail to meet the coverage requirements imposed at either the third or fifth years of their construction period, or to make a convincing showing of substantial service, will forfeit their entire MTA license.

9. A new § 90.667 is added to Subpart S to read as follows:

§ 90.667 Grandfathering provisions for incumbent licensees.

(a) These provisions apply to all 900 MHz SMR licensees who obtained licenses or filed applications on or before August 9, 1994 (''incumbent licensees''). An incumbent licensee's service area shall be defined by its originally-licensed 40 dBu signal strength contour. Incumbent licensees are permitted to add new transmit sites in this existing service area without prior notification to the Commission so long as their original 40 dBu signal strength contour is not expanded. Incumbents will be required to notify the Commission of any changes in technical parameters or additional stations constructed with a minor modification application. These minor modification applications will not be subject to public notice and petition to deny requirements or mutually exclusive applications.

(b) Applications in the 900 MHz SMR service for secondary sites filed after August 9, 1994 shall be authorized on a secondary, non-interference basis to MTA licensee operations. No secondary sites shall be granted on this basis in an MTA once the MTA licensee has been selected.

10. A new § 90.669 is added to Subpart S to read as follows:

§ 90.669 Emission limits.

(a) On any frequency in an MTA licensee's spectrum block that is adjacent to a non-MTA frequency, the power of any emission shall be attenuated below the transmitter power (P) by at least 43 plus 10 $\log_{10}$(P) decibels or 80 decibels, whichever is the lesser attenuation.

Note: The measurements of emission power can be expressed in peak or average values, provided they are expressed in the same parameters as the transmitter power.

(b) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

11. A new § 90.671 is added to Subpart S to read as follows:

§ 90.671 Field strength limits.

The predicted or measured field strength at any location on the border of the MTA service area for MTA licensees shall not exceed 40 dBuV/m unless all bordering MTA licensees agree to a higher field strength. MTA licensees are also required to coordinate their frequency usage with so-channel adjacent MTA licensees and all other affected parties. To the extent that a single entity obtains licenses for adjacent MTAs on the same channel block, it will not be required to coordinate its operations in this manner. In the event that this standard conflicts with the MTA licensee's obligation to provide co-channel protection to incumbent licensees under Section 90.621(b), the requirements of Section 90.621(b) shall prevail.

[FR Doc. 95–11009 Filed 5–2–95; 12:52 pm]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

48 CFR Part 5452

DLA Acquisition Regulation; Fuel Allocation Procedures

AGENCY: Defense Logistics Agency, DoD.

ACTION: Final rule.

SUMMARY: The Defense Logistics Agency establishes a new 48 CFR Chapter 54 to contain Defense Logistics Agency acquisition regulations. New part 5452 is added to supplement Federal Acquisition Regulation 49.504(a)(1) and its requirement to use FAR Default clause 52.249–8. The Defense Fuel Supply Center (DFSC) proposed three nonstandard clauses for bulk, bunkers, into-plane, and posts, camps, and stations petroleum solicitations and contracts concerning fuel allocation procedures. The three clauses have been incorporated into one clause for use by DFSC. This allocation clause permits DFSC contractors to supply less than the full amount of fuel contracted by the government, without being terminated for default, during periods of exceptional fuel shortages, provided that the shortage is beyond the control and without the fault or negligence of the contractor.

EFFECTIVE DATE: May 4, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Melody Reardon, (703) 274–6431.

SUPPLEMENTARY INFORMATION:

A. Background

On April 28, 1994, DFSC published a proposed rule in the **Federal Register** to incorporate three nonstandard clauses into the DLAR. Public comments were requested, received, addressed, and resolved by DFSC. As a result, the three nonstandard clauses were consolidated into one clause by DFSC, to be used in domestic and overseas petroleum solicitations and contracts. DFSC has historically utilized deviations to FAR termination for default clauses in order to provide for contingencies in the case of fuel allocations by contractors. These deviations have been approved on an annual basis since 1974. DFSC incorporates the nonstandard fuel allocation clause in DLAR in order to eliminate the need for annual review and approval. The clause is necessary to protect potential contractors from default proceedings and ensure the continuance of a competitive procurement environment for government petroleum requirements. Allocation of fuel to customers on a pro rata basis during periods of extreme shortage is a standard practice in the petroleum industry.

B. Regulatory Flexibility Act

The final clause is not expected to have 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.* since the previous clauses have been utilized for many years by Defense Fuel Supply Center as deviations to FAR. An initial regulatory flexibility analysis has, therefore, not been performed.

C. Paperwork Reduction Act

The final rule does not impose any reporting or record keeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 5452

Government procurement.

Accordingly, 48 CFR Chapter 54 is added to read:

CHAPTER 54—DEFENSE LOGISTICS AGENCY, DEPARTMENT OF DEFENSE

PART 5452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 5452.2—Texts of Provisions and Clauses

5452.249 Allocation

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, 48 CFR part 1, subpart 1.3 and 48 CFR part 201, subpart 201.3

5452.249 Allocation

The Defense Fuel Supply Center is authorized to use the following clause in domestic and overseas petroleum solicitations/contracts, including those for Canal Zone and Puerto Rico, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation.

Allocation (DFSC 1995) (Deviation) (9F01)

(a) Reduced Supplies.

If, for any cause beyond the control and without the fault or negligence of the Contractor, the total supply of crude oil and/or refined petroleum product is reduced below the level that would have otherwise been available to the Contractor, the Contractor allocates to its regular customers its remaining available supplies of crude oil or product, then the Contractor may also allocate to the U.S. Government supplies to be delivered under this contract, provided—

(1) Prompt notice of and evidence substantiating the necessity to allocate and describing the allocation rate for all the Contractor's customers are submitted to the Contracting Officer;

(2) Allocation among the Contractor's regular customers is made on a fair and reasonable basis (except where allocation on a different basis is required by a governmental authority, agency or instrumentality); and

(3) Reduction of the quantity of product due the Government under this contract shall not exceed the pro rata amount by which the Contractor reduces delivery to its other contractual customers.

(b) Additional Supplies.

If, after the event causing the shortage of crude oil and/or refined petroleum product as described in (a) above, additional supply becomes available to the Contractor, the Contracting Officer may choose any one of the following three possible courses of action:

(1) Accept an updated pro rata reduction as outlined in (a);

(2) Determine that continuance of the contract with the quantities as originally stated in the Schedule is in the best interests of the Government; or

(3) Terminate the contract as permitted in (d) below.

(c) Reduced Deliveries.

If the Contractor believes that a law, regulation, or order of a foreign government requires the Contractor to deliver less than the quantity set forth in the Schedule for any location within that country, the Contractor may request allocation in accordance with (a) above. In addition to the criteria in (a) above, the Contractor's request shall cite—

(1) The law, regulation or order, furnishing copies of the same;

(2) The authority under which is imposed; and

(3) The nature of the Government's waiver, exception, and enforcement procedure.

The Contracting Officer will promptly review the matter and advise the Contractor whether or not the need to allocate has been substantiated. If the law, regulation, or order requiring the Contractor to reduce deliveries ceases to be effective, the Contractor shall resume deliveries in accordance with the original Schedule.

(d) If, as a result of reduced deliveries permitted by (a), (b), or (c) above, the Contracting Officer decides that continuation of this contract is no longer in the best interests of the Government, the Government may terminate this contract or any quantity thereunder, by written notice, at no cost to the Government. However, the Government shall not be relieved of its obligation to pay for supplies actually delivered to and accepted by it.

(e) Except as otherwise stated in (b) above, any volumes omitted pursuant to (a) or (b) above shall be deleted from this contract, and the Contractor shall have no continuing obligation, so far as this contract is concerned, to make up such omitted supplies.

(f) For Posts, Camps, and Stations contracts, Department of Energy priority orders and allocation regulations will take precedence over any conflicting provisions of this clause.

(g) For Bulk Fuels contracts, the provisions contained in (a) and (b) above shall be inoperative when the Secretary of Defense makes a written determination that it is essential to the National Defense that the Defense Fuel Supply Center be provided contract volumes exceeding the pro rata amount of product to which it would otherwise be entitled. However, in no case will the Contractor be required, under this contract, to supply more than 100% of the quantity specified in the Schedule.

[end of clause]

Dated: April 24, 1995.

Margaret J. Janes,

Assistant Executive Director (Procurement Policy).

[FR Doc. 95–10761 Filed 5–3–95; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1503, 1505, 1513, 1514, 1515, 1522, 1525, 1542 and 1552

[FRL–5201–5]

Acquisition Regulation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the EPA Acquisition Regulation (EPAAR) to incorporate changes to the EPAAR which are generally administrative in nature.

EFFECTIVE DATE: May 4, 1995.

ADDRESSES: Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Larry Wyborski, Telephone: (202) 260–6482.

SUPPLEMENTARY INFORMATION:

I. Background Information

This rule raises the level of delegated authority and the dollar thresholds for several administrative review requirements. The rule also corrects terminology, FAR and EPAAR references and improves the consistency between the FAR and the EPAAR.

II. Executive Order 12866

This is not a significant regulatory action under Executive Order 12866; therefore, no review is required at the Office of Information and Regulatory Affairs within OMB.

III. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements for the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

IV. Regulatory Flexibility Act

This rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects in 48 CFR Parts

1503, 1505, 1513, 1514, 1515, 1522, 1525, 1542 and 1552. Government Procurement.

For the reasons set forth in the preamble, Chapter 15 of Title 48 Code of Federal Regulations 1503, 1505, 1513, 1514, 1515, 1522, 1525, 1542 and 1552 is amended as follows:

1. The authority citation for parts 1503, 1505, 1513, 1514, 1515, 1522, 1525, 1542 and 1552 continue to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 as amended, 40 U.S.C. 486(c).

1503.203 [Amended]

2. Section 1503.203 is amended by removing the words ''Head of the Contracting Activity'' and adding in its place the words ''Chief of the Contracting Office''.

1505.270 [Amended]

3. Section 1505.270 is amended by removing the dollar figure ''$10,000'' in paragraph (b) and adding in its place the dollar figure ''$25,000''.

1505.271 [Removed and Reserved]

4. Section 1505.271 is removed and reserved.

1513.570 [Amended]

5. Section 1513.570 is amended by revising paragraph (c) to read as follows:

1513.570 Oral Purchase Orders

* * * * *

(c) Oral purchase orders shall not be used for—

(1) Acquisitions for construction over $2,000.

(2) Acquisitions for services over $2,500 which are subject to the Service Contract Act.

1514.406–3 [Amended]

6. Section 1514.406–3 is amended by removing the words ''Head of Contracting Activity (HCA)'' and adding in its place the words ''Chief of the Contracting Office''.

1515.506 [Amended]

7. Section 1515.506 is amended by removing ''PM–216'' and adding in its place ''3903F''.

1515.612 [Amended]

8. Section 1515.612 is amended by removing the dollar figure of ''$5,000,000'' in paragraphs (a)(1) introductory text and (a)(2) introductory text and adding in its place the dollar figure ''$15,000,000.''

1522.608–3 [Amended]

9. 1522.608–3 is amended by removing the words ''Head of the Contracting Activity (HCA) for referral to the Department of Labor (DOL) or to the Administrator of SBA if the offeror is a small business'' and adding in its place ''Chief of the Contracting Office in accordance with FAR 22.608–3(b)(1)–(3)''.

10. Section 1522.1003 is revised to read as follows:

1522.1003 Applicability.

Requests for limitations, variances, tolerances and exemptions shall be submitted to the Chief of the Contracting Office for signature and through the agency labor advisor in the Grants Administration Division to the Department of Labor in accordance with FAR 22.1003–4.

11. Section 1525.102 is revised to read as follows:

1525.102 Policy.

The Chief of the Contracting Office is designated to approve determinations required by FAR 25.102(b)(2).

1542.708 [Amended]

12. Section 1542.708 is amended by removing the dollar figure ''$500,000'' in paragraph (a)(1) and replacing it with the dollar figure ''$2,000,000'' and by removing the dollar figure ''$1,000,000'' in paragraph (a)(2) and replacing it with the dollar figure ''$5,000,000''.

1552.210–75 [Amended]

13. Section 1552.210–75 introductory text is amended by removing ''1510.011– 74'' and adding in its place ''1510.011–75.''

1552.210–76 [Amended]

14. Section 1552.210–76 introductory text is amended by removing ''1510.011–75'' and adding in its place ''1510.011–76.''

1552.210–77 [Amended]

15. Section 1552.210–77 introductory text is amended by removing ''1510.011–76'' and adding in its place ''1510.011–77.''

1552.210–78 [Amended]

16. Section 1552.210–78 introductory text is amended by removing ''1510.011–77'' and adding in its place ''1510.011–78.''

Dated: April 24, 1995.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 95–10877 Filed 5–3–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 950410096–5096–01; I.D. 042695A]

RIN 0648–AH66

Northeast Multispecies Fishery; Framework 9 Measures; Reporting Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; effectiveness of collection-of-information requirements.

SUMMARY: NMFS announces approval by the Office of Management and Budget (OMB) of collection-of-information requirements contained in Framework Adjustment 9 to the Northeast Multispecies Fishery Management Plan (FMP). This rule makes effective several reporting requirements that are associated with regulations that provide significant regulatory relief to fishermen, including transiting certain closed areas under specified conditions, fishing by vessels in a given state's winter flounder fishing program under certain conditions using net mesh size less than the minimum mesh size, and fishing by party and charter boats in the Nantucket Lightship Closed Area under certain conditions.

EFFECTIVE DATE: Sections 651.20(a)(6)(iii)(B), 651.20(j)(1), and 651.21(c)(2)(iv)(A) published at 60 FR 19364 (April 18, 1995) are effective on April 28, 1995.

ADDRESSES: Any comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to the Regional Director, Northeast Regional Office, National Marine Fisheries Service, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, (Attention: NOAA Desk Officer), Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION: A final rule that implemented the measures contained in Framework 9 to the FMP was published in the **Federal Register** on April 18, 1995 (60 FR 19364), and most of those measures were made effective on April 13, 1995. However, because OMB approval of the reporting requirements contained in Framework 9 had not yet been received as of the effective date of that rule, effectiveness of those measures was delayed. OMB approval for those measures was received on April 26, 1995. Consequently this rule makes the three reporting measures (§§ 651.20(a)(6)(iii)(B), 651.20(j)(1), and 651.21(c)(2)(iv)(A)), which were codified in the April 18 final rule, effective.

Classification

The Assistant Administrator for Fisheries, NOAA, finds that, under 5 U.S.C. 553(d)(1), because immediate implementation of this rule relieves restrictions on the industry with virtually no impact on the conservation objectives of the FMP, there is no need to delay the effectiveness of the reporting requirements contained herein.

This rule contains three new collection-of-information requirements subject to the Paperwork Reduction Act that have been approved by the Office of Management and Budget under OMB control number 0648–0202. The public reporting burden for each of these collections of information is estimated to be 2 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of these collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

NOAA codifies its OMB control numbers for information collection at 50 CFR 204.1.

This action has been determined to be not significant for purposes of E.O. 12866.

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

Dated: April 28, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–10929 Filed 4–28–95; 4:36 pm]

BILLING CODE 3510–22–F

50 CFR Part 649

[Docket No. 950224059–5114–02; I.D. 011195C]

RIN 0648–AH36

American Lobster Fishery; Framework Adjustments 2 and 3

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS implements measures contained in Framework Adjustments 2 and 3 to the American Lobster Fishery Management Plan (FMP). These framework adjustments change the eligibility requirements for lobster limited access permits to address potentially unequal standards for lobster harvesters who reside in different states. Framework Adjustment 3 also authorizes NMFS to issue a letter of authorization to the owners of some vessels, in order to allow them to continue to fish for lobster while pursuing an appeal of the denial of a Federal limited access permit.

EFFECTIVE DATE: May 1, 1995.

ADDRESSES: Copies of Framework Adjustments 2 and 3, Amendment 5 to the FMP, its regulatory impact review, initial regulatory flexibility analysis, and final supplemental environmental impact statement (FSEIS) are available from Douglas Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

Eligibility for a Federal American lobster limited access permit can be established with a vessel's or a person's state permit history (59 FR 31938, June 21, 1994). Because the various states have not had uniform permitting systems, potentially unequal eligibility criteria were inadvertently created for lobster harvesters who reside in different states. These framework actions are implemented to remedy that inequity. This rule also implements a measure contained in Framework Adjustment 3 to prevent harm to active fishery participants by allowing them to continue fishing while they are appealing the denial of a limited access permit.

Framework Adjustment 2

Prior to this action, to qualify for a limited access American lobster permit, which may be issued only to a vessel, the vessel or vessel owner must have been issued a Federal American lobster permit, or a federally endorsed state lobster permit, and must have landed American lobster prior to March 25, 1991. This requirement resulted in potentially unequal eligibility criteria for lobster harvesters residing or fishing in different states. Framework Adjustment 2 remedies this by requiring all permit applicants who base their eligibility on a federally endorsed state license to demonstrate that they owned a boat and used it to land lobsters during the qualification period. These applicants will be required to show proof of ownership of a fishing vessel and of having landed lobsters from that vessel prior to March 25, 1991.

Sections of the current regulations dealing with transferability of permit eligibility were previously written from the perspective of Federal permits issued to vessels. As a result, the regulations were not directly applicable to the transfer of eligibility based on federally endorsed state lobster permits that are issued to individuals. To be consistent with the transferability of eligibility associated with federally permitted vessels, this rule includes regulatory language at § 649.4(b)(1)(i)(B)(*2*) and (b)(3)(ii) to clarify that eligibility based on a federally endorsed state lobster permit can be transferred with the sale of a vessel after March 25, 1991, if the intent to transfer such rights is verified by credible written evidence.

Because this rule changes the qualification criteria for obtaining a limited access American lobster permit for 1995, it also changes the dates by which vessel owners are required to obtain permits. This rule also makes several minor modifications to § 649.4 (p) and (q) to ease the public's administrative burden and to conform the requirement to the Council's recommendation.

The New England Fishery Management Council (Council) followed the framework procedure codified in 50 CFR part 649, subpart C, when making adjustments to the FMP, by developing and analyzing the actions at two Council meetings, on September 21–22 and October 28–29, 1994. In accordance with the regulations, public comments on the framework adjustment were solicited during these Council meetings. No comments were received. However, because this action was initiated at the first of these meetings without adequate notice to the public, the Council recommended that NMFS publish the measures contained in Framework Adjustment 2 as a proposed rule to ensure that the public was afforded sufficient prior notice and an opportunity for comment. The proposed rule was published on March 16, 1995 (60 FR 14261) and the comment period ended on March 30, 1995. No comments were received.

This adjustment is being made through the framework process (§ 649.44) and is within the scope of analyses contained in Amendment 5 and the FSEIS. Supplemental rationale and analyses of expected biological effects, economic impacts, impacts on employment, and safety concerns are contained within the supporting documents for Framework Adjustment 2 (see **ADDRESSES**).

Changes From the Proposed Rule

After the development of Framework Adjustment 2, additional concerns were raised to the attention of the Council concerning inequities resulting from differences among the states in the handling of federally endorsed state permits. Framework Adjustment 3 was developed to address these and other issues. Both Framework Adjustments 2 and 3 deal with aspects of applicant eligibility for limited access permits. These Frameworks are published together in order to present the revisions to the regulations in the clearest manner possible. In the interests of clarity, this presentation has resulted in some changes in the final text when compared to the text published in the proposed rule for Framework Adjustment 2. The changes are listed below.

Paragraph (b)(1)(i)(B)(*3*) is added to implement the action adopted by the Council in Measure 2 of Framework Adjustment 3.

Paragraph (b)(1)(i)(B)(*4*) is added to implement the action adopted by the Council in Measure 1 of Framework Adjustment 3.

Paragraph (b)(1)(i)(C) is revised to clarify the relation of the permit eligibility criteria for vessels that were under construction or re-rigging to the measures contained in Framework Adjustment 3.

Paragraph (b)(1)(iii) is deleted, because NMFS is reexamining the scheduling of permit renewals.

A new paragraph (b)(2)(iii) was proposed to clarify the application deadline for permit renewal in 1996. This paragraph was not included in this final rule, because the issue of permit renewal is under reexamination by NMFS.

Paragraph (b)(5)(vi) is added to implement Measure 4 of Framework Adjustment 3.

Framework Adjustment 3

Approved Measures

Framework Adjustment 3 revises the permit qualification criteria to clarify eligibility criteria for: (1) Applicants who leased federally endorsed state permits, (2) applicants who owned vessels that fished for lobster under a federally endorsed state permit issued to

the operator, and (3) applicants who seek a transfer of permit eligibility as a result of inheritance. Framework Adjustment 3 also establishes a fourth measure, which will allow the owner of a vessel that is denied a Federal limited access lobster permit to continue to fish for lobster while pursuing an appeal of the denial under § 649.4(b)(5) if the vessel was issued a Federal or federally endorsed state permit for the lobster fishery in 1994.

Measure 1 addresses the issue of permit eligibility in the case of harvesters who leased federally endorsed state lobster permits. The Council and NMFS have concurred that this measure is required in order to apply the eligibility criteria equitably to these applicants. The measure entitles the applicant to the fishing right associated with the exercise of the permit, despite the fact that the permit was held through a lease arrangement. This criteria applies only to applicants who have met all other eligibility requirements.

Measure 2 addresses the issue of permit eligibility for vessels that operated legally under federally endorsed state lobster permits issued to the vessel captain. If such vessels meet all other eligibility criteria, the Council believes and NMFS concurs that they should be eligible for the limited access lobster permit because the vessel was operated legally under the existing laws. Permit eligibility for a limited access permit is conferred on the owner of the vessel rather than the vessel captain because the captain who is not the vessel owner cannot satisfy the vessel ownership requirement. This policy is consistent with the Council's policy for limited access permit eligibility for the Northeast multispecies and Atlantic sea scallop fisheries.

Measure 3 was intended by the Council to clarify that the rules relating to permit transfers apply to inheritance of limited access permits. NMFS determined that the existing language specified in § 649.4(b)(3) would apply to transfers through inheritance in a manner consistent with Council intent and that additional regulatory language is not necessary.

Measure 4 allows some applicants to continue to harvest lobsters if they have appealed the denial of their application for the 1995 limited access permit. This action is intended to prevent needless harm to current participants in the fishery. Based on the determination that vessels with a current economic dependence upon the EEZ lobster fishery would have obtained permits in 1994, this provision is restricted to vessels that were issued a 1994 Federal or federally endorsed state lobster permit.

Disapproved Measure

Framework Adjustment 3 included one measure that was disapproved by the Director, Northeast Region, NMFS (Regional Director). The proposed measure would have allowed vessel owners who could show that their vessel landed lobster from the EEZ before the control date, to qualify for a limited access permit, despite never having had a permit to fish in the EEZ. This measure was disapproved because, in part, there is no apparent justification for such an exception in the lobster limited access fishery given that this exemption was not included in the recently implemented amendments establishing limited access programs in the Northeast Multispecies and Atlantic Sea Scallop FMPs. Without justification, NMFS would not implement a measure inconsistent with other similar fishery regulations. In addition, the measure would undermine the perceived importance and the effective enforcement of Federal permitting requirements by appearing to grant a benefit to harvesters who acknowledge that they fished illegally in Federal waters. Moreover, given the indefiniteness of the proposed logbook criterion for establishing an applicant's participation in the Federal lobster fishery, it would be very difficult, if not impossible, to administer this measure consistently, fairly, and equitably, and it is likely that the measure would invite fraud and abuse.

The Council followed the framework procedure codified in 50 CFR part 649, subpart C, when making adjustments to the FMP, by notifying the public of the proposed actions and providing opportunities for comment at two Council meetings, on February 16 and March 30, 1995. Ten members of the industry made comments at these meetings. Most commenters supported the proposed measures. However, there were two commenters who opposed the proposal that would have allowed vessel owners who could show that their vessel landed lobster from the exclusive economic zone (EEZ) before the control date to qualify for a limited access permit, despite never having had a permit to fish in the EEZ.

This adjustment is being made through the framework process (§ 649.44) and is within the scope of analyses contained in Amendment 5 and the FSEIS. Supplemental rationale and analyses of expected biological effects, economic impacts, impacts on employment, and safety concerns are contained within the supporting documents for Framework Adjustment 3 (see **ADDRESSES**).

There are four factors that the Council and NMFS are required to consider in order to publish a framework adjustment as a final rule: (1) Whether the availability of data allows for adequate time to publish the action as a proposed rule, (2) whether there has been adequate notice and opportunity for public participation in the development of the measures, (3) whether there is an immediate need to protect the resource, and (4) whether there will be a continuing evaluation of management measures adopted following publication of the final rule.

The Council recommended publication of these measures as a final rule, rather than as a proposed rule, in order to minimize disruption in the fishery and clarify the administrative requirements associated with the limited access permit requirement. Implementation of these measures is not dependent upon data availability. The Council determined, and NMFS agrees, that adequate notice and opportunity for public participation was provided in the development of the measures. The measures in Framework Adjustment 3 are necessary to administer effectively the management measures contained in the FMP, which was developed in response to the need to protect the resource. The Council will be carrying out continuing evaluation of the management measures adopted under this action.

Comments and Responses—Framework Adjustment 3

Comment—Measure 1: An applicant who is a vessel owner who only leased a federally endorsed permit did not actually have a Federal permit and therefore should not qualify for a limited access lobster permit.

Response: The person who owned and operated the boat and leased the legal rights associated with the permit should be eligible for the limited access permit as a result of exercising the permit because that person legally operated the vessel with authority to fish in the EEZ.

Comment—Measure 2: The operator and not the owner should be eligible for a Federal limited access lobster permit.

Response: Fishing operations are permitted directly under the Federal permit system. The Council's intent is to base eligibility for limited access lobster permits on whether the vessel qualifies, not the operator. This measure attempts to make eligibility criteria based on federally endorsed state permits operate in an identical way. Moreover, to allow operators to qualify independently

would potentially result in significantly more limited access lobster permits being issued than the number of vessels participating in the Federal lobster fishery at the time of the control date.

Comment—Measure 4: This provision discriminates between applicants with a recent history in the fishery and those who participated further in the past.

Response: The opportunity to fish while appealing a permit denial is restricted to 1994 permit holders to avoid allowing a potentially unlimited group of non-bona fide applicants from using the appeals process to gain temporary access to the fishery. Based on the determination that vessels with a current economic dependence upon the EEZ lobster fishery would have obtained permits in 1994 and are more likely to be disadvantaged if not allowed to fish, this provision applies only to vessels that were issued a 1994 Federal or federally endorsed state lobster permit.

Comment—Disapproved Measure: Several commenters supported this measure. They either thought they had federally endorsed state permits and were fishing illegally in the EEZ or were unaware of the requirement. Without this measure, these commenters would be ineligible for the limited access permit.

Response: Though sympathetic with the commenter's dilemma, NMFS has disapproved this measure for the reasons stated above.

Comment—Disapproved Measure: This provision unfairly qualifies people who should not qualify for a limited access permit. The permit applicant should have obtained a Federal lobster permit for a vessel that fished in the EEZ and therefore should not be granted a limited access permit.

Response: NMFS agrees that persons who did not have a Federal lobster permit at the time of the control date should not be eligible for a limited access permit and has disapproved the measure.

Comment—Disapproved Measure: This provision would let too many additional entrants into the EEZ lobster fishery and undermine the stock rebuilding program.

Response: If the measure had been found to address inequities in the application of the criteria used to determine limited access permit eligibility, it would not have mattered how many additional entrants would result because the issue would have been one of equity. However, NMFS has disapproved the measure, because it is inconsistent with other similar fishery regulations, and it undermines the perceived importance and effective enforcement of Federal permitting requirements.

Classification

The Assistant Administrator for Fisheries, NOAA, finds there is good cause to waive the requirements to provide prior notice and an opportunity for public comment concerning Framework Adjustment 3 under 5 U.S.C. 553(b)(B). Two public meetings held by the Council to discuss the management measures implemented by this framework measure provided adequate prior notice and an opportunity for public comment to be considered. Furthermore, NMFS has responded to comments received from the public during those meetings on this rule. Thus, additional opportunity for public comment is unnecessary.

The 30-day delay in effectiveness of these measures required by the APA is waived under 5 U.S.C. 553(d)(1), because this rule relieves restrictions on the eligibility for a lobster permit.

List of Subjects in 50 CFR Part 649

Fisheries.

Dated: April 28, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 649 is amended as follows:

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

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

2. In § 649.4, the first sentence of paragraph (a)(1), the first sentence of paragraph (b) introductory text, and paragraphs (b)(1)(i), (b)(2)(i), (b)(3), (p), and (q) are revised; and paragraph (b)(5)(vi) is added to read as follows:

§ 649.4 Vessel permits.

(a) * * *

(1) Through April 30, 1995, any vessel of the United States fishing for American lobster in the EEZ must have been issued and carry on board a valid permit required by or issued under this part. * * *

(b) * * * From May 1, 1995, through December 31, 1999, any vessel of the United States that fishes for, possesses, or lands American lobster in or harvested from the EEZ must have been issued and carry on board a valid Federal limited access American lobster permit. * * *

(1) * * *

(i) To be eligible for a limited access permit for 1995, a vessel or the permit applicant must meet one of the following criteria:

(A) The vessel was issued a Federal American lobster permit and landed American lobster prior to March 25, 1991, while in possession of the lobster permit.

(B) To qualify for the limited access permit based on a federally endorsed state permit history, one of the following criteria must be met:

(*1*) The permit applicant was issued a federally endorsed state American lobster permit, and landed American lobster prior to March 25, 1991, and owned a vessel that landed American lobster prior to March 25, 1991, while in possession of the lobster permit; or

(*2*) The vessel was owned by a person who landed lobster prior to March 25, 1991, while in possession of a valid federally endorsed state American lobster permit, and the vessel was transferred to the current vessel owner in accordance with the exception to the presumption specified in paragraph (b)(3)(ii) of this section; or

(*3*) The permit applicant owned a vessel that landed American lobster prior to March 25, 1991, while under the operation of an individual with a valid federally endorsed state lobster permit; or

(*4*) The permit applicant owned a vessel that landed American lobster prior to March 25, 1991, while the applicant held a valid signed written lease, recognized and authorized by the issuing state, granting the rights to a federally endorsed state lobster permit.

(C) The permit applicant owned a vessel that was under written agreement for construction or for rerigging for directed American lobster fishing as of March 25, 1991, and the applicant meets one of the eligibility criteria set forth in paragraphs (b)(1)(i)(A) or (B) of this section. For the purposes of paragraph (b)(1)(i)(C) all references to March 25, 1991, in paragraph (b)(1)(i)(A) or (B) of this section should be March 25, 1992.

(D) The vessel is replacing a vessel that meets the criteria set forth in paragraph (b)(1)(i)(A), (B), or (C) of this section.

* * * * *

(2) * * *

(i) To be eligible to renew or apply for a limited access lobster permit after 1995, a vessel or permit applicant must have been issued either a limited access lobster permit or a confirmation of permit history for the preceding year, or a vessel must be replacing a valid limited access American lobster permit or permit history confirmation from the preceding year. If more than one applicant claims eligibility to apply for

a limited access American lobster permit based on one fishing and permit history, the Regional Director shall determine who is entitled to qualify for the limited access permit or permit history confirmation.

* * * * *

(3) *Change in ownership.* (i) The fishing and permit history of a vessel that qualifies based on issuance of a Federal lobster permit under paragraphs (b)(1)(i)(A) and (C) of this section is presumed to transfer with the vessel whenever it is bought, sold or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel fishing and permit history for purposes of replacing the vessel.

(ii) The fishing and permit history of a vessel owner and a vessel that qualifies based on issuance of a federally endorsed state lobster permit under paragraphs (b)(1)(i)(B) and (C) of this section is presumed to remain with such owner for any transfers of the vessel before and including March 25, 1991; and for any transfers of ownership of the vessel after March 25, 1991, the fishing and permit history necessary to qualify for a limited access lobster permit under paragraphs (b)(1)(i)(B) and (C) of this section is presumed to remain with the last owner of the vessel as of or prior to March 25, 1991, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is transferring the fishing and permit history of a vessel necessary to qualify for a limited access lobster permit under paragraph (b)(1)(i)(B) or (C) of this section to the transferee/buyer.

* * * * *

(5) * * *

(vi) *Fishing during appeal.* A vessel for which an appeal has been initiated and that was issued a 1994 Federal or federally endorsed state lobster permit, may fish for American lobster in the EEZ if the appeal is pending and the vessel has on board an authorizing letter from the Regional Director. If the appeal is finally denied, the Regional Director shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

* * * * *

(p) *Limited access American lobster permit renewal.* To renew a limited access permit in 1996 and thereafter, a completed application must be received by the Regional Director by December 31 of the year in which the permit is required. Failure to renew a limited access American lobster permit or confirmation of permit history in any year prevents the renewal of such in subsequent years.

(q) *Abandonment or voluntary relinquishment of limited access American lobster permits.* If a vessel's limited access American lobster permit or confirmation of permit history is voluntarily relinquished to the Regional Director, or abandoned through failure to renew or otherwise, no limited access American lobster permit or confirmation of permit history may be reissued or renewed based on that vessel's history.

[FR Doc. 95–10942 Filed 5–1–95; 10:53 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 86
Thursday, May 4, 1995

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN–95–002]

1995 Proposed Amendment to Cotton Board Rules and Regulations Adjusting Supplemental Assessment on Imports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service proposes to amend the Cotton Board Rules and Regulations by raising the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. The proposed value reflects the 12-month average price received by U.S. farmers for Upland cotton for calendar year 1994.

DATES: Comments must be received by June 5, 1995.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to Craig Shackelford, Chief, Research and Promotion Staff, Cotton Division, AMS, USDA, P.O. Box 96456, Room 2641–S, Washington, D.C. 20090–6456, or by facsimile (202) 690–1718. Three copies of all written materials shall be submitted, and they will be made available for public inspection in the office of the Cotton Division, Washington, D.C. during regular business hours. All comments should reference docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Craig Shackelford, (202) 720–2259.

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of the ruling.

The Administrator, Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

There are an estimated 10,000 importers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. This rule would affect importers of cotton and cotton-containing products. The majority of these importers are small businesses under the criteria established by the Small Business Administration. This rule would raise the assessments paid by the importers under the Cotton Research and Promotion Order. Even though the assessment would be raised, the increase is small and would not significantly affect small businesses. The AMS Administrator therefore has certified that this rule will not have a significant economic impact on a substantial number of small entities.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. 3501 *et seq.*) the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0093.

The Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation and Trade Act of 1990 on November 28, 1990, contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program. These provisions are: (1) The assessment of imported cotton and cotton products; and (2) termination of the right of cotton producers to demand a refund of assessments.

An amended Cotton Research and Promotion Order was approved by producers and importers voting in a referendum held July 17–26, 1991. Proposed rules implementing the amended Order were published in the **Federal Register** on December 17, 1991, (56 FR 65450). The final implementing rules were published on July 1 and 2, 1992, (57 FR 29181) and (57 FR 29431), respectively.

This proposed rule would increase the value assigned to imported cotton in the Cotton Board Rules and Regulations 7 CFR 1205.510 (b)(2). This value is used to calculate supplemental assessments on imported cotton and the cotton content of imported products. Supplemental assessments are the second part of a two-part assessment. The first part of the assessment is levied on the weight of cotton produced or imported at a rate of $1 per bale of cotton which is equivalent to 500 pounds or $1 per 226.8 kilograms.

Supplemental assessments are levied at a rate of five tenths of one percent of the value of domestically produced cotton, imported cotton, and the cotton content of imported products. The agency adopted the use of the calendar year average price received by U.S. farmers for Upland cotton as a benchmark for the value of domestically produced cotton. The source for this statistic is ''Agricultural Prices'', a publication of the National Agricultural Statistics Service (NASS) of the Department of Agriculture. Use of the average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products yields an assessment

that approximates assessments paid on domestically produced cotton.

The current value of imported cotton as published in the **Federal Register** (59 FR 59110) for the purpose of calculating supplemental assessments on imported cotton is $1.197 per kilogram. Using the Average Price Received by U.S. farmers for Upland cotton for the calendar year 1994, which is $0.683 per pound, the new value of imported cotton would be $1.5057 per kilogram.

An example of the assessment formula and how the various figures are obtained is as follows:

One bale is equal to 500 pounds.

One kilogram equals 2.2046 pounds.

One pound equals 0.453597 kilograms.

One dollar per bale assessment converted to kilograms

A 500 pound bale equals 226.8 kg. (500 × .453597)

$1 per bale assessment equals § 0.002000 per pound (1 ÷ 500) or $0.004409 per kg. (1 ÷ 226.8).

Supplemental assessment of 5/10 of one percent of the value of the cotton converted to kilograms

Average price received $0.683 per pound or $1.5057 per kg. (0.683 × 2.2046) = 1.5057.

5/10 of one percent of the average price in kg. equals $0.007529 per kg. (1.5057 × .005)

The total assessment per kilogram of raw cotton is obtained by adding the $1 per bale equivalent assessment of $0.004409 per kg. and the supplemental assessment § 0.007529 per kg. which equals $0.011938 per kg.

Since the value of cotton is the basis of the supplemental assessment calculation and the figures shown in the right hand column of the Import Assessment Table 1205.510(b)(3) are a result of such a calculation, these figures have been revised. These figures indicate the total assessment per kilogram due for each Harmonized Tariff Schedule (HTS) number subject to assessment.

As a result of implementation of national trade agreements, several changes in the harmonized tariff schedule numbering have occurred. Modifications to the harmonized tariff schedule were published in the January 4, 1995, **Federal Register** at 60 FR 1007 (Proclamation 6763 of December 23, 1994, by the President of the United States of America). Therefore, revisions to the Import Assessment Table used in the Cotton Research and Promotion program were necessary. These changes are as follows:

Deleted numbers:
5201001000
5201002000
5702422090
5702491010
5702494090
6002920000
6116926020
6116926030
6116926040
6116929000
6116939010
6208920010
6208920030
6211320080
6211420050
6211420080
6211430090
6216001220
6216003910
6216003920
6303920000

New numbers:
5201000000
5201000500
5201001200
5201001400
5201001800
5201002200
5201002400
5201002800
5201003400
5201003800
5701104000
5701109000
5801210000
5804291000
5808107000
6002921000
6110909022
6110909024
6110909030
6110909040
6110909042
6115199010
6117809010
6117809040
6201999060
6203399060
6203498045
6201198090
6207199010
6210109010
6210403000
6210405020
6211118010
6211118020
6212105020
6212109010
6212109020
6217109010
6217109030
6302215010
6302215020
6302217010
6302219010
6302217020
6302219020
6302217050
6302219050
6302313010
6302313050
6302315050
6302317010
6302319010
6302317020
6302319020
6302317040
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6302317050
6302319050

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 1205 is proposed to be amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for Part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. In Section 1205.510(b) (2) and (3) are revised to read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(2) The 12-month average of monthly average prices received by U.S. farmers will be calculated annually. Such average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is $1.5057 per kilogram.

(3) The following table contains Harmonized Tariff Schedule (HTS) classification numbers and corresponding conversion factors and assessments. The left column of the following table indicates the HTS classifications of imported cotton and cotton-containing products subject to assessment. The center column indicates the conversion factor for determining the raw fiber content for each kilogram of the HTS. HTS numbers for raw cotton have no conversion factor in the table. The right column indicates the total assessment per kilogram of the article assessed.

(i) Any line item entry of cotton appearing on Customs entry documentation in which the value of the cotton contained therein is less than $220.99 will not be subject to assessments as described in this section.

(ii) In the event that any HTS number subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the physical properties, description, or cotton content of the product involved, assessments will continue to be collected based on the new number.

IMPORT ASSESSMENT TABLE

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
5201000000	0.0000	1.1938
5201000500	0.0000	1.1938
5201001200	0.0000	1.1938
5201001400	0.0000	1.1938
5201001800	0.0000	1.1938
5201002200	0.0000	1.1938
5201002400	0.0000	1.1938
5201002800	0.0000	1.1938
5201003400	0.0000	1.1938
5201003800	0.0000	1.1938
5204110000	1.1111	1.3264
5204200000	1.1111	1.3264
5205111000	1.1111	1.3264
5205112000	1.1111	1.3264
5205121000	1.1111	1.3264
5205122000	1.1111	1.3264
5205131000	1.1111	1.3264
5205132000	1.1111	1.3264
5205141000	1.1111	1.3264
5205210000	1.1111	1.3264
5205220000	1.1111	1.3264
5205230000	1.1111	1.3264
5205240000	1.1111	1.3264
5205250000	1.1111	1.3264
5205310000	1.1111	1.3264
5205320000	1.1111	1.3264
5205330000	1.1111	1.3264
5205340000	1.1111	1.3264
5205410000	1.1111	1.3264
5205420000	1.1111	1.3264
5205440000	1.1111	1.3264
5205450000	1.1111	1.3264
5206120000	0.5556	0.6633
5206130000	0.5556	0.6633
5206140000	0.5556	0.6633
5206220000	0.5556	0.6633
5206230000	0.5556	0.6633
5206240000	0.5556	0.6633
5206310000	0.5556	0.6633
5207100000	1.1111	1.3264
5207900000	0.5556	0.6633
5208112020	1.1455	1.3675
5208112040	1.1455	1.3675
5208112090	1.1455	1.3675
5208114020	1.1455	1.3675
5208114060	1.1455	1.3675
5208114090	1.1455	1.3675
5208118090	1.1455	1.3675
5208124020	1.1455	1.3675
5208124040	1.1455	1.3675
5208124090	1.1455	1.3675
5208126020	1.1455	1.3675
5208126040	1.1455	1.3675
5208126060	1.1455	1.3675
5208126090	1.1455	1.3675
5208128020	1.1455	1.3675
5208128090	1.1455	1.3675
5208130000	1.1455	1.3675
5208192020	1.1455	1.3675
5208192090	1.1455	1.3675
5208194020	1.1455	1.3675
5208194090	1.1455	1.3675
5208196020	1.1455	1.3675
5208196090	1.1455	1.3675
5208224040	1.1455	1.3675

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
5208224090	1.1455	1.3675
5208226020	1.1455	1.3675
5208226060	1.1455	1.3675
5208228020	1.1455	1.3675
5208230000	1.1455	1.3675
5208292020	1.1455	1.3675
5208292090	1.1455	1.3675
5208294090	1.1455	1.3675
5208296090	1.1455	1.3675
5208298020	1.1455	1.3675
5208312000	1.1455	1.3675
5208321000	1.1455	1.3675
5208323020	1.1455	1.3675
5208323040	1.1455	1.3675
5208323090	1.1455	1.3675
5208324020	1.1455	1.3675
5208324040	1.1455	1.3675
5208325020	1.1455	1.3675
5208330000	1.1455	1.3675
5208392020	1.1455	1.3675
5208392090	1.1455	1.3675
5208394090	1.1455	1.3675
5208396090	1.1455	1.3675
5208398020	1.1455	1.3675
5208412000	1.1455	1.3675
5208416000	1.1455	1.3675
5208418000	1.1455	1.3675
5208421000	1.1455	1.3675
5208423000	1.1455	1.3675
5208424000	1.1455	1.3675
5208425000	1.1455	1.3675
5208430000	1.1455	1.3675
5208492000	1.1455	1.3675
5208494020	1.1455	1.3675
5208494090	1.1455	1.3675
5208496010	1.1455	1.3675
5208496090	1.1455	1.3675
5208498090	1.1455	1.3675
5208512000	1.1455	1.3675
5208516060	1.1455	1.3675
5208518090	1.1455	1.3675
5208523020	1.1455	1.3675
5208523040	1.1455	1.3675
5208523090	1.1455	1.3675
5208524020	1.1455	1.3675
5208524040	1.1455	1.3675
5208524060	1.1455	1.3675
5208525020	1.1455	1.3675
5208530000	1.1455	1.3675
5208592020	1.1455	1.3675
5208592090	1.1455	1.3675
5208594090	1.1455	1.3675
5208596090	1.1455	1.3675
5209110020	1.1455	1.3675
5209110030	1.1455	1.3675
5209110090	1.1455	1.3675
5209120020	1.1455	1.3675
5209120040	1.1455	1.3675
5209190020	1.1455	1.3675
5209190040	1.1455	1.3675
5209190060	1.1455	1.3675
5209190090	1.1455	1.3675
5209210090	1.1455	1.3675
5209220020	1.1455	1.3675
5209220040	1.1455	1.3675
5209290040	1.1455	1.3675
5209290090	1.1455	1.3675
5209313000	1.1455	1.3675
5209316020	1.1455	1.3675
5209316030	1.1455	1.3675

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
5209316050	1.1455	1.3675
5209316090	1.1455	1.3675
5209320020	1.1455	1.3675
5209320040	1.1455	1.3675
5209390020	1.1455	1.3675
5209390040	1.1455	1.3675
5209390060	1.1455	1.3675
5209390080	1.1455	1.3675
5209390090	1.1455	1.3675
5209413000	1.1455	1.3675
5209416020	1.1455	1.3675
5209416040	1.1455	1.3675
5209420020	1.0309	1.2307
5209420040	1.0309	1.2307
5209430020	1.1455	1.3675
5209430040	1.1455	1.3675
5209490020	1.1455	1.3675
5209490090	1.1455	1.3675
5209516030	1.1455	1.3675
5209516050	1.1455	1.3675
5209520020	1.1455	1.3675
5209590020	1.1455	1.3675
5209590040	1.1455	1.3675
5209590090	1.1455	1.3675
5210114020	0.6873	0.8205
5210114040	0.6873	0.8205
5210116020	0.6873	0.8205
5210116040	0.6873	0.8205
5210116060	0.6873	0.8205
5210118020	0.6873	0.8205
5210120000	0.6873	0.8205
5210192090	0.6873	0.8205
5210214040	0.6873	0.8205
5210216020	0.6873	0.8205
5210216060	0.6873	0.8205
5210218020	0.6873	0.8205
5210314020	0.6873	0.8205
5210314040	0.6873	0.8205
5210316020	0.6873	0.8205
5210318020	0.6873	0.8205
5210414000	0.6873	0.8205
5210416000	0.6873	0.8205
5210418000	0.6873	0.8205
5210498090	0.6873	0.8205
5210514040	0.6873	0.8205
5210516020	0.6873	0.8205
5210516040	0.6873	0.8205
5210516060	0.6873	0.8205
5211110090	0.6873	0.8205
5211120020	0.6873	0.8205
5211190020	0.6873	0.8205
5211190060	0.6873	0.8205
5211210030	0.4165	0.4972
5211210050	0.6873	0.8205
5211290090	0.6873	0.8205
5211320020	0.6873	0.8205
5211390040	0.6873	0.8205
5211390060	0.6873	0.8205
5211490020	0.6873	0.8205
5211490090	0.6873	0.8205
5211590020	0.6873	0.8205
5212146090	0.9164	1.094
5212156020	0.9164	1.094
5212216090	0.9164	1.094
5309214010	0.2864	0.3419
5309214090	0.2864	0.3419
5309294010	0.2864	0.3419
5311004000	0.9164	1.094
5407810010	0.5727	0.6837
5407810030	0.5727	0.6837

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
5407912020	0.4009	0.4786
5408312020	0.4009	0.4786
5408329020	0.4009	0.4786
5408349020	0.4009	0.4786
5408349090	0.4009	0.4786
5509530030	0.5556	0.6633
5509530060	0.5556	0.6633
5513110020	0.4009	0.4786
5513110040	0.4009	0.4786
5513110060	0.4009	0.4786
5513110090	0.4009	0.4786
5513120000	0.4009	0.4786
5513130020	0.4009	0.4786
5513210020	0.4009	0.4786
5513310000	0.4009	0.4786
5514120020	0.4009	0.4786
5516420060	0.4009	0.4786
5516910060	0.4009	0.4786
5516930090	0.4009	0.4786
5601210010	1.1455	1.3675
5601210090	1.1455	1.3675
5601300000	1.1455	1.3675
5602109090	0.5727	0.6837
5602290000	1.1455	1.3675
5602906000	0.526	0.6279
5604900000	0.5556	0.6633
5607902000	0.8889	1.0612
5608901000	1.1111	1.3264
5608902300	1.1111	1.3264
5609001000	1.1111	1.3264
5609004000	0.5556	0.6633
5701104000	0.0556	0.0664
5701109000	0.1111	0.1326
5701901010	1.0444	1.2468
5702109020	1.1	1.3132
5702312000	0.0778	0.0929
5702411000	0.0722	0.0862
5702412000	0.0778	0.0929
5702421000	0.0778	0.0929
5702913000	0.0889	0.1061
5702991010	1.1111	1.3264
5702991090	1.1111	1.3264
5703900000	0.4489	0.5359
5801210000	1.1455	1.3675
5801230000	1.1455	1.3675
5801250010	1.1455	1.3675
5801250020	1.1455	1.3675
5801260020	1.1455	1.3675
5802190000	1.1455	1.3675
5802300030	0.5727	0.6837
5804291000	1.1455	1.3675
5806200000	0.3534	0.4219
5806310000	1.1455	1.3675
5806400000	0.4296	0.5129
5808107000	0.5727	0.6837
5808900010	0.5727	0.6837
5811002000	1.1455	1.3675
6001106000	1.1455	1.3675
6001210000	0.8591	1.0256
6001220000	0.2864	0.3419
6001910010	0.8591	1.0256
6001910020	0.8591	1.0256
6001920020	0.2864	0.3419
6001920030	0.2864	0.3419
6001920040	0.2864	0.3419
6002203000	0.8681	1.0363
6002206000	0.2894	0.3455
6002420000	0.8681	1.0363
6002430010	0.2894	0.3455
6002430080	0.2894	0.3455

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6002921000	1.1574	1.3817
6002930040	0.1157	0.1381
6002930080	0.1157	0.1381
6101200010	1.0094	1.205
6101200020	1.0094	1.205
6102200010	1.0094	1.205
6102200020	1.0094	1.205
6103421020	0.8806	1.0513
6103421040	0.8806	1.0513
6103421050	0.8806	1.0513
6103421070	0.8806	1.0513
6103431520	0.2516	0.3004
6103431540	0.2516	0.3004
6103431550	0.2516	0.3004
6103431570	0.2516	0.3004
6104220040	0.9002	1.0747
6104220060	0.9002	1.0747
6104320000	0.9207	1.0991
6104420010	0.9002	1.0747
6104420020	0.9002	1.0747
6104520010	0.9312	1.1117
6104520020	0.9312	1.1117
6104622010	0.8806	1.0513
6104622015	0.8806	1.0513
6104622025	0.8806	1.0513
6104622030	0.8806	1.0513
6104622060	0.8806	1.0513
6104632010	0.3774	0.4505
6104632025	0.3774	0.4505
6104632030	0.3774	0.4505
6104632060	0.3774	0.4505
6104692030	0.3858	0.4606
6105100010	0.985	1.1759
6105100020	0.985	1.1759
6105100030	0.985	1.1759
6105202010	0.3078	0.3675
6105202030	0.3078	0.3675
6106100010	0.985	1.1759
6106100020	0.985	1.1759
6106100030	0.985	1.1759
6106202010	0.3078	0.3675
6106202030	0.3078	0.3675
6107110010	1.1322	1.3516
6107110020	1.1322	1.3516
6107120010	0.5032	0.6007
6107210010	0.8806	1.0513
6107220015	0.3774	0.4505
6107220025	0.3774	0.4505
6107910040	1.2581	1.5019
6108210010	1.2445	1.4857
6108210020	1.2445	1.4857
6108310010	1.1201	1.3372
6108310020	1.1201	1.3372
6108320010	0.2489	0.2971
6108320015	0.2489	0.2971
6108320025	0.2489	0.2971
6108910005	1.2445	1.4857
6108910015	1.2445	1.4857
6108910025	1.2445	1.4857
6108910030	1.2445	1.4857
6108920030	0.2489	0.2971
6109100005	0.9956	1.1885
6109100007	0.9956	1.1885
6109100009	0.9956	1.1885
6109100012	0.9956	1.1885
6109100014	0.9956	1.1885
6109100018	0.9956	1.1885
6109100023	0.9956	1.1885
6109100027	0.9956	1.1885
6109100037	0.9956	1.1885

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6109100040	0.9956	1.1885
6109100045	0.9956	1.1885
6109100060	0.9956	1.1885
6109100065	0.9956	1.1885
6109100070	0.9956	1.1885
6109901007	0.3111	0.3714
6109901009	0.3111	0.3714
6109901049	0.3111	0.3714
6109901050	0.3111	0.3714
6109901060	0.3111	0.3714
6109901065	0.3111	0.3714
6109901090	0.3111	0.3714
6110202005	1.1837	1.4131
6110202010	1.1837	1.4131
6110202015	1.1837	1.4131
6110202020	1.1837	1.4131
6110202025	1.1837	1.4131
6110202030	1.1837	1.4131
6110202035	1.1837	1.4131
6110202040	1.1574	1.3817
6110202045	1.1574	1.3817
6110202065	1.1574	1.3817
6110202075	1.1574	1.3817
6110909022	0.263	0.314
6110909024	0.263	0.314
6110909030	0.3946	0.4711
6110909040	0.263	0.314
6110909042	0.263	0.314
6111201000	1.2581	1.5019
6111202000	1.2581	1.5019
6111203000	1.0064	1.2014
6111205000	1.0064	1.2014
6111206010	1.0064	1.2014
6111206020	1.0064	1.2014
6111206030	1.0064	1.2014
6111206040	1.0064	1.2014
6111305020	0.2516	0.3004
6111305040	0.2516	0.3004
6112110050	0.7548	0.9011
6112120010	0.2516	0.3004
6112120030	0.2516	0.3004
6112120040	0.2516	0.3004
6112120050	0.2516	0.3004
6112120060	0.2516	0.3004
6112390010	1.1322	1.3516
6112490010	0.9435	1.1264
6114200005	0.9002	1.0747
6114200010	0.9002	1.0747
6114200015	0.9002	1.0747
6114200020	1.286	1.5352
6114200040	0.9002	1.0747
6114200046	0.9002	1.0747
6114200052	0.9002	1.0747
6114200060	0.9002	1.0747
6114301010	0.2572	0.307
6114301020	0.2572	0.307
6114303030	0.2572	0.307
6115199010	1.0417	1.2436
6115922000	1.0417	1.2436
6115932020	0.2315	0.2764
6116101300	0.3655	0.4363
6116101720	0.8528	1.0181
6116926420	1.0965	1.309
6116926430	1.2183	1.4544
6116926440	1.0965	1.309
6116928800	1.0965	1.309
6117809010	0.9747	1.1636
6117809040	0.3655	0.4363
6201121000	0.948	1.1317
6201122010	0.8953	1.0688

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6201122050	0.6847	0.8174
6201122060	0.6847	0.8174
6201134030	0.2633	0.3143
6201921000	0.9267	1.1063
6201921500	1.1583	1.3828
6201922010	1.0296	1.2291
6201922021	1.2871	1.5365
6201922031	1.2871	1.5365
6201922041	1.2871	1.5365
6201922051	1.0296	1.2291
6201922061	1.0296	1.2291
6201931000	0.3089	0.3688
6201933511	0.2574	0.3073
6201933521	0.2574	0.3073
6201999060	0.2574	0.3073
6202121000	0.9372	1.1188
6202122010	1.1064	1.3208
6202122025	1.3017	1.554
6202122050	0.8461	1.0101
6202122060	0.8461	1.0101
6202134005	0.2664	0.318
6202134020	0.333	0.3975
6202921000	1.0413	1.2431
6202921500	1.0413	1.2431
6202922026	1.3017	1.554
6202922061	1.0413	1.2431
6202922071	1.0413	1.2431
6202931000	0.3124	0.3729
6202935011	0.2603	0.3107
6202935021	0.2603	0.3107
6203122010	0.1302	0.1554
6203221000	1.3017	1.554
6203322010	1.2366	1.4763
6203322040	1.2366	1.4763
6203332010	0.1302	0.1554
6203392010	1.1715	1.3985
6203399060	0.2603	0.3107
6203422010	0.9961	1.1891
6203422025	0.9961	1.1891
6203422050	0.9961	1.1891
6203422090	0.9961	1.1891
6203424005	1.2451	1.4864
6203424010	1.2451	1.4864
6203424015	0.9961	1.1891
6203424020	1.2451	1.4864
6203424025	1.2451	1.4864
6203424030	1.2451	1.4864
6203424035	1.2451	1.4864
6203424040	0.9961	1.1891
6203424045	0.9961	1.1891
6203424050	0.9238	1.1028
6203424055	0.9238	1.1028
6203424060	0.9238	1.1028
6203431500	0.1245	0.1486
6203434010	0.1232	0.1471
6203434020	0.1232	0.1471
6203434030	0.1232	0.1471
6203434040	0.1232	0.1471
6203492010	0.1245	0.1486
6203498045	0.249	0.2973
6204132010	0.1302	0.1554
6204192000	0.1302	0.1554
6204198090	0.2603	0.3107
6204221000	1.3017	1.554
6204223030	1.0413	1.2431
6204223040	1.0413	1.2431
6204223050	1.0413	1.2431
6204223060	1.0413	1.2431
6204223065	1.0413	1.2431
6204292040	0.3254	0.3885

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6204322010	1.2366	1.4763
6204322030	1.0413	1.2431
6204322040	1.0413	1.2431
6204423010	1.2728	1.5195
6204423030	0.9546	1.1396
6204423040	0.9546	1.1396
6204423050	0.9546	1.1396
6204423060	0.9546	1.1396
6204522010	1.2654	1.5106
6204522030	1.2654	1.5106
6204522040	1.2654	1.5106
6204522070	1.0656	1.2721
6204522080	1.0656	1.2721
6204533010	0.2664	0.318
6204594060	0.2664	0.318
6204622010	0.9961	1.1891
6204622025	0.9961	1.1891
6204622050	0.9961	1.1891
6204624005	1.2451	1.4864
6204624010	1.2451	1.4864
6204624020	0.9961	1.1891
6204624025	1.2451	1.4864
6204624030	1.2451	1.4864
6204624035	1.2451	1.4864
6204624040	1.2451	1.4864
6204624045	0.9961	1.1891
6204624050	0.9961	1.1891
6204624055	0.9854	1.1764
6204624060	0.9854	1.1764
6204624065	0.9854	1.1764
6204633510	0.2546	0.3039
6204633530	0.2546	0.3039
6204633532	0.2437	0.2909
6204633540	0.2437	0.2909
6204692510	0.249	0.2973
6204692540	0.2437	0.2909
6204699044	0.249	0.2973
6204699046	0.249	0.2973
6204699050	0.249	0.2973
6205202015	0.9961	1.1891
6205202020	0.9961	1.1891
6205202025	0.9961	1.1891
6205202030	0.9961	1.1891
6205202035	1.1206	1.3378
6205202046	0.9961	1.1891
6205202050	0.9961	1.1891
6205202060	0.9961	1.1891
6205202065	0.9961	1.1891
6205202070	0.9961	1.1891
6205202075	0.9961	1.1891
6205302010	0.3113	0.3716
6205302030	0.3113	0.3716
6205302040	0.3113	0.3716
6205302050	0.3113	0.3716
6205302070	0.3113	0.3716
6205302080	0.3113	0.3716
6206100040	0.1245	0.1486
6206303010	0.9961	1.1891
6206303020	0.9961	1.1891
6206303030	0.9961	1.1891
6206303040	0.9961	1.1891
6206303050	0.9961	1.1891
6206303060	0.9961	1.1891
6206403010	0.3113	0.3716
6206403030	0.3113	0.3716
6206900040	0.249	0.2973
6207110000	1.0852	1.2955
6207199010	0.3617	0.4318
6207210010	1.1085	1.3233
6207210030	1.1085	1.3233

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6207220000	0.3695	0.4411
6207911000	1.1455	1.3675
6207913010	1.1455	1.3675
6207913020	1.1455	1.3675
6208210010	1.0583	1.2634
6208210020	1.0583	1.2634
6208220000	0.1245	0.1486
6208911010	1.1455	1.3675
6208911020	1.1455	1.3675
6208913010	1.1455	1.3675
6209201000	1.1577	1.3821
6209203000	0.9749	1.1638
6209205030	0.9749	1.1638
6209205035	0.9749	1.1638
6209205040	1.2186	1.4548
6209205045	0.9749	1.1638
6209205050	0.9749	1.1638
6209303020	0.2463	0.294
6209303040	0.2463	0.294
6210109010	0.2291	0.2735
6210403000	0.0391	0.0467
6210405020	0.4556	0.5439
6211111010	0.1273	0.152
6211111020	0.1273	0.152
6211118010	1.1455	1.3675
6211118020	1.1455	1.3675
6211320007	0.8461	1.0101
6211320010	1.0413	1.2431
6211320015	1.0413	1.2431
6211320030	0.9763	1.1655
6211320060	0.9763	1.1655
6211320070	0.9763	1.1655
6211330010	0.3254	0.3885
6211330030	0.3905	0.4662
6211330035	0.3905	0.4662
6211330040	0.3905	0.4662
6211420010	1.0413	1.2431
6211420020	1.0413	1.2431
6211420025	1.1715	1.3985
6211420060	1.0413	1.2431
6211420070	1.1715	1.3985
6211430010	0.2603	0.3107
6211430030	0.2603	0.3107
6211430040	0.2603	0.3107
6211430050	0.2603	0.3107
6211430060	0.2603	0.3107
6211430066	0.2603	0.3107
6212105020	0.2412	0.2879
6212109010	0.9646	1.1515
6212109020	0.2412	0.2879
6212200020	0.3014	0.3598
6212900030	0.1929	0.2303
6213201000	1.1809	1.4098
6213202000	1.0628	1.2688
6213901000	0.4724	0.564
6214900010	0.9043	1.0796
6216000800	0.2351	0.2807
6216001720	0.6752	0.8061
6216003800	1.2058	1.4395
6216004100	1.2058	1.4395
6217109010	1.0182	1.2155
6217109030	0.2546	0.3039
6301300010	0.8766	1.0465
6301300020	0.8766	1.0465
6302100010	1.1689	1.3954
6302215010	0.8182	0.9768
6302215020	0.8182	0.9768
6302217010	1.1689	1.3954
6302219010	0.8182	0.9768
6302217020	1.1689	1.3954

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6302219020	0.8182	0.9768
6302217050	1.1689	1.3954
6302219050	0.8182	0.9768
6302222010	0.4091	0.4884
6302222020	0.4091	0.4884
6302313010	0.8182	0.9768
6302313050	1.1689	1.3954
6302315050	0.8182	0.9768
6302317010	1.1689	1.3954
6302319010	0.8182	0.9768
6302317020	1.1689	1.3954
6302319020	0.8182	0.9768
6302317040	1.1689	1.3954
6302319040	0.8182	0.9768
6302317050	1.1689	1.3954
6302319050	0.8182	0.9768
6302322020	0.4091	0.4884
6302322040	0.4091	0.4884
6302402010	0.9935	1.186
6302511000	0.5844	0.6977
6302512000	0.8766	1.0465
6302513000	0.5844	0.6977
6302514000	0.8182	0.9768
6302600010	1.1689	1.3954
6302600020	1.052	1.2559
6302600030	1.052	1.2559
6302910005	1.052	1.2559
6302910015	1.1689	1.3954
6302910025	1.052	1.2559
6302910035	1.052	1.2559
6302910045	1.052	1.2559
6302910050	1.052	1.2559
6302910060	1.052	1.2559
6303110000	0.9448	1.1279
6303910000	0.6429	0.7675
6304111000	1.0629	1.2689
6304190500	1.052	1.2559
6304191000	1.1689	1.3954
6304191500	0.4091	0.4884
6304192000	0.4091	0.4884
6304910020	0.9351	1.1163
6304920000	0.9351	1.1163
6505901540	1.181	1.4099
6505902060	0.9935	1.186
6505902545	0.5844	0.6977

* * * * *

Dated: April 27, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–10950 Filed 5–3–95; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Environmental Qualification of Electric Equipment

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: The Commission has undertaken a major initiative to answer questions related to the environmental qualification (EQ) of electric equipment in nuclear power plants, 10 CFR 50.49. In November 1993, the Office of Nuclear Regulatory Research held a public workshop to obtain technical input for the formulation of EQ research program. One of the recommendations made at this workshop was that the NRC staff should review all previous work in the EQ area and endeavor to have its research program cost effective without duplicating past efforts.

The participants at the workshop stated that the focus of the NRC's attention should be on components such as cables and electrical penetrations, that are long lived and very burdensome to replace.

The NRC staff accepted these recommendations and the current research efforts are limited to EQ issues pertaining to cables. In this context, the staff plans to review approximately 300 EQ documents (test reports, technical papers and reports, etc.). The listing of these references is available in the NRC Public Document Room. The staff is seeking public input to determine the completeness of this list of references.

DATES: Submit additional references by June 16, 1995.

ADDRESSES: Chief, Rules Review and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT:

Mr. Satish K. Aggarwal, Senior Program Manager, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–415–6005.

Dated at Rockville, MD, this 26th day of April 1995.

For the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 95–10725 Filed 5–3–95; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–04–AD]

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

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 all Airbus Model A300 and A300–600 series airplanes. This proposal would require repetitive eddy current inspections to detect cracks at the aft spar web of the wings, and repair, if necessary. This proposal is prompted by reports indicating that cracks have been found in the rear spar web of the wings between ribs 1 and 2 of an in-service airplane and during testing on the fatigue test wing; the cracking occurred due to fatigue-related high shear stress. The actions specified by the proposed AD are intended to prevent such fatigue-related cracking, which could result in reduced structural integrity of the wing.

DATES: Comments must be received by June 13, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–04–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–04–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–04–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Airbus Model A300 and A300–600 series airplanes. The DGAC advises that cracks have been found in the rear spar web of the wings between ribs 1 and 2 of an in-service airplane and during testing of the fatigue test wing. In both cases, the cracks spanned across the tip of the build slot and to the nearest adjacent fastener hole. Investigation revealed that such cracking was caused by fatigue-related high shear stress experienced during the landing cycle. Further investigation revealed that the earliest damage to an in-service airplane was found on a Model A300–B2 series airplane that had accumulated 21,500 flight cycles. The crack in the fatigue test wing was discovered at 50,000 simulated flight cycles, and, subsequently, was monitored for an additional 12,000 flight cycles with no evidence of continued crack growth from the hole. Such fatigue-related cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the wing.

Airbus has issued Service Bulletin A300–57–0213, dated August 12, 1994, which is applicable to Model A300 series airplanes. This service bulletin describes procedures for repetitive high frequency eddy current (HFEC) inspections to detect cracks at the aft spar web of the wings, and repair, if necesaary. The DGAC classified this service bulletin as manadatory and issued French airworthiness directive 94–207–168(B), dated September 14, 1994, in order to assure the continued airworthiness of these airplanes in France.

Airbus also has issued Service Bulletin A300–57–6059, dated August 12, 1994, which is applicable to Model A300–600 series airplanes. This service bulletin describes procedures for repetitive high frequency eddy current (HFEC) inspections to detect cracks at the aft spar web of the wings, and repair, if necesaary. The DGAC plans to make this service bulletin mandatory when the Model A300–600 series airplane fleet leader approaches the accumulation of 21,600 total flight cycles, which is the recommended time for accomplishment of the initial inspection.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or

develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive eddy current inspections to detect cracks at the aft spar web of the wings, and repair, if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Operators should note the following differences between the procedures specified in the referenced Airbus service bulletins and the proposed requirements of this AD:

1. Airbus Service Bulletin A300–57–0213, paragraph 1.B.(5)(c), Accomplishment Timescale, makes allowances for airplanes that are close to or have exceeded the specified inspection threshold to fly an additional 1,000 or 1,800 flight cyles prior to the initial inspection, depending upon the number of flight cycles accumulated at the time that the operator received the service bulletin. This proposed AD, however, would allow those airplanes to fly additional 1,400 flight cycles after the effective date of this AD. The FAA considers that this number of flight cycles is a reasonable number for all affected airplanes, regardless of when the service bulletin was received.

2. Airbus Service Bulletin A300–57–0213, paragraph 1.B.(5)(d), Accomplishment Timescale; and Airbus Service Bulletin A300–57–6059, paragraph 1.B.(5)(c), Accomplishment Timescale; provide for adjustments of the inspection threshold and intervals specified in the service bulletin, under certain criteria related to the number and types of touch-and-go flights that have been accumulated on the airplane. The FAA considers that this criteria for adjustments may cause undue confusion among affected operators in attempting to calculate and/or record allowable or ''non-allowable'' types of touch-and-go flights and, therefore, has not included those provisions of the service bulletin in this proposed rule.

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 notice to clarify this requirement.

The FAA estimates that 89 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $16,020, or $180 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 95–NM–04–AD.

Applicability: All Model A300 and Model A300–600 series airplanes, 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 (f) 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 fatigue-related cracking in the rear spar web of the wings, which could result in reduced structural integrity of the wing, accomplish the following:

(a) For Model A300 B2 series airplanes: Prior to the accumulation of 18,000 total flight cycles or within 1,400 flight cycles after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) inspection to detect cracks of at the aft spar web of the wings, in accordance with Airbus Service Bulletin A300–57–0213, dated August 12, 1994. Repeat the inspection thereafter at intervals not to exceed 5,000 flight cycles.

(b) For Model A300 B4–103, and B4–2C series airplanes: Prior to the accumulation of 19,000 total flight cycles or within 1,400 flight cycles after the effective date of this AD, whichever occurs later, perform an HFEC inspection to detect cracks at the aft spar web of the wings, in accordance with Airbus Service Bulletin A300–57–0213, dated August 12, 1994. Repeat the inspection thereafter at intervals not to exceed 6,000 flight cycles.

(c) For Model A300 B4–200 series airplanes: Prior to the accumulation of 17,000 total flight cycles or within 1,400 flight cycles after the effective date of this AD, whichever occurs later, perform an HFEC inspection to detect cracks at the aft spar web of the wings, in accordance with Airbus Service Bulletin A300–57–0213, dated August 12, 1994. Repeat the inspection thereafter at intervals not to exceed 5,000 flight cycles.

(d) For Model A300–600 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, and F4–605R series airplanes: Prior to the

accumulation of 21,600 flight cycles, perform an HFEC inspection to detect cracks at the aft spar web of the wings, in accordance with Airbus Service Bulletin A300–57–6059, dated August 12, 1994. Repeat the inspection thereafter at intervals not to exceed 5,700 flight cycles.

(e) If any crack is detected during any inspection required by this AD, prior to further flight, repair the crack in accordance with Airbus Service Bulletin A300–57–0213, dated August 12, 1994, or Airbus Service Bulletin A300–57–6059, dated August 12, 1994, as applicable; or in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(f) 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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on April 28, 1995.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–10988 Filed 5–3–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–31–AD]

Airworthiness Directives; Beech Model 400 and 400A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Beech Model 400 and 400A airplanes. This proposal would require modification of the autopilot and rudder boost interlock. This proposal is prompted by a report indicating that the rudder boost system installed on these airplanes does not operate correctly during deployment of a thrust reverser. The actions specified by the proposed AD are intended to prevent incorrect operation of the rudder boost system during deployment of a thrust reverser and to prevent the autopilot from exceeding certain bank angle limits; these conditions could result in reduced controllability of the airplane.

DATES: Comments must be received by June 13, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–31–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Beech Aircraft Corporation, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Dale Vassalli, Aerospace Engineer, Systems and Equipment Branch, ACE–130W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4132; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–31–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–31–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The FAA received a report from the airplane manufacturer indicating that, during ground operation, the rudder boost system installed on Beech Model 400 and 400A airplanes is disabled only when the left thrust reverser is deployed. Operation of either the right or left thrust reverser during ground operation should disable the rudder boost system. Additionally, during flight, the rudder boost system on these airplanes is disabled when inadvertent deployment of the left thrust reverser occurs. However, inadvertent deployment of a thrust reverser should not disable the rudder boost system.

The FAA also discovered that, when landing the airplane with a failed left engine, use of the right thrust reverser will result in a rudder boost in the wrong direction. (When landing with a failed right engine, use of the left thrust reverser will disable the rudder boost system, as it should.) Further, inadvertent deployment of the left thrust reverser will result in disengagement of the rudder boost system. Should this condition occur during takeoff, rudder forces could exceed the limits specified in the Federal Aviation Regulations (FAR).

These conditions, if not corrected, could result in reduced controllability of the airplane.

The FAA has reviewed and approved Beechcraft Service Bulletin No. 2533, dated October 1994, which describes procedures for modification of the autopilot and rudder boost interlock. The modification entails installing an autopilot and rudder boost improvement kit. Installation of the kit will disable the rudder boost feature during operation of the thrust reverser with only one engine operating in order to alleviate control input requirements. In addition, the service bulletin describes removal of a placard if one

was installed in accordance with Beechcraft Service Bulletin No. 2502, dated May 1993.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the autopilot and rudder boost interlock. The actions would be required to be accomplished in accordance with the service bulletin described previously.

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 notice to clarify this long-standing requirement.

There are approximately 92 Model 400 and 400A airplanes of the affected design in the worldwide fleet. The FAA estimates that 69 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 24 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $99,360, or $1,440 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Beech Aircraft Corporation: Docket 95–NM–31–AD.

Applicability: Model 400 airplanes, serial RJ–61; and Model 400A airplanes, serials RK–1 through RK–77 inclusive, and RK–79 through RK–92 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 (b) 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 controllability of the airplane, accomplish the following:

(a) At the next scheduled inspection, but no later than 200 hours time-in-service after the effective date of this AD, install an autopilot and rudder boost improvement kit in accordance with Beechcraft Service Bulletin No. 2533, dated October 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, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

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

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

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on April 28, 1995.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–10989 Filed 5–3–95; 8:45 am]

BILLING CODE 4910–13–U

Coast Guard

33 CFR Part 117

[CGD01–95–009]

RIN 2115–AE47

Drawbridge Operation Regulations; Connecticut River, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing a change to the regulations for the Route 82 Bridge at mile 16.8 over the Connecticut River, between East Haddam and Haddam, Connecticut. This proposal would provide openings for recreational vessels only on the hour and half-hour from 15 May through 31 October, between 9 a.m. and 9 p.m. Commercial vessels would continue to be granted bridge openings at all times. This action should ease traffic delays and still meet the reasonable needs of navigation.

This proposal would also require bridge owners to install clearance gauges at the AMTRAK Old Saybrook-Old Lyme Bridge, the CONRAIL Middletown-Portland Bridge and the Route 82 Bridge to assist mariners in

determining if their vessels can pass under the bridges and thereby reduce the number of unnecessary openings at time when the draw is not required to open.

This change was requested by the Connecticut Department of Transportation (CONNDOT) to provide relief from traffic delays caused by frequent, unscheduled bridge openings.

DATES: Comments must be received on or before July 3, 1995.

ADDRESSES: Comments may be mailed to Commander (obr), First Coast Guard District, Building 135A, Governors Island, New York, 10004–5073, or may be hand-delivered to the same address between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (212) 668–7170. The comments will become part of this docket and will be available for inspection and copying by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: Gary Kassof, Bridge Administrator, First Coast Guard District, (212) 668–7069.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–95–009), the specific section of this proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format no larger than 8½″ by 11″, suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period, and may change this proposal in light of comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (obr), First Coast Guard District at the address listed under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are Mr. Waverly W. Gregory, Jr., Project Manager, Bridge Branch, and Lieutenant Commander Samuel R. Watkins, Project Counsel, District Legal Office.

Background and Purpose

The Route 82 Bridge over the Connecticut River, at mile 16.8 between East Haddam and Haddam, Connecticut, has vertical clearances of 22′ above mean high water (MHW) and 25′ above mean low water (MLW). The Coast Guard previously published a temporary final rule (57 FR 24191; June 2, 1992) that required the bridge to open for recreational vessels only on the hour and half-hour from 22 May through 31 October, 1992 between 9 a.m. and 9 p.m. on Fridays, Saturdays, Sundays, and federal holidays. Interested persons were given until November 13, 1992 to submit comments. No comments were received; a public hearing was not requested nor was one held.

Upon the expiration of the temporary final rule in October, 1992, the bridge reverted to the general operating regulations contained in 33 CFR part 117, subpart A. These regulations required the draw to open for all vessels on signal at all times. However, in 1993 and 1994, from 15 May to 15 October, from 9 a.m. to 9 p.m., CONNDOT implemented hourly and half-hourly openings for recreational vessels on Saturdays, Sundays, and federal holidays without Coast Guard approval.

The Town of East Haddam and CONNDOT have since requested the Coast Guard to consider a change to the special operating regulations for the Route 82 Bridge to provide for hourly and half hourly openings from 9 a.m. to 9 p.m. during the summer.

In 1993 and 1994, CONNDOT left the signs for the temporary regulations from the 1992 season in place, unofficially implementing half-hourly openings for recreational vessels from 15 May to 15 October, between 9 a.m. and 9 p.m., on weekends and federal holidays. The Coast Guard has not received any complaints or inquiries concerning this unofficial operating schedule implemented during 1993 and 1994.

The proposed regulations for the Route 82 Bridge would provide openings for recreational vessels on the hour and half hour, daily from 15 May to 31 October, between 9 a.m. and 9 p.m. Openings for commercial vessels would be provided on signal at all times.

Analysis of the bridge logs for 1990, 1991 and 1992 indicated that spring and fall transient recreational boating traffic on the weekends created the greatest potential for disruption of vehicular traffic due to back-to-back openings. Additionally, on Fridays and weekends during the summer months there were frequent, untimely openings affecting persons attending concerts and plays at the Goodspeed Opera House in East Haddam. Analysis of the 1992 and 1993 bridge logs showed that a majority of the recreational vessels requiring openings transited the bridge on the hour and half hour from Monday through Thursday as well as weekends during the summer period.

Discussion of Proposed Amendments

Under this proposal 33 CFR 117.205 would be revised to remove dedundant language and requirements that are included elsewhere in the CFR as general Part 117 operating regulations.

Paragraph (a)(1)(i) and paragraph (a)(1)(ii) from the existing regulation would be deleted as unnecessary because trains are now controlled by the block method. Under this method the track is divided into blocks or segments of a mile or more in length. When a train is in a block with a drawbridge, the draw may not open until the train has passed out of the block. This requirement is contained in 33 CFR 117.9 as a general requirement for bridges.

This proposal would also require bridge owners to install clearance gauges at the AMTRAK Old Saybrook-Old Lyme Bridge, the CONRAIL Middletown-Portland Bridge and the Route 82 Bridge as part of a new paragraph (a). This proposed requirement would assist mariners in determining if their vessels can pass under the Route 82 Bridge during periods when the draw need not be opened and would eliminate unnecessary openings at the other bridges.

Paragraph (b) in the existing regulations would be revised because the requirement to fully open is provided in 33 CFR 117.5 of the general operating regulations. The revised paragraph (b) would add the proposed regulations to formalize the current, unofficial operating regulations at the Route 82 Bridge.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies

and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This is based upon the fact that commercial vessels are unaffected by the proposal and that the regulations will not prevent recreational boaters from transiting the bridge. Rather it will only require them to adjust their time of arrival for openings on the hour and half hour.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their fields and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because of the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this action, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and it has determined that this proposed regulation does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, (as revised by 59 FR 38654, July 29, 1994) this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection and copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.205 is revised to read as follows:

§ 117.205 Connecticut River.

(a) The owners of the AMTRAK Old Saybrook-Old Lyme Bridge, mile 3.4, the Route 82 Bridge, mile 16.8 and the Conrail Middletown Bridge, mile 32.0 shall provide, and keep in good legible condition, clearance gauges with figures not less than twelve (12) inches high designed, installed and maintained according to the provisions of section 118.160 of this chapter.

(b) The draws of the AMTRAK Old Saybrook-Old Lyme Bridge, mile 3.4, and the CONRAIL Middletown-Portland Bridge, mile 32.0 shall be opened as soon as practicable for all noncommercial vessels that cannot pass under the closed bridges, but in no case shall the delay be more than 20 minutes from the time the opening was requested.

(c) The draw of the Route 82 Bridge, mile 16.8 at East Haddam, shall open on signal except that, from 15 May to 31 October between 9 a.m. and 9 p.m., the draw need open for recreational vessels on the hour and half-hour only. The draw shall open on signal for commercial vessels at all times.

Dated: April 19, 1995.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 95–10922 Filed 5–3–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH10

Determinations of Incompetency and Competency

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations concerning determinations of mental incompetency to make clear that only rating boards are authorized to make determinations of incompetency.

DATES: Comments must be received on or before July 3, 1995.

ADDRESSES: Mail written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, or hand-deliver written comments to: Office of Regulations Management, Room 1176, 801 Eye Street, NW., Washington, DC 20001. Comments should indicate that they are in response to ''RIN 2900–AH10.'' All written comments received will be available for public inspection in the Office of Regulations Management, Room 1176, 801 Eye Street, NW., Washington, DC 20001, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION:

Regulations at 38 CFR 3.353 govern VA determinations of competency and incompetency. 38 CFR 3.353(a) defines a mentally incompetent person as one who lacks the mental capacity to manage his or her own affairs, including disbursement of funds without limitation. 38 CFR 3.353(b) was intended to authorize rating boards to make determinations of competency and incompetency for VA purposes without involvement of a Veterans Services Officer (VSO).

In a recent decision (Coleman v. Brown, No. 90–966) the United States Court of Veterans Appeals interpreted § 3.353(b) as requiring VSO participation prior to determination of the issue of incompetency. Although the VSO was meant to play an integral role in developing evidence relating to the veteran's ability to handle his or her affairs, the intent of the regulation was to give rating boards sole responsibility for incompetency determinations without the VSO participating in the decision. See 38 CFR 3.104(a). Although it was intended that evidence produced by the VSO could lead to later reconsideration of the incompetency determination, it was not intended that the VSO's concurrence be a condition precedent to rating a beneficiary incompetent. The VSO's investigation was meant merely to provide an additional safeguard which could lead to later review.

The proposed amendment provides that the rating board has sole authority to determine the competency of beneficiaries, but that if the VSO develops new information bearing on the issue of the beneficiary's competency, the rating board will consider that evidence together with all other evidence of record to determine whether the prior determination of incompetency should remain in effect. Paragraph (b)(2) provides that the Adjudication Officer will authorize disbursement to an incompetent beneficiary as directed by the VSO (e.g., supervised direct payment, payment to a fiduciary, or payment to the beneficiary's spouse). Additional nonsubstantive changes would be made in the wording and format of § 3.353(b) for the sake of clarity.

The Secretary hereby certifies that these regulatory amendments would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The amendments would not directly affect any small entities. Only VA beneficiaries would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of section 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: April 11, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR Part 3 is amended to read as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.353 is amended by revising paragraph (b) to read as follows:

§ 3.353 Determinations of incompetency and competency.

* * * * *

(b) *Authority.* (1) Rating agencies have sole authority to make official determinations of competency and incompetency for the purpose of existing laws, Department of Veterans Affairs regulations and Department of Veterans Affairs instructions. Such determinations are final and binding on field stations for purposes of: insurance (38 U.S.C. 1922), the discontinuance and payment of amounts withheld because of an estate in excess of $1,500 (§ 3.557(b)), and, subject to § 13.56 of this chapter, disbursement of benefits.

(2) Where the beneficiary is rated incompetent, the Adjudication Officer will inform the Veterans Services Officer of jurisdiction of that fact. The Veterans Services Officer will develop information as to the beneficiary's social, economic and industrial adjustment and appoint (or recommend appointment of) a fiduciary as provided in § 13.55 of this chapter, select a method of disbursing payment as provided in § 13.56 of this chapter, or in the case of a married beneficiary, appoint the beneficiary's spouse to receive payments as provided in § 13.57 of this chapter. The Adjudication Officer will authorize disbursement of the benefit in the manner selected by the Veterans Services Officer.

(3) If in the course of fulfilling the responsibilities assigned in paragraph (b)(2) the Veterans Services Officer develops evidence indicating that the beneficiary may be capable of administering the funds payable without limitation, he or she will refer that evidence to the rating agency with a statement as to his or her findings. The rating agency will consider this evidence, together with all other evidence of record, to determine whether its prior determination of incompetency should remain in effect. Reexamination may be requested as provided in § 3.327(a) if necessary to properly evaluate the beneficiary's mental capacity to contract or manage his or her own affairs.

* * * * *

[FR Doc. 95–10936 Filed 5–3–95; 8:45 am]

BILLING CODE 8320–01–P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM95–4]

Rules of Practice and Procedure

AGENCY: Postal Rate Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is soliciting comments on a Postal Service petition, including proposed rules for initiation of a rulemaking on procedural changes intended to foster expedition, flexibility and innovation in seven aspects of ratemaking and classification. Proposed rules accompanied the petition. The changes are based in part on recommendations in a joint Postal Service/Postal Rate Commission task force report on improvements in the ratemaking process. The proposed rules generally provide for a lesser amount of initial supporting documentation in Postal Service requests for certain rate and classification changes and a specific, limited period for public comments and Commission review of those requests.

DATES: Comments must be submitted on or before July 5, 1995.

ADDRESSES: Comments and correspondence should be sent to Margaret Crenshaw, Secretary of the Commission, 1333 H Street NW, Suite 300, Washington, DC 20068–0001 (telephone: 202/789–6840).

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, Legal Advisor, Postal Rate Commission, 1333 H Street NW, Suite 300, Washington, DC 20268–0001 (telephone: 202/789–6820).

SUPPLEMENTARY INFORMATION: On April 13, 1995, the Postal Service filed with the Commission a petition for initiation of a rulemaking involving changes in, or additions to, procedural mechanisms for handling certain rate and classification matters. In support thereof, the petition asserts a keen interest on the part of postal management and the Governors in improving approaches to general rate changes. The petition also acknowledges the influence of certain recommendations of the Joint Task Force on Postal Ratemaking (June 1, 1992). The petition, the Joint Task Force's report, and other reports referred to in the Service's petition are on file in the Commission's Docket Room. A summary of the proposed changes, a number of additional related topics for consideration. The text of the rule changes proposed by the Postal Service may be obtained from the Secretary of the Commission upon request.

"Limited Scope" Rate Cases

Citing the Joint Task Force's acknowledgement that certain circumstances might call for limited adjustments to rates outside the context of an omnibus rate proceeding, the Postal Service proposes rules that would allow expedited, limited rate changes between rate cases. Petition at 7 (internal citation omitted). The Service says the rules are intended to permit extensive reliance on the most recent

general rate case, and to keep the inquiry narrowly focused on areas related to the limited nature of the change and the effects on revenues and costs. The rules would require the Commission to issue a recommended decision on requests that are not challenged within 60 days. If the request is challenged, a 90-day period for issuance of a Commission decision would apply. Ibid.

Rate Bands

The Service indicates that its proposal for rate bands for competitive services adopts the Joint Task Force's framework of establishing a range within a general rate proceeding, but differs in several other respects. Id. at 8. For example, instead of a written notice procedure, the proposed rules create a mechanism in general rate cases for establishing a band of rates for competitive services based on a range of markups over attributable costs, and an aggregate institutional cost contribution for each product or service classified as competitive. The band and contribution thereby established would serve as the criteria for recommending rates in each general rate case and for changing rates within the bands between cases. Provisions in the Domestic Mail Classification Schedule (DMCS) would identify certain categories of mail as eligible to benefit from rate band flexibility. Between general rate cases, the Service would submit to the Commission a request for a recommended decision on whether to adjust prices within the pre-established bands. The Commission would be required to issue a decision within 30 days if the request is not challenged, and within 60 days if challenged. The Service says it believes that a classification proceeding under existing rules would be adequate to create the necessary DMCS provision to implement the rate band mechanism.

Expedited Minor Classification Cases

The Service also proposes rules that would allow expedited treatment for certain narrowly focused, limited classification changes, such as those affecting mailing requirements, eligibility standards, and categories of service with low aggregate costs and revenues. Initial filing requirements would be less demanding than those applicable to more complex classification cases, and findings from the last omnibus rate case would not be relitigated. The Commission would be required to issue a recommended decision within 60 days if the Service's request is not challenged, and within 90 days if it is challenged.

Market Tests

The Postal Service asserts that its rules for market tests attempt to track elements of a procedure outlined in the Joint Task Force Report. Id. at 11. The proposed rules would allow consideration of proposals to obtain data from actual market testing of mail classification or rate changes. There would be limits on the scope, scale and duration of the test. Initially, only information available to support the experimental proposal and a description of the test and the plan for collecting the necessary additional data would need to be filed. Information obtained from the test could be considered in a later portion of the proceeding to determine whether the change should be made permanent. The scope of inquiry in the initial phase would be limited to issues of general legality, the design and necessity of the test, and the nature of any adverse effect on competitors or discrimination among mailers. The Commission would either recommend or not recommend the service as proposed, without modification. However, if the Commission made suggestions for modifications, the Service could incorporate those suggestions in a new request. The petition notes that the rules would embody a presumption in favor of innovation.

Provisional Services

The Service also proposes a mechanism for implementing the Joint Task Force's concept of new services with provisional status. The proposed rules would allow fast-track consideration of proposals to introduce a new service. The type of service eligible for this treatment, in line with the Joint Task Force's recommendation, would be one which supplements existing rates and classifications without changing any of them. The service would be approved initially for only a limited period, and subsequent review would be expected. This provisional status would justify an expedited, more limited degree of review. Although the service could affect future overall revenue requirements, it would not be tied to the rates for any existing class or category. The scope of inquiry would be limited to whether the proposal would have a material adverse effect on revenue or costs, or pose unnecessary or unreasonable harm for competitors. Commission approval or disapproval would be required within 90 days. As with the market test rules, the Postal Service could incorporate Commission modifications in a new request. In the absence of a showing of adverse effect or unreasonable harm to competitors, the rules contemplate that the Commission would recommend the provisional service.

Multi-Year Test Periods for New Services

The Service proposes rules authorizing the use of multi-year test periods for potential new services that are not expected to generate sufficient volumes and revenues to cover costs in their first year or two of existence, but which are expected to generate an appropriate contribution to institutional costs when they mature. Currently, the Commission recommends rates based on a comparison of costs and revenues over a one-year period soon after the implementation of a new service. The Service claims that the proposed rules would encourage innovation by examining costs and revenues for a new service over a multi-year period.

Negotiated Service Agreements

The petition notes that the proposed rules contemplate authorization for the Service to negotiate agreements with mailers. The Service would agree to provide mail services not currently included within the DMCS, at rates attractive to the mailer and beneficial to the Postal Service. The petition indicates that implementation of this proposal would involve two steps. One is introducing DMCS language enabling the Service to provide service in the context of a Negotiated Service Agreement (NSA). The other is establishing procedural rules to govern the actions undertaken by the Commission to allow such agreements to be placed into effect. Under the proposed DMCS provisions, only mailers who meet specified standards and who are willing to submit mailings within closely defined parameters would be eligible to enter NSAs. The negotiated rate must contribute a reasonable amount towards the recovery of institutional costs, with a minimum markup level identified as presumptively reasonable. Similarly situated mailers would be able to apply to receive the same service at the same rate. In addition to providing the text of the NSA, the Service would be required to demonstrate that the NSA would be beneficial to the Postal Service. The Commission would either approve or reject the tentative NSA as submitted. Furthermore, when the effective markup equals or exceeds the percentage amount previously specified as reasonable in the DMCS, the Commission could avoid further debate as to whether that markup is

appropriate. The Commission would be required to issue a recommendation within 60 days.

Request for Comments

The Commission invites interested parties to submit their views on the subject matters addressed in the Service's petition, and on its substantive and procedural proposals. In particular, the Commission invites comments on the following topics.

1. The Service's petition acknowledges the influence of the Joint Task Force's recommendations on the development of its proposals. Does that report offer other recommendations not included in the Service's petition that warrant consideration?

2. The petition states, without further elaboration, that existing Commission and judicial precedent create impediments to accommodating many promising ideas for carrying out the Joint Task Force's recommendations. Id. at 4. The Postal Service is requested to specify to what judicial precedents the petition refers, and how the proposed rules accommodate these precedents.

3. Any commenter which considers one or more of these proposals to violate current law as judicially interpreted is requested to explain why that proposal might be considered unlawful. Comments addressing whether the proposals are consistent with the Administrative Procedure Act, 5 U.S.C. 556, 557, are requested to specify adequate time periods for various procedural steps.

4. The petition indicates that the proposed rules for market tests and provisional services include certain presumptions that would apply in evaluating Postal Service proposals. Id. at 11 and 13. Is inclusion of these presumptions an appropriate approach to Commission review of Service requests? Should these presumptions be specified in the rules?

5. The petition indicates that the Service and Governors believe that improvements in the ratemaking process may require direct legislative change or an explicit clarification that flexibilities already exist in the current law. Moreover, the petition states that certain fundamental changes in the law seem advisable in any event, particularly in basic structural matters and in substantive areas that have been the most controversial in the past. Petition at 3–4. The Postal Service is requested to explain what legislative changes it believes would be needed to foster further expedition and flexibility if the Commission were to adopt the proposed rules.

6. The petition acknowledges the Commission's workload, but nonetheless urges that a rulemaking docket be opened to consider the proposed changes. Petition at 5–6. Should the Commission consider all seven of these proposed changes at this time, or should part or all of the rulemaking be postponed? If some, but not all, of the proposals are considered at this time, which ones should be reviewed first, and which should be deferred? Why?

Issued by the Commission on April 24, 1995.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 95–10944 Filed 5–3–95; 8:45 am]

BILLING CODE 7710–FW–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201–23 and 201–24

Amendment of FIRMR Provisions Relating to GSA's Role in Screening Excess and Exchange/Sale Federal Information Processing (FIP) Equipment

AGENCY: Information Technology Service, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Federal Information Resources Management Regulation (FIRMR) to allow Federal agencies to screen and transfer excess and exchange/sale FIP equipment.

DATES: Comments are due: July 3, 1995.

ADDRESSES: Comments may be mailed to GSA/KAR, 18th and F Streets NW., Room 3224, Washington, DC 20405, Attn: R. Stewart Randall, or delivered to that address between 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: R. Stewart Randall, GSA, Office of Information Technology (IT) Policy and Leadership, Regulations Analysis Division (KAR), 18th and F Streets NW., Room 3224, Washington, DC 20405, telephone FTS/Commercial (202) 501–4469 (v) or (202) 501–4469 (tdd).

SUPPLEMENTARY INFORMATION: (1) Part 201–23 is being amended to delegate authority and responsibility to agencies regarding the screening and transfer of excess FIP equipment. Currently, the FIRMR requires Federal agencies to request GSA to interagency screen and transfer excess FIP equipment that is not outdated and has an original acquisition cost (OAC) per component of $1 million or more. It is not necessary for GSA to continue to operate this program on a centralized basis. Accordingly, the requirement for GSA to be directly involved in interagency screening and transfer of excess FIP equipment will be removed from the FIRMR.

(2) Explanation of the changes being made in this issuance are shown below:

(a) Section 201–23.000 ''Scope of part'' is revised by removing paragraphs (b), (c), and (d) to more succinctly describe the entire contents of this revised part.

(b) Section 201–23.001 paragraph (a)(2) is revised and paragraph (a)(4) is deleted to remove the references to the GSA Excess FIP Equipment Program. Agencies will no longer be required to submit to GSA information about their excess FIP equipment with the OAC above $1 million for GSA to do interagency screening.

(c) Section 201–23.001 paragraph (b) is deleted. Section 201–23.001 paragraph (c) is redesignated as paragraph (b).

(d) Section 201–23.002 paragraph (c) the sentence ''Agencies may interagency screen and transfer excess FIP equipment without GSA approval'' is added at the end of the paragraph.

(e) Paragraph (b) of section 201–23.003 is redesignated as (c) and a new paragraph (b) is added. In the newly designated section 201–23.003 paragraph (c)(1), the work ''internal'' will be removed because it is redundant in this context. The words ''within the agency'' are added at the end of the paragraph to distinguish these procedures for interagency screening from those GSA will require.

(f) Section 201–23.003(c) is redesignated as paragraph (d) and is completely revised to remove the mandatory reporting requirement for agencies to submit equipment with an OAC of $1 million or more to GSA for interagency screening purposes. The section will now show that agencies must offer to other Federal agencies excess FIP equipment with an OAC of $1 million or more in accordance with guidelines in FIRMR Bulletin C–2.

(g) Section 201–23.003(d) is redesignated as paragraph (e) and is revised to remove words indicating GSA's former role in interagency screening of agencies' excess FIP equipment.

(h) Paragraph (h) is added to § 201–23.003 to show that an agency may request GSA to review another agency's decision to transfer excess FIP equipment.

(i) Section 201–24.202 referencing the GSA Excess FIP Program as a mandatory for consideration program will be removed because changes to part 201–

23 and FIRMR Bulletin C–2 will make the references no longer valid.

(3) GSA has determined that this rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993, because it is not likely to result in any of the impacts noted in Executive Order 12866, affect the rights of specified individuals, or raise issues arising from the policies of the Administration. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Parts 201–23 and 201–24

Archives and records, Computer technology, Federal information processing resources activities, Government procurement, Property management, Records management, and Telecommunications.

Accordingly 41 CFR Ch. 201 is proposed to be amended as follows:

PART 201–23—DISPOSITION

Part 201–23 is revised to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

Sec.

201–23.000 Scope of part.
201–23.001 General.
201–23.002 Policies.
201–23.003 Procedures.

§ 201–23.000 Scope of part.

This part prescribes policies and procedures to be followed by agencies for disposing of Government-owned Federal information processing (FIP) equipment and software that is no longer needed for the purpose for which it was acquired.

§ 201–23.001 General.

(a) Government-owned FIP equipment that is no longer needed for the purpose for which it was acquired is either—

(1) Reassigned within the agency;

(2) Declared excess to the agency's needs and made available for transfer to another agency;

(3) Exchanged or sold as part of a transaction to acquire replacement FIP equipment; or

(4) Declared surplus and made available for donation.

(b) FIP software that is no longer needed for the purpose for which it was acquired is either—

(1) Reassigned within the agency consistent with the limitations of any applicable license; or

(2) Otherwise disposed of consistent with the limitations of any applicable license.

§ 201–23.002 Policies.

Agencies shall—

(a) Use FIP equipment of FIP software that is available for reassignment within the agency or by transfer from another agency when such use is the most advantageous alternative to satisfy the agency's requirements.

(b) Make available for reassignment within the agency FIP equipment that is not outdated and that is no longer needed for the purpose for which it was acquired.

(c) Make available for interagency screening and transfer to another agency, excess FIP equipment that is not outdated and has an original acquisition cost (OAC) per component of $1 million or more. Interagency transfer of FIP equipment that is not outdated with an OAC per component of less than $1 million, is permitted if the holding agency learns of a potential user outside of the screening process. Agencies may interagency screen and transfer excess FIP equipment without GSA approval.

(d) Make available for surplus donation or subsequent sale, excess FIP equipment not exchanged, sold, reassigned or transferred.

(e) Consistent with the limitations of any applicable license—

(1) Make available for reassignment within the agency FIP software that is no longer needed for the purpose for which it was acquired;

(2) Make available for interagency transfer, excess FIP software not exchanged or sold, if the holding agency learns of a potential user outside of the screening process (GSA does not require interagency screening of FIP software);

(3) For excess FIP software not reassigned, transferred, exchanged, or sold, either:

(i) Return it to the licensor, or

(ii) Destroy it after a duly authorized agency official determines in writing that destruction is the most cost-effective disposal approach.

§ 201–23.003 Procedures.

(a) Each agency head shall designate an agency point of contact of managing the disposition of FIP equipment and software. Each agency shall submit the name, address, and phone number of this individual to the General Services Administration, Acquisition Reviews Division (KAA), 18th & F Streets, NW., Washington, DC 20405.

(b) GSA will convene meetings with agency points of contacts periodically to discuss emerging issues relating to the disposition of excess FIP resources.

(c) Agencies shall—

(1) Establish procedures for the reassignment of FIP equipment and software within the agency; and

(2) Obtain approval from the agency DSO before reassigning outdated FIP equipment.

(d) Agencies shall offer excess FIP equipment that is not outdated and has an OAC per component of $1 million or more to other Federal agencies in accordance with FIRMR Bulletin C–2.

(e) Agencies may conduct exchange/sale transactions of FIP equipment and software not transferred to another agency without GSA approval. (Exchange/sale transactions for FIP equipment may be initiated in parallel with interagency screening, but screening of exchange/sale transactions with an OAC per component of $1 million or more shall be completed prior to concluding an exchange/sale transaction.) When an agency determines that FIP equipment will be replaced by exchanging or selling it, the agency shall follow the contracting policies and procedures in part 201–39 and the Federal Acquisition Regulation (FAR) and the policies and procedures on exchange/sale contained in 41 CFR part 101–46. FIP software transactions must be consistent with the limitations of any applicable license.

(f) Agencies shall make available for surplus donation or subsequent sale, in accordance with 41 CFR parts 101–44 and 101–45, excess FIP equipment not exchanged, sold, reassigned, or transferred.

(g) Agencies shall apply the policies and procedures of this part 201–23 to FIP equipment used by grantees and contractors when FIP equipment is—

(1) Acquired by the contractor or grantee under a contract or grant and the terms vest title in the Government or the Government is obligated or has the option to take over title;

(2) Furnished to the grantee or contractor by the Government (Transfer of excess FIP equipment to agency project grantees shall be conducted in accordance with 41 CFR 101–43.314.); or

(3) Operated by the grantee or contractor as part of a Government-owned or Government-controlled facility.

(h) Agencies may request GSA to review another agency's decision to transfer excess FIP equipment. Requests shall be sent to the General Services Administration, Acquisition Reviews Division, (KAA), 18th & F Streets, NW., Washington, DC 20405.

PART 201–24—GSA SERVICES AND ASSISTANCE

2. The authority citation for part 201–24 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

§ 201–24.202 [Reserved]

3. Section 201–24.202 is removed and reserved.

Dated: March 22, 1995.

Francis A. McDonough,

Acting Deputy Commissioner for Information Technology (IT) Policy and Leadership.

[FR Doc. 95–10999 Filed 5–3–95; 8:45 am]

BILLING CODE 6820–25–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–53, RM–8613]

Radio Broadcasting Services; Eugene, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Conway Broadcasting seeking the allotment of Channel 265A to Eugene, OR, as the community's fifth local FM service. Channel 265A can be allotted to Eugene with a site restriction of 7.1 kilometers (4.4 miles) southeast, at coordinates 44–00–52 North Latitude; 123–00–50 West Longitude, to avoid a short-spacing to the pending application (BPH–940708IZ) of Station KZUS-FM, Channel 264C2, Toledo, OR.

DATES: Comments must be filed on or before June 22, 1995, and reply comments on or before July 7, 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: Lars Conway, Conway Broadcasting, 4415 Fremont Avenue, South, Minneapolis, MN 55409 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–53, adopted April 19, 1995, and released May 1, 1995. 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 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. 95–11013 Filed 5–3–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–49, RM–8558]

Radio Broadcasting Services; Llano and Marble Falls, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Maxagrid Broadcasting Corporation, licensee of Station KLKM(FM), Channel 284C3, Llano, Texas, seeking the substitution of Channel 285C3 for Channel 284C3, the reallotment of Channel 285C3 from Llano to Marble Falls, Texas, and the modification of Station's KLKM(FM)'s license to specify Marble Falls as the station's community of license. Channel 285C3 can be allotted to Marble Falls in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.1 kilometers (10.0 miles) southeast to accommodate Maxagrid's desired site. The coordinates for Channel 285C3 at Marble Falls are 30–26–45 and 98–11–45. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 285C3 at Marble Falls or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. In addition, since Marble Falls is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

DATES: Comments must be filed on or before June 22, 1995, and reply comments on or before July 7, 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: John Joseph McVeigh, Esq., Multinational Legal Services, P.C., 11 Dupont Circle, Suite 700, Washington, D.C. 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2173.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–49, adopted April 19, 1995, and released May 1, 1995. 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 contractor, ITS, 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 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. 95–11014 Filed 5–3–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–52, RM–8604]

Radio Broadcasting Services; Roann, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Roann Broadcasting seeking the allotment of FM Channel 270A to Roann, Indiana, as that community's first local aural transmission service. Coordinates used for Channel 270A at Roann are 40–55–18 North Latitude and 85–55–30 West Longitude. Roann is located within 320 kilometers (199 miles) of the Canadian border, and therefore, the Commission must obtain concurrence of that Government in this proposal.

DATES: Comments must be filed on or before June 22, 1995, and reply comments on or before July 7, 1995.

ADDRESSES: Secretary, 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: Matthew H. McCormick, Esq., Reddy, Begley, Martin & McCormick, 1001 - 22nd Street, NW, Suite 350, Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–52, adopted April 19, 1995, and released May 1, 1995. 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, 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 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. 95–11015 Filed 5–3–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–51, RM–8591]

Radio Broadcasting Services; Shingletown, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mark C. Allen, seeking the allotment of Channel 232A to Shingletown, California, as that community's second local FM service. Coordinates used for this proposal are North Latitude 40–29–33 and West Longitude 121–53–17.

DATES: Comments must be filed on or before June 22, 1995, and reply comments on or before July 7, 1995.

ADDRESSES: Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mark C. Allen, 3745 McHale Way, Redding, CA 96001.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–51, adopted April 19, 1995, and released May 1, 1995. 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, 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 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. 95–11016 Filed 5–3–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–50, RM–8581]

Radio Broadcasting Services; Willcox, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of William S. Konopnicki, licensee of Station KWCX-FM, Channel 252A, Willcox, Arizona, seeking the substitution of Channel 285C3 for Channel 252A and modification of his license accordingly to specify operation on the higher powered channel. Coordinates for this proposal are 32–14–48 and 109–39–52. Willcox is located within 320 kilometers (199 miles) of the United States-Mexico border, and therefore, the Commission must obtain concurrence of the Mexican government to this proposal.

Additionally, petitioner's modification proposal is consistent with the provisions of Section 1.420(g)(2) of the Commission's Rules as he demonstrated that an additional equivalent channel can be allotted to Willcox in the event other parties express an interest in the proposal. Therefore, we will not accept competing expressions of interest in the use of Channel 285C3 at Willcox.

DATES: Comments must be filed on or before June 22, 1995, and reply comments on or before July 7, 1995.

ADDRESSES: Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC,

interested parties should serve the petitioner's consultant, as follows: Dennis Silver, P.E., 3404 West 2640 South, West Valley City, Utah 84119–1625.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–50, adopted April 17, 1995, and released May 1, 1995. 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, 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 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. 95–11017 Filed 5–3–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 90

[PR Docket No. 89–553, GN Docket No. 93–252, PP Docket No. 93–253, FCC 95–159]

Implementation of Section 309(j) of the Communications Act—900 MHz SMR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission adopted a *Second Further Notice of Proposed Rule Making* seeking comment on proposed licensing and auction rules to complete the licensing of the 900 MHz Specialized Mobile Radio (SMR) service. This Order implements the Commission's decision in the *Third Report & Order* in GN Docket No. 93–252, 59 FR 59,945 (Nov. 21, 1994) (*CMRS Third Report & Order*), to license the 900 MHz band on a Major Trading Area (MTA) basis, and to use competitive bidding to select from among mutually exclusive applicants. This Second Further Notice requests comment on proposed new licensing rules and auction procedures for the service, including special provisions for small businesses, minority-owned and women-owned entities, and rural telephone companies.

DATES: Comments must be filed on or before May 24, 1995, and reply comments must be filed on or before June 1, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Amy Zoslov, (202) 418–0620, Wireless Telecommunications Bureau, Commercial Wireless Division.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Second Further Notice of Proposed Rule Making,* in PR Docket No. 89–553, FCC 95–159, adopted April 14, 1995, and released April 17, 1995. The complete text of this *Second Further Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 239, 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Synopsis of the Second Further Notice of Proposed Rule Making

I. Introduction

1. When the Commission established the 900 MHz SMR service in 1986, it elected to use a two-phase licensing process. In Phase I, licenses were assigned in 46 ''Designated Filing Areas'' (DFAs) comprised of the top 50 markets. Phase II licensing, for facilities outside the DFAs, was frozen after 1986, when the Commission opened its filing window for the DFAs. In 1989, the Commission adopted a *Notice of Proposed Rule Making* in PR Docket 89–553, 55 FR 00744, proposing to begin Phase II licensing of SMR facilities nationwide. In 1993, the Commission adopted a *First Report & Order & Further Notice of Proposed Rule Making* in PR Docket 89–553, 58 FR 12176 (March 3, 1993) (*Phase II First R&O & Further Notice),* modifying its Phase II proposal and seeking comment on whether to license the 900 MHz SMR band to a combination of nationwide, regional and local systems. 8 FCC Rcd 1469 (1993). Shortly thereafter, Congress amended the Communications Act to reclassify most SMR licensees as Commercial Mobile Radio Service (CMRS) providers and establish the authority to use competitive bidding to select from among mutually exclusive applicants for certain services. The Commission deferred further consideration of Phase II and incorporated the 900 MHz SMR docket into its CMRS proceeding.

2. In the *CMRS Third Report & Order,* FR 59,945 (Nov. 21, 1994), the Commission further revised its Phase II proposals and established the broad outlines for the completion of licensing in the 900 MHz SMR band. The Commission left the specific auction rules for the Phase II proceeding.

3. The Commission seeks comment on the following proposals: adoption of a single simultaneous multiple round auction; establishment of upfront payment requirements; adoption of the Milgrom-Wilson activity rule; adoption of application procedures; adoption of procedures governing timing and duration of auction rounds, stopping rules and bid increments; adoption of bid withdrawal and default rules; adoption of procedures governing down payment and full payment for winning bidders; adoption of anti-collusion rules for bidders; and adoption of transfer disclosure and performance requirements for winning bidders.

4. With respect to rules for designated entities (*i.e.* small businesses, women-owned and minority-owned entities, and rural telephone companies), the Commission seeks comment on the following proposals: insulating certain spectrum blocks from large bidders; providing small businesses bidding credits, reduced down payment requirements, and installment payment options; whether reduced upfront payments are necessary; adoption of partitioning rule for rural telephone companies; adoption of eligibility standards for small business and rural telephone companies; and for small businesses, adoption of restrictions on transfer or assignment of their licenses.

II. Discussion

A. Competitive Bidding

5. In the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), the Commission determined that it would use competitive bidding to select from among mutually exclusive applicants in

the 900 MHz SMR service. Accordingly, under the Commission's auction authority, if mutually exclusive applications for an MTA 10-channel block are accepted for filing, the Commission will award that license through competitive bidding. The Commission requests comment on specific bidding procedures, as set forth below.

6. *Competitive Bidding Design.* In the *Second Report & Order,* PP Docket No. 93–253, 59 FR 22980 (May 4, 1994) (Auctions Second Report and Order), the Commission stated that (1) licenses with strong value interdependencies should be auctioned simultaneously; and (2) multiple round auctions generally will yield more efficient allocations of licenses and higher revenues by providing bidders with information regarding other bidders' valuations of licenses, especially where there is substantial uncertainty as to value. Thus, where the licenses to be auctioned are interdependent and their value is expected to be high, simultaneous multiple round auctions would best achieve the Commission's goals for competitive bidding. Based on these factors, the Commission tentatively concluded that simultaneous multiple round auctions are appropriate for the 900 MHz SMR service. The expected value of 900 MHz SMR licenses is high, the licenses are interdependent, and licensees will likely aggregate across spectrum blocks and geographic regions. Because, however, the presence of incumbents on certain channels could affect the relative desirability and value of otherwise identical MTA licenses, the Commission proposes to delegate authority to the Wireless Telecommunications Bureau to revisit the issue of whether another auction design would be more appropriate. The Commission seeks comments on this tentative conclusion and proposal.

7. *License Grouping.* The Commission determined in the *Auctions Second Report & Order,* 59 FR 22980 (May 4, 1994), that in a multiple round auction, highly interdependent licenses should be grouped together and put up for bid at the same time because such grouping provides bidders with the most information about the prices of complementary and substitutable licenses during the course of an auction. The Commission also determined that the greater the degree of interdependence among the licenses, the greater the benefit of auctioning a group of licenses together in a simultaneous multiple round auction. The Commission tentatively concludes that all 51 MTAs in the 900 MHz band should be auctioned simultaneously. While this may entail more administrative costs than breaking the licenses into groups, the added cost will be outweighed by the informational and bidding flexibility advantages afforded by a single auction. Moreover, the 1020 MTA licenses to be auctioned are less than half the number of broadband PCS licenses to be auctioned in Blocks A through F, and all licenses will be for the same amount of spectrum and use a single service area definition. The Commission also proposes to reserve the discretion to inform applicants by Public Notice if the Commission determines to hold more than one auction, on the basis that a single auction proves administratively unworkable.

B. Bidding Issues

8. *Bid Increments.* The bid increment is the amount or percentage by which a bid must be raised above the previous round's high bid in order to be accepted as valid in the current bidding round. The Commission proposes to start the 900 MHz auction with relatively large increments, and adjust the increments as bidding activity indicates. In Stage I of the auction, the minimum bid increment would be five percent of the high bid in the previous round or $.02 per MHz-pop, whichever is greater. In Stage II, the Commission would reduce the minimum bid increment to the greater of five percent of $.01 per MHz-pop, and in Stage III, the greater of five percent of $.01 per MHz-pop. The Commission also proposes to retain the discretion to vary the minimum bid increments for individual license or groups of licenses at any time before or during the course of the auction, based on the number of bidders, bidding activity, and the aggregate high bid amounts. Finally, the Commission proposes to retain the discretion to keep an auction open if there is a round in which no bids are submitted.

9. *Stopping Rules.* In the *CMRS Third Report & Order,* 59 Fed. Reg. 59,945 (Nov. 21, 1994), the Commission noted that in multiple round auctions, a stopping rule must be established for determining when the auction is over. The Commission proposes to adopt a simultaneous stopping rule for 900 MHz SMR. Under this approach, bidding remains open on all licenses until there is no new acceptable bid for any license. This approach also provides full flexibility to bid for any license as more information becomes available during the course of the auction. MTA licenses are expected to have relatively high values because of the substantial amount of clear spectrum that remains available, the high valuation of SMR spectrum in secondary market transactions, the substitutability between licenses within the same MTA and the ability to pursue back-up strategies. Likewise, the use of MTAs, rather than BTAs or more numerous service areas, should reduce complexity of a simultaneous stopping rule. Because the Commission proposes to impose an activity rule, this approach will not lead to excessively long auctions while affording bidders flexibility to pursue back-up strategies.

10. The Commission also proposes to retain the discretion to announce at any time during the auction that the auction will end after a specified number of additional rounds. Bids would only be accepted on licenses where the high bid has increased in the last three rounds. This would deter bidders from continuing to bid on a few low value licenses solely to delay the closing of the auction. It would also enable the Commission to end the auction when it determines that the benefits of terminating the auction and issuing licenses exceed likely benefits of continuing to allow bidding. The Commission proposes that this mechanism be used only in case of extremely dilatory bidding and that final bidding procedures would be announced by public notice. The Commission also proposes to retain the discretion to conduct market by market closings, if circumstances so warrant, to be announced during the auction. Finally, the Commission proposes to retain discretion to keep an auction open in a round in which no new acceptable bids are submitted if the Commission receives a ''proactive'' waiver of the activity rules, and to retain discretion to keep an auction open even if no proactive waivers are filed.

11. *Duration of Bidding Rounds.* The Commission reserves the discretion to vary the duration of bidding rounds or the interval at which bids are accepted (*e.g.* run more than one round per day) in order to move the auction toward closure more quickly. The Commission will announce any changes to the duration of and intervals between bidding rounds either by public notice prior to the auction or by announcement during the auction.

12. *Activity Rules.* The Milgrom-Wilson activity rule encourages bidders to participate in early rounds by limiting their maximum participation to some multiple of their minimum participation level. The Commission tentatively concludes that the Milgrom-Wilson activity rule should be used in conjunction with the simultaneous stopping rule to award 900 MHz SMR

licenses. Under this approach, the minimum activity level increases during the course of the auction. Absent waivers, a bidder's eligibility in the current round is determined by the bidder's activity level and eligibility in the previous round; in the first round, however, eligibility is determined by the bidder's upfront payment and is equal to the upfront payment divided by $.02 per MHz-pop. Bidders are required to declare their maximum eligibility in terms of MHz-pops, and made an upfront payment equal to $0.02 per MHz-pop. In each round, bidders are limited to bidding on licenses encompassing no more than the number of MHz-pops covered by their upfront payment, and licenses on which a bidder is the high bidder from the previous round count toward this bidding limit. Bidders have flexibility to shift their bids among any license for which they have applied so long as, within each round, the total MHz-pops encompassed by those licenses does not exceed the total number of MHz-pops on which they are eligible to bid. This approach would best achieve the Commission's goals of affording bidders flexibility to pursue backup strategies, while at the same time ensuring that simultaneous auctions are concluded within a reasonable period of time. The Commission seeks comment on these issues.

13. During Stage I, the Commission tentatively concludes that a bidder must be active on licenses encompassing one-half of the MHz-pops for which it is eligible. In Stage II and Stage III, the Commission tentatively concludes that the bidder must be active on 75 and 95 percent, respectively, of the MHz-pops for which it is eligible. The penalty for falling below the minimum activity level at any stage would be a reduction in maximum eligibility to bid in future rounds. The transition from one stage of the auction to the next would be determined by the aggregate level of bidding activity, subject to the Commission's discretion. Once an auction proceeds from one stage to the next, it could not revert to any previous stage. Moreover, the Commission proposes to reserve the discretion to increase or decrease these activity levels as well as to vary the timing of stages and activity levels for each stage through public notices issued after applications are filed and before the auction begins, as circumstances warrant. The Commission seeks comment on these proposals.

14. In the *Fourth Memorandum Opinion & Order*, PP Docket No. 93–253, 59 FR 53364 (October 24, 1994), the Commission clarified that it retained the discretion to modify the method and timing of submitting waivers and to allow for both ''proactive'' and ''automatic'' waivers. Proactive waivers are submitted by the bidder, while automatic waivers would be submitted automatically for a bidder whenever its eligibility would be reduced because of insufficient bidding activity and a waiver is available unless the bidder specifically chooses not to have the automatic waiver apply. The Commission proposes to use these waiver procedures with respect to the 900 SMR auctions.

15. Specifically, the Commission proposes to implement a waiver procedure permitting each bidder to request and automatically receive a certain number of waivers of the activity rule during the auction. The Commission would announce by Public Notice how many waivers bidders will receive. A waiver would permit a bidder to maintain its eligibility at the same level as in the round for which the waiver is submitted; it could not, however, be used to correct an error in the amount bid. Under this proposal, a bidder may request a waiver either in the round in which its bidding falls below the minimum required level or prior to submitting a bid in the next round. If an activity rule waiver is proactively requested in a round in which no other bidding activity occurs, the auction would remain open. The Commission seeks comment on these proposals. Finally, the Commission retains discretion to use an alternative activity rule for 900 MHz SMR if it determines that the Milgrom-Wilson rule is too complicated or costly to administer. Any such change would be announced by public notice before commencement of the auction.

16. *Rules Prohibiting Collusion.* Section 1.2105(c) of the Commission's Rules, 47 CFR 1.2105(c) prohibits collusive conduct in the context of competitive bidding. This rule prohibits bidders from communicating with one another after short-form applications have been filed regarding the substance of their bids or bidding strategies, and also prohibits bidders from entering into consortium arrangements or joint bidding agreements after the deadline for short-form applications has passed. 47 C.F.R. 1.2105(c)(1)–(2). The Commission proposes to apply Section 1.2105(c) to 900 MHz SMR auctions. Bidders who have not filed form 175 applications for any of the same MTA licenses would be permitted enter into such discussions, consortia, or arrangements, or add equity partners, during the course of an auction. Also, communications among bidders concerning matters unrelated to the auctions would be permitted. The Commission seeks comment on this proposal.

17. Under the collusion rules, bidders would also identify on their Form 175 applications parties with whom they have entered into any agreements relating to the competitive bidding process, and certify that they will not enter into any such agreements with any parties other than those identified. 47 CFR 1.2105(a)(2). Furthermore, winning bidders in the 900 MHz SMR auctions would attach as an exhibit to the Form 600 long-form application a detailed explanation of the terms and conditions and parties involved in any such agreement entered into prior to the close of bidding. All such arrangements would have been entered into prior to filing of short-form applications to comply with the Commission's rules. 47 CFR 1.2107. Allegations of specific instances of collusion in violation of these rules would be investigated by the Commission or referred to the Department of Justice. The Commission also proposes that bidders found to have violated the Commission's rules or the antitrust laws may be subject to forfeiture of their down payment or their full bid amount, revocation of their licenses, and prohibition from participation in future auctions. The Commission seeks comment on these proposals.

C. Procedural, Payment and Penalty Issues

18. *Pre-Auction Application Procedures.* The Commission proposes to follow generally the processing and procedural rules established in 47 CFR Part 1, Subpart Q with certain modifications designed to address the particular characteristics of the 900 MHz SMR service. Unlike incumbent 900 MHz SMR licensees that are essentially confined to the smaller DFA region, MTA licensees will gain use of a large geographic area and the freedom to locate base stations anywhere within that larger geographic region. Thus, the Commission proposes to treat MTA applicants as initial applicants for public notice, application processing, and auction purposes, regardless of whether they are already incumbent operators.

19. The 1993 Budget Act expressly provides the Commission authority to require that bidders' applications contain all information and documentation sufficient to demonstrate that the application is not in violation of Commission rules, and to dismiss applications not meeting those requirements prior to the competitive

bidding. 47 U.S.C. 309(j)(5). *See also* H. R. Rep. No. 111, 103d Cong., 1st Sess. 28 (1993). In furtherance of this policy, the Commission decided to require only a short-form application prior to competitive bidding, and determined that only winning bidders should be required to submit a long-form license application after the auction. 47 CFR 1.2104, 1.207. Because this procedure fulfills the statutory requirements and adequately protects the public interest here, the Commission proposes to extend application of these rules to the competitive bidding process for 900 MHz SMR.

20. Under this proposal, the Wireless Telecommunications Bureau would release an initial Public Notice announcing the auction. The Public Notice would specify the following: licenses to be auctioned; time and place of the auction method of competitive bidding to be used; applicable bid submission procedures; stopping rules; activity rules; the deadline by which short-form applications must be filed; and the amounts and deadlines for submitting the unfront payment. Applications submitted before the release of the Public Notice would be returned as premature. Likewise, applications submitted after the deadline specified by Public Notice would be dismissed, with prejudice, as untimely.

21. All bidders would be required to submit short-form applications on FCC Form 175 (and FCC Form 175–S, if applicable), by the date specified in the initial Public Notice. *See* CFR 1.2105(a)(2). Applications could be filed manually or electronically. Each applicant would specify on its applications certain information, including its status as a designated entity (if applicable), its classification (*i.e.*, individual, corporation, partnership, trust, or other), the markets and frequency blocks for which it is applying, and the names of persons authorized to place or withdraw a bid on its behalf. If there is no mutual exclusivity for a particular license, and no petitions to deny are filed, the application would be grantable after 30 days. The Commission seeks comment on the proposals discussed above.

22. *Amendments and Modifications.* To encourage maximum bidder participation, the Commission proposes to provide 900 MHz SMR applicants with an opportunity to correct minor defects in their short form applications prior to the auction. The Commission also proposes to waive the ex parte rules as they apply to submission of amended short-form applications to maximize applicants' opportunities to seek Commission staff advice on making such amendments. Also, applicants would be permitted to modify their applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided that (1) such changes do not result in a change in control of the applicant, and (2) parties forming consortia or entering into ownership agreements have not applied for licenses in any of the same geographic licenses. Applicants would not, however, be permitted to make major modifications to their applications, including changes in markets, changes in control of the applicant, or additions of the other bidders into the bidding consortia, until after the auction. Applications that are not signed would be dismissed as unacceptable. The Commission seeks comment on these proposals.

23. Applications with defects, minor or otherwise, would be listed in a public notice. After reviewing corrected applications, the Commission would release a second public notice announcing applicants whose applications have been accepted or filing. This second public notice would announce the date by which applicants must submit an upfront payment to the Commission, generally no later than 14 days before the scheduled auction. The Commission would release a third public notice announcing the names of all applicants that have been determined as qualified to bid. An applicant who fails to submit a sufficient upfront payment to qualified it to bid on any license being auctioned would not be identified on this Public Notice as a qualified bidder. The Commission seeks comment on these proposals.

24. *Upfront Payments.* The Commission tentatively concludes that applicants that have been determined as qualified to bid should be required to submit a payment of $0.02 per MHz-pop, based on the number of 10-channel blocks in each MTA identified by an applicant on its Form 175. This requirement would help ensure that only serious and qualified bidders participate and that any bid withdrawal or default penalties are paid. *See Auctions Second Report & Order* at ¶ 171. This formula would also afford bidders the flexibility to change their strategy during an auction and bid on a larger number of smaller licenses or a smaller number of larger licenses, so long as the total MHz-pops combination does not exceed that amount covered by the upfront payment. Population information for each license would be announced in the initial Public Notice released prior to the auction. The Commission seeks comment on these proposals.

25. *Down payment and Full Payment.* The Commission tentatively concludes that winning bidders in 900 MHz SMR auctions should be required to supplement their upfront payments with a down payment sufficient to bring their total deposits up to 20 percent of their winning bid(s). Under this proposal, if the upfront payment already tendered by a winning bidder, after deducting any bid withdrawal and default penalties due, amounts to 20 percent or more of its winning bids, no additional deposit would be required. If the upfront payment amount on deposit is greater than 20 percent of the winning bid amount after deducting any bid withdrawal and default penalties due, the additional monies would be refunded. If a bidder has withdrawn a bid or defaulted but the amount of the penalty cannot yet be determined, the bidder would be required to make a deposit of 20 percent of the amount bid on such licenses. When it becomes possible to calculate and assess the penalty, any excess deposit would be refunded. Upfront payments would be applied to such deposits and to bid withdrawal and default penalties due before being applied toward the bidder's down payment on licenses the bidder has won and seeks to acquire. The Commission seeks comment on these proposals.

26. The Commission proposes to require winning bidders to submit the required down payment by cashier's check or wire transfer to its lock-box bank by a date to be specified by Public Notice, generally within five business days following the close of bidding. The balance of their winning bids would be made within five business days following public notice that the Commission is about to award the license, and grant of the license would be conditioned on this payment. An auction winner that is eligible to make payments through an installment plan, however, would be required to submit a deposit up to five percent of its winning bid, and would submit an additional five percent of its winning bid after the license granted. This would ensure that auction winners have the necessary financial capabilities to complete payment for the license and pay for the costs of constructing a system, without hindering growth or diminishing access to the auctions. The Commission seeks comment on this proposal.

27. *Bid Withdrawal, Default, and Disqualification.* The Commission proposes that bidders who withdraw a high bid, are found unqualified to hold licenses, or default on payment of a

balance due, would be assessed a substantial penalty. Any bidder that withdraws a high bid during an auction before the Commission declares bidding closed would be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission, if this subsequent winning bid is lower than the withdrawn bid. If a license is re-offered by auction, the ''winning bid'' would refer to the high bid in the auction in which the license is re-offered. If a license is re-offered in the same auction, the ''winning bid'' would refer to the high bid amount, made subsequent to the withdrawal, in that auction. If the subsequent high bidder also withdraws its bid, that bidder would be required to pay a penalty equal to the difference between its withdrawn bid and the amount of the subsequent willing bid the next time the license is offered by the Commission. If a license which is the subject of withdrawal or default is not re-auctioned, but is instead offered to the highest losing bidders in the initial auction, the ''winning bid'' would refer to the bid of the highest bidder who accepts the offer. Losing bidders would not be required to accept the offer, and therefore may decline without penalty. The Commission seeks comment on these proposals.

28. The Commission also proposes that after bidding closes, a defaulting winner would be assessed an additional penalty of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid, whichever is less. *See* 47 CFR 1.2104(g), 1.2109. If a default or disqualification involves an applicant's gross misconduct, misrepresentation, or bad faith, the Commission would be able to declare the applicant ineligible to bid in future auctions or take other action. These penalties would adequately discourage default and ensure that bidders have adequate financing and meet all eligibility and qualification requirements.

29. Finally, the Commission proposes that if the MTA winner defaults, is otherwise disqualified after having made the required down payment, or the license is terminated or revoked, then the Commission would re-auction the license. If the default occurs within five days after bidding has closed, the Commission would retain the discretion to offer the license to the second highest bidder at its final bid level, and thereafter to other bidders (in descending order of their bid amounts). If only a small number of relatively low-value licenses were to be re-auctioned and only a short time has passed since the initial auction, the Commission would have authority to choose to offer the license to the highest losing bidders if the cost of running another auction exceed the benefits. The Commission seeks comment on these proposals.

30. *Long-Form Applications.* If the winning bidder makes the down payment in a timely manner, the Commission proposes the following procedures: A long-form application filed on FCC Form 600 must be filed by a date specified by Public Notice, generally within ten business days after the close of bidding. Designated entities must also submit evidence to support their claim to any special provision, such as bidding credits or installment payment options. Once the long-form is accepted for filing, the Commission will issue a Public Notice announcing this fact, triggering the filing window for petitions to deny. If the Commission denies all petitions to deny, and is otherwise satisfied that the applicant is qualified, the license(s) will be granted to the auction winner. *See generally* 47 CFR 90.163–90.166. The Commission seeks comment on this proposal.

31. *Petitions to Deny and Limitations on Settlements.* A party filing a petition to deny will be required to demonstrate standing and meet all other applicable filing requirements. 47 CFR 90.163. The Commission also adopted ''greenmail'' restrictions to prevent filing of speculative applications and pleadings (or threats of the same) designed to extract money from 900 MHz SMR applicants. 47 CFR 90.162. Thus, the consideration than an applicant or petitioner is permitted to receive for agreeing to withdraw an application or petition to deny is limited to the legitimate and prudent expenses of the withdrawing party. Finally, the Commission need not conduct a hearing before denying an application if it determines that an applicant is not qualified and no substantial issue of fact exists concerning that determination.

32. *Transfer Disclosure Requirements.* In the 1993 Budget Act amendments to the Communications Act, Congress directed the Commission to ''require such transfer disclosures and anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits. 47 U.S.C. 309(j)(4)(E)). To ensure that these statutory requirements are met, the Commission concluded in the *Auctions Second Report & Order,* 59 FR 22980 (May 4, 1994), that transfer disclosure requirements will enable the Commission to accumulate the necessary data to evaluate auction designs and judge whether licenses have been issued for bids that fall short of the true market value of the license. The Commission tentatively concludes to apply these same requirements to all 900 MHz SMR licenses obtained through the competitive bidding process. *See* 47 CFR 1.2111(a). Generally, licensees transferring their licenses within three years after the initial license grant would be required to file, together with their transfer applications, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of the license. The Commission would give particular scrutiny to auction winners who have not yet begun commercial service and who seek approval for a transfer of control or assignment of their licenses, so it may determine if any unforeseen problems relating to unjust enrichment have arisen outside the small business context. The Commission seeks comment on this proposal.

33. *Performance Requirements.* The Communications Act requires the Commission to ''include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services. 47 U.S.C. 309(j)(4)(B). The Commission tentatively concludes that additional performance requirements, beyond those already provided in the service rules, and that coverage requirements adopted in this Order will sufficiently prevent warehousing of spectrum. The Commission seeks comment on this proposal.

D. Treatment of Designated Entities

34. *Overview and Objectives.* Congress provided that in establishing eligibility criteria and bidding methodologies, the Commission shall ''promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' 47 U.S.C. 309(j)(3). Congress also provided that to promote these objectives, the Commission shall ''consider alternative payment schedules and methods of calculation, including lump sums or

guaranteed installment payments, with or without royalty payments, or other schedules or methods * * * and combinations of such schedules and methods.'' 47 U.S.C. 309(j)(3)(B). The statute also requires the Commission to ''ensure that small businesses rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services. *Id.* § 309(j)(4)(D). To achieve this goal, the statute indicates that the Commission should ''consider the use of tax certificates, bidding preferences, and other procedures.'' *Id.*

35. Congress was particularly concerned that difficulties in accessing capital would prevent designated entities from meaningful participation in auctions and spectrum-based services. *See* H.R. Rep. No. 111, 103d Cong., 1st Sess. 254–55 (1993). In other services, the Commission has employed a wide range of special provisions and eligibility criteria designed to meet this statutory objective. *See, e.g., Third Report & Order.* PP Docket No. 93–253, 59 FR 26741 (May 24, 1994). The Commission states its intention to meet this objective in the 900 MHz SMR service, and tentatively concludes that it should provide for bidding credits, installment payments and reduced down payments to promote opportunities for small businesses, including small businesses owned by women and minorities—on all channel blocks in each MTA. These provisions would reduce barriers to accessing capital faced by all small businesses. In addition, to facilitate the introduction of service to rural areas, the Commission proposes to allow rural telephone companies to obtain geographically partitioned 900 MHz SMR licenses in areas where they provide telephone service.

36. *Bidding Credits.* Bidding credits allow eligible designated entities to receive a payment discount (or credit) for their winning bid in an auction. In the *Auctions Second Report & Order,* 59 FR 22980 (May 4, 1994), the Commission determined that competitive bidding rules applicable to individual services would specify the designated entities eligible for bidding credits and the amounts of the available bidding credits for that particular service. The Commission has since adopted bidding credits for narrowband PCS, broadband PCS, and Interactive Video and Data Service. *See Third Memorandum Opinion & Order & Further Notice of Proposed Rule Making,* PP Docket No. 93–253, 59 FR 44058 (August 26, 1994); *Fifth Report & Order,* PP Docket No. 93–253, 59 FR 37566 (July 22, 1994); *Fourth Report & Order,* PP Docket No. 93–253, 59 FR 24947 (May 13, 1994). For 900 MHz SMR service, the Commission proposes to offer a 10 percent bidding credit to small businesses bidding on any of the ten-channel blocks within each MTA. These bidding credit designations would help achieve the objectives of the Budget Act and provide small businesses with a meaningful opportunity to participate in the 900 MHz SMR auction, while taking into account the concerns of incumbents within the DFAs. Because of the large number of licenses available in this service, the Commission states that a higher bidding credit would be unnecessary.

37. The Commission seeks comment on this proposal. Specifically, is a 10 percent credit sufficient to enhance bidding opportunities? Also, how should the presence of incumbents on all channel blocks affect the availability of bidding credits on all blocks? In previous auctions where bidding credits for women and minorities have been available, varying degrees of participation in spectrum-based services has resulted, and the Commission's auction experience to date has not included a small business bidding credit available on all blocks. Also, the Commission proposes to limit eligibility for bidding credits to small businesses. The Commission seeks comment on whether eligibility should be expanded to include businesses owned by minorities and/or women, even if they do not fall within the Commission's small business size standards for 900 MHz SMRs.

38. In the event that the Commission modifies the bidding credit eligibility proposal for minority- and women-owned entities, the Commission also seeks comment on a second bidding credit alternative, which would entitle small businesses and minority- and women-owned entities to receive bidding credits on the five least encumbered blocks in each MTA. In the event the Commission adopts a proposal to limit bidding credits to small businesses, should it also limit availability of the credit to the channel blocks with the fewest incumbents, or would this limitation dilute the effectiveness of a small business credit as a means of attracting broad designated entity participation in the 900 MHz SMR service? What bidding credit amounts should apply to women and minority-owned businesses and small businesses? Should women-owned and minority-owned businesses that are also small businesses receive an aggregate bidding credit? The Commission seeks comment on the ramifications of each proposal for incumbents in each block. Finally, the Commission seeks comment on any possible alternative bidding credit schemes.

39. *Reduced Down Payments/ Installment Payments.* The Commission proposes to adopt an installment payment option for small businesses that are winning bidders in the 900 MHz SMR auction. Under this proposal, small businesses that are winning bidders in the 900 MHz SMR auction would be entitled to pay their bid in installments over the term of the license, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten-year U.S. Treasury obligations plus 2.5 percent. Under this proposed rule, qualified licensees would make interest-only payments during the first two years of the remaining license term. Timely payment of all installments would be a condition of the license grant and failure to make such timely payment would be grounds for revocation of the license. Additionally, the Commission tentatively concludes that small businesses that are eligible for installment payments also would be allowed to pay a reduced down payment (five percent of the winning bid) five days after the auction closes, with the remaining five percent down payment due five days after Public Notice that the license is ready for grant. This proposal would mitigate the effect of limited access to capital by small businesses, especially those owned by minorities and/or women.

40. The Commission seeks comment on these payment procedures. If the Commission expands its installment payment eligibility proposal for women- and minority-owned entities, should those entities also receive reduced down payment and installment payment provisions and, if so, on what terms? In the event the Commission adopts provisions for minority- and women-owned applicants, should enhanced installment payments be made available?

41. *Eligibility for Bidding Credits, Installment Payments and Reduced Down Payments.* The Commission proposes to limit eligibility for bidding credits, installment payments and reduced down payments to small businesses, including those owned by members of minority groups and women and those rural telephone companies that meet the small business size standards. The Commission proposes to define small businesses as those entities with less than $3 million in average gross revenues for each of the preceding

three years. The Commission states that it is unnecessary to propose different eligibility criteria for minority- and women-owned entities that do not meet the small business size standards in order to achieve the goals of Section 309(j) in the 900 MHz SMR service. Broadening the scope of opportunities for very small businesses in all channel blocks still has the potential to result in substantial participation by women and minorities in the provision of 900 MHz SMR service. Moreover, the Commission expects that because capital entry requirements are lower than PCS, minority- and women-owned businesses will have greater opportunities to participate.

42. To enhance the Commission's understanding, however, of the capital requirements the 900 MHz service is likely to entail, the Commission seeks comment on the projected costs associated with acquisition, construction and operation of 900 MHz MTA licenses. In addition, to gain insight into which the degree of small business participation has resulted in opportunities for women and minority-owned businesses, the Commission seeks comment on the composition of existing 900 MHz SMR operators as well as providers in other similar services such as 800 MHz SMR. For example, what proportion of existing 900 MHz SMR businesses are owned by women or minorities? To what extent have participants in 900 MHz SMR networks been small businesses owned by women and minorities? What is the likelihood that management agreements are likely to serve as a vehicle for participation in the 900 MHz SMR service by minority and women-owned businesses? Finally, regardless of whether the Commission adopts its proposal for small businesses, the Commission proposes to request bidder information on the short-form filings as to minority and/or women-owned status in order to monitor the applicant pool and monitor participation by women and minorities. The Commission seeks comment on this monitoring proposal.

43. *Small Business Definition.* The Commission defines eligibility requirements for small businesses on a service-specific basis, taking into account capital requirements and other characteristics of each particular service. *Second Memorandum Opinion & Order,* PP Docket No. 93–253, 59 FR 44272 (August 26, 1994). Because 900 MHz SMR is expected to be less capital-intensive than PCS, a much lower gross revenue threshold is warranted. Therefore, the Commission proposes to define a small business as an entity that, together with affiliates and attributable investors, has average gross revenues for the three preceding years of less than $3 million. This standard appropriately accounts for build-out costs, abundant license supply, and low acquisition costs. The Commission seeks comment on this proposal. For example, is it an appropriate threshold? Should it be higher or lower, based on the types of companies that are likely to benefit from the special provisions proposed here? The Commission also tentatively concludes that it will consider the revenues of affiliates and certain investors and it proposes to apply the 25 percent attribution threshold and affiliation rules similar to those used in the PCS auction rules. *See* 47 CFR 24.320(b)(2)(iv), 24.720(j)(1). The Commission seeks comment on these issues.

44. Finally, if the Commission adopts separate provisions for minority-owned and women-owned entities, it also seeks comment on whether it should adopt the definition of minority-owned and women owned businesses contained in Section 1.2110(b)(2) of the Commission's rules, 47 CFR 1.2110(b)(2), *i.e.,* businesses in which minorities and/or women who control the applicant have at least 50.1 percent equity ownership and, in the case of a corporate applicant, a 50.1% voting interest. Every general partner in a partnership either must be a minority and/or a woman who individually or together own at least 50.1 percent of the partnership equity.

45. *Transfer Restrictions and Unjust Enrichment Provisions.* In the *Fifth Report & Order,* PP Docket No. 93–253, 59 FR 37566 (July 22 1994), the Commission adopted restrictions on the transfer or assignment of licenses to ensure that designated entities do not take advantage of special provisions by immediately assigning or transferring control of their licenses. The Commission proposes to adopt these restrictions on transfer and assignment of 900 MHz SMR licenses won by designated entities. Under this proposal, a designated entity would be prohibited from voluntarily assigning or transferring control of its license to any other entity during the three years after license grant. In the fourth and fifth years of the license term, the designated entity would only be able to assign or transfer control of its license to another qualified designated entity, and no unjust enrichment could be gained through the transfer. Thus, if the entity to which the designated entity transfers or assigns the license were not eligible for the same provisions, the difference would have to be paid back to the U.S. Treasury as a condition of approval of the transfer or assignment. The Commission seeks comment on these proposals.

46. For the remainder of the license term, the Commission proposes to continue to impose unjust enrichment rules on designated entities. These unjust enrichment provisions would deter speculation and participation in the licensing process by those who do not intend to offer service to the public, or who intend to use the Commission's provisions to obtain a license at a lower cost than they otherwise would have to pay, and later to sell it at the market price. Under this proposal, licensees seeking to transfer their licenses for profit must, within a specified time, remit to the government a penalty equal to a portion of the total value of the benefit conferred by the government. Therefore, if a designated entity making installment payments sells its license to an entity that does not qualify as a designated entity, the Commission would require payment of the remaining principal and any interest accrued through the date of assignment as a condition of the license assignment or transfer. If a transfer is made to another eligible designated entity, no penalty would be assessed against the original designated entity license holder. If bidding credits were awarded to a licensee, the Commission would require a designated entity approval for a transfer of control or an assignment of license to a non-designated entity, or who proposes to take any other action relating to ownership or control that will result in loss of status as an eligible designated entity, to reimburse the government for the amount for the amount of the bidding credit before transfer of the license will be permitted. The Commission proposes to apply these payment requirements for the entire license term. The Commission seeks comment on this proposal.

47. *Rural Telephone Company Partitioning.* Congress directed the Commission to ensure that rural telephone companies have the opportunity to participate in the provision of spectrum-based services. Rural areas tend to be less profitable to serve than more densely populated urban areas. Therefore, service to these areas may not be a priority or feasible for many licensees. Rural telephone companies, however, are well positioned to serve these areas because of their existing infrastructure. Therefore, the Commission proposes a geographic partitioning scheme to encourage participation by rural telephone companies.

48. Under this proposal, rural telephone companies would be

permitted to acquire partitioned 900 MHz SMR licenses either by: (1) forming bidding consortia consistent entirely of rural telephone companies to participate in auctions, and then partition the licenses won among consortia participants; or (2) acquiring partitioned 900 MHz SMR licenses from other licenses through private negotiation and agreement either before or after the auction. The Commission would require that partitioned areas conform to established geopolitical boundaries and include all portions of the wireline service area of the rural telephone company applicant that lies within the service area. This partitioning scheme would prevent rural telephone companies from having to bid on the entire MTA license to obtain licenses covering their wireline service areas. In addition, rural telephone companies would have the flexibility to serve areas in which they already provide service, while the remainder of the service area could be served by other providers. The Commission also proposes to use the definition for rural telephone companies implemented in the *Fifth Report & Order*, PP Docket No. 93–253, 59 FR 37566 (July 22, 1994), for broadband PCS. Rural telephone companies would be defined as local exchange carriers having 100,000 or fewer access lines, including all affiliates. The Commission seeks comment on this proposal.

E. Other Provisions

49. *Reduced Upfront Payments.* The Commission proposes not to adopt a reduced upfront payment option in the 900 MHz SMR service for designated entities. The other provisions adopted here render a reduced upfront payment option unnecessary and, in the absence of an entrepreneurs' block, may be too costly to administer in the 900 MHz SMR service. The Commission seeks comment on this proposal. Also, if the Commission adopts provisions for minority and women-owned entities, should the Commission apply a reduced upfront payment provision to those entities only?

50. *Set-aside Spectrum*. In the *Fifth Report & Order*, PP Docket No. 93–253, 59 FR 37566 (July 22, 1994), the Commission established entrepreneurs' blocks on which only qualified entrepreneurs, including designated entities, could bid. *See also* 47 CFR 24.709. The Commission tentatively concludes not to adopt an entrepreneurs' block for the 900 MHz SMR auction. First, the large numbers of licenses available and relatively small spectrum allocations in the 900 MHz SMR service should allow for extensive small business participation. Second, the effectiveness of bidding credits and other provisions will be diluted, due to the smaller capital outlay anticipated for this service. Third, it may be impractical to choose particular blocks to set aside for bidding solely by entrepreneurs due to incumbent 900 MHz SMR operators in 19 of the 46 DFAs. The Commission seeks comment on this proposal. Are the capital requirements of this service anticipated to be so substantial that the Commission should insulate certain blocks from very large bidders in order to provide meaningful opportunities for designated entities?

III. Procedural Matters

Initial Regulatory Flexibility Analysis. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this Further Notice of Proposed Rule Making. Written public comments are requested on the IRFA.

Reason for Action: This rule making proceeding was initiated to secure comment on proposals for establishing a flexible regulatory scheme for the 900 MHz Specialized Mobile Radio (SMR) service that would promote efficient licensing and enhance the service's competitive potential in the commercial mobile radio marketplace. The proposals advanced in the Second Further Notice of Proposed Rule Making are also designed to implement Congress's goal of regulatory symmetry in the regulation of competing commercial mobile radio services as described in Sections 3(n) and 332 of the Communications Act, 47 U.S.C. 153(n), 332, as amended by Title VI of the Omnibus Budget Reconciliation Act of 1993 (Budget Act). The Commission also seeks to adopt rules regarding competitive bidding in the 900 MHz SMR service based on Section 309(j) of the Communications Act, 47 U.S.C. 309(j), which delegates authority to the Commission to use auctions to select among mutually exclusive initial applications in certain services, including 900 MHz SMR.

Objectives: The Commission proposes to adopt rules for the 900 MHz SMR service that are intended to promote the growth of incumbent 900 MHz SMR systems, and emerging MTA SMR licensees, and to enhance the ability of all SMR providers to compete in the larger commercial mobile services market. The Further Notice of Proposed Rule Making seeks to establish competitive bidding procedures and a new licensing mechanism for the 900 MHz SMR service that will expedite service to the public and promote competition in the CMRS marketplace.

Legal Basis: The proposed action is authorized under the Budget Act, Pub. L. No. 103–66, Title VI, 6002, and Sections 2(a), 3(n), 4(i), 302, 303(g), 303(r), 309(i), 309(j), 332(a), 332(c), and 332(d) of the Communications Act of 1934, 47 U.S.C. 152(a), 153(n), 154(i), 302, 303(g), 303(r), 309(i), 309(j), 332(a), 332(c) and 332(d), as amended.

Reporting, Recordkeeping, and Other Compliance Requirements: Under the proposal contained in the Further Notice of Proposed Rule Making, SMR licensees who obtain MTA-based licenses may be required to report information regarding location of their facilities and coverage of their service areas. SMR applicants seeking treatment as ''designated entities'' may also be subject to reporting and recordkeeping requirements to demonstrate compliance with the Commission's competitive bidding rules.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules: None.

Description, Potential Impact, and Number of Small Entities Involved: The Further Notice of Proposed Rule Making potentially affects numerous small entities already operating 900 MHz SMR systems in Designated Filing Areas that will co-exist with 900 MHz SMR MTA licensees. The competitive bidding proposals contained in the Further Notice of Proposed Rule Making also could affect small entities seeking initial licenses in the 900 MHz SMR service. The Further Notice of Proposed Rule Making proposes special provisions in the Commission's auction rules to benefit ''designated entity'' applicants, including small businesses. After evaluating comments filed in response to the Further Notice of Proposed Rule Making, the Commission will examine further the impact of all rule changes on small entities and set forth its findings in the Final Regulatory Flexibility Analysis.

Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives: This Further Notice of Proposed Rule Making solicits comment on a variety of alternatives. Any additional significant alternatives presented in the comments will also be considered.

IRFA Comments: The Commission requests written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines provided above.

List of Subjects in 47 CFR Part 90

Radio.

Federal Communications Commission,

William F. Caton,

Acting Secretary.

Amendatory Text

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 90 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 309 and 332.

2. A new Subpart U consisting of §§ 90.801 through 90.814 is proposed to be added to Part 90 to read as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

Subpart U—Competitive Bidding Procedures for 900 MHz Specialized Mobile Radio

Sec.

90.801 900 MHz SMR subject to competitive bidding.
90.802 Competitive bidding for 900 MHz SMR licensing..
90.803 Competitive bidding mechanisms.
90.804 Aggregation of 900 MHz SMR licenses.
90.805 Withdrawal, default and disqualification payments.
90.806 Bidding application (FCC Form 175 and 175–S Short-form).
90.807 Submission of upfront payments and down payments.
90.808 Long-form applications.
90.809 License grant, denial, default, and disqualification.
90.810 Bidding credits for small businesses.
90.811 Reduced down payment for licenses won by small businesses.
90.812 Installment payments for licenses won by small businesses.
90.813 Procedures for partitioned licenses.
90.814 Definitions.

§ 90.801 900 MHz SMR subject to competitive bidding.

Mutually exclusive initial applications to provide 900 MHz SMR service are subject to competitive bidding procedures. The general competitive bidding procedures found in 47 CFR Part 1, Subpart Q will apply unless otherwise provided in this part.

§ 90.802 Competitive bidding design for 900 MHz SMR licensing.

The Commission will employ a simultaneous multiple round auction design when choosing from among mutually exclusive initial applications to provide 900 MHz SMR service, unless otherwise specified by the Wireless Telecommunications Bureau before the auction.

§ 90.803 Competitive bidding mechanisms.

(a) *Sequencing.* The Commission will establish and may vary the sequence in which 900 MHz SMR licenses will be auctioned.

(b) *Grouping.* All 900 MHz SMR licenses for each of the MTAs will be auctioned simultaneously, unless the Wireless Telecommunications Bureau announces, by Public Notice prior to the auction, an alternative auction scheme.

(c) *Minimum Bid Increments.* The Commission will, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.

(d) *Stopping Rules.* The Commission will establish stopping rules before or during multiple round auctions in order to terminate an auction within a reasonable time.

(e) *Activity Rules.* The Commission will establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, each bidder will be entitled to request and will be automatically granted a certain number of waivers of such rule during the auction.

§ 90.804 Aggregation of 900 MHz SMR licenses.

The Commission will license each 10-channel block in the 900 MHz SMR spectrum separately. Applicants may aggregate across spectrum blocks within the limitation specified in § 20.6(b) of this Chapter.

§ 90.805 Withdrawal, default and disqualification payments.

(a) During the course of an auction conducted pursuant to § 90.802, the Commission will impose payments on bidders who withdraw high bids during the course of an auction, who default on payments due after an auction closes, or who are disqualified.

(b) *Bid withdrawal prior to close of auction.* A bidder who withdraws a high bid during the course of an auction will be subject to a payment equal to the difference between the amount bid and the amount of the winning bid the next time the license if offered by the Commission. No withdrawal payment would be assessed if the subsequent winning bid exceeds the withdrawn bid. This payment amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(c) *Default or disqualification after close of auction.* If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the payment in paragraph (a) of this section plus an additional penalty equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent payment will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission.

§ 90.806 Bidding application (FCC Form 175 and 175–S Short-form).

All applicants to participate in competitive bidding for 900 MHz SMR licenses must submit applications on FCC Forms 175 and 175–S pursuant to the provisions of § 1.2105 of this Chapter. The Wireless Telecommunications Bureau will issue a Public Notice announcing the availability of 900 MHz SMR licenses and, in the event that mutually exclusive applications are filed, the date of the auction for those licenses. This Public Notice also will specify the date on or before which applicants intending to participate in a 900 MHz SMR auction must file their application in order to be eligible for that auction, and it will contain information necessary for completion of the application as well as other important information such as the materials which must accompany the Forms, any filing fee that must accompany the application or any upfront payment that will need to be submitted, and the location where the application must be filed. In addition to identifying its status as a small business or rural telephone company, each applicant must indicate whether it is a minority-owned entity, as defined in § 90.814(g) and/or a women-owned entity.

§ 90.807 Submission of upfront payments and down payments.

(a) Bidders in the 900 MHz SMR auction will be required to submit an upfront payment of $0.02 per pop per MHz, in accordance with § 1.2106 of this Chapter.

(b) Winning bidders in a 900 MHz SMR auction must submit a down payment to the Commission in an amount sufficient to bring their total deposits up to 20 percent of their winnings bids, and in accordance with § 1.2107(b) of this chapter, except for small businesses that are winning bidders, which are governed by § 90.811.

§ 90.808 Long-form applications.

Each winning bidder will be required to submit a long-form application on FCC Form 600 within ten (10) business days after being notified by Public Notice that it is the winning bidder. Applications on FCC Form 600 shall be submitted pursuant to the procedures set forth in 90.119 of this Part and any associated Public Notices. Only auction winners (and rural telephone companies seeking partitioned licenses pursuant to agreements with auction winners under § 90.813) will be eligible to file applications on FCC Form 600 for initial 900 MHz SMR licenses in the event of mutual exclusivity between applicants filing Form 175.

§ 90.809 License grant, denial, default, and disqualification.

(a) Except with respect to entities eligible for installment payments (*see* § 90.812) each winning bidder will be required to pay the balance of its winning bid in a lump sum payment within five (5) business days following Public Notice that the license is ready for grant. The Commission will grant the license within ten (10) business days after receipt of full and timely payment of the winning bid amount.

(b) A bidder who withdraws its bid subsequent to the close of bidding, defaults on a payment due, or is disqualified, will be subject to the payments specified in § 90.805 or § 1.2109 of this Chapter, as applicable.

(c) MTA licenses pursued through competitive bidding procedures will be granted pursuant to the requirements specified in § 90.166.

§ 90.810 Bidding credits for small businesses.

(a) A winning bidder that qualifies as a small business or a consortium of small businesses, (as defined in § 90.814) may use a bidding credit of 10 percent to lower the cost of its winning bid on any of the blocks identified in § 90.617(d), Table 4B.

(b) *Unjust Enrichment.* (1) If a licensee that utilizes a bidding credit under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for bidding credits or seeks to make any other change in ownership that would result in the licensee no longer qualifying for bidding credits under this section, the licensee must seek Commission approval of such assignment, transfer or other ownership change.

(2) If a licensee that utilizes a bidding credit under this section seeks to assign or transfer control of its license to an entity meeting the eligibility standards for lower bidding credits or seeks to make any other change in ownership that would result in the licensee qualifying for a lower bidding credit under this section, the licensee must seek Commission approval and reimburse the government for the difference between the amount of the bidding credit obtained by the licensee and the bidding credit for which the assignee, transferee or licensee is eligible under this section as a condition of the approval of such assignment, transfer or other ownership change.

§ 90.811 Reduced down payment for licenses won by small businesses.

Each winning bidder that qualifies as a small business shall make a down payment equal to ten percent of its winning bid (less applicable bidding credits); a winning bidder shall bring its total amount on deposit with the Commission (including upfront payment) to five percent of its net winning bid within five (5) business days after the auction closes, and the remainder of the down payment (five percent) shall be paid within five (5) business days following Public Notice that the license is ready for grant. The Commission will grant the license within ten (10) business days after receipt of the remainder of the down payment.

§ 90.812 Installment payments for licenses won by small businesses.

(a) Each licensee that qualifies as a small business may pay the remaining 90 percent of the net auction price for the license in installment payments pursuant to § 1.210(e) of this chapter.

(b) Interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first two years and payments of interest and principal amortized over the remaining eight years of the license term.

(c) *Unjust Enrichment.* (1) If a licensee that utilizes installment financing under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for installment payments, the licensee must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of assignment or transfer as a condition of approval.

(2) If a licensee that utilizes installment financing under this section seeks to make any change in ownership structure that would result in the licensee losing eligibility for installment payments, the licensee shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of such change as a condition of approval.

§ 90.813 Procedures for partitioned licenses.

(a) Notwithstanding § 90.661, an applicant that is rural telephone company, as defined in § 90.814, may be granted a 900 MHz SMR license that is geographically partitioned from a separately licensed MTA, so long as the MTA applicant or licensee has voluntarily agreed (in writing) to partition a portion of the license to the rural telephone company.

(b) If partitioned licenses are being applied for in conjunction with a license(s) to be awarded through competitive bidding procedures—

(1) The applicable procedures for filing short-form applications and for submitting upfront payments and down payments contained in this Part and Part 1 of this Chapter shall be followed by the applicant, who must disclose as part of its short-form application all parties to agreement(s) with or among rural telephone companies to partition the license pursuant to this section, if won at auction (*see* 47 CFR § 1.2105(a)(2)(viii) of this Chapter);

(2) Each rural telephone company that is a party to an agreement to partition the license shall file a long-form application for its respective, mutually agreed-upon geographic area together with the application for the remainder of the MTA filed by the auction winner.

(c) If the partitioned license is being applied for as a partial assignment of the MTA license following grant of the initial license, request for authorization for partial assignment of a license shall be made pursuant to § 90.153.

(d) Each application for a partitioned area (long-form initial application or partial assignment application) shall contain a partitioning plan that must propose to establish a partitioned area to be licensed that meets the following criteria:

(1) Conforms to established geopolitical boundaries (such as county lines);

(2) Includes the wireline service area of the rural telephone company applicant; and

(3) Is reasonable related to the rural telephone company's wireline service area.

Note: A partitioned service area will be presumed to be reasonably related to the rural telephone company's wireline service area if the partitioned service area contains no more than twice the population overlap between the rural telephone company's

wireline service area and the partitioned area.

(e) Each licensee in each partitioned area will be responsible for meeting the construction requirements in its area (*see* § 90.665).

§ 90.814 Definitions.

(a) Scope. The definitions in this section apply to §§ 90.810 through 90.813, unless otherwise specified in those sections.

(b) *Small Business: Consortium of Small Businesses.* (1) A small business is an entity that, together with its affiliates and persons or entities that hold attributable interests in such entity and their affiliates, have average gross revenues for the three preceding years of less than $3 million.

(2) A small business consortium is conglomerate organization formed as a joint venture between or among mutually-independent business firms, each of which individually satisfies the definition of a small business in paragraphs (b)(1) and (b)(2) of this section.

(c) *Rural Telephone Company.* A *rural telephone company* is a local exchange carrier having 100,000 or fewer access lines, including all *affiliates.*

(d) *Gross Revenues. Gross revenues* shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (*e.g.*, cost of goods sold), as evidenced by audited financial statements for the relevant number of calendar years preceding January 1, 1994, or, If audited financial statements were not prepared on a calendar-year basis, of the most recently completed fiscal years preceding the filing of the applicant's short-form application (Form 175). For applications filed after December 31, 1994, gross revenues shall be evidenced by audited financial statements for the preceding relevant number of calendar or fiscal years. If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate.

(e) *Business Owned by Members of Minority Groups and/or Women.* A business owned by members of minority groups and/or women is one in which minorities and/or women who are U.S. citizens control the applicant, have at least 50.1 percent equity ownership and, in the case of a corporate applicant, a 50.1 percent voting interest. For applicants that are partnerships, every general partner either must be a minority and/or woman (or minorities and/or women) who are U.S. citizens and who individually or together own at least 50.1 percent of the partnership equity, or an entity that is 100 percent owned and controlled by minorities and/or women who are U.S. citizens. The interest of minorities and women are to be calculated on a fully-diluted basis; agreements such as stock options and convertible debentures shall be considered to have a present effect on the power to control an entity and shall be treated as if the rights thereunder already have been fully exercised. However, upon a demonstration that options or conversion rights held by non-controlling principals will not deprive the minority and female principals of a substantial financial stake in the venture or impair their rights to control the designated entity, a designated entity may seek a waiver of the requirement that the equity of the minority and female principals must be calculated on a fully-diluted basis.

(f) *Members of Minority Groups. Members of minority groups* includes Blacks, Hispanics, American Indians, Alaskan Natives, Asians, and Pacific Islanders.

(g) *Nonattributable Equity. Nonattributable equity* shall mean:

(1) For corporations, voting stock or non-voting stock that includes no more than 25 percent of the total voting equity, including the right to vote such stock through a voting trust or other arrangement;

(2) For partnerships, joint ventures and other non-corporate entities, limited partnership interests and similar interests that do not afford the power to exercise control of the entity.

(h) *Affiliate.* (1) *Basis for Affiliation.* An individual or entity is an affiliate of an applicant or of a person holding an attributable interest in an applicant (both referred to herein as ''the applicant'') if such individual or entity:

(i) Directly or indirectly controls or has the power to control the applicant, or

(ii) Is directly or indirectly controlled by the applicant, or

(iii) Is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant, or

(iv) Has an ''identity of interest'' with the applicant.

(2) *Nature of control in determining affiliation.*

(i) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example for paragraph (h)(2)(i). An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power of control.

(ii) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(iii) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

Example for paragraph (h)(2)(iii). In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him or her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are persons with attributable interests in the applicant, the other entity will be deemed an affiliate of the applicant.

(3) *Identity of interest between and among persons.* Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or is controlled by a concern, persons with an identity of interest will be treated as though they were one person.

Example 1 for paragraph (h)(3) introductory text. Two shareholders in Corporation Y each have attributable interests in the same SMR application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. The two shareholders with these common investments (or identity of interest) are treated as though they are one person and Corporation Y would be deemed an affiliate of the applicant.

Example 2 for paragraph (h)(3) introductory text. One shareholder in

Corporation Y, shareholder A, has an attributable interest in a SMR application. Another shareholder in Corporation Y, shareholder B, has a nonattributable interest in the same SMR application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. Through the common investment of shareholders A and B in the SMR application, Corporation Y would still be deemed an affiliate of the applicant.

(i) *Spousal Affiliation.* Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States.

(ii) *Kinship Affiliation.* Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context ''immediate family member'' means father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father, or -mother, step-brother, or -sister, step-son, or -daughter, half brother or sister. This presumption may be rebutted by showing that

(A) The family members are estranged,

(B) The family ties are remote, or

(C) The family members are not closely involved with each in business matters.

Example for paragraph (h)(3)(ii). A owns a controlling interest in Corporation X. A's sister-in-law, B, has an attributable interest in an SMR application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation X is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(4) *Affiliation through stock ownership.* (i) An applicant is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock.

(ii) An applicant is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(iii) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(5) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements will generally be treated as though the rights held thereunder had been exercised. However, neither an affiliate nor an applicant can use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1 for paragraph (h)(5). If company B holds an option to purchase a controlling interest in company A, who holds an attributable interest in an SMR application, the situation is treated as though company B had exercised its rights and had become owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

Example 2 for paragraph (h)(5). If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds an attributable interest in an SMR application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company, and thus the applicant, until SmallCo actually exercises its options to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

Example 3 for paragraph (h)(5). If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(6) *Affiliation under voting trusts.* (i) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(ii) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(iii) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(7) *Affiliation through common management.* Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(8) *Affiliation through common facilities.* Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(9) *Affiliation through contractual relationships.* Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(10) *Affiliation under joint venture arrangements.* (i) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(ii) The parties to a joint venture are considered to be affiliated with each other.

[FR Doc. 95–11010 Filed 5–2–95; 12:52 pm]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Part 219

Defense Federal Acquisition Regulation Supplement; Evaluation Preference for Small Disadvantaged Business Concerns

AGENCY: Department of Defense.

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement to state that the evaluation preference for small disadvantaged business concerns shall not be used in acquisitions for long distance telecommunications services.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before July 3, 1995, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 95–D008 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

Subpart 219.70 of the Defense Federal Acquisition Regulation Supplement (DFARS) provides policy and procedures for use of an evaluation preference for offers from small disadvantaged business (SDB) concerns in competitive acquisitions. SDB concerns receiving the evaluation preference in acquisitions for services must agree that at least 50 percent of the cost of personnel for contract performance will be spent for employees of the SDB concern.

This DFARS rule proposes to make the SDB evaluation preference inapplicable to acquisitions for long distance telecommunications services, as it is often necessary for large long distance carriers to provide more than 50 percent of the labor under contracts for long distance telecommunications services.

B. Regulatory Flexibility Act

The proposed change to DFARS Part 219 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 eliminates the evaluation preference for small disadvantaged business concerns in acquisitions for long distance telecommunications services. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and may be obtained from the address stated herein. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Comments are invited. Comments from small entities concerning the affected DFARS subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95–D008 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any 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 219

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 219 is proposed to be amended as follows:

1. The authority citation for 48 CFR Part 219 continues to read as follows:

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

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. Section 219.7001(b) is revised to read as follows:

219.7001 Applicability.

* * * * *

(b) Do not use the evaluation preference in acquisitions which—

(1) Use small purchase procedures;

(2) Are set-aside for small disadvantaged businesses;

(3) Are set-aside for small businesses;

(4) Are for commissary or exchange resale; or

(5) Are for long distance telecommunications services.

[FR Doc. 95–11020 Filed 5–3–95; 8:45 am]

BILLING CODE 5000–04–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1121

[Ex Parte No. 400 (Sub-No. 4)]

New Procedures in Rail Exemption Revocation Proceedings

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is requesting comments on a proposal by the Railway Labor Executives' Association and its affiliated labor organizations to establish procedural rules to govern the filing and processing of petitions to revoke exemptions.

DATES: Written comments are due on June 19, 1995.

ADDRESSES: Send an original and 10 copies of comments, referring to Ex Parte No. 400 (Sub-No. 4), to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: By petition filed December 30, 1994, the Railway Labor Executives' Association and its affiliated labor organizations (RLEA)[1] ask that we establish formal procedural rules to govern petitions to revoke exemptions brought under 49 U.S.C. 10505(d) or 49 CFR 1152.25(e). RLEA proposes a set of rules which, it asserts, provides the parties and the Commission with a specific procedure for filing and processing petitions to revoke exemptions. These rules would require, among other things, that a petition to revoke be filed to initiate a proceeding, containing a concise, plain statement of the grounds for revocation, as well as the relief sought. The rules would further require that respondent(s) reply within 15 days, setting forth, among other things, a concise, plain statement of the reasons why the petition should not be granted. Discovery would commence with the

[1] The affiliated organizations include: American Train Dispatchers Department; International Brotherhood of Locomotive Engineers; Brotherhood of Locomotive Engineers; Brotherhood of Maintenance of Way Employees; Brotherhood of Railroad Signalmen; Hotel Employees and Restaurant Employees International Union; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; International Brotherhood of Firemen and Oilers; and Sheet Metal Workers' International Association.

filing of the reply or upon expiration of 15 days after the filing of the petition to revoke (whichever is shorter), and would close within 105 days. Parties could proceed with depositions only by filing a petition with the Commission. All discovery and scheduling matters would be handled by an Administrative Law Judge. RLEA's proposed regulations also allow for the filing of briefs by petitioner and respondent and set a staggered schedule.[2] Finally, the proposed procedural schedule calls for a Commission decision to be issued within 45 days from the filing of the reply brief, if there has been discovery, or within 30 days, if there has been no discovery.

We are now seeking public comments on this proposal by RLEA to amend 49 CFR 1121.4(i) to provide formal procedural rules for the filing and processing of a revocation petition.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

Because this is not a notice of proposed rulemaking within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we need not make, at this time, the small business impact examination required by that Act. Nevertheless, we welcome any comments regarding the small entities considerations embodied in that Act. If we decide to issue a notice of proposed rulemaking, we will conduct an appropriate Regulatory Flexibility Act examination at that time.

[2] Petitioner's brief would be due 30 days after the close of discovery, or if there is no discovery, 15 days after the filing of the reply. Respondent's brief would be due 30 days after service of petitioner's brief or within 15 days if there is no discovery. Petitioner would be permitted to file a reply brief (not to exceed 10 pages) within 10 days after service of the opposition brief.

List of Subjects in 49 CFR Part 1121

Rail exemption procedures.

Authority: 49 U.S.C. 10326, 10505 and 5 U.S.C. 553.

Decided: April 27, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–11011 Filed 5–3–95; 8:45 am]

BILLING CODE 7035–01–P

Notices

Federal Register

Vol. 60, No. 86

Thursday, May 4, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

April 28, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Revision

• Foreign Agricultural Service
Application for Supplementary Dairy Product Import Licenses—Addendum FAS 924A
Individuals or households; Business or other for profit; 1,560 responses; 920 hours
Richard Warsack, (202) 720–9439

• Agricultural Marketing Service
Meat Market News
Individuals or households; Business or other for-profit; Farms; State, Local or Tribal Government; 195,000 responses; 3,250 hours
Jimmy A. Beard, (202) 720–6231

• Agricultural Marketing Service
Cotton Classification and Market News Service
CN–59
Business or other for-profit; 2,494 responses; 237 hours
Elvis W. Morris, (901) 384–3000

Extension

• Animal and Plant Health Inspection Service
APHIS Exit Survey
Individuals or households; 300 responses; 75 hours
Richard F. Fraser, (301) 734–5747

• Foreign Agricultural Service
Regulations—Financing Commercial Sales of Agricultural Commodities Under Title I, P.L. 480—Recordkeeping and Reporting Requirements
Business or other for-profit; 252 responses; 528 hours
James Chase, (202) 720–5780.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 95–10949 Filed 5–3–95; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

Agricultural Biotechnology Research Advisory Committee Meeting

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. 92–463, 86 Stat. 770–776), the U.S. Department of Agriculture (USDA), Research, Education, and Economics, announces the following advisory committee meeting:

Name: Agricultural Biotechnology Research Advisory Committee.

Date: June 26, 1995.

Time: 9:00 a.m. to approximately 5:00 p.m.

Place: Club Room, Westpark Hotel, 1900 North Fort Myer Driver, Arlington (Rosslyn), Virginia 22209.

Type of Meeting: This meeting is open to the public. Persons may participate in the meeting as time and space permit. Members of the public wishing to speak at the meeting may be given such an opportunity at the discretion of the Chair.

Comments: The public may file written comments before or after the meeting with the contact person specified below.

Purpose: To review matters pertaining to agricultural biotechnology research and to develop advice for the Secretary through the Under Secretary for Research, Education, and Economics with respect to policies, programs, operations and activities associated with the conduct of agricultural biotechnology research.

The items to be considered at this meeting include performance standards for research with genetically modified aquatic organisms.

Contact Persons: Dr. Alvin L. Young, Director, or Dr. Daniel D. Jones, Deputy Director, Office of Agricultural Biotechnology, Cooperative State Research, Education, and Extension Service, Department of Agriculture, Room 3868, South Building, 14th and Independence Avenue SW., Washington, D.C. 20250–0904, phone (202) 720–5853.

Done at Washington, D.C., this 17th day of April, 1995.

Floyd P. Horn,

Acting Under Secretary, Research, Education, and Economics.

[FR Doc. 95–11041 Filed 5–3–95; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

[RIN 059–AB47]

Animal Damage Management

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of final policy.

SUMMARY: The Forest Service is adopting a revised policy for animal damage management on National Forest System lands. This action incorporates the tenets of a 1993 Memorandum of Understanding between the Animal and Plant Health Inspection Service (APHIS) and the Forest Service. The policy clarifies the role and responsibility of the Forest Service in coordinating with the APHIS—Animal Damage Control program on APHIS-sponsored animal damage management plans and in cooperating with APHIS to manage wild vertebrates causing damage on National Forest System lands under the Animal Damage Control Act of 1931, as amended. This final policy also outlines the procedures for settling differences between the two agencies and clarifies agency responsibility for National Environmental Policy Act (NEPA) compliance.

EFFECTIVE DATE: This policy is effective May 4, 1995.

FOR FURTHER INFORMATION CONTACT:

Tom Darden, Wildlife Program Leader, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1205.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1994, the Forest Service published a proposed revision of its animal damage management direction in Forest Service Manual Chapter 2650 [59 FR 30334]. The proposed policy clarified the role of the Forest Service, and Animal and Plant Health Inspection Service (APHIS) in NEPA compliance for animal damage management activities on National Forest System lands.

The Forest Service cooperates with APHIS under the Animal Damage Control Act of 1931, as amended (7 U.S.C. 426–426c), which, in part, authorizes animal damage management activities on National Forest System lands. In cooperation with the Forest Service and States, APHIS carries out animal damage management activities on some National Forest System lands, mostly to minimize livestock losses from predation by coyotes, black bears, and other predators. Under other authorities (e.g., Multiple-Use, Sustained-Yield Act of 1960 [16 U.S.C. 528(note), 528–531]), the Forest Service conducts activities to control animal damage caused by small mammals and other animals to National Forest System resources, such as damage to timber stands and roads by beavers.

The Secretary of Agriculture has assigned APHIS the lead responsibility for animal damage management activities (7 CFR 2.51(a)(41)). The principal change proposed to existing Forest Service Manual policy (FSM 2650) is the designation of APHIS as the lead agency for preparing environmental documentation on those animal damage management activities conducted by APHIS that would be carried out on National Forest System lands. The Forest Service will be a cooperating agency in preparing and reviewing environmental analysis and documentation of actions proposed by APHIS that would occur on or affect National Forest System lands. In that role, the Forest Service would provide any mitigation measures needed to ensure that animal damage management activities performed by APHIS are compatible with direction established in the Forest Land and Resource Management Plan.

The proposed policy would bring the Forest Service Manual direction into conformance with the Memorandum of Understanding (MOU) between APHIS and the Forest Service, signed June 18, 1993. Notice of availability of the MOU was published in the **Federal Register** on July 13, 1993 (58 FR 37704).

The 1993 MOU clarified the role of each Forest Supervisor in cooperating with APHIS and the States to ensure that animal damage management activities performed by APHIS are compatible with direction provided in forest plans. The MOU also clarified that APHIS, in cooperation with the Forest Service, develops annual work plans for animal damage management activities on National Forest System lands. These plans address control areas, specific control techniques, emergency control procedures, timeframes, and other limitations and restrictions on the implementation of ADM decisions based on NEPA analysis. The MOU recognizes APHIS annual work plans as establishing the guidelines for predator control actions initiated by APHIS on National Forest System lands.

Response to Public Comments Animal Damage Management Policy

The public comment period on the proposed policy closed August 12, 1994. The Forest Service received 58 letters from individuals, organizations, six State agencies, and one federal agency.

Of the 58 letters submitted, two (2) letters expressed support for the proposed policy. Four (4) letters expressed support if specific changes were made to the policy. Two (2) letters requested that all animal damage management be abolished. One (1) letter expressed support for only non-lethal methods of animal damage management. Forty six (46) letters expressed opposition to the policy changes for a variety of reasons.

The 58 letters were from 11 Western, six Eastern, two Southern and two Midwestern states. Of the 58 letters, 30 were written by individuals who identifies no affiliation with any group or organization. Twenty-one (21) letters represented a variety of organizations, including: animal rights or welfare organizations (11 letters); environmental action organizations (3 letters); organizations concerned with biodiversity (3 letters); wilderness organizations (3 letters); an organization of state agencies (1 letter). Six letters were from State agencies with responsibility for fish and wildlife management. One letter was from a federal agency. A summary of major comments received and the agency response to them follow.

1. Role of States

Comment: Of the 50 States, six responded individually and comments were generally favorable. Six State fish and wildlife agencies and the International Association of Fish and Wildlife Agencies, representing all the 50 States, generally concurred with the proposed policy. Two State agencies, however, requested (1) that a statement be included that any animal damage management activities on National Forest System (NFS) lands by any individual or agency must be done in accordance with State law; and (2) section 2651.2 be revised to require not only cooperation but also consultation with the State Fish and Wildlife agencies to control damage caused by game animals and furbearers through hunting or trapping, where practical.

Response: While ''cooperation'' requires ''consultation'', the Forest Service has no substantive concern with revising section 2651.2 to include ''consultation'' and has adopted the proposed suggestion.

The Forest Service, historically, has viewed the regulation of hunting and fishing as the responsibility of the States. This is recognized in agency direction and FS cooperative agreements with State fish and wildlife agencies. This policy does not infringe or modify that approach. Since 1897, under the federal statutes governing National Forests, general civil and criminal jurisdiction of States has extended to federal lands reserved as National Forests. 16 U.S.C. 480. Over the years, State wildlife and game laws have therefore controlled hunting and fishing in these reservations. Beginning in 1960, when Congress enacted modern, multiple-use provisions for forest resources, it carefully preserved the States' role in managing the wildlife resources in National Forests:

> It is the policy of Congress that the national forests are established and shall be administered for (multiple use). * * * Nothing herein shall be construed as affecting the jurisdiction of the several States with respect to wildlife and fish on the national forests (16 U.S.C. 528). More recently, Congress reiterated the States' role over wildlife, hunting, and fishing on national forest land in the Federal Land Management Policy Act of 1976: (N)othing in this Act shall be construed as authorizing the Secretary concerned to require federal permits to hunt and fish on * * * lands in the National Forest System * * * or as enlarging or diminishing the responsibility or the authority of the States for management of fish and resident wildlife (43 U.S.C. 1732 (b)).

Thus, consistant with the statutory context, the Forest Service is strongly encouraged to rely on State regulation of hunting on National Forest System Lands; and the Forest Service is not expected to intervene, absent some overriding federal concern. See, e.g., *Hunt* v. *United States*, 278 U.S. 96

(1928). The new FSM 2650 is consistent with this approach.

2. Loss of Administrative Appeal Opportunity

Comment: While recognizing that APHIS is subject to the National Environmental Policy Act (NEPA), many reviewers opposed designating APHIS as the lead agency for NEPA compliance. Respondents emphasized that APHIS, unlike the Forest Service, has no administrative appeal process for NEPA decision documents. Several reviewers stated that the loss of this administrative process is very significant to them, leaving only the option of challenging animal damage management decisions in court.

Response: While those interested in ADM activities carried out by APHIS on NFS lands have enjoyed an appeal opportunity until now, this is not a ''right.'' The only reason APHIS–ADC proposals affecting NFS lands have been subject to appeal under Forest Service procedures until now is that, prior to the 1993 MOU, the Forest Service has assumed lead agency responsibility for NEPA analysis and disclosure. Since APHIS will not assume these NEPA compliance duties, those interested and affected by an APHIS-initiated ADM proposal will no longer be able to use Forest Service appeals procedures, since the Forest Service will not be the proponent or deciding agency.

It is true that APHIS has no formal appeal process, but APHIS must consider all issues and concerns presented to them by the public during the NEPA process and comment period. A final decision must address those concerns raised during public comment periods. Given the protections of NEPA procedures and the availability of judicial review, the Forest Service does not believe the loss of ADM appeal opportunity is sufficient grounds for revising the final policy.

3. APHIS NEPA Experience and Procedures

Comment: Many of the reviewers who objected to transferring NEPA compliance from the Forest Service to APHIS asserted that APHIS has no formalized NEPA procedures.

Response: This comment is not accurate and provides no compelling reason for the Forest Service and APHIS to revise the terms of the MOU. APHIS follows Council on Environmental Quality (CEQ) NEPA Regulations (40 CFR parts 1500–1508, et. seq.), the USDA NEPA procedures (7 CFR part 1b), and the APHIS NEPA Implementing Procedures (60 FR 6000–6005, Feb. 1, 1995) effective March 3, 1995, in meeting its NEPA compliance obligations.

Comment: Twenty-six respondents, including a government agency, expressed concerns about differences between APHIS and Forest Service NEPA procedures, and differences in quality of analyses. They thought that APHIS lacked sufficient experience in writing environmental documents.

Response: While APHIS and Forest Service NEPA procedures, and ultimately, NEPA documents, may be identical, they must be prepared in accordance with the Council on Environmental Quality (CEQ) regulations. Where APHIS requests NEPA analysis assistance or help with developing NEPA compliance procedures, the Forest Service will cooperate with APHIS personnel. The MOU and final policy provide the basis for such a partnership. Similarly, as the Forest Service or another agency reviews NEPA documents prepared by APHIS, each agency can note any issues related to quality of analyses and suggest improvement. Additionally, in its leadership and training roles, the Council on Environmental Quality has had opportunity to work with APHIS as it devised formal NEPA implementing procedures. CEQ will have additional opportunities as APHIS implements these procedures and prepares NEPA documents on animal damage management activities.

4. Abdication of Forest Service Responsibility

Comment: Eleven of the response letters claimed that the Forest Service is ''abdicating its responsibility'' or ''turning over all decisionmaking procedures'' to APHIS and that as a result the Forest Service will not be able to ''adequately critique and challenge Animal Damage Control proposals and data.'' These respondents all expressed concern that the Forest Service would no longer take an active role in managing these activities. Additionally, another agency asked ''if APHIS would have the lead in ensuring compliance with forest land and resource management plans on NFS lands? To what extent might APHIS predator control policies conflict with such plans, and which governs in the event of a conflict, and who decides?

Response: There are two assertions underlying these comments: (1) that the Forest Service has all [ultimate] authority for ADM activities and (2) that the Forest Service is abdicating its responsibilities for ADM on National Forest System lands (NFS). Neither of these assertions is accurate. The legal authorities of each agency are recognized in the Memorandum of Understanding (MOU) between APHIS and the Forest Service, signed in June 1993.

Under the final policy and the MOU, tools and procedures for animal damage management activities on NFS lands are to be used ''according to a plan developed in compliance with National Environmental Policy Act (NEPA), National Forest Management Act (NFMA); and Animal Damage Control Act.'' This plan is the Wildlife Damage Management (WDM) Plan, developed by APHIS/ADC in cooperation with the land management agencies, including the Forest Service. The plan is assessed through NEPA documents that cover an entire forest or larger area and is developed under APHIS/ADC leadership. An annual work plan implements the WDM plans, which APHIS–ADC prepares to analyze impacts in logical geographic areas to assess damage caused by wildlife and alternative strategies to manage the damage, regardless of land ownership status. These assessments include NEPA analysis and consider the concerns of all affected interests. The WDM plans are completed as necessary, or when new or changed conditions occur, prior to specific ADM actions. The Forest Service also cooperates with APHIS-ADC in development and review of these WDM plans. The 1993 Memorandum of Understanding states that:

> APHIS-ADC is the agency with the authority and expertise under the Animal Damage Control Act of March 2, 1931, as amended; and pursuant to The Rural Development, Agriculture, and Related Agencies Appropriation Act of 1988 for providing ADM services. This includes maintaining technical expertise in the science of animal damage management, control tools and techniques, conducting ADM research, conducting management programs, and NEPA compliance on activities related to predator control [that APHIS-ADC conducts].

This approach in the MOU is based on the Secretary of Agriculture's longstanding assignment of ADM activities to APHIS. Additionally, the Memorandum of Understanding states that both the Forest Service and APHIS agree to:

> Ensure interagency coordination and concurrence on the effects of predator control activities on National Forest resources before NEPA decisions on predator control are signed.

The Secretary has delegated National Forest System forest planning authorities in the Chief of the Forest Service, including the responsibility to ensure that Forest Service authorized

activities are not in conflict with forest plans. The MOU allows the Forest Service to ensure consistency of ADM activities with Forest Plans, agency regulations, and policy.

It is impossible to speculate whether, or to what degree, if any, APHIS Animal Damage Management activities might conflict with Forest Plans. If there is any conflict, the Forest Service will identify and APHIS will adopt these measures necessary to ensure consistency with the goals and objectives in the Forest Plans. The MOU formalizes the two agency's intent to work closely and cooperate on all activities.

Finally, the Memorandum of Understanding also calls for annual meetings at the State and regional levels to evaluate and coordinate ADM activities. Therefore, on its face, the 1993 MOU recognizes the Forest Service duty to regulate use of NFS lands and ensures that the Forest Service plans a cooperative role in reviewing and commenting on proposed actions and associated NEPA documents prior to APHIS making a decision for predator ADM activities.

If conflicting interpretations arise, the Forest Service will make the final determination of whether the proposed activity conforms to a standard or guideline in a forest plan. A fundamental principle of APHIS' ADM program is its commitment to comply with landowner/manager's restrictions as to where animal damage management activities can and cannot be conducted.

5. Animal Damage Management in Wilderness

Comment: Three respondents expressed concerns about ADM activities in wilderness areas, stating that this ''is counter to the meaning and intent of a wilderness area.''

Response: All ADM activities on NFS lands must be carried out in a manner consistent with the Wilderness Act and subsequent amendments establishing wilderness areas within the NFS system.

6. Compatibility With Ecosystem Management

Comment: Nine reviewers stated that Animal Damage Management is incompatible with the Forest Service's ecosystem management approach on NFS lands.

Response: There is nothing inherent in Animal Damage Management that is incompatible with ecosystem management. Under the final policy and the 1993 MOU, APHIS will consult with the Forest Service concerning any and all effects of APHIS ADM actions on NFS lands. The 1993 MOU states that both agencies agree to:

> Conduct ADM on NFS lands in accordance with the APHIS-ADC Policies, USDA policy on fish and wildlife and consistent with Forest Land and Resource Management Plans'' and to ''[e]nsure interagency coordination and concurrence on the effects of predator control activities on National Forest resources before NEPA decisions on predator control are signed.''

Comment: In addition, another agency stated that the Forest Service recently signed a MOU with the Fish and Wildlife Service (FWS), Bureau of Land Management (BLM), National Park Service (NPS), and National Marine Fisheries Service (NMFS), ''* * * which encourages an ecosystem approach to addressing endangered species. How will FS ensure that it meets this commitment where APHIS is the lead agency?''

Response: The Forest Service's cooperative role will ensure that ADM activities are consistent with broader goals and mandates such as ecosystem management. APHIS will coordinate with the Forest Service concerning any and all effects of their actions on Forest Service lands including the Forest Service's ecosystem management approach.

7. Inadequate Opportunity for Public Comment

Comment: Ten reviewers stated that designating APHIS as the lead agency for NEPA compliance for Animal Damage Management was completed with inadequate opportunity for comment.

Response: Intradepartmental agreements have always been considered a routine business operation of the agency. Such agreements are the mechanisms by which USDA agencies reach agreement on responsibilities and procedures to be followed when programs and activities involve more than one USDA agency. The Forest Service places intradepartmental agreements into Title 1500 of the Forest Service Manual to ensure that agency personnel across the country have access to them in carrying out day-to-day management activities. The Forest Service interprets such intra-agency agreements to be of the same nature as administrative support activities such as personnel, procurement, service contracting and other routine business practices. As such, the Agency was not legally required to give notice of and opportunity to comment on the agreement, pursuant to 36 CFR part 216. However, the Forest Service did give notice of the new agreement on July 13, 1993, at 58 FR 37704 and notice that copies were available upon request. Subsequently, the agency decided to give notice of revisions to its Animal Damage Management policy arising from implementation of the 1993 MOU. The notice was published in a **Federal Register** Notice on June 13, 1994, at 59 FR 30334 and provided a 60-day comment period. Thus, the public has been given adequate notice of and adequate opportunity to comment on the proposed policy.

8. Legality of Animal Damage Management Activities on NFS Lands and of Transfer of NEPA Responsibilities

Comment: Thirty-five respondents stated that it is ''illegal'' for APHIS/ADC to conduct animal damage management on NFS lands or for the Forest Service to ''transfer'' NEPA planning responsibilities to APHIS. These respondents contend that, in doing so, the Forest Service violates the Endangered Species Act, National Forest Management Act, Multiple-Use Sustained Yield Act, Wilderness Act, and the Animal Damage Control Act. Additionally, another agency asked if the Forest Service role as stated in FSM 2651.1 is consistent with APHIS approach so that ESA obligations are met.

Response: The MOU serves to reemphasize the authority that APHIS and the State agencies already have for ADM activities on National Forest System lands. Under the Animal Damage Control Act of 1931, as amended, the Secretary of Agriculture is authorized to control predators and other wild animals causing damage on NFS lands. The Secretary has delegated this authority to APHIS at 7 CFR 2.51(a)(41). Animal damage management for predators has never been a Forest Service responsibility. APHIS is the authorized action agency and has had, and continues to have, responsibility for its ADM activities. Therefore, it is completely lawful for APHIS to conduct animal damage management on NFS land. It is also appropriate for APHIS to be the lead agency in preparing environmental documentation of APHIS-sponsored ADM activities on NFS lands.

However, the policy, at FSM 2651.1, explicitly recognizes the responsibility of Forest Supervisors in cooperating with APHIS to complete necessary site-specific environmental analysis and documentation of actions proposed by APHIS and in providing mitigation measures to ensure that animal damage management activities performed by APHIS are compatible with direction provided in forest plans.

As the lead agency (40 CFR 1508.16) for completing environmental

documentation of APHIS-sponsored ADM activities on NFS lands, APHIS will also be responsible for completion of all Endangered Species Act-mandated interagency consultations (16 U.S.C. 1536.7; FSM 2671.4). Presently, APHIS operates under the programmatic biological opinion issued by the U.S. Fish and Wildlife Service for the Animal Damage Control Program on July 28, 1992 and will consult with the U.S. Fish and Wildlife Service both formally and informally, as appropriate, under Section 7 of the Endangered Species Act, on future actions including those on NFS lands.

As to consistency of approaches to ensure Endangered Species Act (ESA) compliance, under the MOU, the FS and APHIS will cooperate in ESA compliance. In addition to changes based on public comment, the Forest Service, after consideration of the potential for joint responsibility under the ESA, developed additional policy to assure consistent application of protection for threatened and endangered species.

In the final amendment this language appears in section 2650.3, paragraph (5) and reads as follows:

> Additionally, the lead agency responsible for completing environmental documentation is responsible for completion of all Endangered Species Act-mandated interagency consultations. However, the Forest Service will be a cooperating agency with APHIS during consultation under the Endangered Species Act where actions involve National Forest System resources or authorities.

Nothing in the Forest Service policy relieves APHIS of any of its current responsibilities to consult with the FWS nor does it violate any Forest Service policies.

9. Clarification of Each Agency's Roles

Comment: Another government agency asserted that ''the Forest Service and APHIS must clarify their precise roles in preparation of environmental impact analyses and documentation for animal damage management activities on National Forest System lands * * *.''

Response: The roles have been clarified in the 1993 MOU and proposed FSM 2650.6. The Forest Service and APHIS have agreed that APHIS will ensure NEPA compliance and be the lead agency for all actions that APHIS initiates and carries out on NFS lands. Predator control to reduce livestock loss is an example of an action carried out by APHIS. If the Forest Service carries out the action, such as reducing bear or beaver damage to tree regeneration, the Forest Service will be the lead agency for NEPA compliance.

APHIS has not and will not work on any Forest Service administered land without proper NEPA compliance. The Forest Service will cooperate in each effort by APHIS. Disagreements on any specific points are handled through annual meetings or during the development of work plans or NEPA documents, as appropriate. The MOU describes the specific framework for meetings and states that disagreements will be elevated to appropriate levels for resolution.

Comment: Twenty-five reviewers noted their view that APHIS ''cannot comply with forest plans;'' and ten others questioned whether APHIS ''fails to comply with the Endangered Species Act, National Environmental Policy Act, National Forest Management Act, Wilderness Act, Administrative Procedures Act, and numerous other State and Federal laws''.

Response: The Department does not agree. The statement that APHIS ''cannot comply with forest plans'' reflects a misunderstanding of law and authority. Under the 1993 MOU, APHIS consults with the Forest Service to assure that any ADC plans and actions are consistent with the standards and guidelines in the applicable forest plan. As already stated under comments on ''Forest Service Abdication of Responsibility'', the Forest Service retains the ability to assure that ADM plans and actions are consistent with forest plan requirements.

10. NEPA Analysis and Disclosure on Proposed Policy

Comment: Seventeen respondents asserted that the Forest Service must ''complete an Environmental Impact Statement (EIS) to analyze the impact of this transfer.'' Six stated that an Environmental Assessment (EA) is needed.

Response: The Forest Service disagrees. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' Based on consideration of the comments received on the proposed policy, and the nature and scope of the proposed policy, the Forest Service has determined that this policy falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

11. Use of Pesticides in Animal Damage Management

Comment: Two respondents were concerned about the use of pesticides on NFS lands stating that the Forest Service does not ''understand the public's biological concerns about the use of pesticides and the effects on wildlife'' and ''that no one is responsible for overseeing of tracking sodium cyanide in M–44s''.

Response: By law and regulation, both APHIS and the Forest Service allow only certified individuals to administer pesticides being used on NFS lands for animal damage management activities. APHIS reports their use of pesticides annually to the Environmental Protection Agency (EPA). The Forest Service also annually reports pesticide use. Use of sodium cyanide present in M–44s would appear in APHIS reports.

Conclusion

Having carefully considered the comments received in response to the June 13, 1994, notice of proposed policy and having reconsidered the 1993 Animal Damage Management MOU between the Forest Service and APHIS, the Forest Service is adopting the revised Animal Damage Management policy as proposed, except for the revisions noted in the response to public comments and several minor technical revisions. The agency believes the policy is fully responsive to the agency's legal and management obligations. The policy implements the 1993 Memorandum of Understanding which recognizes APHIS as the lead for NEPA compliance where APHIS is the action proposing agency. APHIS has entered into a similar agreement with the Bureau of Land Management of the U.S. Department of Interior, thus providing a fully coordinated, streamlined and consistent approach to NEPA compliance across all land ownerships on federally-funded animal damage management activities to be undertaken by APHIS. This partnership with APHIS will achieve efficiencies through both economies of scale and integrated NEPA documentation. The full text of the directive as it will appear in the Forest Service Manual is set out at the end of this notice.

Environmental Impact

This policy provides administrative instructions to Forest Service field offices on the procedures and processes to follow in order to coordinate with APHIS on animal damage management activities and implements the terms of the 1993 Memorandum of Understanding between the Forest

Service and APHIS. As noted in the response to comments, section 31.1b(2) of Forest Service Handbook 1909.15 (57 FR 43180, Sept. 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Servicewide administrative procedures, program processes, or instructions.'' Accordingly, the agency's assessment is that this policy falls within this category of action and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. This decision is further documented in a Decision Memo available from the Forest Service through the Wildlife Program Leader whose address is provided as a contact for further information at the beginning of this notice.

Controlling Paperwork Burden on the Public

This policy will not result in additional paperwork. Therefore, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR Part 1320 do not apply.

Regulatory Impact

This policy has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is a significant policy.

Dated: April 5, 1995.

David G. Unger,

Associate Chief.

FSM 2600—Wildlife, Fish, and Sensitive Plant Habitat Management

Chapter 2650—Animal Damage Management

(**Note:** The Forest Service organizes its directive system by alpha-numeric codes and subject headings. Only those sections of the Forest Service Manual that are the subject of this notice are set out here. The audience for this direction is Forest Service employees charged with coordinating with the Animal and Plant Health Inspection Service—Animal Damage Control Unit on animal damage management activities on National Forest System lands.)

The Forest Service and Animal and Plant Health Inspection Service (APHIS)—Animal Damage Control program along with the states, cooperate under the Animal Damage Control Act of 1931, as amended, to manage animal damage on National Forest System lands. These activities include actions to provide wildlife damage management through direct control, as well as technical assistance to achieve desired management objectives. APHIS carries out animal damage management activities on National Forest System lands, mostly to minimize livestock losses from predation by coyotes, black bears, and other predators. The Forest Service conducts activities to control animal damage caused by small mammals and other animals to National Forest System resources, such as timber stands and roads.

2650.1—Authority. In addition to the authorities listed in FSM 2601, the following authorities govern animal damage management activities on National Forest System lands:

1. *The Animal Damage Control Act of March 2, 1931,* as amended, (7 U.S.C. 426–426c) authorizes the Secretary of Agriculture to provide animal damage management services, to maintain technical expertise for evaluating and recommending animal damage management techniques, and to perform animal damage research. The Secretary has delegated this authority to the Animal and Plant Health Inspection Service (APHIS) and the Animal Damage Control program in APHIS is specifically responsible for ADM activities.

2. *The Federal Insecticide, Fungicide, and Rodenticide Act* limits the use of pesticides to those that are properly registered in accordance with federal and state requirements for animal damage management and that conform to policies on pesticide-use management and coordination (FSM 2150). (61 stat. 63, as amended; 7 U.S.C. 136 (note), 136, 136b, 136i–m, 136p)

3. *Executive Order 12342, January 24, 1982,* permits the use of chemical toxicants registered by the Environmental Protection Agency for predator damage control on federal lands.

4. *Department of Agriculture Regulation* (DR) 9500–4 (FSM 2601.2) requires Department of Agriculture programs to include measures to alleviate damage by plant and animal pests; develop new techniques and methodologies through management and research programs to limit damage to agriculture or forestry production; and apply integrated pest management practices, where feasible, in carrying out these responsibilities.

5. *A Memorandum of Understanding (MOU) between APHIS and the Forest Service, June 18, 1993,* outlines the cooperative approach to animal damage management on National Forest System lands. Both agencies have a joint responsibility for limiting damage caused by wildlife. In this MOU, APHIS and state agencies are recognized as having the authority and expertise to conduct predator control on National Forest System lands, to determine livestock losses, and to determine methodology for animal damage management. Under the MOU, APHIS is named the lead agency in preparing environmental documentation for predator control and other animal damage management activities initiated by APHIS on National Forest System lands.

Also, under the MOU, the Forest Service agrees to:

a. Cooperate to ensure that the animal damage management plans developed by APHIS will provide for protection of National Forest System resources and;

b. Cooperate with APHIS in the development of work plans to ensure consistency with forest land and resource management plans. See FSM 1543.14 for the full text of the MOU.

2650.2—Objective. The objective of animal damage management activities is to protect National Forest System resources, to protect activities taking place on National Forest System lands, and to reduce threats to human health and safety.

2650.3—Policy. National Forest System resources must be adequately protected during animal damage management activities authorized by the states and conducted by the states or Animal and Plant Health Inspection Service (APHIS)—Animal Damage Control program. This policy in no way defines or limits the authority of States to regulate the taking of predators according to State and other applicable Federal laws.

When the Forest Service conducts animal damage management activities, such as controlling small mammal populations on plantations, the agency must comply fully with state and federal laws. In carrying out animal damage management activities, Forest Service employees shall—

1. Rely upon APHIS or the state agencies to provide the expertise and conduct predator control on National Forest System lands, to determine livestock losses, and to determine methodology for animal damage management.

2. Conduct non-predator animal damage management, such as controlling small mammal populations on plantations, and necessary environmental analysis and disclosure on National Forest System lands consistent with forest plans.

3. Coordinate with the Bureau of Land Management (BLM) and other federal and state agencies to improve effectiveness of control program activities conducted on National Forest System and other public lands.

4. Use an integrated approach to the prevention of animal damage and management of animal damage control programs. Consider a full range of methods, including physical barriers, repellents, habitat manipulation, biological controls, silvicultural methods (for example, fertilizing to improve soil fertility), pesticides, and hunting and trapping. Use licensed hunting, fishing, and trapping as a control technique where practicable.

5. Follow direction in FSM 2670, Threatened, Endangered, and Sensitive Plants and Animals, to determine whether proposed control measures conducted by the Forest Service are likely to have an effect on federally proposed, threatened, endangered, or sensitive species.

Additionally, the lead agency responsible for completing environmental documentation is also responsible for completion of all Endangered Species Act-mandated interagency consultations. However, the Forest Service will be a cooperating agency with APHIS during consultation under the Endangered Species Act where actions involve National Forest System resources or authorities.

2650.4—Responsibility.

2650.41—Deputy Chief for National Forest System. The Deputy Chief for the National Forest System is responsible for resolving any difficulties arising between Regions and the Animal and Plant Health Inspection Service (APHIS)—Animal Damage Control program that cannot be resolved by Regional Foresters under the Memorandum of Understanding (FSM 1543.14).

2650.42—Regional Foresters. Regional Foresters are responsible for:

1. Reviewing and approving all proposed pesticide uses for animal damage management on National Forest System lands (FSM 2151). Regional Foresters may redelegate this authority to Forest Supervisors, except that only Regional Foresters may approve animal damage management in wilderness (FSM 2323).

2. Establishing or amending existing Memorandums of Understanding between the Region and appropriate State and other federal agencies regarding animal damage management.

3. Reviewing all proposed Forest Service animal damage management activities within areas occupied by and habitat of federally proposed or listed threatened or endangered species and Regional Forester approved sensitive species. Regional Foresters may redelegate this authority to Forest Supervisors.

4. Meeting with or designating a representative to meet with State or regional representatives, such as the APHIS Regional Director, as needed to coordinate animal damage management operations.

5. Resolving any difficulties arising among APHIS personnel and Forest Supervisors under the Memorandum of Understanding (FSM 1543.14), or referring unresolved issues to the Deputy Chief, National Forest System, for resolution.

2650.43—Forest Supervisors. Forest Supervisors are responsible for:

1. Ensuring appropriate environmental analysis requirements are met for proposed non-predator control activities conducted by the Forest Service and ensuring consistency with forest plan direction.

2. Recommending changes in state hunting, fishing, or trapping regulations to accommodate animal damage management activities on National Forest System lands (FSM 2640).

3. Meeting with APHIS personnel and responsible state agencies to cooperate where proposed predator control is needed to ensure coordination of Forest Service resources or activities on National Forest Systems lands.

4. Cooperating with APHIS in preparation of environmental documentation for predator control or other animal damage management activities conducted by APHIS on National Forest System lands (40 CFR 1508.15).

5. As necessary, referring any difficulties arising from activities with APHIS under the Memorandum of Understanding (FSM 1543.14) for resolution by the Regional Forester.

6. When needed, requesting training from APHIS in animal damage management techniques.

7. Ensuring that licensing and certification of Forest Service personnel performing animal damage management activities comply with applicable federal and state regulations and that certified pesticide applicators use or supervise the use of restricted-use pesticides on National Forest Systems Lands (FSM 2150).

2650.6—Cooperation in Animal Damage Management Activities. Both the Forest Service and Animal and Plant Health Inspection Service (APHIS)—Animal Damage Control program have a responsibility for limiting damage caused by wildlife, consistent with other wildlife values and resource management objectives. APHIS responsibilities are generally directed toward the management and control of animals causing damage to livestock, agriculture, wildlife, and human health and safety. Trapping or shooting coyotes to prevent losses of sheep or cattle are examples of these activities.

Forest Service animal damage management activities are related to the management of National Forest System resources. Examples of Forest Service initiated activities include, but are not limited to, removing beavers that are damaging roads, reducing bear damage to tree regeneration and controlling mice and pocket gophers to protect seedlings. Pursuant to the delegation of authority to APHIS at section 2.51 (a)(41) of Title 7 of the code of Federal Regulations (7 CFR 2.51 (a)(41)), the 1993 Memorandum of Understanding between the Forest Service and APHIS for animal damage management activities (FSM 1543.14), the role of APHIS is as follows:

1. Evaluate animal damage management needs and conduct predator control in cooperation with the Forest Service, state agencies, and permittees.

2. Serve as lead agency for preparing environmental documentation on animal damage management activities initiated by APHIS on National Forest System lands.

3. Develop and update animal damage management work plans in cooperation with the Forest Service and appropriate state and federal agencies, and interested publics to ensure compliance with forest plans.

4. Inform the Forest Service about animal damage management requests, management activities, and results on a timely basis.

5. Provide the Forest Service with technical information on recommended animal damage management tools and techniques.

6. Conduct animal damage management training sessions for Forest Service personnel, when requested.

2651—WILDLIFE AND FISH DAMAGE MANAGEMENT.

2651.1—Threatened and Endangered Species. Follow specific species control plans for federally listed species (for example, grizzly bear and wolf) cleared through consultation with the Fish and Wildlife Service and National Marine Fisheries Service.

2651.2—Game and Furbearers. Control damage caused by game animals and furbearers through hunting or trapping, where practicable, in cooperation and consultation with the State fish and wildlife agencies, and APHIS, where appropriate.

2651.3—Nongame Species. Control damage caused by nongame species on National Forest System lands in close cooperation with the State fish and

wildlife agencies, or other involved state or federal agencies.

2651.4—Birds. Nonlethal repellents, frightening devices, pesticides, or physical barriers may be used to prevent or reduce resource damage or hazards, where birds damage reforestation or other resources, or where they create health hazards. Obtain permits from the Fish and Wildlife Service for any lethal control of species protected under the Migratory Bird Treaty Act. Consult the Fish and Wildlife Service for permit requirements and procedures.

2651.5—Fish and Aquatic Animals. States or other responsible agencies have the authority to control undesirable fish and aquatic animals in National Forest System waters. The Forest Service is responsible for coordinating with the responsible agencies to develop a work plan to ensure control activities are consistent with direction provided in forest plans. Control activities conducted by the Forest Service must meet appropriate environmental analysis requirements and be consistent with forest plan direction.

2651.6—Wildlife and Fish Damage Management in Wilderness Areas. Follow direction in FSM 2151, FSM 2323, and FSM 4063 for management of wildlife or fish damage in wilderness and Research Natural Areas. Animal damage management is permitted in wilderness only when it was used prior to wilderness designation; when it conforms with direction in FSM 2323.33 on resource management in wilderness; and when it is needed for the recovery of federally listed threatened or endangered species.

2652—REPORTS. Report pesticide uses annually following direction in FSM 2158.

[FR Doc. 95–10918 Filed 5–3–95; 8:45 am]

BILLING CODE 3410–11–M

Tongass Land Management Plan Revision, Tongass National Forest, Alaska

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a revised supplement to the draft environmental impact statement.

SUMMARY: The Forest Service will prepare a revised supplement to the draft environmental impact statement on a proposal to revise the Tongass Land Management Plan. This is a revision of the supplement published in August 1991.

DATES: Formal comments are not being solicited at this time. A revised supplement to the draft environment impact statement is scheduled to be filed with the Environmental Protection Agency in November 1995, at which time a formal comment period will begin.

FOR FURTHER INFORMATION CONTACT: Gary Lidholm, Public Affairs Officer, Tongass Revision Team, 8465 Old Dairy Road, Juneau, AK 99801. Telephone (907) 586–8726.

SUPPLEMENTARY INFORMATION: The original notice of intent for the Tongass Land Management Plan revision was published September 10, 1987 (52 FR 34264, *34265). A draft environmental impact statement was available for public review and comment from July 1990 to January 1991, and a supplement to that draft was available from September to December 1991. Release of a final environmental impact statement was delayed pending completion of additional studies. Based on the results of these studies, other new information, and the lapse of time since public review of the supplement, the Forest Service has decided to issue another draft document, the revised supplement, for public review.

The issues identified in the August 1991 supplement to the draft environmental impact statement have been updated. The focus for the revised supplement will be on the following specific issues: providing for species viability consistent with the provisions of NFMA and the Endangered Species Act; evaluating recommendations for additional fisheries habitat protection; cave and karst management; ensuring conformance with ecosystem management principles; and the socio-economic effects of alternative actions. The alternatives described in the 1991 supplement will be the basis for formulating alternatives to deal with these issues.

A partnership approach with the agency's Pacific Northwest Research Station (PNW) will be an important vehicle to bring science to bear on the issues. PNW will be involved along with the Alaska Region of the Forest Service at every phase of the project. Other federal agencies are being asked to cooperate in the planning process, including the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the Environmental Protection Agency. In addition, the skills and expertise of Alaska State agencies and Alaska tribal governments will be sought.

A revised supplement to the draft environment impact statement is anticipated to be filed with the Environmental Protection Agency in November 1995, and a final environmental impact statement is projected for June 1996.

The responsible official is Phil Janik, Regional Forester, Alaska Region, P.O. Box 21628, Juneau, AK 99801.

A 90-day public comment period on the revised supplement to the draft environmental impact statement will begin on the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. An extensive scoping process has already taken place with respect to the proposed TLMP revision. No further formal scoping process is scheduled as part of the preparation of the revised supplement to the draft environmental impact statement. Public meetings are expected and will be announced.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements (or, in this case, the revised supplement to the draft) must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, objections that could be raised at the draft (or revised supplement to the draft) environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

The revised supplement is preceded by two other draft documents (the 1990 draft and 1991 supplement referred to earlier). Reviewers should note that comments on either of these two previous documents are still valid, and will be considered along with all comments received on the revised supplement in reaching a final decision. Participation in any of the three comments periods satisfies the intent of the previous discussion, provided that the reviewer's position and/or concerns have been raised.

To assist the Forest Service in identifying and considering issues and

concerns on the proposed action, comments on the revised supplement to the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the revised supplement to the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: April 21, 1995.

Robert Williams,

Acting Regional Forester of the Alaska Region.

[FR Doc. 95–10940 Filed 5–3–95; 8:45 am]

BILLING CODE 3410–11–M

Snowbird Mineral Withdrawal, Lolo National Forest, Mineral County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw 160 acres of National Forest System lands for 30 years to allow for public recreational crystal and mineral collection. From the date of the withdrawal, these lands would be closed to location and entry under the mining laws for the next 30 years.

DATES: Comments concerning the scope of the analysis should be received in writing by May 15, 1995.

ADDRESSES: Send written comments to the Ninemile Ranger District, 20325 Ninemile Road, Huson, MT, 49846.

FOR FURTHER INFORMATION CONTACT: Lisa Stoeffler, 406–626–5201.

SUPPLEMENTARY INFORMATION: On March 29, 1993, the U.S. Department of Agriculture filed an application to withdraw the following described National Forest System land from location and mineral entry under the United States mining laws, subject to valid existing rights:

Principle Meridian, Montana

T. 12 N., 25 W., (Unsurveyed)
Sec. 19, SW¼.

The area described contains 160 acres in Mineral County.

The Forest Service is preparing an Environmental Analysis to in order to make a recommendation for the withdrawal of these lands for 30 years.

The purpose of the 30 year withdrawal is to provide the opportunity for the public to use the site as a recreational mineral and crystal collecting area. The Forest Service will undertake an analysis to determine the existing and potential demand for the land and its resources.

The public is invited to comment, in writing, on this proposal

Dated: April 3, 1995

Robert P. Meuchel,

Acting Forest Supervisor.

[FR Doc. 95–10937 Filed 5–3–94; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting Cancellation of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission which was to have convened on Monday, May 8, 1995, at 1:30 p.m. and adjourned at 4:00 p.m., at the Magistrate Court of the U.S. District Court House, Third Floor, 202 Harlow Street, Bangor, Maine 04401, has been canceled.

The original notice for the May 8, 1995, meeting was announced in the **Federal Register** on April 21, 1995, 60 FR 19883.

Persons desiring additional information, or planning a presentation to the Committee, should contact Edward Darden, Acting Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116).

Dated at Washington, DC, May 1, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–11074 Filed 5–3–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Agency Information Collection 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: National Oceanic and Atmospheric Administration (NOAA).

Title: Southeast Region Dealer/Interview Family of Forms.

Form Number: Agency: NOAA 88–30; OMB Number 0648–0013.

Type of Request: Extension of the expiration date.

Burden: 2,268 hours; 9,170 respondents with 15,286 responses; Avg. Hours Per Response varies depending on requirement but ranges between 3 to 40 minutes.

Needs and Uses: Data from dealer reporting are used to monitor mandated fishery quotas. Interviews with fishermen provide detailed catch, effort, and species composition data for stock assessments that support fishery management plans.

Affected Public: Businesses or other for-profit institutions, individuals.

Frequency: Weekly, monthly, on occasion.

Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Gerald Taché, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 27, 1995

Gerald Taché,

Department Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–11053 Filed 5–3–95; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

[A–412–602]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Forged Steel Crankshafts From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 4, 1995.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith or John Beck, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–3464, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 1993, 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 Forged Steel Crankshafts from the United Kingdom (52 FR 35467). In accordance with 19 CFR 353.22(a)(2), in September 1993, United Engineering and Forging (UEF) requested an administrative review of the antidumping order covering the period September 1, 1992, through August 31, 1993. We initiated the administrative review on October 18, 1993 (58 FR 53710), and are conducting it in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered in this review are certain forged steel crankshafts (CFSCs). The term ''crankshafts,'' as used in this review, includes forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined. The products are currently classifiable under items 8483.10.10.10, 8483.10.10.30, 8483.10.30.10, and 8483.10.30.50 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or more than 750 pounds are subject to this review. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Such or Similar Merchandise

In determining similar merchandise comparisons, we considered the following physical characteristics, which appear in order of importance: (1) Twisted vs. untwisted; (2) number of throws; (3) ship weight; (4) forging method; (5) engine type; (6) number of bearings; (7) number of flanges; and, (8) number of counterweights (*see* the February 4, 1993, model matching methodology memorandum from Louis Apple, Acting Division Director to David L. Binder, Acting Director, Office of Antidumping Investigations; and the April 26, 1995, memorandum from the case analyst to the file).

United States Price (USP)

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to an unrelated purchaser before importation into the United States and because exporter's sales price methodology was not otherwise indicated. We based purchase price on the packed, c.i.f. price to the first unrelated purchaser in the United States.

We made deductions from USP, where appropriate, for ocean and foreign inland freight, U.S. duties, harbor maintenance and merchandise processing fees, marine insurance and U.S. brokerage and handling expenses, in accordance with section 772(d)(2) of the Act. For certain sales made by UEF's Shardlow facility, ocean freight, foreign inland freight, U.S. duties, and U.S. brokerage and handling expenses were not reported. Therefore, in accordance with section 776(c) of the Act, we have relied upon the best information available (BIA) in these preliminary results to value these unreported expenses for those sales. As BIA, we applied the largest reported amount to each of Shardlow's unreported expenses. Based on verification, we requested UEF to correct its reported brokerage and handling expenses, and ocean freight expenses identified in the August 23, 1994, verification reports. In addition, we made certain corrections to UEF's reported credit expenses, warranty expenses, U.S. duty expenses, marine insurance expenses and additional corrections to ocean freight and U.S. brokerage and handling expenses identified in the verification reports.

For one crankshaft model, we increased USP to account for tooling and manufacturing costs that were not included in the U.S. sales invoice, but were billed separately to the U.S. customer. Such costs are normally considered a component of USP for that merchandise (*see Final Results of Antidumping Duty Administrative Review: Certain Forged Steel Crankshafts from the United Kingdom* (52 FR 5975 (February 14, 1991)).

We also made adjustments to USP, as appropriate, for price and/or quantity changes subsequent to shipment.

Finally, we made an adjustment for taxes paid on comparison sales in the United Kingdom, in accordance with our practice, pursuant to the Court of International Trade (CIT) decision in *Federal-Mogul, et al* v. *United States,* 834 F. Supp. 1993. *See Preliminary Determination of Sales at Less Than Fair Value: Color Negative Photographic Paper and Chemical Components Thereof from Japan* (59 FR 16177, 16179 (April 6, 1994)), for an explanation of this tax methodology.

Foreign Market Value

In order to determine whether there were sufficient sales of CFSCs in the home market to serve as a viable basis for calculating foreign market value (FMV), we compared the volume of the respondent's home market sales to the volume of its third country sales, in accordance with section 773(a)(1)(B) of the Act. Based on this comparison, we determined that the home market is viable, and that it is the most appropriate basis for calculating FMV.

Where home market sales were used for comparisons, we calculated FMV based on packed, ex-factory or delivered prices to customers in the United Kingdom. We made deductions, where appropriate, for discounts. We also made adjustments to FMV, where appropriate, for price and/or quantity changes subsequent to shipment.

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 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 adjust for those expenses under the circumstance-of-sale (COS) provision of 19 CFR 353.56(a). Accordingly, in the present case, we adjusted for post-sale home market inland freight charges under the COS provision of 19 CFR 353.56(a).

Because all price-to-price comparisons involved purchase price sales, we also made COS adjustments, where appropriate, for differences in credit expenses, warranty expenses, and pre-sale and post-sale warehousing expenses on U.S. sales, in accordance with 19 CFR 353.56(a). We treated the pre-sale warehousing expense as a direct selling expense because UEF has an agreement with its U.S. customer that it will store the subject merchandise in a warehouse before it transfers title of the merchandise to its customer. In accordance with section 773(a)(1) of the Act, we then added U.S. packing costs to all home market prices. We did not deduct home market packing costs because UEF could not report them separately.

Where appropriate, we made adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

For two U.S. products, we found no home market products sold in contemporaneous periods which had an adjustment for differences in physical characteristics of merchandise that was less than 20 percent of the cost of manufacture of the U.S. product. For sales of one U.S. product, we deemed it inappropriate to match a twisted with an untwisted crankshaft (*see Final Determination of Sales at Less Than Fair Value: Certain Forged Steel Crankshafts from the United Kingdom* (52 FR 32951, 32953 (September 1, 1987)). For the second U.S. product, there were no contemporaneous sales of comparable home market products. For these products, we based FMV on CV. We calculated CV based on the sum of the respondent's submitted cost of materials, fabrication, general expenses, U.S. packing and profit. In addition, we increased the respondent's submitted general and administrative expenses (G&A) to include certain forging division G&A items (*see* August 18, 1994, verification report for a further discussion). According to section 773(e)(1)(B) (i) and (ii) of the Act, we included the actual general expenses which exceeded the statutory minimum (ten percent of the cost of manufacturing (COM)). We used the statutory minimum profit, which is eight percent of the sum of COM and general expenses, because the actual profit amount was less than the statutory minimum.

We made adjustments to CV, in accordance with 19 CFR 353.56, for differences in circumstances of sale. These adjustments were made for differences in credit expenses, warranties, and warehousing.

Currency Conversion

We made currency conversions in accordance with 19 CFR 353.60(a). All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondent by using standard verification procedures, including on-site inspection of the manufacturer's facilities, examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margin exists for the period September 1, 1992, through August 31, 1993:

Manufacturer/exporter	Review period	Margin (percent)
UEF	9/01/92—8/31/93	0.36

Interested parties may request a disclosure within 5 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 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication. 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 publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirement will be effective for all shipments of CFSCs from the United Kingdom 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 UEF will be the rate established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis*, the cash deposit will be zero; (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 LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the ''all others'' rate, as set forth below.

On March 25, 1993, the Court of International Trade (CIT), in *Floral Trade Council v. United States*, 822 F.Supp. 766 (CIT 1993), and *Federal-Mogul Corporation v. United States*, 822 F.Supp. 782 (CIT 1993), decided that once an ''all others'' rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement this decision, it is appropriate to reinstate the original ''all others'' rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. In proceedings governed by antidumping findings, unless we are able to ascertain that ''all others'' rate from the original investigation, the Department has determined that it is appropriate to adopt the ''new shipper'' rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical errors or as a result of ligitation) as the ''all others'' rate for the purposes of establishing cash deposits in all current and future administrative reviews. Because this proceeding is governed by an antidumping duty order, the ''all others'' rate for the purposes of this review will be 14.67 percent, the ''all others'' rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next 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 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: April 27, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–11056 Filed 5–3–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–803]

Certain Small Business Telephone Systems and Subassemblies Thereof From Korea; 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 December 23, 1994, the Department of Commerce (the Department) published the preliminary results of its 1993–94 administrative review of the antidumping duty order on certain small business telephone systems and subassemblies thereof (SBTS) from Korea. The review covers one manufacturer/exporter of this merchandise to the United States, SsangBangWool Inc. (SBW). The review period is February 1, 1993, through January 31, 1994.

We gave interested parties the opportunity to comment on the preliminary results. We received one comment from the respondent.

EFFECTIVE DATE: May 4, 1995.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Michael R. Rill, 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 December 23, 1994, the Department published in the **Federal Register** (59 FR 66294) the preliminary results of its administrative review of the antidumping duty order on SBTS from Korea (55 FR 4215, February 7, 1990). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The products covered by this review are SBTS, currently classifiable under *Harmonized Tariff Schedule* (HTS) item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015.

The HTS item numbers are provided for convenience and Customs purposes. They are not determinative of the products subject to the order. The written description remains dispositive.

Certain SBTS are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between 2 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 defined 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; 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; building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or 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 has been excluded from 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.

The review covers one manufacturer/exporter of this merchandise to the United States, SBW. The review period is February 1, 1993, through January 31, 1994.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results as provided by section 353.22(c) of the Department's regulations. We received one comment from the respondent.

Comment Received From SBW

Comment: SBW argues that the Department should include an adjustment for duty drawback with respect to one U.S. sale for which duty drawback has not yet been received. SBW states that it routinely submits the required documentation to Customs and receives the duty drawback allowance. However, at the time of submission, SBW had not received duty drawback with respect to this one sale. Also, SBW asserts that it has already applied for drawback and has no reason to believe that it will not be granted. SBW requests that the Department make the duty drawback adjustment for the sale in question by using the higher of two amounts of drawback reported for the two groups of export transactions for the period of review.

Department's Position: We disagree with SBW. On March 10, 1995, SBW informed the Department that drawback had still not been received with respect to this sale. Thus, more than a year and a half has elapsed since the date of shipment, and SBW has not received any duty drawback. This is more than sufficient time for SBW to collect drawback. In addition, SBW received duty drawback for other exports of this merchandise shipped at about the same time and even later. Accordingly, because SBW has not received drawback for this sale, we have determined that an adjustment for duty drawback is not appropriate.

Final Results of Review

As a result of this review, we determine that the following weighted-average dumping margin exists for the period February 1, 1993, through January 31, 1994:

Manufacturer/exporter	Margin (percent)
SsangBangWool Inc	2.86

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions concerning all respondents directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate shown above; (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) the cash deposit rate for all other manufacturers or exporters will continue to be 13.90 percent, the ''all others'' rate established in the LTFV investigation.

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.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning 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 Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: April 27, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–11057 Filed 5–3–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–333–402]

Determination To Revoke Countervailing Duty Order; Certain Apparel from Peru

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of determination to revoke countervailing duty order.

SUMMARY: The Department of Commerce (the Department) is revoking the countervailing duty order on certain apparel from Peru because it is no longer of interest to interested parties.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Brian Albright, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1995, the Department published in the **Federal Register** (60 FR 11075) its intent to revoke the countervailing duty order on certain apparel from Peru (48 FR 9871; March 12, 1985). Additionally, as required by 19 CFR 355.25(d)(4)(ii)(1994), the Department served, by certified mail, written notice of its intent to revoke this countervailing duty order on each party listed on its most current service list.

Determination to Revoke

The Department may revoke a countervailing duty order if it concludes that the order is no longer of interest to interested parties. We conclude that there is no interest in a countervailing duty order when no interested party (as defined in sections 355.2 (i)(3), (i)(4), (i)(5), and (i)(6) of the Department's regulations) has requested an administrative review for at least five consecutive review periods and when no domestic interested party objects to the revocation (19 CFR 355.25(d)(4)(iii)).

We received no requests for administrative review for the previous five consecutive review periods and no objections to our notice of intent to revoke the countervailing duty order. Therefore, we have concluded that the countervailing duty order on certain apparel from Peru is no longer of interest to interested parties, and we are revoking this countervailing duty order in accordance with 19 CFR 355.25(d)(4)(iii).

Further, as required by 19 CFR 355.25(d)(5), the Department is terminating the suspension of liquidation on the subject merchandise as of the effective date of this notice, and will instruct the Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of this merchandise exported from Peru on or after January 1, 1995.

This notice is published in accordance with 19 CFR 355.25(d)(4)(iii).

Dated: April 18, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–11055 Filed 5–3–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–542–401]

Determination Not To Revoke Countervailing Duty Order; Certain Textile Mill Products From Sri Lanka

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its determination not to revoke the countervailing duty order on certain textile mill products from Sri Lanka.

EFFECTIVE DATE: May 4, 1995.

FOR FURTHER INFORMATION CONTACT: Brian Albright, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1994, the Department published in the **Federal Register** (59 FR 9727) its intent to revoke the countervailing duty order on certain textile mill products from Sri Lanka (50 FR 9826; March 12, 1985). Under 19 CFR 355.25(d)(4)(iii), the Secretary of

Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation, and no interested party requests an administrative review by the last day of the fifth anniversary month.

Within the specified time frame, we received an objection from domestic interested parties to our intent to revoke this countervailing duty order. The Department determined that these domestic interested parties had standing as an interested party under 19 CFR 355.2(i) with respect to all like products covered by this countervailing duty order. See Memorandum to the File from Martina Tkadlec, Case Analyst, April 12, 1995, which is on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Therefore, because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This determination is in accordance with 19 CFR 355.25(d)(4).

Dated: April 8, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–11054 Filed 5–3–95; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the application and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from State and Federal Government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as ''Export Trade Certificate of Review, application number 95–00001.''

Summary of the Application

Applicant: VINEX International, Inc., 1407 Foothill Blvd., Suite 105, La Verne, CA 91750

Application No.: 95–00001

Date Deemed Submitted: April 26, 1995.

VINEX International, Inc. seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

Products

All products.

Services

All services.

Technology Rights

Technology rights, including, but not limited to, patents, trademarks, copyrights, and trade secrets, that relate to Products and Services.

Export Trade Facilitation Services (as They Relate to the Export of Products, Services, and Technology Rights)

Export Trade Facilitation Services include professional services in the areas of government relations and assistance with State and Federal programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping; export management; export licensing; advertising; documentation and services related to compliance with Customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers associations.

Export Markets

The export markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. With respect to the sale of Products and Services, licensing of Technology Rights and provisions of Export Trade Facilitation Services, VINEX International, Inc. may:

a. Provide and/or arrange for the provision of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;

c. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with suppliers for the export of Products, Services, and/or Technology Rights in Export Markets;

d. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

e. Allocate export sales or divide Export Markets among suppliers for the sale and/or licensing of products, services, and/or Technology Rights;

f. Allocate export orders among suppliers;

g. Establish the price of Products, Services, and/or Technology Rights for sale and/or licensing in Export Markets;

h. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;

i. Enter into contracts for shipping; and

j. Exchange information on a one-on-one basis with individual suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of Products for export and coordinating exports with distributors.

Dated: April 28, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 95–11052 Filed 5–3–95; 8:45 am]

BILLING CODE 3510–DR–M

National Institute of Standards and Technology

[Docket No. 950405088–5088–01]

RIN 0693–AB40

Proposed Withdrawal of Federal Information Processing Standard (FIPS) 121, Videotex/Teletext Presentation Level Protocol Syntax (North American PLPS)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: NIST proposes to withdraw Federal Information Processing Standard (FIPS) 121, Videotex/Teletext Presentation Level Protocol Syntax (North American PLPS). This standard, which provides formats, rules and procedures for encoding alphanumeric text and pictorial information for videotex and teletext applications, adopts American National Standard X3.110–1983/Canadian Standard T500–1983. This standard is proposed for withdrawal because commercial products supported by this technology are no longer needed by the Federal government.

The purpose of this notice is to solicit views from the public, manufacturers, and Federal, state, and local government users prior to submission of this proposed withdrawal to the Secretary of Commerce for review and approval.

DATES: Comments on this proposed revision must be received on or before August 2, 1995.

ADDRESSES: Written comments concerning the proposed withdrawal should be sent to: Director, Computer Systems Laboratory, Attn: Proposed Withdrawal of FIPS 121, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Radack, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2833.

Dated: April 27, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–10919 Filed 5–3–95; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

[I.D. 042095D]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold two series of meetings, on May 15 through 17 and on May 31 through June 2, 1995, respectively.

ADDRESSES: South Atlantic Fishery Management Council; One Southpark Circle, Suite 306; Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Sharon Coste, telephone: (803) 571–4366; fax: (803) 769–4520.

SUPPLEMENTARY INFORMATION: The meetings are as follows:

May 15, from 1:00 p.m. until 5:00 p.m., and May 16, from 8:30 a.m. until 12:00 noon, the Executive Committee (Committee) will meet at the Council offices, One Southpark Circle, Suite 306, Charleston, SC, to plan the Council's activities and draft a schedule for the coming year. The Committee also will discuss coordination of the Council's activities with NMFS regional office's manpower and resource capabilities. Additionally, the Committee will discuss FY 1996 funding and changes to the Council's Statement of Organization Practices and Procedures.

May 16 from 1:00 p.m. until 5:00 p.m., and May 17, from 8:30 a.m. until 3:00 p.m., the Snapper-Grouper Plan Development Team will meet at the Council offices to finalize research plans for the Oculina Bank Habitat Area of Particular Concern and to review options papers for Snapper-Grouper Amendments 8 and 9 to the fishery management plan (FMP).

May 31, from 1:00 p.m. until 5:00 p.m., and June 1, from 8:30 a.m. until 12 noon, at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC, the Council will hold a joint meeting of the four state Habitat and Environmental Protection Committee subpanels to receive input on the development of an FMP for Fisheries Habitat of the South Atlantic Region, the development of new Council habitat policy statements, and future coordination of the Council and other state and Federal agencies with the National Center for Ecosystem Health.

June 1, from 1:00 p.m. until 5:00 p.m., and June 2, from 8:30 a.m. until 12:00 noon, the Rock Shrimp Ad-Hoc Advisory Panel will meet at the Town and Country Inn to review comments received at public hearings and finalize recommendations on options for Amendment 1 (Rock Shrimp to the Shrimp FMP).

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office by May 8, 1995.

Dated: April 28, 1995.

Richard H. Schaefer,

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

[FR Doc. 95–10946 Filed 5–3–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 042595D]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for modifications to scientific research and enhancement permits 919 (P503N), 921 (P503P), 922 (P503Q), and 847 (P211E).

SUMMARY: Notice is hereby given that the Idaho Department of Fish and Game (IDFG) and the Oregon Department of Fish and Wildlife (ODFW) have applied in due form for modifications to permits authorizing takes of listed species for the purpose of scientific research and enhancement associated with hatchery supplementation programs.

DATES: Written comments or requests for a public hearing on any of these applications must be received on or before June 5, 1995.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, F/NWO3, NMFS, 525 NE Oregon Street, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing on any of these applications should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: IDFG and ODFW request these modifications to their permits under the authority of section 10 of the Endangered Species

Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

Permit 919 (P503N) authorizes a take of listed Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a supplementation program at Sawtooth Hatchery. IDFG requests modification 1 to the permit for authorization to retain adult, listed, naturally-produced salmon that return to the adult trap for broodstock without any restrictions due to the annual forecasted runsize of returning adults. IDFG is currently authorized to retain adult, listed, naturally-produced salmon for broodstock when the annual forecasted runsize of returning adults is greater than or equal to 80. IDFG also requests authorization to release non-listed, hatchery-origin adults above the adult trap, if necessary, to meet the minimum target of 35 adult pairs to be released annually for natural spawning. Modification 1 is requested for the duration of the permit. Permit 919 expires on December 31, 1998.

Permit 921 (P503P) authorizes a take of listed Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a supplementation program at McCall Hatchery. IDFG requests modification 1 to the permit for authorization to retain adult, listed, naturally-produced salmon that return to the adult trap for broodstock without any restrictions due to the annual forecasted runsize of returning adults. IDFG is currently authorized to retain adult, listed, naturally-produced salmon for broodstock when the annual forecasted runsize of returning adults is greater than or equal to 80. IDFG also requests authorization to release non-listed, hatchery-origin adults above the adult trap at Stolle Meadows, if necessary, to meet the minimum target of 35 adult pairs to be released annually for natural spawning. Modification 1 is requested for the duration of the permit. Permit 921 expires on December 31, 1998.

Permit 922 (P503Q) authorizes a take of listed Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a supplementation program at Pahsimeroi Hatchery. IDFG requests modification 1 to the permit for authorization to retain adult, listed, naturally-produced salmon that return to the adult trap for broodstock without any restrictions due to the annual forecasted runsize of returning adults. IDFG is currently authorized to retain adult, listed, naturally-produced salmon for broodstock when the annual forecasted runsize of returning adults is greater than or equal to 100. IDFG also requests authorization to release all of the returning listed and non-listed hatchery-origin adults above the adult trap for natural spawning in 1995 due to the anticipated low adult return. IDFG's listed adult retention strategy is requested for the duration of the permit. The releases of listed and non-listed hatchery-origin adults is requested for 1995 only. Permit 922 expires on December 31, 1998.

Permit 847 (P211E) authorizes a take of listed Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with supplementation programs at the Imnaha River and Lookingglass Creek Hatcheries. ODFW requests modification 3 to the permit for authorization to retain all of the adult listed salmon that return to the adult trap for broodstock if the forecasted runsize of returning adults is less than 100. If the forecasted runsize of returning adults is greater than or equal to 100, ODFW proposes to release 20 percent of the returning adult listed salmon above the adult trap for natural spawning, with no restriction on the percentage of hatchery-origin fish to be released. ODFW is currently authorized to retain no more than 30 percent of the returning adult, listed, naturally-produced salmon for broodstock each year. ODFW's current permit also restricts the amount of hatchery-origin fish released annually above the adult trap for natural spawning to no more than 50 percent of the total annual releases. Modification 3 is requested for 1995 only. Permit 847 expires on March 31, 1998.

Those individuals requesting a hearing on any of these modification applications should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in these application summaries are those of the applicants and do not necessarily reflect the views of NMFS.

Dated: April 27, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, National Marine Fisheries Service.

[FR Doc. 95–10931 Filed 5–3–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title; Applicable Form; and OMB Control Number: Health-Related Survey—Individual Facility Report; DA Form 4723–2–R; OMB Control Number 0704–0175.

Type of Request: Reinstatement.

Number of Respondents: 1,035.

Responses per Respondent: 1.

Annual Responses: 1,035.

Average Burden per Responses: 1 hour.

Annual Burden Hours: 1,035.

Needs and Uses: The information collected hereby, provides the Department of the Army with the data necessary to identify appropriate facilities, and to assign Army personnel to areas where services are available for exceptional family members.

Affected Public: State or local governments; Businesses or other for-profit, and Non-profit institutions.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 1, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–11022 Filed 5–3–95; 8:45 am]

BILLING CODE 5000–04–P–M

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday and Friday May 11–12, 1995.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App II sec. 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: May 1, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–11023 Filed 5–3–95; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the DOD Advisory Group on Election Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday and Friday, May 11–12, 1995.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II sec. 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: May 1, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–11024 Filed 5–3–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Hostile Capabilities Team

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Hostile Capabilities Team will meet in closed session on May 16, 1995 at Science Applications International Corporation, 1525 Wilson Boulevard, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will focus on those R&D investments that must be made now so as to assure a technology base in the year 2000 capable of providing U.S. military superiority in the 21st century.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: May 1, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–11025 Filed 5–3–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Current DoD Initiatives Team

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Current DoD Initiatives Team will meet in closed session on May 23–24, June 15–16, July 5, and July 26–27, 1995 at Science Applications International Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will focus on those R&D investments that must be made now so as to assure a technology base in the year 2000 capable of providing U.S. military superiority in the 21st century.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: May 1, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–11026 Filed 5–3–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Defense Mapping for Future Operations

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Defense Mapping for Future Operations will meet in closed session on June 12–13, July 6–7, August 3–4, and August 31–September 1, 1995 at Science Applications International Corporation, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition and Technology) on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will develop recommendations for implementing a cost-effective approach for providing geospatial information and products to Department of Defense users.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: May 1, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–11027 Filed 5–3–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Board of Advisors to the President, Naval War College, Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is given that the Board of Advisors to the President, Naval War College, will meet on May 31, and June 1, 1995, in Room 210, Conolly Hall, Naval War College, 686 Cushing Road, Newport, Rhode Island. The meeting will commence at 8:30 a.m. on May 31, and terminate at approximately 12:00 p.m. on June 1, 1995.

The purpose of the meeting is to elicit the advice of the Board on educational, doctrinal, and research policies and programs. The agenda will consist of presentations and discussions on the curriculum, programs and plans of the College, and is open to the public.

For further information contact: Mrs. Mary E. Estabrooks, Assistant to the Dean of Academics, Naval War College, 686 Cushing Road, Newport, RI 02841–1207. Telephone number (401) 841–3589.

Dated: April 24, 1995.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–10998 Filed 5–3–95; 8:45 am]

BILLING CODE 3810–FF–F

CNO Planning and Steering Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Planning and Steering Advisory Committee will meet May 17, 1995, from 9:00 a.m. to 4:00 p.m., at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting will be to discuss topics relevant to SSBN Security. The entire agenda will consist of classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that all sessions of the meeting shall be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: LCDR R. F. Brese, Pentagon, Room 4D534, Washington, DC 20350, Phone: (703) 693–7248.

Dated: April 24, 1995.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–10997 Filed 5–3–95; 8:45 am]

BILLING CODE 3810–FF–F

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Amendment to notice of open meeting.

SUMMARY: This amends the notice of an open meeting of the National Assessment Governing Board published on Tuesday, April 25, 1995 in Vol. 60, No. 79, page 20260. This notice changes the status of the meeting from open to partially closed. This document is intended to notify the general public of the closed sessions.

DATES: May 12, and 13, 1995.

TIME: May 12, 1995—Achievement Levels Committee, 7:30 a.m.–8:45 a.m. (closed); Subject Area Committee #2, 10:00 a.m.–11:30 a.m. (closed). May 13, 1995—Full Board, 9:00 a.m.–10:00 a.m. (closed).

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street NW., Washington, DC, 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: On May 12, 1995 the Achievement Levels Committee will meet from 7:30 a.m. to 8:45 a.m. in closed session to permit the Committee to hear a technical briefing on the 1994 achievement levels. Specifically, the Committee will be briefed on unverified results of the 1994 achievement levels for U.S. History and Geography. This portion of the meeting must be conducted in closed session because premature disclosure of the information presented for review might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C.

Beginning at 10:00 a.m. until 11:30 a.m., the Subject Area Committee #2, will be in session. The meeting of Subject Area Committee #2 will be closed to the public to permit the Committee to review data from the 1995 field test, and to comment on a draft statement of work for specifications for the 1997/1998 writing assessment. This meeting must be conducted in closed session because premature disclosure of the information presented for review might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C.

On May 13, at 9:00 a.m. until 10:00 a.m., the full Board will reconvene in closed session to permit the Board to hear a briefing on the Preliminary Report on Achievement Levels for History and Geography. The report will include references to specific items from the assessments. This portion of the meeting must be conducted in closed session because premature disclosure of the information presented for review might significantly frustrate

implementation of a proposed agency action. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C.

A summary of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street NW., Washington, DC, from 8:30 am. to 5:00 p.m.

Dated: April 28, 1995.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 95–10939 Filed 5–3–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–1612–002, et al.]

Destec Power Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

April 27, 1995.

Take notice that the following filings have been made with the Commission:

1. Destec Power Services, Inc.

[Docket No. ER94–1612–002]

Take notice that on April 10, 1995, Destec Power Services, Inc. tendered for filing a letter reporting no activity for the quarter ending March 31, 1995.

2. Utility-2000 Power Corporation

[Docket No. ER95–187–001]

Take notice that on April 10, 1995, Utility-2000 Power Corporation tendered for filing a letter reporting no activity for the quarter ending March 31, 1995.

3. Industrial Gas & Electric Services Company

[Docket No. ER95–257–001]

Take notice that on April 3, 1995, Industrial Gas & Electric Services Company tendered for filing its quarterly report in the above-referenced docket, reporting no purchases or sales of electricity in the quarter ending March 31, 1995.

4. Kaztex Energy Services, Inc.

[Docket No. ER95–295–001]

Take notice that on April 17, 1995, Kaztex Energy Services, Inc. (KES) filed certain information as required by the Commission's February 24, 1995, letter order in Docket No. ER95–295–000. Copies of KES's informational filing are on file with the Commission and are available for public inspection.

5. Rayburn Electric Cooperative, Inc.

[Docket No. ER95–898–000]

Take notice that on April 12, 1995, Rayburn Electric Cooperative, Inc. (Rayburn Electric) tendered for filing its Application for Authority to Change Rate. Rayburn Electric seeks to reduce its uniform, system-wide rate to allow all of its members to share in the cost savings projected by Rayburn Electric.

Comment date: May 11, 1995, in accordance with Standard Paragraph (E) at the end of this notice.

6. LG&E Power Marketing Inc.

[Docket No. ER95–913–000]

Take notice that on April 13, 1995, LG&E Power Marketing Inc. (LPM) tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that LPM had completed all the steps for pool membership. LPM requests that the Commission amend the WSPP Agreement to include it as a member.

LPM requests an effective date of March 31, 1995, for the proposed amendment. Accordingly, LPM requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: May 11, 1995, in accordance with Standard Paragraph (E) at the end of this notice.

7. Electric Power Clearinghouse

[Docket No. ER95–914–000]

Take notice that on April 11, 1995, Electric Power Clearinghouse tendered for filing an application for authorization to do business as a Power Marketer.

Comment date: May 11, 1995, in accordance with Standard Paragraph (E) at the end of this notice.

8. Southwestern Electric Power Company

[Docket No. ER95–927–000]

Take notice that on April 19, 1995, Southwestern Electric Power Company (SWEPCO), submitted for filing a Power Supply Agreement (PSA) dated March 13, 1995, between SWEPCO and the City of Minden, Louisiana (Minden). Pursuant to the PSA, SWEPCO will, effective May 1, 1995, supply Minden's full requirements in excess of the power and energy generated by Minden's own unit and Minden's hydro entitlement from the Southwestern Power Administration.

SWEPCO seeks an effective date of May 1, 1995, and, accordingly, seeks waiver of the Commission's notice requirements. SWEPCO served copies of the filing on Minden and the Louisiana Public Service Commission.

Comment date: May 11, 1995, in accordance with Standard Paragraph (E) at the end of this notice.

9. Louisville Gas and Electric Company

[Docket No. ER95–928–000]

Take notice that on April 19, 1995, Louisville Gas and Electric Company (Louisville), tendered for filing a new Interchange Agreement between Public Service Electric and Gas Company (PSE&G) and Louisville.

The Interchange Agreement allows transactions between Louisville to PSE&G.

A copy of the filing was served upon the Kentucky Public Service Commission.

Comment date: May 11, 1995, in accordance with Standard Paragraph (E) at the end of this notice.

10. Arizona Public Service Company

[Docket No. ER95–929–000]

Take notice that on April 19, 1995, Arizona Public Service Company (APS) tendered for filing a Service Agreement under APS–FERC Electric Tariff Original Volume No. 1 (APS Tariff) with the following entities.

Howell Power Systems
InterCoast Power Marketing Company
Rainbow Energy Marketing Corporation

A copy of this filing has been served on the above listed entities and the Arizona Corporation Commission.

Comment date: May 11, 1995, in accordance with Standard Paragraph (E) at the end of this notice.

11. Commonwealth Edison Company

[Docket No. ER95–930–000]

Take notice that on April 21, 1995, Commonwealth Edison Company (ComEd), submitted a Service Agreement, dated March 16, 1995, establishing Dairyland Power Cooperative (Dairyland) as a customer under the terms of ComEd's Power Sales Tariff PS–1 (PS–1 Tariff). The Commission has previously designated the PS–1 Tariff as FERC Electric Tariff, Original Volume No. 2.

ComEd requests an effective date of March 16, 1995, and accordingly seeks waiver of the Commission's requirements.

Copies of this filing were served upon Dairyland and the Illinois Commerce Commission.

Comment date: May 11, 1995, in accordance with Standard Paragraph (E) at the end of this notice.

12. PECO Energy Company

[Docket No. ER95–931–000]

Take notice that on April 21, 1995, PECO Energy Company (PECO), tendered for filing an Agreement between PECO and CINergy Services, Incorporated (CINergy) dated February 14, 1995.

PECO states that the Agreement sets forth the terms and conditions for the sale of system energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to CINergy. In order to optimize the economic advantage to both PECO and CINergy, PECO requests that the Commission waive its customary notice period and permit the agreement to become effective on April 24, 1995.

PECO states that a copy of this filing has been set to CINergy and will be furnished to the Pennsylvania Public Utility Commission.

Comment date: May 11, 1995, in accordance with Standard Paragraph (E) at the end of this notice.

13. Alabama Power Company

[Docket No. ER95–912–000]

Take notice that on April 18, 1995, Alabama Power Company tendered for filing a Transmission Service Delivery Point Agreement dated January 27, 1995, which reflects the addition of a delivery point to Baldwin County Electric Membership Cooperative. This delivery point will be served under the terms and conditions of the Agreement for Transmission Service to Distribution Cooperative Member of Alabama Electric Cooperative, Inc., dated August 28, 1980 (designated FERC Rate Schedule No. 147). The parties request an effective date of July 4, 1995, for the addition of the delivery point.

Comment date: May 11, 1995, in accordance with Standard Paragraph (E) at the end of this notice.

14. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)

[Docket No. ER95–915–000]

Take notice that on April 13, 1995, Northern States Power Company—Minnesota (NSP–M) and Northern States Power Company—Wisconsin (NSP–W) jointly tendered and requested the Commission to accept two Transmission Service Agreements which provide for Limited and Interruptible Transmission Service to Cenergy, Inc.

NSP requests that the Commission accept for filing both Transmission Agreements effective on April 17, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to Part 35 of the Commission's regulations so the Agreement may be accepted for filing effective on the date requested.

Comment date: May 11, 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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before 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. 95–10990 Filed 5–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP93–685–000 and CP93–685–001]

Tuscarora Gas Transmission Company; Notice of Availability of the Final Environmental Impact Report/ Environmental Impact Statement for the Proposed Tuscarora Pipeline Project

April 28, 1995.

The staffs of the Federal Energy Regulatory Commission (FERC) and the California State Lands Commission (SLC) have prepared a Final Environmental Impact Report/ Environmental Impact Statement (FEIR/ EIS) on the natural gas pipeline facilities proposed by Tuscarora Gas Transmission Company (Tuscarora) in the above-referenced dockets.

The FEIR/EIS was prepared to satisfy the requirements of the National Environmental Policy Act and the California Environmental Quality Act. The FERC and the SLC staffs conclude that approval of the proposed project, with appropriate mitigating measures including receipt of necessary permits and approvals, has the potential to significantly impact the environment. The FEIR/EIS evaluates alternatives to the proposal.

The FEIR/EIS assesses the potential environmental effects of the construction and operation of the proposed Tuscarora Pipeline Project, which includes the following facilities:

- One 229-mile, 20-inch-diameter pipeline between Malin, Oregon and Tracy, Nevada, (the Tuscarora mainline). The Tuscarora mainline would interconnect with the Pacific Gas Transmission Company's mainline at Malin;
- One 4.42-mile, 4-inch-diameter lateral between the Tuscarora mainline and Alturas, California (the Alturas Lateral);
- One 10.61-mile, 6-inch-diameter lateral between the Tuscarora mainline and a point near Susanville, California (the Susanville Lateral);
- One 5.45-mile, 4-inch-diameter lateral between the Tuscarora mainline and the Sierra Army Depot near Herlong, California (the Herlong Lateral);
- Five meter stations located in Alturas, Susanville, and Herlong (Sierra Army Depot) California; and near Spanish Springs and Tracy, Nevada; and
- Twelve mainline valves.

The project gas would be used to generate electrical power at the Sierra Pacific Company (SPPC) power plant in Tracy, Nevada. A total of 113,050 dekatherms of gas per day (Dkt/d) would be provided. Part of the supply would also service municipal, commercial, and industrial uses in the areas around Reno, Nevada; the California cities of Alturas and Susanville; and at the Sierra Army Depot in the Herlong area.

The FEIR//EIS will be used in regulatory decision making process at the FERC. While the period for filing interventions in this case has expired, motions to intervene out-of-time can be filed with the FERC in accordance with the Commission's Rules of Practice and Procedure, 18 CFR 385.214(d). Further, anyone desiring to file a protest with the FERC should do so in accordance with 18 CFR 385.211.

The SLC is expected to certify the FEIR/EIS and act on the application of the Tuscarora Gas Transmission Company at its regularly scheduled meeting in May or June. Interested parties will be notified of the date, time, and place of the meeting when it is scheduled. The SLC will accept written

comments at the address below. If you have any questions regarding the SLC hearing, or wish to testify, please contact Kirk Walter at the number below.

The FEIR/EIS has been placed in the public files of the FERC and the SLC and is available for public inspection at the following addresses:

Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 941 North Capitol Street, NE., room 3104, Washington, DC 20426, (202) 208–1371.

California State Lands Commission, 100 Howe Avenue, suite 100-South, Sacramento, CA 95825–8202, (916) 574–1900.

Copies of the FEIR/EIS have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the FEIR/EIS are available from either:

Ms. Alisa Lykens, Federal Energy Regulatory Commission, Environmental Project Manager, Office of Pipeline Regulation, room 7312, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0766; or

Mr. Kirk Walter, California State Lands Commission, Environmental Project Manager, 100 Howe Avenue, suite 100-South, Sacramento, CA 95825–8202.

Lois D. Cashell,

Secretary.

[FR Doc. 95–10951 Filed 5–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–325–000, et al.]

Williston Basin Interstate Pipeline Company, et al.; Natural Gas Certificate Filings

April 25, 1995.

Take notice that the following filings have been made with the Commission:

1. Williston Basin Interstate Pipeline Company

[Docket No. CP95–325–000]

Take notice that on April 14, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 300, 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP 95–325–000 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 four storage meter stations in Unit 2 of the Baker Storage Field, Montana under Williston Basin's blanket certificate issued in Docket No. CP82–487–000 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.

Williston Basin proposes to install and operate four two-way (injection/withdrawal) storage meter stations and related facilities in Unit 2 of the Baker Storage Field. The constructed facilities at each storage meter site will consist of a 6′ x 12′ building which will house an orifice meter run, a chart recorder and minor auxiliary metering devices. The land is located completely within Williston Basin's existing right-of-way. Estimated project cost is $36,300. Williston Basin states that the proposed facilities will have no significant effect on peak day or annual requirements.

With the installation of these proposed metering facilities, Williston Basin states that it will be able to provide more detailed injection and withdrawal data from selected storage well groups. This will allow Williston Basin to obtain greater accuracy and detail in gathering reservoir and surface facility data, will give more accurate reservoir modeling and will create greater operating efficiency in Unit 2. Until this time, the metering of gas storage injection and withdrawal volumes for the twelve storage wells extending over seven square miles in Unit 2 has been provided by one storage meter located at the Cabin Creek Compressor Station.

Comment date: June 9, 1995, in accordance with Standard Paragraph (G) at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP95–334–000]

Take notice that on April 19, 1995, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia, 25325–1273, filed in Docket No. CP95–334–000 an abbreviated joint application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) Regulations thereunder, for permission and approval to abandon a natural gas transportation service for Penn Fuel Gas, Inc. (Penn Fuel), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia states that it proposes to abandon a transportation service initiated to implement a storage agreement for annual storage of up to 850,000 Mcf of natural gas by National Gas Storage Corporation (Storage Corporation) for Penn Fuel. Columbia indicates that it provides its service under its Rate Schedule X–98. Columbia further states that the service was authorized in Docket No. CP80–234. It is indicated that National Fuel Gas Supply Corporation (Supply Corporation) agreed to transport the gas from Penn Fuel's account to and from Storage Corporation. It is further indicated that Columbia, Penn Fuel, and Supply Corporation entered into a agreement whereby Columbia agreed to transport base gas and injection and withdrawal volumes from Penn Fuel's Rate Schedule CDS entitlement to Supply Corporation for transportation and redelivery to Storage Corporation, and to transport storage withdrawal volumes delivered by Supply Corporation to Columbia for delivery to existing points of delivery to Penn Fuel.

Columbia states that Rate Schedule X–98 allowed it to transport, on a best efforts basis, summer injection volumes of from 2,000 to 7,000 Mcf per day for delivery to Supply Corporation for Penn Fuel's account, and to transport from 2,000 to 10,000 Mcf per day for Penn Fuel during winter withdrawal periods. Columbia advises that delivery of the summer injection volumes was at existing points of interconnection between Columbia and Supply Corporation near Emporium, Cameron County, Pennsylvania. Columbia indicates that the withdrawal volumes were received at the same points of interconnection and redelivered to Penn Fuel at existing delivery points between Columbia and Penn Fuel. Columbia avers that it is currently providing alternative service under a Part 284 storage service transportation agreement for Penn Fuel as filed in ST94–2317–000. It is indicated that volumes were last transported under Rate Schedule X–98 in November 1994 and that there are no outstanding balances.

Comment date: May 16, 1995, in accordance with Standard Paragraph (F) at the end of this notice.

3. Florida Gas Transmission Company

[Docket No. CP95–339–000]

Take notice that on April 21, 1995, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–339–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for permission and approval to abandon a meter station and .1 of a mile of pipeline. FGT makes such request under its blanket certificates issued in

Docket No. CP82–553–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT is proposing to abandon .1 mile of 3-inch lateral pipeline and the Plymouth Citrus Meter Station located in Orange County, Florida. FGT states that Mid-Florida Freezer Warehouses, Ltd. (Mid-Florida) now owns and operates the citrus processing facility that previously took gas from this system. FGT asserts that Mid-Florida does not need to use natural gas and therefore does not need the facilities previously used by Citrus World. FGT reports that no activity has occurred at this meter station since 1990.

Comment date: June 9, 1995, in accordance with Standard Paragraph (G) at the end of this notice.

4. NorAm Gas Transmission Company

[Docket No. CP95–342–000]

Take notice that on April 21, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–342–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, and 157.211) for approval to construct and operate a delivery tap and meter station located in Phillips County, Arkansas for delivery of natural gas to ARKLA, a division of NorAm Energy Corporation, for redelivery to its customer, Alumax, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NGT proposes to construct and operate a one-inch delivery tap and a two-inch L-Shape meter station on its Line JM–19 for ultimate redelivery to Alumax. NGT states that the estimated volumes to be delivered through this tap are approximately 182,500 MMBtu annually and 750 MMBtu on a peak day. NGT indicates that the volumes delivered are within ARKLA's certificated entitlement and NGT's tariff does not prohibit the addition of new delivery points. NGT further indicates that it has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers. It is indicated that the estimated cost of construction is $42,264, and that ARKLA will reimburse NGT for all construction costs.

Comment date: June 9, 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, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

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 of the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–10953 Filed 5–3–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–330–000]

ANR Storage Company; Notice of Application

April 28, 1995.

Take notice that on April 18, 1995, ANR Storage Company (ANR Storage) 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP95–330–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon three storage services performed for Panhandle Eastern Pipe Line Company (Panhandle), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR Storage states that the services are provided pursuant to Rate Schedules X–2, X–3, and X–4 which was authorized by Order issued in Docket No. CP78–432 et al.

ANR Storage states further that the term of the agreement underlying each of the services has expired, and Panhandle has requested termination of the services.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before May 19, 1995, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

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 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 ANR to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–10954 Filed 5–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–917–000]

Central Illinois Public Service Company; Notice of Filing

April 28, 1995.

Take notice that on April 14, 1995, Central Illinois Public Service Company (CIPS) submitted a Service Agreement, dated March 22, 1995, establishing Citizens Lehman Power as a customer under the terms of CIPS' Coordination Sales Tariff CST–1 (''CST–1 Tariff'').

CIPS requests an effective date of March 22, 1995, and accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Citizens Lehman Power and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 12, 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. 95–10955 Filed 5–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–625–000, ER95–626–000, AND EL95–39–000]

Cincinnati Gas & Electric Co. and PSI Energy, Inc.; Notice of Initiation of Proceeding and Refund Effective Date

April 28, 1995.

Take notice that on April 26, 1995, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL95–39–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL95–39–000 will be 60 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 95–10991 Filed 5–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–238–001]

Columbia Gulf Transmission Company; Notice of Supplemental Filing of Proposed Changes in FERC Gas Tariff

April 28, 1995.

Take notice that on April 26, 1995, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following tariff sheet to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective May 4, 1995, the effective date of Order No. 577. Columbia Gulf states that this filing is intended to supplement Columbia Gulf's April 19, 1995, filing initiating this docket.

Substitute Second Revised Sheet No. 192

In Order No. 577, the Commission modified its capacity release regulations to permit shippers to release firm capacity for a period of one calendar month or less without having to comply with advance posting and bidding requirements. On April 19, 1995, Columbia Gulf filed tariff sheets initiating this docket reflecting the changes dictated by Order No. 577. In that filing, Columbia Gulf also shortened the duration of minimum posting periods in Section 14.2(e) of the General Terms and Conditions (GTC) of its tariff.

Further review of this tariff section revealed that it is different from GTC Section 14.2(e) in Columbia as Transmission Corporation's (Columbia) FERC Gas Tariff, Second Revised Volume No. 1, which is simply the result of an oversight during the Order No. 636 restructuring process for Columbia and Columbia Gulf. Columbia Gulf cites to its restructuring orders as requiring that this provision be identical for Columbia and Columbia Gulf. Columbia Gulf further states that the above referenced tariff sheet corrects Columbia Gulf's GTC Section 14.2(e) to be identical to Columbia's same provision.

Columbia Gulf states that copies of its filing have been mailed to all firm customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 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 proceedings. Copies of Columbia Gulf's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–10956 Filed 5–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–253–000]

Florida Gas Transmission Company; Notice of Transition Cost Recovery Report

April 28, 1995.

Take notice that on April 26, 1995, Florida Gas Transmission Company (FGT) tendered for filing a Transition Cost Recovery Report pursuant to Section 24 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1.

FGT states that the Transition Cost Recovery Report summarizes the activity which has occurred in its TCR Account and Order 636 Account through April 30, 1995. FGT states that it has not made any payments since its last report filed October 26, 1994 in Docket No. RP95–18–000. Because the currently effective surcharge rates are at the maximum levels permitted by FGT's tariff, no tariff revisions are required as a result of this filing.

FGT states that copies of the report were mailed to all customers serviced under the rate schedules affected by the report and the 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, N.E., Washington, D.C., 20426 in accordance with Sections

385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95-10957 Filed 5-3-95; 8:45 am]

BILLING CODE 6717-07-M

[Docket No. RP94–229–003]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

April 28, 1995.

Take notice that on April 25, 1995, Granite State Gas Transmission, Inc. (Granite State) tendered for filing the revised tariff sheets listed below in its FERC Gas Tariff, Third Revised Volume No. 1, containing changes in rates for effectiveness on May 1, 1995:

Fourth Revised Sheet No. 21
Fifth Revised Sheet No. 22
Fourth Revised Sheet No. 23

According to Granite State, the Commission issued an order on April 13, 1995, approving a Stipulation and Agreement settling Granite State's rate proceeding in Docket No. RP94–229. It is further stated that the tariff sheets listed above reflect the revised Base Tariff Rates for Granite State's transportation services approved in the settlement and, according to the terms of the settlement, such rates are to be effective on the first day of the month following the approval of the Stipulation and Agreement.

Granite State further states that copies of its filing have been mailed to its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital 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 May 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 proceedings. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–10961 Filed 5–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–784–000]

J. Anthony & Associates Ltd.; Notice of Filing

April 28, 1995.

Take notice that on April 6, 1995, J. Anthony & Associates Ltd. tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 12, 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. 95–10958 Filed 5–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–187–000 and TM95–2–37–000]

Northwest Pipeline Corporation; Notice of Technical Conference

April 28, 1995.

Take notice that at 9:30 a.m. on Thursday, May 18, 1995, the Commission staff will convene a technical conference in the above-captioned proceedings pursuant to an order issued on March 31, 1995.[1] The technical conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 95–10962 Filed 5–3–95; 8:45 am]

BILLING CODE 6717–01–M

[1] 70 FERC ¶ 61,381 (1995).

[Docket No. RP94–325–000]

Panhandle Eastern Pipe Line Company; Notice of Informal Settlement Conference

April 28, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on Monday, May 15, 1995, at 10 a.m., continuing, if necessary, on Tuesday, May 16, 1995, at 9 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of discussing the proposed draft settlement in the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 358.214).

For additional information, contact Carmen Gastilo at (202) 208–2182 or Kathleen Dias at (202) 208–0524.

Lois D. Cashell,

Secretary.

[FR Doc. 95–10959 Filed 5–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–251–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

April 28, 1995.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on April 25, 1995, tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with proposed effective date of May 4, 1995:

First Revised Volume No. 278
First Revised Volume No. 279
First Revised Volume No. 282

Panhandle states that this filing is being made to comply with Order No. 577, the Commission's Final Rule in Docket No. RM95–5–000 issued March 29, 1995.

Panhandle states that the revised tariff sheets listed on Appendix A reflect the revisions in the term and character of capacity releases that are exempt from advance posting and bidding requirements and reduce the restriction period to re-release such capacity to the same pre-arranged shipper. Specifically, the tariff sheets: (1) Extend the maximum term of pre-arranged capacity releases, at less than the maximum rate, that are exempt from advance posting

and bidding requirements to one full calendar month, and (2) reduce the restriction period from thirty days to twenty-eight days for re-releasing capacity exempt from advance posting and bidding to the same pre-arranged shipper.

In addition, Panhandle states that this filing proposes tariff language to modify Section 15.5 of Panhandle's General Terms and Conditions—Selection of Replacement Shipper. For electronically processed contracts, Panhandle will reduce the time required to tender a Service Agreement for firm service from no later than two (2) Business Days to no later than one (1) Business Day after the close of the posting period.

Panhandle states that copies of this filing have been served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before May 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–10963 Filed 5–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–916–000]

Portland General Electric Company; Notice of Filing

April 28, 1995.

Take notice that on April 14, 1995, Portland General Electric Company tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 180.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 12, 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. 95–10960 Filed 5–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–918–000]

Rainbow Energy Marketing Corporation; Notice of Filing

April 28, 1995.

Take notice that on April 18, 1995, Rainbow Energy Marketing Corporation tendered for filing its service agreement with Rochester Gas and Electric Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protestants should be filed on or before May 12, 1995. Protestants 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 inspection.

Lois D. Cashell,

Secretary,

[FR Doc. 95–10964 Filed 5–3–95; 8:45 am]

BILLING CODE 6717–010–M

[Docket No. CP95–119–001]

Steuben Gas Storage Co.; Notice of Amended Application

April 28, 1995.

Take notice that, on April 18, 1995, Steuben Gas Storage Company (Steuben), 500 Renaissance Center, Detroit, Michigan 48243, amended its December 13, 1994, application in Docket No. CP95–119–000, for a certificate of public convenience and necessity, under Section 7(c) of the Natural Gas Act (NGA) and Part 157 and Part 284 of the Commission's Regulations, by proposing a new route for its Thomas Corners Field's injection/withdrawal facilities (a 12-inch pipeline, the terminus of which remains the same as originally set forth in the application).

Any person desiring to be heard, or to make any protest with reference to said application should on or before May 19, 1995, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–10965 Filed 5–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–252–000]

Texas Eastern Transmission Corp. Notice of Proposed Changes in FERC Gas Tariff

April 28, 1995.

Take notice that on April 25, 1995, pursuant to and in compliance with the Commission's Final Rule (Order No. 577) issued March 29, 1995 in Docket No. RM95–5–000, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 464
First Revised Sheet No. 465
First Revised Sheet No. 467

Texas Eastern states that the tariff sheets submitted herewith reflect the revisions in the term and character of capacity releases that are exempt from advance posting and bidding requirements and which reduce the restriction period for re-releasing such capacity to the same pre-arranged customer.

Texas Eastern requests waiver of the notice requirement of Section 154.22 of the Regulations to permit the tendered tariff sheets to become effective on May 4, 1995, which is the date Order No. 577 will become effective.

Texas Eastern states that copies of the filing were served on firm customers of

Texas Eastern 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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–10996 Filed 5–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–11–29–000]

Transcontinental Gas Pipe Line Corp.; Notice of Proposed Changes in FERC Gas Tariff

April 28, 1995.

Take notice that on April 25, 1995, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Fifth Revised Sheet No. 28B to which tariff sheet is proposed to be effective April 1, 1995.

TGPL states that the purpose of the instant filing is to track a rate change attributable to storage service purchased from North Penn Gas Company (North Penn) under its Rate Schedule SS the costs of which are included in the rates and charges payable under TGPL's Rate Schedule SS–1. The tracking filing is being made pursuant to Section 5 of TGPL's Rate Schedule SS–1.

TGPL states that included in Appendix A attached to the filing is an explanation of the rate change and details regarding the computation of the revised SS–1 rates.

TGPL states that copies of the filing are being mailed to each of its SS–1 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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–10967 Filed 5–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–254–000]

Williams Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

April 28, 1995.

Take notice that on April 26, 1995, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet Nos. 243 and 244. The proposed effective date of these tariff sheets is June 1, 1995.

WNG states that this filing is being made to eliminate unnecessary paperwork by not requiring service agreements on capacity releases which are: (1) For less than three months, (2) occur through the EBB, and (3) cannot generate more than $100,000 in reservation charges and reservation surcharges, calculated at 100% load factor for the duration of the release. Section 11.4(d) is modified to remove the requirement that earnest money must be paid on releases. First Revised Sheet No. 244 is being filed for pagination purposes. These changes will make it easier for Shippers to utilize capacity release on WNG's system.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–10968 Filed 5–3–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5202–6]

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; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 5, 1995.

FOR FURTHER INFORMATION CONTACT: For further information, or a copy of this ICR, contact Sandy Farmer at (202) 260–2740, please refer to ICR #1488.03.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Superfund Site Evaluation and Hazard Ranking System, EPA ICR #1488.03. This ICR requests renewal of a currently approved collection (OMB #2050–0095).

Abstract: Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 1980 and 1986) amends the National Oil and Hazardous Substances Contingency Plan (NCP) to include criteria prioritizing releases throughout the U.S. before undertaking remedial action at uncontrolled hazardous waste before undertaking remedial action at uncontrolled hazardous waste sites. The Hazard Ranking System (HRS) is a model that is used to evaluate the relative threats to human health and the environment posed by actual or potential releases of hazardous substances, pollutants, and contaminants. The HRS criteria take into account the population at risk, the

hazard potential of the substances, as well as the potential for contamination of drinking water supplies, direct human contact, destruction of sensitive ecosystems, damage to natural resources affecting the human food chain, contamination of surface water used for recreation or potable water consumption, and contamination of ambient air.

Under this ICR the States will apply the HRS by identifying and classifying those releases that warrant further investigation. The HRS score is crucial since it is the primary mechanism used to determine whether a site is eligible to be included on the National Priorities List (NPL). Only sites on the NPL are eligible for Superfund-financed remedial actions.

HRS scores are derived from the sources described in this information collection, including field reconnaissance, taking samples at the site, and reviewing available reports and documents. States record the collected information on HRS documentation worksheets and include this in the supporting reference package. States then send the package to the EPA region for a completeness and accuracy review, and the Region then sends it to EPA Headquarters for a final quality assurance review. If the site scores above the NPL designated cutoff value, and if it meets the other criteria for listing, it is then eligible to be proposed on the NPL.

Burden Statement: Depending on the number and type of activities performed, burden for the collection of site assessment information is estimated to range from 130 to 2,170 hours per site. The number of hours required to assess a particular site depends on how far a site progresses through the site assessment process. Sites where only a Preliminary Assessment is performed will typically require approximately 130 hours, while sites that progress to NPL listing will require approximately 2,170 hours. The burden estimates include reporting activities and minimal recordkeeping activities. The States are reimbursed 100% of their costs, except for record maintenance. The ICR does not impose burden for HRS activities on local governments or private businesses.

Respondents: State agencies requesting oversight of the site.

Estimated Number of Respondents: 50 States.

Estimated Total Annual Burden on Respondents: 363,000 hours.

Frequency of Collection: one time; section 116(b) requires an HRS evaluation within four years of the site's entry into the EPA CERCLIS database.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, (please refer to EPA ICR #1488.03 and OMB #2050–0095) to:

Sandy Farmer, EPA ICR #1488.03, U.S. Environmental Protection Agency, Regulatory Information Division (2136), 401 M Street, SW., Washington, DC 20460 and

Jonathan Gledhill, OMB #2050–0095, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: April 28, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–11034 Filed 5–3–95; 8:45 am]

BILLING CODE 6560–50–M

[Docket No. 95F–00 FRL–5202–8]

Interim Revised Clean Water Act Settlement Penalty Policy Issued

AGENCY: Office of Enforcement and Compliance Assurance, Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Assistant Administrator Steve Herman of the Office of Enforcement and Compliance Assurance issued an ''Interim Revised Clean Water Act Settlement Penalty Policy'' on February 28, 1995. This Interim Policy supersedes the 1986 Clean Water Act Penalty Policy and six subsequent guidances.

FOR FURTHER INFORMATION CONTACT: David Hindin, 202–564–6004 or Kenneth Keith, 202–564–4031, Office of Regulatory Enforcement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Section 309 of the Clean Water Act (CWA), (33 U.S.C. 1319) authorizes the Administrator of the U.S. Environmental Protection Agency (''EPA'' or ''Agency'') to bring civil judicial and administrative actions against persons who violates various Federal water pollution control standards and requirements in the CWA. In such actions the Administrator may seek civil penalties.

EPA brings enforcement actions to require alleged violators to promptly correct the violations and remedy any harm caused by the violations. As part of an enforcement action, EPA also seeks monetary penalties. Penalties promote environmental compliance and help protect public health by deterring future violations by the same violator and deterring violations by other members of the regulated community. Penalties also help ensure a national level playing field by ensuring that violators do not obtain an unfair economic advantage over competitors who have done whatever was necessary to comply on time. Penalties also encourage companies to adopt pollution prevention and recycling techniques, so that they minimize their pollutant discharges and reduce their potential liabilities.

This Policy guides EPA in establishing appropriate penalties in settlement of civil judicial and administrative actions. Subject to the circumstances of a particular case, this Policy provides the lowest penalty figure which the Federal Government should accept in a settlement. This Policy is drafted so that violators whose actions, or inactions, resulted in a significant economic benefit and/or harmed or threatened public health or the environment will pay the highest penalties.

The purpose of this Policy is to further four important environmental goals. First, penalties should be large enough to deter noncompliance. Second, penalties should help ensure a level playing field by ensuring that violators do not obtain an economic advantage over their competitors. These two goals generally require that penalties recover the economic benefit of noncompliance, plus an appropriate amount reflective of the gravity or seriousness of the violations. Third, CWA penalties should be generally consistent across the country. This provides fair and equitable treatment to the regulated community wherever they may operate. Fourth, settlement penalties should be based on a logical calculation methodology to promote swift resolution of enforcement actions and the underlying violations.

This interim revision of the Clean Water Act Penalty Policy provides numerous improvements to the 1986 Policy. First, this revision establishes an alternative approach to use in appropriate cases to determine penalties against municipalities. This approach, called the national municipal litigation consideration, is based in part on the penalties obtained in prior case settlements and on an evaluation of four factors: size of the facility (as measured by service population), duration of violations, environmental impact and economic benefit. Second, the methodology for evaluating the gravity of violations has been revised to reduce redundancy, improve national consistency, and provided broader coverage for all types of violations.

Finally, two new gravity adjustments have been established to provide incentives for quick settlements and to mitigate penalty amounts for small facilities.

The Agency is issuing this Policy in an interim version because it may be subsequently revised based on public comments and our experience in using it. (It is being issued as an Interim Policy, rather than as a draft, because this revision is superior in many ways to the existing 1986 version of the Policy.) The Agency is specifically interested in comments on how well the national municipal litigation consideration and gravity adjustment factors function, and how the Policy should apply in conjunction with EPA's new Voluntary Environmental Self-Policing and Self-Disclosure Interim Policy Statement, 60 FR 16875 (April 3, 1995).

Comments from the public are welcome and should be sent within 90 days of the date of this publication to: U.S. Environmental Protection Agency, Water Enforcement Division (2243A), 401 M Street SW., Washington, DC 20460.

Dated: April 17, 1995.

Steven A. Herman,

Assistant Administrator for the Office of Enforcement and Compliance Assurance.

[FR Doc. 95–11033 Filed 5–3–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5203–4]

Clean Air Act Advisory Committee Notice of Public Meeting and Extending the Expiration Date of Subcommittee

Under Section (10)(a)(2) of Title 5 U.S.C. App 2, ''The Federal Advisory Committee Act,'' notice is hereby given that the Subcommittee on Mobile Source Emissions and Air Quality in the Northeastern States of the Clean Air Act Advisory Committee will meet on Thursday, May 25, 1995 beginning at 8:30 A.M. to 5:00 P.M. at the Hyatt Regency Washington Hotel, located near Capitol Hill at 400 New Jersey Avenue, N.W., Washington, D.C. 20001, 202/737–1234. This meeting is open to the public. For further information concerning the meeting, please contact the individuals listed below.

Public notice is also given extending the expiration date of the Subcommittee on Mobile Source Emissions and Air Quality in the Northeastern States to June 15, 1995.

Further Information and Providing Comments

For additional information concerning these meetings, please contact Mike Shields, Designated Federal Official, Office of Mobile Sources, U.S. Environmental Protection Agency, 401 M Street, SW. Washington, D.C. 20460 (202) 260–7645.

Dated: April 27, 1995.

Rob Brenner,

Director, Office of Policy Analysis and Review, Office of Air and Radiation, U. S. Environmental Protection Agency.

[FR Doc. 95–11037 Filed 5–3–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5202–5]

Proposed Administrative Settlement, North Indian Bend Wash Site

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice; Request for public comment.

SUMMARY: In accordance with Section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA,'' commonly referred to as Superfund), 42 U.S.C. 9622(i), notice is hereby given of a proposed cost recovery administrative settlement concerning Area 3 of the North Indian Bend Wash Site in Scottsdale, Arizona. The United States Environmental Protection Agency (''EPA'') is proposing to enter into a settlement pursuant to Section 122(h) of CERCLA. This proposed settlement is intended to resolve the liabilities under CERCLA of William Munzer, Miles Munzer, Gerald Glassman, on behalf of himself and Plainville West, Inc. and Jeffrey Scoon for EPA's past and future response costs associated with Area 3 of the North Indian Bend Wash Site. Under the agreement, these parties are to pay a total of $160,000 to EPA.

EPA may withdraw or withhold its consent to this settlement if comments received during the 30 day public comment period disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

DATES: Pursuant to Section 122(i)(1) of CERCLA, EPA will receive written comments relating to this proposed settlement until June 5, 1995.

ADDRESSES: Comments should be addressed to Steve Armsey, Regional Hearing Clerk, U.S. EPA Region IX (RC–1), 75 Hawthorne Street, San Francisco, CA 94105 and should refer to: North Indian Bend Wash Superfund Site, Scottsdale, Arizona, U.S. EPA Docket No. 95–14. A copy of the proposed Administrative Order on Consent may be obtained from the Regional Hearing Clerk at the address provided above.

FOR FURTHER INFORMATION CONTACT: Janet R. Carlson, Assistant Regional Counsel, (415) 744–1395, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Dated: April 21, 1995.

Jeff Zelikson,

Director, Hazardous Waste Management Division.

[FR Doc. 95–11032 Filed 5–3–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5202–7]

Proposed Administrative Settlement Pursuant to Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for Public Comment.

SUMMARY: The United States Environmental Protection Agency (''U.S. EPA'') is proposing to enter into an administrative settlement agreement under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99–499, 100 Stat. 1613 (1986) (''CERCLA''). The proposed agreement provides for: (1) Recoupment by U.S. EPA of $30,000 in past costs; (2) resolution of the proposed settling party's liability for past costs; and (3) contribution protection.

DATES: Comments should be provided on or before June 5, 1995.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, IL 60604, and should refer to: Performance One, Inc, Site, Loves Park, IL.

FOR FURTHER INFORMATION CONTACT: Eileen L. Furey, U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard (C–29A), Chicago, IL 60604, (312) 353–6124.

NOTICE OF SETTLEMENT: In accordance with Section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement agreement

concerning the Performance One, Inc. Site, which is located in Loves Park, Illinois.

In response to the release or threat of release of hazardous substances, U.S. EPA undertook a removal action at the Performance One Site pursuant to Section 104 of CERCLA. The removal action was completed on February 16, 1994. The former owner and operator of the Site defaulted on loans secured by the property, which had been guaranteed by the U.S. Small Business Administration (''SBA''). After conducting several environmental audits, the SBA was able to secure Donald D. Elmore (the proposed ''Settling Party'') as a potential purchaser. The purchase/sale transaction occurred on December 20, 1994.

Under the terms of the proposed agreement, the Agency will receive $30,000 from the Settling Party in exchange for a release from any liability for the payment of past costs, as defined in the proposed agreement, associated with the removal action. The Settling Party will receive the contribution protection afforded by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4) for past response costs.

Nothing in the proposed agreement compromises U.S. EPA's potential claims against any person not a party to the agreement.

U.S. EPA will receive written comments relating to this agreement for 30 days from the date of publication of this notice.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from U.S. EPA's Region V Office of Regional Counsel, 77 West Jackson Boulevard (C–29A), Chicago, IL 60604.

Authority: The Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601–9675, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99–499, 100 Stat. 1613 (1986).

Dated: April 14, 1995.

Richard C. Karl,

Acting Associate Division Director, Office of Superfund.

[FR Doc. 95–11036 Filed 5–3–95; 8:45 am]

BILLING CODE 6560–50–M

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 25]

Agency Forms Submitted for OMB Review

AGENCY: Export-Import Bank of the United States.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, Ex-Im Bank has submitted two applications to be used under the Bank's medium- and long-term loan and guarantee programs.

PURPOSE: The proposed applications are to be used by applicants when applying for Ex-Im Bank's services under its medium- and long-term loan and guarantee programs. The LI application will be used by Ex-Im Bank to obtain the information needed to ensure that statutory and program requirements relevant to the medium- and long-term loan and guarantee program are met. The PC/AP application will be used to obtain the information needed to ensure that statutory and program requirements, including a judgment of creditworthiness, relevant to the medium- and long-term loan and guarantee program are met.

SUMMARY: The following summarizes the information collection proposal submitted to OMB.

(1) Type of request: revision

(2) Number of forms submitted: two

(3) Form Number: EIB 95–9 and 95–10 (previously EIB No. 87–14)

(4) Title of information collection: Ex-Im Bank Letter of Interest Application Form; Ex-Im Bank Preliminary Commitment and Final Commitment Application Form

(5) Frequency of use: Submission of applications

(6) Respondents: Any U.S. or foreign bank, other financial institution, other responsible party including the exporter or creditworthy borrowers in a country eligible for Ex-Im Bank assistance.

(7) Estimated total number of annual responses: LI–900; PC/AP–550

(8) Estimated total number of hours needed to fill out the form: LI–300; PC/AP–550

ADDITIONAL INFORMATION OR COMMENTS:

Copies of the proposed application may be obtained from Tamzen C. Reitan, Agency Clearance Officer, (202) 565–3333. Comments and questions should be directed to Jefferson Hill, Office of Management and Budget, Information and Regulatory Affairs, Room 3235, New Executive Office Building, Washington, DC 20503, (202) 395–3176. All comments should be submitted within two weeks of this notice; if you intend to submit comments but are unable to meet this deadline, please advise by telephone that comments will be submitted late.

Dated: April 28, 1995.

Tamzen C. Reitan,

Agency Clearance Officer.

[FR Doc. 95–10945 Filed 5–3–95; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

April 28, 1995.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. For further information contact Jonathan Cohen, Federal Communications Commission, (202) 418–2030.

Federal Communications Commission

OMB Control No.: 3060–0639.

Expiration Date: 04/30/98.

Title: Implementation of Section 309(j) of the Communications Act Competitive Bidding, PP Docket 93–253, First Report and Order.

Estimated Annual Burden: 1100 total annual hours; 1 hour per response.

Description: Lottery applicants for voluntary transfer of control or assignment must file with the Commission, along with their application, the consideration they will receive if the Commission grants their application for voluntary transfer of control or assignment. Any applicant for voluntary transfer of control or assignment would be required to file, together with its application, the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration received in return for the transfer of its license. This information should include not only a monetary purchase price, but also any future, contingent, in-kind or other consideration (e.g., management or consulting contracts either with or without an option to purchase; below-market financing).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–11018 Filed 5–3–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Celebrity Cruises, Inc. and Esker Marine Shipping, Inc., 5200 Blue Lagoon Drive, Miami, Florida 33126.

Vessel: GALAXY.

Dated: May 1, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–10996 Filed 5–3–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

M & M Worldwide, Inc., 1940–44 N.W. 82 Ave., Miami, FL 33126, Officers: Mario A. Gomez, President; Maria S. Gomez, Vice President

D.L. Bynum & Company, Inc., 3040 Airfreight Road, Houston, TX 77032, Officer: Diana Lee Bynum, President

ProCargo Inc., 126 N. Langley Rd., Glen Burnie, MD 21060, Officer: Margaret B. Troy, President, Les Harrison, Director

Apollo Stevedoring Company, dba Jason Shipping Company, 13251 Eastern Ave—Port Manatee, Palmetto, FL 34221, Officers: Edward E. Sheffield, President; Joan E. Sheffield, Secretary

Worldwide Cargo Express Inc., dba Wessco International, 1551 N.W. 93rd Ave., Miami, FL 33172, Officers: Carlos A. Henao, President, Astrid Henao, Vice President

One Stop Cargo Services, Inc., 4410 NW 74th Ave., Miami, FL 33166, Officers: Ben Barbosa, President, Andreia Barbosa, Vice President.

Dated: May 1, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–10995 Filed 5–3–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Deutsche Bank AG, Frankfurt, Germany; Application to engage in Nonbanking Activities

Deutsche Bank AG, Frankfurt, Germany (Deutsche Bank), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), through a newly-formed wholly-owned subsidiary, Deutsche Bank Futures Corporation, New York, New York (Futures), to engage in the following activities: 1) acting as a futures commission merchant (FCM) for nonaffiliated persons in executing and clearing, executing without clearing, and clearing without executing, on the Chicago Board of Trade and the Chicago Mercantile Exchange with respect to certain futures and options contracts, 2) acting as an FCM for nonaffiliated persons in executing and clearing, and clearing without executing, through omnibus trading accounts with affiliated and nonaffiliated futures commission merchants or brokers with respect to certain futures and options contracts, 3) providing related investment advisory services, 4) providing securities brokerage services on the American Stock Exchange, the Chicago Board Options Exchange and the Philadelphia Stock Exchange, and 5) providing related data processing services. Deutsche Bank would engage in these activities on a worldwide basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the ''closely related to banking'' test if it is demonstrated that banks generally have provided the proposed activity, that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity, or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement regarding Regulation Y, 49 FR 806 (1984).

Deutsche Bank states that the Board previously has determined by regulation that certain of the proposed activities, when conducted within limitations established by the Board in its regulations and in related interpretations and orders, are closely related to banking for purposes of section 4(c)(8) of the BHC Act. *See* 12 CFR 225.25(b)(15)(full-service securities brokerage); 12 CFR 225.25(b)(4)(investment advisory services); 12 CFR 225.25(b)(18)(futures commission merchant services);12 CFR 225.25(b)(7), *Citicorp*, 72 Federal Reserve Bulletin 497 (1986), and *Citicorp*, 68 Federal Reserve Bulletin 505 (1982)(data processing services).

Deutsche Bank also maintains that the Board has determined by order that several of the other proposed activities, when conducted within the limitations established by the Board in previous orders, are closely related to banking. *See Sakura Bank, Limited*, 79 Federal Reserve Bulletin 723 (1993)(providing execution-only, clearing-only, and investment advisory services, and buying and selling contracts through omnibus accounts, with respect to financial futures and options on futures); *Northern Trust Corporation*, 79 Federal Reserve Bulletin 723 (1993)(providing execution-only, clearing-only, and investment advisory services, and buying and selling contracts through omnibus accounts, with respect to financial futures and options on futures); *Commerzbank Aktiengesellschaft*, 79 Federal Reserve Bulletin 961 (1993)(providing execution-only, clearing-only, and investment advisory services, and buying and selling contracts through omnibus accounts, with respect to

financial futures and options on futures); and *Societe Generale*, 76 Federal Reserve Bulletin 776 (1990). Deutsche Bank maintains that Futures would conduct these previously approved activities in conformance with the conditions and limitations established by the Board in prior cases.

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Deutsche Bank and Futures ''can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' 12 U.S.C. 1843(c)(8). Deutsche Bank believes that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Deutsche Bank maintains that the proposal will enhance competition and enable Deutsche Bank to assist its customers in lowering financing costs, contributing to greater market stability, increasing efficiency and reducing portfolio risk. In addition, Deutsche Bank states that the proposed activities will not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than May 18, 1995 . Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, April 28, 1995.

Jennifer J. Johnson

Deputy Secretary of the Board.

[FR Doc. 95–11038 Filed 5–3–95; 8:45 am]

BILLING CODE 6210–01–F

Societe Generale; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 18, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Societe Generale, Paris, France; to engage *de novo* through its subsidiary, Societe Generale Asset Management Corp., New York, New York, in nonbanking activities acting as investment or financial advisor, pursuant to § 225.25(b)(4) of the Board's Regulation Y. These activities will be conducted worldwide.

Board of Governors of the Federal Reserve System, April 28, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–11039 Filed 5–3–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Advisory Committee; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is cancelling the subcommittee meeting of the Food Advisory Committee scheduled for May 8 and 9, 1995, to provide time for the agency to expand its ongoing research review. The meeting was announced in the **Federal Register** of April 21, 1995 (60 FR 19949). It is anticipated that the meeting will be rescheduled in the future, to be announced at a later date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Lynn A. Larsen, Center for Food Safety and Applied Nutrition (HFS–5), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4727,

Catherine M. DeRoever, Advisory Committee Staff (HFS–22), 200 C St. SW., Washington, DC 20204, 202–205–4251, or

FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Food Advisory Committee, code 10564.

Dated: May 1, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–11169 Filed 5–2–95; 2:25 pm]

BILLING CODE 4160–01–F

Health Care Financing Administration

Hearing: Reconsideration of Disapproval of Illinois State Plan Amendment (SPA)

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

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on June 14, 1995, at 10 a.m. in the 15th Floor Conference Room, 105 West Adams, Chicago, Illinois to reconsider our decision to disapprove Illinois SPA 93–14.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by May 19, 1995.

FOR FURTHER INFORMATION CONTACT: Stan Katz, Presiding Officer, Ground floor, Meadowwood East Building, 1849 Gwynn Oak Avenue, Baltimore, Maryland 21207, Telephone: (410) 597–3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Illinois State plan amendment (SPA) number 93–14.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The State of Illinois submitted SPA 93–14 on October 18, 1994, to establish a new payment adjustment for uncompensated care services, and requested an effective date of July 1, 1993.

The issue in this matter is whether Illinois SPA 93–14, meets Federal regulations which require the State to comply with the public notice requirements in Section 447.205.

Illinois published public notice on August 6, 1993, with the plan amendment's proposed effective date of July 1, 1993.

HCFA believes the proposed effective date of the plan amendment was not approvable because the State failed to comply with the Federal regulation at 42 CFR 447.253(h) which requires that the Medicaid agency must comply with public notice requirements in § 447.205 when it is proposing significant changes to its methods and standards for setting payment rates for inpatient hospital and long-term care facility services. Section 447.225(d)(1) requires that the notice be published before the proposed effective date of the change. The State's requested effective date is prior to the date of the public notice announcement.

However, because public notice was published on August 5, 1993, HCFA believes the plan amendment was approvable with an effective date of August 6, 1993.

The State of Illinois contends that the change was not significant. Additionally, Illinois challenges HCFA's disapproval because public notice was published prior to the State's implementation of the amendment, and because the eventual disallowances of Federal financial participation funds based on public notice requirements are the subject of current regulatory reform proposals.

Under HCFA's policy, the sole factor in determining a significant change is the degree to which the State is proposing to modify its payment methods and standards. HCFA believes since this amendment established a new payment adjustment for uncompensated care services, the amendment represents a significant change in the methods and standards used to determine payment rates.

The notice to Illinois announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Robert W. Wright,

Director, Illinois Department of Public Aid, Jesse B. Harris Building II, 3rd Floor, 100 South Grand Avenue, East, Springfield, Illinois 62762–0001

Dear Mr. Wright: I am responding to your request for reconsideration of the decision to disapprove Illinois State Plan Amendment (SPA) 93–14. The State of Illinois submitted SPA 93–14 on October 18, 1994, to establish a new payment adjustment for uncompensated care services, and requested an effective date of July 1, 1993.

The issue in this matter is whether Illinois SPA 93–14, meets Federal regulations at 42 CFR 447.253(h) which require the State to comply with the public notice requirements in section 447.205.

I am scheduling a hearing on your request for reconsideration to be held on June 14, 1995, at 10 a.m. in the 15th floor conference room, 105 West Adams, Chicago, Illinois. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide the names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 597–3013.

Sincerely,

Bruce C. Vladeck,

Administrator.

(Sec. 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: April 28, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–11019 Filed 5–3–95; 8:45 am]

BILLING CODE 4120–01–P

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS, (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and

will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACCU-LAB, Inc., 405 Alderson St., Schofield, WI 54476, 800–627–8200 (formerly: Alpha Medical Laboratory, Inc., Employee Health Assurance Group, ExpressLab, Inc.)

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/205–263–5745

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444/800–877–7016

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 11850 West 85th St., Lenexa, KS 66214, 800–445–6917

CORNING Clinical Laboratories, South Central Divison, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 (formerly: Metropolitan Reference Laboratories, Inc.)

CORNING Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 800–526–0947 (formerly: Damon Clinical Laboratories, Damon/MetPath)

CORNING MetPath Clinical Laboratories, 1355 Mittel Blvd., Wood Dale, IL 60191, 708–595–3888 (formerly: MetPath, Inc.)

CORNING MetPath Clinical Laboratories, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5000 (formerly: MetPath, Inc.)

CORNING National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science)

CORNING Nichols Institute, 7470–A Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT))

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–836–3093

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 813–936–5446/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180 / 206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Eagle Forensic Laboratory, Inc., 950 N. Federal Highway, Suite 308, Pompano Beach, FL 33062, 305–946–4324

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)

HealthCare/MetPath, 24451 Telegraph Rd., Southfield, MI 48034, 800–444–0106 ext. 650 (formerly: HealthCare/Preferred Laboratories)

Holmes Regional Medical Center Toxicology Laboratory, 5200 Babcock St., N.E., Suite 107, Palm Bay, FL 32905, 407–726–9920

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–222–5835

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38175, 901–795–1515

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699–0008, 419–381–5213

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199

MetPath Laboratories, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–931–7200 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon)

MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808 (x4512)

National Health Laboratories Incorporated, 2540 Empire Dr., Winston-Salem, NC 27103–6710,

Outside NC: 919–760–4620/800–334–8627 / Inside NC: 800–642–0894
National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522
National Health Laboratories Incorporated, 13900 Park Center Rd., Herndon, VA 22071, 703–742–3100
National Psychopharmacology Laboratory, Inc., 9320 Park W. Blvd., Knoxville, TN 37923, 800–251–9492
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 503–687–2134
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627 (formerly: Physicians Reference Laboratory Toxicology Laboratory)
Poisonlab, Inc., 7272 Clairemont Mesa Rd., San Diego, CA 92111, 619–279–2600/800–882–7272
Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Regional Toxicology Services, 15305 N.E. 40th St., Redmond, WA 98052, 206–882–3400
Roche Biomedical Laboratories, Inc., 1120 Stateline Rd., Southaven, MS 38671, 601–342–1286
Roche Biomedical Laboratories, Inc., 69 First Ave., Raritan, NJ 08869, 800–437–4986
Roche CompuChem Laboratories, Inc., A Member of the Roche Group, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984 (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory)
Roche CompuChem Laboratories, Inc., Special Division, A Member of the Roche Group, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263 (Formerly: CompuChem Laboratories, Inc.—Special Division)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800
Sierra Nevada Laboratories, Inc. 888 Willow St. Reno, NV 89502 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91045, 818–376–2520
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 904–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 404–934–9205 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 708–885–2010 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–5447 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–343–8191 (formerly: MetWest-BPL Toxicology Laboratory)

No laboratories withdrew from the Program in April.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–11044 Filed 5–3–95; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–020–5101–10-B038; CACA–31406, NVN–57250]

Alturas 345 Kilovolt Transmission Line Project; California

AGENCY: Bureau of Land Management, Interior; Susanville District Office, California.

ACTION: Amendment to Notice of Availability of a Draft Environmental Impact Statement (EIS No. 950068).

SUMMARY: The Bureau of Land Management (BLM) and the California Public Utilities Commission (CPUC) have prepared a draft Environmental Impact Report/Statement (EIR/S) for the Alturas 345 kilovolt (KV) transmission line project proposed by Sierra Pacific Power Company (SPPCo) in BLM application number CACA–31406. The BLM notice of availability of the draft EIR/S was published in the **Federal Register** on March 9, 1995 (60 FR 12967–12968), and provided a comment period on the draft EIR/S that ended May 3, 1995. This Amendment to the BLM notice of availability of a Draft EIR/S hereby extends the comment period until June 2, 1995. All comments on the Draft EIR/S for the Alturas 345 kilovolt (KV) transmission line project must be postmarked no later than June 2, 1995, and must be sent to: Julie Halligan/Peter Humm, CPUC/BLM; c/o Aspen Environmental Group; 30423 Canwood Street, Suite 218, Agoura Hills, CA 91301. For information call Peter Humm, BLM Project Manager, at (916) 257–0456.

Dated: April 27, 1995.

John Bosworth,

Acting District Manager.

[FR Doc. 95–11000 Filed 5–3–95; 8:45 am]

BILLING CODE 4310–40–M

[CA–050–05–1610–00]

Availability of an Environmental Assessment and Proposed Arcata Resource Management Plan Amendment for the Lacks Creek, Red Mountain, Covelo and Scattered Tracts Management Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Land Management has available the Environmental Assessment which proposes to amend the existing Arcata Resource Management Plan. The Plan specifically addresses four management areas (MAS): Lacks Creek, Red Mountain, Covelo, and Scattered Tracts. These MAS encompass approximately 122,400 acres of public land located within the northern California counties of Humboldt, Mendocino, Trinity and Sonoma. This notice is furnished to inform the public of the document's availability and the notice of a 30-day public comment period.

FOR FURTHER INFORMATION CONTACT:

Lynda J. Roush, Area Manager, at Bureau of Land Management, Arcata Resource Area, 1695 Heindon Road, Arcata CA 95521–4573. Telephone: (707) 825–2300.

SUPPLEMENTARY INFORMATION: The environmental assessment was prepared in accordance with the requirements set forth in the Code of Federal Regulations (43 CFR 1610.5–5) to amend the Arcata Resource Area Management Plan.

The issues and concerns addressed in the environmental assessment focus on key land use management changes. The scope of this plan amendment is limited to a review of decisions related to forest management and land tenure adjustment in the four MAS listed above.

The environmental assessment is available to the public for review. Availability has also been published in local and county newspapers. There will be a 30-day comment period beginning approximately April 28, 1995 and ending approximately May 30, 1995. Public comments must be in writing and mailed to the above address.

Lynda J. Roush,

Arcata Area Manager.

[FR Doc. 95–10934 Filed 5–3–95; 8:45 am]

BILLING CODE 4310–40–M

[NM–930–1310–01; NMNM 90818]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of Terminated Oil and Gas Lease NMNM 90818, Rio Arriba County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from September 1, 1994, the date of termination. No valid lease has been issued affecting the land. The lessee has agree to new lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective September 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Tony Ferrero, BLM, New Mexico State Office, (505) 438–7607.

Dated: April 25, 1995.

Tony Ferrero,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 95–10938 Filed 5–3–95: 8:45 am]

BILLING CODE 4310–FB–M

[CA–942–1420–00]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATES: Filing was effective at 10:00 a.m. on the date of submission to the Bureau of Land Management (BLM), California State Office, Public Room.

FOR FURTHER INFORMATION CONTACT:

James B. McCavitt, Acting Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, Room E–2845, Sacramento, CA 95825, 916–979–2890.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office, Sacramento, CA.

Humboldt Meridian, California

T. 17 N., R. 8 E.—Dependent resurvey, subdivision of section 16, and metes-and-bounds survey of Tracts 37, 38 and 39, (Group 1096) accepted February 9, 1995, to meet certain administrative needs of the U.S. Forest Service, Klamath National Forest.

Mount Diablo Meridian, California

T. 3 S., R. 20 E.—Dependent resurvey of certain lots of the Foresta Subdivision, (Group 1178) accepted February 9, 1995, to meet certain administrative needs of the National Park Service, Yosemite National Park.

T. 3 N., R. 9 W.—Survey of a portion of the Point Reyes National Seashore Boundary, (Group 1032) accepted February 28, 1995, to meet certain administrative needs of the National Park Service, Point Reyes National Seashore.

T. 9 N., R. 12 E.—Dependent resurvey and subdivision of sections, (Group 958) accepted March 6, 1995, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

T. 13 S., R. 35 E.—Dependent resurvey and subdivision of section 6, (Group 1175) accepted March 29, 1995, to meet certain administrative needs of the BIA, Central California Agency.

T. 25 S., Rs. 36 & 37 E.—Corrective dependent resurvey, dependent resurvey, and metes-and-bounds survey, (Group 943) accepted March 29, 1995, to meet certain administrative needs of the BLM, Bakersfield District, Caliente Resource Area, and the California Desert District, Ridgecrest Resource Area.

San Bernardino Meridian, California

T. 16 S., R. 5 E.—Supplemental plat of the NE ¼ of section 7, accepted March 8, 1995, to meet certain administrative needs of the U.S. Forest Service, Cleveland National Forest.

T. 12 S., R. 19 E.—Dependent resurvey, and subdivision of section 13, (Group 1190) accepted March 8, 1994, to meet certain administrative needs of the BLM, California Desert District, El Centro Resource Area.

T. 10 S., R. 1 W.—Dependent resurvey and subdivision of sections 28 & 33, accepted March 31, 1995, to meet certain administrative needs of the BIA, Southern California Agency. All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: April 26, 1995.

James B. McCavitt,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 95–11001 Filed 5–3–95; 8:45 am]

BILLING CODE 4310–40–M

[NM–070–5101–09–G010; NMNM91469]

Notice of Right-of-Way Application; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: An application, serialized as NMNM91469, was received from El Paso Natural Gas Company (EPNG) for a natural gas pipeline right-of-way in San Juan County, New Mexico.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 USC 185), as amended by the Act of November 16, 1973, (37 Stat. 576), EPNG has applied for a right-of-way for 36 inch diameter pipeline that is 5.20 miles in length. An additional 11.00 miles would be located on land administered by the Bureau of Indian Affairs. The project would loop existing lines and will help relieve line pressure and also help in accommodating projected volumes. The proposed line crosses the following public lands.

New Mexico Principal Meridian

T. 29 N., R. 11 W.,
Sec. 9, SE¼/SE¼;
Sec. 10, lot 4, SW¼SW¼;
Sec. 16, N½NE¼, SW¼NE¼, E½W¼, NW¼SE¼;
Sec. 20, E½NE¼, N½SE¼, SW¼SE¼;
Sec. 21, N¼NW¼, SW¼NW¼;
Sec. 29, NW¼NE¼, N½NW¼, SW¼NW¼.

T. 29 N., R. 11 W.,
Sec. 27, W½SE¼;
Sec. 33, lot 1, NE¼SE¼;
Sec. 34, NW¼NE¼, E½NW¼, SW¼NW¼, NW¼SW¼.

The purpose of this notice is to inform the public that the Bureau will be making a decision on approval of the right-of-way, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, 1235 La Plata Highway, Farmington, New Mexico 87401 within 30 days of publication of this notice. Additional information can be obtained by contacting Jerry Crockford at (505) 599–6333.

Dated: April 28, 1995.

Robert Moore,

Acting Assistant District Manager for Resources.

[FR Doc. 95–10985 Filed 5–3–95; 8:45 am]

BILLING CODE 4310–FB–M

[WY–989–1959–1050–00–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 43 N., R. 68 W., accepted April 21, 1995
T. 42 N., R. 71 W., accepted April 21, 1995
T. 20 N., R. 108 W., accepted April 21, 1995

Sixth Principal Meridian, Nebraska

T. 25 N., R. 8 E., accepted April 21, 1995
T. 26 N., R. 8 E., accepted April 21, 1995

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s)

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 2515 Warren Ave., Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: April 26, 1995.

John P. Lee,

Chief, Branch of Cadastral Survey.

[FR Doc. 95–10935 Filed 5–3–95; 8:45 am]

BILLING CODE 4310–22–M

Fish and Wildlife Service

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.*):

PRT–801916

Applicant: Brookfield Zoo, Brookfield, IL

The applicant requests a permit to import 5 male captive born Leadbeater's possum (*Gymnobelideus leadbeateri*) from Healesville Sanctuary and Melbourne Zoo, Australia for the purpose of enhancement of the species through captive breeding and conservation education.

PRT–798412

Applicant: Exotic Endangered Cats of the World, FL

The applicant requests a permit to export and re-import captive-born Asian leopards (*Panthera pardus*), captive-born Bengal tigers (*Panthera tigris*), captive-born Amur leopards (*Panthera pardus orientalis*), captive-born Siberian tigers (*Panthera tigris altaica*), and captive-born snow leopards (*Panthera uncia*) and progeny of the animals currently held by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification period covers activities conducted by the applicant over a three year period.

PRT–801979

Applicant: Leila Porter, Department of Anthropology, State University of New York

The applicant requests a permit to import blood samples from five sportive lemurs (*Lepilemur sp.*) in Ranamafana National Park, Madagascar for the purpose of scientific research.

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, *as amended* (U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR 17 and 18).

PRT–801652

Applicant: National Biological Service, Alaska Science Center, Anchorage, AK

Type of Permit: Scientific Research.

Name and Number of Animals: Walrus (*Odobenus rosmarus*); 230.

Summary of Activity to be Authorized: The applicant requests a permit to capture, immobilize, tag, implant transmitters, collect blood and whisker samples, biopsy, and release 230 walrus, aged 6 years or older, to continue scientific research to develop reliable methods for anesthetizing and holding walrus, develop methods for attaching transmitters and testing these devices in determining walrus movements, diving, and haulout patterns, and collect data on physiological status and life history parameters of walrus. The applicant also intends to import biological samples taken from Atlantic or Pacific walrus in Canada, Greenland, Norway, and Russia.

Source of Marine Mammals for Research: Cape Pierce, Round Island, and Bristol Bay, Alaska, and Bering and Chukchi seas.

Period of Activity: Through December 31, 2000.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), 4401 N. Fairfax Dr., Room 420(c), Arlington, VA 22203 and must be received by the Director within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

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: April 28, 1995.

Mary Ellen P. Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–10917 Filed 5–3–95; 8:45 am]

BILLING CODE 4310–55–P

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.*):

PRT–801914

Applicant: Savannah River Ecology Laboratory, University of Georgia, Aiken, South Carolina.

Perform recovery-related management and monitoring activities on the endangered wood stork, Mycteria americana, for the purposes of enhancement of survival of the species.

PRT–801913

Applicant: Barrett Kays and Associates, Raleigh, North Carolina.

Perform recovery-related monitoring activities on the endangered dwarf-wedge mussel, *Alasmidenta heterodon*, to enhance the survival of the species.

Written data or comments on any of these applications should be submitted to: Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received 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 the 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, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Permit Coordinator). Telephone: 404/679–7110; Fax: 404/679–7280.

Dated: April 28, 1995.

Judy L. Jones,

Acting Regional Director.

[FR Doc. 95–10983 Filed 5–3–95; 8:45 am]

BILLING CODE 4310–55–P

Receipt of Application(s) for Permit

The following applicant(s) 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.)

PRT–801822

Applicant: Mr. Donald F. Eriacho, Governor, Pueblo of Zuni, New Mexico.

The applicant requests a permit to take (conduct presence/absence surveys) for the southwestern willow flycatcher Empidonax trailii extimus on Reservation lands in New Mexico for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application 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 above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–10984 Filed 5–3–95; 8:45 am]

BILLING CODE 4310–55–M

Draft Brown Tree Snake Control Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and request for comments.

SUMMARY: This notice announces the availability of the Draft Brown Tree Snake Control Plan for public review and comments. The document was prepared by the Brown Tree Snake Control Committee of the Aquatic Nuisance Species Task Force, as required by section 1209 of the

Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. Comments received will be considered in preparing the final Brown Tree Snake Control Plan, which will become the basis for a cooperative and integrated Brown Tree Snake Control Program with the involvement of Federal, State, and Territorial, and local resource agencies.

DATES: Comments on the Draft Brown Tree Snake Control Plan should be received by June 19, 1995.

ADDRESSES: Written responses and requests for copies of the document should be mailed to Robert P. Smith, Chair, Brown Tree Snake Control Committee, U.S. Fish and Wildlife Service, Box 50167, Honolulu, HI 96850.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, Chair, Brown Tree Snake Control Committee, at (808) 541–2749.

SUPPLEMENTARY INFORMATION: A native of Indonesia, New Guinea, the Solomon Islands, and Australia, the brown tree snake (Boiga irregularis) has caused or been a major factor in a modern extinction episode beyond its native range that is unprecedented in its scope: the extirpation of most of Guam's native terrestrial vertebrates, including fruit bats, lizards, and virtually all of the island's forest birds. In addition, brown tree snakes in Guam have caused more than a thousand power outages, damaged agricultural interests by preying on poultry, killed many pets, and envenomated numerous children.

Several governmental agencies and private entities have been working to prevent similar ecological disasters on other Pacific islands, since the threat of the brown tree snake's dispersal to other islands and continents is significant. The brown tree snake is a major threat to the biodiversity of the Pacific region and other areas at risk. High densities of snakes occur in many urban areas on Guam where cargo is loaded for transport by air and sea to other Pacific islands, and dispersal has been documented by snakes discovered on islands in Hawaii and the Commonwealth of the Northern Mariana Islands, and even in the continental United States.

In recognition of this threat, the United States Congress included a section in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 that authorizes a cooperative program to control the brown tree snake outside of its historic range. Representatives of the Departments of Agriculture, Commerce, Defense, and the Interior; the Commonwealth of the Northern Mariana Islands; the Territory of Guam; and the State of Hawaii formed the Brown Tree Snake Control Committee on May 1993 to develop an integrated pest management approach that would:

- Reduce existing brown tree snake population on Guam;
- Prevent the spread of brown tree snakes to other Pacific islands and mainland areas;
- Eradicate or contain new populations as soon as detected;
- Protect endangered species and other wildlife from brown tree snake predation;
- Assist organizations and individuals on Guam to manage and control brown tree snake infestations, and especially to reduce disruptions of electrical supplies and human-snake encounters resulting in emotional trauma and bites;
- Develop adequate information on the brown tree snake's biology, dispersal dynamics, and control to support Federal, State, Territorial, and Commonwealth needs; and
- Develop more effective and environmentally sound control strategies and methods.

To meet these objectives, the Brown Tree Snake Control Committee has developed a draft plan reviewing the biology of the brown tree snake, its population development and status on various Pacific islands, its current and potential impacts on the environment and the economy, and past and present brown tree snake control activities. The draft plan also outlines specific tasks that need to be accomplished and funding needed for operational and research activities.

Dated: April 28, 1995.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries.

[FR Doc. 95–11021 Filed 5–3–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Concession Contract Negotiations for Continued Operation of Air Transportation Services; Isle Royale National Park, MI

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession permit authorizing continued operation of air transportation services to and from Isle Royale National Park for the public at Isle Royale National Park, Michigan, for a period of approximately five (5) years from date of execution through December 31, 2000.

EFFECTIVE DATE: July 3, 1995.

ADDRESSES: Interested parties should contact the Superintendent, Isle Royale National Park, 800 East Lakeshore Drive, Houghton, Michigan 49931 to obtain a copy of the prospectus describing the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared. The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1994, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the negotiation of a new proposed permit providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the permit will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the permit will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the permit will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Superintendent not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: April 4, 1995.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 95–11059 Filed 5–3–95; 8:45 am]

BILLING CODE 4310–70–M

Grand Canyon National Park, AZ Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: General Management Plan/ Environmental Impact Statement; Grand

Canyon National Park, Arizona; Extension of Time.

The National Park Service announced the availability for public review of the Draft General Management Plan/ Environmental Impact Statement for Grand Canyon National Park on March 13, 1995 (60 Federal Register 13450). At that time a public review period was announced and scheduled to end no later than April 24, 1995. This notice extends the comment period to May 11, 1995.

ADDRESSES: Comments should be sent to Planning Team Leader, Grand Canyon General Management Plan, National Park Service, Denver Service Center-TWE, P.O. Box 25287, Denver, CO 80225–0287.

FOR FURTHER INFORMATION CONTACT: Larry Norris at the above address or telephone (303) 969–2210.

Dated: April 26, 1995.

Denis P. Galvin,

Associate Director, Planning and Development.

[FR Doc. 95–10932 Filed 5–3–95; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Correction to Notice of Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Notice of the lodging of a proposed consent decree in *United States* versus *Edward Azrael, et al.*, Civ. A. No. WN–89–2898, was published at 60 Fed. Reg. 19772 on April 20, 1995. The decree was lodged on April 10, 1995, with the United States District Court for the District of Maryland. The complaint in the action seeks recovery of costs and injunctive relief under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, 42 U.S.C. 9606, 9607(a).

The *Azrael* case involves the Kane and Lombard Superfund Site located in Baltimore, Maryland. Under the proposed consent decree, Edward Azrael, Harriet Azrael and the Estate of Cele Landay (the ''Settlors'') will pay $325,000.00 to the United States and $175,000.00 to the State of Maryland toward reimbursement of past and future costs incurred by the United States and the State of Maryland in performing certain response actions at the Kane and Lombard Superfund Site. The notice of lodging published April 20, 1995, had mistakenly stated that the Settlors were to pay $375,000.00 to the United States.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from April 20, 1995, the date of Notice of Lodging was originally published. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States* versus *Edward Azrael, et al.*, DOJ Reference No. 90–11–2–299.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of Maryland, U.S. Courthouse, Eighth Floor, 101 W. Lombard Street, Baltimore, Md. 21201; Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania; and at the Consent Decree Library, 1120 ''G'' Street NW., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library at the address listed above. In requesting a copy, please refer to the referenced case and number, and enclose a check in the amount of $6.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Section Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 95–11003 Filed 5–3–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Amendment Consent Decree Pursuant to the Safe Drinking Water Act

In accordance with Departmental policy and 28 C.F.R. 50.7, notice is hereby given that on April 24, 1995, a proposed Amendment To Consent Decree For Injunction Relief in *United States* v. *Silver Bow Water Inc., et al.*, Civil Action No. 94CV026, was lodged with the United States District Court for the District of Montana.

The proposed amendment modified a consent decree entered on May 15, 1992 which resolved claims by the United States and State of Montana against Silver Bow Water, Inc. and the City-County of Butte-Silver Bow under Sections 1414 and 1431 of the Safe Drinking Water Act, 42 U.S.C. 300g–3 and 300i. The consent decree required *inter alia*, the construction of two drinking water filtration plants. The scheduled date for completion, startup and compliance of the two plants with the Safe Drinking Water Act was December 31, 1994 under the decree. The proposed amendment modifies the compliance schedule for the Moulton water treatment plant to allow for construction of custom filtration technology with a final compliance date on June 1, 1995. The compliance schedule for the Big Hole water treatment plant is unaffected by the proposed amendment.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed amendment to consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States* v. *Silver Bow Water, Inc. et al.*, DOJ Ref. #90–5–1–1–3751A.

The proposed consent decree amendment may be examined at the Office of the United States Environmental Protection Agency, Region VIII, Montana Office, 301 S. Park, Helena, Montana 59626 and at the Consent Decree Library, 1120 ''G'' Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed decree amendment may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and number, and enclose a check in the amount of $2.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–11004 Filed 5–3–95; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 93–62]

Leonard Merkow, M.D.; Denial of Application

On June 10, 1993, the Deputy Assistant Administrator (then Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Leonard Merkow, M.D. (Respondent). The Order to Show Cause sought to deny Respondent's application for a

DEA Certificate of Registration. The Order to Show cause alleged that Respondent's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

The Order to Show Cause was received by Respondent. Respondent, through counsel, timely filed a request for a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Judge Bittner ordered the parties to file prehearing statements. After the Government filed its prehearing statement, Respondent requested and obtained an extension of time to file his prehearing statement on or before February 10, 1994. On February 28, 1994, Judge Bittner issued an order terminating the proceedings based upon the fact that Respondent had not filed a prehearing statement nor any other pleading. The order also found that Respondent waived his right to a hearing pursuant to 21 CFR 1301.54(a) and 1301.54(d). Accordingly, the Deputy Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

In 1986, Respondent prescribed various narcotic and benzodiazepine controlled substances to an individual whom Respondent knew was drug addicted. Respondent also prescribed Tylenol with codeine, a Schedule III controlled substance, and Doriden, then a Schedule III controlled substance and now a Schedule II substance, to this individual. This combination, known by its street name of ''fours and dors'', is commonly abused by many drug addicts and Respondent was aware of such fact at the time he prescribed these substances to this individual.

In October 1987, this individual acting in an undercover capacity made thirteen undercover visits to Respondent's office. The transcripts of these undercover visits revealed that Respondent was well aware that the combination of Tylenol with codeine and Doriden was used by drug abusers and that he was not prescribing these substances to this individual for any legitimate reason. In addition, from October 1987 to December 1987, Respondent's receptionist gave this individual over 300 dosage units of Valium, a Schedule IV controlled substance, and 144 dosage units of Doriden for no legitimate medical purpose. Although Respondent claimed he was unaware of this activity, he was responsible for this employee's actions and ultimately accountable for the controlled substances that were dispensed from his office.

Respondent ordered about 200,000 dosage units of controlled substances in a nine month period in 1987. These controlled substances were stored at his residence, and then transferred to Respondent's two offices; one of these offices was never a registered location and Respondent let the other office's registration lapse in January 1987.

In February of 1986, Respondent was convicted in the Commonwealth of Pennsylvania of 47 counts of submitting false or fraudulent Medicaid claims. Respondent was sentenced to three years probation and to pay a fine and restitution. The Pennsylvania Bureau of Occupational and Professional Affairs suspended Respondent's medical license in March 1988, but reinstated the license about a month later.

On March 23, 1988, Respondent was notified that his prior DEA registration was immediately suspended and that he should notify DEA of any controlled substance deliveries that he might receive subsequent to that date. In fact Respondent did order over 19,000 dosage units of controlled substances on March 23, 1988, and he received this shipment on March 28, 1988. He never notified DEA of this receipt of controlled substances. The controlled substances were discovered in the garage at the residence of Respondent's attorney pursuant to a search warrant which was served on April 13, 1988. Based upon these events, Respondent's prior DEA registration, AM5075305, was revoked on March 27, 1989. 54 FR 13254 (1989).

In evaluating whether Respondent's registration by the Drug Enforcement Administration would be inconsistent with the public interest, the Deputy Administrator considers the factors enumerated in 21 U.S.C. 823(f). They are as follows:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In determining whether a registration would be inconsistent with the public interest, the Deputy Administrator is not required to make findings with respect to each of the factors listed above. Instead, he has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. *See David E. Trawick, D.D.S.*, Docket No. 88–69, 53 FR 5326 (1988).

Regarding factor two, Respondent's experience in dispensing controlled substances is poor based upon his prescribing the combination of Tylenol with codeine and Doriden to an individual, especially when Respondent was aware that this combination was subject to abuse. This factor is also supported by the fact that Respondent's employee dispensed numerous controlled substances to this individual in addition to the controlled substances that he received from Respondent's illegitimate prescriptions.

With respect to factor four, Respondent failed to comply with applicable Federal law by dispensing controlled substances from an unregistered location. 21 U.S.C. 822(e). Respondent also did not maintain records of the controlled substances dispensed from his office by his employee. 21 U.S.C. 827(a). Finally, Respondent received controlled substances after he was notified that his DEA registration was suspended. 21 U.S.C. 843(a)(2). This violation is particularly egregious because Respondent ignored instructions to inform DEA of any controlled substance shipments received after the suspension of his DEA registration. Factor five is applicable based upon Respondent's Medicaid fraud convictions.

No evidence of explanation or mitigating circumstances has been offered by Respondent. Therefore, the Deputy Administrator concludes that Respondent's application for a DEA Certificate of Registration must be denied.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration, submitted by Leonard Merkow, M.D., be, and it is hereby denied. This order is effective May 4, 1995.

Dated: April 28, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–10928 Filed 5–3–95; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 93–56]

Michael G. Sargent, M.D.; Revocation of Registration

On June 2, 1993, the Deputy Assistant Administrator (then Director), Office of

Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Michael G. Sargent, M.D. of Katy, Texas (Respondent), proposing to revoke his DEA Certificate of Registration, AS2512374, as a practitioner and deny any pending application for registration as a practitioner. The statutory basis for the Order to Show Cause was that Respondent's continued registration as a practitioner would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held on January 5 and 6, 1994, in Houston, Texas. On August 25, 1994, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision recommending that Respondent's registration be revoked. Respondent filed exceptions to the opinion on September 19, 1994.

On October 13, 1994, the administrative law judge transmitted the record of the proceeding to the Deputy Administrator. After a careful consideration of the record in its entirety, the Deputy Administrator enters his final order in this matter, in accordance with 21 CFR 1316.67, based on findings of fact and conclusions of law as set forth herein.

The administrative law judge found that, in July 1991, DEA investigators in Houston, Texas, received an anonymous complaint that Respondent was prescribing controlled substances to individuals without a legitimate medical purpose. As a result, DEA investigators conducted prescription surveys of pharmacies located near Respondent's office. These surveys established that Respondent was prescribing Tylenol #3 with codeine, a Schedule III controlled substance, in conjunction with Valium, a Schedule IV controlled substance.

Judge Bittner further found that, on five separate occasions from August 16, 1991 through April 16, 1992, Respondent prescribed combinations of Tylenol #3 with codeine and Valium to two undercover agents without a legitimate medical purpose and not in the usual course of professional medical practice. Respondent failed to conduct and record an appropriate patient history and failed to conduct a physical examination of either agent prior to prescribing this combination of controlled substances.

The administrative law judge considered testimony from the Government's expert medical witness who concluded that Respondent was not acting within the normal course of his professional practice when these prescriptions were issued. Conversely, Respondent's expert medical witness concluded that Respondent issued the prescription at issue for a legitimate medical need and in the normal course of professional practice, and, at worse may have exercised poor judgment with respect to prescribing Tylenol with codeine.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any application for such registration, if he determines that continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

''(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The [registrant's] experience in dispensing or conducting research with respect to controlled substances.

(3) The [registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.''

The Deputy Administrator may properly rely on any one or a combination of these factors, and give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. *Henry J. Schwartz, Jr., M.D.* 54 FR 16422 (1989). In the present case, the administrative law judge found that factors two, four and five were relevant in determining whether Respondent's registration should be revoked.

Judge Bittner found that Respondent's prescribing of controlled substances to the undercover agents was not for a legitimate medical purpose. Further, Respondent did not conduct comprehensive physical examinations of the two agents and failed to maintain proper records regarding his prescribing of controlled substances.

The administrative law judge concluded that the record does not support Respondent's contentions that the controlled substances he prescribed were warranted by, and appropriate for, the medical ailments that the investigators presented to him. She further found that the record demonstrates Respondent neither conducted anything resembling comprehensive physical examinations nor asked probing questions of the agents as to their symptoms, the possible causes of these symptoms, or alternative treatments for their complaints. *See James H. Brown, M.D.,* 59 FR 37778 (1994). Respondent additionally was remiss in his responsibilities as a DEA registrant by failing to keep appropriate patient files on the agents.

Judge Bittner additionally found that a negative inference is warranted where, as in the present case, Respondent did not testify. *See Raymond A. Carlson, M.D.,* 53 FR 7425 (1988). The administrative law judge concluded that Respondent has not discharged his responsibilities as a DEA registrant in the past and there is no indication that he is more likely to do so in the future. Judge Bittner recommended that Respondents DEA Certificate of Registration be revoked and any pending applications for registration as a practitioner be denied.

Respondent took exception to Judge Bittner's opinion and recommendation arguing that there was not sufficient, reliable, probative, and substantial evidence to support such recommendation of revocation. Respondent further contended that Judge Bitter, in finding that 21 U.S.C. 823(f) (2), (4) and (5) were relevant, failed to discuss Respondent's threat to the public interest under these factors. Respondent additionally argued that the record, as a whole, does not support a conclusion that his behavior was egregious, that Judge Bittner failed to address the requirements of 21 CFR 1306.04 concerning valid prescriptions, that Respondent did not have inadequate recordkeeping practices, and that a negative inference was not warranted from Respondent's decision not to testify. Respondent further objected to the characterization that he did not perform any diagnostic tests, and to the administrative law judge's description of the agents' visit to Respondent's office on March 23, 1992. Respondent also took exception to the use of the testimony given by the Government's expert medical witness.

The Deputy Administrator adopts the opinion and recommended decision of the administrative law judge in its entirety. The Deputy Administrator concurs with the administrative law judge's finding that the Government had met its burden of proof with respect to establishing the factors set forth under 21 U.S.C. 823(f) (2), (4) and (5). The Deputy Administrator finds that Respondent prescribed controlled

substances to the undercover agents without legitimate medical purpose and not in the usual course of professional medical practice. Further, Respondent's recordkeeping practices, medical examinations and patient history procedures were extremely deficient. Finally, the Deputy Administrator concurs with the administrative law judge's finding that a negative inference was warranted from Respondent's decision not to testify.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AS2512374, previously issued to Michael G. Sargent, M.D, be, and it hereby is, revoked, and any pending applications for such registration be, and hereby are, denied. This order is effective June 5, 1995.

Dated: April 28, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–10927 Filed 5–3–95; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL SCIENCE FOUNDATION

Reports; Availability, etc.: Climate Change; Second Assessment by Climate Change Intergovernmental Panel

AGENCY: National Science Foundation.

ACTION: Notice of the availability of draft report and request for comment.

SUMMARY: Working Group I of the Intergovernmental Panel on Climate Change (IPCC) has prepared a draft Second Assessment on Climate Change. The IPCC Secretariat requires comments on this report from national governments so that the Secretariat can meet its obligations to member governments of the IPCC. The U.S. Government is expected to receive its copy of the draft assessment for formal government comment on May 8, 1995. The U.S. Subcommittee on Global Change Research (SGCR) is responsible for coordinating the preparation of the comments of the United States Government. Through this notice, the SGCR is announcing the availability of the draft Second Assessment upon its receipts from IPCC and is requesting comments on the draft report by June 2, 1995 from experts and interested groups and individuals. These comments will be reviewed, combined, and incorporated as appropriate, in the process of preparing the set of official U.S. comments to the IPCC.

DATES: Written comments (hard copy and if possible on a 3.5-inch diskette in either Microsoft Word or Word Perfect format) on the draft Second Assessment should be received on or before June 2, 1995. The SGCR cannot extend this deadline because the member countries of the IPCC have established a strict timetable for the review process.

ADDRESSES: Comments should be submitted either by mail to: IPCC WG I Comments, Office of the U.S. Global Change Research Program, 300 D Street, SW., Suite 840, Washington, DC 20024, or by E-mail in ASCII format on Inter net to: ''wg1@usgcrp.gov''. A list of chapters making up the draft Second Assessment is included with this notice. Review is sought by those individuals and groups having specific expertise or interest in the various aspects of the assessment. Copies of individual chapters making up the draft Second Assessment can be obtained by: (1) Telephone request to Mr. Earley Green at (202) 651–8240; (2) sending E-mail to ''office@usgcrp.gov''; (3) faxing a request to (202) 554–6715; or (4) sending a letter to the USGCRP Office directed to Mr. Earley Green at the address shown above.

FOR FURTHER INFORMATION CONTACT: Dr. Michael C. MacCracken, Office of the U.S. Global Change Research Program, at 202–651–8250.

SUPPLEMENTARY INFORMATION:

I. Background

The Intergovernmental Panel on Climate Change (IPCC) was jointly established in 1988 by the United Nations Environment Programme and the World Meteorological Organization to conduct periodic assessments of the state of knowledge concerning global climate change. The IPCC has formed working groups to study various aspects of climate change. Working Group I addresses the state of the science concerning what is happening and is projected to happen to the climate; Working Group II addresses the state of the science concerning (i) vulnerability to and impacts of climate change and (ii) adaptation and mitigation strategies; and Working Group III addresses the state of science and understanding concerning economics and cross-cutting issues associated with climate change. Each Working Group is charged with issuing periodic assessments. The first Scientific Assessment of Climate Change, for example, was prepared in 1990. Working Group I provided a supplementary report in 1992 and a report on radiative forcing of climate change in 1994.

Periodic assessment reports such as these provide a comprehensive statement of the state of knowledge concerning topics such as scientific information, environmental impacts, response strategies, and other issues concerning climate change.

II. Public Input Process

The member countries of the IPCC have established a timetable that includes a brief period for comments from governments so that the IPCC Secretariat can meet its obligations for a timely completion of the IPCC Second Assessment. The Subcommittee on Global Change Research is responsible for coordinating preparation of the U.S. Government response, and through this notice is seeking the views of experts and interested groups and individuals to help in the formulation of its response. Comments that are provided will be reviewed, integrated, and used, as appropriate, in the preparation of the official U.S. comments. An information sheet providing specific requests for formatting submissions will be provided with each mailing of a chapter. In this review process, the emphasis should be on providing detailed recommendations on specific chapters for which the reviewer has established expertise or interest. To be most useful, comments should be specific in suggesting wording changes to the text of a particular paragraph or chapter and, where appropriate, offer supporting information and peer-reviewed references supporting the proposed changes. Comments on the overall tone and scientific validity of the chapter and comments expressing agreement and disagreement with specific major points in the Executive Summary of the chapters are also solicited. Reviewers should request for review those specific chapters of the draft IPCC Working Group I Second Assessment for which they have expertise or special interest. The materials available for review include 11 chapters and a Summary for Policymakers. In addition to a specific chapter, a copy of the draft Summary for Policymakers will be provided for each reviewer in order to provide an opportunity for the reviewer to consider the consistency of the chapter and the selection and representation of its major points in the draft Summary for Policymakers.

Chapter 1 The Climate System—An Overview

Chapter 2 Update of 1994 WG I report

2.1 CO_2 and the carbon cycle

2.2 Other trace gases and atmospheric chemistry

2.3 Aerosols

2.4 Radiative forcing

2.5 Trace gas radiative forcing indices
Chapter 3 Observed climate variability and change
Chapter 4 Climate processes
Chapter 5 Climate models—validation
Chapter 6 Climate models—projections of future climate
Chapter 7 Changes in sea-level
Chapter 8 Detection of climate change, and attribution of causes
Chapter 9 Terrestrial biotic responses to environmental change and feedbacks to climate
Chapter 10 Marine biotic responses to environmental change and feedbacks to climate
Chapter 11 Advancing our understanding

III. Public Availability of Comments

Subsequent to the US assembly of its comments, all comments received will be available for public inspection in the NSF Library, which is located on the second floor of the NSF building at 4201 Wilson Boulevard, Arlington, VA (adjacent to the Ballston Metro station).

Robert W. Corell,

Assistant Director for Geosciences, NSF, and Chair, Subcommittee on Global Change Research.

[FR Doc. 95–10933 Filed 5–3–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Final Disposition of SEP Lessons-Learned Issues; Issued

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter 95–04 which informs licensees of nuclear power reactors about the final disposition of the 27 lessons-learned issues found in the Systematic Evaluation Program (SEP). This generic letter is available in the Public Document Rooms under accession number 9504210293.

DATES: The generic letter was issued on April 28, 1995.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Sheri R. Peterson at (301) 415–2752.

SUPPLEMENTARY INFORMATION: None.

Dated at Rockville, MD, this 28th day of April, 1995.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Project Support, Office of Nuclear Reactor Regulation.

[FR Doc. 95–11028 Filed 5–3–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–361 and 50–362]

Southern California Edison, et al.; San Onofre Nuclear Generating Station, Units 2 and 3, Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has acted on a Petition for action under 10 CFR 2.206 received by Ted Dougherty, dated August 10, 1994, for the San Onofre Nuclear Generating Station, Units 2 and 3.

The Petitioner requested that the NRC cause the shutdown and dismantlement of the San Onofre Nuclear Generating Station because of concerns regarding (1) the vulnerability of the San Onofre Nuclear Generating Station to earthquakes because of nearby fault lines and (2) a newspaper article concerning the threat of vehicle bombs and the Commission's recent rule requiring nuclear generating plants to install antiterrorist barriers within 18 months.

The Director of the Office of Nuclear Reactor Regulation has determined that the request should be denied for the reasons stated in the ''Director's Decision Under 10 CFR 2.206'' (DD–95–06), the complete text of which follows this notice, and which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the University of California Main Library, P.O. Box 19577, Irvine, California 92713.

A copy of this Decision has been filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, this Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 27th day of April 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

I. Introduction

On August 10, 1994, Mr. Ted Dougherty (the Petitioner) submitted a letter to the Nuclear Regulatory Commission (the Commission or NRC) requesting a shutdown of the San Onofre Nuclear Generating Station (SONGS). The Commission determined to act on this request pursuant to 10 CFR 2.206. The request was based on concerns regarding the vulnerability of SONGS to earthquakes because of the existence of nearby fault lines, and concerns regarding the defensibility of SONGS to a terrorist threat.

On September 22, 1994, I informed the Petitioner that the Petition had been referred to this Office for action pursuant to 10 CFR 2.206 of the Commission's regulations. I also informed the Petitioner that the NRC would take appropriate action within a reasonable time regarding the Petitioner's request.

My Decision in this matter follows.

II. Background

The Petitioner provided as basis for the request (1) a letter to the Governor of California wherein the Petitioner expressed concerns regarding the vulnerability of SONGS to earthquakes and (2) a *Los Angeles Times* article concerning the threat of vehicle bombs and the Commission's recent rule requiring nuclear generating plants to install antiterrorist barriers within 18 months.

III. Discussion

A. Vulnerability of SONGS to Earthquakes

The Petitioner asserts that SONGS is vulnerable to a deep ocean quake as well as a magnitude 8 earthquake (or greater) on the Newport-Inglewood fault. He asserts that human error following an earthquake of this magnitude could result in failure of the plant's safety systems to protect the plant, thereby resulting in a meltdown.

Before licensing SONGS (and all nuclear plants), the NRC reviewed the design of the facility including its ability to withstand the effects of natural phenomena such as earthquakes, tornadoes, and hurricanes without loss of capability to perform the safety functions. Appendix A (Criterion 2) to 10 CFR part 50 states that the design basis for the nuclear power plant should reflect the most severe of the natural phenomena that have been historically

reported for the site and surrounding area, the combinations of the effects of normal and accident conditions with the effects of the natural phenomena, and the importance of the safety functions to be performed. Appendix A to 10 CFR part 100, ''Seismic and Geologic Siting Criteria for Nuclear Power Plants,'' Section III(C), requires that the nuclear power plant's design bases for earthquakes be determined through evaluation of the geologic and seismic history of the nuclear power plant site and surrounding region. The purpose of this determination is to estimate the magnitude of the strongest earthquake that might affect the site of a nuclear power plant during its operating lifetime. the earthquake postulated for the seismic design of a plant, called the Safe Shutdown Earthquake (SSE), defines the maximum ground motion for which certain nuclear power plant structures, systems and components necessary for safe operation and shutdown are designed to remain functional (e.g., for decay heat removal after the reactor is shutdown).

The San Onofre Nuclear Generating Station (SONGS) site had undergone geologic and seismic investigations and reviews prior to issuance of the construction permits including surveys performed by the applicant, the United States Geological Survey, the California Division of Mines and Geology, and the National Oceanic and Atmospheric Administration. The findings of these investigations were reviewed extensively by the staff and were litigated extensively in proceedings concerning the issuance of the construction permits [1] and operating licenses [2] for SONGS Units 2 and 3.

The Petitioner asserts that SONGS is vulnerable to a deep ocean quake. There are a number of offshore faults in the coastal waters off of Southern California. Of greatest concern to the San Onofre site is an offshore structure beginning with the Newport-Inglewood Zone of Deformation near Long Beach, passing the site about 8 kilometers offshore and extending south to the San Diego area as the Rose Canyon Fault Zone.[3] This entire structure is known as the Offshore Zone of Deformation (OZD).[4] The Atomic Safety and Licensing Board determined, during the 1982 operating license proceeding, that, based on historic earthquake data, the distinctive geology of the area, and prevailing stresses in the earth's crust, the controlling feature for San Onofre is the OZD.[5]

The Petitioner asserts that SONGS is vulnerable to a magnitude 8 or greater earthquake on the Newport-Inglewood Fault. The largest earthquake known to have occurred on that fault is the 1933 Long Beach earthquake which was a magnitude 6.3.[6] Testimony presented during the operating license proceeding concluded that the features of the OZD, its geologic strain rate, regional tectonic setting, and absence of extensive and/or through-going fault rupture in near-surface strata along much of the OZD, all support earthquakes of less than about a magnitude 7.[7] In addition, the NRC staff concluded, based on an evaluation of historical seismicity of the OZD and an evaluation of the fault parameters, that a maximum magnitude of 7.0 is based upon a reasonable and conservative interpretation of all available geological and seismological information.[8] The Atomic Safety and Licensing Board [9] as well as the Atomic Safety and Licensing Appeal Board [10] concluded that a magnitude 7 earthquake on the OZD is appropriately conservative.[11] The Petitioner has not provided any basis to support the likelihood of magnitude 8 or greater earthquake on the Newport-Inglewood Fault or call into question the conclusion of the Atomic Safety and Licensing Board and the Atomic Safety and Licensing Appeal Board.

The Petitioner expresses concern that panic caused by an earthquake could result in a meltdown due to human error. The ability of a nuclear power plant to resist the forces generated by the ground motion during an earthquake is incorporated in the design and construction of the plant. Industry codes and practices that govern the design and construction of nuclear power plant structures and components are far more stringent than those used for residential and commercial buildings. As a result, nuclear power plants are able to resist earthquake ground motions well beyond their design bases and well beyond the ground motion that would result in damage to commercial buildings.

As a safety requirement, nuclear power plants have strong ground motion seismic instruments in and near the sites. If the ground motion at a site exceeds a specified level, which is one-half or less of the Safe Shutdown Earthquake, the plant is required to shut down (10 CFR 100, Appendix A, V, (a)(2)). As a defense-in-depth design feature, SONGS has a automatic seismic scram system to shut down the reactors when the ground motion exceeds a conservatively selected threshold value.[12] Prior to resuming operations following plant shutdown as the result of an earthquake, the licensee is required to demonstrate to the Commission that no functional damage has occurred to those plant features necessary for continued safe operation.

In summary, based on exhaustive seismic and geologic investigations performed for the SONGS site, which has been subjected to extensive litigation, the seismic design basis for the plant is reasonably conservative.

The Petitioner has failed to provide an adequate basis for his concern regarding the seismic adequacy of SONGS and, accordingly, has not raised any substantial health or safety issue that would call into question the safe operation of SONGS.

B. Threat of Vehicle Bombs

The Petitioner asserts that SONGS is not defensible from terrorists. The Petitioner bases this assertion on a newspaper article (*Los Angeles Times*, August 4, 1994) concerning the threat of vehicle bombs at nuclear plants and the Commission's recent rule requiring nuclear plants to install anti-terrorist barriers within 18 months.

[1] *See Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), LBP–73–36, 6 AEC 929 (1973), and ALAB–248, 8 AEC 957 (1974).

[2] *See Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), LBP–82–3, 15 NRC 61 (1982); ALAB–673, 15 NRC 688 (1982); ALAB–717, 17 NRC 346 (1983); and *see Carstens v NRC*, 742 F.2d 1546 (D.C. Cir. 1984), *cert denied* 471 U.S. 1136 (1985) (the Court of Appeals affirmed the Commission's granting of the operating licenses for SONGS Units 2 and 3, noting the voluminous record and substantial evidence supporting the seismic review).

[3] *See Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), LBP–82–3, 15 NRC 61, at 68 (1982).

[4] *Id.*

[5] *Id.*, at 69.

[6] *Id., at 104.*

[7] *Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB–673, 15 NRC 688, 709 n. 40 (1982).

[8] NUREG–0712, ''Safety Evaluation Report Related to the Operation of San Onofre Nuclear Generating Station, Units 2 and 3,'' Section 2.5.2.3.4, February 1981.

[9] *See Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), LBP–82–3, 15 NRC 61, at 86 (1982).

[10] *Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB–717, 17 NRC 346, 364–65 (1983).

[11] The Petitioner also provided a scenario of the effects on the Los Angeles area of a magnitude 6 earthquake on the Newport-Inglewood Fault followed by a magnitude 8 earthquake. The Petitioner has failed to provide any basis to support this scenario. The staff reviewed this scenario and determined that, based on the investigations and reviews discussed above, it has no basis in scientific theory or physical possibility.

[12] NUREG–0741, ''Technical Specifications San Onofre Nuclear Generating Station Unit 2,'' Table 3.3.1 February 1982; and NUREG–0952, ''Technical Specifications San Onofre Nuclear Generating Station Unit 3,'', Table 3.3.1, November 1982.

The Commission's regulations regarding physical protection of nuclear plants are set forth in 10 CFR part 73. The regulations require a physical protection system designed to protect against acts of radiological sabotage or theft of special nuclear material based on certain design basis threats. The design basis threats for radiological sabotage defined in 10 CFR part 73.1(a)(1) include ''a determined, violent, external assault.'' The potential threat posed by malevolent use of vehicles as part of a violent external assault and the need to protect against it, were the subject of detailed analysis before the NRC published its regulations on design basis threat. However, the use of a land vehicle bomb was not initially included in the design basis threat for radiological sabotage.

The newspaper article cited by the Petitioner describes two events that occurred in February 1993: a forced vehicle entry into the protected area at Three Mile Island (TMI), Unit 1, and a van bomb which was detonated in a public underground parking garage at the World Trade Center in New York City. As a result of these events, the Commission directed the NRC staff to reevaluate and, if necessary, update the design basis threat for vehicle intrusions and the use of vehicle bombs.

In its subsequent review of the threat environment, the NRC staff concluded that there is no indication of an actual vehicle threat against the domestic commercial nuclear industry (59 FR 38889, August 1, 1994). Nonetheless, in light of the above recent events, the NRC staff concluded that a vehicle intrusion or bomb threat to a nuclear power plant could develop without warning in the future. Therefore, on August 1, 1994, the Commission published in the **Federal Register** (59 FR 38889), a final regulation to amend its physical protection regulation for operating nuclear power reactors. The amendments modified the design basis threat for radiological sabotage to include use of a land vehicle by adversaries for transporting personnel and their hand-carried equipment to the proximity of vital areas and to include a land vehicle bomb (*see* 10 CFR 73.1(a)(1)(i)(E) and (iii)).

All operating commercial nuclear power plants, including SONGS Units 2 and 3, must comply with the modified design basis threat. This amended rule requires reactor licensees to install vehicle control measures, including vehicle barrier systems, to protect against the malevolent use of a land vehicle by February 29, 1996 (*see* 10 CFR 73.55(c)(9)). A description of the proposed vehicle control measures for all operating commercial power reactors was required to be submitted to the Commission by February 28, 1995, for review. The licensee for SONGS submitted its proposed measures on February 24, 1995, and they are currently being reviewed by the NRC staff.

The security program at SONGS has consistently demonstrated superior performance and continues to exceed regulatory requirements. In addition to the normal NRC inspection activities of the SONGS security program, and Operational Safeguards Response Evaluation (OSRE) was conducted with the assistance of members of the U.S. Army Special Forces. One objective of the OSRE is to evaluate the licensee's abilities to respond to an external threat. The OSRE team concluded that SONGS had an excellent contingency response capability.

The Petitioner has failed to provide an adequate basis for asserting that the plant is not defensible. The petitioner cited a newspaper article as basis for his allegation. The article does not provide any information that is new or different than that already considered by the Commission. The staff has concluded that the Petitioner has not raised a significant health or safety issue.

IV. Conclusion

The NRC staff has reviewed the basis and justification stated to support the Petitioner's request that the NRC take appropriate actions to cause the shutdown and dismantling of SONGS. This review did not reveal any substantial safety issues that would call into question the continued safe operation of SONGS.

The institution of proceedings in response to a request pursuant to Section 2.206 is appropriate only when substantial health and safety issues have been raised. *See Consolidated Edison Co. of New York* (Indian Point, Units 1, 2, and 3), CLI–75–8, 2 NRC 173, (1975), and *Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), DD–84–7, 19 NRC 899, 923 (1984). This standard has been applied to determine whether any action in response to the Petition is warranted. For the reasons discussed above, no basis exists for taking any action in response to the Petition as no substantial health or safety issues have been raised by the Petition. Accordingly, no action pursuant to Section 2.206 is being taken in this matter.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c). As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 27th day of April 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 95–11030 Filed 5–3–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–31609 License No. 37–28496–01 (Revoked) EA 94–253]

McCormick, Taylor, And Associates, Inc., Philadelphia, Pennsylvania; Order Imposing A Civil Monetary Penalty

I

McCormick, Taylor and Associates, Inc. (MTA) (Licensee) was the holder of Byproduct Materials License No. 37–28496–01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) on October 31, 1979. The License was revoked by the Commission on August 13, 1992 for nonpayment of fees. The License authorized MTA to possess and use certain byproduct materials in accordance with the conditions specified therein at its facility in Philadelphia, Pennsylvania.

II

An inspection of MTA's activities was conducted on December 2, 1994, at MTA's facility located in Philadelphia, Pennsylvania. The results of the inspection and review of communication (and associated documents) conducted between NRC and MTA between August 13, 1992, and November 19, 1994, indicated that MTA had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon MTA by letter dated February 13, 1995. The Notice states the nature of the violations, the provisions of the NRC requirements that MTA had violated, and the amount of the civil penalty proposed for one of the violations.

MTA responded to the Notice in two letters, both dated March 10, 1995. In its responses, MTA admits the violations as stated in the Notice and requests mitigation of the penalty.

III

After consideration of MTA's responses and the statements of fact, explanation, and arguments for

mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated in the Notice, and that the violation set forth in Section I of the Notice was appropriately classified at a Severity Level III. The staff also has determined that an adequate basis was provided for partial mitigation of the penalty, and that a penalty of $2,000 should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that: MTA pay a civil penalty in the amount of $2,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

MTA may request a hearing within 30 days of the date of the date of this Order. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If MTA fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event MTA requests a hearing as provided above, the issue to be considered at such hearing shall be whether, on the basis of Violation I, which is admitted by MTA, this Order should be sustained.

Dated at Rockville, Maryland, this 26th day of April 1995.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluations and Conclusion

On February 13, 1995, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during a review of communications (and associated documents) conducted between NRC and McCormick, Taylor and Associates, Inc. (MTA) between August 13, 1992 and November 9, 1994, as well as an NRC inspection conducted at the MTA facility on December 2, 1994. MTA responded to the Notice in two letters, both dated March 10, 1995. In its responses, MTA admits the violations as stated in the Notice, but requests mitigation of the penalty. The NRC's evaluation and conclusion regarding MTA's requests are as follows:

Summary of MTA's Request for Mitigation

In its response, MTA maintains that there are a number of extenuating circumstances and other mitigating factors which should be considered and result in mitigation of the penalty.

With respect to the NRC application of 50% escalation because the violation was identified by the NRC, MTA contends that it, in fact, notified the NRC on December 2, 1994, that it could not locate the gauge. MTA states that it did not become convinced until December 1 or 2, 1994 that the gauge had been stolen or misplaced. MTA further contends that a statement made by the Radiation Safety Officer during a telephone conversation with the NRC on December 2, 1994, was, in fact, a notification that MTA was in violation.

With respect to the NRC application of 50% escalation because of the lack of prompt action, MTA states that it was not until December 2, 1994, that it became fully aware that the gauge was lost or stolen. MTA further maintains that it has acted promptly and aggressively since December in an attempt to locate the gauge.

With respect to the NRC application of 100% escalation because of prior opportunity to prevent the violation, MTA states that it did not believe it ever received the Order issued in 1992 for nonpayment of fees. At the enforcement conference, MTA indicated that it requested proof of a delivery receipt from the NRC but the NRC has not yet provided MTA with a receipt. MTA also states that its Chief Financial Officer had a conversation with an NRC representative (unnamed) in 1993, and was told that with its payment of fees and penalties at that time it was fully paid up through September 1994.

With respect to the NRC application of 100% escalation based on duration (because the gauge was unattended for an extended period), MTA states that there is no evidence to document how long the gauge was outside the locked storage closet before it was lost or stolen. MTA also states that its office is not easily accessible and is typically a secure location, noting that the fact that the gauge was out of its locked storage cabinet was not as risky a location as it might seem. Therefore, while admitting the violation, MTA maintains that these factors should reduce the escalation.

MTA also describes other bases which it considers mitigating factors and extenuating circumstances to the proposed civil penalty. Specifically, MTA contends that there was significant confusion over payment of fees from 1991 to 1993, noting that on at least one occasion, it was cited for nonpayment of a particular charge that had in fact been paid. MTA stated that due to the confusion over payment of fees, when it was contacted in August and September of 1994, there was still confusion over payment. MTA further states that this confusion, and the fact that it never received the Order in 1992 may help explain why it did not initially respond with urgency.

MTA also states that a significant amount has already been paid in penalties for late payment of fees and that the imposition of an additional $3,000 seems excessive. MTA maintains that it acted aggressively to locate the gauge over the ten weeks prior to its response. MTA states that the penalty is excessive to emphasize the importance of maintaining a valid license, and is unnecessary since MTA does not intend to possess a gauge of this type, or any NRC licensed material, in the future. MTA requests that the civil penalty be reduced to $500.

NRC Evaluation of Licensee's Request for Mitigation

The NRC letter, dated February 13, 1995, transmitting the civil penalty, notes that the base civil penalty amount of $500 in this case was increased by 50% because the violations were identified by the NRC; increased by 50% based on the licensee's lack of prompt corrective action; increased by 100% based on the prior opportunity since the Order provided ample notice of the need to control entry to restricted areas; and increased 100% based on the duration because the gauge was unattended in the vicinity of a closet for an extended period, based on the RSO's recollection. The letter also notes that to emphasize the importance of maintaining a valid license or properly disposing of NRC-licensed materials, particularly after the NRC directed and reminded MTA to do so, and the importance of maintaining proper control of licensed material, the NRC exercised discretion in accordance with Section VII.A of the Enforcement Policy and increased the base civil penalty by an additional 200%. As a result, a penalty of $3,000 was proposed.

With respect to the identification factor, the NRC is not citing the licensee for failure to notify the NRC as required. It was during the NRC inspection that the specific violation was identified, namely, failure to maintain adequate security of licensed material (which resulted in the gauge being lost or stolen). Further, the loss of the gauge was only identified after the NRC repeatedly reminded MTA of the need to transfer the gauge to an authorized recipient, as well as to notify the NRC that such a transfer had taken place. Therefore, mitigation is not warranted for this factor.

With respect to the corrective actions and prior opportunity to identify factors, the NRC also notes that MTA had ample opportunity to identify and correct any problems with security of the gauge, via the repeated

contacts with the NRC reminding MTA of the need to transfer the gauge to an authorized recipient. If MTA had aggressively responded to the Notice of a Violation issued by the NRC on September 7, 1994, or the telephone call from Mr. Walt Pasciak on August 29, 1994, the security violation could have either been prevented, or corrected, or identified if the gauge was already missing.

MTA's failure to do so is considered particularly egregious. Even if MTA had not received a copy of the 1992 Order, it had several conversations with NRC staff regarding the status of the gauge between August 1992 and November 1994, and had received the September 7, 1994 Notice of Violation which provided prior opportunities to prevent or correct this violation. If MTA had promptly acted to locate and transfer the gauge to an authorized recipient at that time, the security violation and subsequent loss of the gauge might have been prevented. Therefore, no mitigation is warranted for these factors.

With respect to the duration factor, while MTA contends that its office is typically a secure location, and the gauge being out of its locked storage cabinet is not as risky a situation as it might seem, MTA's action to remove the gauge from its secure location without taking appropriate measures for an extended period, as the RSO recollects, provided an appropriate basis for excalating the penalty on this factor. Therefore, no mitigation of this factor is warranted.

Escalation of the penalty by 200% to emphasize the importance of maintaining a valid license is no longer warranted due to MTA's assertion that they do not intend to posses any NRC licensed material in the future. Therefore, the penalty is reduced to $2,000.

Furthermore, notwithstanding MTA's contention, the NRC does not consider the penalty excessive, particularly given the fact that the security violation resulted in a loss or theft of radioactive material.

NRC Conclusion

The NRC has concluded that MTA did not provide an adequate basis for mitigation of the civil penalty to $500. Given the significance of the failure to maintain security of radioactive materials, and the loss of the gauge that occurred in this case, a civil penalty in the amount of $2,000 should be imposed.

[FR Doc. 95–11029 Filed 5–3–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Deadline for Submission of Petitions in the 1995 Annual GSP Review

AGENCY: Office of the United States Trade Representatives.

ACTION: Notice of the 1995 Annual GSP Review.

SUMMARY: The notice announces the deadline for the submission of petitions in the 1995 Annual GSP Review.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., Room 518, Washington, DC 20506. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

I. Announcement of 1995 Annual GSP Review

The GSP regulations (15 CFR 2007.3 *et seq.*) provided for annual review, unless otherwise specified by **Federal Register** notice. Notice is hereby given that, in order to be considered in the 1995 Annual GSP Review, all petitions to modify the list of articles eligible for duty-free treatment under the GSP and requests to review the GSP status of any beneficiary developing country must be received by the GSP Subcommittee no later than 5 p.m., Wednesday, June 14, 1995. Petitions submitted after the deadline will not be considered for review and will be returned to the petitioner. The GSP provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries. The GSP is authorized by Title V the Trade Act of 1974, as amended (''Trade Act'') (19 U.S.C. 2461 *et seq.*), and was implemented by Executive Order 11888 of November 24, 1975, and modified by subsequent Executive Orders and Presidential Proclamations.

A. 1995 Annual GSP Review

Interested parties or foreign governments may submit petitions: (1) To designate additional articles as eligible for GSP; (2) to withdraw, suspend or limit GSP duty-free treatment accorded either to eligible articles under the GSP or to individual beneficiary developing countries with respect to specific GSP eligible articles; (3) to waive the competitive need limits for individual beneficiary developing countries with respect to specific GSP eligible articles; (4) to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in sections 502(b) or 502(c) of the Trade Act (19 U.S.C. 2462 (b) and (c)); and, (5) to otherwise modify GSP coverage.

B. Identification of Product Requests With Respect to the Harmonized Tariff Schedule of the United States

The Harmonized Tariff Schedule of the United States (HTS) was implemented by the United States on January 1, 1989, and replaces the former Tariff Schedules of the United States nomenclature. All product petitions must include a detailed description of the product and the HTS subheading in which the product is classified.

C. Submission of Petitions and Requests

Petitions to modify GSP treatment should be addressed to GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, NW., Room 518, Washington, DC 20506. All such submissions must conform with the GSP regulations, which are set forth at 15 CFR 2007. These regulations were published in the **Federal Register** on Tuesday, February 11, 1986 (FR 5035). The regulations are printed in ''A Guide to the U.S. Generalized System of Preferences (GSP)'' (August 1991) (''GSP Guide''). Information submitted will be subject to public inspection by appointment only with the staff of the USTR Public Reading Room, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6 and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. An original and fourteen (14) copies of each petition must be submitted in English. If the petition contains business confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and fourteen (14) copies of the confidential version must be submitted. In addition, the submission containing confidential information should be clearly marked ''confidential'' at the top and bottom of each and every page of the submission. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each page (either ''public version'' or ''nonconfidential'').

Petitioners are strongly advised to review the GSP regulations. Petitioners are reminded that submissions that do not provide all information required by § 2007.1 of the GSP regulations will not be accepted for review except upon a detailed showing in the submission that the petitioner made a good faith effort to obtain the information required. These requirements will be strictly enforced. Petitions with respect to competitive need waivers must meet the informational requirements for product addition requests in § 2007.1(c). A model petition format is available from the GSP Subcommittee and is included in the GSP Guide. Petitioners are requested to use this model petition format so as to ensure that all informational requirements are met. Furthermore, interested parties

submitting petitions that request action with respect to specific products should list on the first page of the petition the following information: (1) The requested action; (2) the HTS subheading in which the product is classified; and, (3) if applicable, the relevant beneficiary developing country.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 95–11051 Filed 5–3–95; 8:45 am]

BILLING CODE 3901–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35651; File SR–Amex–95–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing and Trading of Indexed Term Notes Linked to the Real Estate Index

April 27, 1995.

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 February 16, 1995, 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. On April 4, 1995, the Exchange filed Amendment No. 1 to the proposal.[1] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to approve for listing and trading under Section 107A of the Amex Company Guide (''Guide'') intermediate-term, indexed notes (''Notes'') whose value will be linked in part to changes in the level of the Real Estate Index (''Index''), a new index designed to reflect general movements in the underlying market for commercial real estate. The Index is calculated by combining the performance of two separate equity indexes—one comprised entirely of large, actively traded Real Estate Investment Trusts (''REIT50 Index''), and the other being the Russell 2000 Index, a broad-based index comprised of small capitalization stocks (''Russell 2000''). The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and the 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 Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Under Section 107 (Other Securities) of the Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, and warrants. The Amex now proposes to list for trading under Section 107A of the Guide, intermediate-term, indexed notes, the value of which can be expected to fluctuate based on changes in the level of an index designed to reflect general movements in the underlying market for commercial real estate by combining the performance of two separate equity indexes—one comprised entirely of large, actively trade real estate investment trusts (''REITS''), *i.e.*, the REIT50 Index, and the other a broad-based index of small capitalization stocks, *i.e.*, the Russell 2000.

Background

According to the Exchange, by some estimates over half of the wealth in the United States and as much as one-fourth of total corporate value are in the form of real estate. In addition, the Exchange represents that studies of asset allocation demonstrate clear diversification benefits from allocating a portion of an investment portfolio to real estate as a separate asset class. Traditional investment in a diversified portfolio of commercial real estate, however, is not possible for most investors, in the Exchange's opinion, because of high transaction costs, market illiquidity, and the extremely large investment required to purchase a pool of properties diversified across different property types and geographic regions.

The Exchange further represents that research has demonstrated that the performance associated with an index of REITs may be attributed partly to movements in the underlying real estate market and partly to the small capitalization nature of REIT securities. Therefore, by subtracting a portion of the returns associated with a broad-based small capitalization stock index from the returns generated by an index of REITs, the Exchange believes that an index can be generated that more closely reflects the performance of the underlying real estate market. The Exchange states that the proposed Notes are intended to use this method to provide an exchange-listed alternative for investors who wish to gain exposure to general movements in the real estate sector or whose portfolios are heavily weighted in real estate and wish to shed some of that exposure.

Note Structure

The proposed Notes will conform to the listing guidelines under Section 107A of the Guide which provide, in part, that such issues have: (1) a public distribution of at least one million trading units; (2) a minimum of 400 holders; and (3) a market value of not less than $4 million.[2] The Notes will have a term of two to five years and may provide for periodic payments to holders. Upon maturity, holders will receive not less than 90% of the original issue price plus an amount in U.S. dollars equal to a participation rate (*i.e.*, a specified percentage) multiplied by the increase, if any, in the level of the Index at the time of the offering and the average of the closing Index level on the first ten days of the last twenty days preceding maturity (''Closing Index Level'').[3]

The Notes may not be redeemed prior to maturity and holders of the Notes have no claim to the securities underlying the Index. Thus, holders will be able to liquidate their investment

[1] In Amendment No. 1, the Exchange proposes to: (1) clarify the name of the Real Estate Index; (2) specify that the Real Estate Index will be initialized at a value of 100; and (3) amend the formula for calculating the value of the Real Estate Index. *See* Letter from Claire McGrath, Managing Director and Special Counsel, Amex, to Michael Walinskas, Branch Chief, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated April 4, 1995.

[2] The proposal incorrectly indicates that Section 107A requires a market value of not less than $20 million. Section 107A was recently amended to set the minimum market value to $4 million. *See* Securities Exchange Act Release No. 34765 (September 30, 1994), 59 FR 51220 (October 7, 1994).

[3] If the Closing Index Level is lower than the level of the Index at the time of the offering, holders will receive at least 90% of the original issue price. The minimum level that holders will receive at maturity will be set at the time of the offering of the Notes.

prior to maturity only by selling the Notes in the secondary market. The Exchange anticipates that the trading value of the Notes in the secondary market will depend in large part on the value of the securities comprising the Index and such other factors as the level of interest rates, the volatility of the value of the Index, the time remaining to maturity, dividend rates, and the credit of the issuer.

The Notes will be subject to the equity margin rules of the Exchange. The Exchange will also distribute a circular to its membership prior to trading the Notes providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the notes and highlighting the special risks and characteristics of the Notes.[4]

The Index

The Notes will be linked to the Real Estate Index, a new index designed to reflect general movements in the underlying market for commercial real estate. The Index is calculated as a combination of the performance of two separate equity indexes: the REIT50 Index, which is a total return index comprised of 50 large, actively traded REITS;[5] and the Russell 2000 Index, which is a well-established capitalization-weighted broad-based index designed to track the performance of the small capitalization segment of the stock market.[6]

The Exchange represents that the method for calculating the value of the Index was developed based upon research that has demonstrated that the performance associated with an index of REITs may be attributed partly to movements in the underlying real estate market, and partly to the small capitalization nature of REIT stocks. Therefore, by subtracting a portion of the returns associated with a broad-based small capitalization stock index (such as the Russell 2000) from the returns generated by an index of REITs, the Exchange believes that an index can be generated that more closely reflects the performance of the underlying real estate market. Based on historical research and for purposes of simplicity, the Exchange has determined that the portion of small capitalization stock returns to be subtracted from the returns of the REIT50 Index will be set at a fixed level of 50% of the value of the Russell 2000.

The Index will initially be set at a level of 100 as of the market close on the day prior to the start of trading of the Notes. At any point in time, the Index value is calculated by multiplying the initial Index level (*i.e.*, 100) by a factor determined as follows: First, the percentage change in the REIT50 Index from the market close on the day prior to the start of trading of the Notes is determined. Next, the percentage change of the Russell 2000 from the market close on the day prior to the start of trading of the Notes is determined. One half of the calculated percent change in the Russell 2000 is then subtracted from the calculated percent change in the REIG50 Index. This differential is added to the number one to yield the factor by which the initial Index level is multiplied to determine the current Index level. The following formula summarizes this calculation:

$$I_t = 100 * \left(1 + \left[\frac{(RE50_t - RE50_{init})}{RE50_{init}} - 50\% * \frac{(R2000_t - R2000_{init})}{R2000_{init}}\right]\right)$$

Where:
RE50=REIT50 Index.
R2000=Russell 2000 Index.
Init=Indicates the level of the designated index as of the market close on the day prior to the start of trading of the Notes.
t=Indicates the current level of the designated index.

The Index will be calculated continuously based on the most recently reported values of the REIT50 Index and the Russell 2000 and disseminated every 15 seconds over the Consolidated Tape Association Network B.

Russell 2000 Index

The Russell 2000 is a well established benchmark index of the small-capitalization segment of the U.S. equity market. Options on the Russell 2000 trade at the Chicago Board Options Exchange and futures trade at the Chicago Mercantile Exchange. The Russell 2000 is capitalization-weighted, and values are disseminated every 15 seconds to market vendors through the Option Price Reporting Authority. The value of the Russell 2000 does not reflect reinvestment of dividends paid on component stocks in the Index.

REIT50 Index

The REIT50 Index is a new capitalization-weighted index and, as discussed below, is a total return index. The Exchange represents that the REIT50 Index conforms with Exchange Rule 901C, which specifies criteria for inclusion of stocks in an index on which standardized options will be traded. The REIT50 Index is composed of the 50 largest publicly-traded equity REITs, as measured by market capitalization. The REIT50 Index will be maintained so that at each quarterly review, as discussed below, over the prior six-month period, the components of the Index will have had an average monthly trading volume of at least 400,000 shares with share prices greater than or equal to $5 for the majority of business days during the preceding three calendar months.[7] The REIT50 Index also does not and will not include health care REITs or REITs that invest primarily in real estate mortgages or debt securities.[8] The REIT50 Index also will exclude real estate operating companies and partnerships.[9]

The Exchange will review the component securities on a quarterly basis to ensure that the REIT50 Index continues to represent only the largest and most actively traded REITs. After the close of trading on the last business day of December, March, June, and September, all eligible REITs will be ranked by descending market capitalization, and the 50 largest, subject to the maintenance criteria discussed above, will comprise the REIT50 Index until the next quarterly review. Only REITs that have been trading for at least three calendar months will be considered for inclusion in the REIT50 Index. Resulting composition changes will be made after the close of trading on the third Friday of January, April, July, and October. The divisor of the REIT50 Index will be adjusted as necessary to ensure that there is no discontinuity in the value of

[4] The Commission notes that the Amex will be required to submit a draft of the circular to the Commission staff for approval prior to distribution to members.

[5] *See* Discussion of the REIT50 Index, *infra.*

[6] *See* Discussion of the Russell 200 Index, *infra.*

[7] Telephone conversation between Claire McGrath, Managing Director and Special Counsel, Amex, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on April 5, 1995.

[8] *Id.*

[9] *Id.*

the REIT50 Index as a result of these replacements.

The number of component stocks in the REIT50 Index will remain fixed between quarterly reviews. In the event that one or more component securities must be removed due to merger, takeover, bankruptcy, or other circumstances, the REIT next on the list from the most recent quarterly review, subject to the maintenance criteria discussed above, will be selected to replace that security in the REIT50 Index. In such case, the divisor will be adjusted as necessary to ensure that there is no discontinuity in the value of the REIT50 Index.

The REIT50 Index is a total return index in that the regular cash dividends of its component securities are included in calculating the value of the REIT50 Index. Therefore, at the close of trading each day, the prices of component securities that will trade ''ex-dividend'' the next day will be adjusted (downward) by the value of the dividend to reflect the price impact on the stock as it trades without (or ''ex'') the dividend on the following day. The divisor is then adjusted to ensure continuity of the Index value. The REIT50 Index value will be calculated and disseminated every 15 seconds over the Consolidated Tape Association's Network B under a separate ticker symbol so that the two component indexes that comprise the Index (*i.e.*, the REIT50 and the Russell 2000 Indexes) may be monitored separately, and the Index value calculated independently.

Because the Notes are linked to an index of equity securities, the Exchange's equity floor trading rules will apply to the trading of the Notes. In addition, members and member firms will have an obligation pursuant to Exchange Rule 411 to learn the essential facts relating to every customer prior to trading the Notes. The Exchange also will require, pursuant to Exchange Rule 411, that a member or member firm specifically approve a customer's account for trading the Notes prior to, or promptly after, the completion of the transaction.

The Exchange believes 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) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate 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

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, 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 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 will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–95–05 and should be submitted by May 25, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

[10] 17 CFR 200.30–3(a)(12) (1994).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–10969 Filed 5–3–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35652; File No. SR–NASD–95–14]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Interim Extension of the OTC Bulletin Board® Service Through June 28, 1995

April 27, 1995.

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 April 26, 1995 the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 1, 1990, the NASD, through a subsidiary corporation, initiated operation of the OTC Bulletin Board Service (''OTCBB Service'' or ''Service'') in accord with the Commission's approval of File No. SR–NASD–88–19, as amended.[1] The OTCBB Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are not listed on The Nasdaq Stock Market℠ nor on a registered national securities exchange (collectively referred to as ''OTC Equities'').[2] Essentially, the Service supports NASD members' market making in OTC Equities through authorized Nasdaq Workstation® units. Real-time access to quotation information captured in the Service is available to subscribers of

[1] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124.

[2] With the Commission's approval of File No. SR–NASD–93–24, the universe of securities eligible for quotation in the OTCBB now includes certain equities listed on regional stock exchanges that do not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape Association.

Level 2/3 Nasdaq service as well as subscribers of vendor-sponsored services that now carry OTCBB Service data. The Service is currently operating under an interim approval that expires on April 28, 1995.[3]

The NASD hereby files this proposed rule change, pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, to obtain authorization for an interim extension of the Service through June 28, 1995. During this interval, there will be no material change in the OTCBB Service's operational features, absent Commission approval of a corresponding Rule 19b–4 filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to ensure continuity in the operation of the OTCBB Service while the Commission considers an earlier NASD rule filing (File No. SR–NASD–92–7) that requested permanent approval of the Service.[4] For the month ending March 31, 1995, the Service reflected the market making positions of 421 NASD member firms displaying quotations/indications of interest in approximately 5,753 OTC Equities.

During the proposed extension, unregistered foreign securities and American Depositary Receipts (collectively, ''Foreign Equity Securities'') will remain subject to the twice-daily, update limitation that traces back to the Commission's original approval of the OTCBB Service's operation. As a result, all priced bids/offers displayed in the Service for unregistered Foreign Equity Securities will remain indicative.

In conjunction with the launch of the Service in 1990, the NASD implemented a filing requirement (under Section 4 of Schedule H to the NASD By-Laws) and review procedures to verify member firms' compliance with Rule 15c2–11 under the Act. During the proposed extension, this review process will continue to be an important component of the NASD's self-regulatory oversight of broker-dealers' market making in OTC Equities. The NASD also expects to work closely with the Commission staff in developing further enhancements to the Service to fulfill the market structure requirements mandated by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (''Reform Act''), particularly Section 17B of the Act.[5] The NASD notes that implementation of the Reform Act entails Commission rulemaking in several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for ''penny stocks.''

* * * * *

The NASD believes that this proposed rule change is consistent with Sections 11A(a)(1), 15A(b)(6) and (11), and Section 17B of the Act. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, among other things, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations. Finally Section 17B contains Congressional findings and directives respecting the collection and distribution of quotation information on low-priced equity securities that are neither Nasdaq nor exchange-listed.

The NASD believes that extension of the Service through June 28, 1995 is fully consistent with the foregoing provisions of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 NASD requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register** to avoid any interruption of the Service. The current authorization for the Service extends through April 28, 1995. Hence, it is imperative that the Commission approve the instant filing on or before that date. Otherwise, the NASD will be required to suspend operation of the Service pending Commission action on the proposed extension.

The NASD believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a determination on permanent status for the Service, as requested in File No. SR–NASD–92–7. Continued operation of the Service will ensure the availability of an electronic quotation medium to support member firms' market making in approximately 5,753 OTC Equities and the widespread dissemination of quotation information on these securities. The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. From a regulatory standpoint, the NASD's capture of quotation data from participating market makers supplements the transactional data now reported by member firms pursuant to

[3] Securities Exchange Act Release No. 35316 (February 1, 1995), 60 FR 7613.

[4] Securities Exchange Act Release No. 30766 (June 1, 1992), 57 FR 24281.

[5] On November 24, 1992, the NASD filed an application with the Commission for interim designation of the Service as an automated quotation system for penny stocks, pursuant to Section 17B(b) of the Act. On December 30, 1992, the Commission granted Qualifying Electronic Quotation System (''QEQS'') status for the Service for purposes of certain penny stock rules that became effective on January 1, 1993. On August 26, 1993, the Commission granted the NASD's request for an extension of QEQS status until such time as the OTCBB meets the statutory requirements of Section 17B(b)(2). Finally, on May 13, 1994, the NASD filed an application with the Commission for permanent designation of the Service as an automated quotation system for penny stocks pursuant to Section 17B(b) of the Act. The Commission has not yet acted upon the May 13th application.

Part XII of Schedule D to the NASD By-Laws.

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 Room. Copies of such filing will also be available for inspection and copying at the principle office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by May 25, 1995.

V. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that approval of the proposed rule change is consistent with the Act and the rules and regulations thereunder, and in particular with the requirements of Section 15A(b)(11) of the Act, which provides that the rules of the NASD relating to quotations must be designed to produce fair and informative quotations, prevent fictitious or misleading quotations and promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing thereof. Accelerated approval of the NASD's proposal is appropriate to ensure continuity in the Service's operation as an electronic quotation medium that supports NASD members' market making in OTC Equities and that facilitates price discovery and the execution of customers' orders at best available price. Additionally, continued operation of the Service will materially assist the NASD's surveillance of trading in OTC Equities that are quoted in the Service, including certain non-Tape B securities that are listed on regional exchanges and quoted in the Service.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for an interim period through June 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–10970 Filed 5–3–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26283]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

April 28, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 22, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Arkansas Power & Light Company, et al. (70–8001)

Arkansas Power & Light Company (''AP&L''), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201, Louisiana Power & Light Company (''LP&L''), 639 Loyola Avenue, New Orleans, Louisiana 70113, Mississippi Power & Light Company (''MP&L''), 308 East Pearl Street, Jackson, Mississippi 39201 and New Orleans Public Service Inc. (''NOPSI''), 639 Loyola Avenue, New Orleans, Louisiana 70113, each an electric public-utility subsidiary of Entergy Corporation, a registered holding company, and System Fuels, Inc. (''SFI''), 639 Loyola Avenue, New Orleans, Louisiana 70113, a fuel supply company jointly owned by AP&L, LP&L, MP&L and NOPSI (all companies collectively, ''Applicants''), have filed a post-effective amendment under sections 9(a) and 10 of the Act and rule 54 thereunder to their application previously filed under sections 9(a) and 10 of the Act.

By orders dated November 1, 1979, August 25, 1980, June 15, 1982 and May 15, 1984 (HCAR Nos. 21277, 21689, 22556 and 23309), the Commission authorized SFI to acquire by leveraged lease (''Lease'') 600, 750, 580 and 320 steel railroad cars,[1] respectively, for the transportation of coal from Wyoming to the White Bluff Steam Electric Station located near Redfield, Arkansas (''White Bluff'') and the Independence Steam Electric Station located near Newark, Arkansas (''ISES''). Pursuant to the Lease transactions, the obligations of SFI were supported by SFI's parent companies (AP&L, LP&L, MP&L and NOPSI, collectively ''Parents'') by means of ''keep-well'' arrangements. Under these keep-well arrangements, the Parents agreed, severally and to the extent of their percentage ownership of SFI, to keep SFI in sound financial condition and to place SFI in a position, and cause SFI, to perform and discharge all its obligations under the relevant Lease transaction agreements.

By orders dated July 7, 1992 and September 3, 1992 (HCAR Nos. 25576 and 25618) (collectively, ''1992 Orders''), AP&L was authorized to assume SFI's rights and obligations as lessee under the Leases. Such assumption released and discharged SFI from its obligations under the Leases, and the Parents were released and discharged from their keep-well obligations. In addition, the 1992 Orders authorized AP&L to sublease the steel railroad cars to nonaffiliate companies. The 1992 Orders included two restrictions on such subleasing: (i) No sublease could be longer than the lesser of one year or the period during which the steel railcars were not needed for the transportation of coal to White Bluff and ISES; and (ii) no more than 50% of the steel railroad cars leased by AP&L could be subleased at any one time (''50% Restriction'').

[6] 17 CFR 200.30–3(a)(12).

[1] AP&L states that, during the past 14 years, 25 of the original steel railcars were destroyed in derailments leaving 2,225 railcars currently in service.

AP&L now proposes to replace its existing steel railcar fleet with aluminum railcars. Consequently, AP&L seeks Commission authority to: (i) Sublease all of its existing steel railcars for up to the remainder of their respective lease terms; and (ii) sublease new aluminum railcars during periods when they are not needed to service the coal transportation requirements of White Bluff and ISES.

AP&L states that the above request for authority would be limited by the following conditions: (i) Each subleasing transaction shall be reported by a quarterly rule 24 certificate; and (ii) any revenue realized from the sublease of the steel railcars shall be credited against AP&L's costs as lessee of the steel railcars. AP&L's proposal expressly rejects the 50% Restriction, as imposed by the 1992 Orders.

AP&L further states that the benefit from such lower costs of leasing the steel railcars shall accrue to the owners of White Bluff and ISES on a pass-through basis. Such revenues shall be reflected accordingly in AP&L's ratemaking provisions, except to the extent the regulatory authority having jurisdiction over the matters authorizes a different treatment. Such revenues will be credited to ''Fuel Stock'' (Account No. 151 under the Federal Energy Regulatory Commission's Uniform System of Accounts). In the event AP&L changes its method of accounting for subleasing it will provide 30 days advance notice of the proposed change to the Commission.

General Public Utilities Corporation (70–8593)

General Public Utilities Corporation (''GPU''), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 53 thereunder.

GPU proposes to acquire and hold the interests or securities of one or more foreign utility companies (''FUCOs'') and exempt wholesale generators (''EWGs'') (each, an ''Exempt Entity''), as defined in sections 32 and 33 of the Act. To facilitate the acquisition and ownership of interests in Exempt Entities, GPU proposes to acquire the securities of subsidiary companies which are not themselves Exempt Entities (each, a ''Subsidiary Company''). Each Subsidiary Company will be engaged, directly or indirectly, and exclusively, in the business of owning and holding the interests and securities of one or more Exempt Entities and in project development activities relating to the acquisition of such interests and securities and the underlying projects.

Accordingly, GPU proposes to acquire Subsidiary Company securities which may take the form of capital stock or shares, trust certificates, partnership interests or other equity or participation interests. Any investment in the capital stock or other equity securities of a Subsidiary Company having a stated or par value will be in an amount equal to or greater than such stated or par value.

If GPU determines that a Subsidiary Company whose securities it has acquired no longer has a purpose (whether due to termination of a proposed project acquisition, loss of a bid, change of law, or otherwise), it shall (to the extent that it is able to do so), liquidate or dissolve such Subsidiary Company within 45 days after such determination, unless GPU determines that such Subsidiary Company may be used in conjunction with a proposal or plan to acquire an interest in a different Exempt Entity.

GPU further proposes to make investments in such Subsidiary Companies from time to time through December 31, 1997 in an aggregate amount of up to $200 million. Investments may take the form of cash capital contributions or open account advances; loans evidenced by promissory notes; guarantees by GPU of the principal of, or interest on, any promissory notes or other evidences of indebtedness or obligations of any Subsidiary Company, or of GPU's undertaking to contribute equity to a Subsidiary Company; assumption of liabilities of a Subsidiary Company; and reimbursement agreements with banks entered into to support letters of credit delivered as security for GPU's equity contribution obligation to a Subsidiary Company or otherwise in connection with a Subsidiary Company's project development activities.

In addition to the above-described investments in Subsidiary Companies, GPU requests authority to make investments in Exempt Entities from time to time through December 31, 1997. Such investments could take the form of (i) guarantees of the indebtedness or other obligations of one or more Exempt Entities; (ii) assumption of liabilities of one or more Exempt Entities; and (iii) guarantees and letter of credit reimbursement agreements in support of equity contribution obligations or otherwise in connection with project development activities for one or more Exempt Entities. The aggregate amount of such guarantees, assumptions and reimbursement agreements entered into with respect to Exempt Entities, together with the amount invested in Subsidiary Companies, would not exceed $200 million in the aggregate outstanding at any one time.

Any open account advance made by GPU will be non-interest bearing and repayable within one year of the date of the advance. Any promissory note issued by a Subsidiary Company to GPU, and any promissory note or similar evidence of indebtedness issued by a Subsidiary Company or an Exempt Entity to a person other than GPU with respect to which GPU may issue a guarantee, would mature not later than 30 years after the date of issuance thereof, and would bear interest at a rate (a) not greater than the prime rate at a bank to be designated by GPU in the case of any promissory note issued to GPU, and (b) in the case of any note or similar evidence of indebtedness issued to a person other than GPU and guaranteed by GPU, not in excess of the rates proposed below for borrowings by Subsidiary Companies. Any promissory note issued to GPU by any Subsidiary Company may, at GPU's option, be converted to a capital contribution to such Subsidiary Company through GPU's forgiveness of the indebtedness evidenced thereby.

Any reimbursement agreement supporting a letter of credit would have a term not in excess of 30 years. Drawings under any such letter of credit would bear interest at not more than 5% above the prime rate of the letter of credit bank as in effect from time to time, and letter of credit fees would not exceed 1% annually of the face amount of the letter of credit.

GPU also requests authorization for each Subsidiary Company to issue equity and debt securities to persons other than GPU (and with respect to which there is no recourse to GPU except to the extent GPU may guarantee payment of such securities pursuant to the authorization herein requested), including banks, insurance companies and other financial institutions, exclusively for the purpose of financing or refinancing investments in and project development activities for Exempt Entities. Such securities may be issued in one or more transactions from time to time through the earlier to occur of (i) December 31, 1997, and (ii) the effective date of any rule or regulation under the Act exempting such transactions from prior Commission authorization. No equity security having a stated or par value would be issued or sold by a Subsidiary Company for a consideration that is less than such stated or par value.

The aggregate principal amount of such debt securities issued by

Subsidiary Companies to persons other than GPU will not exceed $500 million at any one time outstanding. In any case in which GPU directly or indirectly owns less than 100% of the equity interests of a Subsidiary Company, only that portion of the indebtedness of such Subsidiary Company equal to GPU's equity ownership percentage shall be included for purposes of the foregoing limitation.

Debt securities issued or sold by any Subsidiary Company will mature not later than 30 years from the date of issuance thereof, and will bear interest at a rate not in excess of the greater of (A) if such note, bond or other indebtedness is U.S. dollar denominated, the greater of (i) 250 basis points above the greater of (a) the lending bank's or other recognized prime rate and (b) 50 basis points above the federal funds rate, (ii) 400 basis points above the specified London Interbank Offered Rate plus any applicable reserve requirement, or (iii) a negotiated fixed rate which, in any event, would not exceed 500 basis points above the 30 years ''current coupon'' treasury bond rate; and (B) if such note, bond or other indebtedness is denominated in the currency of a country other than the United States , at a fixed or floating rate which, when adjusted (i.e., reduced) for the prevailing rate of inflation in such country, as reported in official indices published by such country, would be equivalent to a rate on a U.S. dollar denominated borrowing of identical average life that does not exceed 10% over the highest rate set forth in clause (A) above.

In connection with the issuance of any securities by any Subsidiary Company, it is anticipated that such Subsidiary Company may grant a security interest in its assets. Such security interest may take the form of a pledge of the shares or other equity securities of an Exempt Entity that it owns, including a security interest in any distributions from any such Exempt Entity, and/or a collateral assignment of its rights under and interests in other property, including rights under contracts.

It is also anticipated that fees in the form of placement or commitment fees, or other similar fees, would be paid to lenders, placement agents, or others in connection with the issuance of any such securities. GPU proposes that any Subsidiary Company may agree in any case to pay placement or commitment fees, and other similar fees, in connection with such issuance, provided that the aggregate amount of any such fees (i) payable at or about the time of the issuance of the securities would not exceed 4% of the stated or principal amount thereof and (ii) payable thereafter would not cause the effective annual interest charge on such securities to exceed 115% of the stated interest rate thereon.

GPU states that it would obtain the funds for any direct or indirect investment in any Subsidiary Company or Exempt Entity from available cash or as the Commission may otherwise authorize by separate order.

West Penn Power Company, et al. (70–8613)

Monongahela Power Company (''Monongahela''), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, The Potomac Edison Company (''Potomac Edison''), 10435 Downsville Pike, Hagerstown, Maryland 21740, and West Penn Power Company (''West Penn''), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, public-utility subsidiary companies of Allegheny Power System, Inc., a registered holding company, have filed a declaration under sections 6(a), 7 and 12(c) of the Act and rule 42 thereunder.

Monongahela, Potomac Edison and West Penn proposes to issue and sell, at any time or from time to time through December 31, 1998, in one or more series, up to $95,000,000, $61,834,900, and $110,000,000 principal amount, respectively (an aggregate of $266,834,900 principal amount for all three companies) of junior subordinated debentures (the ''Debt Securities''). The Debt Securities will be issued under an indenture or indentures to be entered into with a trustee or trustees to be named.

The Debt Securities will be unsecured obligations of the issuer thereof, will be subordinate to all other indebtedness for borrowed money of such issuer, and may contain cross-default provisions with respect to other indebtedness of the issuer. Each such series will have a term of no more than fifty years and will bear interest, payable at periodic intervals, at a fixed or an adjustable rate. Any adjustable rate will be determined on a periodic basis as a percentage of or spread from a predetermined benchmark security, by auction or remarketing procedures, in accordance with a formula based on reference rates, or by other predetermined methods. The issuer of any series of Debt Securities may have the right to defer payment of interest for up to five years, provided that at the end of any deferral period the issuer would be required to pay all accrued and unpaid interest, with interest thereon at the rate borne by such Debt Securities, and during any deferral period the issuer may not be permitted to declare or pay dividends on or to acquire any of its capital stock. Debt Securities of any series may be redeemable at the option of the issuer, at any time after a specified date not later than twenty years from the date of issuance, at a price equal to the principal amount thereof plus accrued and unpaid interest, plus a premium (if any).

The Debt Securities will be sold at such time, at such interest rates, and for such prices as shall be approved by the issuer, depending on market conditions. The proceeds of the sale of Debt Securities will be applied to the redemption, tender offer or other retirement of outstanding preferred stock. Monongahela, Potomac Edison and West Penn state that the Debt Securities will provide substantial benefits over traditional perpetual preferred stock (including increased cash flow and net income and a lower net interest cost due to the tax deductibility of interest payments), while receiving substantially similar treatment for rating agency and other credit analysis purposes.

Appalachian Power Company, et al. (70–8615)

Appalachian Power Company (''Appalachian''), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, and its subsidiary, Southern Appalachian Coal Company (SACCo'') (collectively, the ''Sellers''), both located at 40 Franklin Road, Roanoke, Virginia 24022, have filed an application-declaration under Sections 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By Commission order dated June 6, 1984 (HCAR No. 23322), the Commission approved the sale of a significant portion of Appalachian's and its subsidiary's coal mining assets. The Sellers have now entered into an Agreement of Purchase and Sale, dated March 22, 1995 (''Agreement''), with Whites Creek Limited Liability Company (''Buyer''), a West Virginia limited liability company, with respect to most of its remaining West Virginia mining assets. Appalachian owns certain real property interests, including coal lands and docking facilities, located in Boone and Kanawha Counties, West Virginia. SACCo owns the Bull Creek Preparation Plant and equipment consisting of certain raw coal and clean coal handling and preparation plant facility together with fixed assets and improvements and other coal mining equipment. SACCo is the permittee under various reclamation,

pollutant discharge, pollution control and facilities permits applicable to coal mining, preparation and transportation.

Pursuant to the Agreement, the Buyer will acquire the real property interests, the coal preparation facility, the equipment and the permits (''Assets'') from the Sellers. The Sellers shall assign and delegate to the Buyer all rights and obligations under various oil and gas leases, farming leases, timber leases, residential leases, licenses, franchises, contracts, concessions and recorded and unrecorded occupancy agreements applicable to or for the use or occupancy of the real estate to be sold. The total purchase price under the Agreement for the Assets is $6.05 million, of which $1.25 million shall be paid at closing to be held no later than June 30, 1995. The Buyer will deliver a promissory note, secured by a letter of credit, in the amount of $4.8 million, bearing interest at the rate of a 8.004213 percent per annum, payable in 40 equal quarterly installments of principal and interest of $175,500, beginning on September 30, 1995 and ending on June 30, 2005.

Under the Agreement, the Sellers have agreed to indemnify the Buyer against certain liabilities and contingencies that may be asserted by employees or former employees of SACCo against the Buyer or by federal, state or local agencies as a result of noncompliance with laws relating to mining operations.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–11040 Filed 5–3–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License # 03/03–5171]

Consumer United Capital Corporation; Notice of License Surrender

Notice is hereby given that *Consumers United Capital Corporation, (''CUCC''), 1150 Connecticut Avenue NW., Suite 205, Washington, D.C. 20036,* has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (''the Act''). CUCC was licensed by the Small Business Administration on *April 25, 1985.*

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on *March 22, 1994,* and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 27, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–10952 Filed 5–3–95; 8:45 am]

BILLING CODE 8025–01–M

Investment Advisory Council; Public Meeting

The U.S. Small Business Investment Advisory Council will hold a public meeting from 10 a.m. to 3 p.m. Thursday, May 11, 1995, at the ANA Hotel, located at 2900 M Street, NW, Washington, DC, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ed Cleveland, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416, (202) 205–6510.

Dated: April 27, 1995.

Dorothy A. Overal,

Director, Office of Advisory Council.

[FR Doc. 95–10926 Filed 5–3–95; 8:45 am]

BILLING CODE 8025–01–M

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 95–1(6)]

Preslar v. Secretary of Health and Human Services; Definition of Highly Marketable Skills for Individuals Close to Retirement Age

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 95–1(6).

EFFECTIVE DATE: May 4, 1995.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965-1695.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Sixth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after May 4, 1995. If we made a determination or decision on your application for benefits between January 21, 1994, the date of the Court of Appeals' decision and May 4, 1995, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b) or 416.1485(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e) and 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) and 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivors Insurance; 93.806—Special Benefits for Disabled Coal Miners; 93.807—Supplemental Security Income.)

Dated: November 14, 1994.

Shirley S. Chater,

Commissioner of Social Security.

Acquiescence Ruling 95–1(6)

Preslar v. *Secretary of Health and Human Services*, 14 F.3d 1107 (6th Cir. 1994)—Definition of Highly Marketable Skills for Individuals Close to Retirement Age—Titles II and XVI of the Social Security Act.

Issue: Whether, in order to find that the skills of a claimant who is close to retirement age (age 60–64) are ''highly marketable'' within the meaning of the Secretary's regulations, the Social Security Administration (SSA) must

first establish that the claimant's skills are sufficiently specialized and coveted by employers as to make the claimant's age irrelevant in the hiring process and enable the claimant to obtain employment with little difficulty.

Statute/Regulation/Ruling Citation: Sections 223(d)(2)(A) and 1614(a)(3)(B) of the Social Security Act (42 U.S.C. 423(d)(2)(A) and 1382c(a)(3)(B)); 20 CFR 404.1520(f)(1), 404.1563(d), 404.1566(c), 416.920(f)(1), 416.963(d), 416.966(c); 20 CFR Part 404, Subpart P, Appendix 2, sections 201.00(f) and 202.00(f); Social Security Ruling 82–41.

Circuit: Sixth (Kentucky, Michigan, Ohio, Tennessee)

Preslar v. *Secretary of Health and Human Services,* 14 F.3d 1107 (6th Cir. 1994).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing or Appeals Council).

Description of Case: In April 1989, the plaintiff, Walter Preslar, who was 61 years of age and had an eleventh grade education, applied for Social Security disability insurance benefits and Supplemental Security Income benefits based on disability. Mr. Preslar alleged that he was disabled due to pain resulting from hip and back injuries, osteoarthritis and the late effects of musculoskeletal and connective tissue injuries. Following denial of his claims at both the initial and reconsideration levels of the administrative review process, the plaintiff requested and received a hearing before an ALJ. The evidence provided at the hearing included the testimony of a vocational expert who testified that Mr. Preslar could not perform any of his past relevant work, which included food truck driving, custodial work, and bartending. The vocational expert also testified, however, that Mr. Preslar possessed truck driving skills and that there were a significant number of skilled light trucking jobs in the regional economy that he could perform with no significant vocational adjustment.

The ALJ found that Mr. Preslar could not perform his past relevant work, but that he retained the capacity to do a full range of light work with only minor limitations. The ALJ also found, based upon testimony by the vocational expert, that Mr. Preslar had ''highly marketable work skills,'' including truck driving, the ability to use hand and power tools, and the ability to use a cash register. Based on these findings, the ALJ concluded that Mr. Preslar was not disabled. The Appeals Council denied Mr. Preslar's request for review, and the ALJ's decision became the final decision of the Secretary. This decision was reviewed by a district court which upheld the Secretary's denial of disability benefits, and the plaintiff appealed to the Court of Appeals for the Sixth Circuit.

Holding: The Sixth Circuit reversed the decision of the district court. The court of appeals noted that at the fourth and fifth steps of the five-step sequential evaluation process for determining disability prescribed in the Secretary's regulations, once a claimant establishes that he or she can no longer perform his or her past relevant work because of a severe impairment (step four), the burden shifts to the Secretary to show whether the claimant can perform other work which exists in the national economy, considering the claimant's residual functional capacity, age, education and work experience (step five). The court observed that for purposes of step five, a claimant's age is to be evaluated under the four-tiered structure of section 404.1563 of the Secretary's regulations.[1] Among other things, section 404.1563(d) provides that if a claimant is of advanced age (55 or over), has a severe impairment, and cannot do medium work, such claimant may not be able to work unless he or she has skills that can be transferred to less demanding jobs which exist in significant numbers in the national economy. The court noted that, in addition, section 404.1563(d) states that, ''[i]f you are close to retirement age (60-64) and have a severe impairment, we will not consider you able to adjust to sedentary or light work unless you have skills which are highly marketable.''

The Sixth Circuit observed that the term ''highly marketable'' skills was not expressly defined in the statutes, regulations or case law. The court stated, however, that it was evident from the regulations that ''highly marketable'' skills denoted something more than ''transferable'' skills. Specifically, the court noted that, under section 404.1563(d) of the regulations, claimants age 55 or over, including those close to retirement age, must possess skills easily transferable to other occupations; the ''highly marketable'' requirement, on the other hand, only applies to those age 60-64. In addition, the court indicated that section 404.1563(a) of the regulations also sheds light on how the Secretary is required to evaluate a claimant's age, noting that the section states, in part:

> Age refers to how old you are (your chronological age) and the extent to which your age affects your ability to adapt to a new work situation and to do work in competition with others.

Although the Sixth Circuit noted that, under section 223(d)(2)(A) of the Act (42 U.S.C. 423(d)(2)(A)), vocational factors usually are to be viewed in terms of their effect on the ability to perform jobs rather than obtain them, the court nevertheless found that section 404.1563 of the regulations ''recognizes a direct relationship between age and the likelihood of employment'' and that, as age increases, the four-tiered structure of the regulation places an increasingly heavy burden on the Secretary to demonstrate that a claimant is ''easily employable.'' The court concluded that the regulations and other judicial interpretations of ''highly marketable'' skills imply that such skills are those ''which are sufficiently coveted by employers and sufficiently specialized or unique so as to offset the disadvantage of advancing age'' and enable a claimant to obtain employment with little difficulty. The court indicated that the possession of such skills may be shown by establishing that a claimant's skills were acquired through specialized or extensive education, training or experience and that they give the claimant a significant advantage or edge over other, younger, potential employees competing for jobs requiring the skills, giving consideration to the number of such jobs available and the number of individuals competing for such jobs.

The court applied its interpretation of ''highly marketable'' skills to Mr. Preslar's case and concluded that the Secretary had not assessed whether Mr. Preslar's skills were in some way specialized or coveted by employers; had not determined the amount of training, education or experience required of the plaintiff to attain his skills; and had not assessed whether the plaintiff enjoyed a competitive edge over younger, potential employees with whom he would compete for truck driving jobs. Accordingly, the court remanded the case to the Secretary for reevaluation of whether the plaintiff possessed ''highly marketable'' skills in accordance with the court's interpretation of that term in section 404.1563(d) of the regulations.

[1] Although the court of appeals only cited the title II regulation concerning the evaluation of age, section 404.1563, the corresponding title XVI regulation, section 416.963, also was relevant in Mr. Preslar's case. These sections, entitled ''Your age as a vocational factor,'' are virtually identical. Sections 404.1563(b)-(d) and 416.963 (b)-(d) specify three age categories: ''Younger person'' (under age 50); ''Person approaching advanced age'' (age 50-54); and ''Person of advanced age'' (age 55 or over). The latter includes a subcategory—a person close to retirement age (age 60-64).

Statement as to How Preslar Differs From Social Security Policy

At step five of the sequential evaluation, SSA considers a claimant's chronological age in conjunction with residual functional capacity, education and work experience to determine whether a claimant can do work other than past relevant work. SSA weighs the effect of increasing age by the extent it erodes a claimant's ability to adapt to new work situations and to work in competition with others.

To this end, SSA's regulations provide that in order to find that a claimant whose sustained work capability is limited to light work or less and who is close to retirement age (60–64) possesses skills that can be used in (transferred to) other work, ''there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.'' 20 CFR Part 404, Subpart P, Appendix 2, section 202.00(f). SSA's regulations provide the same rule for a claimant whose sustained work capability is limited to sedentary work and who is of advanced age (55 or over). 20 CFR Part 404, Subpart P, Appendix 2, section 201.00(f). If the claimant's skills are transferable to other work under this standard, SSA will consider such skills ''highly marketable'' under 20 CFR 404.1563(d) and 416.963(d).

SSA's regulations do not require a finding that a claimant's skills are specialized and coveted so as to offset the disadvantage that advancing age may present in obtaining employment. Instead, SSA's regulations require that a claimant (of *any* age) be found not disabled if his or her residual functional capacity and vocational abilities enable him or her to work, but he or she remains unemployed because of the hiring practices of employers. The evaluation of disability is based on the ability to perform jobs in the national economy and not the ability to obtain them, 20 CFR 404.1566(c) and 416.966(c).

The Sixth Circuit's interpretation of ''highly marketable'' imposes requirements in contravention of the Secretary's regulations regarding the vocational relevance of a claimant's age. Specifically, the court has interpreted ''highly marketable'' skills in 20 CFR 404.1563(d) to mean those skills which are sufficiently specialized and coveted by employers so as to make a claimant's age irrelevant in the hiring process and enable the claimant to obtain employment with little difficulty.

Explanation of How SSA Will Apply The Preslar Decision Within the Circuit

This ruling applies only where the claimant resides in Kentucky, Michigan, Ohio or Tennessee at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, ALJ hearing or Appeals Council review.

In the case of a claimant whose sustained work capability is limited to sedentary or light work as a result of a severe impairment, who is closely approaching retirement age (age 60-64), and who has skills, an adjudicator will consider the claimant's skills to be ''highly marketable'' only if the skills are sufficiently specialized and coveted by employers as to make the claimant's age irrelevant in the hiring process and enable the claimant to obtain employment with little difficulty. In determining whether a claimant's skills meet this definition of ''highly marketable,'' an adjudicator will consider:

(1) whether the skills were acquired through specialized or extensive education, training or experience; and

(2) whether the skills give the claimant a competitive edge over other, younger, potential employees with whom the claimant would compete for jobs requiring those skills, giving consideration to the number of such jobs available and the number of individuals competing for such jobs.

SSA intends to clarify the regulations at issue in this case, 20 CFR 404.1563 and 416.963, through the rule making process and may rescind this Ruling once such clarification is made.

[FR Doc. 95–10920 Filed 5–3–95; 8:45 am]

BILLING CODE 4190–29–F

DEPARTMENT OF STATE

[Public Notice 2198]

International Telecommunications Advisory Committee; Radiocommunications Sector; Study Group 8—Mobile Services; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector Study Group 8—Mobile Services will meet on 19 May 1995 at 10 AM to 1 PM, in room 1107 at the Department of State, 2201 C Street, N.W., Washington, DC 20520.

Study Group 8 studies and develops recommendations concerning technical and operating characteristics of mobile, radiodetermination, amateur and related satellite services.

This May meeting will continue preparations for the June 12–16, 1995 international meeting of Study Group 8. It will also review activities concerning the Inter-American Telecommunication Commission Permanent Consultative Committee III—Radiocommunications, and begin preparations for the August 24–26 meeting of PCC.III.

Members of the General Public may attend the meeting and join in the discussions, subject to the instructions of the Chairman, John T. Gilsenan.

Note: In order to gain access to State Department for this meeting, please call 202–647–0201 and leave your name, your social security number, and date of birth. Please use ''C'' Street Entrance.

Dated: April 28, 1995.

Warren G. Richards,

Chairman, U.S. ITAC for ITU-Radiocommunication Sector.

[FR Doc. 95–10947 Filed 5–3–95; 8:45 am]

BILLING CODE 4710–45–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects in the exhibit, ''Claude Monet 1840–1926'' (see list [1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition of the objects at The Art Institute of Chicago, Chicago, Illinois from on or about July 14, 1995, to on or about November 26, 1995, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

[1] A copy of this list may be obtained by contacting Ms. Neila Sheahan of the Office of the General Counsel of USIA. The telephone number is 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547.

Dated: April 28, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–10925 Filed 5–3–95; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans; Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 103–446, gives notice that a meeting of the Advisory Committee on Minority Veterans will be held June 5–8, 1995, in Washington, DC. The purpose of the Advisory Committee on Minority Veterans is to advise the Secretary of Veterans Affairs on the administration of VA benefits and services for minority veterans and to assess the needs of minority veterans and evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The committee will make recommendations to the Secretary regarding such activities.

The sessions will convene in room 230, VA Central Office Building, 810 Vermont Avenue, NW, Washington, DC. on June 5, from 9 a.m. to 5:30 p.m. and end on June 8 at 12 noon. All sessions will be open to the public up to the seating capacity of the room. Because the capacity is limited, it will be necessary for those wishing to attend toe contact Mrs. Angelia Sare, Department of Veterans Affairs (phone 202 273–6708) prior to June 1, 1995. Limited time will be allocated for the purpose of receiving oral presentations from the public, however prior notification of request to speak will be required. The Committee will accept appropriate written comments from interested parties on issues affecting minority veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Minority Veterans, Center for Minority Veterans (008D), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: April 26, 1995.

By Direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–10948 Filed 5–3–95; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 60, No. 86

Thursday, May 4, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP93-49-000]

Paiute Pipeline Company; Notice of Settlement Conference

Correction

In notice document 95–10561 appearing on page 21187 in the issue of Monday, May 1, 1995, in the first column, the document should be removed because it is a duplicate of FR Doc. 95-10563.

BILLING CODE 1505–01–D

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1852

Indemnification Under Public Law 85-804

Correction

In rule document 95–8511 beginning on page 18032 in the issue of Monday, April 10, 1995, make the following correction:

On page 18034, in the third column, the first bold line after amendatory instruction 8 should read as set forth below.

1852.250-70— [Removed]

BILLING CODE 1505–01–D

Federal Register

Thursday
May 4, 1995

Part II

Social Security Administration

Statement of Organization, Functions and Delegations of Authority; Notice

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Notice is given of the complete revision of existing Part S and the establishment of Part T as SSA becomes an independent agency. Notice is further given that Chapter SA for the Office of the Commissioner; Chapter S1 for the Office of the Deputy Commissioner for Finance, Assessment and Management; Chapter S2 for the Office of the Deputy Commissioner for Operations; Chapter S4 for the Office of the Deputy Commissioner for Systems; and Chapter S7 for the Office of the Deputy Commissioner for Human Resources are being amended to reflect internal organizational realignments and the deletion of all references to the Department of Health and Human Services as the parent agency of SSA. Chapter S3 for the Office of the Deputy Commissioner for Policy and Chapter S5 for the Office of the Deputy Commissioner for Policy and External Affairs are being deleted in their entirety. Notice is further given of the establishment of Chapter S8 for the SSA Office of Inspector General; Chapter S9 for the SSA Office of General Counsel; Chapter TA for the Office of the Deputy Commissioner for Programs, Policy, Evaluation and Communications; and Chapter TB for the Office of the Deputy Commissioner for Legislation and Congressional Affairs. The Deputy Commissioners for Finance, Assessment and Management (S1); Operations (S2); Systems (S4); Human Resources (S7); Programs, Policy, Evaluation and Communications (TA); Legislation and Congressional Affairs (TB); the SSA Inspector General (S8); and the SSA General Counsel (S9) are all line officials responsible for directing major organizational components. The following chapters reflect these changes.

Chapter S—Social Security Administration

S.00 Mission
S.10 Organization
S.20 Functions
S.30 Order of Succession

Section S.00 *The Social Security Administration*—(Mission): The Social Security Administration is the Nation's primary income security Agency. It administers the Federal retirement, survivors and disability insurance programs, as well as the program of supplemental security income (SSI) for the aged, blind and disabled, and performs certain functions with respect to the black lung benefits program. SSA also directs the aid to the aged, blind and disabled in Guam, Puerto Rico and the Virgin Islands.

Section S.10 *The Social Security Administration*—(Organization):

The Social Security Administration, under the supervision and direction of the Commissioner of Social Security (the Commissioner), includes:

A. The Office of the Commissioner of Social Security (SA).

B. The Office of the Deputy Commissioner of Social Security (SA).

C. The Office of the Deputy Commissioner, Finance, Assessment and Management (S1).

D. The Office of the Deputy Commissioner, Operations (S2).

E. The Office of the Deputy Commissioner, Systems (S4).

F. The Office of the Deputy Commissioner, Human Resources (S7).

G. The Office of the SSA Inspector General (S8).

H. The Office of the SSA General Counsel (S9).

I. The Office of the Deputy Commissioner, Programs, Policy, Evaluation and Communications (TA).

H. The Office of the Deputy Commissioner, Legislation and Congressional Affairs (TB).

Section S.20 *The Social Security Administration*—(Functions): The Social Security Administration performs all functions necessary to accomplish the Agency's mission. These are specified in more detail in the sections which follow Section S.30.

Section S.30 *The Social Security Administration*—(Order of Succession):

A. 1. In the event of the absence or disability of the Commissioner, the Deputy Commissioner shall serve as Acting Commissioner.

2. In the event of the absence or disability of both the Commissioner and Deputy Commissioner of Social Security or vacancies in the positions, one of the Deputy Commissioners or another Executive Level official, will be designated to serve as Acting Commissioner.

3. In the event of the absence of the Commissioner and the Deputy Commissioners, an SSA official designated by the Commissioner shall serve as Acting Commissioner.

4. Should the positions of Commissioner and Deputy Commissioner of Social Security and the Deputy Commissioners become vacant, or these officials become disabled, an official will be designated to serve as Acting Commissioner.

B. 1. Where an Associate Commissioner has two deputies, one of the deputies shall be designated by the Associate Commissioner to serve as Acting Associate Commissioner during his/her absence. In the event of a disability of the Associate Commissioner, the Commissioner shall designate one of the Deputy Associate Commissioners to serve as Acting Associate Commissioner.

2. In the event of the absence of both an Associate Commissioner and his/her Deputy or deputies, an executive designated by the Associate Commissioner shall serve as Acting Associate Commissioner.

3. Should an Associate Commissioner or his/her Deputy Associate Commissioner become disabled, an SSA official designated by the Commissioner shall serve as Acting Associate Commissioner.

C. 1. During the absence or disability of a Regional Commissioner, the Deputy Regional Commissioner shall serve as Acting Regional Commissioner.

2. In the event of the absence of both a Regional Commissioner and his/her Deputy, an SSA regional office official designated by the particular Regional Commissioner shall serve as Acting Regional Commissioner.

3. Should both the Regional Commissioner and Deputy Regional Commissioner become disabled, an SSA official designated by the Commissioner shall serve as Acting Regional Commissioner.

Delete: Existing Chapter S3, the Office of Policy and Chapter S5, the Office of Policy and External Affairs in their entirety.

This statement amends part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Notice is given of the revision of Chapter SA for the Office of the Commissioner of SSA to reflect changes as SSA becomes an independent agency. The changes are as follows:

Section SA.10 *The Office of the Commissioner*—(Organization):

Retitle:

B. The Office of the Principal Deputy Commissioner (SA) to the Office of the Deputy Commissioner of Social Security (SA).

Establish:

D. The Office of the Chief of Staff (SAN).

Section SA.20 *The Office of the Commissioner*—(Functions) Retitle and revise to read as follows:

B. The Deputy Commissioner of Social Security (SA) assists the Commissioner in carrying out his/her responsibilities and performs other

duties as the Commissioner may prescribe.

Delete all references to HHS:

C. The Immediate Office of the Commissioner (SA).

Establish:

D. The Chief of Staff (SAN) provides day-to-day support to the Commissioner and Deputy Commissioner in matters relating to program policy, administration, communications and external liaison.

This statement amends part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Notice is given that Chapter S1 for the Office of the Deputy Commissioner, Finance, Assessment and Management is being amended to reflect internal organizational realignments and the deletion of all references to the Department of Health and Human Services as the parent agency of SSA. The following material replaces Chapter S1 in its entirety.

Chapter S1—The Office of the Deputy Commissioner, Finance, Assessment and Management

S1.00 Mission
S1.10 Organization
S1.20 Functions

Section S1.00 *The Office of the Deputy Commissioner, Finance, Assessment and Management*—(Mission): The Office of the Deputy Commissioner Finance, Assessment and Management (ODCFAM) directs the administration of comprehensive SSA management programs including budget, acquisition and grants, facilities management and publications and logistics. The Office directs the development of Agency policies and procedures as well as the management of the Agency financial management systems. It directs the activities of the Systems Review Board (SRB) and the systems procurement review function. It directs the evaluation of programs operations quality and the management of Agency quality assurance, management integrity and systems security programs and the oversight of SSA's matching operations.

Section S1.10 *The Office of the Deputy Commissioner, Management, Budget and Assessment*—(Organization): The Office of the Deputy Commissioner, Finance, Assessment and Management under the leadership of the Deputy Commissioner, Finance, Assessment and Management, includes:

A. The Deputy Commissioner, Finance, Assessment and Management (S1).

B. The Assistant Deputy Commissioner, Finance, Assessment and Management (S1).

C. The Immediate Office of the Deputy Commissioner, Finance, Assessment and Management (S1J), which includes:

1. The SSA Senior Financial Executive (S1J–1).

2. The Information Technology Systems Review Staff (S1J–2).

3. The Management Analysis and Audit Program Support Staff (S1J–3).

D. The Office of Program and Integrity Reviews (S1K).

E. The Office of Financial Policy and Operations (S1N).

F. The Office of Budget (S1P).

G. The Office of Acquisition and Grants (S1Q).

H. The Office of Facilities Management (S1R).

I. The Office of Publications and Logistics Management (S1S).

Section S1.20 *The Office of the Deputy Commissioner, Finance, Assessment and Management*—(Functions):

A. The Deputy Commissioner, Finance, Assessment and Management (S1) is directly responsible to the Commissioner for carrying out the ODCFAM mission and providing general supervision to the major components of ODCFAM. The Deputy Commissioner also is the SSA Chief Financial Officer (SSACFO) and is directly responsible to the Commissioner for carrying out the SSACFO mission.

B. The Assistant Deputy Commissioner, Finance, Assessment and Management (S1) assists the Deputy Commissioner in carrying out his/her responsibilities and performs other duties as the Deputy Commissioner may assign.

C. The Immediate Office of the Deputy Commissioner, Finance, Assessment and Management (S1J) provides the Deputy Commissioner with staff assistance on the full range of his/her responsibilities. It reviews and analyzes existing and proposed formal delegations of program and administrative decisionmaking authorities within SSA. It includes:

1. The SSA Senior Financial Executive (S1J–1) provides financial management expertise, advice and support to the Deputy Commissioner, Finance, Assessment and Management (DCFAM) in his/her role as the Chief Financial Officer; serves as a high-level Agency focal point for financial management matters and on selected issues, acts as liaison with the Department of the Treasury and the Internal Revenue Service; monitors Agency activities to improve financial management and management integrity weaknesses to assure Agency commitment and followthrough. The Senior Financial Executive is the focal point for Agency combined annual wage reporting/wage reconciliation improvement efforts; prepares progress reports and recommends corrective action as required.

2. The Information Technology Systems Review Staff (S1J–2) serves as the principal independent source of advice to the SRB, the SSACFO and the Commissioner on the feasibility, suitability and conformance to regulations of proposed systems plans and acquisitions; on proposed systems design and requirement specifications; and on all other systems strategies and related issues. It reviews the proposed Information Technology Systems (ITS) budget and Agency Procurement Requests for adequacy, clarity, cost-effectiveness, achievability, consistency with Agency plans, and to ensure that project objectives are realistic and complete. It conducts technical reviews of the functional requirements and design specifications of all ITS hardware and software systems to ensure their sufficiency and compliance with applicable policies, procedures and Agency plans. The Staff conducts in-process reviews of systems, planned implementation strategies, contracts, interagency agreements and other ongoing work in the systems area to determine compliance with Agency decisions and plans and monitors significant ITS projects to ensure the Agency objectives and timeframes are met. The Staff conducts postimplementation reviews of Agency systems and ITS acquisitions to determine if Agency investments provide the expected returns and whether the Agency objectives are being met with timely and cost-effective methods. The Staff conducts Information Resources Management reviews, maintains the Agency ITS budget project accounting data base and provides the DCFAM and the Commissioner with regular status reports on the execution of the Agency's ITS budget.

3. The Management Analysis and Audit Program Support Staff (S1J–3) provides analytical staff support for a wide range of Agencywide and/or Office-wide administrative program activities related to program administration, operations and policy; plans and directs SSA's participation in the audit programs conducted by the U.S. Government Accounting Office (GAO), the Office of Inspector General (OIG) and other external organizations;

develops Agency position on issues presented in the audits; reviews and evaluates audit reports and monitors and evaluates the implementation of GAO and OIG audit reports and internal survey recommendations.

D. The Office of Program and Integrity Reviews (S1K) reviews, evaluates and assesses the integrity and quality of the administration of Social Security programs in headquarters and in the field. It recommends corrective changes in programs, policies, procedures or legislation aimed at quality and productivity improvement and/or program simplification. It evaluates the quality of SSA operations with emphasis on the prevention of program and systems abuse, the elimination of waste and the increase of efficiency. It also has responsibility for overseeing SSA's computer matching operations.

E. The Office of Financial Policy and Operations (S1N) has operational responsibility for SSA's accounting and payment operations and establishes requirements for all SSA financial systems and processes to ensure Agency compliance with accounting principles and standards as prescribed by the Comptroller General and Chief Financial Officer of the United States; fiscal policies and procedures prescribed by the Secretary of the Treasury; and management integrity and control standards prescribed by the Office of Management and Budget under the Federal Managers' Financial Integrity Act.

F. The Office of Budget (S1P) provides overall management of the planning, development and execution of the SSA budget. The Office develops policies and guidelines for the exercise of SSA-wide budget responsibility and evaluates and appraises the manner in which this responsibility is carried out.

G. The Office of Acquisition and Grants (S1Q) directs the business management aspects of SSA's procurement program and grants management program by awarding and administering contracts, preparing purchase orders or other contractual instruments, and awarding and administering grants. It develops and implements policies, procedures and directives for SSA procurement and grants activities.

H. The Office of Facilities Management (S1R) directs the national SSA real property program including short- and long-range facilities planning: design, construction and leasing of central office and large field facilities and maintenance, repair and construction projects and policy development related to these operations and facilities. It acquires, utilizes and manages space at SSA headquarters and develops a comprehensive space inventory and utilization system. The Office of Facilities Management develops, implements and evaluates SSA's environmental protection, safety and protective services programs. It ensures that these programs are responsive to the needs of the Agency and serves as a focal point for inquiries and guidance concerning these programs.

I. The Office of Publications and Logistics Management (S1S) directs a comprehensive SSA printing, publications and distribution management program and develops pertinent policies, standards, and procedures for SSA's forms and publications management, printing, reprographics and distribution programs. It directs the administration and maintenance of the SSA library, the SSA History Room, the historical research program and records management program. It administers the SSA logistics management program, directs the SSA property and supply management programs and manages the operation of SSA warehousing facilities including receipt, storage and issuance of forms publications, supplies and equipment for SSA-wide use. The Office directs activities related to employee transportation including providing headquarters passenger, mail and freight transportation services. The Office directs the SSA mail management program.

Subchapter S1K—Office of Program and Integrity Reviews

S1K.00 Mission
S1K.10 Organization
S1K.20 Functions

Section S1K.00 *The Office of Program and Integrity Reviews*—(Mission): The Office of Program and Integrity Reviews (OPIR) reviews, evaluates and assesses the integrity and quality of the administration of Social Security programs in headquarters and in the field. It recommends corrective changes in programs, policies, procedures or legislation aimed at quality and productivity improvement and/or program simplification. It evaluates the quality of SSA operations with emphasis on the prevention of program and systems abuse, the elimination of waste and the increase of efficiency. It also oversees SSA's computer matching operations.

Section S1K.10 *The Office of Program and Integrity Reviews*—(Organization): The Office of Program and Integrity Reviews, under the leadership of the Associate Commissioner for Program and Integrity Reviews, includes:

A. The Associate Commissioner for Program and Integrity Reviews (S1K).

B. The Deputy Associate Commissioner for Program and Integrity Reviews (S1K).

C. The Immediate Office of the Associate Commissioner for Program and Integrity Reviews (S1K).

1. The Administration, Matching and Data Management Staff (S1K–1).

D. The Office of Statistics and Special Area Studies (S1KE).

1. The Division of Statistics (S1KE1).

2. The Division of Special Studies and Analysis (S1KE2).

3. The Division of Public Service Evaluation (S1KE3).

E. The Office of Disability Program Quality (S1KC).

1. The Division of Disability Quality Policy, Evaluation and Analysis (S1KC1).

2. The Division of Disability Quality Operations (S1KC2).

3. The Division of Disability Hearings Quality (S1KC3).

F. The Offices of Regional Program and Integrity Reviews (S1K–F1—S1K–FX).

G. The Office of Assistance and Insurance Program Quality (S1KG).

1. The Division of Insurance Program Entitlement Quality (S1KG1).

2. The Division of Insurance Program Postentitlement Quality (S1KG2).

3. The Division of Assistance Program Eligibility Quality (S1KG3).

4. The Division of Assistance Program Posteligibility Quality (S1KG4).

Section S1K.20 *The Office of Program and Integrity Reviews*—(Functions):

A. The Associate Commissioner for Program and Integrity Reviews (S1K) is directly responsible to the Deputy Commissioner, Finance, Assessment and Management for carrying out OPIR's mission and providing general supervision to the major components of OPIR.

B. The Deputy Associate Commissioner for Program and Integrity Reviews (S1K) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Program and Integrity Reviews (S1K) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

1. The Administration, Matching and Data Management Staff (S1K–1) consolidates and focuses on a number of

functions previously spread throughout the organization. It conducts a variety of activities that cross component lines and impact the organization as a whole. The staff provides support on all budget, personnel and staffing issues; oversees the implementation of the provisions of the Computer Matching and Privacy Protection Act of 1988 for the Agency; and supports OPIR components, including the Office of Regional Program Integrity Reviews (ORPIR), by planning, developing, maintaining and improving OPIR's communications and data processing systems and the quality review data bases for SSA programs.

D. The Office of Statistics and Special Area Studies (S1KE) has the responsibility for conducting broad-based studies and analyses of SSA's Retirement and Survivors Insurance (RSI), Supplemental Security Income (SSI), Disability Insurance (DI) and 800 Number operations and policies. It surveys SSA's customers to determine their satisfaction with field office (FO) services and whether their expectations were met; i.e., customer satisfaction. This effort supports the Agency initiative to improve the quality of services provided. The Office provides statistical advice and assistance to OPIR components. Operations research studies of SSA programs and management issues, designed to improve the efficiency of SSA's operational workloads, are also conducted in this office.

1. The Division of Statistics (S1KE1).

a. Provides statistical advice and support to OPIR components on study design, sample selection, variance calculations, hypothesis testing and data analysis.

b. Develops and applies statistical profiling techniques to operational workloads to improve targeting of resources and/or quality of operations.

2. The Division of Special Studies and Analysis (S1KE2).

a. Designs, coordinates and conducts ad hoc studies and analyses of the RSI, SSI and DI programs' policies and procedures.

b. Develops recommendations to improve quality and/or cost-effectiveness of SSA operations.

3. The Division of Public Service Evaluation (S1KE3).

a. Designs, directs and coordinates the nationwide system and procedures for evaluating SSA's 800 Number service.

b. Designs, directs and coordinates the evaluation of SSA's delivery of services to our customers by obtaining feedback of their expectations for, and perceptions of, SSA's service.

c. Plans, coordinates and conducts focus group discussions on various issues/policies/concerns with general public and beneficiary/recipient populations.

E. The Office of Disability Program Quality (S1KC) plans, designs and maintains a quality review system for the Title II and Title XVI disability programs to ensure quality in adjudication and payment. It designs sampling methods and techniques, and issues policies and procedures for reviews. It analyzes review data and prepares reports on findings, including recommendations for corrective action or changes in disability program policies, procedures or legislation. The Office plans and designs special reviews of problem areas and plans and utilizes an automated data base of findings in current and longitudinal analyses so that policy and operational managers can improve the operation of the disability program. The Office provides technical support and guidance to program and integrity field staff in the disability quality review program and conducts reviews of ORPIR adherence to OPIR review policies and procedures.

I111. The Division of Disability Quality Policy, Evaluation and Analysis (S1KC1):

a. Develops disability quality review policy, procedures, forms and instructions for use by State and Federal components in payment and adjudicative process consistency and preeffectuation reviews.

b. Identifies error-prone and user-support type case review workloads, and plans targeted sampling procedures to produce appropriate quality review data. Verifies production of sample levels for targeted reviews. Provides sampling intervals for use by State agencies in their quality review operations.

c. Studies the adjudication and payment quality review programs, and modifies them to accommodate new workloads or to improve quality of the data.

d. Develops sampling techniques for adjudication and payment process quality reviews. Modifies sampling to insure validity of data and to respond to disability program and quality review program changes.

e. Provides technical guidance and support to the ORPIR in regard to disability quality review operations. Develops technical training package and programs for workload, policy or procedural changes.

f. Plans and issues periodic reports related to the quality of disability payment and eligibility processes for the Title II and Title XVI disability programs.

g. Analyzes data to identify repetitive and significant errors to determine their causes and costs, and to target areas needing study to determine corrective action.

h. Determines the need for, and designs, special studies to supplement regular reports of disability quality reviews. Coordinates, reviews and evaluates these studies, and helps field offices develop field-initiated studies.

i. Works with program components to identify user requirements for various profiles and to implement and evaluate profiles.

2. The Division of Disability Quality Operations (S1KC2):

a. Conducts consistency quality reviews of samples of QA or preeffectuation reviews by Disability Quality Branches in the ORPIR. These cases include initial claims, reconsideration and continuing disability investigations.

b. Conducts consistency quality reviews of the substantive and technical aspects of samples of continuing disability reviews completed by the Office of Disability Operations and the Disability Review Sections of the Processing Centers.

c. Conducts quality reviews of the substantive and technical aspects of samples of uneffectuated claims adjudicated by the Federal Disability Determination Services and the Office of International Operations.

d. Reviews samples of types of disability cases that have been identified as error-prone or which involve policy, procedural or operational problems. Prepares evaluative reports of the findings derived from such reviews, including recommendations for corrective actions.

e. Designs and conducts special studies of problem areas and prepares reports indicating trends and recommendations for improvements in policy and procedure.

3. The Division of Disability Hearings Quality (S1KC3).

a. Plans, designs and maintains a quality assurance (QA) review system to assess quality in adjudication of disability claims in which a hearing before an administrative law judge (ALJ) has been requested.

b. Conducts QA reviews of the disability and procedural aspects of a sample of claims decided by the ALJ including State Agency reconsideration determinations that have been appealed by an ALJ hearing.

c. Plans and issues periodic reports related to the QA reviews of ALJ decisions.

d. Designs and conducts special studies of significant issues that are identified during the QA review.

F. The Offices of Regional Program and Integrity Reviews (ORPIR) (S1K–F1—S1K–FX) manage quality assurance and evaluation activities in the field. They conduct independent reviews to determine payment and eligibility error rates in Social Security programs, including errors in Federally-administered State supplementary payments. The ORPIR conduct independent reviews to determine the quality of adjudication processes of Social Security programs. They implement study reviews as formulated by the Office of Program and Integrity Reviews and provide reports, data and analyses. They assist in identifying error trends and sources and recommend corrective actions. They also perform special assessment surveys and analyses.

G. The Office of Assistance and Insurance Program Quality (S1KG) is responsible for quality reviews, special studies and analyses of the full range of legal requirements, policies, procedures, systems and operations for the RSI and SSI programs, for the nonmedical aspects of disability in both programs, and for issues common to both programs.

1. The Division of Insurance Program Entitlement Quality (S1KG1).

a. Is the principal SSA source for quality measurement and data for preclaims (enumeration and earnings maintenance) and RSI claims actions and for the level of service rendered to the public with such actions.

b. Designs, develops and conducts ongoing RSI quality reviews, special studies and analyses of entitlement. Special studies and targeted analyses are requested by Congress, higher monitoring authorities, the SSA Executive Staff, as well as being Division-initiated in response to identified error issues.

c. Maintains, analyzes and reports quality data and develops and promotes recommendations to improve the accuracy and cost-effectiveness of RSI entitlement, to improve productivity in processing entitlement workloads, and to improve entitlement policies and procedures.

d. Conducts research in the areas of RSI entitlement and serves as SSA liaison with other Federal entities, State and local governments, and the private sector.

2. The Division of Insurance Program Postentitlement Quality (S1KG2).

a. Is the principal SSA source for quality measurement and data for RSI postentitlement actions, including Stewardship studies, and for the level of service rendered to the public with such actions.

b. Designs, develops and conducts ongoing RSI quality reviews, special studies and analyses of postentitlement. Special studies and targeted analyses are requested by Congress, higher monitoring authorities, the SSA Executive Staff, as well as being Division-initiated in response to identified error issues.

c. Maintains, analyzes and reports quality data and develops and promotes recommendations to improve the accuracy and cost-effectiveness of RSI postentitlement, to improve productivity in processing postentitlement workloads, and to improve postentitlement policies and procedures.

d. Conducts research in the areas of RSI postentitlement and serves as SSA liaison with other Federal entities, State and local governments, and the private sector.

3. The Division of Assistance Program Eligibility Quality (S1KG3).

a. Is the principal SSA source for quality measurement and data for SSI claims and subsequent determination actions and for the level of service rendered to the public with such actions.

b. Designs, develops and conducts ongoing SSI quality reviews, special studies, and analyses of eligibility and subsequent determinations of eligibility. Conducts special studies and targeted analyses in response to identified error issues whether requested by Congress, higher monitoring authorities, the SSA Executive Staff or Division-initiated.

c. Maintains, analyzes and reports quality data and develops and promotes recommendations to improve the accuracy and cost-effectiveness of SSI eligibility and subsequent determinations of eligibility, to improve productivity in processing such workloads, and to improve such policies and procedures.

d. Conducts research in the areas of SSI eligibility and subsequent eligibility and serves as SSA liaison with other Federal entities, State and local governments, and the private sector.

e. Designs automation-enhanced quality review processes.

4. The Division of Assistance Program Posteligibility Quality (S1KG4).

a. Is the principal SSA source for quality measurement and data for SSI posteligibility actions, including Stewardship studies, and for the level of service rendered to the public with such actions.

b. Designs, develops and conducts ongoing SSI quality reviews, special studies, and analyses of posteligibility decisions. Special studies and targeted analyses are requested by Congress, higher monitoring authorities, the SSA Executive Staff, as well as being Division-initiated in response to identified error issues.

c. Maintains, analyzes and reports quality data, performs consistency reviews, and develops, promotes and tracks recommendations to improve the accuracy of SSI posteligibility, to improve productivity in processing posteligibility workloads, and to improve posteligibility policies and procedures.

d. Conducts research in the areas of SSI posteligibility and serves as SSA liaison with other Federal entities, State and local governments, and the private sector.

Subchapter S1N—Office of Financial Policy and Operations

S1N.00 Mission
S1N.10 Organization
S1N.20 Functions

Section S1N.00 *The Office of Financial Policy and Operations*—(Mission): The Office of Financial Policy and Operations (OFPO) has operational responsibility for SSA's accounting and payment operations and establishes requirements for all SSA financial systems and processes to ensure Agency compliance with accounting principles and standards prescribed by the Comptroller General and Chief Financial Officer of the United States; fiscal policies and procedures prescribed by the Secretary of the Treasury; and management integrity and control standards prescribed by the Office of Management and Budget under the Federal Managers' Financial Integrity Act.

Section S1N.10 *The Office of Financial Policy and Operations*—(Organization): The Office of Financial Policy and Operations, under the leadership of the Associate Commissioner for Financial Policy and Operations, includes:

A. The Associate Commissioner for Financial Policy and Operations (S1N).

B. The Deputy Associate Commissioner for Financial Policy and Operations (S1N).

C. The Immediate Office of the Associate Commissioner for Financial Policy and Operations (S1N).

D. The Office of Financial Policy and Systems Design (S1NA).

1. The Division of Financial Policy and Standards (S1NA1).

2. The Division of Financial/Administrative Systems (S1NA2).

3. The Division of Systems Security (S1NA6).

4. The Division of Program Systems Requirements (S1NA7).

E. The Office of Finance (S1NC).

1. The Division of Central Accounting Operations (S1NC1).

2. The Division of Administrative Payments and Recovery (S1NC2).

3. The Division of Travel Management (S1NC3).

F. The Office of Program Accounting Operations (S1NE).

1. The Division of Benefit Certification and Accounting (S1NE1).

2. The Division of Cost Analysis (S1NE2).

Section S1N.20 *The Office of Financial Policy and Operations*—(Functions):

A. The Associate Commissioner for Financial Policy and Operations (S1N) is directly responsible to the Deputy Commissioner, Finance, Assessment and Management for carrying out OFPO's mission and provides general supervision to the major components of OFPO.

B. The Deputy Associate Commissioner for Financial Policy and Operations (S1N) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Financial Policy and Operations (S1N) provides the Associate Commissioner and the Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. The Office of Financial Policy and Systems Design (S1NA) develops financial accounting policies, procedures and requirements for all SSA financial management systems: program benefits, debt management and financial/administrative systems. It directs the preparation and publication of SSA's annual financial statement, plans and directs the analysis of SSA's integrated financial/administrative systems and develops and executes Agency policies and procedures for system security, management integrity, cash management, administrative control and use of Agency funds and performance measurement including analysis of program outcomes, program financing adequacy, operational efficiency and service delivery.

1. The Division of Financial Policy and Standards (S1NA1) directs the development of financial accounting policies and procedures for all SSA financial management systems in compliance with accounting principles and standards prescribed by the Comptroller General and Chief Financial Officer of the United States and fiscal policies prescribed by the Secretary of the Treasury. It administers SSA's Federal Managers' Financial Integrity Act reporting and monitoring program (sections 2 and 4) including a risk analysis/vulnerability assessment program to ensure the accuracy and accountability of SSA's operational and administrative processes. It manages the preparation of SSA's audited annual financial statement and reports required by the Government Performance and Results Act.

2. The Division of Financial/Administrative Systems (S1NA2) provides systems analysis and support for the design, development and implementation of SSA's financial management systems and their integration with related administrative processes including applications to support core accounting functions of fund control, general ledger and reporting to higher monitoring authorities; accounts payable functions with connectivity to Treasury disbursing centers, Agency cashier and electronic commerce operations; cost analysis functions with determinations for Agency production, productivity and costs of workloads, business processes, programs and projects; travel management functions including document preparation, authorization and management information; payroll management functions, including full-time equivalency, workyear and dollar tracking at all organizational levels; budget formulation and execution functions of the Office of Budget; and related functions of managers SSA-wide.

3. The Division of Systems Security (S1NA6) directs, coordinates and manages SSA's overall information systems security program. This includes the development of SSA's security policy requirements and procedures, the effective implementation of other governing directives in the area of security, the administration of an effective access control program and an onsite review program. It provides educational training and awareness programs to management and employees on security policy/requirements; serves as the Agency focal point for day-to-day contact with the Office of Inspector General on matters of fraud, waste and abuse; and provides direction and guidance to the Agency's component and regional security officers.

4. The Division of Program Systems Requirements (S1NA7) directs the development of financial and accounting requirements for SSA's programmatic systems; reviews and negotiates modifications to Agency's functional requirements for adherence to the SSACFO requirements; participates in software validation/testing to ensure its effectiveness, reliability and conformance; and negotiates scope and timing for software releases especially to ensure prompt correction of material nonconformances with accounting principles and standards prescribed by the Comptroller General and the Chief Financial Officer of the United States.

E. The Office of Finance (S1NC) directs SSA's central accounting and financial reporting activities and provides financial, fund control, cash management services that include administrative payments, administrative debt collection and travel management. It plans and directs the development of operating policies and procedures related to financial operations and evaluates these activities to ensure they are responsive to the needs of the Agency.

1. The Division of Central Accounting Operations (S1NC1) directs SSA's central accounting and reporting operations and develops related Agency operating procedures. It monitors and reports on the status of Agency spending and maintains control over Agency assets, liabilities and appropriations; manages the Agency's cash position and flow including coordination with trust fund investment activities and with fund balances at the U.S. Treasury; manages SSA's financial reporting activities, including preparation of all Agency financial reports to higher monitoring authorities; and serves as the Agency's obligations control point assuring and certifying the legality and propriety of proposed and incurred obligations.

2. The Division of Administrative Payments and Recovery (S1NC2) directs SSA's administrative payment and collection operations and develops related operating policies and procedures. It examines and certifies SSA's administrative payments; administers SSA's third party draft program, providing both administrative and benefit payment delivery service to SSA FOs nationwide; adjudicates claims submitted to the Agency under the Federal Tort Claims and Military Personnel and Civilian Employees' Claims Act; and serves as the Agency's focal point for administrative debt management ensuring the billing and collection of fees charged by SSA for reimbursable services.

3. The Division of Travel Management (S1NC3) directs SSA's travel management operations and develops related operating policies and procedures. It serves as the Agency's

focal point for travel management, ensuring the propriety of travel payments; examines and certifies SSA's travel payments; administers commercial travel agent, charge card, traveler's checks and automated teller machine services; and manages SSA's nationwide relocation services program.

F. The Office of Program Accounting Operations (S1NE) directs SSA's program accounting operations including the processes which determine trust fund revenues, authorize recurring and daily benefit payments and determine the administrative expenses to be borne by each trust fund and the general fund for administration of Titles II, XVI and XVIII of the Social Security Act and other Federal programs. It also plans and directs the formulation of SSA's operating policies and procedures in these areas and provides a wide range of management information and analysis of SSA workloads, workyears, productivity and costs.

1. The Division of Benefit Certification and Accounting (S1NE1) directs SSA's benefit payment and earnings certification operations and develops related operating policies and procedures. It certifies and accounts for all benefit payments authorized under the Social Security Act; interacts with the Department of the Treasury to ensure accurate and timely issuance of benefit entitlements and accounting for all related cash activity, including proper charges and credits to the Agency's trust funds and general fund appropriations and master beneficiary records. As necessary, directs parallel actions by SSA's FOs and processing centers. Oversees the Agency's earnings records maintenance operation and maintains accounting controls necessary for interim and final certifications to the Secretary of the Treasury which determine revenues paid to the Social Security and Medicare trust funds.

2. The Division of Cost Analysis (S1NE2) directs SSA's cost accounting and analysis operations and the development of related Agency operating procedures; develops Agency workload measurement policy and labor distribution requirements; manages SSA's Cost Analysis System which supports the Agency's budget formulation and execution processes; and satisfies the statutory requirements for attribution of costs to all Agency workloads, functions, business processes and programs. Provides a wide range of management information and analysis on the Agency's administrative costs, workloads, labor utilization and productivity.

Chapter S1P—Office of Budget

S1P.00 Mission
S1P.10 Organization
S1P.20 Functions

Section S1P.00 *The Office of Budget*—(Mission): The Office of Budget (OB) provides overall management of the planning, development and execution of the SSA budget. The Office develops policies and guidelines for the exercise of SSA-wide budget responsibility and evaluates and appraises the manner in which this responsibility is carried out.

Section S1P.10 *The Office of Budget*—(Organization): The Office of Budget, under the leadership of the Associate Commissioner, Office of Budget, includes:

A. The Associate Commissioner, Office of Budget (S1P).

B. The Deputy Associate Commissioner, Office of Budget (S1P).

C. The Immediate Office of the Associate Commissioner, Office of Budget (S1P).

D. The Office of Administrative Budget (S1PA).

E. The Office of Program Budget (S1PB).

F. The Office of Administrative Budget Coordination and Analysis (S1PC).

Section S1P.20 *The Office of Budget*—(Functions):

A. The Associate Commissioner, Office of Budget (S1P) is directly responsible to the Deputy Commissioner, Finance, Assessment and Management for carrying out OB's mission and providing general supervision to the major components of OB.

B. The Deputy Associate Commissioner, Office of Budget (S1P) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner, Office of Budget (S1P) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. The Office of Administrative Budget (S1PA).

1. Interprets and applies SSA policies and guidelines on budget formulation and execution in the review and analysis of SSA component budget requests.

2. Formulates the operational workload portion of SSA's administrative budget based on SSA plans, policies, and operational data.

3. Monitors and analyzes component spending as part of SSA level budget execution policies.

E. The Office of Program Budget (S1PB).

1. Reviews and consolidates present statutory program cost estimates for trust fund and other Federal fund programs administered by SSA (Retirement, Survivors and Disability Insurance, Black Lung Benefits and Supplemental Security Income). Formulates a unified Agency budget through consolidation of program and administrative budgets, coordinating with OB's other offices as necessary.

2. Coordinates presentation of the SSA budget in total and by account; presents the proposed budget to the Commissioner; and develops budget documents and briefing material for the Commissioner's budget presentation to the Office of Management and Budget (OMB) and Congress.

3. Reviews, coordinates and presents program cost estimates for proposed legislative, operational policy and regulatory changes. Formulates or directs the formulation of administrative cost estimates for proposed legislative, operational policy and regulatory changes, coordinating with OB's other offices and other SSA components, as necessary. Provides financial management advice to the Commissioner and other SSA officials in the policy development process.

4. Serves as the SSA focal point for budget information provided to OMB, congressional appropriations and budget staffs and, as requested, by representatives of the media.

F. The Office of Administrative Budget Coordination and Analysis (S1PC).

1. Interprets administrative budgetary policies and limitations, and develops and issues guidelines and instructions to SSA components for budget formulation and execution.

2. Executes the total administrative and program budgets for SSA through issuance of workyear and dollar controls, budgetary allotments/allowances for administrative and program expenditures and employment ceilings to SSA components, coordinating with OB's Office of Administrative Budget and the Office of Program Budget as appropriate.

3. Coordinates and analyzes SSA administrative budget totals including the Information Technology Systems Budget.

4. Provides direct budget support for ODCFAM.

5. Develops and implements a program to evaluate Agency operations

in accordance with the requirements of A–76.

Subchapter S1Q—Office of Acquisition and Grants

S1Q.00 Mission
S1Q.10 Organization
S1Q.20 Functions

Section S1Q.00 *The Office of Acquisition and Grants*—(Mission): The Office of Acquisition and Grants (OAG) directs the business management aspects of SSA's procurement program and grants management program by awarding and administrating contracts, preparing purchase orders or other contractual instruments, and awarding and administrating grants. It develops and implements policies, procedures and directives for SSA procurement and grants activities.

Section S1Q.10 *The Office of Acquisition and Grants*—(Organization): The Office of Acquisition and Grants, under the leadership of the Associate Commissioner, Office of Acquisition and Grants, includes:

A. The Associate Commissioner, Office of Acquisition and Grants (S1Q).

B. The Deputy Associate Commissioner, Office of Acquisition and Grants (S1Q).

C. The Immediate Office of the Associate Commissioner, Office of Acquisition and Grants (S1Q).

D. The Office of Information Resources and Programs Contracts (S1QA).

E. The Office of Operations Contracts and Grants (S1QB).

F. The Office of Acquisition Support (S1QC).

Section S1Q.20 *The Office of Acquisition and Grants*—(Functions):

A. The Associate Commissioner, Office of Acquisition and Grants (S1Q) is directly responsible to the Deputy Commissioner, Finance, Assessment and Management for carrying out OAG's mission and provides general supervision to the major components of OAG.

B. The Deputy Associate Commissioner, Office of Acquisition and Grants (S1Q) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner, Office of Acquisition and Grants (S1Q) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. The Office of Information Resources and Programs Contracts (S1QA).

1. Responsible for planning, solicitation, award and administration of contracts, purchase orders, delivery orders or other contractual instruments for the entire range of automatic data processing equipment, software and services; voice-grade telecommunications equipment and services; and specialized training and computer support equipment.

2. Provides coordination, assistance and guidance in the development of complex procurement requirements and translates these needs into comprehensive solicitation packages to assure the maximum use of full and open competition.

3. Provides procurement advice, guidance and support for the development of acquisition strategies, evaluation techniques and negotiation of business and technical terms and conditions.

E. The Office of Operations Contracts and Grants (S1QB).

1. Responsible for planning, solicitation, award and administration of contracts, purchase orders, delivery orders or other contractual instruments for specialized program needs (e.g., program research, development and demonstration through studies and surveys, consultants, systems designs and evaluations and facilities construction and alterations) and procurement of administrative supplies, equipment and services in support of SSA's overall operational mission (e.g., technical and professional services, office equipment, moving services, film processing, translations and transcription services). Responsible for contracts for construction and facilities management and operations.

2. Provides coordination, assistance and guidance in the development of complex procurement requirements and translates these needs into comprehensive solicitation packages to assure maximum use of full and open competition.

3. Provides procurement advice, guidance and support for the development of acquisition strategies, evaluation techniques and negotiation of business and technical terms and conditions.

4. Responsible for planning, placement and administration of grants under all SSA discretionary grants programs (including guidance and support in the selection strategy, evaluation process, budget negotiation, planning and development of policies, procedures, regulations and directives).

F. The Office of Acquisition Support (S1QC).

1. Responsible for the development, evaluation and implementation of comprehensive SSA-wide acquisition policies, procedures, regulations and directives.

2. Performs acquisition management reviews of SSA activities with delegated procurement authority.

3. Manages SSA's acquisition planning and tracking processes.

4. Responsible for SSA's acquisition information collection, analysis and reporting activities.

5. Responsible for the planning, designing, developing and administering of automated systems to support SSA's acquisition and grant processes.

6. Provides audit, accounting and financial advisory services in support of the negotiation, administration, settlement and closeout of SSA contracts.

Subchapter S1R—Office of Facilities Management

S1R.00 Mission
S1R.10 Organization
S1R.20 Functions

Section S1R.00 *The Office of Facilities Management*—(Mission): The Office of Facilities Management (OFM) manages SSA-wide materiel management and facilities management programs. It directs the SSA real property program including short- and long-range facilities planning: design, construction and leasing of central office facilities and maintenance, repair and construction projects and policy development related to these operations. It acquires, utilizes and manages space at SSA headquarters and develops a comprehensive space inventory and utilization system. OFM develops, implements and evaluates SSA's environmental protection, safety and protective services programs. It ensures that these programs are responsive to the needs of the Agency and serves as a focal point for inquiries and guidance concerning these programs.

Section S1R.10 *The Office of Facilities Management*—(Organization): The Office of Facilities Management, under the leadership of the Associate Commissioner for Facilities Management, includes:

A. The Associate Commissioner for Facilities Management (S1R).

B. The Deputy Associate Commissioner for Facilities Management (S1R).

C. The Immediate Office of the Associate Commissioner for Facilities Management (S1R).

D. The Office of Realty Management (S1RE).

E. The Office of Environmental Policy and Automation Resources (S1RG).

F. The Office of Main Complex Management (S1RH).

G. The Office of Outlying Buildings Management (S1RJ).

H. The Office of Field Facilities Management (S1RK).

I. The Office of Protective Security Services (S1RL).

Section S1R.20 *The Office of Facilities Management*—(Functions):

A. The Associate Commissioner for Facilities Management (S1R) is directly responsible to the Deputy Commissioner for Finance, Assessment and Management for carrying out OFM's mission and provides general supervision to the major components of OFM.

B. The Deputy Associate Commissioner for Facilities Management (S1R) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Facilities Management (S1R) provides the Associate Commissioner with staff assistance on the full range of his/her responsibilities.

D. The Office of Realty Management (S1RE) directs SSA's national real property program, including long- and short-range planning, design, construction and leasing of central office and prospectus level field facilities, renovation projects, energy management, project management, and the development and implementation of policies, procedures and technical assistance to support these programs. The Office of Realty Management is SSA's representative to other agencies in all these areas, and participates in the development of governmentwide policies and procedures.

E. The Office of Environmental Policy and Automation Resources (S1RG) directs SSA's national security, environmental, occupational health, and safety programs, including long- and short-range planning, management of disparate contract guard forces, automation efforts, the Agency's asbestos management program, national testing programs for water and indoor air quality, the Agency's suitability program, and the development and implementation of policies, procedures and technical assistance to support these programs.

F. The Office of Main Complex Management (S1RH) directs SSA's headquarters facilities, including the East, Operations, Annex, West, Supply and Altmeyer Buildings. Responsibilities include long- and short-range planning, maintenance, repair, ongoing preventive maintenance, space planning, execution of safety, environmental health, and physical security policies, and the development and implementation of policies, procedures and technical assistance to support these programs.

G. The Office of Outlying Buildings Management (S1RJ) directs operations at the Metro West, Security West, the National Computer Center, Hollings Ferry, and Techwood Buildings, including long- and short-range planning, construction and lease management, maintenance, repair, ongoing preventive maintenance, space planning, execution of safety, environmental health, and physical security policies, and the development of the appropriate policies, procedures and technical assistance to support these programs.

H. The Office of Field Facilities Management (S1RK) directs SSA's space management program for all field facilities, including long- and short-range planning, acquisition, management, and utilization of space, installation of IWS/LAN, modular furniture installation, asbestos management, and the execution of safety, environmental health, and physical security policies, and the development of policies, procedures and technical assistance to support these programs.

I. The Office of Protective Security Services (S1RL) directs the SSA's security program, including physical security, criminal investigation, and civil defense, designed to ensure the physical security of life and property on premises occupied by SSA personnel on a nationwide basis. The office is the SSA representative to other agencies in all these areas and participates in the development of governmentwide policies and procedures.

Subchapter S1S—Office of Publications and Logistics Management

S1S.00 Mission
S1S.10 Organization
S1S.20 Functions

Section S1S.00 *The Office of Publications and Logistics Management*—(Mission): The Office of Publications and Logistics Management (OPLM) provides overall management of the SSA logistics and publications programs. It directs a comprehensive SSA printing, publications and distribution management program and develops pertinent policies, standards, and procedures for SSA's forms and publications management, printing, reprographics and distribution programs. It directs the administration and maintenance of the SSA library, the SSA History Room, the historical research program and records management program. It administers the SSA logistics management program, directs the SSA property and supply management program, manages the operation of SSA warehousing facilities including receipt, storage and issuance of forms publications, supplies and equipment for SSA-wide use. The Office directs activities related to employee transportation including providing headquarters passenger, mail and freight transportation services. It directs the SSA mail management program.

Section S1S.10 *The Office of Publications and Logistics Management*—(Organization): The Office of Publications and Logistics Management, under the leadership of the Associate Commissioner for Publications and Logistics Management, includes:

A. The Associate Commissioner for Publications and Logistics Management (S1S).

B. The Deputy Associate Commissioner for Publications and Logistics Management (S1S).

C. The Immediate Office of the Associate Commissioner for Publications and Logistics Management (S1S).

D. The Office of Receiving, Storage and Issue (S1SC).

E. The Office of Property Management (S1SE).

F. The Office of Supply Management (S1SG).

G. The Office of Logistics Planning and Process Control (S1SH).

H. The Office of Publications Management (S1SJ).

I. The Office of Library, Records and Reprographics (S1SK).

J. The Office of Printing Operations (S1SL).

K. The Office of Mail Management (S1SM).

Section S1S.20 *The Office of Publications and Logistics Management*—(Functions):

A. The Associate Commissioner for Publications and Logistics Management (S1S) is directly responsible to the Deputy Commissioner for Finance, Assessment and Management for carrying out OPLM's mission and provides general supervision to the major components of OPLM.

B. The Deputy Associate Commissioner for Publications and Logistics Management (S1S) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Publications and Logistics Management (S1S) provides the Associate

Commissioner with staff assistance on the full range of his/her responsibilities.

D. The Office of Receiving, Storage and Issue (S1SC).

1. Directs the supply program nationwide by managing the operations of SSA warehousing facilities, including the control and maintenance of stock, the receipt, storage and issuance of forms, publications, supplies and equipment for use, and conducts ongoing inventories and investigates discrepancies at all sites.

2. Provides transportation services including chauffeur service for the SSA Executive Staff and shuttle service for employees between SSA headquarters and other buildings in the Washington/Baltimore metropolitan areas.

3. Prepares and administers maintenance contracts and services for all SSA equipment and maintains adequate stock of repair parts for in-house emergency repair.

4. Performs all electrical preparations for SSA ceremonies; provides carpentry services for all SSA occupied buildings in the Baltimore/Washington area; exercises procurement authority to provide parts, services and maintenance for all SSA equipment; and maintains all equipment inventory history and records.

E. The Office of Property Management (S1SE).

1. Oversees all policy and procedures pertaining to the acquisition, utilization, accountability, transfer and disposal of SSA personal property. Manages and maintains the SSA Property Accountability System and the Property Management Officer/Custodial Officer network for the effective control of all SSA sensitive, accountable, and personalized personal property assets. Provides SSA's liaison for all personal property activities with other Federal, State and local agencies, as well as commercial and civic organizations. Represents SSA's interest in the acquisition, transfer and disposal of personal property.

2. Oversees the acquisition and installation of modular/systems furniture in SSA offices nationwide; acts as technical expert; plans, coordinates and implements studies and surveys related to providing necessary ergonomic furniture and equipment to support SSA employees; plans coordinates and implements studies and surveys to access the variety of ergonomic furniture previously purchased and new furniture available to SSA offices; and provides expert technical advice and consultative services to the SSA Executive Staff and to major headquarters and regional components.

3. Responsible for all financial management and contracting activities performed within the scope of the Interagency Agreement with the Federal Prison Industries. Maintains audit trails for all expenses incurred during and after furniture installation.

F. The Office of Supply Management (S1SG).

1. Responsible for the development of policies, procedures and directives in support of SSA supply management program. Ensures that Agency's printing requests and justified requisitions are processed timely for all necessary forms, publications, office supplies and instructional materials.

2. Monitors Agencywide stock items usage for making proper stock replenishment and to initiate scheduled shipments timely through the Direct Delivery Program, and oversees the replenishment of warehouse stock for headquarters' use, emergencies, etc.

3. Manages the direct delivery program of scheduled shipments to field components of major use forms, publications and supplies; evaluates all supply proposals; monitors warehouse availability of on-hand training materials to accommodate periodic changes to training schedules and course material configurations; and develops and oversees common expense supply budget.

G. The Office of Logistics Planning and Process Control (S1SH).

1. Responsible for the overall management and control of automatic data processing resources which support SSA's centralized Supply and Property Accountability Systems; coordinates with financial/administrative components governmentwide on major systems management projects and studies; and is the primary systems planning, development, and execution component within the Office of the Deputy Commissioner.

2. Responsible for the collection, validation, process, and control of SSA-wide requisitions for expendable supplies and supports special service programs for processing field and headquarters routine and emergency supply requests and planned training class orders.

H. The Office of Publications Management (S1SJ).

1. Directs a comprehensive SSA-wide forms control, publication and distribution management program, including forms and publications design, photocomposition and electronic information dissemination (electronic publishing, on-line publishing/services, electronic reference materials and CD–ROM and multi-media production and delivery) and provides SSA-wide special media services for visually impaired employees.

2. Responsible for administering the regulatory and procedural requirements governing SSA's collection of information from the public, stemming from the Paperwork Reduction Act and providing liaison services with the Office of Management and Budget and coordinates the Agency Administrative Instructions Manual System for the printing, clearance and issuance of policy, standards and procedural instructions.

3. Coordinates and directs a comprehensive printing management program and administers the procurement of all SSA printing needs; prepares the Agency's Comprehensive Printing Program Plan report for the Joint Committee on Printing; and provides liaison on policy and procedures.

4. Plans, directs and administers the SSA mail policy program, including developing policy and procedures for more efficient Agency mail processing methodologies and administers Agencywide mail management contracts. Provides liaison with the United States Postal Service in all national level mail management and operational policy negotiations and activities.

I. The Office of Library, Records and Reprographics (S1SK).

1. Directs, develops and maintains an Agencywide library and information service at SSA headquarters and nationwide. Provides on-line information on subjects relating to SSA programs and their operations in a variety of media.

2. Directs, develops and maintains a records management program. Develops policy and procedures regarding the retention and disposition of SSA's program and administrative records, administrative filing systems and equipment utilization, administrative correspondence, electronic records and vital records. Coordinates records storage and maintenance activities.

3. Directs, develops and maintains a reprographics management program. Develops Agencywide reprographic policy and procedures, manages the nationwide complement of SSA's reprographic equipment; and represents SSA in activities and negotiations with reprographic vendors and government officials at the General Services Administration.

J. The Office of Printing Operations (S1SL).

1. Provides SSA in-house printing services for short turnaround work

which cannot be procured commercially.

2. Provides coordination, technical advice and guidance to Agency components on SSA's in-house printing operation.

K. The Office of Mail Management (S1SM).

1. Plans, directs and coordinates the SSA mail handling program, including the receipt, processing and dispatch of all incoming and outgoing United States Postal Service mail for SSA headquarters. Provides inter-office mail service for SSA headquarters and priority delivery service in Washington, D.C.

2. Administers oversight of necessary contracts such as the internal mail messenger service. Consolidates and processes outgoing mail from headquarters to district offices, branch offices, program service centers and regional offices.

3. Processes computer-generated priority notices to SSA beneficiaries nationwide, using high-speed equipment to fold, insert and label mailings.

This statement amends part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Notice is given that Chapter S2 for the Office of the Deputy Commissioner for Operations is being amended to reflect internal organizational realignments and the deletion of all references to the Department of Health and Human Services as the parent agency of SSA. The following material replaces Chapter S2 in its entirety.

Chapter S2—Office of the Deputy Commissioner, Operations

S2.00 Mission
S2.10 Organization
S2.20 Functions

Section S2.00 *The Office of the Deputy Commissioner, Operations*—(Mission): The Office of the Deputy Commissioner, Operations (ODCO) directs and manages central office and geographically dispersed operations installations. It oversees regional operating program, technical, assessment and program management activities. It directs studies and actions to improve the operational effectiveness and efficiency of its components. It promotes systems and operational integration and defines user needs in the strategic planning process. It determines automation support for Operations components. This office defines user concerns in the development of operational and programmatic specifications for new and modified systems, evaluations and implementation phases.

Section S2.10 *The Office of the Deputy Commissioner, Operations*—(Organization): The Office of the Deputy Commissioner, Operations, under the leadership of the Deputy Commissioner, Operations, includes:

A. The Deputy Commissioner, Operations (S2).

B. The Assistant Deputy Commissioner, Operations (S2).

C. The Immediate Office of the Deputy Commissioner, Operations (S2A).

1. The Senior Advisor to the Deputy Commissioner, Operations (S2A–2).

D. The Office of the Central Records Operations (S2B).

E. The Office of Disability and International Operations (S2H).

F. The Office of the Regional Commissioner (S2D).

G. The Office of Public Service and Operations Support (S2N).

H. The Office of Telephone Services (S2Q).

I. The Office of Automation Support (S2L).

Section S2.20 *The Office of the Deputy Commissioner, Operations*—(Functions):

A. The Deputy Commissioner, Operations (S2) is directly responsible to the Commissioner for carrying out the ODCO mission and providing general supervision to the major components of ODCO.

B. The Assistant Deputy Commissioner Operations (S2) assists the Deputy Commissioner in carrying out his/her responsibilities and performs other duties as the Deputy Commissioner may prescribe.

C. The Immediate Office of the Deputy Commissioner, Operations (S2A) provides the Deputy Commissioner with staff assistance on the full range of his/her responsibilities.

1. The Senior Advisor to the Deputy Commissioner, Operations (S2A–2) assists the Deputy Commissioner on a wide variety of special management issues affecting Agency operations and the delivery of SSA programs to the public.

D. The Office of Central Records Operations (S2B) provides executive direction and leadership for the nationwide establishment and maintenance of basic records supporting Social Security programs. It manages centralized records operations and a stand alone data operations center (DOC). The Office receives and processes Social Security earnings reports from private and governmental employers and adjustments or corrections to posted earnings items. The Office maintains records of SSA enumeration and earnings records in microfilm, magnetic tape and disc form and maintains an ongoing data exchange activity with the Treasury Department on the compilation and verification of individual earnings data.

E. The Office of Disability and International Operations (S2H) provides executive direction and leadership to centralized disability and foreign claims operations. It directs the processing of claims under disability and Black Lung Benefits programs and maintains beneficiary rolls. It directs the review of initial and reconsidered determinations of disability excluded from State agency jurisdiction and directs the authorization of disability claims not authorized by District Offices (DOs) at the initial, reconsideration and other appeal levels. It directs the development, adjudication, authorization of payment or disallowance of claims for Retirement, Survivors and Disability Insurance (RSDI) benefits filed by persons in foreign countries; determines eligibility for Medicare on related claims; and determines entitlement to benefits based on international Social Security agreements. It determines whether and when eligibility or payments should be terminated, suspended, continued, increased or reduced in amount. Recovers or waives recovery of amounts incorrectly paid to beneficiaries. It serves as liaison on operational issues which affect the administration of the United States Social Security program abroad, with the Department of State, other Federal agencies, agencies of foreign governments and private organizations.

F. The Office of the Regional Commissioner (S2D) serves as the principal SSA component at the regional level and ensures effective SSA interaction with other Federal agencies in the regions, State welfare agencies, State Disability Determination Services (DDS) and other regional and local organizations. The Office provides regional program leadership and technical direction for the RSDI programs, the Black Lung Benefits program and the SSI program. It issues regional operating policy and procedures for these programs. It directs a regionwide network of Field Offices (FOs), Teleservice Centers (TSCs) and in the regions where present, Program Service Centers (PSCs). The Office manages and coordinates SSA regional operations. It provides overall management direction for the provision of personnel services and administrative support to SSA regional components. It establishes regional priorities and issues

policy directives consistent with national program objectives, operational requirements and systems; and implements a regional SSA public affairs program. The Office maintains a broad overview of administrative operations of the ROs of SSA, the Office of Hearings and Appeals (OHA) and the DOC to ensure effective coordination of SSA activities at the regional level.

G. The Office of Public Service and Operations Support (S2N) provides operations analysis, program support, service to the public and employee services for the Deputy Commissioner, Operations (DCO), and conducts studies and analyses. Provides broad operations support to FOs, TSCs, PSCs, the Office of Disability and International Operations (ODIO) and the Office of Central Records Operations (OCRO). OPSOS also integrates operational delivery of public services under the RSDI, SSI and health insurance (HI) programs for domestic beneficiaries and delivery of RSDI program services to foreign beneficiaries. Provides broad operations support to the maintenance of the basic earnings data which support the Social Security programs. Conducts activities associated with the overall effectiveness and efficiency of the DCO components. Directs and coordinates internal management support functions to ensure effective position management, workforce utilization and management analysis and planning. Directs the overall DCO budget process. Plans, implements, manages and assesses the interrelated duties of delivering SSA program and related services to the public.

H. The Office of Telephone Services (S2Q) plans, implements, operates and evaluates SSA's telephone service to the public delivered by the national 800 Number and SSA FOs. Plans and conducts studies, pilots and analyses of 800 Number and FO telephone operations to assess and improve the service provided. Provides direct support to 38 TSCs and approximately 1,300 FOs, including developing and communicating uniform operating policies and procedures. Maintains close, effective working relationships with SSA policy, program and administrative components, with other Federal agencies and with vendors which have important roles in the delivery and evaluation of SSA's telephone service to the public. Manages SSA's national 800 Number network operation, designs and administers call routing plans, continuously monitors call handling and adjusts routing to handle emergency situations and to maximize call answering effectiveness and efficiency.

I. The Office of Automation Support (S2L) is responsible for integrating service delivery and employee concerns with modern technology. It determines and defines DCO requirements for software and hardware support. OAS directs user evaluations of new technology assuring that technology meets DCO needs and coordinates all implementation activities. OAS develops, implements and administers evaluative tools for hardware purchases and software development. Assures that the most recent technology is integrated into the operations of all DCO components.

Subchapter S2B—Office of Central Records Operations

S2B.00 Mission
S2B.10 Organization
S2B.20 Functions

Section S2B.00 *The Office of Central Records Operations*—(Mission): The Office of Central Records Operations (OCRO) provides executive direction and leadership for the nationwide establishment and maintenance of basic records supporting Social Security programs. It manages centralized records operations and a stand alone DOC. The Office receives and processes Social Security earnings reports from private and governmental employers and adjustments or corrections to posted earnings items. The Office maintains records of SSA enumeration and earnings records in microfilm, magnetic tape and disc form and maintains an ongoing data exchange activity with the Treasury Department on the compilation and verification of individual earnings data.

Section S2B.10 *The Office of Central Records Operations*—(Organization): The Office of Central Records Operations, under the leadership of the Director, OCRO, includes:

A. The Director, Office of Central Records Operations (S2B).

B. The Immediate Office of the Director, Office of Central Records Operations (S2B).

C. The Division of Certification and Coverage (S2BA).

D. The Division of Earnings and Adjustments (S2BC).

E. The Division of Operations Support (S2BE).

F. The Data Operations Center (S2B-F6).

Section S2B.20 *The Office of Central Records Operations*—(Functions):

A. The Director, OCRO (S2B) is directly responsible to the Deputy Commissioner, Operations for carrying out OCRO's mission and managing its respective components.

B. The Immediate Office of the Director, OCRO (S2B) provides internal operations and management analysis staff support and assistance to the Director and all OCRO components.

C. The Division of Certification and Coverage (S2BA).

1. Answers inquiries about earnings records, including earnings discrepancies; investigates and adjusts incorrectly reported earnings items; and resolves discrepancies where SSA's records disagree with individual allegations of services rendered or remuneration received.

2. Certifies earnings record data to DOs and PCs for use in the adjudication of RSDI cases.

3. Reviews determinations on correctness of earnings data, coverage, increment years, total earnings, closing dates, primary insurance amounts and, in disability cases, determinations as to whether work requirements are met. Makes these determinations when needed.

4. Makes determinations as to coverage under the Social Security Act, as amended, of services performed by employees or self-employed individuals in earnings disagreement cases if a claim for benefits has not been filed.

5. Maintains files of microfilmed employer wage reports, self-employed income reports, detailed earnings listings and a file of earnings reported incorrectly or incompletely by employers or by self-employed individuals.

D. The Division of Earnings and Adjustments (S2BC).

1. Corresponds with employers and the Internal Revenue Service about the correction and processing of employer wage reports and self-employment income reports.

2. Investigates and corrects, as necessary, improperly reported earnings items.

3. Investigates and resolves magnetic media annual wage reporting (AWR) exception output.

4. Maintains control of pre-tax year 1987 agreements with State and interstate entities and modifications of these agreements and reviews wage statements submitted for State and interstate entity employees.

5. Ensures that Supplemental Security Income payments are interfaced with various external payment programs such as the Veterans Administration, the Railroad Retirement Board, the Office of Personnel Management and the Department of Defense.

E. The Division of Operations Support (S2BE).

1. Receives, converts and processes AWR data submitted on magnetic media

for input to the central computer complex at SSA headquarters.

2. Provides programming, scheduling and operating support for the automated processing of operational, administrative, management and statistical computer programs for OCRO and other SSA components. Develops technical requirements for information reporting systems. Maintains the OCRO magnetic tape library.

3. Provides internal mail, central microfilm storage and retrieval services to OCRO.

4. Procures and maintains contracts for microphotographic services for SSA. Maintains master copies of basic systems and microfilm records to ensure continuous operations should records be destroyed. Reproduces, on film, records for current use and for preservation of a variety of employee and employer records.

F. The Data Operations Center (S2B-F6)

1. Receives, examines and processes annual wage reports and other SSA program data through imaged-base data capturing and telecommunications systems for input to the central computer complex at SSA headquarters.

2. Performs electronic editing, validating and balancing functions related to the processing of source data and transmits products to the SSA headquarters computer complex for processing in a timely manner.

3. Contacts beneficiaries, representative payees, district office and program service center personnel to resolve post-eligibility systems exceptions output.

4. Serves as the central repository for all SSI folders.

Subchapter S2D—Office of the Regional Commissioner

S2D.00 Mission
S2D.10 Organization
S2D.20 Functions

Section S2D.00 *The Office of the Regional Commissioner*—(Mission): The Office of the Regional Commissioner (ORC) serves as the principal SSA component at the regional level and assures effective SSA interaction with other Federal agencies in the regions; State welfare agencies; State Disability Determination Services (DDSs); and other regional and local organizations. The Office provides regional program leadership and technical direction for the RSDI programs, the Black Lung Benefits program and the SSI program. It issues regional operating policy and procedures for these programs and evaluates program effectiveness. It implements national operational and management plans for providing SSA service to the public, and directs a regionwide network of FOs, TSCs and where present, PSCs. The Office manages and coordinates SSA regional operations. It provides overall management direction for the provision of personnel services and administrative support to SSA regional components. It establishes regional priorities and issues policy directives consistent with national program objectives, operational requirements and systems and implements a regional SSA public affairs program. The Office maintains a broad overview of administrative operations of the ROs of SSA's OHA and the DOC to ensure effective coordination of SSA activities at the regional level.

Section S2D.10 *The Office of the Regional Commissioner*—(Organization): The Office of the Regional Commissioner, under the leadership of the Regional Commissioner, includes:

A. The Regional Commissioner (S2D1–S2DX).

B. The Deputy Regional Commissioner (S2D1–S2DX).

C. The Immediate Office of the Regional Commissioner (S2DB–S2DX).

D. The Office of the Assistant Regional Commissioner for Program Operations and Systems (S2D1B–S2DXB).

E. The Office of the Assistant Regional Commissioner for Field Operations (S2D14–S2DX4).

F. The Office of the Assistant Regional Commissioner for Management and Budget (S2D17–S2DX7).

G. The Office of the Assistant Regional Commissioner for Processing Center Operations (S2D25,35,45,55,75,95).

Section S2D.20 *The Office of the Regional Commissioner*—(Functions):

A. The Regional Commissioner (S2D1–S2DX) is directly responsible to the Deputy Commissioner, Operations, for carrying out the Regional Commissioner's (RC) mission and managing the respective SSA regional organizations.

B. The Deputy Regional Commissioner (S2D1–S2DX) assists the Regional Commissioner in carrying out his/her responsibilities, and performs other duties as the Regional Commissioner may prescribe.

C. The Immediate Office of the Regional Commissioner (S2D1–S2DX) provides the Regional Commissioner with high-level staff assistance on the full range of his/her responsibilities. It also furnishes staff support for the civil rights, equal opportunity and external affairs functions.

D. The Office of the Assistant Regional Commissioner for Program Operations and Systems (S2D1B–S2DXB).

1. Provides program leadership and technical direction for the RSDI, SSI and Black Lung Benefits programs in the region. Issues regional operating policies and procedures necessary to ensure implementation of national policies for these programs. Establishes and maintains a field visit program covering DDSs, FOs, TSCs and PSCs to determine the effectiveness of RSDI, SSI and Black Lung Benefits program policies and procedures, and to provide technical assistance in the resolution of operational problems relating to these programs. Evaluates RSDI, SSI and the Black Lung Benefits program effectiveness in the region.

2. Assists DDSs in developing their operating budgets, reviews these budgets with the Assistant Regional Commissioner for Management and Budget and submits recommendations on the acceptability of DDS budgets to the RC. Manages a comprehensive review and analysis program covering DDS operations.

3. Plans, directs and coordinates regional activities concerning Social Security coverage agreements between SSA and State or interstate entities; carries out negotiations with State or interstate authorities on the content of these agreements; makes recommendations to final approving officials regarding the execution of new coverage agreements, modifications in existing agreements, or the termination of agreements; and processes requests for further extensions, or extensions for more than 1 year, of time limits for assessments, credits or refunds of amounts due.

4. Negotiates and maintains agreements with States covering the administration of optional State SSI supplementation, mandatory minimum State SSI supplementation and Medicaid eligibility determinations. Evaluates and monitors State budgets necessary to carry out these agreements and maintains ongoing dialogues with States on SSI program issues in such areas as adjustment levels, hold harmless provisions, operational aspects of the Food Stamp program, social service referral practices, etc. Directs the preparation of regional operations instructional material necessary to implement agreements negotiated with the States.

5. Oversees SSA regional automated data processing (ADP) systems and automated processing operations, ensures their effectiveness and carries out an ongoing regional systems

planning program to ensure effective integration of regional operating and management systems. Coordinates and monitors regional implementation of major changes to national systems on behalf of SSA's Central Office components dealing with systems activities.

6. Conducts operational analyses and provides support to regional operations management in the resolution of operational, procedural and systems problems. Consolidates, reviews and arranges for the distribution of regional program instructions and systems instructional material developed at the regional level. Coordinates with Rehabilitation Services Administration and other agencies to attain disability insurance (DI), Black Lung Benefits and SSI program goals. Maintains relationships with professional medical organizations, interacts with outside groups representing program interests or concerns and consults with representatives of community and private organizations on operational matters.

E. The Office of the Assistant Regional Commissioner for Field Operations (S2D14–S2DX4).

1. Provides leadership, guidance and direction FO's and TSC's.

2. Ensures the consistency of field operations in the region with national and regional policies and procedures and is accountable for the effectiveness of these operations.

F. The Office of the Assistant Regional Commissioner for Management and Budget (S2D17–S2DX7).

1. Furnishes leadership and support to SSA regional operations components in the areas of financial, workpower, and organization management and other areas of management concern.

2. Develops regional management policies, procedures and guidelines consistent with prevailing Federal and SSA requirements and objectives. Guides and controls regional administrative management operations and administrative practices. Evaluates component performance and needs in these areas to ensure effective and economical use of available resources and takes appropriate action on behalf of the RC to remedy or correct any inefficiencies or undesirable practices uncovered in administrative management operation.

3. Furnishes financial management staff expertise and professional judgments required to compile and recommend effective regional/State operating budgets.

4. Coordinates regional operations administrative management issues and concerns with SSA headquarters and other Federal-regional authorities.

5. Carries out the SSA regional security program.

G. The Office of the Assistant Regional Commissioner for Processing Center Operations (S2D25,35,45,55,75,95) (located in the six regions containing PSCs).

1. Reviews and authorizes payment or disallows claims for RSDI benefits and HI entitlement; certifies RSDI benefit amounts to the Treasury Department for payment; and maintains RSDI benefit and HI records.

2. Determines whether and when eligibility or payments should be terminated, suspended, continued, increased or reduced in amount and reconsiders determinations on initial claims and continuing eligibility.

3. Maintains RSDI payment rolls; recovers or waives recovery of amounts incorrectly paid to RSDI beneficiaries; receives, records and deposits Supplemental Medical Insurance (SMI) premium and overpayment refunds; and makes representative payee determinations and processes related accountability reports.

4. Answers inquiries about individual RSDI cases and claims determinations and ensures expeditious processing of actions where inquiries indicate claimant hardship.

5. Receives and coordinates computer programs and exceptions on case processing. Maintains accounting controls and ensures, by sample audit, that magnetic tape records reflect actual authorized payment actions.

6. Coordinates PSC operations with the other components within ORC, other SSA components, the Railroad Retirement Board, the Veterans Administration, the United States Postal Service and other Federal agencies as required.

Subchapter S2H—The Office of Disability and International Operations

S2H.00 Mission
S2H.10 Organization
S2H.20 Functions

Section S2H.00 *The Office of Disability and International Operations*—(Mission): The Office of Disability and International Operations (ODIO) provides executive direction and leadership to centralized disability operations that process claims under disability and Black Lung Benefits programs and maintain beneficiary rolls. It directs the review of initial and reconsidered determinations of disability excluded from State agency jurisdiction, and directs the authorization of disability claims not authorized by DOs at the initial, reconsideration and other appeal levels. It responds to public and congressional correspondence on disability operations issues. It directs the development, adjudication, authorization of payment or disallows claims for RSDI benefits filed by persons in foreign countries; determines eligibility for HI and SMI on related claims; and determines entitlement to benefits based on international Social Security agreements. It determines whether and when eligibility or payments should be terminated, suspended, continued, increased or reduced in amount and recovers or waives recovery of amounts incorrectly paid to beneficiaries. It serves as liaison on operational issues which affect the administration of the United States Social Security program abroad, with the Department of State, other Federal agencies, agencies of foreign governments and private organizations.

Section S2H.10 *The Office of Disability and International Operations*—(Organization): The Office of Disability and International Operations, under the leadership of the Director, includes:

A. The Director, The Office of Disability and International Operations (S2H).

B. The Deputy Director, The Office of Disability and International Operations (S2H).

C. The Immediate Office of the Director, The Office of Disability and International Operations (S2H).

1. The Organizational Planning, Analysis and Review Staff (S2H–2).

D. The Office of Disability Operations (S2HA).

1. The Process Divisions (S2HA1,2,3,4).

E. The Office of International Operations (S2HB).

1. The International Process Division (S2HB1).

2. The International Operations and Totalization Staff (S2HB3).

F. The Office of Support Services (S2HC).

1. The Division of Management Support (S2HC1).

2. The Division of Operations Support (S2HC2).

Section S2H.20 *The Office of Disability and International Operations*—(Functions):

A. The Director, The Office of Disability and International Operations (S2H) is directly responsible to the Deputy Commissioner, Operations, for carrying out ODIO's mission and managing its respective components.

B. The Deputy Director, Office of Disability and International Operations (S2H) assists the Director, Office of

Disability and International Operations in carrying out his/her responsibilities and performs other duties as the Director may prescribe.

C. The Immediate Office of the Director, Office of Disability and International Operations (S2H) provides internal organizational planning, analysis and review, staff support and assistance to the Director and all ODIO components.

1. The Organizational Planning, Analysis and Review Staff (S2H–2).

a. Conducts operations analysis and provides support to the Director of Disability and International Operations in the resolution of operational and procedural problems.

b. Directs the development of long-range systems planning for ODIO and evaluates ongoing systems requirements.

c. Analyzes office automation activities and systems operations, and recommends enhancements to improve capabilities. Evaluates systems changes prior to implementation and conducts postimplementation analysis.

d. Oversees procurement of ADP hardware and software for ODIO.

e. Provides technical advice and information to managers and employees in ODIO on systems development and changes that affect operations.

D. The Office of Disability Operations (ODO) (S2HA) plans, directs and coordinates activities related to the processing and maintenance of domestic disability claims for individuals under age 59, and for Black Lung and End Stage Renal Disease cases under the jurisdiction of the component. It directs activities related to continuing disability reviews of Title XVI and concurrent Title II/XVI claims under section 1619. It has responsibility for processing initial claims allowed at the administrative law judge and other appellate levels for disability claims under the jurisdiction of the component.

1. The Process Divisions (S2HA1,2,3,4).

a. Make initial determinations of disability and reconsider disability determinations of claims excluded from State agency jurisdiction. Make determinations of continuing disability entitlement.

b. Make determinations of entitlement or eligibility to primary or auxiliary benefits, and authorize allowance or disallowance of disability claims not authorized by district offices and reconsider those cases appealed for issues other than the existence of disability. Make representative-payee determinations, process representative-payee accountability reports, approve the payment and amount of attorney fees and offset disability insurance benefits due to previous SSI payments.

c. Implement, adjust, suspend and terminate benefits and prepare benefit payment data for introduction into the computer system; process all actions to maintain beneficiary payment rolls; recover or waive recovery of amounts incorrectly paid to beneficiaries, prepare and release award certificates, denial letters and other claims-related notices; and maintain the files of disability claim folders.

d. Answer inquiries regarding individual cases and ensure expeditious processing of actions where claimant hardship is indicated.

e. Contact outside Federal/State components such as the Department of Labor, Railroad Retirement Board, Workers' Compensation Commissions and other SSA components, as necessary, to resolve disability claims actions.

E. The Office of International Operations (OIO) (S2HB) serves as liaison with the Department of State, other Government agencies and SSA components on matters pertaining to the administration of the program abroad. It directs the Social Security representatives stationed overseas, appraises the role of foreign service posts in administering the Social Security program abroad and conducts special studies to evaluate the overseas program. Has responsibility for the operational implementation of totalization agreements. Negotiates operational accords and procedures with foreign Social Security agencies for the implementation of agreements. Develops requirements for totalization processing. OIO plans, directs and coordinates activities pertinent to development and processing of foreign claims. Directs the processing of postentitlement actions. Assures the proper application of tax liability to benefit payments abroad and is the focal point for debt management activities in the foreign sector. Directs the processing of sensitive and controlled correspondence related to the program abroad. It directs the reconsideration of claims for benefits filed by persons overseas and the approval of fees for attorney and other representatives. It directs a variety of State agency type functions for disability claims filed abroad such as the development and adjudication of initial claims, continuing disability reviews and other disability benefits issues.

1. The International Process Division (S2HB1).

a. Develops and adjudicates Retirement, Survivors and Disability Health Insurance (RSDHI) claims, and makes decisions on continuing eligibility for persons living in foreign countries. This includes cases filed under the totalization agreements.

b. Determines health insurance eligibility and proper payees for beneficiaries; makes decisions regarding recovery of overpayments; processes nonreceipt allegations and congressional, critical, hardship and controlled correspondence and cases; performs material associations and record maintenance activities; and types notices and other correspondence.

c. Processes requests for Social Security numbers from individuals residing in foreign countries.

d. Provides translation services to SSA, including translation of program material for foreign visitors, materials relating to foreign pension systems, documents and other materials required to process foreign claims and some domestic claims.

e. Reconsiders determinations on claims for benefits filed by persons living in foreign countries and prepares claims material for appealed cases. Reconsiders certain adverse claims involving benefits for persons in foreign countries. Approves fees for attorneys and other representatives of claimants outside the United States.

f. Makes findings of administrative finality. Determines proper application of regulations governing the disclosure of confidential records.

g. Performs functions similar to domestic State agencies related to the determination of entitlement to, and processing of, foreign disability claims. Includes the development and review of medical evidence and other factors required for the adjudication of initial claims.

h. Processes continuing disability reviews for foreign beneficiaries.

3. The International Operations and Totalization Staff (S2HB3).

a. Provides liaison with the Department of State and other Government agencies to ensure SSA operations, systems and administrative policies and procedures are correctly carried out as they affect the Social Security program overseas.

b. Evaluates and provides direction and guidance to the Social Security representatives stationed overseas, and ensures that necessary administrative support is provided to carry out SSA's mission abroad.

c. Furnishes information on Social Security foreign program matters and concerns to other SSA components, other Government agencies, Members of Congress and the public. Designs and conducts validation and other special

studies to foster integrity in the Social Security program overseas.

d. Oversees the operational implementation of totalization agreements. Participates in negotiations with foreign government representatives and negotiates operational accords and procedures with foreign Social Security agencies.

e. Prepares forms and procedures for the ODIO and foreign service post employees, and participates with the Office of International Policy (OIP) in the development of district office instructions, applications, notices, public information materials and systems requirements for totalization processing, and continually evaluates the processing of cases under existing agreements.

F. The Office of Support Services (OSS) (S2HC) plans, directs and coordinates support activities for ODIO in a broad range of essential administrative areas including: personnel and organization management, labor and employee relations, budget and facilities management, managerial, technical and clerical training, integrity and security. It is responsible for ADP hardware and software support activities for ODIO. OSS directs ODIO liaison between the Office of Systems Operations and the Department of the Treasury to ensure timely benefit payments. It ensures delivery, distribution and dispatch of mail for ODIO, and oversees ODIO's folder and record control operation.

1. The Division of Management Support (S2HC1).

a. Provides administrative support services to the Director, ODIO; the Director, Disability Operations; and the Director, International Operations in such areas as:

—Budget development and monitoring.

—Personnel management.

—Labor relations.

—Management information.

—Organization planning.

b. Develops and conducts ODIO-wide operational training and employee development activities. Analyzes and evaluates training needs and effectiveness. Ensures that required agency-level, other Government agency and private vendor training is provided.

c. Performs independent reviews to detect and prevent employee and beneficiary fraud. Plans, develops and implements ODIO's security program and conducts security reviews. Reviews beneficiary fraud cases and determines whether cases will be referred for prosecution. Determines proper application of regulations governing the disclosure of confidential records.

2. The Division of Operations Support (S2HC2).

a. Provides ADP hardware and software support for ODIO. Conducts analyses relating to user software application development, contract maintenance and equipment use.

b. Serves as SSA liaison with the Department of the Treasury to ensure timely payments.

c. Integrates and controls benefit payment processing operations.

d. Delivers, distributes and dispatches mail for ODIO.

e. Oversees the ODIO folder and record control operations. Identifies and resolves folder and record control problems and coordinates case location activities.

f. Coordinates systems support services, health and safety matters, laborer services, transportation activities, projects concerning the maintenance and performance of capitalized equipment and other property inventories, and provides input to budget submittals for furniture and supplies.

Subchapter S2L—Office of Automation Support

S2L.00 Mission
S2L.10 Organization
S2L.20 Functions

Section S2L.00 *The Office of Automation Support*—(Mission): The Office of Automation Support (OAS) ensures delivery of automation support to meet end users' needs to deliver accurate, caring, efficient public service while providing a favorable environment for OAS employees. OAS is responsible for integrating service delivery and employee concerns with modern technology. In concert with the Deputy Commissioner for Systems (DCS), it determines and defines DCO requirements for software and hardware support. OAS directs user evaluations to ensure that technology meets DCO needs and coordinates all implementation activities. Working with DCS, it ensures that the most recent technology is integrated into the operations of all DCO components.

Section S2L.10 *The Office of Automation Support*—(Organization): The Office of Automation Support, under the leadership of the Associate Commissioner for Automation Support, includes:

A. The Associate Commissioner for Automation Support (S2L).

B. The Deputy Associate Commissioner for Automation Support (S2L).

C. The Immediate Office of the Associate Commissioner for Automation Support (S2L).

D. Software Implementation Process Team (S2LA).

E. Technology Support Process Team (S2LB).

Section S2L.20 *The Office of Automation Support*—(Functions):

A. The Associate Commissioner for Automation Support (S2L) is directly responsible to the Deputy Commissioner, Operations for carrying out OAS' mission and provides general supervision to the major components of OAS.

B. The Deputy Associate Commissioner for Automation Support (S2L) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Automation Support (S2L) provides the Associate Commissioner with staff assistance on the full range of his/her responsibilities.

D. Software Implementation Process Team (S2LA).

1. Works with the systems, policy, security, training and personnel components during the development and implementation of all modernized software to ensure that security, user and operational needs are satisfied within DCO.

2. Works with DCO user components to define the operational requirements for modernized software, training materials and procedural support and helps shape the directions the Agency takes to meet these needs.

3. In concert with DCS, ensures that functional requirements are accurate, straightforward and efficient and support the mission of providing high quality public service.

4. Evaluates with DCS and DCO users all modernized software and support material prior to implementation to confirm that operational requirements have been met and that effective and efficient audit and security controls are in place to deter and detect improper systems usage for fraudulent purposes.

5. Coordinates DCO user component software implementation activities and provides help desk support for problem reporting, analysis and remedial measures as well as providing procedural clarification.

6. Works with DCS to monitor and support national software and online and batch systems performance on behalf of the operational end user to ensure that operational expectations and performance standards are satisfied.

7. Develops and manages effective mechanisms to evaluate user reaction to modernized software and support materials in order to help define, shape

and refine future Agency approaches to modernized software development.

8. Directs the activities of the Model District Office and Test Processing Module, which are the major operational components for testing and evaluating modernized software.

E. Technology Support Process Team (S2LB).

1. Serves as the focal point for user systems planning within Operations. Working with DCS components, determines and defines the technological hardware needs for the operational components and promotes the acquisition, effective implementation and innovative usage of this technology.

2. Identifies operational needs and works through DCS to evaluate and promote the implementation of state-of-the-art technologies such as imaging, storage and retrieval alternatives, and optical disk capabilities that can modernize and streamline labor-intensive current processes.

3. Provides leadership in the management of automated computer processes resident in OCRO, ODIO, PSCs, FOs and the DOC and identifies and defines support requirements, such as procedural and technical training needs, to assure the smooth operation of those computer processes.

4. Arranges with the appropriate technical staff in the systems components to provide technical training when needed and provides oversight in the management of operating software, version control and scheduling of these local computer operations.

5. Through analytical and evaluative mechanisms it develops and manages, the team ensures that modern technology serves the needs of all DCO employees, including those employees with disabilities, that fully participate in the accomplishment of their mission.

6. Supports field components in their efforts to integrate modern technology into day-to-day work environments and articulates user needs as the Agency moves into distributed processing platforms and office automation/local intelligence arenas.

7. Assures that proper technical support, including procedural instructions and comprehensive user training, is provided for these distributive platforms, such as local area networks, where needed.

Subchapter S2N—Office of Public Service and Operations Support

S2N.00 Mission
S2N.10 Organization
S2N.20 Functions

Section S2N.00 *The Office of Public Service and Operations Support*—(Mission): The Office of Public Service and Operations Support (OPSOS) is responsible for providing operational/program support and for conducting studies and analyses related to service to the public, employee services and activities associated with financial management, budget and management information. This Office provides broad operations support to the FOs, TSCs, PSCs, the Office of Disability and International Operations and the Office of Central Records Operations. OPSOS is also responsible for integrating operational delivery of public services under the RSDI, SSI and HI programs for domestic beneficiaries and for the delivery of RSDI program services to foreign beneficiaries. Additionally, this Office provides broad operations support to the maintenance of the basic earnings data which support the Social Security programs. It conducts studies, pilots and other activities associated with the overall effectiveness and efficiency of DCO components. It directs and coordinates internal management support functions to ensure effective position management, workforce utilization and management analysis and planning. It directs the overall DCO budget process and plans, implements, manages and assesses the interrelated duties of delivering SSA program and related services to the public.

Section S2N.10 *The Office of Public Service and Operations Support*—(Organization): The Office of Public Service and Operations Support, under the leadership of the Associate Commissioner for Public Service and Operations Support, includes:

A. The Associate Commissioner for Public Service and Operations Support (S2N).

B. The Deputy Associate Commissioner for Public Service and Operations Support (S2N).

C. The Immediate Office of the Associate Commissioner for Public Service and Operations Support (S2N).

D. The Division of Service Delivery and Program Policy (S2NA).

E. The Division of Operations Management (S2NB).

F. The Division of Resource and Management Information (S2NC).

Section S2N.20 *The Office of Public Service and Operations Support*—(Functions):

A. The Associate Commissioner for Public Service and Operations Support (S2N) is directly responsible to the Deputy Commissioner, Operations, for carrying out OPSOS' mission and provides general supervision to the major components of OPSOS.

B. The Deputy Associate Commissioner for Public Service and Operations Support (S2N) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Public Service and Operations Support (S2N) provides the Associate Commissioner with staff assistance on the full range of his/her responsibilities. Ensures open and effective communication with employees and Union representatives.

D. The Division of Service Delivery and Program Policy (S2NA).

1. Plans, develops or participates in the development of operational policy and procedures to assure effective and efficient implementation of national and international program activities in DCO.

2. Plans and implements studies designed to assess DCO's processing activities and affected operational objectives to ensure appropriate integration of new program policies.

3. Provides analysis and recommendations to the DCO regarding legislative planning and implementation. Provides technical guidance to DCO management and ensures integration of RSI, DI, SSI, and Medicare policies and procedures.

4. Develops partnerships with other SSA components and the Health Care Financing Administration to ensure effective program delivery within operational constraints.

5. Provides operational support to the enumeration process.

6. Plans, directs and evaluates the quality of program activities throughout operational components. Develops initiatives to improve the quality of the claims, postentitlement and preclaims processes.

7. Participates with appropriate policy components in SSA to provide clear, accurate and timely notices to the public and to fully utilize automation to reduce the need for manually prepared notices.

8. Develops and recommends to DCO standards and practices for national and international delivery of services. Plans, implements and evaluates the full range of SSA's service to the public.

9. Establishes service delivery policies. Develops and evaluates standards for measuring service to the public to ensure that quality, efficient and compassionate service is provided.

10. Plans, conducts and evaluates public information/referral programs to ensure Agency and other public and private services are effectively provided to the community within the guidelines and direction provided by the Agency.

Ensures SSA's public affairs/information efforts are implemented effectively and efficiently within DCO components.

11. Establishes policies and develops criteria on field office accessibility (hours of service, size of field offices, type and location of services, etc.).

12. Directs the planning, analysis and evaluation of field office structure and develops innovative concepts for the future role of DCO components, including improvements in service.

E. The Division of Operations Management (S2NB).

1. Plans and coordinates postentitlement cyclical workloads; maintenance of beneficiary and earnings records; certification of payment; and recoupment of overpayment processes impacting on DCO components.

2. Plans, designs and implements studies and analyses to assess payment processing activities and operational goals and objectives. Plans and initiates new processing workflows for claims and postadjudicative actions to ensure the most effective and efficient program delivery to the public.

3. Establishes workload processing schedules ensuring efficient sequences of interrelated workloads and recommends to DCO appropriate priorities.

4. Coordinates operational processes with programs administered by other government agencies such as Railroad Retirement Board, Treasury Department, Internal Revenue Service, Veterans Administration, State Department and the Administration on Aging.

5. Creates workflows and processes with systemic safeguards to prevent errors and ensure a full audit trail for automated and paper products.

F. The Division of Resource and Management Information (S2NC).

1. Performs a broad range of financial management, budget and management information activities. Formulates, executes and monitors component budgets and spending plans. Develops and monitors DCO's operating budgets. Develops reprogramming recommendations for DCO management consideration.

2. Analyzes and develops budget cost analyses based on Agency constraints, initiatives and legislation. Analyzes budget data, program cost allocations, operating program input, workload and productivity information for the preparation of the annual budget.

3. Analyzes and monitors component productivity to determine staffing requirements and ensure effective delivery of service. Establishes component fulltime equivalents, workyears and dollar allocations, including identification of reprogramming needs. Distributes and monitors General Services Administration building delegations.

4. Analyzes legislative, procedural and technological changes and ensures appropriate resource allocations are provided to effectively implement those changes. Plans and implements budgetary incentives/pay reform projects.

5. Implements and maintains an integrated management information system through studies and analyses which identify specific operating areas to be measured and to control workloads. Identifies DCO management needs and develops systems and methods to deliver the timely, pertinent information that managers need to effectively manage SSA's programs and delivery of service.

6. Analyzes data to identify trends which DCO management must consider in developing plans for deployment of human and materiel resources. Designs, develops and analyzes various weekly, quarterly and annual management information reports.

7. Develops policies, procedures and standards for which DCO can carry out its management activities in the areas of personnel, employee relations, facilities, space, property management, etc.

8. Identifies training and career development needs of DCO employees and ensures these needs are met. Assesses future training needs as technology advances and plans and implements component career enhancement programs to ensure employees have skills needed to plan and prepare for these technological changes.

9. Within established guidelines, plans and oversees implementation in DCO components of projects which improve employee environment and well being (wellness/fitness, child care, elder care, office space/furniture).

10. Plans, develops, implements and evaluates comprehensive handicapped, Equal Employment Opportunity and affirmative employment programs to ensure all employees are treated equitably.

11. Plans and implements effective management communication networks to ensure employees are kept informed of Operations' and SSA's initiatives as well as determining, evaluating and addressing employee concerns.

12. Provides staff support to DCO in planning and providing effective performance management/awards programs ensuring fair and equitable treatment of all employees.

13. Develops innovative approaches to job restructuring/enhancements from an Operations' perspective. Plans, develops, implements and analyzes pilots and studies to enhance the quality of the workforce.

Subchapter S2Q—Office of Telephone Services

S2Q.00 Mission
S2Q.10 Organization
S2Q.20 Functions

Section S2Q.00 *The Office of Telephone Services*—(Mission): The Office of Telephone Services is responsible for planning, implementing, operating and evaluating SSA's telephone service to the public delivered by the national 800 Number and SSA FOs. The Office plans and conducts studies, pilots and analyses of 800 Number and FO telephone operations to assess and improve the service provided. The Office provides direct support to 38 TSCs and approximately 1,300 FOs, including developing and communicating uniform operating policies and procedures. The Office maintains close, effective working relationships with SSA policy, program and administrative components, with other Federal agencies and with vendors which have important roles in the delivery and evaluation of SSA's telephone service to the public. This Office manages SSA's national 800 Number network operation, designs and administers call routing plans, continuously monitors call handling and adjusts routing to handle emergency situations and to maximize call answering effectiveness and efficiency.

Section S2Q.10 *The Office of Telephone Services*—(Organization): The Office of Telephone Services includes:

A. The Director of the Office of Telephone Services (S2Q).

B. The Deputy Director of the Office of Telephone Services (S2Q).

C. The Immediate Office of the Director of the Office of Telephone Services (S2Q).

D. The Service Team (S2QA).

E. The Voice Network Team (S2QB).

Section S2Q.20 *The Office of Telephone Services*—(Functions):

A. The Director, Office of Telephone Services (S2Q) is directly responsible to the DCO for carrying out the Office's mission relating to the operation of SSA's national 800 Number and FO telephone service, and provides general supervision to the major components in the Office.

B. The Deputy Director, Office of Telephone Services (S2Q) assists the Director in carrying out his/her responsibilities and performs other duties as the Director may prescribe.

C. The Immediate Office of the Office of Telephone Services (S2Q) provides the Director with staff assistance over the full range of his/her responsibilities.

D. The Service Team (S2QA).

1. Plans, designs, implements and evaluates studies of initiatives related to the effective management, operation and future direction of telephone services provided to the public by the national 800 Number and FOs.

2. Provides leadership on SSA telephone service planning initiatives for the Office of Operations.

3. Researches and evaluates the application of innovative concepts and new technologies for SSA's public telephone services.

4. Designs, implements and maintains management information systems for SSA telephone service delivery. Analyzes data, evaluates trends and long-range needs and prepares executive level reports.

5. Evaluates and plans for implementation of legislative issues that impact SSA's telephone service. Works with other SSA components, other Federal agencies and vendors to ensure quality public telephone services.

6. Plans, develops, implements and evaluates systematic measurement processes to assess the operational effectiveness and efficiency of SSA public telephone service operations.

7. Develops and maintains procedural guides, operational instructions and training materials for TSC and FO employees providing public telephone service.

8. Develops and evaluates plans for the effective utilization of TSC and FO resources and equipment relating to delivery of telephone services to the public.

9. Develops and evaluates operational telephone service quality review policies. Evaluates telephone service delivery training needs to ensure quality public service is provided.

E. The Voice Network Team (S2QB).

1. Plans, develops, implements and evaluates the effectiveness and efficiency of the routing of 800 Number calls to the geographically dispersed TSCs that provide 800 Number service.

2. Administers 800 Number call routing on a daily basis, making necessary adjustments to ensure the best possible public telephone service.

3. Develops and maintains an effective management information system needed for the 800 Number operation and produces the required reports. Analyzes the information to evaluate the routing of calls.

4. Identifies trends and/or patterns that impact 800 Number call volumes and resource requirements. Projects call volumes and creates staffing models and other techniques to determine future call-handling capacity needs.

5. Analyzes the applicability of innovative concepts and technologies to the national 800 Number and FO telephone service and recommends ways to improve service.

6. Studies and evaluates the effectiveness of TSCs and overall SSA 800 Number network operations and FO telephone services and makes recommendations for improving operations.

This statement amends part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Notice is given that Chapter S4 for the Office of the Deputy Commissioner Systems is being amended to reflect internal organizational realignments and the deletion of all references to the Department of Health and Human Services as the parent agency of SSA. The following material replaces Chapter S4 in its entirety.

Chapter S4—Office of the Deputy Commissioner, Systems

S4.00 Mission
S4.10 Organization
S4.20 Functions

Section S4.00 *The Office of the Deputy Commissioner, Systems*—(Mission): The Office of the Deputy Commissioner, Systems (ODCS) directs the conduct of systems and operational integration and strategic planning processes, and the implementation of a comprehensive systems configuration management, data base management and data administration program. Initiates software and hardware acquisition for SSA and oversees software and hardware acquisition procedures, policies and activities. Directs the development of operational and programmatic specifications for new and modified systems, and oversees development, validation and implementation phases.

Section S4.10 *The Office of the Deputy Commissioner, Systems*—(Organization): The Office of the Deputy Commissioner, Systems, under the leadership of the Deputy Commissioner, Systems, includes:

A. The Deputy Commissioner, Systems (S4).

B. The Assistant Deputy Commissioner, Systems (S4).

C. The Immediate Office of the Deputy Commissioner, Systems (S4C).

D. The Office of Systems Operations (S4E).

E. The Office of Systems Design and Development (S4G).

F. The Office of Systems Requirements (S4H).

G. The Office of Systems Planning and Integration (S4J).

H. The Office of Information Management (S4K).

I. The Office of Telecommunications (S4L).

Section S4.20 *The Office of the Deputy Commissioner, Systems*—(Functions):

A. The Deputy Commissioner, Systems (S4) is directly responsible to the Commissioner for carrying out the ODCS mission and providing general supervision to the major components of ODCS.

B. The Assistant Deputy Commissioner, Systems (S4) assists the Deputy Commissioner in carrying out his/her responsibilities, and performs other duties as the Deputy Commissioner may prescribe.

C. The Immediate Office of the Deputy Commissioner, Systems (S4C) provides the Deputy Commissioner with management support on the full range of his/her responsibilities.

D. The Office of System Operations (OSO) (S4E) directs, manages and coordinates the planning, acquisition, implementation, security, operation and maintenance of SSA's computer systems operations. It directs and coordinates the transition, implementation and operation of current/ongoing operating systems support software, including diagnostic software. OSO coordinates with the Office of Telecommunications (OTC) in the design and implementation of the critical interface between OTC's telecommunications facilities and OSO's teleprocessing complexes. OSO interfaces with the Office of Systems Design and Development (OSDD) and the Office of Information Management (OIM) in the transition and implementation of redesigned programmatic and administrative systems to progressively replace existing application systems. It manages the computer operations complex which process SSA's programmatic support, administrative, management information (MI) and statistical application systems. OSO conducts continuing assessments and engineering analyses of the computer operations, as well as equipment performance analyses and coordinates with OSDD the implementation of necessary improvements to existing resources. It directs and coordinates the activities associated with the planning, management, acquisition, procurement and renewal of ADP equipment, software and technical services for SSA to maintain operational systems and to prevent progressive deterioration. OSO

develops, controls and implements operational plans which include the preparing of technical specifications, evaluation criteria, acceptance test criteria, facilities engineering plans and budget estimates to maintain operational systems. It advises the Deputy Commissioner, SSA Executive Staff and external monitoring authorities such as the General Services Administration, the General Accounting Office, the Office of Management and Budget and Congress on SSA's computer systems operations.

E. The Office of Systems Design and Development (OSDD) (S4G) directs the design, development and maintenance of all programmatic software to support SSA's social insurance and income maintenance programs. The Office directs SSA's data base integration activities to improve the administration of SSA's data bases and to implement modern data base management systems software. It designs and develops all new or improved data base-oriented systems. OSDD directs a comprehensive software engineering program to modernize the Agency's programmatic applications software by developing new software and improving existing software engineering technologies. It develops and oversees the implementation of standards, methods and procedures for software design and development. It plans and directs a software development facility to support applications development personnel and supports the testing of new or redesigned software. OSDD directs and coordinates a comprehensive management program for SSA's programmatic software.

F. The Office of System Requirements (OSR) (S4H) directs, develops and coordinates operational and programmatic information requirements and functional specifications for new systems and modifications to existing systems in direct support of SSA programs. It manages an Agencywide process for assessment of user requirements and establishment of priorities for software development and modification. The Office directs validation of systems processes against user-defined performance criteria to ensure conformance with requirements and approves the resulting system for operational acceptance. It directs the development of procedures and instructions to support user needs in effective implementation of all systems. It develops and implements standards for analysis and requirements definition and validation phases of the system development process. It designs, develops and executes an interactive validation environment and associated automated techniques, methodologies, tools and data bases necessary for conducting validations for all programmatic systems. It develops control, auditability and security standards and ensures their implementation through the systems development life cycle. It is responsible for SSA-wide data administration including the overall operation of the SSA Data Resource Management Program.

G. The Office of Systems Planning and Integration (OSPI) (S4J) directs and conducts comprehensive integration and systems planning processes. It provides management leadership and direction to systems activities in the areas of software engineering technology and systems engineering management, including configuration management and quality assurance. It carries out a variety of technology assessment functions, including the development of pilot projects to evaluate specific technology applications in SSA. The Office develops the Information Technology Systems Budget for Systems, prepares the detailed budget submission and develops monitoring and tracking systems. It also develops systems security policy for the systems community and coordinates technical activities for Systems components.

H. The Office of Information Management (OIM) (S4K) directs, develops and coordinates SSA-wide administrative, management and statistical information (AMSI) systems. The Office is responsible for long-range planning and analyses to define new and improved systems processes to support SSA's long-term AMSI needs. It directs the coordination of user requirements with private contractors, the SSA user community and the State Disability Determination Services to ensure efficient and effective administration of MI needs and related systems support. OIM directs a comprehensive data base administration program for the control of SSA's AMSI data bases. It develops technical specifications for the acquisition, implementation and operation of AMSI, ADP and telecommunications resources.

I. The Office of Telecommunications (OTC) (S4L) plans, implements and evaluates SSA's communications technology and systems. It is responsible for evaluating current and emerging communications technologies and for designing, acquiring, implementing, operating and maintaining new integrated telecommunications systems combining voice, data, video, facsimile, and other SSA communications requirements. OTC directs, manages and coordinates the planning, analysis, design, acquisition, implementation, operation and maintenance of SSA's existing telecommunications systems. It manages the telecommunications operations complexes located at the Central Office, Regional Offices and field sites. It is responsible for SSA's comprehensive voice communication management program.

Subchapter S4E—Office of Systems Operations

S4E.00 Mission
S4E.10 Organization
S4E.20 Functions

Section S4E.00 *The Office of Systems Operations*—(Mission): The Office of Systems Operations (OSO) directs, manages and coordinates the planning, acquisition, implementation, security, operation and maintenance of SSA's computer systems operations. It directs and coordinates the transition, implementation and operation of current/ongoing operating systems support software, including diagnostic software. OSO coordinates with OTC in the design and implementation of the critical interface between OTC's telecommunications facilities and OSO's teleprocessing complexes. OSO manages the implementation of production application software at all network platforms and interfaces with OSDD and OIM in the transition and implementation of redesigned programmatic, and administrative systems to progressively replace existing application systems. OSO administers all activities pertaining to configuration management, change management and problem management. It manages the computer operations complex which process SSA's programmatic support, administrative, MI and statistical application systems. OSO conducts continuing assessments and engineering analyses of the computer operations, as well as equipment performance analyses and coordinates with OSDD the implementation of necessary improvements to existing resources. It directs and coordinates the activities associated with the planning, management, acquisition, procurement and renewal of ADP equipment, software and technical services for SSA to maintain operational systems and to prevent progressive deterioration. OSO develops, controls and implements operational plans which include the preparing of technical specifications, evaluation criteria, acceptance test criteria, facilities engineering plans and budget estimates to maintain operational systems. It advises the Deputy Commissioner, SSA Executive Staff and external monitoring

authorities such as the General Services Administration, the General Accounting Office, the Office of Management and Budget and Congress on SSA's computer systems operations.

Section S4E.10 *The Office of Systems Operations*—(Organization): The Office of Systems Operations (S4E), under the leadership of the Associate Commissioner for Systems Operations, includes:

A. The Associate Commissioner for Systems Operations (S4E).

B. The Deputy Associate Commissioner for Systems Operations (S4E).

C. The Immediate Office of the Associate Commissioner for Systems Operations (S4E).

D. Division of Systems User Services and Facilities (S4EE).

E. The Division of Computer Operations Production Control (S4EG).

F. The Division of Operational Support Software (S4EH).

G. The Division of Operational Capacity Performance Management (S4EJ).

H. The Division of Standards and Control (S4EK).

I. The Division of Operational Resource Management (S4EL).

J. The Division of Integration and Environmental Testing (S4EM).

K. The Division of Teleprocessing Systems Operations (S4EN).

Section S4E.20 *The Office of Systems Operations*—(Functions):

A. The Associate Commissioner for Systems Operations (S4E) is directly responsible to the Deputy Commissioner, Systems, for carrying out the OSO mission and providing general supervision to the major components of OSO.

B. The Deputy Associate Commissioner for Systems Operations (S4E) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Systems Operations (S4E) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. Division of Systems User Services and Facilities (S4EE).

1. Provides all computer hardware-related support for OSO and coordinates the installation of all major hardware and software. Plans and coordinates all computer systems installations and relocations. Provides technical evaluation support for the procurement, acceptance, testing, installation and implementation of equipment and software.

2. Plans and coordinates computer facility environmental systems requirements. Provides computer facilities support for all Agency computer processing centers.

3. Serves as focal point for all user systems problems, questions, complaints and corrective actions regarding the full range of production services. Establishes quality standards for selected operations areas and provides enforcement of the standards. Measures operations performance in providing timely output services as delineated in the User Service Agreements.

4. Provides operational status and workload information to field offices and payment centers using the SSA telecommunications network. Provides statistical analyses of, and reports on, operations performance at meeting both user and computer center management service objectives.

5. Provides a centralized contact for the management of all online storage media resources in the National Computer Center (NCC) and Program Service Centers. Manages Direct Access Storage Device (DASD) resources to maintain the integrity, reliability and performance of state-of-the-art storage technology. Responsible for DASD backup and recovery operations. Advises senior management of all aspects of storage media management.

E. The Division of Computer Operations Production Control (S4EG).

1. Manages and processes all of SSA's program/mission-oriented and MI batch and online batch production workloads and administers effective resource utilization.

2. Manages and directs the automated magnetic media processes and directs the activity of the magnetic tape library function. Serves as the focal point for management of all magnetic tape storage resources, both internal and external to the Agency.

3. Participates in the design reviews of proposed application systems to assure operational support and control aspects are being considered. Analyzes applications systems to assure compliance with systems standards. Approves applications systems for production status and incorporates them into the production library. Before acceptance of any new batch applications, performs preproduction testing to minimize unexpected impacts to existing schedules and to ensure the most optimum use of existing data center resources.

4. Manages all incoming and end-deliverable products of data processing operations within both the test and production environments. Responsible for the operations and control of the print and punch products produced in the NCC. Ensures the quality, timeliness and accurate delivery of all distributed information, including transmitted data.

5. Represents OSO and Systems in the preparation and revision of Service Level Agreements between Systems and its users.

F. The Division of Operational Support Software (S4EH).

1. Directs the analysis, design, development, implementation and maintenance of computer operating systems and locally prepared subroutines in support of programmatic workloads for SSA's central data processing center.

2. Designs, develops, implements and maintains production control ADP systems which supervise media library controls and automates the scheduling of the production workload.

3. Directs the analysis, evaluation, selection, implementation and maintenance of a wide variety of vendor proprietary and locally provided utility software to support the programmatic production and MI workloads of the central and remote data centers.

4. Supports other SSA components with user liaison, systems development, technical and operational problem resolution.

G. The Division of Operational Capacity Performance Management (S4EJ).

1. Evaluates computer performance and monitors resource utilization to ensure that OSO's operational computer systems capacity is utilized effectively and efficiently. Ensures that OSO's systems performance objectives are being met and that data bases are efficiently implemented. Prepares recommendations to OSO management and as directed, performs similar functions for other SSA components.

2. Ensures that sufficient ADP capacity is available to process present and future workloads, coordinating decisions on target systems for new/modified workloads and systems configuration changes.

3. In conjunction with other Deputy Commissioner, Systems (DCS) components, develops an ADP Capacity Plan for 1-, 2- and 5-year timeframes.

4. Provides advice and services to other OSO components in the use of computer interpretation of reports and data resulting from evaluation and utilization studies.

5. Uses operational research tools to investigate operational efficiency problems and develop workload and utilization relationships.

H. The Division of Standards and Control (S4EK).

1. Develops, publishes and implements standards and operating procedures within OSO. Develops and controls enforcement mechanisms to ensure adherence to operational standards. Administers the Federal systems standards program within OSO.

2. Directs the planning, implementation and evaluation of the systems security program in OSO and SSA privacy and security policies.

3. Serves as OSO liaison with other SSA components in matters of privacy and security. Provides for the security of all OSO resources in the centralized OSO computer boundaries established by the Deputy Commissioner for Finance, Assessment and Management.

4. Provides planning, evaluation and oversight on disaster recovery capabilities in order to maintain continuity of data center operations. Develops, implements and evaluates systems and procedures for the security and protection of data.

5. Formulates an OSO-wide Systems Plan and assigns responsibility to OSO components for various parts of the Plan. Works with OSO components to evaluate their proposed systems objectives in terms of technical feasibility, availability of resources and systems costs. Identifies the major OSO activities and resources needed to support these objectives. Directs and coordinates the OSO technical workpower, equipment and other special costs for the SSA budget process and justifies these on the basis of the ADP plan.

6. Coordinates OSO activities related to the SSA ADP Plan. Directs the preparation of detailed project plans including resource estimates for projects of which OSO has the lead. Monitors progress and use of workpower and equipment resources by OSO components against their approved plans. Develops standard methods for project management and assists OSO components in their use.

7. Manages the OSO technical training program. Assesses needs, and formulates and executes strategies to upgrade individual knowledge and skill levels.

8. Performs systems analysis, configuration design, software selection, implementation and procurement support for micro-computers, minicomputers and computer graphics systems and equipment for various components of OSO. Provides state-of-the-art technical expertise including the evaluation of new and existing systems activities and provides support for enhancements, modifications, design and/or redesign. Research and analyze emerging office systems developments to ensure technology awareness and provide supporting systems development, design, planning and implementation. Provides systems training support within OSO.

I. The Division of Operational Resource Management (S4EL).

1. Directs OSO's participation in the Information Technology Systems (ITS) procurement process.

2. Performs technical and cost reviews of all OSO/ITS procurements. Performs technical review of procurement proposals for ITS resources.

3. Provides support for ITS Technical Evaluation Committees.

4. Supports contract administration for all OSO/ITS contracts.

5. Provides technical support to Project Officers in the development, modification and administration of ITS contracts.

6. Directs the renewal process for existing lease and maintenance contracts for ITS and telecommunications equipment and services.

7. Manages the fiscal administration of all ITS contracts, collecting, analyzing and reporting performance data to support required fiscal and other contractual proceedings.

8. Manages a centralized inventory of all SSA ITS and telecommunications equipment, and manages the ITS excess equipment process.

9. Provides for the centralized certification and authorization for the lease and maintenance of SSA's ITS and telecommunications equipment.

10. Provides necessary staff support to all users within OSO for the development of procurement documents and documentation.

11. Develops and maintains the OSO macroprocurement plan which relates to planned acquisitions of ITS equipment, software, system design and system support services.

12. Serves as Project Officer for ITS recompetition/ongoing maintenance contracts.

13. Provides technical support to OSO and other SSA components during major procurement activities. Ensures that procurement documentation complies with directives published by SSA and higher monitoring authorities. Provides recommendations for disposition of procurement proposals for ITS resources.

J. The Division of Integration and Environmental Testing (S4EM).

1. Directs and controls all activities with the release of new or enhanced versions of host programmatic and telecommunications-related software. Enforces software acceptance and certifications standards. Directs the initial staging of program modules to be tested, including generation of executable code.

2. Develops and maintains extensive test data bases for use in the acceptance, integration and environmental testing processes. Develops and incorporates the use of software simulators and emulators in software acceptance testing.

3. Directs the integration testing of new or enhanced communications host software, remote network/terminal and microprocessor software and network communications software. Participates in the movement and/or migration of software systems and associated data files between complexes and processing components.

4. Directs environmental testing to ensure that all new or enhanced software is compatible with changing hardware configurations. Directs the integration of new or enhanced SSA programmatic software. Administers the generation of finalized testing results for evaluation. Directs software performance evaluations, parallel testing, timing studies, inter/intrasystem relationship and testing trend analysis.

5. Responsible for administering ADP hardware integration and acceptance testing.

6. Provides the checks and balances on SSA's ADP systems and equipment procurement for complying with contractual performance requirements throughout the life cycle of the procurement.

7. Directs the design, development and implementation of software to gather and report statistical information on the functioning of telecommunications networks. Distributes the information to other SSA components to report on network performance and equipment utilization.

8. For all teleprocessing application software, manages and controls libraries, controls and migrates software into the production environment and designs and develops backup and recovery procedures.

9. Administers all activities pertaining to configuration management for the OSO change management system.

10. Monitors problem determination and resolution flow for all software, hardware and environmental failures that occur in the NCC and other Agency data processing centers.

K. The Division of Teleprocessing Systems Operations (S4EN).

1. Procures, installs, modifies and tunes all online/batch teleprocessing monitor systems software, vendor support products and Data Base Management Systems. Designs, modifies, implements and installs

specialized teleprocessing system software to support new teleprocessing application software including inhouse modifications.

2. Directs all teleprocessing system software problem determination and resolution.

3. Participates in the establishment of teleprocessing software standards for application design and for the use of data base packages within the SSA network environment. Formulates policy for data base applications software systems and monitors and optimizes performance of that software.

4. Coordinates with other OSO components in addressing teleprocessing software concerns regarding system capacity issues and system configuration proposals.

5. Develops teleprocessing software procedures for computer operations components.

6. Manages all online teleprocessing and Data Base Management Systems interface regions.

7. Operates and maintains an integrated systems and technical coordination control center and help desk to coordinate problem identification and resolution activities with the Office of Telecommunications.

Subchapter S4G—Office of Systems Design and Development

S4G.00 Mission
S4G.10 Organization
S4G.20 Functions

Section S4G.00 *Office of Systems Design and Development*—(Mission): OSDD directs the design, development and maintenance of all programmatic software to support SSA's social insurance and income maintenance programs. It is responsible for a comprehensive software engineering program and oversees the implementation of standards, methods and procedures in connection with this program. OSDD directs and coordinates a comprehensive software configuration management program and manages a detailed project control system for OSDD software development projects. It directs SSA's data base administration management program and designs, develops and, with OSO, implements the production of all new or improved data base oriented systems. It develops policies and procedures, prepares procurement documents for and oversees acquisition of software packages and tools and software support services. OSDD plans and directs a software development facility to support applications development personnel. It serves as liaison with other SSA components and external monitoring authorities including the Deputy Commissioner for Human Resources, General Services Administration, General Accounting Office and Congress on SSA applications systems planning and software and data base development.

Section S4G.10 *Office of Systems Design and Development*—(Organization): The Office of Systems Design and Development, under the leadership of the Associate Commissioner for Systems Design and Development, includes:

A. The Associate Commissioner for Systems Design and Development (S4G).

B. The Deputy Associate Commissioner for Systems Design and Development (S4G).

C. The Immediate Office of the Associate Commissioner for Systems Design and Development (S4G).

Section S4G.20 *Office of Systems Design and Development*—(Functions):

A. The Associate Commissioner for Systems Design and Development (S4G) is directly responsible to the Deputy Commissioner, Systems, for carrying out the OSDD mission and providing general supervision to the major components of OSDD.

B. The Deputy Associate Commissioner for Systems Design and Development (S4G) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Systems Design and Development (S4G) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

1. OSDD plans and manages the Software Engineering Facility (SEF) mainframe and OSDD LAN/workstation configurations to provide an integrated set of automated tools, techniques and services in support of SSA's application development community. Provides support for both programmatic and MI applications throughout each phase of the systems development life cycle, including analysis, design, development, testing, validation, production and maintenance. Plans, designs, develops, selects and implements automation methods and standards for the design and development stages of the Software Engineering Technology. Provides for automated software configuration management, quality control and library migration. Provides technical assistance to SEF users with specific emphasis on software tools used by the programming community. Acts as liaison between the SEF user community and the computer center to ensure that user needs are being met. Monitors SEF performance to ensure that appropriate service levels are continuously maintained; performs impact analyses and validation of proposed software development tools before they are installed on the SEF; and manages the SEF DASD pool. Also manages a security program for the SEF which includes administration of SSA's security software, control of system access and coordination of component Security Officer activities.

2. OSDD directs the design and development of all new or improved in-house file access software for data base/master record files, including selection and installation of commercial data base management packages in connection with systems modernization and design/development initiatives. It identifies, evaluates and manages software improvement projects which are implemented internally by OSDD or assigned to private contractors. Prepares draft requirements statements and statements of work for the acquisition of software packages/tools and software contractor support services. It designs and develops new software systems/subsystems based on systems modernization plans or user requirements. It designs and develops all new or improved in-house applications support software designed to promote data base/master record data independence. It is responsible for all analyses in support of data standardization and data quality improvement/ assurance in connection with software improvement and design and development initiatives. It establishes and maintains a data dictionary to support and control its function.

3. OSDD plans, directs and coordinates the development of operational ADP systems which directly support SSA's social insurance and income maintenance programs. Based on user requirements developed by OSR, it develops and modifies programmatic applications software systems, including systems analysis and design, development, documentation, testing, implementation and maintenance. Coordinates systems development activities with OSR to assure full integration with OSDD and SSA plans. It assures implementation of systems operating policies by developing detailed standards, methods and procedures consistent with OSDD directives and standards. Serves as liaison with other SSA components, other governmental agencies and private organizations on operational systems

development and maintenance functions.

Chapter S4H—Office of Systems Requirements

S4H.00 Mission
S4H.10 Organization
S4H.20 Functions

Section S4H.00 *Office of Systems Requirements*—(Mission): The Office of Systems Requirements (OSR) directs, develops and coordinates organizational information requirements and functional requirements for new systems and modifications to existing systems in direct support of SSA programs. OSR is responsible for long-range planning and analyses to define new and improved systems processes in support of user requirements and maintains a comprehensive, updated and integrated set of system requirement specifications. OSR directs validation of systems operations against user-defined requirements and performance criteria, and approves the resulting system for operational acceptance. It directs the development of procedures and instructions to support user needs in effective implementation of all systems. OSR is also responsible for all SSA-wide data administration including the overall operation of the SSA Data Resource Management Program. OSR develops security standards and ensures implementation of the standards within OSR. It directs the evaluation of the effect of proposed legislation, policies or regulations to determine the impact on SSA systems and develops information requirements and procedures as they relate to such legislation, regulations and SSA policy directives. It directs the coordination of user requirements with SSA central and regional operations to ensure the efficiency and effectiveness of program information needs and overall systems support. Based on input from users, OSR translates organizational information requirements and priorities into plans and, in line with OSDD and OSO systems targets, develops SSA's annual Automated Data Processing (ADP) Plan and directs development and maintenance of the plan. OSR serves as primary contact and advocate for the SSA user community on issues concerning the development of organizational information requirements, functional specifications and supporting operational procedures and instructions. OSR provides system support for the Agency's programmatic systems interactive validation environment, project management and control, resource management, ITS Budget/ADP Plan coordination, Agency Strategic Plan and workload scheduling.

Section S4H.10 *Office of Systems Requirements*—(Organization): The Office of Systems Requirements, under the leadership of the Associate Commissioner for Systems Requirements, includes:

A. The Associate Commissioner for Systems Requirements (S4H).

B. The Deputy Associate Commissioner for Systems Requirements (S4H).

C. The Immediate Office of the Associate Commissioner for Systems Requirements (S4H).

1. The Data Administration, Methods, Modeling and Processes Staff (S4H–2).

D. The Division of Claims and Control (S4HE).

E. The Division of Data Support and Enumeration (S4HG).

F. The Division of Earnings Control and Processing (S4HH).

G. The Division of Earnings Correction and Certification (S4HJ).

H. The Division of Payment Processes (S4HK).

I. The Division of Planning and Support (S4HL).

J. The Division of Requirements Support and Security (S4HM).

K. The Division of RSDI Postentitlement Systems (S4HN).

L. The Division of Supplemental Security Income Systems (S4HP).

M. The Division of Validation (S4HQ).

Section S4H.20 *The Office of Systems Requirements*—(Functions):

A. The Associate Commissioner for Systems Requirements (S4H) is directly responsible to the Deputy Commissioner, Systems, for carrying out the OSR mission and providing general supervision to the major components of OSR.

B. The Deputy Associate Commissioner for Systems Requirements (S4H) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Systems Requirements (S4H) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

1. The Data Administration, Methods, Modeling and Processes Staff (S4H–2).

a. Responsible for all SSA-wide data administration, including responsibility for the overall operation of the SSA Data Resource Management Program.

b. Responsible for the development of Systems-wide policies, procedures and standards for the specific OSR phases of the life cycle development process and development of methods to assure the quality of systems products.

c. Serves as the focal point for coordinating the development and maintenance of the Software Engineering Technology (SET) for all OSR standards and procedures.

d. Responsible for providing assistance to the configuration management processes by developing strategies and guidelines for baselining automated functional requirements (FR) data bases.

e. Responsible for the integration of data and process models, as well as FRs and software design.

f. Responsible for the development of requirements for standardizing data collection across application areas.

g. Responsible for the development of proposals and recommendations for the new software engineering methods for use at SSA, based on extensive research into various methodologies utilized by other data processing installations.

h. Responsible for providing program expertise and process management direction and oversight for cross-cutting segments for all SSA systems initiatives, legislative initiatives or projects involving the initiation, interpretation and/or the implementation of administrative and programmatic systems.

i. Responsible for providing a variety of high level coordinative, analytical, consultative and advisory services to SSA as a whole relative to very visible and complex systems initiatives.

D. The Division of Claims and Control (S4HE).

1. Plans, develops, evaluates and implements organizational information requirements, functional specifications, procedures, instructions and standards, including security and fraud detection for the retirement and disability initial claims processes, control of claims folders and claims-related material, the transaction control operation, RSDI disallowances, appeals processes and management data reports.

2. Participates, with the Division of Validation (DV), in the planning and conducting of integrated validation tests of new systems and modifications to existing systems against user-defined requirements and performance criteria, and certifies that the changes are in conformance with functional specifications.

3. Develops and maintains a comprehensive, updated and integrated set of systems requirements specifications for the claims and control process.

4. Performs requirements analyses and definition, conveying SSA-approved user needs and requirements in the area of claims and control to

OSDD for development of ADP specifications and systems design.

5. Evaluates legislative proposals, regulations and policy changes affecting the claims and control process.

6. Represents users in resolving system discrepancies and errors relating to existing claims and control processes with OSDD and OSO representatives.

7. Coordinates user requirements with SSA central and field offices to ensure the efficiency and effectiveness of program information needs and overall systems support.

E. The Division of Data Support and Enumeration (S4HG).

1. Plans, develops, validates, evaluates and implements organizational information requirements, functional specifications, procedures, instructions and standards, including security and fraud detection for data exchanges between SSA systems and other Federal and State agencies; for data base access to programmatic information; for access to SSA main and sub menus; for Telecommunications support; for the establishment, correction, maintenance and verification of Social Security numbers; for the issuance of new or replacement cards; for the updating of death data; and for the Death Master, News and Tride files, serves as the lead component in OSR for development of the Integrated Client database.

2. Participates, with DV, in the planning and conducting of integrated validation tests of modifications to existing systems against user-defined requirements and performance criteria, and certifies that the changes are in conformance with functional specifications.

3. Develops and maintains a comprehensive, updated and integrated set of systems requirements specifications for the enumeration process and for interface and data base access processes.

4. Performs requirements analyses and definition, conveying SSA-approved user needs and requirements in the areas of enumeration, data base accesses and interfaces to OSDD for the development of ADP specifications and systems design.

5. Evaluates legislative proposals, regulations and policy changes affecting the enumeration process, system interfaces programmatic data base queries.

6. Represents users in resolving system discrepancies and errors relating to the existing interface, enumeration processes and programmatic queries with OSDD and OSO representatives.

7. Coordinates user requirements with SSA central and field offices and Federal and State agencies to ensure the efficiency and effectiveness of program information needs and overall systems support.

F. The Division of Earnings Control and Processing (S4HH).

1. Plans, develops, evaluates and implements organizational information requirements, functional specifications, procedures, instructions and standards, including those relating to security and fraud detection, for reporting private and public sector earnings data; for establishment, correction and maintenance of earnings records for Trust Fund accounting information provided to the Department of the Treasury; for reconciling disagreements and resolving discrepancies; for the establishment and maintenance of employer identification information; for the classification of employers; for the employer reporting control and SSA/IRS reconciliation process; and for State and local reporting audit and reconciliation.

2. Participates, with DV, in the planning and conducting of integrated validation tests of modifications to existing systems against user-defined requirements and performance criteria, and certifies that the changes are in conformance with functional specifications.

3. Develops and maintains a comprehensive, updated and integrated set of systems requirements specifications for the earnings reporting and maintenance process, State and local contribution and liability, and the employer identification and control process.

4. Performs requirements analyses and definition, conveying SSA-approved user needs and requirements in the areas of earnings reporting, State and local contributions and liability, and employer identification and control to OSDD for the development of ADP specifications and system design.

5. Evaluates legislative proposals, regulations and policy changes affecting the earnings reporting process, State and local contributions and liability, and the employer identification and control process.

6. Represents users in resolving systems discrepancies and errors relating to the existing earnings reporting and maintenance process, existing State and local contributions and liability, and employer identification and control processes with OSDD and OSO's representatives.

7. Coordinates user requirements with SSA central and field offices and Federal and State agencies to ensure the efficiency and effectiveness of program information needs and overall systems support.

G. The Division of Earnings Correction and Certification (S4HJ).

1. Plans, develops, evaluates and implements organizational information requirements, functional specifications, procedures, instructions and standards, including those relating to security and fraud detection for use, access and exchange of earnings; for providing certified earnings data to support Titles II and XVI programmatic processes; for issuing earnings and benefit estimate statements; for reconciling disagreements and resolving discrepancies related to earnings data; and for reinstating earnings data from suspense.

2. Participates, with DV, in the planning and conducting of integrated validation tests of new systems or modifications to existing systems against user-defined requirements and performance criteria, and certifies that the changes are in conformance with functional specifications.

3. Develops and maintains a comprehensive, updated and integrated set of system requirements specifications for earnings data use, item correction and data accessing processes.

4. Performs requirements analyses and definition, conveying SSA-approved user needs and requirements in the area of earnings data use, item correction and data accessing processes to OSDD for the development of ADP specifications and systems design.

5. Evaluates legislative proposals, regulations and policy changes affecting use and maintenance of earnings data and data accessing processes.

6. Represents users in resolving system discrepancies and errors relating to earnings data uses and data accessing processes with OSDD and OSO representatives.

7. Coordinates user requirements with SSA central and field offices and Federal and State agencies to ensure the efficiency and effectiveness of program information needs and overall system support.

H. The Division of Payment Processes (S4HK).

1. Plans, develops, evaluates and implements organizational information requirements, functional specifications, procedures, instructions and standards, including security and fraud detection, for the Master Beneficiary Record (MBR) update operations; Titles II and XVI check-related areas; the taxation process; overpayment, underpayment, misuse, fraud and civil suit actions; and benefit-related accounting operations.

2. Participates, with DV, in the planning and conducting of integrated validation tests of modifications to

existing systems against user-defined requirements and performance criteria, and certifies that the changes are in conformance with functional specifications.

3. Develops and maintains a comprehensive, updated and integrated set of system requirements specifications for the payment process.

4. Performs requirements analyses and definition, conveying SSA-approved user needs and requirements in the area of Titles II and XVI payment processes to OSDD for the development of ADP specifications and systems design.

5. Evaluates legislative proposals, regulations and policy changes affecting the payment process.

6. Represents users in resolving system discrepancies and errors relating to existing payment processes with OSDD and OSO representatives.

7. Coordinates user requirements with SSA central and field offices and Federal and State agencies to ensure the efficiency and effectiveness of program information needs and overall systems support.

I. The Division of Planning and Support (S4HL).

1. Directs development, operation and maintenance of Management Support Systems which provide automated support to OSR and DCS planning, monitoring, project and resource management functions. Analyzes management requirements and needs of other OSR components, and develops appropriate systems support capability. Acquires necessary ADP capability to meet user needs through equipment acquisition or timesharing agreements. Works with OSPI and OIM contractors and other involved components to develop, maintain and implement systems' management support and control processes to integrate OSR's management support systems and processes systems-wide.

2. Provides standards, procedures, systems support and technical assistance to OSR project managers to facilitate preparation of work plans. Directs review of project work plans to ensure completeness, compatibility with standards and managerial directives, and requirements and conformity to the ADP Plan, Configuration Control Board (CCB) decisions and other management decisions. Coordinates systems-wide approval of new and modified plans, and ensures that differences and conflicts among components are resolved. Provides for monitoring progress of work projects against work plans and reporting status to systems management.

3. Develops procedures and works with systems management to develop, maintain and implement configuration control and systems change control processes. Directs review and control of requests for modification of SSA systems and documentation of problems identified in the validation and production of application software environments. Ensures that all systems change requests are in accordance with ADP Plan and CCB decisions and correspond to approved project work plans. Monitors change requests through the systems life cycle, and ensures that all necessary concurrences and approvals are obtained.

4. Monitors DCS workloads, resource estimates and resource usage and provides comprehensive resource information to DCS management to support workload priority decisions. Directs resource estimation and reporting processes for OSR.

5. Plans and analyzes information and resource requirements to determine the requirements for new or improved systems processes to support long-term agency needs, and develops a final list of recommended requirements for new or improved systems, setting priorities among the requirements.

6. Develops, maintains and publishes the overall approved SSA plan for fulfilling short-term and long-range information system requirements, including determining, classifying and ranking systems needs of all SSA components, and recommends final priorities for approval. Documents all critical issues having major Agencywide impact and forwards them to the Associate Commissioner for Systems Requirements for resolution.

7. Coordinates approved system requirements changes for pre-claims and claims areas with system modernization plans maintained by OSDD. Coordinates OSR input to Agency and DCS planning processes.

8. Coordinates Modernized Systems Operating Manual (MSOM) activities including Version Directory Management, Indexing, Cataloging, Scheduling and Transmittal release and manages MSOM on CD–ROM activities.

9. Coordinates the evaluation of legislative proposals affecting SSA programs for DCS and performs implementation monitoring.

J. The Division of Requirements Support and Security (S4HM).

1. Develops controls, auditability and security standards for the organizational information requirements for all SSA systems, and ensures the implementation of the standards within all areas of OSR's functional responsibilities. Also, develops methods to improve control and security features based on established standards and cost/benefit considerations.

2. Reviews FR documents, requests for systems modifications, procedural issuance and related material developed by OSR components to determine adherence to SSA and the Office of Management and Budget standards relating to the security and integrity of SSA data processing and information systems.

3. Leads and/or coordinates reviews of programmatic processes and systems to identify weaknesses in control, auditability and security features, makes recommendations for improvement, and coordinates activities with other SSA components to ensure that approved recommendations are implemented.

4. Provides the capability for, and performs dynamic testing and static testing of, all programmatic systems in support of SSA and oversight Agency requirements, as well as in support of OSR control and audit process reviews.

5. Develops requirements for, and authorizes systems software changes to, various Control and Audit Test Facility software modules and programmatic modules used in the performance of static and dynamic testing, and validates those changes.

6. Coordinates with users and all systems components on Privacy Act and Freedom of Information Act (FOIA) issues to ensure that FRs and procedures are in conformance with that legislation.

7. Performs requirement analyses and definition and conveys SSA approved user needs and requirements in the area of audit data collection to OSDD for the development of ADP specifications and systems designs.

8. Reviews SSA approved security access control requirements to ensure that they reflect any recent additions or modifications to an applications functionality and conveys the requirements to OSO for an update of the access control apparatus.

9. Performs security, functional security, access control, Individuals of Extraordinary National Prominence and Social Security Number Block validations, and audit trail data collection validations to ensure that profiles are accurate, security does not interfere with the functionality of an application and audit trail data are properly collected.

10. Develops requirements for and validates software changes to the TOP SECRET Administration process.

11. Implements and supports the appropriate standards and procedures for functional requirements definition and analysis stages through the use of

Computer-Aided Software Engineering (CASE) tools.

12. Supports the procurement, use and integration of automated tools in support of OSR's development and maintenance of FRs, documents and data models for SSA's programmatic systems.

13. Defines, designs, develops and implements computer programs and automated processes which support the development and maintenance of integrated programmatic data processing systems.

14. Develops, maintains, and provides technical support of hardware, software and all networking functions within OSR.

15. Performs user analyses, develops functional requirements and validates PC programmatic applications and Expert systems that run on SSA's Intelligent Work Station/Local Area Network (IWS/LAN) platform to support its field offices nationwide.

K. The Division of RSDI Postentitlement Systems (S4HN).

1. Plans, develops, evaluates and implements organizational information requirements, functional specifications, procedures, instructions and standards, including security and fraud detection, for ADP of RSDI postentitlement reports and events (work notices, student reports, etc.) that involve manual/automated suspensions, terminations or reinstatements; related beneficiary notices; address and/or representative-payee changes and Medicare enrollment, withdrawal and termination actions; critical case processing; attorney fees; and cyclical workloads (AERO, ARF/DRC, Earnings Enforcement), Black Lung processes and Drug Addiction and Alcohol (DA&A) processes.

2. Participates, with DV, in the planning and conducting of unit validation tests of modifications to existing systems against user-defined requirements and performance criteria, and certifies that the changes are in conformance with functional specifications.

3. Develops and maintains a comprehensive, updated and integrated set of system requirements specifications for the RSDI Postentitlement process.

4. Performs requirements analyses and definition, conveying SSA-approved user needs and requirements in the area of RSDI Postentitlement to OSDD for the development of ADP specifications and systems design.

5. Evaluates legislative proposals, regulations and policy changes affecting the RSDI Postentitlement process.

6. Represents users in resolving system discrepancies and errors relating to the existing RSDI Postentitlement process with OSDD and OSO representatives.

7. Coordinates user requirements with SSA central and field offices and Federal and State agencies to ensure the efficiency and effectiveness of program information needs and overall systems support.

L. The Division of Supplemental Security Income Systems (S4HP).

1. Plans, develops, evaluates and implements organizational information requirements, functional specifications, procedures, instructions and standards, including security and fraud detection for Title XVI (SSI) processes and redetermination operations.

2. Participates, with DV, in the planning and conducting of integrated validation tests of modifications to existing systems against user-defined requirements and performance criteria, and certifies that the changes are in conformance with functional specifications.

3. Develops and maintains a comprehensive, updated and integrated set of system requirements specifications and validation tests of systems changes against user requirements and performance criteria and certifies that changes are in conformance with specifications for assigned areas of responsibility.

4. Performs requirements analyses and definition, conveying SSA-approved user needs and requirements in the area of SSI initial claims and posteligibility operations, computation and record balancing operations, notices and redeterminations to OSDD for the development of ADP specifications and systems design.

5. Evaluates legislative proposals, regulations and policy changes affecting the SSI process.

6. Represents users in resolving system discrepancies and errors relating to the existing SSI process with OSDD and OSO representatives.

7. Coordinates user requirements with SSA central and field offices and Federal and State agencies to ensure the efficiency and effectiveness of program information needs and overall systems support.

M. The Division of Validation (S4HQ).

1. Designs, develops, evaluates and implements automated techniques and methodologies for the validation and systems acceptance phases of system development in accordance with established standards and in support of modified operational systems and system modernization efforts.

2. Identifies and documents requirements for automated validation tools and validation data bases.

3. Designs, develops, evaluates and implements validation files and historical data bases, validation tools and model test plans for use by OSR components in conducting integrated validation tests.

4. Executes integration/validation tests and analyzes the results to ensure that all activities have been performed and all necessary outputs have been produced in order to assist in the validation of programmatic systems developmental, cyclical, and maintenance projects.

5. Coordinates with other system components and users in evaluating the analysis of the validation.

6. Performs integration and pilot validations, including operational procedures, to ensure that the functional requirements have been met and that the systems are free of operating faults.

7. Certifies resulting systems for operational acceptance.

8. Constructs periodic software version releases for modified operational systems and software modernization projects using systems change control procedures.

Subchapter S4J—Office of Systems Planning and Integration

S4J.00 Mission
S4J.10 Organization
S4J.20 Functions

Section S4J.00 *Office of Systems Planning and Integration*—(Mission): The Office of Systems Planning and Integration (OSPI) directs and conducts comprehensive systems integration and systems planning processes. It provides management leadership and direction to systems activities in the areas of software engineering technology and systems engineering management, including configuration management and quality assurance. It carries out a variety of technology assessment functions, including the development of pilot projects to evaluate specific technology applications in SSA. The Office develops the Information Technology Systems budget for Systems, prepares the detailed budget submission and develops monitoring and tracking systems. It also develops and monitors systems security policy for the systems community, and coordinates technical training activities for SSA Systems components.

Section S4J.10 *Office of Systems Planning and Integration*—(Organization): The Office of Systems Planning and Integration under the leadership of the Director for Systems Planning and Integration, includes:

A. The Director, Office of Systems Planning and Integration (S4J).

B. The Deputy Director, Office of Systems Planning and Integration (S4J).

C. The Immediate Office of the Director, Office of Systems Planning and Integration (S4J).

D. The Division of Systems Engineering (S4JA).

E. The Division of Systems Planning (S4JC).

Section S4J.20 *Office of Systems Planning and Integration*—(Function):

A. The Director, Office of Systems Planning and Integration (S4J) is directly responsible to the Deputy Commissioner, Systems for carrying out the Office of Systems Planning and Integration's mission and managing its respective components.

B. The Deputy Director, Office of Systems Planning and Integration (S4J) assists the Director in carrying out his/her responsibilities and performs other duties as the Director may prescribe.

C. The Immediate Office of the Director, Office of Systems Planning and Integration (S4J) provides internal operations and management analysis staff support and assistance to the Director, the Deputy Director and all of the Office of Systems Planning and Integration components.

D. The Division of Systems Engineering (S4JA) is responsible for the development of Systems-wide policies, procedures and standards for all phases of the systems life cycle development process and systems security and integrity; development of methods to assure the quality of systems products; and development and maintenance of the Software Engineering Technology, which includes the policies, standards, guidelines, procedures, tools and training elements pertaining to the following software life cycle stages: requirements definition and analysis, design, programming, validation, operation and review. The Division develops proposals and recommendations for new software engineering methods for use at SSA, based on extensive research into various methodologies utilized by other data processing installations. Develops and maintains quality assurance procedures and mechanisms to assure that software products satisfy user requirements and conform to the defined standards, guidelines and procedures of SSA systems. The Division is responsible for assessment of new technologies and planning for and acquiring technical training for systems personnel. It analyzes the current SSA data processing environment, future systems requirements and technology forecasts to evaluate the applicability of new technologies to SSA processes. It develops pilot projects to evaluate technologies, particularly in the area of artificial intelligence and expert systems, for selected applications. The Division evaluates technical and nontechnical training needs for all Systems offices and coordinates and evaluates vendor provided and inhouse training as applicable.

E. The Division of Systems Planning (S4JC) is responsible for development of SSA's Information Systems Plan (ISP) which sets forth SSA's major systems goals and objectives and the initiatives/projects to achieve them. It develops the Systems 5-year ITS plan and budget. It directs the fiscal management and tracking of ITS procurements and keeps management abreast of the status of all ITS acquisitions, systems life cycle costs and full-time equivalent utilization. The Division functions as an advisor and consultant to the Director, Office of Systems Planning and Integration, and the DCS, on all matters related to the development and execution of the ISP and the 5-year plan and budget. The Division is responsible for ongoing, formal change control procedures for the ISP and monitoring and reporting progress toward ISP project goals. It identifies major systems integration issues and develops alternative solutions and recommendations to the DCS. It also designs and maintains software systems such as the Resource Accounting System to track and report on personnel and computer resource utilization.

The Division operates the Systems Management Center, a fully-automated multimedia briefing center, and designs briefing material for SSA Executive Staff.

Subchapter S4K—Office of Information Management

S4K.00 Mission
S4K.10 Organization
S4K.20 Functions

Section S4K.00 *The Office of Information Management*—(Mission): The Office of Information Management (OIM) provides overall management of the SSA-wide administrative, management and statistical information systems. It is responsible for long-range planning and analyses to define new and improved systems processes to support SSA's long-term AMSI needs. Directs the coordination of user requirements with private contractors, the SSA user community and the State Disability Determination Services to ensure efficient and effective administration of MI needs and related systems support. Directs a comprehensive data base administration program for the control of SSA's AMSI data bases. Develops technical specifications for the acquisition, implementation and operation of AMSI ADP and telecommunications resources.

Section S4K.10 *The Office of Information Management*—(Organization): The Office of Information Management (S4K), under the leadership of the Associate Commissioner for Information Management, includes:

A. The Associate Commissioner for Information Management (S4K).

B. The Deputy Associate Commissioner for Information Management (S4K).

C. The Immediate Office of the Associate Commissioner for Information Management (S4K).

D. The Division of Information Resource Management (S4KB).

E. The Division of Information Systems Policy and Administration (S4KC).

F. The Division of Administrative Systems Development (S4KE).

G. The Division of Management Information Systems Development (S4KG).

Section S4K.20 *The Office of Information Management*—(Functions):

A. The Associate Commissioner for Information Management (S4K) is directly responsible to the Deputy Commissioner, Systems for carrying out OIM's mission and provides general supervision to the major components of OIM.

B. The Deputy Associate Commissioner for Information Management (S4K) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Information Management (S4K) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. Division of Information Resource Management (S4KB).

1. Coordinates with the staff components under the DCS on all areas within Division control, (e.g., ITS budget, MI systems design and delivery, ongoing user support).

2. Directs the development and monitoring of the ITS budget for OA/end-user computing/MI-related hardware, software and services.

3. Directs the preparation, review and approval of OA/end-user computing/MI procurements.

4. Maintains knowledge of each MI area and monitors support provided by division.

5. Directs SSA-wide work measurement and performance management systems, as well as component work measurement systems for the field, State agencies and Regional Program and Integrity Review offices.

6. Directs audits and analyses of MI systems and reports to ensure adherence to users' and Agency needs, Federal and SSA guidelines and integrity standards.

7. Serves as initial point of user contact for MI delivery-related problems.

8. Directs OIM's total quality management program and manages OIM's production environment, including systems support.

9. Plans, implements, integrates and controls Office Automation (OA) software functions at SSA and is responsible for development and dissemination of OA software acquisition and development policies, standards, guidelines and procedures.

10. Monitors technology trends and maintains current information on OA software products, development tools and techniques.

11. Works with SSA users to provide solutions to their OA requirements that are consistent with Agency OA policies.

12. Assists SSA users in refining OA requirements, configuring and engineering solutions, coordinating implementation and evaluating effectiveness.

13. Assists SSA users in determining OA applications, software and training needs, implementing solutions, planning for expansion.

14. Provides a full range of initial and follow-up OA applications, software and development support for SSA users in requirements analysis, system design, engineering, implementation and training.

15. Directs the preparation, acquisition and management of contracts for OA/end-user computing/MI hardware, software and support services.

F. Division of Information Systems Policy and Administration (S4KC).

1. Plans, formulates, develops and maintains SSA's MI policy.

2. Develops and maintains strategic and technical level views and plans from an OIM automated information systems integration perspective (e.g., cross application area integration) to define how the various OIM automated information systems map into SSA's MI logical and physical information systems architectures as required by the Agency's MI policy. Manages the technical aspects related to such views, plans and MI integration.

3. Plans, develops and coordinates MI policy and integration among all involved SSA components, and plans for the transition to, and integration with, current SSA automated information systems and with those of the future.

4. Initiates and submits project proposals through the formal OIM review and approval process for development of new or modified automated information systems where necessary to facilitate integration among SSA's administrative and MI systems under the Agency's logical and physical MI systems architectures.

5. Represents SSA and works with other Government agencies and the private sector on issues involving MI policy, automated information systems, integration, software development, exchange of information, information systems data and data base topics, and other MI and automated information systems related matters.

6. Plans, develops, administers and maintains SSA's administrative and MI data, and data base requirements and standards in consultation with internal OIM Divisions and external SSA components. Assists in the development, maintenance and enforcement of SSA's end-user computing policies, standards and procedures.

7. Responsible for SSA's Information Systems Data and DataBase Administration functions as well as providing support to other internal OIM Divisions and liaison with external components.

8. Responsible for formulating and maintaining the Information Systems Architecture supporting SSA's administrative and MI systems.

9. Responsible for developing systems requirements and validation in support of new automated MI systems.

10. Provides fourth and fifth generation computer language support to end-users and developers of Administrative/MI systems.

G. Division of Administrative Systems Development (S4KE).

1. Responsible for the entire administrative systems development life cycle.

2. Designs, develops, coordinates and implements new administrative application systems and enhancements to existing systems which include quality assurance, financial/physical and human resources, and planning/policy and procedures.

3. Assists other parts of OIM in procurement associated with application projects.

H. Division of Management Information Systems Development (S4KG).

1. Responsible for the entire MI systems life cycle.

2. Designs, develops, coordinates and implements new MI application systems and enhancements to existing systems which include workload management, work measurement, program demographics, earnings and employee/employer statistics.

3. Assists other parts of OIM in procurements associated with application projects.

Subchapter S4L—Office of Telecommunications

S4L.00 Mission
S4L.10 Organization
S4L.20 Functions

Section S4L.00 *The Office of Telecommunications*—(Mission): The Office of Telecommunications (OTC) plans, implements and evaluates SSA's communications technology and systems. It is responsible for evaluating current and emerging communications technologies and for designing, acquiring, implementing, operating and maintaining new integrated telecommunications systems combining voice, data, video, facsimile, and other SSA communications requirements. OTC directs, manages and coordinates the planning, analysis, design, acquisition, implementation, operation and maintenance of SSA's existing telecommunications systems. It manages the telecommunications operations complexes located at the Central Office, Regional Offices and field sites. It is responsible for SSA's comprehensive voice communication management program.

Section S4L.10 *The Office of Telecommunications*—(Organization): The Office of Telecommunications (S4L), under the leadership of the Associate Commissioner for Telecommunications, includes:

A. The Associate Commissioner for Telecommunications (S4L).

B. The Deputy Associate Commissioner for Telecommunications (S4L).

C. The Immediate Office of the Associate Commissioner for Telecommunications (S4L), which includes:

1. The Distributed Data Processing Management Staff (S4L–1).

D. The Telecommunications Resource Management Staff (S4LC).

E. The Division of IWS/LAN Engineering (S4LE).

F. The Division of Integrated Telecommunications Management (S4LG).

G. The Division of Wide-Area Network Engineering (S4LH).

H. The Division of Telecommunications Operations (S4LJ).

Section S4L.20 *The Office of Telecommunications*—(Functions):

A. The Associate Commissioner for Telecommunications (S4L) is directly responsible to the Deputy Commissioner, Systems, for carrying out the OTC mission and providing general supervision to the major components of OTC.

B. The Deputy Associate Commissioner for Telecommunications (S4L) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Telecommunications (S4L) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities. It includes:

1. Distributed Data Processing Management Staff (S4L–1).

a. Directs the plans and activities to implement distributed data processing systems across SSA.

b. Initiates major program, subprogram, project and task activities in support of the implementation of Distributed Data Processing Management Staff (DDPMS) plans outlined in the Integrated Systems Plan and the Agency Strategic Plan.

c. Oversees/coordinates all DDPMS implementation activity among all systems components including the incorporation of office automation, programmatic systems, existing distributed-type systems, stand-alone personal computer-based systems, pilot systems and user-developed systems into a unified distributed processing environment.

d. Develops and manages the DDPMS procurement plan, outlining all acquisitions related to the project. Manages the development of distributed data processing acquisitions in the intelligent IWS/LAN areas.

e. Develops and manages the delivery, implementation and acceptance plans for DDPMS acquisitions.

f. Manages the evaluation process for all technology substitutions, technology refreshments, upgrades and unsolicited proposals for DDPMS. Manages the administration of DDPMS contracts to include amendments, cancellations and renewals.

g. Establishes and maintains the coordination and liaison interfaces to all other systems components, all SSA central office and field components and external committees, conferences and organizations involved in and affected by DDPMS.

h. Approves technical specifications, technical evaluation criteria, technology substitution specifications for DDPMS-related workstation, network and application acquisitions.

i. Directs project activities to ensure that SSA-level DDPMS initiatives maintain compatibility with Governmentwide ITS standards.

D. The Telecommunications Resource Management Staff (S4LC).

1. Manages, plans and coordinates the activities relating to business and financial planning of SSA's telecommunications needs.

2. Manages and plans for the acquisition of network hardware, software and related services. Controls, reviews and tracks status of telecommunications requisitions through the procurement process.

3. Coordinates within OTC and SSA the planning of the design and configuration of the telecommunications network.

4. Serves as focal point for procurement of telecommunications and related equipment and services.

5. Coordinates within OTC the development of planning documents assessing current and future technology for suitability and impact on the telecommunications network.

6. Develops short-term and long-range telecommunications strategic plans and telecommunications macro strategic plans.

7. Assists SSA users in determining network requirements and interfacing needs. It is responsible for the coordination of strategic and tactical planning and implementing telecommunications expansion.

8. In conjunction with other Systems components, develops user service level agreements in support of the telecommunications solutions.

9. Develops, executes and monitors the telecommunications network portion of the ITS budget. Monitors budgetary commitments for contract awards of network telecommunications acquisitions.

10. Maintains a database of telecommunications hardware and software and ensures proper disposition of telecommunications equipment no longer in use.

E. The Division of IWS/LAN Engineering (S4LE).

1. Responsible for all aspects of engineering, design, configuration, implementation and support of LAN Operating System (OS) software, telecommunications and connectivity service functions at SSA.

2. Responsible for telecommunications and connectivity projects, including acquisition, implementation, integration and control.

3. Develops, disseminates and enforces standards and policies relating to workstations, workstation configurations, peripherals, LANs, LAN OS, local bridges and routers and related customer support and service.

4. Works with SSA users to provide solutions to LAN telecommunications needs that are consistent with SSA-network architecture policies; determines network and interfacing hardware needs, implementing solutions, planning and expansion; and determines staff hardware training needs. It assists SSA telecommunications users in determining and refining services and support requirements, configuration and engineering solutions, planning for future needs, coordinating implementation and evaluating effectiveness.

5. Provides a full range of initial and followup telecommunications and connectivity services and support for SSA users in network requirements analysis, system design, LAN needs determination, engineering, implementation, network control, OS software support and training.

6. Supports operating system and connectivity software on the LANs and IWS. It researches and tests current off-the-shelf products for their network configuration to LAN and workstation needs.

7. Develops and distributes research papers on applied technology and its relationship to existing and future telecommunications and connectivity requirements. It also develops alternate systems configurations to meet specific alternative requirements (non-traditional technology approaches).

8. Solves network problems by applying information on state-of-the-art OS, telecommunications and connectivity software and hardware currently available in the marketplace. It develops turn-key telecommunications systems and special menus to meet unusual customer requirements.

F. The Division of Integrated Telecommunications Management (S4LG).

1. Plans and manages the strategic and tactical direction of the SSA voice communications and voice-data integration programs.

2. Provides technical and analytical support for the National 800 Number and other communications initiatives and programs.

3. Provides and manages voice communications systems hardware, software, services and ancillary equipment for SSA nationwide.

4. Directs the acquisition, operations, maintenance, retention and disposal of voice communications systems and services SSA-wide. Develops and administers voice communications ITS contracts.

5. Administers Federal Telecommunication System (FTS) 2000 services SSA-wide and supports OTC in representing SSA in all related negotiations with SSA, General Services Administration and FTS vendors and carriers.

6. Directs the evaluation, acquisition, installation, operation and disposal of voice communications systems and services for SSA nationwide.

7. Serves as the SSA focal point for voice communications capacity planning.

8. Manages SSA-wide programs for imaging, video, facsimile, satellite, radio and emergency communications.

9. Manages SSA headquarters voice communications systems.

10. Serves as SSA-level liaison with Federal, State and other government and private-sector entities on voice communications and voice-data integration.

11. Manages within SSA the development and application of emerging voice communications technology.

12. Manages technical solutions for ''800'' and other toll-free services SSA-wide.

13. Manages the acquisition of data circuits.

G. The Division of Wide-Area Network Engineering (S4LH).

1. Directs the design, development, implementation, maintenance and support of specialized data communications software to support SSA's international network (SSANet).

2. Responsible for network design, connectivity, management, automation, availability, performance and capacity planning and modeling.

3. Researches network prototypes and performs testing of new network technologies and implements and monitors network standards.

4. Supports SSA components as well as other Government agencies to provide optimum network interface design, management capabilities, connectivity, availability and response time.

5. Integrates and validates new network hardware, software products, versions and maintenance levels into SSANet and SSANet connectivity management.

6. Manages and coordinates all change management system control relating to network hardware and software changes to SSANet under the auspices of the change management facility.

7. Performs Level 3 network monitoring and problem determination for the SSANet.

8. Develops and implements a network backup recovery.

9. Performs network software planning, installation and management at all remote sites.

10. Serves as the SSA-level liaison with Federal, State, and local Government agencies and with the private sector to integrate them into the SSA network.

11. Responsible for SSANet software distribution and version management.

12. Interfaces with SSANet users to determine the impact of new applications and workloads and supports user liaison and systems development activities of other SSA components in the resolution of network technical and operational problems.

13. Manages communications software changes to ensure compatibility with hardware modifications at Central Office and all remote network platform locations.

14. Directs the planning, analysis and design of specialized network software systems for providing information relevant to the development of existing and proposed data communications systems.

H. The Division of Telecommunications Operations (S4LJ).

1. Manages the installation, relocation and operation of SSA's telecommunications network facilities for the transmission of program and management data over SSA established networks.

2. Monitors telecommunications operations, analyzes equipment problems and effects proper maintenance and repair.

3. Develops and directs the implementation of new procedures and updates existing procedures for network node operations.

4. Escalates outages to vendor management for prompt resolution and is responsible for the repair of advanced communications electronics equipment.

5. Provides emergency support services for equipment reconfiguration as well as repair, assembly/disassembly and installation of advanced telecommunications electronics.

6. Serves as the initial point of contact for user and technical problem determination for telecommunications. Diagnoses data-center hardware and network problems and coordinates network operations issues with applications and systems support staff.

7. Monitors and controls functions for the nationwide telecommunications system. Develops operational procedures to modernize and streamline network operation and develops plans for automation.

8. Manages traffic flow between telecommunications complexes and other SSA complexes.

9. Communicates status of the network to other network nodes and advises users of abnormal or extraordinary situations affecting network operations.

10. Monitors voice communications operations, analyzes equipment problems and effects proper maintenance and repair.

This statement amends part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Notice is given that Chapter S7 for the Office of the Deputy Commissioner, Human Resources is being amended to reflect internal organizational realignments and the deletion of all references to the Department of Health and Human Services as the parent agency of SSA. The following material replaces Chapter S7 in its entirety.

Chapter S7—Office of the Deputy Commissioner, Human Resources

S7.00 Mission
S7.10 Organization
S7.20 Functions

Section S7.00 *The Office of the Deputy Commissioner, Human Resources*—(Mission): The Office of the Deputy Commissioner, Human Resources (ODCHR) directs the administration of comprehensive SSA human resources programs including: personnel management, labor management relations, employee relations, civil rights and equal opportunity, training and workforce analysis.

Section S7.10 *The Office of the Deputy Commissioner, Human Resources*—(Organization): The Office of the Deputy Commissioner, Human Resources, under the leadership of the Deputy Commissioner, Human Resources, includes:

A. The Deputy Commissioner, Human Resources (S7).

B. The Assistant Deputy Commissioner, Human Resources (S7).

C. The Immediate Office of the Deputy Commissioner, Human Resources (S7A).

D. The Office of Personnel (S7B).

E. The Office of Labor Management Relations (S7C).

F. The Office of Civil Rights and Equal Opportunity (S7E).

G. The Office of Training (S7G).

H. The Office of Workforce Analysis (S7H).

Section S7.20 *The Office of the Deputy Commissioner, Human Resources*—(Functions):

A. The Deputy Commissioner, Human Resources (DCHR) (S7) is directly responsible to the Commissioner for carrying out the ODCHR mission and providing general supervision to the major components of ODCHR as well as guidance, support and technical assistance to the SSA regional personnel administration operation.

B. The Assistant Deputy Commissioner, Human Resources (S7) assists the Deputy Commissioner in carrying out his/her responsibilities and performs other duties as the Deputy Commissioner may prescribe.

C. The Immediate Office of the Deputy Commissioner, Human Resources (S7A) provides the Deputy Commissioner and the Assistant Deputy Commissioner with staff assistance on the full range of their responsibilities.

D. The Office of Personnel (OPE) (S7B) is directly responsible to the Deputy Commissioner for Human Resources for carrying out OPE's mission and for providing general supervision to the major components of OPE. The Office directs a comprehensive SSA personnel management program. It develops, implements and maintains a fully integrated and coordinated personnel management program responsive to the needs of SSA. The Office manages personnel programs in the following areas: personnel policy and research, personnel data, position classification and organization management, recruitment and placement, employee counseling, personnel management evaluation, executive personnel services, employee assistance services, personnel information planning, employee recognition and health services.

E. The Office of Labor Management Relations (OLMR) (S7C) is directly responsible to the Deputy Commissioner for Human Resources for carrying out OLMR's mission and for providing general supervision to the major components of OLMR. The Office manages the SSA labor management relations program, including the development and evaluation of the program and the formulation of SSA-wide labor management relations policy.

F. The Office of Civil Rights and Equal Opportunity (OCREO) (S7E) is directly responsible to the Deputy Commissioner for Human Resources for carrying out OCREO's mission and for providing general supervision to the major components of OCREO. The Office provides overall management of the SSA-wide programs of civil rights and equal opportunity, including the development of SSA-wide civil rights and equal opportunity policy.

G. The Office of Training (OT) (S7G) is directly responsible to the Deputy Commissioner for Human Resources for carrying out OT's mission and for providing general supervision to the major components of OT. The Office manages and administers a national training program to enhance SSA's capability of providing effective and efficient service to the public. It develops and issues Agencywide policies, procedures and operational guidelines for the design, development, implementation, maintenance and evaluation of all SSA training activities. It directs the financial management of training monies to ensure accountability of money spent to train and develop the Agency's employees.

H. The Office of Workforce Analysis (OWA) (S7H) is directly responsible to the Deputy Commissioner for Human Resources for carrying out OWA's mission and providing general supervision to the major components of OWA. The Office develops, implements and directs a comprehensive program of management studies, research and analysis. It implements a comprehensive workforce effectiveness program and conducts studies of work processes and procedures. It provides SSA liaison with other Federal agencies and outside sources on these matters.

Subchapter S7B—Office of Personnel

S7B.00 Mission
S7B.10 Organization
S7B.20 Functions

Section S7B.00 *The Office of Personnel*—(Mission): The Office of Personnel (OPE) directs a comprehensive program designed to provide the full range of personnel management programs, including personnel management evaluation, executive personnel services, recruitment and placement, employee counseling, personnel policy and research, personnel data, employee assistance services, personnel information planning, employee recognition, health services and classification and organization management. The Office develops policy and guidelines for the SSA-wide management of those programs and evaluates the manner in which they are carried out.

Section S7B.10 *The Office of Personnel*—(Organization): The Office of Personnel under the Associate Commissioner, Office of Personnel, includes:

A. The Associate Commissioner, Office of Personnel (S7B).

B. The Deputy Associate Commissioner, Office of Personnel (S7B).

C. The Immediate Office of the Associate Commissioner, Office of Personnel (S7B).

D. The Project Management Staff (S7BH).

E. The Personnel Management Information Systems and Payroll Staff (S7BJ).

F. The Center for Personnel Operations (S7BK).

G. The Center for Personnel Policy and Program Development (S7BE).

H. The Center for Employee Services (S7BG).

Section S7B.20 *The Office of Personnel*—(Functions):

A. The Associate Commissioner, Office of Personnel (S7B) is directly responsible to the Deputy Commissioner, Human Resources for carrying out the Office of Personnel's mission and for providing general supervision to the major components.

B. The Deputy Associate Commissioner, Office of Personnel (S7B) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner, Office of Personnel (S7B) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. The Project Management Staff (S7BH).

1. Provides the Associate Commissioner with a staff of self-managed work/project teams of a temporary nature which can be rapidly deployed to address high priority, interdisciplinary personnel projects of a specialized nature. The staff expands or contracts based upon the workload at any given time.

2. Directs an SSA-wide program for inspection and evaluation of SSA's personnel management program including employment and staffing, position management and classification, employee relations, equal employment opportunity and labor relations. Conducts administrative surveys and special studies to provide managers with information and assistance to assure conformance with Office of Personnel Management (OPM) regulations and SSA policies and directives.

3. Designs, analyzes and implements a variety of research projects in the areas of personnel management.

E. The Personnel Management Information Systems and Payroll Staff (S7BJ).

1. Plans and directs ongoing development, analysis and evaluation of SSA's personnel recordkeeping systems; develops general objectives and performance standards for automated systems and detailed specifications for development or modification of computer programs used in automated systems; and proposes changes in these systems to meet SSA's human resources data, statistics and information needs.

2. Coordinates, with SSA's Office of the Deputy Commissioner for Systems, the planning, development, modification and evaluation of automated systems.

3. Plans, designs and evaluates the use of personal computers and provides office automation support for human resources systems.

4. Operates selected data processing/office automation systems in OPE.

5. Reviews and processes all personnel and payroll actions in conformance with OPM regulations.

F. The Center for Personnel Operations (S7BK).

1. Develops and implements policies and regulations pertaining to SSA recruitment and placement, including policies and guidelines for SSA administration of the Senior Executive Service (SES). Initiates and processes personnel actions for SSA Headquarters employees; participates with office managers and staffs in assessing placement actions; and directs the administration of all Merit Promotion Plans applicable within Baltimore/Washington/Falls Church Headquarters components. Processes necessary administrative actions required for new employees entering on duty.

2. Develops and implements SSA-wide programs of position classification, position management and personnel security within SSA Headquarters. Directs position classification, position management and personnel security activities having SSA-wide significance.

3. Provides advice and assistance to all SSA components on activities and issues that involve position classification and position management; serves as the central SSA referral point on these programs; and acts as SSA liaison with OPM and other non-SSA entities and organizations with respect to assigned areas of responsibility.

4. Formulates and oversees the implementation of policies, procedures, standards, directives and objectives which assure that position structure and management promote cost-effective operations and the efficient use of employee skills.

5. Provides leadership and coordination in the formulation of SSA policies, directives and programs relating to the Fair Labor Standards Act and to salary and wage surveys; conducts a continuing review of the applicability of classification standards; and, as appropriate, negotiates with OPM for the revision of such standards or the development of single Agency standards.

6. Authorizes the establishment of positions and organizations, providing advice and guidance to managers on organizational structure and preparing **Federal Register** and Organization Manual material.

7. Implements policies, regulations and programs pertaining to special recruitment and staffing activities for SSA Headquarters and field organizations. Develops and implements student employment programs.

8. Directs the development and administration of SSA services concerning employee benefit programs which include the Civil Service Retirement System, the Federal Employee Retirement System, the Thrift Savings Plan, the Federal Employees Group Life Insurance Program and the Federal Employees Health Benefits Program.

9. Provides for the establishment and maintenance of the Official Personnel Folders for SSA Headquarters employees.

10. Develops and implements all SSA policies and activities relating to the Agency's executive level personnel management program.

11. Recruits for and places individuals in positions in the SES in accordance with OPM regulations.

12. Provides staff support to the Executive Resources Board in administering a systematic program to manage SSA's executive and professional resources and ensuring the appropriate selection of candidates to participate in official executive development programs.

13. Provides staff support to the Performance Review Board in reviewing performance plans and subsequent appraisals of career and noncareer executives in SES and employees in equivalent level positions.

G. The Center for Personnel Policy and Program Development (S7BE).

1. Directs the formulation and issuance of SSA personnel policies and directives. Provides guidance on matters pertaining to such areas as staffing, compensation, appraisals and performance standards, personnel information disclosure and management communications and ensures that guidance is consistent with pertinent laws, regulations and policies. Oversees the dissemination and implementation of SSA-wide policies and directives pertaining to personnel management areas. Directs the development and maintenance of the SSA personnel manual system, reviewing all issuances under this system.

2. Directs the development and operation of SSA performance and employee awards programs. Develops and implements SSA employee suggestion, incentive and honor awards programs and administers the performance management systems.

H. The Center for Employee Services (S7BG).

1. Provides professional counseling and referral services for employees with mental health problems and for employees with alcohol or drug problems. Provides technical advice and guidance to SSA management officials on matters related to these functions.

2. Develops, implements and evaluates SSA's employee health services programs in conformance with appropriate laws, policies and regulations.

3. Directs the development and operation of SSA's Workers' Compensation services program. Provides assistance to employees regarding claims for loss of wages, settlement awards, notices of injury and required medical reports.

4. Provides overall coordination and direction to work environment improvement efforts within SSA. Coordinates a variety of studies throughout SSA designed to improve the work environment.

5. Plans, develops and implements a variety of employee and family-oriented programs and services in the areas of Child Care, Elder Care, fitness and wellness, Career/Life Planning and financial counseling.

Subchapter S7C—Office of Labor Management Relations

S7C.00 Mission
S7C.10 Organization
S7C.20 Functions

Section S7C.00 *The Office of Labor Management Relations*—(Mission): The Office of Labor Management Relations (OLMR) provides overall management of an SSA-wide program of labor management and employee relations, including the development and evaluation of the program and the formulation of SSA-wide labor management relations policy.

Section S7C.10 *The Office of Labor Management Relations*—(Organization): The Office of Labor Management Relations under the leadership of the

Director, Office of Labor Management Relations, includes:

A. The Director, Office of Labor Management Relations (S7C).

B. The Human Resources Manager, Office of Labor Management Relations (S7C).

C. The Immediate Office of the Director, Office of Labor Management Relations (S7C).

Section S7C.20 *The Office of Labor Management Relations*—(Functions):

A. The Director, Office of Labor Management Relations (S7C) is directly responsible to the Deputy Commissioner, Human Resources for carrying out OLRM's mission and for providing general supervision to the major components of OLRM.

B. The Human Resources Manager, Office of Labor Management Relations (S7C) assists the Director in carrying out his/her responsibilities and performs other duties as the Director may prescribe.

C. The Immediate Office of the Director, Office of Labor Management Relations (S7C) provides the Director and the Human Resources Manager with staff assistance on the full range of their responsibilities.

1. Administers the Master Agreement nationwide. Negotiates midterm contractual issues with the recognized bargaining unit(s).

2. Provides technical and advisory services and expertise to management in establishing management negotiating positions and for representation in third-party proceedings. Coordinates SSA representation in unfair labor practice complaints before the Federal Labor Relations Authority.

3. Represents SSA at unemployment compensation hearings and on management-initiated actions under appeal to the Merit Systems Protection Board and before arbitrators.

4. Provides technical guidance in developing, implementing and administering performance plans and standards.

5. Responsible for negotiation, administration and implementation of SSA national labor agreements which include prenegotiation activities, team preparation, advisory services and problem resolution.

6. Maintains files of case law which affect contracts and researches bargaining history relevant to establishing management's position at third-party proceedings and negotiations.

7. Formulates SSA policy for the labor management and employee relations programs, and researches policy questions for management.

8. Negotiates national midterm personnel policy-related issues and coordinates SSA management representation at national-level arbitration, unfair labor practice hearings and national-level meetings with the recognized bargaining units.

9. Conducts statutory review of all Memoranda of Understanding negotiated agencywide. Administers and maintains arbitration panels.

10. Develops, implements and evaluates SSA programs involving disciplinary and adverse actions, performance-based actions, grievances, appeals and serious misconduct cases. Provides advisory services to management and prepares documentation for headquarters' managers pertaining to such cases. Provides consultation to SSA management on nonbargaining unit grievances.

Subchapter S7E—Office of Civil Rights and Equal Opportunity

S7E.00 Mission
S7E.10 Organization
S7E.20 Functions

Section S7E.00 *The Office of Civil Rights and Equal Opportunity*—(Mission): The Office of Civil Rights and Equal Opportunity (OCREO) provides overall management of the SSA-wide programs of civil rights and equal opportunity.

Section S7E.10 *The Office of Civil Rights and Equal Opportunity*—(Organization): The Office of Civil Rights and Equal Opportunity, under the leadership of the Director, Office of Civil Rights and Equal Opportunity, includes:

A. The Director, Office of Civil Rights and Equal Opportunity (S7E).

B. The Immediate Office of the Director, Office of Civil Rights and Equal Opportunity (S7E).

Section S7E.20 *The Office of Civil Rights and Equal Opportunity*—(Functions):

A. The Director, Office of Civil Rights and Equal Opportunity (S7E) is directly responsible to the Deputy Commissioner, Human Resources for carrying out OCREO's mission and for providing general supervision to the major components of OCREO.

B. The Immediate Office of the Director, Office of Civil Rights and Equal Opportunity (S7E) provides the Director with staff assistance on the full range of his/her responsibilities.

1. Directs implementation and evaluation of the SSA Equal Employment Opportunity Discrimination Complaint program for both Headquarters and the field. Provides advice, guidance and assistance to SSA officials concerning the discrimination complaint program area and related management matters.

2. Provides leadership, guidance and direction in formulating and implementing SSA policies, regulations and procedures pertaining to the timely, accurate, fair and impartial processing of discrimination complaints throughout the Headquarters and field organizations.

3. Provides overall direction regarding all aspects of SSA's complaint system in order to ensure uniformity in complaint handling, resolution and disposition. Directs the preparation of guidelines on all complaint matters.

4. Prepares proposed dispositions on complaints of discrimination against SSA. Ensures compliance with any corrective or remedial action directed by SSA, Equal Employment Opportunity Commission (EEOC) or any other agency having authority to so direct.

5. Develops litigation information and documentation for the Office of the General Counsel and the U.S. Attorney's Office in employment discrimination court suits filed against SSA. Prepares the Agency's brief for complaints appealed to EEOC. Also, responds to interrogatories submitted in class complaints. Analyzes new and recent court decisions, public laws and Federal regulations for their impact on SSA complaint processing.

6. Directs special projects and studies of the various aspects of SSA's nationwide discrimination complaint process to evaluate the overall effectiveness of the equal opportunity program. Directs the analysis of trends observed during projects and studies and implements new procedures as required.

7. Provides the authoritative interpretations on legal, regulatory and technical discrimination complaint matters to SSA management nationwide.

8. Implements policies, regulations and affirmative action programs, and develops and implements special needs placement programs related to the Disabled program.

9. Directs the development and monitoring of SSA's equal opportunity and civil rights programs.

10. Provides leadership, direction and guidance throughout the Headquarters and field organizations in the formulating and implementing of SSA policies, regulations and procedures pertaining to the development of sound affirmative civil rights and equal opportunity programs. Approves, on behalf of the Deputy Commissioner, affirmative employment program plans prepared by components and regions.

Develops the overall SSA affirmative employment program plan.

11. Develops guidelines and procedures for effective affirmative employment program planning and monitoring throughout SSA. Develops recommendations on affirmative employment policy and operations for the Director, OCREO.

12. Reviews non-SSA equal opportunity and civil rights issuances, EEOC and court decisions for applicability to SSA policy statements. Develops instructions and guidelines to transmit or implement equal opportunity and civil rights policy decisions in SSA.

13. Conducts and coordinates studies or analyses of SSA's human resources and operating policies and procedures to assess their equal opportunity and civil rights impact.

14. Directs the development and maintenance of minority disabled persons employment information system(s) for SSA employees and applicants for employment.

15. Develops and tracks SSA's major initiatives that relate to civil rights and equal opportunity and oversees their implementation.

16. Plans, directs and implements special programs for minority, female, Hispanic and disabled employees of SSA.

17. Directs the SSA-wide program of processing civil rights complaints, which involves developing complaint policy, procedures and guidelines for applying standards under the civil rights statutes. Develops SSA standards, consistent with government-wide standards, for delivering services to members of the public and meeting other SSA service and outreach commitments under civil rights statutes.

18. Develops, implements, monitors and evaluates special recruitment plans, programs and projects for targeted equal opportunity groups.

19. Develops, monitors and evaluates SSA compliance program(s) under civil rights statutes.

Subchapter S7G—Office of Training

S7G.00 Mission
S7G.10 Organization
S7G.20 Functions

Section S7G.00 *The Office of Training*—(Mission): The Office of Training (OT) directs a nationwide program designed to assure that all levels of SSA employees receive the training necessary to provide effective and efficient service to the public.

Section S7G.10 *The Office of Training*—(Organization): The Office of Training under the leadership of the Director, Office of Training, includes:

A. The Director, Office of Training (S7G).

B. The Immediate Office of the Director, Office of Training (S7G).

C. The Administrative Staff (S7GC).

D. The Human Resources Planning Staff (S7GE).

E. The Center for Technology and Employee Development (S7GG).

F. The Center for Program Initiatives and Management Education (S7GH).

G. The Center for Educational Research and Evaluation (S7GJ).

Section S7G.20 *The Office of Training*—(Functions):

A. The Director, Office of Training (S7G) is directly responsible to the Deputy Commissioner, Human Resources for carrying out OT's mission and for providing general supervision to the major components of OT.

B. The Immediate Office of the Director, Office of Training (S7G) provides the Director with staff assistance on the full range of his/her responsibilities.

D. The Administrative Staff (S7GC) plans, directs, coordinates and administers the activities relative to developing and executing budget activities; acts as OT liaison with Personnel on such personnel matters as classification, position management, staffing and recruitment; plans, formulates and implements SSA training policies; and provides overall support and coordination to the training function. Coordinates travel, training and conference attendance for office staff.

E. The Human Resources Planning Staff (S7GE) is responsible for the development, implementation and updating of SSA's Human Resources Plan. This plan provides for the development of an SSA staffing and recruitment plan, for training employees once they enter on duty, for providing the means for employee development beyond training for the initial position for which the employee was recruited and for retaining Agency employees.

F. The Center for Technology and Employee Development (S7GG).

1. Directs the design, development, implementation and evaluation of Title II disability related program/technical training for SSA components, including entry-level and advanced program, systems-user and computer technology training and other technical training to meet the needs of SSA components Agencywide.

2. Develops guidelines and procedures to determine technical training needs for disability related training programs, and reviews and evaluates technical training Agencywide.

3. Initiates independent studies and analyses to anticipate and identify new or changing training and development needs in a dynamic organizational environment.

G. The Center for Program Initiatives and Management Education (S7GH).

1. Directs the design, development, implementation and evaluation of Title II Retirement Survivor Insurance-related program/technical training for SSA components, including entry-level and advanced program, systems-user and computer technology training and other technical training to meet the needs of SSA components Agencywide.

2. Directs, designs, develops, implements, conducts and evaluates all SSA supervisory, managerial and executive level training development activities.

3. Develops guidelines and procedures to determine technical training needs for Retirement, Survivor Insurance-related training programs, and reviews and evaluates technical training Agencywide.

4. Has Agencywide responsibility for common needs and general skills training, including related developmental activities for nonsupervisory personnel.

H. The Center for Educational Research and Evaluation (S7GJ).

1. Directs the design, development, implementation and evaluation of Title XVI program/technical training for SSA components, including entry-level and advanced program, systems-user and computer technology training and other technical training to meet the needs of SSA components Agencywide.

2. Develops guidelines and procedures to determine technical training needs, and reviews and evaluates technical training Agencywide.

3. Engages in applied research and development efforts associated with training and development programs administered by the center. Provides ongoing consultative assistance and support to SSA components, including training needs identification and program design. Monitors and evaluates Agency training and developmental activities to ensure desired results and effects of non-technical training provided to the Agency's employees. Fosters and maintains effective communications with appropriate internal and external organizations to ensure positive results relative to Agency objectives, policy directives, new initiatives, inservice training needs, etc.

4. Develops guidelines and procedures to determine technical training needs for Title XVI training

programs, and reviews and evaluates technical training Agencywide.

5. Conducts ongoing research to identify automated technologies and instructional methodologies for application to training throughout SSA.

Subchapter S7H—Office of Workforce Analysis

S7H.00 Mission
S7H.10 Organization
S7H.20 Functions

Section S7H.00 *The Office of Workforce Analysis*—(Mission): The Office of Workforce Analysis (OWA) directs a comprehensive program of management studies, research and analysis. It implements and manages a comprehensive workforce effectiveness system and conducts studies of work processes and procedures.

Section S7H.10 *The Office of Workforce Analysis*—(Organization): The Office of Workforce Analysis under the leadership of the Director, Office of Workforce Analysis, includes:

A. The Director, Office of Workforce Analysis (S7H).

B. The Immediate Office of the Director, Office of Workforce Analysis (S7H).

Section S7H.20 *The Office of Workforce Analysis*—(Functions):

A. The Director, Office of Workforce Analysis (S7H) is directly responsible to the Deputy Commissioner for Human Resources for carrying out OWA's mission and for providing general supervision to the major components of OWA.

B. The Immediate Office of the Director, Office of Workforce Analysis (S7H) provides the Director with staff assistance on the full range of his/her responsibilities.

1. Directs, develops and implements a comprehensive program of management studies, research and analysis to evaluate and determine the feasibility of implementing major changes affecting the SSA organization, its administrative practices and its methods of operation. Studies and analyses are Agencywide, frequently deal with issues of a sensitive nature and may involve other Government agencies.

2. Undertakes feasibility, predictive benefit and cost/risk analyses to identify alternatives and to develop administrative strategies for consideration by the SSA Executive Staff in responding to Agencywide problems and issues.

3. Develops SSA-wide workforce management policies, procedures and guidelines; determines resource requirements, conducts trend analysis; and makes recommendations regarding management options, transition alternatives, etc, as appropriate.

4. Develops and implements comprehensive workforce utilization and planning programs to improve productivity and the use of the SSA workforce.

5. Conducts studies and analyses of work processes and procedures, workflows and workload processing positions; applies a variety of disciplines and techniques, including management analysis and model building to assure best workforce utilization; and recommends action to top SSA executives for improving the effectiveness of the SSA workforce.

6. Develops, analyzes and interprets workforce forecasting data and projects future workforce needs, including the types of skills and positions required.

7. Directs, develops and conducts Agencywide reviews and studies using industrial engineering, model building and other scientific approaches and methodologies.

This statement amends part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Notice is given of the establishment of SSA's Office of the Inspector General (OIG) (S8) at the first level below the Commissioner and the establishment of the Office of Investigations, the Office of Audits and the Office of Evaluations and Inspections. The new chapter reads as follows:

Chapter S8—The Office of the Inspector General

S8.00 Mission
S8.10 Organization
S8.20 Functions

Section S8.00 *The Office of the Inspector General*—(Mission): The Office of the Inspector General (OIG) is directly responsible for meeting the statutory mission of promoting economy, efficiency and effectiveness in SSA programs and detecting and preventing fraud, waste and abuse. To accomplish this mission, OIG conducts and supervises audits, investigations, inspections and evaluations relating to SSA's programs and operations. The OIG also searches for systemic weaknesses in SSA programs and operations and makes recommendations for needed improvements.

Section S8.10 *The Office of the Inspector General*—Organization: The Office of the Inspector General under the leadership of the Inspector General includes:

A. The Inspector General (S8).

B. The Deputy Inspector General (S8).

C. The Immediate Office of the Inspector General (S8A).

D. The Office of Investigations (S8B).

E. The Office of Audits (S8C).

F. The Office of Evaluations and Inspections (S8E).

Section S8.20 *The Office of the Inspector General*—Functions:

A. The Inspector General (S8) is directly responsible to the Commissioner for carrying out the OIG mission and providing general supervision to the major components of OIG.

B. The Deputy Inspector General (S8) assists the Inspector General in carrying out his/her responsibilities and performs other duties as the Inspector General may prescribe.

C. The Immediate Office of the Inspector General (S8A) provides the Inspector General with staff assistance on the full range of his/her responsibilities. Conducts and coordinates OIG reviews of existing and proposed legislation and regulations related to SSA programs and operations to identify their impact on economy and efficiency and their potential for fraud and abuse. Serves as the OIG contact for the press and electronic media and serves as OIG congressional liaison. Coordinates the development of the OIG long-range strategic plan and the OIG annual work plan. Compiles the Semiannual Report to the Congress and operates the Executive Secretariat. Formulates and assists the IG with the execution of the OIG budget and confers with the Office of the Commissioner (OC), the Office of Management and Budget (OMB) and the Congress on budget matters. Conducts management analyses and establishes and coordinates general management policies of the OIG. Serves as OIG liaison on personnel issues and other administrative policies and practices as well as on equal employment opportunity and civil rights matters.

D. The Office of Investigations (OI) (S8B) conducts and coordinates investigative activity related to fraud, waste, abuse and mismanagement in SSA programs and operations. This includes wrongdoing by applicants, grantees, or contractors, or by SSA employees in the performance of their official duties. It serves as OIG liaison to the Department of Justice on all matters relating to investigations of SSA programs and personnel, and reports for the Attorney General when the OIG has reason to believe Federal criminal law has been violated. OI works with other investigative agencies and organizations on special projects and assignments. In support of its mission, the office carries

out and maintains an internal quality assurance system.

E. The Office of Audits (OA) (S8C) provides audit policy direction for and conducts and oversees comprehensive audits of SSA programs, operations, grantees and contractors, following generally accepted Government auditing standards. It maintains an internal quality assurance system, including periodic quality assessment studies and quality control reviews, to provide reasonable assurance the applicable laws, regulations, policies, procedures, standards and other requirements are followed in all audit activities performed by, or on behalf of, SSA.

F. The Office of Evaluations and Inspections (OEI) (S8E) conducts inspections of SSA programs, operations and processes to identify vulnerabilities, to prevent and detect misconduct, and to promote economy, efficiency and effectiveness in SSA programs and operations. In support of its mission, the office carries out and maintains an internal quality assurance system. The system includes quality assessment studies and quality control reviews of OEI processes and products to ensure that policies and procedures are effective, are followed and are functioning as intended.

Subchapter S8B—Office of Investigations

S8B.00 Mission
S8B.10 Organization
S8B.20 Functions

Section S8B.00 *The Office of Investigations*—(Mission): The Office of Investigations (OI) conducts and coordinates investigative activity related to fraud, waste, abuse and mismanagement in SSA programs and operations. This includes wrongdoing by applicants, grantees, or contractors, or by SSA employees in the performance of their official duties. It serves as OIG liaison to the Department of Justice on all matters relating to investigations of SSA programs and personnel, and reports for the Attorney General when the OIG has reason to believe Federal criminal law has been violated. OI works with other investigative agencies and organizations on special projects and assignments. In support of its mission, the office carries out and maintains an internal quality assurance system.

Section S8B.10 *The Office of Investigations*—(Organization): The Office of Investigations (S8B) under the leadership of the Assistant Inspector General for Investigations, includes:

A. The Assistant Inspector General for Investigations (S8B).

B. The Immediate Office of the Assistant Inspector General (S8B).

Section S8B.20 *The Office of Investigations*—(Functions):

A. The Assistant Inspector General for Investigations (S8B) is directly responsible to the Inspector General for carrying out the OI mission and providing general supervision to the major components of OI.

B. The Immediate Office of the Assistant Inspector General (S8B) provides the Inspector General with staff assistance on the full range of his/her responsibilities. Coordinates quality assurance studies to assure that applicable laws, regulations, policies, procedures standards and other requirements are followed in all investigative activities performed by, or on behalf of, SSA.

1. Establishes investigative priorities, evaluates the progress of investigations and reports to the IG on the effectiveness of investigative efforts. Develops and implements investigative techniques, programs, guidelines and policies.

2. Provides investigative programmatic expertise and issues information on new programs, procedures, regulations and statutes.

3. Directs and coordinates the investigative field offices which conduct investigations of fraud, waste, abuse, mismanagement and violations of standards of conduct and other investigative matters within the jurisdiction of the OIG.

4. Coordinates investigations with SSA operating and staff components, OIG counterparts and other investigative and law enforcement agencies.

5. Prepares and issues completed reports of investigations and ensures accuracy and compliance with guidelines and recommends appropriate debarment actions, administrative sanctions, civil money penalties and other civil action or prosecution under the law.

6. Identifies systemic and programmatic vulnerabilities in SSA's operations and makes recommendations for changes to the appropriate official.

7. Provides policy guidance and technical expertise to SSA on civil fraud laws and regulations, penalties, sanctions and other remedies.

8. Maintains liaison with the Department of Justice on the civil fraud aspects of SSA investigations.

9. Coordinates and/or helps investigate matters arising under the Program Fraud Civil Remedies Act, the Civil Monetary Penalties Law and Public Law 100–93.

10. Assists the Department of Justice to investigate and evaluate civil fraud lawsuits under provisions of the Federal False Claims Act and related statutes.

11. Leads outreach activities to State and local investigative agencies.

12. Provides pertinent information from SSA records to assist Federal, State and local investigative agencies to detect, investigate and prosecute fraud.

13. Manages SSA Hotline to receive complaints and allegations of fraud, waste and abuse, and to refer the information for investigation, audit, program review or other appropriate action. Coordinates with the GAO Hotline and hotlines from other agencies.

14. Maintains investigative files for OI headquarters and an automated data and management information system used by all OI managers and investigators.

15. Provides technical expertise on computer applications for investigations and coordinates and approves investigative computer matches with other agencies.

16. Develops general management policy for OI; coordinates general management processes; develops and issues instructional media on wrongdoing and on investigating and processing cases; plans, develops, implements; and evaluates all levels of employee training in OI.

17. Assists the IG in reviews of proposed legislation, regulations, policies and procedures to identify vulnerabilities and recommends modifications where appropriate. Reviews investigative files in response to Privacy and Freedom of Information Act requests.

Subchapter S8C—Office of Audits

S8C.00 Mission
S8C.10 Organization
S8C.20 Functions

Section S8C.00 *The Office of Audits*—(Mission): The Office of Audits (OA) provides policy direction for and conducts and oversees comprehensive audits of SSA programs, operations, grantees and contractors, following generally accepted Government auditing standards. It maintains an internal quality assurance system, including periodic quality assessment studies and quality control reviews, to provide reasonable assurance the applicable laws, regulations, policies, procedures, standards and other requirements are followed in all audit activities performed by, or on behalf of, SSA.

Section S8C.10 *The Office of Audits*—(Organization): The Office of Audits (S8C) under the leadership of the Assistant Inspector General for Audits, includes:

A. The Assistant Inspector General for Audits (S8C).

B. The Immediate Office of the Assistant Inspector General for Audits (S8C).

Section S8C.20 *The Office of Audits*—(Functions):

A. The Assistant Inspector General for Audits (S8C) is directly responsible to the Inspector General for carrying out the OA mission and providing general supervision to the major components of OA.

B. The Immediate Office of the Assistant Inspector General for Audits (S8C) provides the Inspector General with staff assistance on the full range of his/her responsibilities.

1. Directs and coordinates the activities of the Regional Inspectors General for Audits who carry out audit activities in their assigned geographic areas.

2. Develops audit policy, procedures, standards, criteria and instructions for all audit activities performed by, or on behalf of, or conforming with SSA programs, grants, contracts or operations, complying with general accepted Government auditing standards and other legal, regulatory and administrative requirements.

3. Develops policy and procedure for an internal quality assurance system to provide reasonable assurance that applicable laws, regulations, procedures, standards and other requirements are followed in all audit activities performed by, or on behalf of, SSA.

4. Conducts quality assurance studies to ensure that the policies and procedures are implemented by each OA component and are functioning as intended.

5. Evaluates audit work, including performing quality control reviews of audit reports.

6. Develops and monitors audit work plans and tracks, monitors and reports on audit resolution.

7. Plans, develops and coordinates advanced techniques to carry out OA functions and coordinates and manages OA's information system.

8. Conducts, as well as oversees nationwide, the audits of SSA's Retirement, Survivors and Disability Insurance programs; the Supplemental Security Income Program; the Black Lung program; as well as the operation and administration of the entire agency.

9. Maintains an internal quality assurance system, including periodic quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in all SSA audit activities performed by, or on behalf of, SSA.

Subchapter S8E—Office of Evaluations and Inspections

S8E.00 Mission
S8E.10 Organization
S8E.20 Functions

Section S8E.00 *The Office of Evaluations and Inspections*—(Mission): The Office of Evaluations and Inspections (OEI) (S8E) conducts inspections of SSA programs, operations and processes to identify vulnerabilities, to prevent and detect misconduct, and to promote economy, efficiency and effectiveness in SSA programs and operations. In support of its mission, the office carries out and maintains an internal quality assurance system. The system includes quality assessment studies and quality control reviews of OEI processes and products to ensure that policies and procedures are effective, are followed and are functioning as intended.

Section S8E.10 *The Office of Evaluations and Inspections*—(Organization): The Office of Evaluations and Inspections (S8E) under the leadership of the Assistant Inspector General for Evaluations and Inspections, includes:

A. The Assistant Inspector General for Evaluations and Inspections (S8E).

B. The Immediate Office of the Assistant Inspector General for Evaluations and Inspections (S8E).

Section S8E.20 *The Office of Evaluations and Inspections*—(Functions):

A. The Assistant Inspector General for Evaluations and Inspections (S8E) is directly responsible to the Inspector General for carrying out the OEI mission and providing general supervision to the major components of OEI.

B. The Immediate Office of the Assistant Inspector General for Evaluations and Inspections (S8E) provides the Inspector General with staff assistance on the full range of his/her responsibilities.

1. Directs and coordinates the activities of the Regional Inspectors General for Evaluations and Inspections who carry out OEI's mission and activities in assigned geographic areas.

2. Develops OEI's evaluations and inspections policies, standards and procedures and assesses the quality of inspections to ensure compliance with policies and procedures.

3. Manages OEI's human and financial resources and develops and monitors OEI's management information systems.

4. Manages OEI's work planning process and reviews legislative, regulatory and program proposals for vulnerabilities to fraud, waste and mismanagement.

5. Conducts inspections of SSA programs and recommends changes to improve efficiency and effectiveness. Provides programmatic expertise and issues information on new programs, procedures, regulations and statutes to OEI regional offices.

6. Evaluates SSA programs, provides written reports and follows up on implementation of corrective action recommendations. Evaluates the actions taken to resolve problems and vulnerabilities identified and provides additional data or corrective action options, where applicable.

7. Conducts data and trend analyses of major SSA initiatives to determine the effects of current policies and practices on program effectiveness and efficiency.

8. Recommends changes in program policies, regulations and law to improve efficiency and effectiveness and to prevent fraud, waste and abuse. Analyzes current policies to evaluate options for future policy, regulatory and legislative improvements.

This statement amends part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Notice is given of the establishment of SSA's Office of the General Counsel (OGC) (S9) at the first level below the Commissioner and the establishment of subordinate components. The new chapter reads as follows:

Chapter S9—The Office of the General Counsel

S9.00 Mission
S9.10 Organization
S9.20 Functions

Section S9.00 *The Office of the General Counsel*—(Mission): The General Counsel, as special advisor to the Commissioner on legal matters, is responsible for providing all legal services and advice to the Commissioner, Deputy Commissioner and all subordinate organizational components of SSA in connection with the operation and administration of SSA.

Section S9.10 *The Office of the General Counsel*—(Organization) The Office of the General Counsel under the leadership of the General Counsel includes:

A. The General Counsel (S9).

B. The Principal Deputy General Counsel (S9).

C. The Immediate Office of the General Counsel (S9A) which includes:

1. The Deputy General Counsel (Regional Operations) (S9A–1).

2. The Inspector General Staff (S9A–2).

D. The Division of General Law (S9B).

E. The Division of Litigation (S9C).

F. The Division of Policy and Legislation (S9E).

G. The Offices of Regional Chief Counsels (S9G–F1—S9G–FX).

Section S9.20 *The Office of the General Counsel*—(Functions):

A. The General Counsel (S9) is directly responsible to the Commissioner for carrying out the OGC mission and providing general supervision to the major components of OGC.

B. The Principal Deputy General Counsel (S9) assists the General Counsel in carrying out his/her responsibilities and performs other duties as the General Counsel may prescribe. In the event of the General Counsel's absence or disability, or in the event of a vacancy in the position of General Counsel, the Principal Deputy General Counsel acts for him/her unless the Commissioner directs otherwise.

C. The Immediate Office of the General Counsel (S9A) provides the General Counsel with staff assistance on the full range of his/her responsibilities. It includes:

1. The Deputy General Counsel (Regional Operations) (S9A–1) directs and coordinates regional Offices of the General Counsel personnel who carry out OGC's mission. In the event of the absence or disability of both the General Counsel and the Principal Deputy General Counsel, the Deputy General Counsel (Regional Operations) acts for the General Counsel unless the Commissioner directs otherwise.

2. The Inspector General Staff (S9A–2) provides legal services to SSA's Inspector General in all areas within the jurisdiction of the Inspector General including prosecution of all claims by SSA for civil money penalties under section 1129 of the Social Security Act, 42 U.S.C. 1320a–8.

D. The Division of General Law (S9B).

1. Provides legal services on business management activities and administrative operations throughout SSA, including procurement, contracting, patents, copyrights, personnel, budget, appropriations, employment, compensation, travel and claims involving these areas by and against SSA.

2. Provides legal services and advice regarding SSA's civil defense, civil rights and security programs as well as for SSA's administration of the Freedom of Information and Privacy Acts. Provides liaison with the Department of Justice on administering the Freedom of Information and Privacy Acts. Liaisons with the Comptroller General.

3. Provides legal advice to officials and employees regarding ethics and standards of conduct matters. Coordinates SSA's confidential reporting system for reporting on financial interests and outside activities.

4. Assists SSA components with the development and implementation of ethics training, provides liaison with the White House General Counsel and the Office of Government Ethics on ethics matters.

5. Furnishes litigation support and litigation related advice to the Commissioner and all components of SSA in both administrative and court litigation in connection with each of the areas mentioned above. Represents SSA in all such litigation when such direct representation is authorized by law. In other cases, makes and supervises contacts with attorneys responsible for the conduct of such litigation.

E. The Division of Litigation (S9C).

1. Furnishes legal support and litigation related advice in both administrative and court litigation in connection with the operations and administration by SSA of the various programs administered by SSA under the Social Security Act and of other programs which do not fall within the jurisdiction of the Division of General Law (DGL) or the Inspector General Staff (IGS).

2. Represents SSA in all such litigation when such direct representation is authorized by law and in other cases, makes and supervises contacts with attorneys responsible for the conduct of such litigation.

F. The Division of Policy and Legislation (S9E).

1. Furnishes nonlitigation legal services and advice in connection with the operations and administration by SSA of the various programs administered by SSA under the Social Security Act and of other programs and areas which do not fall within the jurisdiction of DGL or IGS.

2. Drafts proposals for legislation originating in SSA, reviews specifications for such proposed legislation and reviews all proposed legislation submitted by SSA for comment. Drafts or reviews reports and letters to congressional committees, the Office of Management and Budget and others on proposed legislation and legislative matters. Prescribes the procedures to govern the routing and review within SSA of material relating to proposed legislation.

3. Drafts or reviews proposed testimony of SSA officials before Congress relating to any area within the jurisdiction of the division.

4. Drafts or reviews all SSA regulatory materials and legal instruments relating to an area within the jurisdiction of the division.

G. The Offices of Regional Chief Counsels (S9G–F1—S9G—FX) provide the Commissioner and the various regional components of SSA with legal services and support as follows:

1. Provide professional legal and managerial expertise for the OGC in their respective geographic locations.

2. Provide litigation support and legal services and advice to the SSA Regional Commissioners in the various areas set out above regarding OGC divisions and the IGS.

This statement establishes part T of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Notice is given of the establishment of the Office of the Deputy Commissioner, Programs, Policy, Evaluation and Communications (TA) at the first level below the Commissioner. Notice is further given of the establishment of the Office of Program Coordination and Planning, the Office of Policy Analysis and Evaluation, the Office of the Actuary, the Office of Disability, the Office of Disclosure Policy, the Office of Hearings and Appeals, the Office of International Policy, the Office of Policy, the Office of Communications, the Office of Research and Statistics and the Office of Program Benefits Policy. The new chapter reads as follows:

Chapter TA—Office of the Deputy Commissioner, Programs, Policy, Evaluation and Communications

TA.00 Mission
TA.10 Organization
TA.20 Functions

Section TA.00 *The Office of the Deputy Commissioner, Programs, Policy, Evaluation and Communications*—(Mission): The Office of the Deputy Commissioner, Programs, Policy, Evaluation and Communications (ODCPPEC) directs the formulation of overall policy for SSA. Directs the formulation and issuance of program objectives. Directs and manages the planning, development, issuance and evaluation of program and operational policies, standards and instructions for the retirement and survivors insurance, disability and supplemental security income programs. Serves as a focal point for international program policy issues and activities. Oversees Agency hearings and appeals activities. Directs a public communications program that effectively promotes and furthers the

initiatives of SSA and public understanding of the Social Security programs. Serves as the central receipt for public inquiries. Oversees the collection, use and dissemination of both personal and non-personal information to ensure consistency with Agency objectives, law and the expectations of the American public. Directs, administers and coordinates a program of actuarial analysis and social science research related to Agency-administered programs and projected changes in those programs. Directs the development of actuarial estimates pertaining to SSA-administered programs. Provides information on the effects on individuals and the economy of programs operated by SSA and the interactions among these programs, other tax and income-transfer programs and economic, social and demographic forces.

Section TA.10 *The Office of the Deputy Commissioner, Programs, Policy, Evaluation and Communications*—(Organization): The Office of the Deputy Commissioner, Programs, Policy, Evaluation and Communications under the leadership of the Deputy Commissioner, Programs, Policy, Evaluation and Communications, includes:

A. The Deputy Commissioner, Programs, Policy, Evaluation and Communications (TA).

B. The Assistant Deputy Commissioner, Programs, Policy, Evaluation and Communications (TA).

C. The Immediate Office of the Deputy Commissioner, Programs, Policy, Evaluation and Communications (TAA).

1. The Resources Management Staff (TAA–1).

2. The Office Automation Support Staff (TAA–2).

D. The Office of Program Coordination and Planning (TAB).

E. The Office of the Actuary (TAC).

F. The Office of Disability (TAE).

G. The Office of Disclosure Policy (TAG).

H. The Office of Hearings and Appeals (TAH).

I. The Office of International Policy (TAJ).

J. The Office of Policy (TAK).

K. The Office of Communications (TAL).

L. The Office of Research and Statistics (TAN).

M. The Office of Program Benefits Policy (TAP).

N. The Office of Policy Analysis and Evaluation (TAQ).

Section TA.20 *The Office of the Deputy Commissioner, Programs, Policy, Evaluation and Communications*—(Functions):

A. The Deputy Commissioner, Programs, Policy, Evaluation and Communications (TA) is directly responsible to the Commissioner for carrying out the ODCPPEC mission and for providing general supervision to the major components of ODCPPEC.

B. The Assistant Deputy Commissioner, Programs, Policy, Evaluation and Communications (TA) assists the Deputy Commissioner in carrying out his/her responsibilities and performs other duties as the Deputy Commissioner may prescribe.

C. The Immediate office of the Deputy Commissioner, Programs, Policy, Evaluation and Communications (TAA) provides the Deputy Commissioner with staff assistance on the full range of his/her responsibilities.

1. The Resources Management Staff (TAA–1).

a. Plans, develops and coordinates Deputy Commissioner for Programs, Policy, Evaluation and Communications (DCPPEC) financial, personnel, and administrative management programs, and advises the Executive Officer and/or the Deputy Commissioner of the impact of agency level finance, personnel and the administrative decisions which affect DCPPEC.

b. Formulates, justifies and presents DCPPEC's annual and multi-year budget submissions. Controls the collection, recording and reporting of all financial, personnel and administrative data in connection with the budget and staffing formulation and execution functions.

c. Reviews, and analyzes budget requests submitted by DCPPEC components and formulates DCPPEC financial operating plans and budget projections.

d. Is responsible for presenting DCPPEC's budget submissions and the justifications for these submissions to SSA officials and for the assessment of, and response to, SSA's reviews of these submissions.

e. Administers cost allocation functions of the budget process. Works with SSA budget officials to obtain the resources necessary to meet DCPPEC goals and objectives.

f. Monitors workload projections for budget execution and control purposes. Ensures that employment ceilings and obligations and expenditures of funds are in conformance with authorized allotments and allowances. Performs periodic reviews of budget execution and financial management practices in DCPPEC offices.

g. Administers Agency guidelines on personnel and Equal Employment Opportunity (EEO) issues. Serves as DCPPEC liaison with SSA and other federal components on labor management relations, EEO and training issues.

h. Is responsible for advising the Executive Officer and/or Deputy Commissioner on issues impacting DCPPEC staff and staffing levels.

2. The Office Automation Support Staff (TAA–2).

a. Designs, implements and maintains automated information and communications systems DCPPEC-wide and provides systems support to DCPPEC components, advises on changing SSA plans and strategies with respect to systems.

b. Prepares all support documentation and represents DCPPEC interests with respect to systems projects and procurements, including performing project officer duties on contracts. Provides data and analysis for the DCPPEC Information Technology Systems budget submission.

c. Performs contract management functions for DCPPEC computer system contracts and interagency agreements. Ensures DCPPEC systems meet user needs and management information requirements.

d. Performs liaison function with vendors and Office of Systems components for servicing hardware, software, and network.

e. Performs property management function for systems equipment and software within the immediate Office of the Deputy Commissioner.

f. Designs complex computer-based systems to improve efficiency of DCPPEC operations and functions. Develops, implements, documents, and maintains applications systems for DCPPEC. These systems include client-server databases working across multiple operating system platforms. Performs management analysis of requirements, workflow, work processes and writes specifications for computer systems needed to improve operations, work processes and tasks. Maintains management plans for all systems projects.

g. Provides day-to-day operational systems management and support services for DCPPEC, including minicomputers, network, communications and microcomputer operations. Ensures that projects effectively support DCPPEC business and strategic plans.

h. Serves as electronic mail administrator for the immediate front office of the Deputy Commissioner.

i. Maintains electronic gateways from DCPPEC networks into Agency and non-SSA mainframe and other computer systems. Maintains liaison with Office of Systems on network issues and standards.

j. Identifies DCPPEC training needs with respect to systems activities, and coordinates with responsible SSA components to ensure that these needs are met.

D. The Office of Program Coordination and Planning (TAB) provides Agency leadership in identifying policies that can be changed and emerging technologies that can be used to improve service to the public; manages all planning activities for the Deputy Commissioner, including liaison with other Agency, governmental and private sector committees and groups; manages the Agency's on-line (Internet) policies and services; manages the flow of information and assignments within DCPPEC, and in coordination with the Office of the Commissioner and other major SSA Offices; prepares a wide range of information and materials for the Deputy Commissioner; and monitors progress in achieving Commissioner and DCPPEC initiatives and objectives.

E. The Office of the Actuary (TAC) develops actuarial estimates and analyses and cost estimates pertaining to SSA-administered retirement, survivors and disability programs and the supplemental security income program and to projected changes in those programs. Conducts studies of program financing. Performs actuarial and demographic research on social insurance and related program issues and projects future workloads.

F. The Office of Disability (TAE) develops, coordinates and evaluates the disability program and issues related operational policies, standards and procedures. Develops and issues policies and guidelines for use by State, Federal or private contractor providers which implement the disability provisions of the Social Security Act as amended. The Office plans and directs a continuing evaluation of program performance and an economic and social survey program to evaluate the current impact and future needs of the disability program. Ensures that interrelated program policy and procedural areas are coordinated.

G. The Office of Disclosure Policy (TAG) develops and interprets SSA policy governing requests for disclosure of information from Agency records made under the provisions of the Privacy Act and the Freedom of Information Act (FOIA).

H. The Office of Hearing and Appeals (TAH) holds hearings and issues decisions as part of the SSA appeals process. Directs a nationwide field organization which conducts impartial hearings and makes decisions on appealed determinations involving retirement, survivors, disability, health insurance, black lung and supplemental security income benefits. Performs central office reviews of decisions.

I. The Office of International Policy (TAJ) serves as SSA's focal point for international program policy matters and for its participation in the international Social Security community. Serves as liaison to international agencies and associations which deal with Social Security matters. Negotiates international Social Security (totalization) agreements with foreign governments and develops policies and procedures to implement the agreements. Develops and implements policies and procedures relating to the operation of the Social Security program outside the United States. Provides training programs and technical consultation on Social Security and related fields to Social Security officials and other experts outside the United States. Serves as liaison with other Federal agencies, such as the Department of State and the Department of the Treasury, on Social Security program matters outside the United States.

J. The Office of Policy (TAK) serves as the focal point for the Agency to ensure that strategic policy decisions are properly translated into operational policies and procedures and are implemented in an effective manner. Coordinates the development of policies across program lines to ensure consistency in implementation. Develops, promulgates and reviews all program regulations for consistency. Reviews regulations for directly-administered programs for consistency with statutory and congressional intent and with SSA policy decisions and requirements. Directs the clearance of regulations within the Agency and with other departments and agencies and the Office of Management and Budget. Develops the Agency's Regulatory Plan and its portion of the United Agenda of Federal Regulations. Is responsible for development, review and distribution of the Agency's instructional system. Develops and publishes general and special compilations of Social Security laws, various technical issuances and program handbooks. Ensures that policies are coordinated internally and that all instructional materials developed are compatible with overall operating policies and practices. Establishes policies relating to the Agency's notices to the public and serves as the focal point for the Agency's effort to improve service to the public through the issuance of clear notices. Evaluates the effectiveness of national policies in meeting program goals and recommends necessary program modifications.

K. The Office of Communications (TAL) directs a program to develop and preserve working relationships with a wide variety of national organizations, special interest and advocacy groups, the media, other Federal agencies and State and local governments, for purposes of securing understanding, cooperation and acceptance of SSA programs, policies and procedures and for providing avenues of public participation in the decisionmaking process of SSA. Plans, directs, coordinates, effects and evaluates SSA's nationwide communications program, which involves interaction with other Federal and State agencies, local governments and other organizations concerned with public communications programs and activities. Develops public information programs and materials to ensure public knowledge and understanding of protections, rights and responsibilities under the programs administered by SSA. Directs SSA's Satellite Communications Network activities. Coordinates the non-English communications activities within SSA. Provides a central receipt, control, acknowledgement, response and referral program for all high-priority and other inquiries addressed to, or telephone calls directed to SSA headquarters, the Commissioner or other SSA executives. Develops correspondence policy and procedures and guide language on recurring topics and issues for use throughout the Agency.

L. The Office of Research and Statistics (TAN) is responsible for providing information on the effects on individuals and the economy of programs operated by SSA and the interactions among these programs, other tax and income-transfer programs and economic, social and demographic forces.

M. The Office of Program Benefits Policy (TAP) develops, coordinates and evaluates the retirement and survivors insurance and supplemental security income programs and issues related operational policies, standards and instructions. Develops and issues policies and guidelines for use by State and Federal organizations which implement supplemental security income provisions. Develops agreements with the States that govern State supplementation programs, Medicaid eligibility, data exchange programs, food stamps and fiscal reporting processes. Plans and directs continuing performance evaluation and economic and social survey programs to evaluate the current impact and future needs of the RSI and SSI programs.

N. The Office of Policy Analysis and Evaluation (TAQ) conducts a comprehensive program to analyze cross-cutting policy issues, provide analytic support to external commissions and evaluate current and proposed social welfare policy.

Subchapter TAB—Office of Program Coordination and Planning

TAB.00 Mission
TAB.10 Organization
TAB.20 Functions

Section TAB.00 *The Office of Program Coordination and Planning*—(Mission): The Office of Program Coordination and Planning (OPCP) provides Agency leadership in identifying policies that can be changed and emerging technologies that can be used to improve service to the public; manages all planning activities for the Deputy Commissioner, including liaison with other Agency, governmental and private sector committees and groups; manages the Agency's on-line (Internet) policies and services; manages the flow of information and assignments within ODCPPEC and in coordination with the Office of the Commissioner and other major SSA Offices; prepares a wide range of information and materials for the Deputy Commissioner; and monitors progress in achieving Commissioner and DCPPEC initiatives and objectives.

Section TAB.10 *The Office of Program Coordination and Planning*—(Organization): The Office of Program Coordination and Planning, under the leadership of the Director, Office of Program Coordination and Planning, includes:

A. The Director of the Office of Program Coordination and Planning (TAB).

B. The Immediate Office of the Director, Office of Program Coordination and Planning (TAB).

C. The Planning and Technology Policy Staff (TABA).

D. The Program Coordination Staff (TABB).

Section TAB.20 *The Office of Program Coordination and Planning*—(Functions):

A. The Director of the Office of Program Coordination and Planning (TAB) is directly responsible to the Deputy Commissioner, Programs, Policy, Evaluation and Communications for carrying out OPCP's mission and providing managerial direction to the major components of OPCP.

B. The Immediate Office of the Director, Office of Program Coordination and Planning (TAB) provides the Director with staff assistance on the full range of his/her responsibilities.

C. The Planning and Technology Policy Staff (TABA).

1. Provides Agency leadership in identifying the policies that can be changed and emerging technologies that can be used to improve our service to the public; develops policy scenarios for such change, testing change models and evaluating their efficacy; and recommends policy adjustments and positions to the Deputy Commissioner, Commissioner and the SSA Executive Staff.

2. Identifies how DCPPEC can administer its program functions more efficiently and effectively, considering such influences as workforce demographic changes, Agency-level restructuring and downsizing activities, technology and the organizational vision and missions. Tests change models within the organization.

3. Implements new planning strategies within DCPPEC organizations and manages the DCPPEC planning process, including improvements in information dissemination and coordination for DCPPEC staff.

4. Maintains liaison with Government-wide planning bodies, including committees, working groups, and oversight panels established in conjunction with Government-wide policy, planning and technology assessment activities. Establishes and maintains appropriate relationships with entities in the public and private sectors with respect to technology and policy planning issues.

5. Provides Agency leadership for SSA's on-line (Internet and emerging online information infrastructure) services, including participation with other SSA components, other governmental Agencies and the private sector in designing and testing specific online services which have major policy implications for improving service to the public; manages SSA's Internet services; establishes Internet service policies; and serves as DCPPEC's managing organization for Information Resources Management (IRM) functions.

6. Develops and manages DCPPEC-wide planning initiatives in conjunction with Agency-level planning activities (such as the Agency Strategic Plan, SSA Business Plan, Information Technology Systems plan) and in concert with Government-wide planning and policy review activities, including Presidential, Vice-Presidential and Office of Management and Budget initiatives.

D. The Program Coordination Staff (TABB).

1. Performs a wide variety of analytical, coordinative, technical and liaison activities for the Deputy Commissioner; conducts in-depth reviews of submittals and policy documents to ensure completeness and consistency with the Social Security Act, regulations and policy; serves as a liaison with other SSA components and Federal agencies; represents the Deputy Commissioner at meetings with officials from other Federal agencies and/or SSA components; and provides guidance to DCPPEC executive staff in the area of communications.

2. Manages the daily flow of assignments and information within DCPPEC components and in coordination with the Office of the Commissioner and other major SSA Offices, ensuring timeliness, quality, and policy consistency in products created within DCPPEC.

3. Prepares a wide range of materials, including analytical papers, memoranda, speeches, talking points and briefing papers on the full range of Agency program provisions and policies.

4. Monitors progress in achieving Commissioner and Deputy Commissioner initiatives, objectives and priorities which involve DCPPEC components.

Subchapter TAC—Office of the Actuary

TAC.00 Mission
TAC.10 Organization
TAC.20 Functions

Section TAC.00 *The Office of the Actuary*—(Mission): The Office of the Actuary (OACT) plans and directs a program of actuarial estimates and analyses pertaining to SSA-administered retirement, survivors and disability insurance programs and supplemental security programs and to projected changes in these programs. Evaluates operations in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, conducts studies of program financing, performs actuarial and demographic research on social insurance and related program issues, and projects future workloads. Provides technical and consultative services to the Commissioner and to the Board of Trustees of those two Trust Funds and appears before congressional committees to provide expert testimony on the actuarial aspects of Social Security issues.

Section TAC.10 *The Office of the Actuary*—(Organization): OACT, under the leadership of the Chief Actuary, includes:

A. The Chief Actuary (TAC).

B. The Deputy Chief Actuary (Short-Range) (TAC).

C. The Deputy Chief Actuary (Long-Range) (TAC).

D. The Immediate Office of the Chief Actuary (TAC).

E. The Office of Short-Range Actuarial Estimates (TACA).

F. The Office of Long-Range Actuarial Estimates (TACB).

Section TAC.20 *The Office of the Actuary*—(Functions):

A. The Chief Actuary (TAC) is directly responsible to the Deputy Commissioner, Programs, Policy, Evaluation and Communications for carrying out OACT's mission and provides supervision to the major components of OACT.

B. The Deputy Chief Actuary (Short-Range) (TAC) assists the Chief Actuary in carrying out his/her OACT-wide responsibilities and performs other duties as prescribed.

C. The Deputy Chief Actuary (Long-Range) (TAC) assists the Chief Actuary in carrying out his/her OACT-wide responsibilities and performs other duties as prescribed.

D. The Immediate Office of the Chief Actuary (TAC) provides the Chief Actuary and his/her Deputies with staff assistance on the full range of their responsibilities, and conducts special actuarial studies and analyses.

E. The Office of Short-Range Actuarial Estimates (TACA) is responsible for planning, directing and coordinating the development of short-range cost estimates for all Social Security programs both under current provisions and proposed changes in law or regulation. Develops special cost analyses involving technical actuarial issues; projects operations of the Trust Funds; provides a variety of data services including data collection, statistical support; and prepares estimates for general fund and interprogram reimbursement.

F. The Office of Long-Range Actuarial Estimates (TACB) is responsible for planning, directing and coordinating the development of long-range cost estimates for all the Social Security programs both under current provisions and proposed changes in law or regulation. Designs the economic, demographic and programmatic assumptions and the methods needed to develop these estimates; analyzes and publishes actuarial research based on projections and actual program experience; and provides authoritative advice to agency policymakers and congressional staffs relating to the long-range actuarial impact of current law and proposed program changes.

Subchapter TAE—Office of Disability

TAE.00 Mission
TAE.10 Organization
TAE.20 Functions

Section TAE.00 *The Office of Disability*—(Mission): The Office of Disability (OD) plans, develops, evaluates and issues the operational and administrative appeals process policies, standards and instructions for the SSA administered disability programs. Develops and promulgates policies and guidelines for use by State, Federal or private contractor providers which implement the disability provisions of the Social Security Act as amended. Provides operational policy advice, technical support and management direction to central office, regional office and field components in the administration of the disability programs. Evaluates the effects of proposed legislation and legislation pending before Congress to determine the impact on the disability programs. Plans and directs a continuing program performance evaluation, and an economic and social survey program to evaluate the current impact and future needs of the disability programs. Ensures that interrelated policy areas are coordinated. Processes State agency workloads on a temporary or transitional basis.

Section TAE.10 *The Office of Disability*—(Organization): The Office of Disability under the leadership of the Associate Commissioner for Disability, includes:

A. The Associate Commissioner for Disability (TAE).

B. The Deputy Associate Commissioner(s) for Disability (TAE).

C. The Immediate Office of the Associate Commissioner for Disability (TAE).

D. The Office of Medical Evaluation (TAEA).

E. The Federal Disability Determination Services (TAEB).

F. The Division of Medical and Vocational Policy (TAEC).

G. The Division of Field Disability Operations (TAEE).

H. The Division of Disability Process Policy (TAEG).

I. The Division of Disability Program Information and Studies (TAEH).

J. The Division of Employment and Rehabilitation Programs (TAEJ).

Section TAE.20 *The Office of Disability*—(Functions):

A. The Associate Commissioner for Disability (TAE) is directly responsible to the Deputy Commissioner, Programs, Policy, Evaluation and Communications for carrying out OD's mission and provides general supervision to the major components of OD.

B. The Deputy Associate Commissioner(s) for Disability (TAE) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Disability (TAE) provides the Associate Commissioner and the Deputy Associate Commissioner with staff assistance on the full range of their responsibilities and coordinates the administrative and program activities of OD components.

D. The Office of Medical Evaluation (TAEA):

1. Provides advice and consultation to the Associate Commissioner of OD, the Commissioner and other officials of SSA on all medical aspects in the planning, direction and coordination of the Title II disability insurance (DI) program and the Title XVI supplemental security income (SSI) program for the blind and disabled.

2. Develops broad medical concepts and policies for the administration of the Title II and Title XVI programs, and provides consultation for research studies to develop improved medical techniques for evaluating impairment severity and disability.

3. Provides leadership and professional direction to the Regional Medical Officers and consultants, and to State Disability Determination Services (DDS) medical personnel engaged in Title II and Title XVI related activities.

4. Provides medical consultation required in the formulation of medical evaluation and development policies and guides, and develops orientation and training programs for medical personnel in OD, regional offices and State DDSs.

5. Carries out professional relations efforts in support of SSA's efforts to gain support from professional medical associations.

E. The Federal Disability Determination Services (TAEB):

1. Develops and adjudicates disability determinations either temporarily as help for one or more Disability Determination Services (DDS) or as a transition until a permanent alternative case processing operation is fully operational in the event that SSA must assume the disability determination function for a State because of noncompliance with regulations and guidelines, or voluntary withdrawal.

2. Pilot tests new work processes, procedures and systems prior to nationwide implementation; validates and conducts useability tests on new and/or revised systems processes; evaluates new or revised disability adjudication policies for national consistency and practical application; and conducts special studies and policy reviews required for management purposes.

3. Reviews and makes disability decisions on applications for disability under Title II and Title XVI of the Social Security Act on initial applications, on reconsideration requests, and continuing disability.

4. Screens disability applicants for, and makes referrals to, vocational rehabilitation (VR) agencies; develops and evaluates medical/vocational evidence; and arranges for procurement and payment of such evidence, as required.

5. Reviews State hearing officer and Federal hearing officer decisions; prepares decisions on foreign claims and changes hearing officers' determinations in accordance with the regulations at 404.918 and 416.1418; participates in hearing process studies; and prepares statistical and narrative reports and recommendations for training and policy and procedural changes based on case review and analysis or study findings.

F. The Division of Medical and Vocational Policy (TAEC):

1. Develops, evaluates, implements and maintains medical policy for deciding disability claims for all body systems to be used at all adjudicative levels.

2. Develops, evaluates, implements and maintains policy for deciding disability claims, including such areas as residual functional capacity, medical improvement review standard and other continuing disability issues, onset, duration, weighing of evidence and other issues affecting disability claims at all adjudicative levels.

3. Develops, evaluates, implements and maintains policy for all vocational issues, such as age, education, work experience, the vocational rules, and work evaluations which are used to decide disability claims at all adjudicative levels.

4. Develops, evaluates, implements and maintains all policy used to decide disability in childhood disability claims, including the childhood Listings of Impairments, individualized functional assessment and functional equivalency for all adjudicative levels.

5. Coordinates recommendations concerning which court decisions should be appealed; coordinates development of responses to interrogatories and court orders; and ensures that policies and procedures are changed to reflect specific court orders and legal precedents.

G. The Division of Field Disability Operations (TAEE):

1. Provides national guidance for the administrative aspects of the disability determination function whether administered through State DDS, contracted out to the private sector, or accomplished by designated SSA organizational components.

2. Develops pertinent policies, regulations and procedures by establishing standards and guides for performance; monitoring performance; initiating corrective action where needed; coordinating workloads and administering the funds for the DDSs, etc. Conducts such studies and reviews as are necessary to the disability determination function.

3. Works through SSA regional offices, interested national organizations and other SSA central office components to accomplish objectives or, in special situations, works directly with the component performing the disability determination function.

4. Plans, coordinates and manages the Office of Disability systems related activities, including DDS and Federal Disability Determination Services automation, information resource management, expert systems, development of user specifications, and installation and testing of hardware, networks and communications links for DDSs.

5. Analyzes, plans, distributes and monitors all DDS funding on a State-by-State basis. This includes establishing and monitoring workload and productivity targets for each DDS.

H. The Division of Disability Process Policy (TAEG):

1. Develops procedures and instructions for the disability provisions of other programs including certain Title XVI and XVIII provisions unique to the disability programs, e.g., worker's compensation.

2. Develops and issues the policies, procedures and instructions relating to the development of nonmedical evidence, the processing of claims, the development of policy guidelines and technical procedures for the Continuing Disability Review process.

3. Develops the procedures and instructions which define the administrative appeals process. Develops notice policy and issues language and forms for use in disability claims and notices including foreign language and Braille notices.

4. Maintains liaison and assists professional relations efforts to gain the support of private advocacy groups, Federal, State and local agencies and the public and provides guidance and assistance on disability professional relations issues to the SSA regional and Disability Determination Services' field networks.

I. Division of Disability Program Information and Studies (TAEH):

1. Conducts research and evaluates studies on the disabled population and recipients and specific operational/administrative program issues. Designs demonstration projects.

2. Designs evaluation systems for and evaluates demonstration projects.

3. Develops and maintains data bases for research, statistical activities and program information. Provides recurring and specialized reports, and coordinates information requirements.

J. The Division of Employment and Rehabilitation Programs (TAEJ):

1. Implements the provisions of the Social Security Act which call for the referral of beneficiaries and recipients to the State or alternate vocational rehabilitation (VR) providers, evaluates VR provider services, reimburses VR providers for successful rehabilitations, ensures that client participation in a program is appropriate and meets the requirements of the Act and develops proposals and plans for new VR initiatives.

2. Implements and evaluates test models for delivering rehabilitation, job placement and post-employment services and for making appropriate referrals to public and private agencies. Administers contracts to support projects.

3. Develops initiative to promote public understanding and use of work incentives through enhanced outreach activities and by building networks with community-based agencies and service providers.

4. Prepares and revises regulations, operating policies and training materials. Develops proposals and plans for new work incentives.

5. Develops procedures and instructions for implementation of the drug addiction and alcoholism referral and monitoring provisions. Administers agreements implementing the provisions.

Subchapter TAG—Office of Disclosure Policy

TAG.00 Mission
TAG.10 Organization
TAG.20 Functions

Section TAG.00 *The Office of Disclosure Policy*—(Mission): The Office of Disclosure Policy (ODP) develops and interprets SSA policy governing requests for disclosure of information from SSA records made under the provisions of the Privacy Act and the Freedom of Information Act (FOIA).

Section TAG.10 *The Office of Disclosure Policy*—(Organization): ODP, under the leadership of the Director of the Office of Disclosure Policy, includes:

A. The Director of the Office of Disclosure Policy (TAG).

B. The Immediate Office of the Director of the Office of Disclosure Policy (TAG).

Section TAG.20 *The Office of Disclosure Policy*—(Functions):

A. The Director of the Office of Disclosure Policy (TAG) is directly responsible to the Deputy Commissioner, Programs, Policy, Evaluation and Communications for carrying out ODP's mission and provides managerial direction to the major components of ODP.

B. The Immediate Office of the Director of the Office of Disclosure Policy (TAG) provides the Director with staff assistance on the full range of their responsibilities.

1. Develops and interprets SSA policy governing requests for information made under the provisions of the Privacy Act.

2. Develops national standards relating to the release and exchange of personal data in SSA data bases. Manages SSA's interaction with other agencies in negotiating data releases and exchanges. Develops and interprets SSA policy related to personal access initiatives which allow individuals to use technology (e.g., personal computers, kiosks) to access their records from SSA data bases.

3. Negotiates with various federal government entities regarding electronic data sharing, direct terminal access to SSA computer records and use of the Social Security Number.

4. Assures Agencywide sensitivity to importance of privacy considerations in all situations involving disclosure of SSA data about individuals. Reviews Agency projects and initiatives to ensure compliance with the Privacy Act and related laws and regulations. Examines public service issues related to handling various information requests from the public. Develops decisions on Privacy Act appeals for the Commissioner.

5. Develops and interprets SSA policy governing requests for information made under the provisions of the Freedom of Information Act (FOIA). Directs FOIA activities in SSA, develops SSA's FOIA policies and procedures, and prepares the Annual Report to Congress on these activities. Decides whether records are required to be disclosed to members of the public. Develops decisions on FOIA appeals for the Commissioner and Deputy Commissioner.

Subchapter TAH—Office of Hearings and Appeals

TAH.00 Mission
TAH.10 Organization
TAH.20 Functions

Section TAH.00 *The Office of Hearings and Appeals*—(Mission): The Office of Hearings and Appeals (OHA) administers the nationwide hearings and appeals program for SSA. Provides the basic mechanisms through which individuals and organizations dissatisfied with determinations affecting their rights to and amounts of benefits or their participation in programs under the Social Security Act may administratively appeal these determinations in accordance with the requirements of the Administrative Procedure and Social Security Acts. OHA includes a nationwide field organization staffed with Administrative Law Judges (ALJs) who conduct impartial hearings and make decisions on appeals filed by claimants, their representatives, providers-of-service institutions and others under the Social Security Act. The Appeals Council of OHA impartially reviews ALJ decisions, either on the Appeals Council's own motion or at the request of the claimant, and renders the Commissioner's final decision when review is taken. Reviews new court cases to determine whether the case should be defended on the record or the Commissioner should seek voluntary remand, and reviews final court decisions in light of the programmatic and administrative implications involved and makes recommendations as to whether appeal should be sought. Provides advice and recommendations on Social Security Administration program policy and related matters, including proposed Social Security Rulings.

Section TAH.10 *The Office of Hearings and Appeals*— (Organization): The Office of Hearings and Appeals, under the leadership of the Associate Commissioner for Hearings and Appeals, includes:

A. The Associate Commissioner for Hearings and Appeals (TAH).

B. The Deputy Associate Commissioner for Hearings and Appeals (TAH).

C. The Immediate Office of the Associate Commissioner for Hearings and Appeals (TAH) which includes:

1. The Executive Secretariat (TAH–1).

2. The Special Counsel Staff (TAH–2).

D. The Office of the Chief Administrative Law Judge (TAHA).

1. The Division of Field Operations and Liaison (TAHA1).

2. The Division of Field Practices and Procedures (TAHA2).

3. The Vocational Expert and Medical Advisor Staff (TAHA1).

4. The Division of Medicare Part B (TAHA4).

E. The Offices of the Regional Chief Administrative Law Judges (TAH–F1—TAH–FX).

F. The Office of Appellate Operations (TAHB), which includes the Executive Director who also serves as Deputy Chair of the Appeals Council, the Appeals Council and its Administrative Appeals Judges, Appeals Officers, a Deputy Director to the Executive Director, and a Director of Operations.

1. The Operations Management, Analysis and Coordination Staff (TAHB1).

2. The Division of Program Support (TAHB2).

3. The Medical Support Staff (TAHB3).

4.–22. The Disability Program Branches 1–19 (TAHB4–9 and TAHBA–Q).

23.–24. The Court Case Preparation and Review Branches 1–2 (TAHBR–S).

25. The Division of Retirement and Survivors Insurance, Supplemental Security Income and Health Insurance (TAHBT).

G. The Office of Policy, Planning and Evaluation (TAHC).

1. The Division of Litigation Analysis and Implementation (TAHC1).

2. The Division of Planning and Evaluation (TAHC2).

3. The Division of Policy (TAHC3).

H. The Office of Management (TAHE).

1. The Equal Employment Opportunity Staff (TAHE1).

2. The Division of Congressional and Public Inquiries (TAHE2).

3. The Division of Budget and Financial Management (TAHE3).

4. The Division of Materiel Resources (TAHE4).

5. The Division of Systems Resources (TAHE5).

6. The Division of Management Analysis and Employee Development (TAHE6).

Section TAH.20 *The Office of Hearings and Appeals*—(Functions):

A. The Associate Commissioner of Hearings and Appeals (TAH) is directly responsible to the Commissioner of Social Security for carrying out OHA's mission of holding hearings and rendering decisions on appeals filed under Titles II, XVI, and XVIII of the Social Security Act, as amended, and Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. The Associate Commissioner is responsible for planning, directing, managing, coordinating, and maintaining the integrity of the nationwide SSA hearings and appeals system. As Chair of the Appeals Council, the Associate Commissioner is responsible for the decisions issued at the final administrative level of the Social Security Administration.

B. The Deputy Associate Commissioner for Hearings and Appeals (TAH) assists the Associate Commissioner in carrying out his/her OHA-wide responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Hearings and Appeals (TAH) provides the Associate Commissioner and the Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

1. The Executive Secretariat (ES) (TAH–1) is the liaison and coordination point between the Office of the Associate Commissioner and major SSA and OHA components. It serves as the primary point of contact with OC, ODCPPEC, other Deputy and Associate Commissioners and other top SSA staff for sensitive and urgent matters and to ensure OHA support to those officials.

2. The Special Counsel Staff (TAH–2) serves as professional legal advisor to the Associate Commissioner, OHA, and to other members of the OHA Executive Staff on all matters pertaining to the legislative process, labor relations law, ethics and administrative law, with special emphasis on the Administrative Procedure Act.

D. The Office of the Chief Administrative Law Judge (TAHA) serves as the principal consultant and advisor to the Associate Commissioner on all matters concerning the Administrative Law Judge (ALJ) hearing function. Under the executive leadership of the Associate Commissioner, the Chief Administrative Law Judge manages and administers a hearings organization consisting of a nationwide network of hearing offices and supporting regional offices nationwide. The Chief Administrative Law Judge has primary responsibility for maintaining effective channels of communication between the Associate Commissioner and the RCALJs and the ALJ corps. Formulates and develops broad policies and objectives and establishes program goals for OHA's ALJ corps. Maintains a continuous review of all aspects of OHA field operations, and implements improvements where needed. Is responsible for developing and maintaining the procedures for effective operation of the hearings process. Provides management oversight for all administrative and managerial functions involved in the day-to-day operations of field activities; coordinates regional and hearing office activities; prepares, reviews and drafts decisions and dismissals in Medicare Part B cases; and conducts liaison with other government and private agencies on issues falling within the Office's area of responsibility.

1. The Division of Field Operations and Liaison (TAHA1) serves as liaison for the field with all headquarters components, and provides advice, guidance, and counsel to field units in all areas of identified needs. Assists the Chief Administrative Law Judge in setting field office objectives. Analyzes field resource needs, including staffing, equipment, training and travel and recommends resource allocations to meet those needs. Represents the field on ongoing or ad hoc workgroups, task forces, etc.

2. The Division of Field Practices and Procedures (TAHA2) formulates, develops, communicates and oversees field practices and procedures governing the conduct of the hearing process and other program operations issues in response to the Associate Commissioner, the Chief Administrative Law Judge, or other OHA management officials, as well as a result of court orders and/or changes in the law and regulations.

3. The Vocational Expert and Medical Expert Staff (TAHA3) formulates, develops and oversees the national program for recruitment and use of Vocational Experts and Medical Experts at hearings before Administrative Law Judges. On an ongoing basis, monitors Regional and Hearing Office operations regarding the program and when appropriate provides guidance and makes necessary changes.

4. The Division of Medicare Part B (TAHA4) processes Medicare Part B cases on receipt from Health Care Financing Administration (HCFA) contractors. Researches the law, regulations and relevant policy to resolve case-related issues as necessary. Drafts all decisions where an on-the-record decision is requested and drafts decisions where hearings are held by an Administrative Law Judge who is attached directly to the division. Provides technical and staff assistance to the Chief Administrative Law Judge and all Administrative Law Judges concerning the adjudication of Medicare Part B cases.

E. Each Office of the Regional Chief Administrative Law Judge (TAH–F1—TAH–FX) acts on behalf of the Associate Commissioner and the Chief Administrative Law Judge at the respective regional levels on all matters involving the hearings process, and is directly responsible for the effective execution of the hearings process within the region. Provides direction, leadership, management and guidance to the regional office staff and to the hearing offices in the region, including Administrative Law Judges (ALJs) and their staffs. Is responsible for the regional implementation of national policies, goals, objectives, and procedures pertaining to the hearings process, and formulates policies, goals, and objectives for the ALJs and support staff in the region. Develops and recommends OHA action with respect to allegations of unfair hearings within the region. Is responsible for evaluating the effectiveness of regional and hearing office management. Reviews hearing practices and procedures to detect trends, training needs, and operational problems. Investigates allegations of improper employee conduct, and makes recommendations as to necessary corrective action. Has responsibility for the acquisition and distribution of human and materiel resources within the region. Coordinates operation and administrative activities with SSA regional offices, other SSA regional components, State Agencies, and others, as necessary. Establishes a program to maintain ongoing communication with congressional offices on issues of mutual interest and ensures timely and accurate responses to congressional inquiries. Ensures that court remands are processed efficiently within the region, and coordinates with the Office of the Chief Counsel in the region to foster OHA compliance with court requirements. Serves as an expert advisor on substantive issues within the region, and upon request by ALJs, provides advice and guidance in matters relating to adjudicating cases under the provisions of the Social Security Act, as amended. Reviews and analyzes fee petitions from attorneys and representatives of claimants for the provision of services at the hearing level, and authorizes payment of fees in those cases where the fees are beyond the authority of a hearing office Administrative Law Judge.

F. The Office of Appellate Operations (TAHB) consists of the Appeals Council and its support staff. In accordance with a direct delegation of authority from the Commissioner of Social Security, the Appeals Council is the final level of administrative review under the Administrative Procedure Act for claims filed under Titles II, XVI, and XVIII of the Social Security Act, as amended, and Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. The Executive Director of the Office of Appellate Operations (OAO) is the Deputy Chair of the Appeals Council and is responsible for the day-to-day operations of a program of administrative review of ALJ decisions issued under the provisions of the

Social Security Act. Upon claimant request or on the Appeals Council's own motion, OAO reviews ALJ decisions and dismissals involving claims for benefits filed under Titles II and XVI of the Social Security Act, as amended, health insurance cases under Title XVIII of the Act, including claims for individual enrollment to participate under Parts A and/or B of Title XVIII and claims by hospitals, skilled nursing facilities and independent laboratories seeking certification or continued certification under the Act, and claims under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, to determine if jurisdiction exists, and, if so, takes appropriate action. The Appeals Council identifies cases which represent broad policy matters or have national impact, conducts oral hearings and acts to resolve the issues in such cases, establishing binding adjudicatory standards and decisional principles that govern OHA's adjudicatory process. Tracks and analyzes court case trends and disseminates information to guide adjudicators with respect to case law, to implement an effective appeals strategy, and to identify areas and make recommendations as to policies which need to be developed and/or clarified, new regulations which need to be developed, or clarifying legislation which should be sought.

1. The Operations Management, Analysis and Coordination Staff (TAHB1) provides a comprehensive program of management analysis and evaluative services to assist the Appeals Council in adjudicating cases, to assist the Executive Director of OAO, and to assist the support staff of the Appeals Council in performing their program review function.

2. The Division of Program Support (TAHB2) under the direction of the Director of Operations of OAO, provides support services to the Appeals Council, including reconstruction of lost claim files and receiving and analyzing fee petitions. Provides reprographic services and controls transcription of hearing cassettes in preparation of the official answer to civil actions filed against the Commissioner of SSA.

3. The Medical Support Staff (TAHB3) consists of staff physicians, consulting physicians, and support staff and provides expert professional judgment to the Appeals Council on individual disability and health insurance claims. Provides informational, advisory and consultant services to the Appeals Council and its support staff on matters of interpretation and application of national policy on SSA and OHA disability criteria and regulations. It reviews disability evaluation training manuals for consistency and national uniformity, represents OHA in contacts with appropriate professional affiliations, and coordinates with the Office of Disability and International Operations all matters of joint interest in the area of medical disability evaluation.

4.–22. The Disability Program Branches 1–19 (TAHB4–9 and TAHBA–Q) serve as support staff providing advice to the Appeals Council in its review of ALJ decisions and dismissals involving claims for benefits. Following an analysis of the record and any additional evidence and/or argument submitted, and applying a thorough knowledge of the Act, Regulations, Rulings and applicable case law, the staff in the program review branches examine hearing decisions and other final actions of the Administrative Law Judges, and requests for Appeals Council review, and make recommendations to the Appeals Council as to what action should be taken on cases pending before the Council. Analyze and recommend action on cases remanded by the courts and those referred by the Office of General Counsel (OGC) for consideration of whether remand should be requested at the Commissioner's motion. Recommend to OGC defense on the record of certain litigated cases if further administrative action is not warranted.

23.–24. The Court Case Preparation and Review Branches 1–2 (TAHBR–S) serve as a support staff to OAO. Prepare remand orders and affidavits and related correspondence on cases in which a complaint has been filed in Federal court. Within published guidelines, recommend to OGC defense on the record for certain litigated cases if further administrative action is not warranted. Analyze and recommend action on cases remanded by the courts. Prepares all court transcripts and controls and maintains all certified records of claims at the civil actions level.

25. The Division of Retirement and Survivors Insurance, Supplemental Security Income and Health Insurance (TAHBT) serves as a support staff and provides advice to the Appeals Council in its review of decisions and dismissals involving claims to establish entitlement to Health Insurance benefits under Title XVIII of the Social Security Act, including claims for individual enrollment to participate under Parts A and/or B of Title XVIII and claims by hospitals, skilled nursing facilities and independent laboratories seeking certification under the Social Security Act, decisions and dismissals involving claims to establish entitlement and the amount of benefits in old-age, survivors and disability under Title II of the Social Security Act; and claims to establish eligibility for and benefits payable in Title XVI cases. Following an analysis of the record and any additional evidence and/or argument submitted, and applying a thorough knowledge of the Act, Regulations, Rulings and applicable case law, examines hearing decisions and other final actions of the ALJ, and requests for Appeals Council review, and makes recommendations to the Administrative Appeals Judges as to what action should be taken on cases pending before the Council whether before or after a civil action is filed.

G. The Office of Policy, Planning and Evaluation (TAHC) plans, analyzes and develops OHA-wide policy for the hearings, appeals and civil actions processes. Responsible for SSA policy with respect to claimant representation and fees charged for their services. Manages the overall OHA hearings and appeals process policy communications system. Is responsible for OHA activity with respect to Social Security regulations, including developing an OHA position with respect to program regulations proposed by SSA components. Monitors OHA's implementation of program regulations governing the hearings and appeals process. Plans and conducts a comprehensive OHA-wide evaluation program designed to support OHA policy and regulatory initiatives and measure the overall effectiveness of the nationwide hearings and appeals process. Provides advice and guidance throughout OHA on matters involving program policies, planning and evaluation. Coordinates policy, planning and evaluation matters within OHA, with OGC, other SSA components, with HCFA and with other Federal agencies and private organizations. Develops and coordinates program training in conjunction with appropriate OHA, SSA, HCFA and OGC components. Develops and implements an appeals strategy, in conjunction with other OHA components, that identifies the issues and types of cases which OHA believes should be appealed. Captures court trend information for dissemination to other components to assist in formulating the Agency's litigation strategy and improving the adjudication process.

1. The Division of Litigation Analysis and Implementation (TAHC1) develops and implements, in conjunction with other OHA components, an appeals strategy that identifies the issues and types of cases which OHA believes

should be appealed. Captures court trend information for dissemination to other components to assist in formulating the Agency's litigation strategy and improving the adjudication process. Develops and maintains a compendium of circuit court case law with systems-based access. Tracks pending class actions, forecasts potential workload impact, and makes recommendations to workload components regarding workload impact. Uses court trend information to identify and make appropriate recommendations with respect to areas in which policies need to be developed and/or clarified, new regulations need to be developed, or clarifying legislation should be sought. Prepares and updates significant court case requirements used in reviewing court cases. Uses court trend information to identify areas where additional training is needed or other measures are needed to improve defensibility. Advises OHA officials of significant cases and trends and of litigation issues which may require revision of operating instructions, and assists with the preparation of the instructions. Coordinates OHA's views on proposed Social Security Acquiescence Rulings. In response to OHA-identified cases and to requests for appeals recommendations from the Litigation Staff, ODCPPEC, obtains the views of affected OHA components and formulates an OHA position on appeal. Maintains liaison with OGC and ODCPPEC to coordinate the settlement of class actions and class action implementation. In coordination with other OHA components, develops instructions for OHA implementation of class action orders, monitors implementation and serves as a focal point for questions from OHA adjudicators. Responds to requests from OGC and the ODCPPEC regarding information about OHA operations requested in the course of litigation. Coordinates OHA's response to discovery requests. Administers and coordinates the Freedom of Information Act and Privacy Act provisions for OHA.

2. The Division of Planning and Evaluation (TAHC2) develops, coordinates and conducts a comprehensive OHA-wide program of studies and analyses of the application of and compliance with SSA and OHA policies and procedures in all phases of OHA's hearings and appeals processes and SSA's claimant representation process and the quality of results achieved. Provides advice and assistance to other OHA components in designing and implementing appropriate systems and procedures for collecting, recording, analyzing and evaluating data to assess the quality of work emanating from the hearings and appeals processes. Conducts studies of policy implementation within OHA. Identifies problem areas and deficiencies in policies. Develops techniques and systems for conducting evaluations of the substantive and technical aspects of claims throughout OHA.

3. The Division of Policy (TAHC3) plans, develops and coordinates the preparation of regulations, policies and guidelines for the hearings, appeals, civil actions and claimant representation processes under Titles II, XVI and XVIII of the Social Security Act, as amended, and under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. Ensures that operating procedures and instructions developed to implement the hearings and appeals process conform with SSA benefit program policy and OHA hearings and appeals process policy. Provides advisory services, consultation, and staff assistance to other components of OHA. Maintains ongoing liaison with SSA, HCFA, OGC and others with respect to program, legislative and policy matters. Reviews current and developing trends in administrative law and litigation; analyzes and prepares policy recommendations; and develops long-range and short-range plans for hearing and appeals policy matters and OHA's implementation of benefit program policy matters. Develops and coordinates program training in conjunction with other OHA, SSA, and OGC program components.

H. The Office of Management (OM) (TAHE) provides administrative support to the Associate Commissioner for all management and systems related activities for OHA. Coordinates with the Chief Administrative Law Judge with respect to management, financial, materiel resources and systems support functions which affect field operations. Has direct line authority for all management and administrative support functions for Headquarters' components of OHA and in coordination with the Chief Judge, for all field components of OHA including its regional offices (ROs) and hearing offices nationwide. Coordinates and integrates the management programs and administrative planning initiatives of OHA into the long-range goals and objectives of SSA. Monitors OHA's progress toward meeting established Agency goals and makes recommendations for needed adjustments to enable OHA to meet these goals. Plans, directs and implements an EEO program within OHA. Plans, directs, administers and evaluates the congressional and public inquiries activities for OHA. Plans, directs and administers a comprehensive nationwide management analysis program to identify areas requiring improvement to enhance the quality and effectiveness of management practices and to assess trends in management.

1. The Equal Employment Opportunity Staff (TAHE1) is responsible for OHA's Equal Opportunity program. Plans, develops, implements and monitors OHA's affirmative action program, and administers the EEO complaint process for OHA headquarters. Provides guidance for, and monitoring of, OHA regional EEO programs.

2. The Division of Congressional and Public Inquiries (TAHE2) formulates policies, procedures and guidelines for use in responding to high priority correspondence from the public and congressional offices. Serves as the correspondence liaison staff with the Commissioner's Office, the Office of Communications and other SSA components.

3. The Division of Budget and Financial Management (TAHE3) plans, develops and coordinates OHA's budget and financial management programs, advising the Director of OM and/or the Associate Commissioner of the financial impact of all decisions which may affect the program and administrative operations of the Agency. Formulates, justifies and presents OHA's annual and multi-year budget submissions. Reviews and analyzes budget requests submitted by OHA components and formulates OHA's financial operating plans and budget projections. Works with SSA budget officials to obtain the resources necessary to meet OHA goals and objectives. Develops all necessary applications for generating budget data and financial management reports. Executes and administers a financial management system, integrating resource management controls. Ensures that employment ceilings and obligations and expenditures of funds are in conformance with authorized allotments and allowances. Administers the travel and payroll function for all OHA headquarters components and ALJs nationwide.

4. The Division of Materiel Resources (TAHE4) plans, directs and provides administrative support services in the areas of space planning and management; forms and records management; property management; equipment control and maintenance;

graphic arts; safety and self-protection, including emergency planning; security; procurement and supply; laboring services; mail and messenger services; motor vehicle operations; and communications systems management. Organizes, controls and coordinates procurement and property management activities, including development of specifications and requisitions for procurement of property, inspections of property owned or leased by the United States Government, and property accountability. Administers an occupational health and safety program in compliance with established health and safety concepts, regulations, standards and procedures. Administers security programs and inspections, and coordinates with local law enforcement officials to ensure protection of OHA property and personnel.

5. The Division of Systems Resources (TAHE5) is the focal point for all OHA systems-related activities. Provides office automation and data processing support to all OHA components. Develops OHA's long-range systems goals and objectives. Provides computer programming and systems support for the planning, design, development and implementation of all OHA ADP systems. Serves as liaison with the Office of Systems on all matters pertaining to systems, and ensures that OHA systems efforts are undertaken, that projects underway are carried out successfully and that OHA participates fully in the SSA systems strategy.

6. The Division of Management Analysis and Employee Development (TAHE6) advises the Director of OM and the Associate Commissioner in all management areas involving management practices, management analysis, operational analysis and the resolution of management/employee concerns and problems. Plans, designs and administers evaluation programs and tracking systems to assess the efficiency and effectiveness of OHA operations in the field and headquarters. Serves as the focal point of contact for coordinating the General Accounting Office, OIG, SSA and other studies of OHA operations. Coordinates, develops and publishes administrative delegations of authority for OHA. Administers OHA's Employee Development Program. Develops and administers an OHA-wide program to identify training needs; develops mechanisms to meet identified training needs; and assesses the effectiveness of the OHA training program in meeting the training needs of managers, supervisors and employees.

Subchapter TAJ—Office of International Policy

TAJ.00 Mission
TAJ.10 Organization
TAJ.20 Functions

Section TAJ.00 *The Office of International Policy*—(Mission): The Office of International Policy (OIP) serves as SSA's focal point for international program policy matters and for its participation in the international Social Security community. Serves as liaison to international agencies and associations which deal with Social Security matters. Negotiates international Social Security (totalization) agreements with foreign governments, and develops policies and procedures to implement the agreements. Develops and implements policies and procedures relating to the operation of the Social Security program outside the United States. Provides programs of training and technical consultations on Social Security and related fields to Social Security officials and other experts outside the United States. Serves as liaison with other Federal agencies, such as the Department of State and the Department of the Treasury, on Social Security program matters outside the United States.

Section TAJ.10 *The Office of International Policy*—(Organization): The Office of International Policy, under the leadership of the Director of the Office of International Policy includes:

A. The Director for International Policy (TAJ).

B. The Immediate Office of the Director for International Policy (TAJ).

C. The Division of International Program Policy and Agreements (TAJA).

D. The International Activities Staff (TAJB).

Section TAJ.20 *The Office of International Policy*—(Functions):

A. The Director for International Policy (TAJ) is directly responsible to the Deputy Commissioner, Programs, Policy, Evaluation and Communications for carrying out the OIP mission and provides supervision to the major components of OIP.

B. The Immediate Office of the Director for International Policy (TAJ) provides the Director with staff assistance on the full range of his/her responsibilities, helps coordinate the activities of OIP components, and acts as the SSA or United States Government representative to international organizations and world bodies involved with international social security matters.

C. The Division of International Program Policy and Agreements (TAJA).

1. Plans, develops and evaluates program policies and procedures relating to foreign claims administration, foreign evidence and beneficiaries and modifies policies and procedures to meet program requirements in foreign countries.

2. Negotiates international Social Security (totalization) agreements with foreign governments and takes the actions necessary to secure their approval, develops policies and procedures to implement agreements and administers the coverage provisions of the agreements.

3. Issues certificates of coverage to United States-based workers who are on temporary assignments in countries with which the United States has international totalization agreements to exempt them (and their employers) from foreign social security taxes.

4. Interacts with various SSA components, other Federal agencies and governments of other countries on all foreign program matters, including evaluation of foreign social insurance systems for alien nonpayment purposes, benefit payment delivery and restrictions, acceptability of foreign evidence, program integrity and mutual assistance arrangements with other countries.

5. Conducts legislative and regulatory reviews, studies and analyses of all matters relating to international policy and international Social Security agreements and takes necessary legislative or regulatory action on foreign program and agreement problems requiring such remedy.

D. The International Activities Staff (TAJB).

1. Develops and coordinates individualized programs of consultation and observation for foreign Social Security officials and experts in related fields on the United States Social Security system.

2. Coordinates SSA's technical assistance to foreign countries in designing and/or modernizing existing social security systems.

3. Serves as SSA's focal point in disseminating information about the United States Social Security program to foreign organizations.

4. Plans and coordinates SSA's international travel plan, including providing logistical support and administering all activities relating to control of official passports for SSA staff travelling abroad.

5. Plans, implements and manages SSA-hosted international conferences, meetings and seminars.

Subchapter TAK—Office of Policy

TAK.00 Mission
TAK.10 Organization
TAK.20 Functions

Section TAK.00 *The Office of Policy*—(Mission): The Office of Policy (OP) serves as the focal point for the Agency to ensure that strategic policy decisions are properly translated into operational policies and procedures and are implemented in an effective manner. Coordinates the development of policies across program lines to ensure consistency in implementation. Develops, promulgates and reviews all program regulations for consistency. Reviews regulations for directly-administered programs for consistency with statutory and congressional intent and with SSA policy decisions and requirements. Directs the clearance of regulations within the Agency and with other departments and agencies and the Office of Management and Budget. Develops the Agency's Regulatory Plan and its portion of the United Agenda of Federal Regulations. Is responsible for development, review and distribution of the Agency's instructional system. Develops and publishes general and special compilations of Social Security laws, various technical issuances and program handbooks. Ensures that policies are coordinated internally and that all instructional materials developed are compatible with overall operating policies and practices. Establishes policies relating to the Agency's notices to the public and serves as the focal point for the Agency's effort to improve service to the public through the issuance of clear notices. Evaluates the effectiveness of national policies in meeting program goals and recommends necessary program modifications.

Section TAK.10 *The Office of Policy*—(Organization):

The Office of Policy, under the leadership of the Associate Commissioner for Policy includes:

A. The Associate Commissioner for Policy (TAK).

B. The Deputy Associate Commissioner for Policy (TAK).

C. The Immediate Office of the Associate Commissioner for Policy (TAK).

D. The Notice Policy Staff (TAKA).

E. The Division of Regulations and Rulings (TAKB).

F. The Division of Directives Management (TAKC).

Section TAK.20 *The Office of Policy*—(Functions):

A. The Associate Commissioner for Policy (TAK) is directly responsible to the Deputy Commissioner Programs, Policy, Evaluation and Communications for carrying out OP's mission and provides general supervision to major components of OP.

B. The Deputy Associate Commissioner for Policy (TAK) assists the Associate Commissioner in carrying out his/her responsibilities, and performs other duties that the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Policy (TAK) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities and helps coordinate the activities of OP components.

D. The Notice Policy Staff (TAKA) serves as the focal point for SSA's effort to improve service to the public through the issuance of clear notices. Coordinates, plans, establishes priorities and schedules all notice improvement activities for the Agency. Develops Agency-level strategies for notice improvements. Establishes the Agency's notice policy and develops and publishes the Agency's Notice Standards. Designs and writes notices and selected forms. Provides direction for notice content and design throughout SSA. Acts as a clearinghouse through which program offices submit proposed new or revised notices and selected forms. Assesses the impact of new notices on public service. Develops, plans and implements Agency efforts to get public feedback about notices. Maintains the language database for the Field Office Notice Software, both in English and Spanish. Oversees training for operations and program components to improve the quality of notices.

E. The Division of Regulations and Rulings (TAKB) plans, develops and writes SSA regulations and provides for the publication of regulations. Performs an ongoing assessment of the regulations process in SSA. Coordinates, within SSA, the review and clearance of regulations for the claims and payment processes developed for the RSDI programs, the SSI program and the Black Lung Benefits programs. Ensures that OP has input into the regulations development process. Coordinates activities with SSA's Office of the General Counsel on the issuance of regulations. Coordinates activities with other departments and agencies on the issuance of regulations. Negotiates with the Office of Management and Budget and the Office of the Federal Register on regulations matters. Plans and develops Social Security Rulings to provide interpretations and applications of the Social Security Act. Coordinates the review and clearance of Social Security Rulings with the Office of the General Counsel, the Office of the Commissioner and other ODCPPEC components and arranges for their publication in the **Federal Register**.

F. The Division of Directives Management (TAK3) directs the review, coordination, publication and distribution of program instructions and other materials in paper and electronic form to insure uniformity, lack of duplication and compatibility of all SSA operations, instructional and informational material. Also, coordinates the publication, distribution and warehousing of all Social Security Rulings that have been published in the **Federal Register**. Participates in determining the instructional needs of SSA operating personnel. Researches and develops processes for providing instructions digitally. Directs technical review of program operating instructions to insure proper integration, organization, clearance and audience for materials prepared by various SSA components for the Program Operations Manual System and related program guides. Coordinates publication, distribution and warehousing of all program instructional and related materials and directs a quality review of new issuances to insure proper reproduction of printed materials. Indexes all program instructional materials and determines user needs in this area. Develops and publishes general and special compilations of Social Security laws, various technical issuances and program handbooks. Participates with SSA's Systems organization in the design, development and ongoing administration of a computerized system for storing, updating, publishing and distributing operational instructions and materials. Coordinates with SSA's Office of Human Resources as appropriate. Establishes policies and guidelines for the distribution of SSA's program publications to the public as required by the Freedom of Information Act.

Subchapter TAL—Office of Communications

TAL.00 Mission
TAL.10 Organization
TAL.20 Functions

Section TAL.00 *The Office of Communications*—(Mission): The Office of Communications (OCOMM) directs a program to develop and preserve working relationships with a wide variety of national organizations, special interest and advocacy groups, the media, Members of Congress, other Federal agencies and State and local governments, for purposes of securing understanding, cooperation and acceptance of SSA programs, policies

and procedures and for providing avenues of public participation in the decisionmaking processes of SSA. Plans, directs, coordinates, effects and evaluates SSA's nationwide public communications program, which involves interaction with other Federal and State agencies, and other organizations concerned with public communications programs and activities. Develops public information programs and materials to ensure public knowledge and understanding of protections, rights and responsibilities under the programs administered by SSA. Directs SSA's Satellite Communications Network activities. Directs the non-English communications activities within SSA.

Section TAL.10 *The Office of Communications*—(Organization): The Office of Communications, under the leadership of the Associate Commissioner for Communications, includes:

A. The Associate Commissioner for Communications (TAL).

B. The Deputy Associate Commissioner for Communications (TAL).

C. The Immediate Office of the Associate Commissioner for Communications (TAL).

D. The Office of Communications Technology (TALA).

1. The Visual Graphics and Community Affairs Staff (TALA1).

2. The Audiovisual Media Operations Staff (TALA2).

E. The Office of Editorial Policy and Communications (TALB).

1. The Editorial Policy and Communications Staff (TALB1).

2. The Special Communications Staff (TALB2).

F. The Office of National Affairs (TALC).

G. The Office of Regional Affairs and Special Projects (TALE).

H. The Office of Public Inquiries (TALG).

1. The Policy, Appraisal and Systems Group (TALG1).

2. The Correspondence Analysis and Response Group (TALG2).

Section TAL.20 *The Office of Communications*—(Functions):

A. The Associate Commissioner for Communications (TAL) is directly responsible to the Deputy Commissioner, Programs, Policy, Evaluation and Communications for carrying out OCOMM's mission and providing managerial direction to the major components of OCOMM.

B. The Deputy Associate Commissioner for Communications (TAL) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Communications (TAL) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. The Office of Communications Technology (OCT) (TALA) directs and implements technical information communications for the Agency. Develops the Agency's goals and objectives for using the media to promote SSA programs and policies. Is responsible for the design and production of audiovisual and graphics materials. Utilizes state-of-the-art technological theories, principles and methodologies in determining and creating the most effective means of communicating the Agency's information.

1. The Visual Graphics and Community Affairs Staff (TALA1).

a. Plans, designs and produces Agency display, presentation, media and photographic materials for internal and external public information programs.

b. Produces materials in various media formats for the observance of special ceremonial events.

c. Plans and implements a program of community liaison in the Baltimore/Washington metropolitan area. Maintains viable relationships with representatives of users of SSA programs, professional societies and local governments.

2. The Audiovisual Media Operations Staff (TALA2).

a. Plans, develops and directs electronic systems required for the Agency's television and audiovisual productions and management communications.

b. Coordinates all technical activities related to the Agency's television and audiovisual production system.

c. Plans, writes, directs and edits motion picture and television productions covering all aspects of Social Security for public information, SSA training and management information purposes.

d. Plans, designs and coordinates satellite communication programs for SSA and other agencies nationwide.

E. The Office of Editorial Policy and Communications (OEPC) (TALB) directs SSA's information activities to ensure public knowledge and understanding of programs administered by SSA. Develops and evaluates goals, objectives, policies, standards and guidelines for SSA public information needs, and carries out programs to inform the public of the purposes and provisions of SSA-administered programs, program changes and people's rights and responsibilities under these programs. Prepares and determines distribution of a wide variety of public information materials on all phases of SSA-administered programs, evaluates the quality of informational materials to ensure a high-quality product and helps in public affairs training in SSA.

1. The Editorial Policy and Communications Staff (TALB1).

a. Develops and evaluates goals and objectives, policies, standards and guidelines for SSA public information needs. Prepares public information workplans and SSA's National Communications objectives.

b. Provides direction and quality control of information materials for the administration of SSA public affairs and public information programs.

c. Writes, edits and produces a variety of public information materials. Provides advice and consultation to other components on editorial policy and methods of initiating and developing informational programs.

d. Conducts editorial reviews and approves content, format and style of Social Security information materials for use in all media.

e. Plans and conducts a public information management program. Determines public information strategies for a wide variety of public information materials on all phases of SSA-administered programs.

f. Designs and conducts broad evaluation programs, incorporating and coordinating various evaluation methods, techniques and efforts.

2. The Special Communications Staff (TALB2).

a. Directs the internal communications program in SSA. Publishes a variety of informational materials, including a monthly national employee magazine and Central Office Bulletin. Prepares and edits administrative reports and presentations.

b. Provides assistance to and appraises internal communications activities in SSA field organizations. Identifies weaknesses in communications SSA-wide, and recommends improvements.

F. The Office of National Affairs (ONA) (TALC) implements and directs programs designed to develop and preserve working relationships with a wide variety of national organizations, special interest and advocacy groups, other Federal agencies and State and local governments. Presents, explains,

advocates and defends the views and objectives of SSA. Provides the avenue for bringing the views and opinions of influential organizations into the Agency. Is responsible for reviewing and considering the validity of SSA-related issues and concerns raised by a variety of external sources and recommending changes or referring the matter to other SSA components for further study. Facilitates operational dealings between these organizations and other SSA components.

G. The Office of Regional Affairs and Special Projects (ORASP) (TALE) provides onsite leadership and direction to the regional SSA public communications program. Analyzes and evaluates regional public communications activities and issues national public communications policies. Plans and coordinates the development of regional policies, directives and procedures concerning the relationships of SSA programs to public and private welfare and community service programs. Oversees the regional public information program. Prepares and disseminates public information materials. Coordinates the development and implementation of regional information and referral programs. Advises the Regional Public Affairs Officers in carrying out SSA public information policy, plans and activities. Provides guidance and assists in interpreting, analyzing and evaluating public communications/public information needs of the regions. Coordinates workgroups representing SSA components for the purpose of solving complex problems resulting from adverse impacts of SSA programs and program service delivery on special groups or the general public.

H. The Office of Public Inquiries (OPI) (TALG) provides a central receipt, control, acknowledgement, response, and referral program for all public inquiries. Develops correspondence policy and procedure and guide language on recurring topics and issues for use throughout the Agency.

1. The Policy, Appraisal and Systems Group (PASG) (TALG1) develops policy and procedures concerning the style, control, workflow and signature of correspondence, and disseminates the information to headquarters components. Performs a pre-release quality review of final replies prepared in OPI to ensure that they are well-written, accurate and responsive. Designs and administers OPI's electronic correspondence management system and provides support to system users. Directs surveys and analyses to increase the effectiveness of the correspondence workflow process throughout SSA.

2. The Correspondence Analysis and Response Group (CARG) (TALG2) collects, stores and maintains information needed to respond congressional, White House and public inquiries. Prepares responses in conformance with SSA standards, policies and procedures. Performs correspondence receipt, screening, imaging, routing and letterwriting functions. Identifies sensitive inquiries and trends and reports them to appropriate officials. Receives and responds to telephone inquiries.

Subchapter TAN—Office of Research and Statistics

TAN.00 Mission
TAN.10 Organization
TAN.20 Functions

Section TAN.00 *The Office of Research and Statistics*—(Mission): The Office of Research and Statistics (ORS) is responsible for providing information on the effects on individuals and the economy of programs operated by SSA and the interactions among these programs, other tax and income-transfer programs and economic, social and demographic forces. Plans and directs a continuing program of economic and social research to evaluate the effectiveness of national policies in meeting program goals.

Section TAN.10 *The Office of Research and Statistics*—(Organization): The Office of Research and Statistics under the leadership of the Associate Commissioner, Office of Research and Statistics, includes:

A. The Associate Commissioner, Office of Research and Statistics (TAN).

B. The Deputy Associate Commissioner, Office of Research and Statistics (TAN).

C. The Immediate Office of the Associate Commissioner, Office of Research and Statistics (TAN).

D. The Publications Staff (TANA).

E. The Division of Program Analysis (TANB).

F. The Division of Economic Research (TANC).

G. The Division of Earnings Statistics and Analysis (TANE).

H. The Division of Retirement, Survivors, Disability Insurance Research Statistics (TANG).

I. The Division of SSI Analysis/ Management Statistical Support (TANH).

J. The Disability Research Staff (TANJ).

Section TAN.20 *The Office of Research and Statistics*—(Functions):

A. The Associate Commissioner, Office of Research and Statistics (TAN) is directly responsible to the Deputy Commissioner for Programs, Policy, Evaluation and Communications for carrying out ORS' mission, and providing general supervision to the major components of ORS.

B. The Deputy Associate Commissioner, Office of Research and Statistics (TAN) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner, Office of Research and Statistics (TAN) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities and helps coordinates the activities of ORS components.

D. The Publications Staff (TANA).

1. Advises ORS on the development, organization and presentation of research and statistical studies.

2. Publishes and distributes these studies to national and international audiences.

3. Assesses informational needs of SSA staff, staff in other Government agencies, the social science research community and the public for data and findings from the ORS research program.

E. The Division of Program Analysis (TANB).

1. Plans, designs and conducts surveys of program target groups and performs policy-relevant research.

2. Analyzes the impact of proposed policy options, legislative proposals and special high-priority issues and prepares briefing materials for SSA administrators.

3. Plans, conducts and publishes the results of cross-national research on social security programs worldwide.

F. The Division of Economic Research (TANC).

1. Plans, directs and executes issue-oriented research to provide information about relationships between the Social Security program, the economy and other aspects of society.

2. Makes program revenue projections and interprets changing demographic and economic trends as they relate to the broad field of economic security and to overall economic and social policy.

3. Studies such major areas as: Social Security financing, economic impacts of Social Security, income maintenance, effect of Social Security on lifetime income redistribution, alternative measures of income adequacy, and labor market and retirement behavior.

G. The Division of Earnings Statistics and Analysis (TANE).

1. Plans, coordinates and directs the preparation of statistical and analytical

data pertaining to earnings, employment and employer classification. Analyzes these data with emphasis on demographic, economic, social and program characteristics. These data are used to support program and legislative planning and serve as important sources for program evaluation, research and administrative information within SSA, and for research by other Federal and State and local government agencies, universities, and private research organizations.

2. Provides ORS and other SSA researchers with support in the development of social science survey data linked with SSA administrative record data.

H. The Division of Retirement, Survivors and Disability Insurance Research Statistics (TANG).

1. Plans, coordinates and directs the preparation of statistical and analytical data pertaining to RSDI claims and benefits provisions of Title II of the Social Security Act. Analyzes these data with emphasis on demographic, economic, social and program characteristics. These data are used to support program and legislative planning and serve as important sources for program evaluation, research and administrative information within SSA, and for research by other Federal and State and local government agencies, universities and private research organizations.

I. The Division of SSI Analysis/ Management Statistical Support (TANH).

1. Plans, coordinates and directs the preparation of statistical and analytical data pertaining to the Supplemental Security Income provisions of Title XVI of the Social Security Act. Analyzes these data with emphasis on demographic, economic, social and program characteristics. These data are used to support program and legislative planning and serve as important sources for program evaluation, research and administrative information within SSA and for research by other Federal and State and local government agencies, universities and private research organizations.

2. Provides management statistical services to SSA operating and policy components, including such activities as the development of general purpose and customized field office samples, development of work sampling systems and quality assurance systems, and the design and analysis of operational pilot studies. Provides support for the development and use of mathematical models and statistical methods.

J. The Disability Research Staff (TANJ).

1. Plans, directs and implements a wide range of studies and analyses, utilizing data from surveys and administrative records, on the national disabled population, disability applicants and disability beneficiaries.

2. Develops research in response to DI program issues.

3. Maintains and develops research surveys and administrative data files used in the analysis of disability data.

Subchapter TAP—Office of Program Benefits Policy

TAP.00 Mission
TAP.10 Organization
TAP.20 Functions

Section TAP.00 *The Office of Program Benefits Policy*—(Mission): The Office of Program Benefits Policy (OPBP) provides SSA-wide leadership and direction to the development, coordination and promulgation of RSI and SSI policies and procedures. Develops, coordinates and evaluates the program and issues the operational policies, standards and instructions for the RSI and SSI programs. Develops and issues policies and guidelines for use by State and Federal organizations which implement the SSI provision. Develops agreements with the States and other agencies that govern State supplementation programs, Medicaid eligibility, data exchange programs, food stamps and fiscal reporting processes. Plans and directs continuing performance evaluation and economic and social survey programs to evaluate the current impact and future needs of the RSI and SSI programs.

Section TAP.10 *The Office of Program Benefits Policy*—(Organization): The Office of Program Benefits Policy, under the leadership of the Associate Commissioner for Program Benefits Policy includes:

A. The Associate Commissioner for Program Benefits Policy (TAP).

B. The Deputy Associate Commissioner(s) for Program Benefits Policy (TAP).

C. The Immediate Office of the Associate Commissioner for Program Benefits Policy (TAP).

D. The Division of Benefit Continuity (TAPA).

E. The Division of Coverage (TAPB).

F. The Division of Entitlement (TAPC).

G. The Division of Payment Policy (TAPE).

H. The Division of Program Requirements Policy (TAPG).

I. The Division of Program Management, Research and Demonstration (TAPH).

Section TAP.20 *The Office of Program Benefits Policy*—(Functions):

A. The Associate Commissioner for Program Benefits Policy (TAP) is directly responsible to the Deputy Commissioner, Programs, Policy, Evaluation and Communications for carrying out OPBP's mission and provides general supervision to the major components of OPBP.

B. The Deputy Associate Commissioner(s) for Program Benefits Policy (TAP) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Program Benefits Policy (TAP) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities and helps coordinate the activities of OPBP components.

D. The Division of Benefit Continuity (TAPA).

1. Plans, develops and evaluates the operational policies, standards and instructions and provides guidance to field components on issues related to the retirement and survivors insurance program and common to one or more of the other SSA programs in the area of benefit continuity.

2. Develops, issues and evaluates guidelines, directives, instructions and operating procedures for such areas as work notices, annual and monthly earnings tests, suspensions and terminations, governmental pension offset and enforcement and beneficiary compliance, overpayments, underpayments, recovery and waiver, garnishment, payment delivery, onsite review, accounting, representative payee selection, advance notice, capability/incapability and use and misuse.

E. The Division of Coverage (TAPB).

1. Plans, develops and evaluates the operational policies, standards and instructions and provides guidance to field components on issues related to the retirement and survivors insurance program and common to one or more of the other SSA programs in the area of coverage.

2. Develops and issues guidelines, directives, instructions and operating procedures for such coverage and employment subject areas as wages, coverage and exceptions, anti-poverty programs, earnings records and earnings records discrepancies, coverage aspects of international agreements, self-employment status and income, religious exemptions, State and local coverage and statutes of limitations.

F. The Division of Entitlement (TAPC).

1. Plans, develops and evaluates the operational policies, standards and instructions and provides guidance to field components on issues related to the retirement and survivors insurance program and common to one or more of the other SSA programs in the area of entitlement.

2. Develops and issues guidelines, directives, instructions and operating procedures for such entitlement subject areas as applications, insured status, veterans' benefits, railroad employment, family relationships, dependency and support, evidence, school attendance, indexing of earnings, primary insurance amount computation, reduction of benefits for age, family maximums, saving clauses, recomputations and recalculations of benefits, period of disability computations, awards, disallowances and abatements of claims, earnings records, claims application forms, administrative finality, adjudicative standards, evidence, documentation, conspicuous characteristics and social security numbers.

G. The Division of Payment Policy (TAPE).

1. Plans, develops and evaluates the operational policies, standards and instructions and provides guidance to field components on issues related to the supplemental security income program in the area of payment policy.

2. Develops and issues guidelines, directives, instructions and operating procedures for such payment policy subject areas as redeterminations, SSI notices, SSI appeals and overpayments/underpayments matching and interfaces, mandatory and optional State supplemental payments, pass through of rate increases, monitoring of fiscal information systems with the States, maintenance of State agreements, food stamps, Medicaid, State assistance reimbursements, energy assistance, State data exchange systems and postadjudicative issues.

H. The Division of Program Requirements Policy (TAPG).

1. Plans, develops and evaluates the operational policies, standards and instructions and provides guidance to field components on issues related to the supplemental security income program in the area of program requirements policy.

2. Develops and issues guidelines, directives, instructions and operating procedures for such program requirements subject areas as individual/couple/child eligibility status, in-kind income, support and maintenance, in-kind living arrangements, institutionalization, special classifications of income and medical social services, generic income issues, deeming of income and resources, computation of income, certain grandfather clauses, special sponsored alien deeming, color of law alien status, presence in the United States, generic resources issues, trust policy, filing for other benefit requirements and property essential for self-support.

I. The Division of Program Management, Research and Demonstration (TAPH).

1. Designs, manages and conducts studies to measure the impact and effectiveness of the supplemental security income and the retirement and survivors insurance program policies, procedures and programs on the population.

2. Establishes, maintains and operates statistical program data base extract systems to provide program information for internal and external use; develops functional specifications and programs; validates output; and assists requestors in verifying final product.

3. Conducts retirement and survivors insurance and supplemental security income research programs based on administrative records and State and Federal data to formulate and evaluate policies and the impact of legislation, to reduce errors, to implement redetermination requirements, and to improve program implementation.

4. Manages demonstration cooperative agreements and initiatives to target special populations and program issues. Evaluates the effectiveness of demonstrations and initiatives and develops new and revised policies and procedures to implement program improvements.

5. Coordinates and directs assignments and projects related to program redesign and systems modernization efforts, including development of program specifications for expert systems. Formulates, plans and implements computer programs and other automation activities in support of program policy, research and administrative needs.

6. Develops and issues guidelines, directives, instructions and operating procedures for SSI applications policy, including protective filing and advance filing and SSI work incentive provisions, including plans for achieving self-support and 1619 provisions.

Subchapter TAQ—Office of Policy Analysis and Evaluation

TAQ.00 Mission
TAQ.10 Organization
TAQ.20 Functions

Section TAQ.00 *The Office of Policy Analysis and Evaluation*—(Mission): The Office of Policy Analysis and Evaluation (OPAE) conducts a comprehensive program to analyze cross-cutting policy issues, provide analytic support to external commissions and evaluate current and proposed social welfare policy.

Section TAQ.10 *The Office of Policy Analysis and Evaluation*—(Organization): The Office of Policy Analysis and Evaluation, under the leadership of the Director of the Office of Policy Analysis and Evaluation, includes:

A. The Director of the Office of Policy Analysis and Evaluation (TAQ).

B. The Immediate Office of the Director of the Office of Policy Analysis and Evaluation (TAQ).

Section TAQ.20 *The Office of Policy Analysis and Evaluation*—(Functions):

A. The Director of the Office of Policy Analysis and Evaluation (TAQ) is directly responsible to the Deputy Commissioner, Programs, Policy, Evaluation and Communications for carrying out OPAE's mission and providing managerial direction to the major components of OPAE.

B. The Immediate Office of the Director of the Office of Policy Analysis and Evaluation (TAQ) provides the Director with staff assistance on the full range of his/her responsibilities.

1. Provides analyses of complex and cross-cutting policy issues, ensuring the consideration of available knowledge, commissions analyses to fill knowledge gaps and to synthesize available research and develops options and recommendations for Agency action.

2. Serves as a link between SSA and the external social welfare research and policymaking communities.

3. Coordinates analytic support for major external commissions and studies relating to Social Security and Supplemental Security Income program policy.

4. Evaluates the effectiveness and appropriateness of current and proposed social welfare policy to assess what implications may exist regarding future directions of Social Security and Supplemental Security Income programs.

This statement amends part T of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Notice is given of the establishment of the Office of the Deputy Commissioner, Legislation and Congressional Affairs (DCLCA) (TB) at the first level below the Commissioner. Notice is further given of the establishment of the Disability

Insurance Program Staff, the Congressional Relations Staff, the Supplemental Security Income (SSI) Program Staff, the Old Age and Survivors Insurance (OASI) Benefits Staff and the Program Administration and Financing Staff. The new chapter reads as follows:

Section TB.00 *The Office of the Deputy Commissioner, Legislation and Congressional Affairs*—(Mission): The Office of the Deputy Commissioner, Legislation and Congressional Affairs develops and conducts the legislative program of SSA, serves as the focal point for all legislative activity in SSA, analyzes legislative and regulatory initiatives and develops specific positions and amendments. The Office evaluates the effectiveness of programs administered by SSA in terms of legislative needs, and analyzes and develops recommendations on related income maintenance, social service and rehabilitation program proposals, particularly those which may involve coordination with SSA-administered programs, and on other methods of providing economic security. It provides advisory service to SSA officials on legislation of interest to SSA pending in Congress. It also provides legislative drafting to officials within the Executive Branch, congressional committees, individual Members of Congress and private organizations interested in Social Security legislation. It establishes and maintains a working relationship with all Members of Congress. It serves as SSA's information gathering and dissemination staff on congressional activities affecting SSA programs and handles certain claims and administrative matters that are particularly urgent or sensitive to Members of Congress.

Section TB.10 *The Office of the Deputy Commissioner, Legislation and Congressional Affairs*—(Organization): The Office of the Deputy Commissioner, Legislation and Congressional Affairs, under the leadership of the Deputy Commissioner for Legislation and Congressional Affairs, includes:

A. The Deputy Commissioner for Legislation and Congressional Affairs (TB).

B. The Assistant Deputy Commissioner for Legislation and Congressional Affairs (TB).

C. The Immediate Office of the Deputy Commissioner for Legislation and Congressional Affairs (TBA).

D. The Disability Insurance Program Staff (TBB).

E. The Congressional Relations Staff (TBC).

F. The Supplemental Security Income (SSI) Program Staff (TBE).

G. The Old Age and Survivors Insurance (OASI) Benefits Staff (TBG).

H. The Program Administration and Financing Staff (TBH).

Section TB.20 *The Office of the Deputy Commissioner, Legislation and Congressional Affairs*—(Functions):

A. The Deputy Commissioner for Legislation and Congressional Affairs (TB) is directly responsible to the Commissioner for carrying out DCLCA's mission and providing general supervision to the major components of DCLCA.

B. The Assistant Deputy Commissioner for Legislation and Congressional Affairs (TB) assists the Deputy Commissioner in carrying out his/her responsibilities and performs other duties as the Deputy Commissioner may prescribe.

C. The Immediate Office of the Deputy Commissioner for Legislation and Congressional Affairs (TBA) provides the Deputy Commissioner and Assistant Deputy Commissioner with staff assistance on the full range of their responsibilities, including the legislative reference function. The legislative reference function:

1. Tracks legislative bills, highlights items of interest from the Congressional Record and other publications for DCLCA and SSA's Executive Staff and provides support for other DCLCA and SSA components at congressional hearings.

2. Assists individual Members of Congress and their staffs and congressional committee staffs by responding to requests for information on pending and proposed Social Security legislation, related legislative proposals and the legislative history of the Social Security program.

3. Reviews legislative proposals for consistency with existing program goals, philosophy and program requirements.

D. The Disability Insurance Program Staff (TBB).

1. Develops and explains disability insurance (DI) program principles and philosophy.

2. Reviews proposed regulations dealing with the DI program to assure consistency with policy requirements and decisions.

3. Develops and evaluates legislative proposals for changes in the DI program, the SSA hearings and appeals process and other matters.

4. Provides technical and advisory services to other agencies within the Executive Branch, congressional committees, State officials and private organizations having an interest in the DI program, the SSA hearings and appeals process and other matters.

E. The Congressional Relations Staff (TBC).

1. Develops and preserves working relationships with Members of Congress covering the full range of program and administrative matters.

2. Serves as consultant to the Deputy Commissioner, DCLCA with regard to establishing and maintaining effective congressional relationships.

3. Maintains productive relationships with all members on behalf of the Agency. Conducts dialogue on a routine basis, and participates in negotiations on highly sensitive matters with members.

F. The Supplemental Security Income (SSI) Program Staff (TBE).

1. Develops and explains SSI program principles and philosophy.

2. Studies the SSI program interrelationships with Social Security income maintenance, child support enforcement, food stamps, employment and other Federal, State and local programs and recommends methods for coordinating these programs.

3. Reviews regulations dealing with the SSI program for the aged, blind and disabled to ensure consistency with policy requirements and decisions.

4. Develops and evaluates legislative proposals for changes in the SSI program.

5. Provides technical and advisory services to other agencies within the Executive Branch, congressional committees and individual Members of Congress, State officials and private organizations having an interest in the SSI program.

G. The Old Age and Survivors Insurance (OASI) Benefits Staff (TBG).

1. Develops and explains retirement and survivors insurance (RSI) program principles and philosophy.

2. Develops and evaluates legislative proposals for changes in the areas of retirement and survivors benefits and coverage.

3. Provides analytical support on broad programmatic issues, including eligibility requirements for dependents' and survivors' benefits, the level of Social Security benefits, value of benefits in relation to contributions, benefit computation methods, which dependents should receive benefits and the establishment of priority among these dependents.

4. Reviews proposed regulations dealing with RSI issues, such as Social Security coverage, the retirement earnings test, insured status and the definition of employment and wages to assure cross-program consistency with policy requirements and decisions.

5. Provides technical and advisory services to other agencies within the

Executive Branch, congressional committees and individual Members of Congress, State officials and private organizations having an interest in RSI and Social Security coverage issues.

H. The Program Administration and Financing Staff (TBH).

1. Develops and explains Social Security program principles and philosophy.

2. Provides analytical support on broad programmatic issues, including tax rates, alternative methods of financing trust fund operations, service to the public, Social Security numbers, taxation of benefits, alien suspension, and debt management.

3. Identifies and analyzes far-reaching economic, political and societal issues that impact/influence the development and modification of Social Security program policies and procedures.

4. Recommends methods for coordinating the protection afforded under Social Security with that afforded under other public and private benefit programs.

5. Reviews proposed regulations dealing with interprogram relationships to assure cross-program consistency with policy requirements and decisions.

6. Provides technical and advisory services to other agencies within the Executive Branch, congressional committees and individual Members of Congress, State officials and private organizations having an interest in interprogram relationships.

Dated: March 31, 1995.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 95–10626 Filed 5–3–95; 8:45 am]

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federal register

Thursday
May 4, 1995

Part III

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Federal Reserve System
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Federal Deposit Insurance Corporation
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Department of the Treasury
Office of Thrift Supervision
12 CFR Part 563e
Federal Reserve System
12 CFR Part 203

Community Reinvestment Act Regulations and Home Mortgage Disclosure; Final Rules

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 95–07]

RIN 1557–AB32

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–0822]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AB27

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[Docket No. 95–72]

RIN 1550–AA69

FEDERAL RESERVE SYSTEM

12 CFR Part 203

Community Reinvestment Act Regulations

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS).

ACTION: Joint final rule.

SUMMARY: The OCC, Board, FDIC, and OTS, (collectively, the Federal financial supervisory agencies or agencies) are amending their regulations concerning the Community Reinvestment Act (CRA). The agencies published a joint notice of proposed rulemaking on this issue on December 21, 1993 (1993 proposal) and again on October 7, 1994 (1994 proposal). This final rule reflects comments received on both proposals and the agencies' further internal considerations.

The purpose of the CRA regulations is to establish the framework and criteria by which the agencies assess an institution's record of helping to meet the credit needs of its community, including low- and moderate-income neighborhoods, consistent with safe and sound operations, and to provide that the agencies' assessment shall be taken into account in reviewing certain applications.

The final rule seeks to emphasize performance rather than process, to promote consistency in evaluations, and to eliminate unnecessary burden. As compared to the 1993 and 1994 proposals, the final rule reduces recordkeeping and reporting requirements and makes other modifications and clarifications.

EFFECTIVE DATES: This joint rule is effective July 1, 1995, except 12 CFR 25.3 through 25.7 and 25.51, 12 CFR 228.3 through 228.7 and 228.51, 12 CFR 345.3 through 345.7 and 345.51, and 12 CFR 563e.3 through 563e.7 and 563e.51 are removed effective July 1, 1997.

FOR FURTHER INFORMATION CONTACT:

OCC: Stephen M. Cross, Deputy Comptroller for Compliance, (202) 874–5216; or Matthew Roberts, Director, Community and Consumer Law Division, (202) 874–5750, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Glenn E. Loney, Associate Director, Division of Consumer and Community Affairs, (202) 452–3585; Robert deV. Frierson, Assistant General Counsel, Legal Division, (202) 452–3711; or Leonard N. Chanin, Managing Counsel, Division of Consumer and Community Affairs, (202) 452–3667, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Bobbie Jean Norris, Chief, Fair Lending Section, Division of Compliance and Consumer Affairs, (202) 942–3090; Robert W. Mooney, Fair Lending Specialist, Division of Compliance and Consumer Affairs, (202) 942–3092; or Ann Hume Loikow, Counsel, Regulation and Legislation Section, Legal Division, (202) 898–3796, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Timothy R. Burniston, Assistant Director for Compliance Policy, (202) 906–5629; Theresa A. Stark, Program Analyst, Compliance Policy, (202) 906–7054; or Lewis A. Segall, Senior Attorney, Regulations and Legislation Division, Chief Counsel's Office, (202) 906–6648, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Introduction

The Federal financial supervisory agencies jointly are amending their regulations implementing the CRA (12 U.S.C. 2901 *et seq.*). The amended regulations will, when fully effective, replace the existing regulations in their entirety.

The CRA is designed to encourage regulated financial institutions to help meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, consistent with safe and sound operations. Despite the CRA's notable successes in improving access to credit, banks and savings and loan institutions, as well as community and consumer groups, maintain that its full potential has not been realized, in large part because regulatory compliance efforts have focused on process rather than performance.

In accordance with a request from the President, the Federal financial supervisory agencies have undertaken a comprehensive effort to reform their standards for evaluating compliance with CRA requirements. The final rule implements this reform effort by substituting a new system that evaluates institutions based on their actual performance in helping to meet their communities' credit needs.

Background

In 1977, the Congress enacted the CRA to encourage banks and thrifts to help meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, consistent with safe and sound lending practices. In the CRA, the Congress found that:

''(1) regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business;

(2) the convenience and needs of communities include the need for credit as well as deposit services; and

(3) regulated financial institutions have continuing and affirmative obligation[s] to help meet the credit needs of the local communities in which they are chartered.''

(12 U.S.C. 2901(a))

The CRA has come to play an increasingly important role in improving access to credit in communities—both rural and urban—across the country. Under the impetus of the CRA, many banks and thrifts opened new branches, provided expanded services, and made substantial commitments to increase lending to all segments of society.

Despite these successes, the CRA examination system has been criticized. Financial institutions have indicated that policy guidance from the agencies on the CRA is unclear and that examination standards are applied inconsistently. Financial institutions

have also stated that the CRA examination process encourages them to generate excessive paperwork at the expense of providing loans, services, and investments to their communities.

Community, consumer, and other groups have agreed with the industry that there are inconsistencies in CRA evaluations and that current examinations overemphasize process and underemphasize performance. Community and consumer groups also have criticized the agencies for failing aggressively to penalize banks and thrifts for poor performance.

Noting that the CRA examination process could be improved, President Clinton requested in July 1993 that the Federal financial supervisory agencies reform the CRA regulatory system. The President asked the agencies to consult with the banking and thrift industries, Congressional leaders, and leaders of community-based organizations across the country to develop new CRA regulations and examination procedures that ''replace paperwork and uncertainty with greater performance, clarity, and objectivity.''

Specifically, the President asked the agencies to refocus the CRA examination system on more objective, performance-based assessment standards that minimize compliance burden while stimulating improved performance. He also asked the agencies to develop a well-trained corps of examiners who would specialize in CRA examinations. The President requested that the agencies promote consistency and even-handedness, improve CRA performance evaluations, and institute more effective sanctions against institutions with consistently poor performance.

To implement the President's initiative, the four agencies held a series of seven public hearings across the country in 1993. At those hearings, the agencies heard from over 250 witnesses. Nearly 50 others submitted written statements. The preamble to the 1993 proposal reviewed the results of those hearings.

The 1993 Proposal

The agencies published proposed revisions to their CRA regulations on December 21, 1993. The 1993 proposal (58 FR 67466) would have eliminated the twelve assessment factors in the present CRA regulations and substituted a more performance-based evaluation system. Under the 1993 proposal, the agencies would have evaluated institutions based on their actual lending, service, and investment performance rather than on how well they conducted their needs assessments, documented their community outreach, and implemented other procedural requirements of the existing regulations.

Generally, large retail institutions would have been evaluated based on some combination of lending, service, and investment tests. Institutions would have been required to report data on the basis of the geographic distribution of applications, denials, originations, and purchases of loans. Small banks and thrifts could have elected to be evaluated under a streamlined method that would not have required them to report this data. Every institution also could have elected to have its performance evaluated on the basis of a pre-approved strategic plan.

All banks and thrifts would have been assigned one of four statutorily mandated CRA ratings (12 U.S.C. 2906(b)(2)). However, five ratings would have been used for the lending, service, and investment tests, with the satisfactory category split into low satisfactory and high satisfactory.

Collectively, the agencies received over 6,700 comment letters on the 1993 proposal. As a general matter, the vast majority of commenters expressed support for the agencies' goal of developing more objective, performance-based assessment standards that minimize burden while stimulating improved performance. However, many expressed concern over aspects of the 1993 proposal that they viewed as allocating credit to particular kinds of borrowers. After considering the comments, the agencies published a second proposal on October 7, 1994, which responded to many of the suggestions in the comments on the 1993 proposal, including concerns about credit allocation, while preserving the 1993 proposal's goal of emphasizing performance over process.

The 1994 Proposal

The 1994 proposal (59 FR 51232) retained the principles and structure underlying the 1993 proposal but made significant changes to the details in order to respond to many of the specific concerns raised in the comment letters. As in the 1993 proposal, the 1994 proposal would have replaced the existing regulations' twelve assessment factors with a performance-based evaluation system. The 1994 proposal retained, but modified, the lending, investment, and service tests for large retail institutions; the streamlined evaluation for small institutions; an alternative evaluation for limited purpose and wholesale institutions; and the pre-approved strategic plan option available to all institutions.

The 1993 proposal had been criticized because of certain objective criteria in the proposal (including market share, a presumptively reasonable loan to deposit ratio, loan mix, investment to capital ratios, and the number of branches readily accessible to low- and moderate-income geographies) which were intended to respond to concerns about the need for more objective standards for evaluating compliance with CRA requirements. Many commenters viewed these criteria as calling for credit allocation, although the agencies did not intend this result. The 1994 proposal removed these criteria from the regulatory language and substituted a broader range of qualitative and quantitative criteria. A system for evaluating compliance with CRA should not eliminate examiner judgment, even if completely objective criteria consistently applied were achievable. Preservation of examiner judgment to take into account the unique characteristics and needs of an institution's community and the institution's own capacity and relevant constraints are essential for a workable rule.

At the same time, consistency in evaluations, reduction in the burden of compliance, and emphasis on performance are fully consistent with assuring a measure of examiner judgment. The 1994 proposal would have provided a balance between objective analysis and subjective judgment through a series of examiner decisions relying on detailed data measuring an institution's actual lending, service and investment performance. In order to minimize unnecessary subjectivity, the agencies provided guidance as to the standards that examiners would have applied in making the required judgments.

Compared to the 1993 proposal, the 1994 proposal would have reduced data reporting burdens by streamlining reporting requirements. The one significant new reporting requirement was the collection and reporting of information on the race and gender of small business and farm borrowers. The agencies proposed this provision to respond to concerns that the 1993 proposal did not give enough weight to the fair lending aspect of an institution's CRA performance.

In order to take into account community characteristics and needs, the 1994 proposal would have made explicit the context in which the tests and standards would have been applied to individual institutions. In a specific effort to reduce burden, the preamble indicated that the agencies, rather than institutions, would have collected and

developed the information needed to provide this ''assessment context.''

The 1994 proposal also modified the rating process from the 1993 proposal. For large retail institutions, in calculating the assigned rating, the revised proposal would have given primacy to lending performance, but an institution's performance on the service and investment tests also would have been reflected in the assigned rating. The rating process for small institutions similarly would have given primacy to lending performance, and would have provided guidance on how the agencies would have considered service and investment performance. For all institutions, evidence of discriminatory or other illegal credit practices would have adversely affected the evaluation of an institution's performance. In addition, an appendix to the 1994 proposal included rating profiles to guide the assessments.

The 1994 proposal revised and clarified other important features of the 1993 proposal. It provided more detail as to how the proposed strategic plan option would operate in practice. Wholesale and limited purpose institutions were made subject to a community development test, which would have incorporated both community development lending and community development services in addition to qualified investments. Also, the agencies revised the definition of service area to include the local areas around an institution's deposit facilities in which it has significant lending activity and all other areas equally distant from such facilities.

Overview of Comments on the 1994 Proposal

Collectively, the agencies received over 7,200 comment letters on the 1994 proposal. The agencies received comment letters from individuals, representatives of bank and thrift institutions, consumer and community groups, members of Congress, state, local, and tribal governments, and others, as shown in the following table.

TABLE OF COMMENTS RECEIVED

Agency	Letters from banks, thrifts and their trade associations	Letters from consumer and community groups	Letters from government entities	Letters from others	Total
OCC	669	839	39	672	2,219
Board	607	832	12	482	1,933
FDIC	1,007	788	32	237	2,064
OTS	261	623	24	173	1,081

The agencies reviewed and considered all of these comments in writing the final rule. The section-by-section analysis of the final rule discusses these comments in greater detail. As a general matter, the vast majority of commenters expressed support for the agencies' goal of developing more objective, performance-based assessment standards that minimize burden while stimulating improved performance. Many commenters believed that, under the existing CRA regulations, the agencies focus too closely on documentation of CRA performance and too little on actual performance. Some commenters felt the present documentation requirements are overly burdensome. Many commenters also supported the agencies' goal of ensuring consistency and evenhandedness among the agencies in CRA evaluations, without including specific criteria that might be viewed as allocating credit to specific borrowers. Commenters supported enhanced CRA examiner training to increase consistency. Although most commenters generally supported the agencies' goals in amending their CRA regulations, many expressed concern over certain aspects of the 1994 proposal.

The Final Rule

Review of Comments on the 1994 Proposal and Responses

The final rule retains, to a significant extent, the principles and structure underlying the 1993 and 1994 proposals, but makes important changes to some details in order to respond to concerns raised in the comment letters and further agency consideration. The following discussion describes by topic the ways in which the agencies addressed commenters' concerns. The discussion also describes important technical modifications included in the final rule.

Enforcement Authority

The agencies have removed two provisions found in both the 1993 and 1994 proposals that engendered considerable comment. These provisions were the community reinvestment obligation, which stated that banks and thrifts have a specific affirmative obligation to help meet the credit needs of their communities, and the enforcement provision, which provided for penalties against banks and thrifts with ''substantial noncompliance'' ratings using the agencies' general enforcement powers under 12 U.S.C. 1818. Substantial comment was received both in favor of, and in opposition to, these provisions. Based on further analysis of their statutory authority, the agencies have removed these provisions.

Consistent with the statute, the final rule provides that an institution's CRA rating reflects its record of helping to meet the credit needs of its entire community. The agencies will take into account an institution's record when evaluating various types of applications, such as applications for branches, office relocations, mergers, consolidations, and purchase and assumption transactions, and may deny or condition an application on the basis of the institution's record.

Scope

The scope of the final rule does not differ appreciably from the scope of the current CRA regulations or the 1993 and 1994 proposals. The agencies historically have excluded from CRA coverage certain special purpose institutions, such as banker's banks, that are not organized to grant credit to the public in the ordinary course of business. These institutions continue to be treated as special purpose banks in the final rule and are excluded from coverage. Several commenters were concerned that the definition of banker's bank in the 1994 proposal may not have conformed with that found in 12 U.S.C. 24 (Seventh), as modified by the Interstate Banking Efficiency Act of 1994 (IBEA). Therefore, the final rule references the definition of ''banker's

bank'' found in 12 U.S.C. 24 (Seventh). The rule also specifies that institutions that provide only cash management controlled disbursement services are excluded from CRA coverage. In addition, the final rule provides for the CRA's applicability to foreign institutions consistent with the IBEA and prior agency interpretations.

Definitions

Many of the definitions in the 1994 proposal remain the same in the final rule or have been adjusted only for purposes of clarity, with no change in substance. The agencies did, however, change some definitions substantively.

Assessment area. The agencies replaced the term ''service area'' in the 1994 proposal with ''assessment area'' in the final rule for the reasons explained in the discussion of assessment area.

ATM and branch. The agencies changed the definitions of ATM and branch to eliminate the requirement that an ATM or a branch be at a fixed site. This change means that staffed mobile offices that are licensed as branches will be considered ''branches'' under the final rule and that mobile ATMs will be considered ''ATMs.'' This change may affect the delineation of an institution's assessment area(s) because the assessment area(s) must include the geographies in which the institution has its main office, branches and deposit-taking ATMs. Including mobile branches and ATMs in defining an assessment area ensures that an institution that uses these means in an area not otherwise served by the institution will be evaluated on its success in helping to meet the credit needs of the area. Including mobile branches in the definition of ''branch'' will also affect evaluation of an institution's service to its community because the ''service test'' evaluates the distribution of an institution's branches and the institution's history of opening and closing branches. In the revised Part 345, the FDIC uses the term ''remote service facility'' instead of ''ATM'' to conform with the terminology used in its regulations.

Community development. The 1994 proposal did not provide a separate definition of ''community development,'' although the term was used in defining community development loans and services and qualified investments. Several commenters requested further guidance on the scope of activities that would qualify. Some commenters were concerned that, without further specification, the regulation might permit an overly broad range of activities to be considered favorably as supporting community development. Others were concerned that the definition might be too narrow.

The final rule separately defines community development to mean: (1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals; (2) community services targeted to low- or moderate-income individuals; (3) activities that promote economic development by financing businesses or farms that meet the size eligibility standards of 13 CFR 121.802(a)(2) or have gross annual revenues of $1 million or less; or (4) activities that revitalize or stabilize low- or moderate-income geographies.

The definition of community development restricts qualifying activities to those that promote community welfare, while recognizing that community welfare can be promoted in diverse ways. For example, a number of commenters, representing both the industry and community and consumer groups, stated that the requirement in the 1994 proposal that community development loans and services and qualified investments meet ''community economic development needs'' inappropriately limited community development to efforts that meet ''economic'' needs. The final rule does not contain this limitation, and community development includes community- or tribal-based child care, educational, health, or social services targeted to low- or moderate-income persons or services that revitalize or stabilize low- or moderate-income geographies.

In response to comments, the definition clarifies the small businesses and farms that the agencies intend to cover. The section of the definition that discusses activities that promote economic development by financing small businesses and farms refers to 13 CFR 121.802(a)(2), the size limitations for the Small Business Administration's Small Business Investment Company and Development Company programs, as well as the $1 million gross annual revenues threshold used for lending test analysis.

Several commenters stated that community development should require benefit to low- and moderate-income areas. However, narrowing the focus to only these areas would ignore some of the beneficial purposes of community development lending for low- and moderate-income individuals. Under the rule, community development includes activities outside of low- and moderate-income areas if the activities provide affordable housing for, or community services targeted to, low- or moderate-income individuals or if they promote economic development by financing small businesses and farms. Activities that create, retain, or improve jobs for low- or moderate-income persons to stabilize or revitalize low- or moderate-income areas also qualify as community development, even if the activities are not located in low- or moderate-income areas.

The final rule also requires that, in order to be community development loans or services or qualified investments, activities must have community development as their primary purpose. Activities not designed for the express purpose of revitalizing or stabilizing low- or moderate-income areas, providing affordable housing for, or community services targeted to, low- or moderate-income persons, or promoting economic development by financing small businesses and farms are not eligible. The fact that an activity provides indirect or short-term benefits to low- or moderate-income persons does not make the activity community development. Thus, a loan for upper-income housing in a distressed area would not qualify simply on the basis of the indirect benefit to low- or moderate-income persons from construction jobs or the increase in the local tax base that supports enhanced services to low- and moderate-income area residents.

The final rule removes the requirement in the 1994 proposal that community development loans and services and qualified investments primarily benefit low- or moderate-income persons or small businesses or farms. This requirement is unnecessary because the definitions of community development loan and service and qualified investment in the final rule require that community development be the primary purpose of the activities.

Community development loan. The agencies have amended the definition of ''community development loan'' as described in the discussion of ''community development'' and in several other ways to respond to commenters' concerns.

First, many commenters objected to the requirement in the 1994 proposal that community development loans meet needs ''not being met by the private market.'' Some commenters pointed out that financial institutions are part of the private market so, if financial institutions make the loans, the needs addressed by the loans will, as a matter of course, be met by the private market. To respond to these comments, the agencies removed this

qualifier from the definition of a community development loan.

Second, some commenters expressed confusion about the extent to which the definition of ''community development loan'' in the 1994 proposal would have differed for wholesale and limited purpose institutions. The agencies amended the definition of ''community development loan'' in the final rule to clarify the two ways in which a ''community development loan'' differs for wholesale and limited purpose institutions. First, wholesale and limited purpose institutions may consider loans as community development loans wherever they are located, if the institutions have otherwise adequately addressed the credit needs in their assessment area(s). This different treatment accounts for the fact that wholesale and limited purpose institutions typically draw their resources from, and serve areas well beyond, their immediate communities. Second, a wholesale or limited purpose institution may consider loans reported as home mortgage, small business, small farm or consumer loans to be community development loans. Institutions subject to the lending test may not consider loans reported in those categories to be community development loans, unless the loans are multifamily dwelling loans. This different treatment recognizes that the rule does not separately assess wholesale and limited purpose institutions on these reported loans.

Some commenters also urged that the agencies permit wholesale and limited purpose institutions to include as a community development loan any loan that primarily benefits low- or moderate-income individuals regardless of the loan's effect on community development. The lending test evaluates an institution's performance in making home mortgage, small business, small farm, and consumer loans based on the geographic distribution of loans to borrowers of different incomes, not on the basis of the total number and dollar amount of loans to low- and moderate-income borrowers. Because the community development test does not consider borrower distribution, but only loan amount and volume, crediting any loan that benefits low- and moderate-income individuals could significantly inflate performance under this test. Therefore, the final rule does not incorporate the suggested change.

Other commenters urged that institutions that are not wholesale or limited purpose institutions have the option of treating a home mortgage, small business, or small farm loan as a community development loan if it would otherwise qualify. The agencies have not done so. For retail institutions, the community development loan category permits consideration of loans that do not meet the definitions of home mortgage, small business or small farm loans but deserve favorable consideration in a CRA assessment. Loans that do meet the definitions of home mortgage, small business and small farm loans are more appropriately evaluated based on the criteria provided for these loans in the lending test.

Some commenters requested that retail institutions receive favorable consideration for community development loans outside their assessment areas. Under the final rule, an institution that is not a wholesale or limited purpose institution may receive favorable consideration for a community development loan that benefits a broader statewide or regional area that includes the institution's assessment area(s). This approach maintains a balance between the broader purposes of community development lending and the focus of CRA on meeting the credit needs of an institution's local community. As previously noted, because of their different operational focus, wholesale and limited purpose institutions receive consideration for community development loans made outside this broader area if they have adequately addressed credit needs within the area.[1]

Community development service. The definition of ''community development service'' has been moved to the definition section of the rule for clarity. The definition has been conformed to the definitions of ''community development loan'' and ''qualified investment'' by removing the reference to ''needs not being met by the private market'' for the reasons described in the discussion of ''community development loan.'' In addition, community development services are required to be related to the provision of financial services. For example, service on the board of directors of an organization that promotes credit availability or affordable housing meets this requirement. Providing technical assistance in the financial services field to community-based groups, local, or tribal government agencies, or intermediaries that help to meet the credit needs of low- and moderate-income individuals or small businesses and farms is also related to the provision of financial services. By contrast, general participation by bank or thrift employees in community activities that do not take advantage of the employee's technical or financial expertise would not qualify. Although an admirable civic contribution, such employee participation is not sufficiently related to the provision of financial services to meet the purposes of CRA. As mentioned in the preamble to the 1994 proposal, electronic benefits transfer and point-of-sale terminal systems that are designed to improve access, such as by decreasing costs, for low- or moderate-income individuals would receive favorable consideration.[2]

Consumer loan. The definition of ''consumer loan'' remains substantially the same as in the 1994 proposal. As in the 1994 proposal, a consumer loan must be extended to one or more individuals for household, family, or other personal expenditures. However, as proposed in 1994, the definition would have mirrored the definition of consumer loan in the Consolidated Report of Condition and Income (Call Report) or Thrift Financial Report (TFR) in an effort to reduce potential regulatory burden. The Call Report and TFR definitions exclude loans secured by real estate and loans used to purchase or carry securities. Many industry commenters objected to these exclusions. Commenters were particularly concerned that home equity loans that do not fall within the

[1] Examples of community development loans include, but are not limited to, loans to: borrowers for affordable housing rehabilitation and construction, including construction and permanent financing of multifamily rental property serving low- and moderate-income persons; not-for-profit organizations serving primarily low- and moderate-income housing or other community development needs; borrowers in support of community facilities in low- and moderate-income areas or that are targeted to low- and moderate-income individuals; and financial intermediaries including, but not limited to, Community Development Financial Institutions (CDFIs), Community Development Corporations (CDCs), minority- and women-owned financial institutions, and low-income or community development credit unions that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development. Other examples include loans to: local, state, and tribal governments for community development activities; and loans to finance environmental clean-up or redevelopment of an industrial site as part of an effort to revitalize the low- or moderate-income community in which the property is located.

[2] Examples of community development services include, among other things: providing technical expertise for not-for-profit, tribal or government organizations serving low- and moderate-income housing needs or economic revitalization and development; lending executives to organizations facilitating affordable housing construction and rehabilitation or development of affordable housing; providing credit counseling, home buyers counseling, home maintenance counseling, and/or financial planning to promote community development and affordable housing; school savings programs; and other financial services the primary purpose of which is community development, such as low-cost or free government check cashing.

definition of home improvement loans reportable under HMDA would not have been considered consumer loans under the proposed rule. The definition of consumer loan in the final rule no longer uses the definition in the Call Report or TFR. As a result, home equity loans that are not reportable under HMDA are consumer loans if they otherwise meet the definition. However, the agencies have clarified in the final rule that consumer loans do not include home mortgage, small business, or small farm loans. These loans are considered separately under the lending test so treating them also as consumer loans would result in double-counting.

The final rule contains definitions for five categories of consumer loans: motor vehicle loans, credit card loans, home equity loans, other secured consumer loans, and other unsecured consumer loans. These definitions reflect the fact that the final rule permits an institution to elect evaluation of its consumer lending on a product-by-product basis.

Home mortgage loan. In the 1994 proposal's definition of ''home mortgage loan,'' the agencies referred to the HMDA and its implementing regulations. Some commenters pointed out that the Board has refined the definition of home mortgage loan in its HMDA regulations (12 CFR Part 203). These commenters indicated it would be preferable and, perhaps, less confusing if the agencies referred only to the Board's HMDA regulations, rather than to both the HMDA and the regulations. The agencies have amended the definition of ''home mortgage loan'' in the final rule accordingly. Under the final rule, a home mortgage loan means a ''home improvement loan'' or a ''home purchase loan'' as these terms are defined in 12 CFR Part 203. This definition includes multifamily dwelling loans and refinancings of home improvement and home purchase loans.

Income level. The income level definitions under the 1994 proposal would have included adjustments to reflect high-cost areas and family size. A number of commenters suggested that, although these adjustments would make the income definitions more accurate, the value of the increased accuracy would be outweighed by the complication and burden associated with the use of adjusted figures. Other commenters pointed out that HMDA disclosure statements, which are used, in part, to evaluate CRA performance, do not employ the adjustments. Some commenters strongly supported the use of adjusted area median income, especially in high-cost communities. However, the flexibility of the performance standards allows examiners to account in their evaluations under the tests for conditions in high-cost communities, such as a shortage of credit for moderate-income persons or areas. In addition, the flexibility in the requirement that community development loans, community development services, and qualified investments have as their ''primary'' purpose community development allows examiners to account for conditions in high-cost areas. Therefore, the definitions of income level in the final rule are based upon area median income without adjustments. In addition, the definition of ''area median income'' for rural areas has been simplified and uses only the statewide non-metropolitan median rather than the higher of county median or the statewide figure.

Limited purpose institution and wholesale institution. A number of industry commenters suggested that ''nonbank banks'' permitted under the Competitive Equality Banking Act (12 U.S.C. 1843(f)) (CEBA banks) should automatically be considered limited purpose institutions. These institutions operate under a variety of different business plans and legal constraints and include retail and wholesale banks, credit card banks, and industrial loan companies. CEBA banks may legally engage in different activities, depending on which activities a particular bank engaged in as of March 1, 1987. A uniform treatment of these institutions is therefore not practicable. The final rule provides the necessary flexibility to assess the CRA performance of these institutions and does not require any institution to engage in proscribed activities. Some of these institutions could be designated as wholesale or limited purpose institutions on a case-by-case basis. Further, the final rule permits the agencies to take into account any legal constraints placed on an institution in assessing performance. As in the case of thrifts, adjustments can be made in the ratings profiles to reflect the legal constraints imposed on the activities of CEBA banks.

Other commenters requested more guidance on incidental lending activities that wholesale and limited purpose institutions could engage in without losing their special designation. Wholesale institutions may engage in some retail lending without losing their designation if this activity is incidental and done on an accommodation basis. Similarly, a limited purpose institution continues to meet the narrow product line requirement if it provides other types of loans on an infrequent basis.

Qualified investment. The definition of ''qualified investment'' has been moved to the definition section for clarity and changed to reflect the new definition of ''community development'' and to respond to comments. The agencies have removed the requirement that a qualified investment must address community development needs ''not being met by the private market.'' Instead, in evaluating performance, the agencies will give greater weight to qualified investments that are not routinely provided by private investors.

The 1994 proposal clearly permitted consideration of investments in organizations that make qualified investments, and the final rule is unmodified in this respect. Some commenters asked that qualified investments be required to benefit low- or moderate-income areas or required to benefit either low- or moderate-income people or areas. The agencies rejected these suggestions for the reasons noted in the discussion of ''community development.''

The final rule clarifies specific aspects of qualified investments proposed in the 1994 proposal that raised issues in the comments. For example, the explicit reference to investments in credit unions has been removed to clarify that no special treatment for these institutions was intended under the investment test. Deposits and membership shares in any financial institution that otherwise meet the criteria discussed earlier for treatment as a qualified investment qualify under the investment test. In addition, although some comments suggested otherwise, Federal Home Loan Bank stock does not have a sufficient connection to community development to be considered a qualified investment.

The use of the term ''standard'' mortgage backed securities in the preamble to the 1994 proposal was ambiguous and should be clarified to mean ''untargeted'' mortgage backed securities. Untargeted mortgage backed securities and untargeted municipal bonds are not qualified investments because their primary purpose is not community development. Investments in municipal bonds designed primarily to finance community development generally are qualified investments and need not be housing-related. Housing-related municipal bonds must primarily address affordable housing (including multifamily rental housing) needs in order to qualify.

The term ''grants'' in the final rule includes in-kind contributions of property to community development organizations. Grants do not automatically have less weight than

investments, but the weight accorded a grant is determined under the performance criteria in the investment test.[3]

Small institution. Under the 1994 proposal, institutions would have been considered small institutions if they had total assets of less than $250 million and were either independent institutions or affiliates of holding companies with less than $250 million in total assets. This definition of ''small institution'' received numerous comments. Industry commenters generally believed that the asset level for holding companies should be raised or eliminated entirely, although some indicated that the $250 million asset level for small institutions would be satisfactory. Some commenters representing institutions with assets below $250 million affiliated with a larger holding company indicated that their institutions typically operated independently from the holding company in complying with CRA obligations. They stated that it would be unfair for them to be evaluated under the assessment tests for a larger institution merely because of their ownership structure. On the other hand, community and consumer groups often commented that small institutions should not be treated differently, or that only institutions with fewer than $50 million in assets should be considered small institutions for purposes of the CRA rule.

The final rule modifies the definition of ''small institution'' in light of these comments. In the final rule, for any independent institution to be considered a small institution, it must have total assets of less than $250 million. Moreover, an institution with total assets of less than $250 million that is owned by a holding company would be considered a small institution if the total bank and thrift assets of its holding company are less than $1 billion. The agencies were persuaded that some smaller holding companies may be unable to provide support to their subsidiary banks and thrifts for CRA compliance. Larger holding companies have the ability to provide support to their subsidiary banks and thrifts, so small institutions owned by these holding companies will not be unfairly burdened by evaluation under the lending, investment, and service tests used in the assessments of larger institutions. The choice of the $1 billion level reflects the weight of the comments that suggested raising the asset level and the agencies' judgment regarding the size at which a holding company should be expected to support the compliance activities of its bank and thrift subsidiaries. The agencies estimate that this change will add only a limited number of institutions, with average assets of about $100 million, to those eligible under the small bank performance standards.

Many commenters also asked the agencies to clarify the date on which the determination will be made whether an institution is a small institution. The agencies have amended the definition of ''small institution'' to clarify that an institution will be considered a small institution throughout any calendar year if, as of December 31 of either of the prior two calendar years, the total assets of the institution (and, if applicable, its holding company) fell below the asset limits set out earlier for a small institution. This definition ensures some stability in whether an institution is classified as a small institution and minimizes the chance that an institution's status will change repeatedly from year to year. The definition also ensures that institutions that exceed the asset limits have adequate time to prepare to meet the requirements applicable to larger institutions.

Small business loan and small farm loan. The agencies made no substantive changes to the definitions of ''small business loan'' and ''small farm loan.'' The final rule cross-references the Call Reports and TFR definitions rather than restating the substance of the definitions as the 1994 proposal would have done. The definitions are based on the size of the loans. Some commenters urged that the definitions be based on the asset size of the business or the farm, as was originally proposed in 1993. The agencies have concluded that, although defining small business and small farm loans by the size of the loan may not be as precise as definitions based on business or farm asset size, following the approach used in the Call Report and TFR will appreciably reduce the burden of compliance for institutions and their borrowers. Also, the Call Report and TFR definitions minimize the need for institutions to collect additional information. The danger of inaccuracy is limited, because loan size roughly correlates with the size of a business or farm borrower. Furthermore, the agencies have retained the proposed requirement that institutions indicate whether a small business or small farm loan is to a business or farm with gross annual revenues of $1 million or less. This requirement will provide additional information to identify loans to small entities.

Several commenters requested that the agencies clarify whether the definitions of small business and small farm loans include loans made to nonprofit organizations as described in the Internal Revenue Code at 26 U.S.C. 501(c)(3). Loans made to nonprofit organizations are included to the same extent they are included under the Call Report and TFR definitions of small business and small farm loans. Loans to nonprofits that are reported as small business or small farm loans cannot also be reported as community development loans, except by wholesale and limited purpose institutions.

Performance Tests, Standards and Ratings in General

Several changes have been made to the section of the 1994 proposal on assessment tests, standards, and ratings. As an initial matter, the terms ''performance tests,'' ''performance standards,'' and ''performance criteria'' have been substituted for the terms ''assessment tests,'' ''assessment standards,'' and ''assessment criteria'' to reflect more accurately the final rule's focus on performance rather than process. The agencies have also changed the term ''assessment context'' to ''performance context'' because the latter term better describes the role of this information in the CRA evaluation process.

Performance context. An institution's performance under the tests and standards in the rule is judged in the context of information about the institution, its community, its competitors, and its peers. Examiners will consider the following information, as appropriate, in order to assist in

[3] Examples of qualified investments include, but are not limited to, investments, grants, deposits or shares: in or to financial intermediaries (including, but not limited to CDFIs, CDCs, minority- and women-owned financial institutions, and low-income or community development credit unions) that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, such as a CDFI that promotes economic development on an Indian reservation; in support of organizations engaged in affordable housing rehabilitation and construction, including multifamily rental housing; in support of organizations promoting economic development by financing small businesses, including Small Business Investment Companies (SBICs) and specialized SBICs; to support or develop facilities that promote community development in low- and moderate-income areas for low- and moderate-income individuals, such as day care facilities; in projects eligible for low-income housing tax credits; in state and municipal obligations that specifically support affordable housing or other community development; to not-for-profit organizations serving low- and moderate-income housing or other community development needs, such as home-ownership counseling, home maintenance counseling, credit counseling, and other financial services education; and in or to organizations supporting activities essential to the capacity of low- and moderate-income individuals or geographies to utilize credit or to sustain economic development.

understanding the context in which the institution's performance should be evaluated: (1) The economic and demographic characteristics of the assessment area(s); (2) lending, investment, and service opportunities in the assessment area(s); (3) the institution's product offerings and business strategy; (4) the institution's capacity and constraints; (5) the prior performance of the institution and, in appropriate circumstances, the performance of similarly situated institutions; and (6) other relevant information. The final rule clarifies that a proposed strategic plan will also be evaluated in the same context. However, all of the factors described in the performance context would not necessarily apply to each strategic plan. In this regard, the performance of similarly situated lenders would not generally be appropriate for evaluating future goals under a strategic plan.

Under the 1994 proposal, the assessment context would have included examiner-developed information on the credit needs of an institution's service area. Many commenters interpreted the proposal to mean that the agencies would prepare a detailed needs assessment for each institution's service area(s). Several bank and thrift commenters criticized such a role for the agencies, reasoning that institutions know their communities far better than a regulatory agency, and that agency-prepared assessments would lead to credit allocation. Some community organization commenters, while more supportive of the concept of agency prepared needs assessments, were concerned that the proposal might imply that institutions did not need to make an effort to know their communities' credit needs, but could instead look to the agencies for that determination.

The agencies did not intend to suggest that an agency-developed needs assessment would prescribe the credit needs an institution must address. Instead, the examiner-developed information on credit needs was intended to help inform the examiner's judgment about the institution's record of performance. Institutions are in the better position to know their communities, and it is neither appropriate nor feasible for the agencies to prepare a detailed assessment of the credit needs of an institution's community. Thus, under the final rule the agencies will analyze the information an institution maintains on the credit needs of its community along with relevant information available from other sources. At the same time, the final rule does not establish a requirement that each institution prepare a ''needs assessment'' to be evaluated by the examiner as urged in some comments provided by financial institutions and community organizations.

Under the final rule, the agencies will neither prepare a formal assessment of community credit needs nor evaluate an institution on its efforts to ascertain community credit needs. Instead, the agencies will request any information that the institution has developed on lending, investment, and service opportunities in its assessment area(s). The agencies will not expect more information than what the institution normally would develop to prepare a business plan or to identify potential markets and customers, including low- and moderate-income persons and geographies in its assessment area(s). This information from the institution will be considered along with information from community, government, civic and other sources to enable the examiner to gain a working knowledge of the institution's community. In response to comments, the final rule also clarifies that information about lending, investment, and service opportunities in an institution's assessment area will, where appropriate, be obtained from tribal governments, as well as from other sources.

Statutory limits on investment authority. Several thrift commenters had concerns about the application of the investment test to thrift institutions because of their limited investment authority. Rather than providing a blanket exemption from the investment test, the final rule modifies the ''capacity and constraints'' section of the performance context to clarify that examiners should consider an institution's investment authority in evaluating performance under the investment test. A thrift that has few or no qualified investments may still be considered to be performing adequately under the investment test if, for example, the institution is particularly effective in responding to the community's credit needs through community development lending activities.

Safety and soundness. The CRA requires the agencies to assess an institution's record of helping to meet the credit needs of its entire community, consistent with the safe and sound operation of the institution. A number of industry commenters were concerned that the 1994 proposal would not have stressed the importance of the safety and soundness of an institution's operation to the same extent as the CRA statute or the current regulations. These commenters responded primarily to the omission of a statement in the 1993 proposal that the CRA does not require any institution to make loans or investments that are expected to result in losses or are otherwise inconsistent with safe and sound operations. The agencies did not intend by this omission to encourage unprofitable or otherwise unsafe and unsound practices. The agencies firmly believe that institutions can and should expect lending and investments encouraged by the CRA to be profitable. The final rule explicitly reflects this belief and addresses the importance of safety and soundness considerations in several sections and in the ratings appendix. The agencies assess an institution's record of helping to meet community credit needs with careful attention to the constraints imposed by safety and soundness. As in other areas of bank and thrift operations, unsafe and unsound practices are viewed unfavorably. The ratings appendix specifically states: ''The bank's overall performance, however, must be consistent with safe and sound banking practices. * * *''

Flexible underwriting approaches. The final rule states that the agencies permit and encourage an institution's use of flexible underwriting approaches to facilitate lending to low- and moderate-income individuals and areas, but only if consistent with safe and sound operations. This is consistent with, and clarifies, language in the 1994 proposal. Some commenters urged that the rule expressly identify particular types of areas or borrowers covered by this provision. Mentioning particular types of borrowers or areas in the regulatory text is unnecessary and inconsistent with the principle of evaluating each institution and its community based on their characteristics, capacity, and needs. However, certain borrowers or areas, such as Native Americans residing in Indian country, may face difficulties obtaining credit that could warrant special consideration. The efforts of lenders that utilize innovative or flexible methods, in a safe and sound manner, to address these or other unusual underwriting issues are recognized under the lending test.

The Lending Test

The lending test in the final rule is substantially similar to the 1994 proposal. However, there are some significant changes in response to the comments.

Consideration of originations and purchases. The 1994 proposal would

have evaluated home mortgage lending based on HMDA data, which is based on loan originations and purchases. However, the proposal would have required institutions to collect, report, and be evaluated on loans outstanding for other types of loans. The agencies took this approach in an effort to reduce burden on the industry, because institutions must already report loans outstanding on Call Reports and TFRs.

The vast majority of commenters who addressed this issue (almost exclusively industry commenters) stated that use of originations would provide a substantially more accurate picture of actual lending activity, because current activity would not be obscured by past activity and the data would reflect seasonal variations and sale of loans in the secondary market. Moreover, using originations rewards, rather than penalizes, institutions for selling loans on the secondary market, which frees up capital for additional lending and increases credit availability. The commenters did not support the premise that use of originations would be more burdensome than using loans outstanding. Because institutions would have to collect and report additional information on each loan for CRA purposes, using loans outstanding would not significantly decrease burden. The bulk, if not all, of the burden reduction would be achieved by using the Call Report and TFR definitions. The final rule therefore uses originations and purchases, instead of loans outstanding, for all types of loans.

Lines of credit are considered originated at the time the line is approved or increased; and an increase is considered a new origination. Generally, the full amount of the credit line (or in the case of an increase in an existing line, the amount of the increase) is the amount that is considered originated. Although some lines of credit may be for both home improvement and other purposes, only the amount that is considered to be for home improvement purposes is reported as a home improvement loan under HMDA. Lines of credit should be considered in assessing an institution's lending activity in all applicable loan types. Therefore, where a portion of a line of credit is reported under HMDA and another portion meets the definition either of a ''small business loan'' or a ''consumer loan,'' the full amount of the line of credit should be reported as a small business loan or collected as a consumer loan, as appropriate, and the agencies will also consider as a home mortgage loan the portion of the credit line that is reported under HMDA.

The final rule contains an option for lenders also to provide data on loans outstanding, which may, in certain circumstances, enhance an examiner's understanding of an institution's performance. Institutions may also provide for examiner consideration information on letters of credit and commitments, as well as any other loan information. The language of the lending test (and the definition of ''community development loan'') has been adjusted as appropriate to reflect these changes.

Consumer loan evaluation. Under the 1994 proposal, consumer lending would have been evaluated under the lending test only if an institution elected to have it evaluated and provided the necessary loan data. Thus, the 1994 proposal would have permitted an institution that is primarily a consumer lender not to be evaluated on a substantial portion of its business if it so chose. Under these circumstances, meaningful evaluation of certain institutions might have been very difficult. The final rule, therefore, changes the treatment of consumer lending. Under the rule, if a substantial majority of an institution's business is consumer lending, this lending is evaluated in the lending test. The rule does not impose any reporting requirements for consumer lending, however. If an examiner determines that a substantial portion of an institution's business is consumer lending, and the institution has not elected to provide consumer loan data, the examiner will evaluate consumer lending by analyzing an appropriate sample of the institution's consumer loan portfolio. In addition, this aspect of the final rule does not affect the evaluation of a limited purpose bank, because the bank will be evaluated under the community development test, not the lending test.

The 1994 proposal would have required that institutions provide information on all consumer loans if they choose to provide information on any consumer loans. The agencies included this requirement because they were concerned that, otherwise, an institution might provide information only on those consumer products that would reflect well on the institution's CRA performance and would choose not to provide information on those products that would reflect poorly.

Many industry commenters stated that the prospect of reporting all their consumer loan information was so burdensome that they would not report any information. On the other hand, consumer and community groups commented that, if consumer lending is to be considered in CRA at all, consumer loan reporting should be mandatory. After considering these comments, the agencies have decided to permit institutions to provide information on one or more categories (motor vehicle, credit card, home equity, other secured, and other unsecured) of consumer loans.

Although an institution may have some opportunity to mask poor performance or otherwise inappropriately influence its CRA evaluation through selective provision of data, this opportunity will be limited by the provision in the final rule requiring an institution to maintain data on all loans in the category or categories in which it seeks to be evaluated. For example, if an institution provides information on its credit card lending, it would have to provide information on all its credit card lending, although it need not provide information on its motor vehicle lending. Furthermore, under the final rule, if an institution is a substantial consumer lender, the agencies will evaluate its consumer lending in appropriate categories regardless of whether the institution reports data for those categories.

Relative weight of different lending categories. The 1994 proposal explicitly stated that home mortgage, small business, and small farm lending (and consumer lending if it was considered) would have been weighted to reflect the relative importance of the categories to the institution's overall business. The proposal also stated that community development lending would have been weighted to reflect the characteristics and needs of an institution's assessment area(s), the capacity and constraints of the institution, and the opportunities available for this lending. Several commenters expressed concern about the lack of certainty in these provisions; some also believed that community development lending would have received excessive weight. However, a fixed formula for the relative weight of different categories would require a determination that some categories of lending are uniformly more important than others, when the appropriate weight depends on the specific institution and its community. The agencies have removed the discussion of the relative weight assigned to different lending categories because examiners will determine the appropriate weight based on the performance context.

Lending activity criterion. The lending test in the 1994 proposal, unlike the current CRA regulations, did not specifically consider the volume of lending activity—the number and amount of home mortgage, small business, small farm, and consumer loans located in the institution's

assessment area(s). Experience under the current regulations has demonstrated that this criterion can be useful in assessing performance. Therefore, based on further internal agency considerations, the final rule contains a lending activity performance criterion. This criterion encourages an institution that does not itself engage in the categories of lending evaluated under the lending test to seek designation as a wholesale or limited purpose institution so that the institution's CRA performance can be evaluated under criteria appropriate to the institution. The criterion also creates a disincentive for institutions to try to influence inappropriately the evaluation of their CRA performance by conducting activities viewed favorably under CRA in the institution and other activities in an affiliate. An institution's performance on the lending activity criterion will be assessed taking into account the information described in the section of the preamble discussing the performance context, including the institution's business strategy regarding the lending conducted by the institution itself and the lending conducted by affiliates.

Market share analysis. Many commenters, particularly community and consumer groups, suggested that the market share evaluation of the 1993 proposal be reinstated or that the agencies substitute an alternative objective ratio to serve as the linchpin for an institution's lending test rating. Other commenters, particularly those representing the industry, opposed using any market share analysis. In the agencies' opinion, the 1994 proposal struck the appropriate balance between objective performance measures and subjective judgments. A single, standardized set of performance evaluation tools is not appropriate because of the variety of institutions and the differences among the communities that they serve. The public evaluation prepared by the agencies will explain the data and analytic tools used to evaluate the institution.

The geographic distribution of an institution's loans remains a component of the lending test. One element of the geographic distribution analysis, both in the 1994 proposal and in the final rule, is the amount of lending to low-, moderate-, middle- and upper-income geographies. As part of the performance context, examiners would consider, among other considerations described earlier in this preamble, the performance of other similarly-situated lenders. In this regard, examiners would use market share and other analyses to assist in evaluating the geographic distribution of an institution's lending where such analyses would provide accurate insight. However, the final rule does not require examiners to use any single type of analysis, and would not link a particular market share ratio, or any ratio, with a particular lending test rating.

Proportion of lending within assessment areas. Under the final rule, as under the 1994 proposal, another component of the geographic distribution criterion is the proportion of total loans made in an institution's assessment area(s). Some commenters believed that this criterion is inappropriate; they noted that safety and soundness considerations require an institution to lend to a geographically dispersed area. This criterion is a consideration under the existing CRA rules and has proved over the years to be one useful indicator of the degree to which an institution is focused on serving its local community. Moreover, the agencies believe the criterion encourages an institution to draw its assessment area broadly enough to allow the dispersion of its lending and distribution of its loans among geographies of different income levels. Therefore, the agencies retained the provision unchanged in the final rule.

Dispersion. The third component of the geographic distribution criterion of the lending test is the dispersion of the institution's lending activity. The 1994 proposal would have assessed the degree of dispersion ''throughout'' an institution's assessment area(s). For clarification, the word ''throughout'' has been changed to ''in'' in the final rule. The agencies will still examine the entire assessment area; however, an institution is not expected to lend evenly throughout or to every geography in its assessment area. Rather, an institution's lending pattern should not exhibit conspicuous gaps that are not adequately explained by the performance context.

Borrower distribution. The lending test also considers the distribution of an institution's loans among borrowers of different income levels and businesses of different sizes. Favorable consideration is given for loans to low- and moderate-income persons and small businesses and farm loans outside of the institution's assessment area, provided that the institution has adequately served borrowers within its assessment area. The importance of this criterion, particularly in relation to the geographic distribution criterion, will depend on the performance context. For example, borrower distribution may be more important in rural areas or in assessment areas without identifiable geographies of different income categories; geographic distribution may be more important in urban areas and assessment areas with the full range of geographies of different income categories.

Some commenters recommended that the lending test evaluate an institution's record of lending to different racial and ethnic groups and to women. The final rule does not incorporate this suggestion. The appropriate inquiry regarding service to particular racial or ethnic groups and men and women is whether the institution is operating in a non-discriminatory manner. Therefore, in arriving at an institution's assigned rating, the agencies consider whether there is evidence of discrimination in violation of the Fair Housing Act or Equal Credit Opportunity Act, or evidence of other illegal credit practices.

Innovative or flexible lending practices. The final rule, like the 1994 proposal, assesses an institution's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies. An innovative practice is one that serves low- and moderate-income creditworthy borrowers in new ways or serves groups of creditworthy borrowers not previously served by the institution. Both innovative practices and flexible practices are favorably considered. Although a practice ceases to be innovative if its use is widespread, it may nonetheless receive consideration if it is a flexible practice. An institution need not provide lending data connected with a practice in order to receive consideration. For example, an examiner could consider an institution's secured credit card program as a flexible lending practice even though the institution has not provided its credit card loan data for evaluation under the other criteria of the lending test.

Compliance with private commitments. Some commenters suggested that, in the lending test, the agencies should consider the extent to which an institution has fulfilled lending agreements that the institution has made with third parties. The final rule does not incorporate this suggestion. The CRA requires the agencies to assess an institution's record of helping to meet the credit needs of its community, not to enforce privately negotiated agreements. Therefore, an institution's record of fulfilling these types of agreements is not an appropriate CRA performance criterion.

Affiliate lending. The 1994 proposal would have permitted consideration of affiliate lending at an institution's option or if the agency determined that

the affiliate's activity is integral to the institution's business. Many industry commenters opposed consideration of affiliate lending except at the institution's option on the ground that consideration without the institution's consent may be equivalent to extending CRA coverage to affiliates that may not be subject to the statute. Some community and consumer groups supported consideration of affiliate activity and urged that the regulatory language be strengthened to require the agencies to take affiliate lending into account under certain circumstances. In the final rule, affiliate lending is considered only at the election of the institution, except with regard to the lending activity criterion, where, as described earlier, it will provide context for the assessment in order to discourage an institution from inappropriately influencing an evaluation of its CRA performance by conducting activities that would be viewed unfavorably in an affiliate. The agencies also received comments that the phrase ''integral to the institution's business'' in the proposal was unclear. The final rule does not use this phrase.

The other limitations on consideration of affiliate lending contained in the 1994 proposal have been retained in the final rule. However, the limitation against double-counting of loans has been modified to clarify that an institution can count as a purchase a loan originated by an affiliate, or count as an origination a loan sold to an affiliate, provided the same loans are not sold several times to inflate their value for CRA purposes.

The agencies have added language to the final rule to clarify that affiliate lending is not considered in evaluating the proportion of total lending made within an institution's assessment area(s). The agencies also wish to clarify that if an institution elects to have the lending activities of its affiliates considered in the evaluation of the institution's lending, the geographies served by the affiliate's lending activities do not affect the institution's delineation of assessment area(s).

Furthermore, the final rule would not change the existing supervisory authority of the agencies over institutions and their affiliates. Therefore, although lending by affiliates may be treated as lending by an institution, this treatment for CRA purposes will not permit a regulatory agency to examine any institution or its affiliate if it does not otherwise have such authority.

Direct and indirect lending. Many consumer and community groups expressed concern that the 1994 proposal did not adequately emphasize direct lending by the institution as compared to indirect lending carried out through consortia and third parties. Other commenters, particularly from the industry, urged a return to the provisions of the 1993 proposal that would have treated direct and indirect lending as interchangeable. The final rule clarifies that loans originated or purchased by third parties and consortia in which an institution participates or invests may only be considered if they qualify as community development loans and may only be considered under the community development lending criterion. Indirect loans will not affect an institution's performance under the other four lending test criteria. Under the final rule, direct lending performance is an essential element of an institution's CRA performance.

Some commenters requested clarification whether an institution is required to participate directly in making or funding each loan that is made through a consortium or third party in order for the loan to be considered under the community development lending criterion of the lending test. An institution need not directly participate in the making or funding of consortia- and third party-loans for the loans to be considered (subject to the constraints set out in the rule) under the community development lending criterion, provided the loans meet the definition of community development loan. Loans originated directly on the books of the institution or purchased by the institution are considered to have been made directly by the institution, even if the institution originated or purchased the loans as a result of its participation in a loan consortium.

Investment Test

The 1994 proposal would have focused on the dollar amount of an institution's qualified investments, the innovativeness and complexity of the qualified investments and their responsiveness to the credit and economic development needs of the community. The 1994 proposal also would have clarified that the investment test considers all qualified investments benefitting a broader statewide or regional area that included an institution's assessment area. Most of the comments on the investment test concerned the definition of qualified investment and have been discussed earlier in the preamble.

Limited investment authority. One group of commenters representing institutions with statutory constraints on their authority to make this type of investment maintained that reliance on an investment test in assigning a CRA rating could unfairly stigmatize their CRA performance. As previously discussed, the final rule has modified the performance context for CRA evaluations to account for financial institutions with limited investment authority. These modifications would permit an institution with limited authority to make investments to receive a low satisfactory rating under the investment test, although it has made few or no qualified investments, if the institution has a strong lending record, thereby preventing potential anomalies in the CRA performance ratings.

Disposition of branch premises. To implement the statutory requirement in 12 U.S.C. 2907(a), the final rule specifies that a donation, sale on favorable terms or rent-free occupancy of a branch (in whole or in part) in a predominantly minority neighborhood to any minority- or women-owned depository institution is a qualifying investment. Similar disposition of branch premises to a financial institution with a primary mission of promoting community development is also a qualified investment.

Service Test

Compared to the 1993 proposal, the service test in the 1994 proposal would have reduced the significance in the CRA performance evaluation of an institution's full service, ''brick and mortar'' branch structure by elevating the consideration given to alternative systems for delivering retail banking services (*e.g.*, ATMs, mobile branches, loan production offices, or banking-by-telephone or banking-by-computer). In this regard, the provision of retail banking services would have been evaluated on the basis of an institution's: (1) Distribution of branches and ATMs among low-, moderate-, middle-, and upper-income areas; (2) record of opening and closing branches and ATMs; (3) range of services to low-, moderate-, middle-, and upper-income areas; and (4) efforts to make alternative delivery systems responsive to the needs of low- and moderate-income areas and individuals. In addition, the extent to which an institution provided innovative and responsive community development services would also have been considered under the service test. The final rule retains the essential structure and elements of the test as proposed but makes some modifications.

Relative weight of branches and alternative delivery systems. The overwhelming majority of community and consumer group commenters stated

that the 1994 proposal placed too little emphasis on the location of an institution's full service branches in evaluating performance under the service test. Many of those commenters also were concerned that the proposed service test would have erroneously equated ATMs with full service branches. On the other hand, several industry commenters commended the proposal's recognition that full service branches should not be the determining factor under the service test as consistent with the trend in the industry toward the use of alternative service delivery systems.

The final rule responds to these issues by adjusting the balance of the service performance evaluation in favor of full-service branches while still considering alternative systems. In this regard, references to ATMs in the criteria for evaluating the distribution of an institution's branches have been removed, and conforming changes have been made in the ratings appendix. These changes signify a recognition that convenient access to full-service branches within a community is an important factor in determining the availability of credit and non-credit services. The focus of the service test, however, remains on an institution's current distribution of branches, and the test does not require an institution to expand its branch network or operate unprofitable branches.

The final rule emphasizes that alternative systems for delivering retail banking services, such as ATMs, are to be considered only to the extent that they are effective alternatives in providing needed services to low- and moderate-income areas and individuals. Furthermore, network ATMs owned by other institutions do not receive the same consideration in an institution's evaluation as ATMs owned by or operated exclusively for that institution.

An institution's branches and other service delivery systems need not be accessible to every part of an institution's assessment area. However, the service delivery systems should not exhibit conspicuous gaps in accessibility, particularly to low- or moderate-income areas or individuals, unless the gaps are adequately explained by the performance context.

Other issues. The final rule conforms the community development services component of the service test to that of the investment test by giving consideration to community development services that benefit a broader statewide or regional area encompassing an institution's assessment area.

Some of the specific suggestions in the comments were not implemented in the final rule. For example, the rule does not require institutions to provide basic banking services or low-cost checking accounts, because the CRA permits institutions substantial leeway to determine the specific policies and programs that help meet credit needs in their communities. In addition, the final rule does not evaluate the effectiveness of service performance on the basis of deposit growth. This measurement is not clearly related to helping to meet the credit needs of the community and could necessitate burdensome coding of deposit accounts on a geographic basis. Finally, debit cards are not a retail credit delivery system, and therefore the agencies have not included debit cards in the list of examples of alternative delivery systems for retail services.

Community Development Test

The performance of wholesale and limited purpose institutions would have been evaluated in the 1994 proposal separately under the community development test. This test would have focused on the record of these institutions in helping to meet credit needs through community development lending, qualified investments, and community development services. The 1994 proposal also would have required wholesale or limited purpose institutions to serve a designated local area and would have placed limits on consideration of activities outside this designated area. The final rule maintains the community development test with some changes.

Request for designation as a wholesale or limited purpose institution. In response to comments on the 1994 proposal, the final rule provides more detail on the process by which an institution is designated wholesale or limited purpose. An institution that seeks designation as wholesale or limited purpose must file a request in writing at least three months prior to the proposed effective date of the designation. If the designation is approved, it remains in effect until the institution requests revocation of the designation or until one year after the agency notifies the institution that the agency has revoked the designation on its own initiative. Thus, once an institution has received a designation, the institution need not reapply before each CRA examination.

Benefit to assessment area. Many commenters, including both industry and some community group commenters, maintained that the limitations placed on considering out-of-assessment area activities were too restrictive and did not account for the broader business strategies and operations of wholesale and limited purpose institutions, which often serve communities on a nationwide basis.

The final rule removes the specific limitation that community development activities outside an institution's assessment area be considered only up to the amount of activities within the institution's assessment area. Under the final rule, the agencies consider all activities that benefit the institution's assessment area(s) or a broader statewide or regional area that includes the assessment area(s). In addition, other activities receive full consideration as long as the institution has adequately addressed the needs of its assessment area.

Technical changes and clarifications. The final rule clarifies that investments in third party community development organizations may be treated either as qualified investments or as community development loans (with the institution receiving credit for a pro rata share of the loans made by the third party, at the institution's option). In addition, the agencies note that a wholesale or limited purpose institution need not engage in all three categories of activities considered under the community development test but can perform well under the test by engaging in one or more of these categories. Technical changes have also been made to conform with the modifications, previously discussed, to the definition of community development loans, the definitions of wholesale and limited purpose institutions, and the focus of lending performance assessments on originations and purchases rather than loans outstanding.

Small Institution Performance Standards

The small institution performance standards have been retained in the final rule essentially as proposed in 1994, except for the change in the eligibility threshold described earlier. As a technical matter, the final rule has been changed to clarify that an institution that was a small institution as of the end of the prior calendar year is examined as a small institution.

Many commenters, predominantly representing community organizations but also including some larger institutions, stated that the streamlined approach would amount to a *de facto* exemption from CRA for small institutions. Other commenters, predominantly representing the industry, supported the proposal for streamlined examinations and an exemption from new data collection and

reporting. Many commenters representing the industry stated that data collection may place a greater relative burden on smaller institutions than larger institutions due to limitations in staff and financial resources. After considering the comments, the agencies have decided not to change materially the smaller institution performance standards. Examinations of small banks and thrifts will be streamlined and will not require the periodic reporting of new data. Examinations will be meaningful and will not be implemented as *de facto* exemptions.

Performance criteria. The 1994 proposal provided that to determine whether a small institution's CRA record is satisfactory, the agencies would consider the institution's loan-to-deposit ratio, adjusted for seasonal variation and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans or qualified investments. This provision of the 1994 proposal responded to concerns following the 1993 proposal that institutions that package and sell their loans would be disadvantaged when compared to portfolio lenders by a strict loan-to-deposit ratio test. This provision of the 1994 proposal has been retained in the final rule. Evaluations will also take into account the institution's size, financial condition, and the credit needs of its assessment area.

The final rule also requires consideration of the proportion of the institution's total lending made to borrowers in its assessment area. The agencies will take into account local lending and investment opportunities in assessing this criterion.

In addition, the agencies will evaluate the distribution of loans and lending-related activities among individuals of different income levels and businesses and farms of different sizes. Where appropriate, the agencies will also evaluate the geographic distribution of loans in the institution's assessment area, including low- and moderate-income geographies. Contrary to the concerns expressed by some commenters, however, a small institution is not expected to lend evenly throughout its service area; rather, loan distribution will be evaluated within the context of an institution's capacity to lend, local economic conditions, and lending opportunities in the assessment area.

The agencies also will evaluate whether an institution has taken appropriate action, as warranted, in response to written complaints about the institution's performance in helping to meet the credit needs of its assessment area(s). Some commenters suggested that complaints resolved satisfactorily for the complainant not be considered in the evaluation. The agencies will consider those complaints, but their satisfactory resolution will be a favorable element in an evaluation. Other commenters expressed concern that the agencies might not adequately consider bona fide complaints from community members. However, the agencies intend to consider all CRA complaints in the course of an examination. Therefore, this criterion is retained in the final rule as proposed.

Elements of outstanding performance. Some commenters requested a clarification of the circumstances under which a small institution could earn an ''outstanding'' rating. Others urged that some flexibility be provided to consider a range of activities that enhance credit availability and promote community development. Under the final rule, in addition to determining whether an institution has exceeded some or all of the standards for a satisfactory rating, the agencies will consider a small institution's investment and service performance based on the broad range of investment and service activities discussed in the rule for other institutions.

Strategic Plan

The provisions of the strategic plan in the 1994 proposal have been adopted largely as proposed, with some changes.

The 1994 proposal provided that, as an alternative to being rated under the lending, service, and investment tests, or the small institution performance standards, a bank or thrift could submit to its supervisory agency for approval a strategic plan developed with community input detailing how the institution proposed to meet its CRA obligation. The 1994 proposal made clear that an institution would not be assessed under a plan unless the plan had been approved by its supervisory agency. To facilitate examinations of institutions with approved plans, the final rule clarifies that an institution is only evaluated under a plan if the plan is in effect and if the institution has operated under an approved plan (although not necessarily the particular plan currently in effect) for at least one year. Affiliates may prepare joint plans. The final rule permits activities to be allocated among affiliated institutions at the institutions' option, provided that the same activities are not considered for more than one institution. This change was made in response to comments requesting greater flexibility and increased opportunities for affiliated institutions sharing the same assessment area(s) to work together to help meet the credit needs of their communities and, in particular, in low- and moderate-income areas.

Public participation. The final rule retains the public participation provisions in the 1994 proposal. The final rule requires an institution informally to seek suggestions from the public while developing a plan. Once the institution has developed a plan, it must publish notice of the plan and solicit written public comment for at least 30 days. In order to avoid unduly lengthening the plan approval process, the final rule does not extend the minimum comment period. After the comment period, the institution shall submit the plan to its regulator, along with any written comments received. If the plan was revised in light of the comments received, the institution shall also submit the plan in the form released for public comment. The agencies have added in the final rule a requirement that an institution submit with its plan a description of its informal efforts to seek suggestions from members of the public. As under the 1994 proposal, the final rule states that a plan will be approved if the agency fails to act on it within 60 days after submission, unless the agency extends the review period for good cause.

Because of the importance of constructive community involvement in the plan process, the agencies have not changed in the final rule the amount of public participation required. Requiring an institution to seek informal suggestions in formulating a plan, and then to solicit formal comment before submitting a plan to the agency, encourages consultation between an institution and its community, including local government, community leaders, the public and tribal governments. There is no need for a further comment period after the institution submits its proposed plan to the agency because such a comment period could undermine the direct communication and consultation between an institution and its community that is most beneficial to the process.

Several comments appeared to misunderstand why the strategic plan provides for comment from the public. The strategic plan option provides institutions an opportunity to tailor their CRA objectives to the needs of their community and their capacity and expertise. Several industry comments were concerned that under the strategic plan option, community organizations would play an inappropriate role in an

institution's operations. However, the purpose of the consultation is for the institution to develop the fullest possible information about the needs of its community and how these needs might be met. The institution nevertheless makes all decisions regarding how it plans to help meet those needs. In reviewing the public participation, the agencies will not consider whether community organizations unanimously support the plan, but whether the institution made an appropriate investigation to determine the needs of its community, and whether the goals of the plan serve those needs.

As a technical clarification, the final rule provides that an institution may impose a reasonable charge for copying or mailing a plan but may not charge for reviewing the plan.

Assessment of performance under the plan. Under the final rule, as under the 1994 proposal, the agencies will generally rate an institution's performance under an approved plan solely in relation to goals set out in the plan. An institution has the option, however, to elect in its plan to be subject to the standard tests should it fail to meet substantially its ''satisfactory'' goals under the plan. The final rule makes this election clear. An institution operating under an approved plan would, during the period of the plan, not be subject to assessment under the standard tests, unless the institution so chose. In considering whether an institution has substantially met plan goals, an agency will give consideration to circumstances beyond the institution's control, such as economic conditions, that have affected its ability to perform.

Confidential information. A number of industry commenters indicated that the possibility of public disclosure of confidential information presented a major disincentive to their use of the strategic plan alternative. In response to similar comments on the 1993 proposal, the 1994 proposal would have permitted institutions to submit additional information to the relevant agency on a confidential basis. The final rule includes this provision, which adequately addresses confidentiality concerns.

Data collection and reporting responsibilities. Despite industry comments to the contrary, the final rule provides that approval of a plan does not affect an institution's data collection responsibilities. These data are useful to the agencies in assessing overall lending in communities, and would also be of value to the public. Since the institution's plan will be in its public file, the public will have the appropriate context in which to evaluate the lending data.

Assigned Ratings

In the final rule, as under the 1994 proposal, an institution will be assigned one of the four assigned ratings required by the statute: ''outstanding,'' ''satisfactory,'' ''needs to improve,'' or ''substantial noncompliance.'' (12 U.S.C. 2906(b)(2)) For institutions that are evaluated under the community development test for wholesale or limited purpose institutions, the small institution performance standards, or an approved strategic plan, the rating on these tests will be the institution's assigned rating with adjustment for any evidence of discrimination. Retail institutions that are evaluated under the lending, investment and service tests will be assigned a rating based upon the assigned rating principles and the matrix that implements these principles, also with adjustment for any evidence of discrimination.

Ratings principles and matrix. A number of comments discussed the principles and methodology by which an assigned rating would be given to retail institutions evaluated under the lending, investment and service tests. The 1994 proposal set forth five principles that governed the assignment of this rating. The methodology for calculating the assigned rating was described in Appendix A. The proposal would have required that an institution's rating on the lending test count for at least 50 percent of its assigned rating. Furthermore, an institution would have been required to achieve a ''satisfactory'' rating on the lending test in order to receive an assigned rating of ''satisfactory.'' In addition, the 1994 proposal would have allowed investment and service performance to raise a institution's assigned rating if it had earned at least a ''satisfactory'' rating on the lending test. Poor performance on either the investment or service test also could have negatively affected an institution's assigned rating. The proposal would have required the agencies to adjust ratings for all institutions, regardless of which test the agencies used to evaluate their performance, to take into consideration evidence of discriminatory or other illegal credit practices. Finally, an institution that otherwise would have received a ''needs to improve'' rating would have been rated as ''substantial noncompliance'' if it received no better than a ''needs to improve'' rating on each of its two previous examinations.

Commenters generally supported the 1994 proposal's emphasis on lending performance, but a number were concerned about several apparently anomalous ratings that would have resulted from applying the rating principles and the matrix in the appendix. Several commenters, particularly community groups, were concerned that an institution could receive an assigned rating of ''satisfactory'' even if it received a rating of ''substantial noncompliance'' on both the investment and service tests, if its rating on the lending test was at least a ''high satisfactory.'' In addition, an institution with a rating of ''substantial noncompliance'' on either the service or investment test could get an ''outstanding'' composite rating if its rating on the lending and the third test was ''outstanding.'' These commenters suggested revising the rating principles and matrix to avoid these anomalous results.

After considering the comments, the agencies have revised the final rule to eliminate these anomalies. The agencies eliminated the principle that an ''outstanding'' rating on the lending test and either the service or investment test would mean an ''outstanding'' assigned rating even if the rating on the third test was ''substantial noncompliance.'' The agencies also eliminated the principle that an institution's rating on the lending test would count for at least 50 percent of its assigned rating. This change does not alter the agencies' emphasis on the primacy of lending when evaluating CRA performance, because no institution may receive an assigned rating of ''satisfactory'' unless it receives a rating of at least ''low satisfactory'' on the lending test.

In light of the comments, the matrix that sets forth the methodology for aggregating an institution's scores on the lending, service and investment tests to arrive at an assigned rating has also been revised. The number of points to be given for each rating on the lending, service and investment tests remains unchanged as shown in the following table.

Component test ratings	Lending	Service	Investment
Outstanding	12	6	6
High Satisfactory	9	4	4
Low Satisfactory	6	3	3
Needs to Improve	3	1	1
Substantial Noncompliance	0	0	0

The number of points needed to achieve each of the four composite assigned ratings has been modified slightly, as shown in the following table, to remove the anomalies discussed earlier.

Points	Composite assigned rating
20 or over	Outstanding.
11 through 19	Satisfactory.
5 through 10	Needs to Improve.
0 through 4	Substantial Noncompliance.

To ensure that an institution does not receive an assigned rating of ''satisfactory'' unless it receives a rating of at least ''low satisfactory'' on the lending test, an institution's assigned rating will be calculated using three times the lending test score if the institution's point total exceeds three times the lending test score.

The agencies have removed the matrix from Appendix A. This change will allow the agencies some flexibility in adjusting the matrix to prevent any other unintended anomalies that may be found during the examination process. If the agencies change the matrix in the future, the new matrix will be published for information, but not necessarily for comment, in the **Federal Register**.

Automatic downgrade of third ''needs to improve'' rating. The agencies have also removed the requirement that an institution's CRA rating be downgraded automatically from ''needs to improve'' to ''substantial noncompliance'' if it received no better than a ''needs to improve'' rating on each of its two previous examinations. Even though the automatic downgrading has been eliminated in the final rule, the agencies will consider an institution's past performance in its overall evaluation. If the poor performance continues, an institution could be rated ''substantial noncompliance'' if prior ratings were ''needs to improve'' and the institution has not made efforts to improve its performance.

Weight of service test. Some consumer groups urged that an institution be required to get at least a ''low satisfactory'' on the service test in order to get an assigned rating of ''satisfactory'' or better. The agencies considered this suggestion, but decided that because the CRA's focus is on helping to meet a community's credit needs, it would be inappropriate to impose this requirement. However, the changes to the ratings principles and matrix increase the weight of both the service and investment tests.

High satisfactory and low satisfactory ratings. Some commenters found confusing the use of a ''high'' and ''low'' satisfactory rating on the lending, service and investment tests and only a ''satisfactory'' on the assigned rating. Because a wide range of performance may be rated as satisfactory, the agencies decided to keep the five ratings on the underlying tests, even though the assigned ratings are limited to the four statutory ratings. This will permit the agencies, banks and thrifts, and their customers to recognize the stronger performances on the lending, investment, and service tests of those institutions that are doing a very good, but not quite outstanding, job of helping to meet the credit needs of their communities.

Effect of CRA Performance on Applications

The CRA requires the agencies to consider an institution's CRA performance record when considering an application by the institution to establish a deposit facility. The statute defines applications for a deposit facility as including applications for a Federal financial institution charter or FDIC deposit insurance, applications to establish or relocate a branch or home office, and applications for mergers, consolidations, or the purchase of assets or assumption of liabilities of a regulated financial institution. The 1994 proposal provided that in considering an institution's application for a deposit facility, the agencies would consider the institution's CRA performance and take into account any views expressed by interested parties submitted in accordance with the applicable agency's rules and procedures. The proposal also stated that an institution's record of CRA performance could provide a basis for approving, denying, or conditioning approval of an application.

A number of comments from financial institutions asked the agencies to create a ''safe harbor'' from CRA protests for banks with good CRA ratings that apply to establish a deposit facility. Some commenters suggested that a ''safe harbor'' would provide an incentive to achieve an outstanding rating. Community and consumer groups, on the other hand, opposed any sort of safe harbor from CRA protests.

The agencies have consistently recognized that materials relating to CRA performance received during the applications process can and do provide relevant and valuable information. The agencies also continue to believe, as provided in the Interagency Policy Statement Regarding the Community Reinvestment Act, that information from an examination is a particularly important consideration in the applications process because it represents the on-site evaluation of an institution's CRA performance by its primary Federal regulator. The final rule implements without change the balance given in the 1994 proposal between CRA performance ratings and material information presented through public comment in the applications process.

The agencies noted in the preamble to the 1993 proposal that the frequency with which the agencies will examine an institution will depend in part on its record of performance. A similar discussion was inadvertently omitted from the 1994 proposal. Examination frequency will be based, in part, on an institution's record of performance. This policy combines an efficient use of agency resources with an incentive for good performance.

Assessment Area Delineation

As a result of numerous comments received on this issue, the final rule makes several changes to the definition of service area in the 1994 proposal.

Assessment area. The CRA requires the agencies to assess an institution's record of helping to meet the credit needs of its local community. The assessment area as defined in the final rule represents the community within which the agencies assess an institution's record of CRA performance.

As noted earlier in the preamble, in the final rule, the term ''assessment area'' replaces the term ''service area,'' which was used in the 1993 and 1994 proposals. The agencies believe the term ''assessment area'' more accurately

describes the geographic area within which the specific performance criteria in the rule will be assessed. Based on the continuing criticisms of the ''delineated community'' in the current regulation and the ''service area'' in both the 1993 and 1994 proposals, the agencies have decided to place a different emphasis on the institution's specific delineation and the methods used by the institution to establish that delineation. The agencies do not expect that, simply because a census tract or block numbering area is within an institution's assessment area, the institution must lend to that census tract or block numbering area. The capacity and constraints of the institution, its business decisions about how it can best help to meet the needs of its assessment area, including those of low- and moderate-income neighborhoods, and other aspects of the performance context, would be relevant to explain why the institution is not serving portions of the assessment area(s).

The rule also clarifies that an institution's delineation of its assessment area(s) is not separately evaluated as an aspect of CRA performance, although the delineation will be reviewed for compliance with the assessment area requirements of the rule. If, for example, an institution delineated the entire county in which it is located as its assessment area but could have delineated its assessment area as only a portion of the county, it will not be penalized for lending only in that portion of the county, so long as that portion does not reflect illegal discrimination or arbitrarily exclude low- or moderate-income geographies.

Assessment area boundaries. The 1994 proposal would have prohibited a financial institution, other than a wholesale or limited purpose institution, from delineating a service area that extends substantially across boundaries of a metropolitan statistical area (MSA) or state boundaries, unless the service area was located in a multistate MSA. Further, the proposal would have prohibited an institution's service area from reflecting illegal discrimination or arbitrarily excluding low- and moderate-income geographies (taking into account the institution's size and financial condition).

The final rule states that an institution shall not delineate an assessment area extending substantially across the boundaries of a consolidated metropolitan statistical area (CMSA). An institution shall delineate separate assessment areas for the areas inside and outside the CMSA and for different CMSAs. The 1994 proposal expressed these limitations in terms of MSAs rather than CMSAs. The change in the final rule has been made to address a technical shortcoming in the 1994 proposal, but does not change its substance. The final rule retains the provision from both the 1993 and 1994 proposals that an assessment area not extend substantially across state boundaries unless the assessment area is located in a multistate MSA. The final rule applies these limitations to wholesale and limited purpose institutions as well as other institutions because of changes made to the community development test.

To simplify the process of delineating an assessment area, the final rule encourages institutions to establish assessment area boundaries that coincide with the boundaries of one or more MSAs or one or more contiguous political subdivisions, such as counties, cities, or towns. An institution is permitted, but is not required, to adjust the boundaries of its assessment area(s) so as to include only the portion of a political subdivision it reasonably can be expected to serve. This provision gives institutions some flexibility in their delineations, particularly in the case of an area that would otherwise be extremely large, of unusual configuration, or divided by significant geographic barriers. As with the 1994 proposal, however, such adjustments may not arbitrarily exclude low- and moderate-income geographies from the institution's assessment area(s). For purposes of assessment area delineation, an institution should use the MSA and CMSA boundaries in effect on January 1 of the calendar year in which the institution is making the delineation.

Equidistance principle. The 1994 proposal would have adopted the effective lending territory principle from the current regulations in slightly modified form. The 1994 proposal would have explicitly linked an institution's CRA obligations to the areas around its branches and deposit-taking ATMs, rather than its other non-deposit taking offices. The service area delineated by the institution would have had to include all geographies around its branches in which the institution originated or had outstanding during the previous year a significant number and amount of home mortgage, small business and small farm, and consumer loans and any other geographies equidistant from its branches and deposit-taking ATMs.

The final rule eliminates the equidistance principle as a required part of the delineation of an assessment area. This change provides institutions greater flexibility in their delineations. Several commenters suggested that, in certain circumstances, the equidistance requirement could be inappropriate, because institutions do not routinely serve areas that are uniformly equidistant from their deposit-taking offices. The final rule retains the requirement that an assessment area not arbitrarily exclude low- or moderate-income geographies.

Wholesale and limited purpose institutions. The final rule requires that the assessment area(s) for a wholesale or limited purpose institution must generally consist of one or more MSAs or one or more contiguous political subdivisions in which the institution has its main office, branches, and deposit-taking ATMs. This requirement is substantively consistent with the 1994 proposed delineation of service area for wholesale and limited purpose institutions, but the final rule differs from the 1994 proposal in two ways. First, the final rule specifies that the assessment area must generally consist of one or more MSAs or contiguous political subdivisions; the 1994 proposal would have required the institution to delineate ''an area or areas around its offices.'' Second, the assessment area has been modified to conform to changes made to the scope of the community development test. The community development test permits consideration of community development activities that are outside of an institution's assessment area, but that are in a broader statewide or regional area that includes the institution's assessment area. As a result, an institution need not delineate a statewide or regional, rather than local, assessment area in order to receive consideration for these activities.

Use of assessment area. In response to comments indicating concern that examiners might modify the area delineated by the institution, the final rule explicitly provides that the agencies will use the assessment area delineated by the institution, unless they determine that the assessment area does not comply with the requirements for assessment areas set forth in the final rule. If the assessment area fails to comply with the rule's requirements, the examiner will designate an area that does comply and will use that area in evaluating the institution's performance.

Technical changes and clarifications. The final rule includes other technical changes to provide clarification. For example, some commenters interpreted the use of the phrase ''significant number and amount of loans'' in the 1994 proposal to have a different meaning than the phrase ''substantial portion of its loans'' in the current

regulations. The agencies did not intend a different meaning and have used the wording from the current regulations in the final rule. In addition, changes in the final rule reflect the rule's shift in focus from loans outstanding to originations and the different circumstances under which the lending test considers consumer loans.

Data Collection and Reporting

In the final rule, the agencies continued their efforts to streamline data collection and reporting requirements in response to comments concerning potential burden. The final rule simplifies data requirements and eliminates Appendix C.

Application of data collection provisions to small institutions and wholesale and limited purpose institutions. The 1994 proposal would not have applied small business and farm loan and community development loan data requirements to small institutions. Some commenters criticized the exemption from data collection and reporting requirements for small institutions because only a subset of data would actually be collected, restricting the regulators' ability accurately to assess the overall performance of institutions in helping to meet credit needs. These commenters stated that the benefits of collecting the data across the industry outweighed the associated burden. However, the burden on small institutions would be significant and the benefit less than the commenters assert. Therefore, the final rule does not subject a small institution to additional data collection and reporting requirements. The volume of originations of loans other than home mortgage loans in a small institution will generally be small enough that an examiner can view a substantial sampling of loans without advance collection and reporting of information by the institution. In addition, although small institutions are large in number, they have a relatively small percentage of the total assets of the industry.

An institution that was a small institution during the prior calendar year but is no longer a small institution would be subject to data collection and maintenance requirements but not data reporting requirements. The data reporting requirements do not apply because the institution would not have collected the data to report. The institution would be subject to data reporting requirements in the year following the first year for which it was required to collect data, provided the institution does not qualify as a small institution at the time the data must be reported.

The 1994 proposal would have required large wholesale and limited purpose institutions to collect and report data. Some commenters urged that wholesale and limited purpose institutions be exempt from data collection and reporting. The final rule does not include an exemption. The data are necessary for the agencies to determine whether the institutions initially qualify and continue to remain qualified for treatment as wholesale or limited purpose institutions. The data also will be helpful in understanding the context in which the performance of other institutions should be evaluated.

Collection and reporting of originations and purchases rather than loans outstanding. For the reasons stated in the discussion of the lending test earlier in the preamble, the final rule requires reporting of and evaluation based on originations and purchases for all categories of loans. Institutions still have the option to provide data on loans outstanding, which examiners would consider to round out the picture of lending performance.

Community development loan reporting. The community development loan reporting provisions in the final rule have been modified to reflect the decision to rely on originations and purchases. Institutions, except small institutions and institutions that were small institutions during the prior calendar year, are required to report to their primary regulator annually on March 1 the aggregate number and aggregate amount of community development loans originated and purchased during the prior calendar year. The agencies will include this information in the CRA Disclosure Statements that they prepare for each institution, and which an institution shall place in its public file within three days of receipt.

Some commenters requested reporting and disclosure of more detailed information on community development loans, including a breakdown by location and purpose of the loan. The agencies did not adopt these suggestions because the additional burden would outweigh the potential usefulness of more specific data. In assessing an institution's performance under the lending or community development test, examiners will review actual community development loan files to determine the complexity and innovativeness of the loans and their responsiveness to credit and community development needs. Examiners will discuss the community development loans reviewed in the public portion of the institution's CRA performance evaluation. The discussion will include the nature and location (if relevant) of the activities supported by the loans reviewed.

Consumer loan collection and maintenance. In the final rule, as in the 1994 proposal, data collection and maintenance are optional for consumer loans, and there are no reporting requirements. As described in the discussion of the lending test earlier in the preamble, an institution may provide data on one or more categories of consumer loans, such as motor vehicle loans, and not on others. However, if an institution provides data for any loan in a category, it is required to provide data for all loans in the category. For each loan category for which an institution elects to provide data, the data must include for each loan in the category originated or purchased since the last CRA examination: (1) the amount at origination or purchase, (2) the loan location, and (3) the gross annual income of the borrower that the institution considered in making the credit decision. If the institution does not consider income in making an underwriting decision, it need not collect income information. Further, if the institution routinely collects, but does not verify, a borrower's income when making a credit decision, it need not verify the income for purposes of data maintenance. The location of the loan must be maintained by census tract or block numbering area.

Reporting of loan information outside assessment areas and outside MSAs. Some commenters asked that institutions not be required to report small business and small farm loans located outside their assessment areas or outside MSAs. The agencies have not made this change in the final rule. The data on lending in rural areas provide important information on how well institutions are serving rural communities where they have branches. The data are also necessary for the lending test assessment criterion that evaluates the degree to which an institution's lending is inside its assessment area. Finally, the lending data provide information that assists examiners in understanding the context in which the performance of other institutions should be evaluated. The commenters that opposed reporting of small business and small farm loans outside their assessment areas or outside MSAs also generally opposed the proposed change to require institutions that are not small institutions and are subject to HMDA to report the location of applications and originations of home mortgage loans outside the MSAs in which the

institutions have offices. The agencies have adopted the proposed change despite these objections for the same reasons that the agencies did not change the final rule for collecting of small business and small farm loans outside MSAs or assessment areas. Conforming amendments to Regulation C (HMDA) have been adopted by the Board.

Race and gender information on small business borrower not required. The 1994 proposal would have required each institution, other than a small institution, to collect and report data on the race and gender of small business and small farm borrowers. This provision, which was the most frequently addressed issue in the comments, was proposed in order to support the fair lending component of the CRA assessment. The agencies have removed this proposed requirement from the final rule.

Many commenters, including virtually every community or consumer group that addressed the issue, supported the provision. These commenters believed that the information was critical to determine whether discrimination was occurring in small business and small farm lending. The commenters noted the value of HMDA data on race and gender in monitoring home mortgage lending. Nearly every industry comment opposed the collection as proposed. These commenters stated that the requirement was burdensome and the data, as proposed to be collected and reported, would be of limited utility. They asserted that reporting institutions would be at a competitive disadvantage because small institutions and non-financial institution lenders not only would not be required to collect and report the information but actually would be prohibited from doing so (because of the Board's Regulation B, implementing the Equal Credit Opportunity Act). Some commenters also questioned the relevance of the race and gender data to CRA. A few industry commenters endorsed collection of race and gender data, provided it was done through Regulation B. A larger number opposed collection, but believed that, if the agencies concluded the data were necessary, collection should be required under Regulation B.

The agencies have removed the proposed requirement from the final rule. Although the agencies believe that fair lending performance is directly relevant to CRA performance, they recognize the anomaly of requiring some institutions to collect and report information that other lenders are prohibited from collecting. Therefore, they believe that it is more appropriate to address the issue of race and gender data in fair lending regulations that apply equally to all lenders.

Small business data collection, maintenance, and reporting generally. In response to industry comments regarding the burden associated with the small business and small farm loan data requirements, the final rule streamlines the data collection, maintenance and reporting. The agencies have replaced loan-by-loan reporting using loan registers with aggregate reporting by census tract.

The 1994 proposal would have required lenders to indicate whether small business borrowers had gross annual revenues $1 million or less. Some commenters suggested that the requirement be eliminated because they believed it was burdensome and unnecessary. The final rule retains the requirement. The burden of collecting this information is minimal, because $1 million is already used in the Board's Regulation B as a threshold for certain requirements related to adverse action notifications and record retention. Therefore, many institutions already have a reason to track business and farm loans based on this revenue figure.

The information on the revenue size of business and farm borrowers is useful because, in combination with loan amount information, it will enable the agencies to make accurate judgments about the size of businesses and farms receiving reported loans. Some commenters questioned whether an institution should report the revenue of the entity to which the loan is actually extended or of its parent corporation if the entity is a subsidiary. An institution should report the revenues that the institution considered in making its credit decision.

Some commenters asked that the agencies require collection and reporting of data on applications and denials. The agencies did not adopt this suggestion. The small business lending process is generally far less formal than the consumer or home mortgage lending process. Sometimes institutions do not require written applications for small business loans; when they do, applications often come after potential problems have been addressed in informal discussions. Because the agencies do not believe information on applications and denials would be particularly helpful, the final rule does not require collection or reporting of information on small business and small farm applications and denials. Instead, institutions are required to report all small business and small farm loans that they originate or purchase.

Under the final rule, each covered institution is required to collect and maintain in a standardized, machine readable format the following information on each small business loan originated or purchased since the prior CRA examination: (1) amount at origination; (2) location; and (3) an indicator whether the loan was to a business with $1 million or less in gross annual revenues. The location of the loan must be maintained by census tract or block numbering area.

Each covered institution is required to report in machine-readable form annually on March 1 the following information, aggregated for each census tract/block numbering area in which the institution made at least one small business or small farm loan during the prior calendar year: (1) number and amount of loans with original amounts of $100,000 or less; (2) number and amount of loans with original amounts of more than $100,000 but less than or equal to $250,000; (3) number and amount of loans with original amounts of more than $250,000; and (4) number and amount of loans to businesses and farms with gross annual revenues of $1 million or less (using the revenues the institution considered in making its credit decision).

Need for data collection and reporting. Some commenters continued to question the validity and propriety of any data collection and reporting for larger institutions. As discussed earlier, the agencies have significantly reduced the data collection and reporting from that originally proposed, and where feasible the rule relies on existing data collections. However, the rule continues to provide for some additional data collection and reporting by larger institutions. In a performance-based CRA process, these requirements are necessary to permit the agencies to carry out their statutory obligation to examine and assess institutions' CRA records and to prepare the public sections of CRA performance evaluations. The emphasis on actual performance responds to the nearly universal criticism that current CRA examinations rely too heavily on documentation of an institution's policies, procedures and community contacts rather than lending. While the agencies recognize that the collection of data regarding lending activity will impose burden on many institutions, the final rule has been tailored to rely primarily on data readily available to or already collected by institutions in order to minimize the collection burden. In addition, the burden of collecting actual loan performance data will be offset somewhat by the elimination of requirements under the current CRA

evaluation scheme that institutions document policies, procedures, and CRA contacts. Finally, the agencies will prescribe a standardized format for data maintenance and reporting and make available software to facilitate data maintenance and reporting.

Disclosure of small business and small farm loan data. Under the 1994 proposal, every large institution would have been required to include in its public file the following information on small business loans: (1) the number and amount of loans in low-, moderate-, middle- and upper-income census tracts; (2) a list of each census tract with at least one loan; (3) the number and amount of loans inside the institution's service areas and outside the institution's service areas; (4) the number and amount of loans to businesses with gross annual revenues of $1 million or less; (5) the number and amount of loans to minority-owned businesses; and (6) the number and amount of loans to women-owned businesses. The proposal did not provide that the agencies would make any aggregate data available to the public.

The vast majority of consumer and community group commenters maintained that the public disclosure provisions of the 1994 proposal were not sufficient. They asked that small business loan data be made available to the public in a HMDA-like format for individual institutions and in aggregated form. They asked that, at a minimum, data be available to the public on an aggregate and institution-by-institution basis by individual census tract, including for each census tract the number and volume of loans. Otherwise, the public would not be able to judge how an institution is performing in one low-income neighborhood as compared to another and, without incurring unreasonable cost, would not be able to compare the performance of one institution with the performance of another. The commenters also expressed concern about the agencies' using certain data to evaluate institutions but not making the data available to the public. Industry commenters generally opposed detailed data collection and reporting requirements as burdensome.

Census tract-by-census tract information provides the most detailed information to the public. However, some commenters were concerned that disclosure at this level for each institution might invade the privacy of small business and small farm borrowers, could reveal protected business information, might erroneously signal an expectation that an institution lend in each census tract in its assessment area(s), and might lead to misinterpretation of the data.

Based on these considerations, under the final rule, the agencies, rather than the institutions, will prepare disclosure statements in order to reduce burden on the industry. The agencies will prepare annually individual CRA Disclosure Statements for each reporting institution and aggregate disclosure statements for each MSA and the non-MSA portion of each state. The agencies will make both the individual and the aggregate disclosure statements available to the public at central depositories.

The aggregate disclosure statements will indicate, for each geography, the number and amount of small business and small farm loans originated or purchased by all reporting institutions, except that the agencies may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

The disclosure statements for the individual institutions will be prepared on a state-by-state basis and will contain for each county (and each assessment area smaller than a county) with a population of 500,000 or fewer in which the institution reported a small business or small farm loan: (1) The number and amount of small business and small farm loans located in low-, moderate-, middle-, and upper-income census tracts or block numbering areas; (2) a list of each census tract or block numbering area in the county or assessment area grouped according to whether the geography is low-, moderate-, middle-, or upper income; (3) a list of each census tract or block numbering area in which the institution reported a small business or small farm loan; and (4) the number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less. For each county (and each assessment area smaller than a county) with a population greater than 500,000, the number and amount of small business and small farm loans will be provided for geographies grouped according to whether the median income of the geography relative to the area median income is less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, or 120 percent or more.

The disclosure statements will also contain information on the number and amount of loans inside each and outside any assessment area of the institution and the institution's community development loan information. The disclosure statements will include affiliate lending if the institution reported the affiliate lending for consideration in its assessment.

An institution itself no longer has to prepare information on small business and small farm lending or community development lending to place in its public file. Instead, each institution is required to put its CRA Disclosure Statement in its public file within three days of receipt of the statement from its regulator.

List of geographies in assessment area and map of each assessment area. The 1994 proposal also would have required each institution to report (and include in its public file) a list of the geographies the institution considers to be within its assessment area and a map of each assessment area showing its geographies. Several industry comments suggested that this requirement was overly burdensome and that either a map or a list of the geographies in the assessment area(s) be reported but not both. Under the final rule, institutions would only report the list of geographies in each assessment area, and small institutions or institutions that were small during the prior calendar year would not have to report at all. In addition, the agencies have changed the reporting date to March 1 to provide a uniform date for reporting of information required under the final rule.

All institutions would still have to include a map of each assessment area in the public file because the agencies believe a list of census tract numbers is likely not to be useful to many members of the public. To reduce burden, the final rule clarifies that the map itself need not show the geographies. The geographies may be identified on the map; alternatively, if the institution provides a separate list of the geographies contained in the area, the map may need to show only the boundaries of the area.

Public File

Other aspects of the public file requirements have also been amended to provide more clarity and to respond to the criticism that the requirements in the 1994 proposal were burdensome.

List of branches, ATMs, and services. The 1994 proposal would have required the public file to include a list of the

institution's branches and ATMs, their street addresses, and geographies; a list of branches and ATMs opened or closed by the institution during the current and each of the prior two calendar years, their street addresses, and geographies; and a list of services offered at the institution's branches and ATMs. Many industry commenters stated that these requirements were extremely burdensome, particularly the list of services offered at the branches. Much of this information is central to the institution's performance under the service test, and the public should have access to it. The final rule therefore retains the requirement that the public file include a list of services offered at the branches as well as the requirement that the file include a list of the branches, their street addresses, and geographies and a list of branches opened and closed during the current and prior two calendar years.

However, the final rule does not require institutions to list ATMs by street address or geography. Nor does the final rule require that institutions provide a list of ATMs that have been opened or closed in the current or prior two years. This change reduces burden on an institution in trying to keep the public file current because ATMs may be opened and closed more frequently than branches. This change is also consistent with other changes that clarify that the agencies do not consider ATMs as equivalent to branches in providing services to the community.

Small business, small farm, consumer, and community development loan data. The 1994 proposal would have required institutions that were not small institutions (and small institutions that elected to be evaluated under the lending, investment, and service tests) to include data collected or reported to the agencies for each of the prior two calendar years in their public file. The 1994 proposal would not have required public disclosure of data if it might reasonably be expected to disclose the identity of the borrower because of the small number of loans made in particular geographies or to particular groups of borrowers.

Institutions will no longer have to compile information on small business, small farm, and community development loans for inclusion in their public files. As described earlier, the information regarding these loans that continues to be relevant under the final rule will be contained in the institution's CRA Disclosure Statement prepared by the agencies.

Institutions that elect to have any portion of their consumer lending portfolios considered under the lending test will be required to provide in the public file information on the number and amount of consumer loans to low-, moderate-, middle- and upper-income borrowers and census tracts, as well as information on the number and amount of consumer loans located both inside and outside of the institution's assessment area.

The final rule also removes the exception to providing data in the public file that might reasonably be expected to disclose the identity of the borrower. Because of changes to data disclosure in the final rule, the agencies believe that a privacy exception is not necessary for the individual CRA Disclosure Statements. As described earlier, the agencies will take privacy concerns into account in preparing aggregate disclosure statements.

Inclusion of comments received. The 1994 proposal would have required an institution to include in the public file all signed, written comments that it received from the public for the past two years. A few industry commenters did not perceive a need to keep correspondence related to complaints that have been satisfactorily resolved. The agencies have not made a change in response to these comments because, as discussed earlier, satisfactorily resolved comments are relevant to assessment of the institution's performance. The final rule removes the requirement that written comments be signed in order to be included in the public file, because all written comments should be considered even if the commenter wishes to remain anonymous. Of course, the response appropriate to a comment may well vary depending on whether the commenter has provided his or her name.

Loan-to-deposit ratio for small institutions. The 1994 proposal would have required small institutions to include in the public file their loan-to-deposit ratios computed at the end of the most recent calendar year. Many small institutions requested that the public file requirement for loan-to-deposit ratio information be expanded to include loan-to-deposit ratios for each quarter, or alternatively, that an annual average loan-to-deposit ratio be placed in the file in order to better convey seasonal fluctuations in lending to the public. In accordance with the comments, the final rule requires a small institution to place annually in the public file the loan-to-deposit ratio at the end of each quarter of the prior calendar year.

Public file location and number of copies. The 1994 proposal would have required that institutions maintain a complete copy of the public file at the home office. At least one branch office in each assessment area would have been required to have the HMDA Disclosure Statement and any materials from the public file relating to that assessment area available to the public. In addition, if a request for the public file was made at a branch office that did not maintain the file, the institution would have been required to make a complete copy of the file for that assessment area available for review at the branch within five days at no cost. An institution could have imposed reasonable copying and mailing charges if a member of the public requested copies of information in the file.

Industry commenters maintained that the requirement to keep multiple copies of the public file was extremely burdensome, particularly given the large amount of information in the file. These commenters suggested that only one public file should be required.

Under the final rule, an institution need maintain only one copy of its public file in each state in which it has its main office or a branch. The final rule provides that each institution shall make available to the public for inspection upon request and at no cost the information in the file at the main office and, if the institution is an interstate institution, at one branch office in each state. At each branch, an institution shall provide its public evaluation and a list of services provided at the branch. The institution shall also make all information in the public file relating to the assessment area in which the branch is located available for review at the branch within five calendar days of a request to review the file. These changes reduce the burden associated with the maintenance of public files at a branch in each assessment area while making it easier for the public to access the file at any branch. They also reflect the statutory provisions of the IBEA requiring separate written evaluations for each state in which an interstate institution operates.

Additional clarifications. Some commenters requested the agencies to specify a date on which the public file information should be updated. The final rule provides that the public file be updated as of April 1 of each year unless the rule specifies another time for a particular element, such as the CRA Disclosure Statement. The final rule also clarifies that contents of the public file can be supplemented with any other information the institution deems appropriate. The final rule further clarifies that lending data contained in the public file relate to lending not only by the institution, but

also its affiliates, if the lending by affiliates is considered in the assessment of the institution.

Transition

The 1994 proposal would have established a transition period from July 1, 1995, to July 1, 1996. Institutions subject to data collection and reporting requirements would have been required to begin collecting home mortgage, small business, and consumer loan data on July 1, 1995. Assessments under the proposed standards would have begun July 1, 1996. However, small institutions would have had the opportunity to be examined, at their option, under the small institution assessment method anytime after July 1, 1995. Anytime on or after July 1, 1995, an institution could have elected to submit for approval a strategic plan, and examinations under approved strategic plans would have begun July 1, 1996.

Many industry commenters requested that the transition period be lengthened to provide institutions with more time to develop procedures for satisfying the data collection requirements. Also, some of these commenters recommended against implementing the data collection requirements on July 1, because they believed that data collected for a half year would not be useful. Moreover, some industry commenters asked that data collection begin on January 1, to fall in line with other materials that are maintained on a calendar-year basis.

In light of these comments and the fact that the implementation dates set forth in the 1994 proposal reflected anticipated publication of the final rule in January 1995, the data collection requirements set forth in the final rule will become effective January 1, 1996. The reporting requirements will become effective January 1, 1997. Evaluations under the lending, investment, service, and community development tests will begin July 1, 1997, in order to allow the agencies to use the newly reported data. However, evaluations under the small bank performance standards, which do not utilize new data, will begin January 1, 1996. In addition, beginning January 1, 1996, any institution may submit a strategic plan for approval or elect to be examined under the revised performance tests, if the institution provides the necessary data.

An institution that elects evaluation under the lending, investment, and service tests before July 1, 1997, must provide, in machine readable form, data on small business and small farm loans and community development loans for the twelve month period preceding the examination. The institution must also provide, in machine readable form, the location of home mortgage loans located outside MSAs in which the institution has an office (or outside any MSA) for that period. If the institution elects evaluation of any category of consumer loans, the institution must also provide consumer loan data, in machine readable form, for that category for that period. An institution that seeks evaluation under the community development test must apply for designation as a wholesale or limited purpose bank three months prior to its examination and must provide data on community development loans for the twelve months prior to the examination. All institutions evaluated under the revised tests and standards or under an approved strategic plan before July 1, 1997, must delineate their assessment areas in accordance with the provisions of the final rule.

CRA Notice

The 1994 proposal would have made minor changes to the notice requirements set forth in the 1993 proposal. The term ''head office'' was changed to ''main office'' for clarity. Within the notice, the statement of what is included in the CRA performance file would have been expanded to describe more accurately the contents of the file. The final rule makes additional changes to reflect changes in the public file provisions.

Multiple Assessment Areas

The 1994 proposal did not address how institutions with multiple assessment areas would be examined or how performance in different assessment areas would affect the overall rating. The agencies received comments expressing a broad range of opinions regarding the examination treatment and assessment of institutions with multiple assessment areas. Several community group commenters stated that ''sampling'' among assessment areas was unacceptable, while an industry organization suggested an elaborate sampling procedure. Other commenters proposed that certain assessment area characteristics, such as the percentage of the institution's deposits or assets in the assessment area, should determine the weight that performance in that assessment area should have on the overall rating of the institution. Other commenters were concerned that such proposals could mean that rural assessment areas would not be given appropriate consideration in the examination process.

The agencies continue to believe that the examination treatment of multiple assessment areas is best left for examination procedures, rather than stated in regulatory text. Whether an institution has one assessment area or several, the examiner must have an adequate factual basis on which to assess an institution's record of performance, and the overall rating must be fair and appropriate. These objectives do not necessarily require that an agency examine an institution's performance in every assessment area in the same way or that the rule state how performance in different assessment areas is aggregated. Just as a single mathematical calculation cannot determine performance in an assessment area, so the appropriate treatment of multiple assessment areas cannot be reduced to a formula.

The agencies note that the IBEA amended the provisions of the CRA regarding written evaluations, and the examination procedures will be consistent with those requirements.

Written Evaluations

Although the 1994 proposal did not directly address the content of the written performance evaluations required by the CRA statute, some commenters did. These commenters focused on whether the agencies would disclose an institution's ratings on the lending, investment, and service tests to the institution and to the public.

The agencies jointly will issue guidelines for the contents and disclosure of written evaluations prepared under the final rule, and these guidelines will implement the IBEA amendments regarding written evaluations. To address the issue raised in the comments, the agencies envision that these guidelines will provide that an institution's ratings on the different tests in the rule be disclosed both to the institution and, as part of the public section of the written evaluation, to the public. A guiding principle of the CRA reform effort has been to clarify for all concerned the basis for an institution's rating, and the disclosure of ratings will provide essential information regarding the assessment of an institution's performance. Contrary to the claim raised in some comments, neither the use of five ratings, nor the disclosure of those ratings to the public, conflicts with the statutory mandate that the agencies use four ratings in assessing the overall performance of an institution.

Appeals

Many commenters requested that the agencies establish an interagency appeals process. The final rule does not adopt this suggestion. Each agency has a process under which an institution

can appeal its CRA rating. The agencies have recently reviewed and modified, as necessary, their appeals processes pursuant to the Community Development and Regulatory Improvement Act of 1994. In light of the recent review, the agencies do not believe that it is necessary to adopt an interagency appeals process in the final rule.

Additional Interagency Initiatives

In addition to this rulemaking, the agencies will work together to improve training for examiners, to increase interagency efforts to apply standards consistently and reliably, and to minimize unnecessary compliance burden. These efforts will focus on producing a CRA assessment process that imposes fewer burdens on institutions yet yields better results for the local communities in which they are chartered to do business.

The agencies have also agreed to conduct a full review of the final rule in the year 2002, five years after the rule is fully implemented. This review will be conducted to determine whether the rule has been effective in achieving the goals of the final rule, including emphasizing performance rather than process, promoting consistency in evaluations, and eliminating unnecessary burden. Any regulatory changes that are determined to be necessary to improve the rule's effectiveness will be made at that time.

Paperwork Reduction Act

OCC: The collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1557–0160.

The estimated annual burden per respondent varies, depending on individual circumstances, from 2 hours for a small bank required to perform only recordkeeping, to 280 hours for a large bank required to perform all elements in part 25, with an estimated average burden of 18.5 hours.

The collections of information in this final rule are in 12 CFR 25.25, 25.27, 25.29, 25.41, 25.42, and 25.43.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Legislative and Regulatory Activities Division, Attention: 1557–0160, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, and to the Office of Management and Budget, Paperwork Reduction Project (1557–0160), Washington, DC 20503.

Board: In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Ch. 35; 5 CFR 1320.13), the proposed information collection was reviewed by the Board under the authority delegated to the Board by the Office of Management and Budget after consideration of the comments received during the public comment period.

The collections of information in this rule are in 12 CFR 228.25, 228.27, 228.41, 228.42, and 228.43. This information is required to evidence the efforts of State member banks in helping to meet the credit needs of their entire communities, including low- and moderate-income areas. This information will be used to assess State member bank performance in satisfying the credit needs of their communities and in evaluating certain applications.

The estimated annual burden per respondent/recordkeeper varies from 2 to 280 hours, depending on individual circumstances, with an estimated average of 17 hours. There will be an estimated 969 recordkeepers, averaging 16 hours. Among those will be an estimated 274 respondents, responsible for an additional average of 4 hours of reporting burden. These estimates include a prediction that five percent of respondents/recordkeepers will keep or submit optional data.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0247), Washington, DC 20503.

FDIC: The collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 3064–0092.

The estimated annual burden per respondent varies, depending on individual circumstances, from 2 hours for a small bank required to perform only recordkeeping, to 280 hours for a large bank required to perform all elements in part 345, with an estimated average burden of 12 hours.

The collections of information in this final rule are in 12 CFR 345.25, 345.27, 345.29, 345.41, 345.42, and 345.43.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Paperwork Reduction Project (3604–0092), Washington, DC 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, room F–453, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: The collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1550–0012.

The estimated annual burden per respondent varies, depending on individual circumstances, from 2 hours for a small savings association required to perform only recordkeeping, to 214 hours for a large savings association required to perform all elements in part 563e, with an estimated average burden of 16 hours.

The collections of information in this final rule are in 12 CFR 563e.25, 563e.27, 563e.29, 563e.41, 563e.42, and 563e.43.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Paperwork Reduction Project (1550–0012), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Regulatory Flexibility Act

The agencies concluded that the 1994 proposal, if adopted as a final rule, would not have a significant economic impact on a substantial number of small banks and thrifts and invited comment on this determination. In response to comments received, the agencies have conducted an analysis under The Regulatory Flexibility Act (5 U.S.C. 601–612, the ''Act'').

The Act requires an agency to take certain considerations into account when a rule will have a significant economic impact on a substantial number of small entities. Two of the three requirements of a final regulatory flexibility analysis (5 U.S.C. 604)—(1) a succinct statement of the need for and the objectives of the rule, and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments—are discussed earlier in the preamble. The third requirement is for a description of the alternatives the agency considered to the rule being adopted that were designed to minimize the effect on small entities subject to the rule and why, if applicable, they were rejected.

The agencies have carefully considered the effects of the final rule on small entities and the alternatives available to mitigate its potential burdens. The final rule provides separate, less burdensome treatment for small institutions, which are defined as institutions with total assets of $250 million or less that are either independent or are affiliates of a holding company with banking and thrift assets of less than $1 billion. The rule contains a specific small institution performance evaluation that relies on simplified criteria, to account for the operational differences between large and small institutions. Small institutions are also not subject to the data collection and reporting provisions in the rule for large institutions.

The agencies believe that the rule has minimized the burden on small institutions, while still enabling the agencies to fulfill their statutory mandate to examine the CRA record of these institutions. Although exempting small institutions from evaluation under the CRA would eliminate any possible burden imposed by the final rule, the CRA does not provide an exemption for small institutions.

Some small institutions would continue to be subject to the same potential burdens imposed on large institutions if they were affiliates in a holding company with banking and thrift assets of more than $1 billion. The agencies have rejected the alternative of eliminating the holding company limitation altogether in order to prevent holding companies from manipulating the asset size of their institutions to qualify for the small institution treatment.

However, by raising the holding company asset limit from $250 million in the 1994 proposal to $1 billion in the final rule, the agencies have sought to mitigate any unfairness and unnecessary burden resulting from the holding company limitation. The agencies selected a higher asset level for the holding company limitation in recognition that smaller holding companies may be unable to provide the necessary support for the CRA activities of their small institution subsidiaries. The agencies anticipate that larger holding companies under the final rule would be capable of supporting the CRA activities of their subsidiary small institutions.

Executive Order 12866

OCC and OTS: The OCC and OTS have determined that this document is a significant regulatory action because of the legal and policy issues it raises. Because of the significance of the rule, the OCC and OTS will review its effectiveness in achieving the goals of the CRA prior to and in preparation for the full CRA regulatory review in the year 2002, discussed earlier.

Unfunded Mandates Reform Act of 1995

OCC and OTS: Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, provides that before promulgating certain rulemakings, covered agencies must prepare a written statement containing a cost/benefit analysis. Under section 205, before promulgating any rule for which a written statement is required under section 202, covered agencies must identify and consider a reasonable number of regulatory alternatives, and from those alternatives, select the least costly, most cost-effective, or least burdensome one that achieves the objective of the rulemaking.

In promulgating this rulemaking, the Federal financial supervisory agencies considered a wide range of alternatives described in notices of proposed rulemaking published in 1993 and 1994. In addition to the comments that the agencies received in response to the notices of proposed rulemaking, the agencies conducted a series of seven public hearings across the country in 1993, at which hundreds of witnesses commented and others provided written statements. Although the OCC and OTS have determined that they are not required to prepare a written statement under section 202 or to make a finding under section 205, they conclude that, on balance, this final rule provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule, consistent with statutory requirements.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 228

Banks, Banking, Community development, Credit, Federal Reserve System, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

Office of the Comptroller of the Currency

12 CFR Chapter I

For the reasons outlined in the joint preamble, the Office of the Comptroller of the Currency amends 12 CFR chapter I as set forth below:

PART 25—COMMUNITY REINVESTMENT ACT REGULATIONS

1. The authority citation for part 25 is revised to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), and 2901 through 2907.

2. Part 25 is amended by adding Subparts A through D and Appendices A and B to read as follows:

Subpart A—General

Sec.

25.11 Authority, purposes, and scope.
25.12 Definitions.

Subpart B—Standards for Assessing Performance

25.21 Performance tests, standards, and ratings, in general.
25.22 Lending test.
25.23 Investment test.
25.24 Service test.
25.25 Community development test for wholesale or limited purpose banks.
25.26 Small bank performance standards.
25.27 Strategic plan.
25.28 Assigned ratings.
25.29 Effect of CRA performance on applications.

Subpart C—Records, Reporting, and Disclosure Requirements

25.41 Assessment area delineation.
25.42 Data collection, reporting, and disclosure.
25.43 Content and availability of public file.
25.44 Public notice by banks.
25.45 Publication of planned examination schedule.

Subpart D—Transition Rules

25.51 Transition rules.

Appendix A to Part 25—Ratings

Appendix B to Part 25—CRA Notice

Subpart A—General

§ 25.11 Authority, purposes, and scope.

(a) *Authority and OMB control number*—(1) *Authority.* The authority for this part is 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), and 2901 through 2907.

(2) *OMB control number.* The information collection requirements contained in this part were approved by the Office of Management and Budget

under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 1557–0160.

(b) *Purposes.* In enacting the Community Reinvestment Act (CRA), the Congress required each appropriate Federal financial supervisory agency to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the agency's evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the Office of the Comptroller of the Currency (OCC) assesses a bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank; and

(2) Providing that the OCC takes that record into account in considering certain applications.

(c) *Scope*—(1)*General.* This part applies to all banks except as provided in paragraphs (c)(2) and (c)(3) of this section.

(2) *Federal branches and agencies.* (i) This part applies to all insured Federal branches and to any Federal branch that is uninsured that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

(ii) Except as provided in paragraph (c)(2)(i) of this section, this part does not apply to Federal branches that are uninsured, limited Federal branches, or Federal agencies, as those terms are defined in part 28 of this chapter.

(3) *Certain special purpose banks.* This part does not apply to special purpose banks that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operations. These banks include banker's banks, as defined in 12 U.S.C. 24 (Seventh), and banks that engage only in one or more of the following activities: providing cash management controlled disbursement services or serving as correspondent banks, trust companies, or clearing agents.

§ 25.12 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company. The term ''control'' has the meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

(b) *Area median income* means:

(1) The median family income for the MSA, if a person or geography is located in an MSA; or

(2) The statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.

(c) *Assessment area* means a geographic area delineated in accordance with § 25.41.

(d) *Automated teller machine (ATM)* means an automated, unstaffed banking facility owned or operated by, or operated exclusively for, the bank at which deposits are received, cash dispersed, or money lent.

(e) *Bank* means a national bank (including a Federal branch as defined in part 28 of this chapter) with Federally insured deposits, except as provided in § 25.11(c).

(f) *Branch* means a staffed banking facility authorized as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization.

(g) *CMSA* means a consolidated metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(h) *Community development* means:

(1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals;

(2) Community services targeted to low- or moderate-income individuals;

(3) Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of 13 CFR 121.802(a)(2) or have gross annual revenues of $1 million or less; or

(4) Activities that revitalize or stabilize low- or moderate-income geographies.

(i) *Community development loan* means a loan that:

(1) Has as its primary purpose community development; and

(2) Except in the case of a wholesale or limited purpose bank:

(i) Has not been reported or collected by the bank or an affiliate for consideration in the bank's assessment as a home mortgage, small business, small farm, or consumer loan, unless it is a multifamily dwelling loan (as described in Appendix A to Part 203 of this title); and

(ii) Benefits the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(j) *Community development service* means a service that:

(1) Has as its primary purpose community development;

(2) Is related to the provision of financial services; and

(3) Has not been considered in the evaluation of the bank's retail banking services under § 25.24(d).

(k) *Consumer loan* means a loan to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. Consumer loans include the following categories of loans:

(1) *Motor vehicle loan,* which is a consumer loan extended for the purchase of and secured by a motor vehicle;

(2) *Credit card loan,* which is a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a ''credit card,'' as this term is defined in § 226.2 of this title;

(3) *Home equity loan,* which is a consumer loan secured by a residence of the borrower;

(4) *Other secured consumer loan,* which is a secured consumer loan that is not included in one of the other categories of consumer loans; and

(5) *Other unsecured consumer loan,* which is an unsecured consumer loan that is not included in one of the other categories of consumer loans.

(l) *Geography* means a census tract or a block numbering area delineated by the United States Bureau of the Census in the most recent decennial census.

(m) *Home mortgage loan* means a ''home improvement loan'' or a ''home purchase loan'' as defined in § 203.2 of this title.

(n) *Income level* includes:

(1) *Low-income,* which means an individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent, in the case of a geography.

(2) *Moderate-income,* which means an individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 and less than 80 percent, in the case of a geography.

(3) *Middle-income,* which means an individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 and less than 120 percent, in the case of a geography.

(4) *Upper-income,* which means an individual income that is 120 percent or more of the area median income, or a median family income that is 120

percent or more, in the case of a geography.

(o) *Limited purpose bank* means a bank that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose bank is in effect, in accordance with § 25.25(b).

(p) *Loan location.* A loan is located as follows:

(1) A consumer loan is located in the geography where the borrower resides;

(2) A home mortgage loan is located in the geography where the property to which the loan relates is located; and

(3) A small business or small farm loan is located in the geography where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

(q) *Loan production office* means a staffed facility, other than a branch, that is open to the public and that provides lending-related services, such as loan information and applications.

(r) *MSA* means a metropolitan statistical area or a primary metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Qualified investment* means a lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

(t) *Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had total assets of less than $250 million and was independent or an affiliate of a holding company that, as of December 31 of either of the prior two calendar years, had total banking and thrift assets of less than $1 billion.

(u) *Small business loan* means a loan included in ''loans to small businesses'' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(v) *Small farm loan* means a loan included in ''loans to small farms'' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(w) *Wholesale bank* means a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale bank is in effect, in accordance with § 25.25(b).

Subpart B—Standards for Assessing Performance

§ 25.21 Performance tests, standards, and ratings, in general.

(a) *Performance tests and standards.* The OCC assesses the CRA performance of a bank in an examination as follows:

(1) *Lending, investment, and service tests.* The OCC applies the lending, investment, and service tests, as provided in §§ 25.22 through 25.24, in evaluating the performance of a bank, except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(2) *Community development test for wholesale or limited purpose banks.* The OCC applies the community development test for a wholesale or limited purpose bank, as provided in § 25.25, except as provided in paragraph (a)(4) of this section.

(3) *Small bank performance standards.* The OCC applies the small bank performance standards as provided in § 25.26 in evaluating the performance of a small bank or a bank that was a small bank during the prior calendar year, unless the bank elects to be assessed as provided in paragraphs (a)(1), (a)(2), or (a)(4) of this section. The bank may elect to be assessed as provided in paragraph (a)(1) of this section only if it collects and reports the data required for other banks under § 25.42.

(4) *Strategic plan.* The OCC evaluates the performance of a bank under a strategic plan if the bank submits, and the OCC approves, a strategic plan as provided in § 25.27.

(b) *Performance context.* The OCC applies the tests and standards in paragraph (a) of this section and also considers whether to approve a proposed strategic plan in the context of:

(1) Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to a bank's assessment area(s);

(2) Any information about lending, investment, and service opportunities in the bank's assessment area(s) maintained by the bank or obtained from community organizations, state, local, and tribal governments, economic development agencies, or other sources;

(3) The bank's product offerings and business strategy as determined from data provided by the bank;

(4) Institutional capacity and constraints, including the size and financial condition of the bank, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the bank's ability to provide lending, investments, or services in its assessment area(s);

(5) The bank's past performance and the performance of similarly situated lenders;

(6) The bank's public file, as described in § 25.43, and any written comments about the bank's CRA performance submitted to the bank or the OCC; and

(7) Any other information deemed relevant by the OCC.

(c) *Assigned ratings.* The OCC assigns to a bank one of the following four ratings pursuant to § 25.28 and Appendix A of this part: ''outstanding''; ''satisfactory''; ''needs to improve''; or ''substantial noncompliance'' as provided in 12 U.S.C. 2906(b)(2). The rating assigned by the OCC reflects the bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank.

(d) *Safe and sound operations.* This part and the CRA do not require a bank to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the OCC anticipates banks can meet the standards of this part with safe and sound loans, investments, and services on which the banks expect to make a profit. Banks are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations.

§ 25.22 Lending test.

(a) *Scope of test.* (1) The lending test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a bank's business, the OCC will evaluate the bank's consumer lending in one or more of the following categories: motor vehicle, credit card, home equity, other secured, and other unsecured loans. In addition, at a bank's option, the OCC will evaluate one or more categories of consumer lending, if the bank has collected and maintained, as required in § 25.42(c)(1), the data for each category that the bank elects to have the OCC evaluate.

(2) The OCC considers originations and purchases of loans. The OCC will also consider any other loan data the bank may choose to provide, including

data on loans outstanding, commitments and letters of credit.

(3) A bank may ask the OCC to consider loans originated or purchased by consortia in which the bank participates or by third parties in which the bank has invested only if the loans meet the definition of community development loans and only in accordance with paragraph (d) of this section. The OCC will not consider these loans under any criterion of the lending test except the community development lending criterion.

(b) *Performance criteria.* The OCC evaluates a bank's lending performance pursuant to the following criteria:

(1) *Lending activity.* The number and amount of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, in the bank's assessment area(s);

(2) *Geographic distribution.* The geographic distribution of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:

(i) The proportion of the bank's lending in the bank's assessment area(s);

(ii) The dispersion of lending in the bank's assessment area(s); and

(iii) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the bank's assessment area(s);

(3) *Borrower characteristics.* The distribution, particularly in the bank's assessment area(s), of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:

(i) Home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) Small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(iii) Small business and small farm loans by loan amount at origination; and

(iv) Consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals;

(4) *Community development lending.* The bank's community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and

(5) *Innovative or flexible lending practices.* The bank's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) At a bank's option, the OCC will consider loans by an affiliate of the bank, if the bank provides data on the affiliate's loans pursuant to § 25.42.

(2) The OCC considers affiliate lending subject to the following constraints:

(i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and

(ii) If a bank elects to have the OCC consider loans within a particular lending category made by one or more of the bank's affiliates in a particular assessment area, the bank shall elect to have the OCC consider, in accordance with paragraph (c)(1) of this section, all the loans within that lending category in that particular assessment area made by all of the bank's affiliates.

(3) The OCC does not consider affiliate lending in assessing a bank's performance under paragraph (b)(2)(i) of this section.

(d) *Lending by a consortium or a third party.* Community development loans originated or purchased by a consortium in which the bank participates or by a third party in which the bank has invested:

(1) Will be considered, at the bank's option, if the bank reports the data pertaining to these loans under § 25.42(b)(2); and

(2) May be allocated among participants or investors, as they choose, for purposes of the lending test, except that no participant or investor:

(i) May claim a loan origination or loan purchase if another participant or investor claims the same loan origination or purchase; or

(ii) May claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.

(e) *Lending performance rating.* The OCC rates a bank's lending performance as provided in Appendix A of this part.

§ 25.23 Investment test.

(a) *Scope of test.* The investment test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(b) *Exclusion.* Activities considered under the lending or service tests may not be considered under the investment test.

(c) *Affiliate investment.* At a bank's option, the OCC will consider, in its assessment of a bank's investment performance, a qualified investment made by an affiliate of the bank, if the qualified investment is not claimed by any other institution.

(d) *Disposition of branch premises.* Donating, selling on favorable terms, or making available on a rent-free basis a branch of the bank that is located in a predominantly minority neighborhood to a minority depository institution or women's depository institution (as these terms are defined in 12 U.S.C. 2907(b)) will be considered as a qualified investment.

(e) *Performance criteria.* The OCC evaluates the investment performance of a bank pursuant to the following criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

(f) *Investment performance rating.* The OCC rates a bank's investment performance as provided in Appendix A of this part.

§ 25.24 Service test.

(a) *Scope of test.* The service test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) by analyzing both the availability and effectiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services.

(b) *Area(s) benefitted.* Community development services must benefit a bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(c) *Affiliate service.* At a bank's option, the OCC will consider, in its assessment of a bank's service performance, a community development service provided by an affiliate of the bank, if the community development service is not claimed by any other institution.

(d) *Performance criteria—retail banking services.* The OCC evaluates the availability and effectiveness of a bank's systems for delivering retail banking services, pursuant to the following criteria:

(1) The current distribution of the bank's branches among low-, moderate-, middle-, and upper-income geographies;

(2) In the context of its current distribution of the bank's branches, the bank's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;

(3) The availability and effectiveness of alternative systems for delivering

retail banking services (*e.g.*, ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals; and

(4) The range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(e) *Performance criteria—community development services.* The OCC evaluates community development services pursuant to the following criteria:

(1) The extent to which the bank provides community development services; and

(2) The innovativeness and responsiveness of community development services.

(f) *Service performance rating.* The OCC rates a bank's service performance as provided in Appendix A of this part.

§ 25.25 Community development test for wholesale or limited purpose banks.

(a) *Scope of test.* The OCC assesses a wholesale or limited purpose bank's record of helping to meet the credit needs of its assessment area(s) under the community development test through its community development lending, qualified investments, or community development services.

(b) *Designation as a wholesale or limited purpose bank.* In order to receive a designation as a wholesale or limited purpose bank, a bank shall file a request, in writing, with the OCC, at least three months prior to the proposed effective date of the designation. If the OCC approves the designation, it remains in effect until the bank requests revocation of the designation or until one year after the OCC notifies the bank that the OCC has revoked the designation on its own initiative.

(c) *Performance criteria.* The OCC evaluates the community development performance of a wholesale or limited purpose bank pursuant to the following criteria:

(1) The number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the bank, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;

(2) The use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and

(3) The bank's responsiveness to credit and community development needs.

(d) *Indirect activities.* At a bank's option, the OCC will consider in its community development performance assessment:

(1) Qualified investments or community development services provided by an affiliate of the bank, if the investments or services are not claimed by any other institution; and

(2) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in § 25.22(c) and (d).

(e) *Benefit to assessment area(s)*—(1) *Benefit inside assessment area(s).* The OCC considers all qualified investments, community development loans, and community development services that benefit areas within the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(2) *Benefit outside assessment area(s).* The OCC considers the qualified investments, community development loans, and community development services that benefit areas outside the bank's assessment area(s), if the bank has adequately addressed the needs of its assessment area(s).

(f) *Community development performance rating.* The OCC rates a bank's community development performance as provided in Appendix A of this part.

§ 25.26 Small bank performance standards.

(a) *Performance criteria.* The OCC evaluates the record of a small bank, or a bank that was a small bank during the prior calendar year, of helping to meet the credit needs of its assessment area(s) pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(b) *Small bank performance rating.* The OCC rates the performance of a bank evaluated under this section as provided in Appendix A of this part.

§ 25.27 Strategic plan.

(a) *Alternative election.* The OCC will assess a bank's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The bank has submitted the plan to the OCC as provided for in this section;

(2) The OCC has approved the plan;

(3) The plan is in effect; and

(4) The bank has been operating under an approved plan for at least one year.

(b) *Data reporting.* The OCC's approval of a plan does not affect the bank's obligation, if any, to report data as required by § 25.42.

(c) *Plans in general.*—(1) *Term.* A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the OCC will evaluate the bank's performance.

(2) *Multiple assessment areas.* A bank with more than one assessment area may prepare a single plan for all of its assessment areas or one or more plans for one or more of its assessment areas.

(3) *Treatment of affiliates.* Affiliated institutions may prepare a joint plan if the plan provides measurable goals for each institution. Activities may be allocated among institutions at the institutions' option, provided that the same activities are not considered for more than one institution.

(d) *Public participation in plan development.* Before submitting a plan to the OCC for approval, a bank shall:

(1) Informally seek suggestions from members of the public in its assessment area(s) covered by the plan while developing the plan;

(2) Once the bank has developed a plan, formally solicit public comment on the plan for at least 30 days by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and

(3) During the period of formal public comment, make copies of the plan available for review by the public at no cost at all offices of the bank in any assessment area covered by the plan and provide copies of the plan upon request for a reasonable fee to cover copying and mailing, if applicable.

(e) *Submission of plan.* The bank shall submit its plan to the OCC at least three months prior to the proposed effective date of the plan. The bank shall also

submit with its plan a description of its informal efforts to seek suggestions from members of the public, any written public comment received, and, if the plan was revised in light of the comment received, the initial plan as released for public comment.

(f) *Plan content.*—(1) *Measurable goals.* (i) A bank shall specify in its plan measurable goals for helping to meet the credit needs of each assessment area covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and services, as appropriate.

(ii) A bank shall address in its plan all three performance categories and, unless the bank has been designated as a wholesale or limited purpose bank, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its assessment area(s), considering public comment and the bank's capacity and constraints, product offerings, and business strategy.

(2) *Confidential information.* A bank may submit additional information to the OCC on a confidential basis, but the goals stated in the plan must be sufficiently specific to enable the public and the OCC to judge the merits of the plan.

(3) *Satisfactory and outstanding goals.* A bank shall specify in its plan measurable goals that constitute ''satisfactory'' performance. A plan may specify measurable goals that constitute ''outstanding'' performance. If a bank submits, and the OCC approves, both ''satisfactory'' and ''outstanding'' performance goals, the OCC will consider the bank eligible for an ''outstanding'' performance rating.

(4) *Election if satisfactory goals not substantially met.* A bank may elect in its plan that, if the bank fails to meet substantially its plan goals for a satisfactory rating, the OCC will evaluate the bank's performance under the lending, investment, and service tests, the community development test, or the small bank performance standards, as appropriate.

(g) *Plan approval.*—(1) *Timing.* The OCC will act upon a plan within 60 calendar days after the OCC receives the complete plan and other material required under paragraph (d) of this section. If the OCC fails to act within this time period, the plan shall be deemed approved unless the OCC extends the review period for good cause.

(2) *Public participation.* In evaluating the plan's goals, the OCC considers the public's involvement in formulating the plan, written public comment on the plan, and any response by the bank to public comment on the plan.

(3) *Criteria for evaluating plan.* The OCC evaluates a plan's measurable goals using the following criteria, as appropriate:

(i) The extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;

(ii) The amount and innovativeness, complexity, and responsiveness of the bank's qualified investments; and

(iii) The availability and effectiveness of the bank's systems for delivering retail banking services and the extent and innovativeness of the bank's community development services.

(h) *Plan amendment.* During the term of a plan, a bank may request the OCC to approve an amendment to the plan on grounds that there has been a material change in circumstances. The bank shall develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (c) of this section.

(i) *Plan assessment.* The OCC approves the goals and assesses performance under a plan as provided for in Appendix A of this part.

§ 25.28 Assigned ratings.

(a) *Ratings in general.* Subject to paragraphs (b) and (c) of this section, the OCC assigns to a bank a rating of ''outstanding,'' ''satisfactory,'' ''needs to improve,'' or ''substantial noncompliance'' based on the bank's performance under the lending, investment and service tests, the community development test, the small bank performance standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The OCC assigns a rating for a bank assessed under the lending, investment, and service tests in accordance with the following principles:

(1) A bank that receives an ''outstanding'' rating on the lending test receives an assigned rating of at least ''satisfactory'';

(2) A bank that receives an ''outstanding'' rating on both the service test and the investment test and a rating of at least ''high satisfactory'' on the lending test receives an assigned rating of ''outstanding''; and

(3) No bank may receive an assigned rating of ''satisfactory'' or higher unless it receives a rating of at least ''low satisfactory'' on the lending test.

(c) *Effect of evidence of discriminatory or other illegal credit practices.* Evidence of discriminatory or other illegal credit practices adversely affects the OCC's evaluation of a bank's performance. In determining the effect on the bank's assigned rating, the OCC considers the nature and extent of the evidence, the policies and procedures that the bank has in place to prevent discriminatory or other illegal credit practices, any corrective action that the bank has taken or has committed to take, particularly voluntary corrective action resulting from self-assessment, and other relevant information.

§ 25.29 Effect of CRA performance on applications.

(a) *CRA performance.* Among other factors, the OCC takes into account the record of performance under the CRA of each applicant bank in considering an application for:

(1) The establishment of a domestic branch;

(2) The relocation of the main office or a branch;

(3) Under the Bank Merger Act (12 U.S.C. 1828(c)), the merger or consolidation with or the acquisition of assets or assumption of liabilities of an insured depository institution; and

(4) The conversion of an insured depository institution to a national bank charter.

(b) *Charter application.* An applicant (other than an insured depository institution) for a national bank charter shall submit with its application a description of how it will meet its CRA objectives. The OCC takes the description into account in considering the application and may deny or condition approval on that basis.

(c) *Interested parties.* The OCC takes into account any views expressed by interested parties that are submitted in accordance with the OCC's procedures set forth in part 5 of this chapter in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

(d) *Denial or conditional approval of application.* A bank's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(e) *Insured depository institution.* For purposes of this section, the term ''insured depository institution'' has the

meaning given to that term in 12 U.S.C. 1813.

Subpart C—Records, Reporting, and Disclosure Requirements

§ 25.41 Assessment area delineation.

(a) *In general.* A bank shall delineate one or more assessment areas within which the OCC evaluates the bank's record of helping to meet the credit needs of its community. The OCC does not evaluate the bank's delineation of its assessment area(s) as a separate performance criterion, but the OCC reviews the delineation for compliance with the requirements of this section.

(b) *Geographic area(s) for wholesale or limited purpose banks.* The assessment area(s) for a wholesale or limited purpose bank must consist generally of one or more MSAs (using the MSA boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the bank has its main office, branches, and deposit-taking ATMs.

(c) *Geographic area(s) for other banks.* The assessment area(s) for a bank other than a wholesale or limited purpose bank must:

(1) Consist generally of one or more MSAs (using the MSA boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

(2) Include the geographies in which the bank has its main office, its branches, and its deposit-taking ATMs, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans (including home mortgage loans, small business and small farm loans, and any other loans the bank chooses, such as those consumer loans on which the bank elects to have its performance assessed).

(d) *Adjustments to geographic area(s).* A bank may adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual configuration, or divided by significant geographic barriers.

(e) *Limitations on the delineation of an assessment area.* Each bank's assessment area(s):

(1) Must consist only of whole geographies;

(2) May not reflect illegal discrimination;

(3) May not arbitrarily exclude low- or moderate-income geographies, taking into account the bank's size and financial condition; and

(4) May not extend substantially beyond a CMSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a bank serves a geographic area that extends substantially beyond a state boundary, the bank shall delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends substantially beyond a CMSA boundary, the bank shall delineate separate assessment areas for the areas inside and outside the CMSA.

(f) *Banks serving military personnel.* Notwithstanding the requirements of this section, a bank whose business predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area may delineate its entire deposit customer base as its assessment area.

(g) *Use of assessment area(s).* The OCC uses the assessment area(s) delineated by a bank in its evaluation of the bank's CRA performance unless the OCC determines that the assessment area(s) do not comply with the requirements of this section.

§ 25.42 Data collection, reporting, and disclosure.

(a) *Loan information required to be collected and maintained.* A bank, except a small bank, shall collect, and maintain in machine readable form (as prescribed by the OCC) until the completion of its next CRA examination, the following data for each small business or small farm loan originated or purchased by the bank:

(1) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(2) The loan amount at origination;

(3) The loan location; and

(4) An indicator whether the loan was to a business or farm with gross annual revenues of $1 million or less.

(b) *Loan information required to be reported.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall report annually by March 1 to the OCC in machine readable form (as prescribed by the OCC) the following data for the prior calendar year:

(1) *Small business and small farm loan data.* For each geography in which the bank originated or purchased a small business or small farm loan, the aggregate number and amount of loans:

(i) With an amount at origination of $100,000 or less;

(ii) With amount at origination of more than $100,000 but less than or equal to $250,000;

(iii) With an amount at origination of more than $250,000; and

(iv) To businesses and farms with gross annual revenues of $1 million or less (using the revenues that the bank considered in making its credit decision);

(2) *Community development loan data.* The aggregate number and aggregate amount of community development loans originated or purchased; and

(3) *Home mortgage loans.* If the bank is subject to reporting under part 203 of this title, the location of each home mortgage loan application, origination, or purchase outside the MSAs in which the bank has a home or branch office (or outside any MSA) in accordance with the requirements of part 203 of this title.

(c) *Optional data collection and maintenance.*—(1) *Consumer loans.* A bank may collect and maintain in machine readable form (as prescribed by the OCC) data for consumer loans originated or purchased by the bank for consideration under the lending test. A bank may maintain data for one or more of the following categories of consumer loans: motor vehicle, credit card, home equity, other secured, and other unsecured. If the bank maintains data for loans in a certain category, it shall maintain data for all loans originated or purchased within that category. The bank shall maintain data separately for each category, including for each loan:

(i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(ii) The loan amount at origination or purchase;

(iii) The loan location; and

(iv) The gross annual income of the borrower that the bank considered in making its credit decision.

(2) *Other loan data.* At its option, a bank may provide other information concerning its lending performance, including additional loan distribution data.

(d) *Data on affiliate lending.* A bank that elects to have the OCC consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, shall collect, maintain, and report for those loans the data that the bank would have collected, maintained, and reported pursuant to paragraphs (a), (b), and (c) of this section had the loans been originated or purchased by the bank. For home mortgage loans, the bank shall also be prepared to identify the home

mortgage loans reported under part 203 of this title by the affiliate.

(e) *Data on lending by a consortium or a third party.* A bank that elects to have the OCC consider community development loans by a consortium or third party, for purposes of the lending or community development tests or an approved strategic plan, shall report for those loans the data that the bank would have reported under paragraph (b)(2) of this section had the loans been originated or purchased by the bank.

(f) *Small banks electing evaluation under the lending, investment, and service tests.* A bank that qualifies for evaluation under the small bank performance standards but elects evaluation under the lending, investment, and service tests shall collect, maintain, and report the data required for other banks pursuant to paragraphs (a) and (b) of this section.

(g) *Assessment area data.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall collect and report to the OCC by March 1 of each year a list for each assessment area showing the geographies within the area.

(h) *CRA Disclosure Statement.* The OCC prepares annually for each bank that reports data pursuant to this section a CRA Disclosure Statement that contains, on a state-by-state basis:

(1) For each county (and for each assessment area smaller than a county) with a population of 500,000 persons or fewer in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in low-, moderate-, middle-, and upper-income geographies;

(ii) A list grouping each geography according to whether the geography is low-, moderate-, middle-, or upper-income;

(iii) A list showing each geography in which the bank reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(2) For each county (and for each assessment area smaller than a county) with a population in excess of 500,000 persons in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in geographies with median income relative to the area median income of less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(ii) A list grouping each geography in the county or assessment area according to whether the median income in the geography relative to the area median income is less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(iii) A list showing each geography in which the bank reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(3) The number and amount of small business and small farm loans located inside each assessment area reported by the bank and the number and amount of small business and small farm loans located outside the assessment area(s) reported by the bank; and

(4) The number and amount of community development loans reported as originated or purchased.

(i) *Aggregate disclosure statements.* The OCC, in conjunction with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, prepares annually, for each MSA (including an MSA that crosses a state boundary) and the non-MSA portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 228, 345, or 563e of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the OCC may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

(j) *Central data depositories.* The OCC makes the aggregate disclosure statements, described in paragraph (i) of this section, and the individual bank CRA Disclosure Statements, described in paragraph (h) of this section, available to the public at central data depositories. The OCC publishes a list of the depositories at which the statements are available.

§ 25.43 Content and availability of public file.

(a) *Information available to the public.* A bank shall maintain a public file that includes the following information:

(1) All written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the bank's performance in helping to meet community credit needs, and any response to the comments by the bank, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the bank or publication of which would violate specific provisions of law;

(2) A copy of the public section of the bank's most recent CRA Performance Evaluation prepared by the OCC. The bank shall place this copy in the public file within 30 business days after its receipt from the OCC;

(3) A list of the bank's branches, their street addresses, and geographies;

(4) A list of branches opened or closed by the bank during the current year and each of the prior two calendar years, their street addresses, and geographies;

(5) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the bank's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. At its option, a bank may include information regarding the availability of alternative systems for delivering retail banking services (*e.g.*, ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs);

(6) A map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list; and

(7) Any other information the bank chooses.

(b) *Additional information available to the public.*—(1) *Banks other than small banks.* A bank, except a small bank or a bank that was a small bank

during the prior calendar year, shall include in its public file the following information pertaining to the bank and its affiliates, if applicable, for each of the prior two calendar years:

(i) If the bank has elected to have one or more categories of its consumer loans considered under the lending test, for each of these categories, the number and amount of loans:

(A) To low-, moderate-, middle-, and upper-income individuals;

(B) Located in low-, moderate-, middle-, and upper-income census tracts; and

(C) Located inside the bank's assessment area(s) and outside the bank's assessment area(s); and

(ii) The bank's CRA Disclosure Statement. The bank shall place the statement in the public file within three business days of its receipt from the OCC.

(2) *Banks required to report Home Mortgage Disclosure Act (HMDA) data.* A bank required to report home mortgage loan data pursuant part 203 of this title shall include in its public file a copy of the HMDA Disclosure Statement provided by the Federal Financial Institutions Examination Council pertaining to the bank for each of the prior two calendar years. In addition, a bank that elected to have the OCC consider the mortgage lending of an affiliate for any of these years shall include in its public file the affiliate's HMDA Disclosure Statement for those years. The bank shall place the statement(s) in the public file within three business days after its receipt.

(3) *Small banks.* A small bank or a bank that was a small bank during the prior calendar year shall include in its public file:

(i) The bank's loan-to-deposit ratio for each quarter of the prior calendar year and, at its option, additional data on its loan-to-deposit ratio; and

(ii) The information required for other banks by paragraph (b)(1) of this section, if the bank has elected to be evaluated under the lending, investment, and service tests.

(4) *Banks with strategic plans.* A bank that has been approved to be assessed under a strategic plan shall include in its public file a copy of that plan. A bank need not include information submitted to the OCC on a confidential basis in conjunction with the plan.

(5) *Banks with less than satisfactory ratings.* A bank that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The bank shall update the description quarterly.

(c) *Location of public information.* A bank shall make available to the public for inspection upon request and at no cost the information required in this section as follows:

(1) At the main office and, if an interstate bank, at one branch office in each state, all information in the public file; and

(2) At each branch:

(i) A copy of the public section of the bank's most recent CRA Performance Evaluation and a list of services provided by the branch; and

(ii) Within five calendar days of the request, all the information in the public file relating to the assessment area in which the branch is located.

(d) *Copies.* Upon request, a bank shall provide copies, either on paper or in another form acceptable to the person making the request, of the information in its public file. The bank may charge a reasonable fee not to exceed the cost of copying and mailing (if applicable).

(e) *Updating.* Except as otherwise provided in this section, a bank shall ensure that the information required by this section is current as of April 1 of each year.

§ 25.44 Public notice by banks.

A bank shall provide in the public lobby of its main office and each of its branches the appropriate public notice set forth in Appendix B of this part. Only a branch of a bank having more than one assessment area shall include the bracketed material in the notice for branch offices. Only a bank that is an affiliate of a holding company shall include the next to the last sentence of the notices. A bank shall include the last sentence of the notices only if it is an affiliate of a holding company that is not prevented by statute from acquiring additional banks.

§ 25.45 Publication of planned examination schedule.

The OCC publishes at least 30 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA examinations in that quarter.

Subpart D—Transition Rules

§ 25.51 Transition rules.

(a) *Effective date.* Sections of this part become applicable over a period of time in accordance with the schedule set forth in paragraph (c) of this section.

(b) *Data collection and reporting; strategic plan; performance tests and standards.* (1) *Data collection and reporting.* (i) On January 1, 1996, the data collection requirements set forth in § 25.42 (except § 25.42 (b) and (g)) become applicable.

(ii) On January 1, 1997, the data reporting requirements set forth in § 25.42 (b) and (g) become applicable.

(2) *Small banks.* Beginning January 1, 1996, the OCC evaluates banks that qualify for the small bank performance standards described in § 25.26 under that section.

(3) *Strategic plan.* Beginning January 1, 1996, a bank that elects to be evaluated under an approved strategic plan pursuant to § 25.27 may submit its strategic plan to the OCC for approval.

(4) *Other performance tests.* (i) Beginning January 1, 1996, a bank may elect to be evaluated under the pertinent revised performance tests described in §§ 25.22, 25.23, 25.24, and 25.25, if the bank provides the necessary data to permit evaluation.

(ii) Beginning July 1, 1997, the OCC evaluates all banks under the pertinent revised performance tests.

(c) *Schedule.* (1) On July 1, 1995, §§ 25.11, 25.12, 25.29, and 25.51 become applicable, and §§ 25.1, 25.2, 25.8 and 25.101 expire.

(2) On January 1, 1996, § 25.41 and the pertinent provisions of Subpart B of this part will apply to banks that elect to be evaluated under §§ 25.22 through 25.25, banks that submit for approval strategic plans under § 25.27, and banks that qualify for the small bank performance standards described in § 25.26.

(3) On January 1, 1996, §§ 25.42 (except § 25.42 (b) and (g)) and 25.45 become applicable.

(4) On January 1, 1997, §§ 25.41 and 25.42 (b) and (g) become applicable.

(5) On July 1, 1997, §§ 25.21 through 25.28, 25.43, and 25.44 become applicable, and §§ 25.3 through 25.7, and 25.51 expire.

Appendix A to Part 25—Ratings

(a) *Ratings in general.* (1) In assigning a rating, the OCC evaluates a bank's performance under the applicable performance criteria in this part, in accordance with § 25.21, and § 25.28, which provides for adjustments on the basis of evidence of discriminatory or other illegal credit practices.

(2) A bank's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The bank's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(b) *Banks evaluated under the lending, investment, and service tests.* (1) *Lending performance rating.* The OCC assigns each bank's lending performance one of the five following ratings.

(i) *Outstanding.* The OCC rates a bank's lending performance ''outstanding'' if, in general, it demonstrates:

(A) Excellent responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A substantial majority of its loans are made in its assessment area(s);

(C) An excellent geographic distribution of loans in its assessment area(s);

(D) An excellent distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) An excellent record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Extensive use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It is a leader in making community development loans.

(ii) *High satisfactory.* The OCC rates a bank's lending performance ''high satisfactory'' if, in general, it demonstrates:

(A) Good responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A high percentage of its loans are made in its assessment area(s);

(C) A good geographic distribution of loans in its assessment area(s);

(D) A good distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A good record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a relatively high level of community development loans.

(iii) *Low satisfactory.* The OCC rates a bank's lending performance ''low satisfactory'' if, in general, it demonstrates:

(A) Adequate responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) An adequate percentage of its loans are made in its assessment area(s);

(C) An adequate geographic distribution of loans in its assessment area(s);

(D) An adequate distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) An adequate record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Limited use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made an adequate level of community development loans.

(iv) *Needs to improve.* The OCC rates a bank's lending performance ''needs to improve'' if, in general, it demonstrates:

(A) Poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A small percentage of its loans are made in its assessment area(s);

(C) A poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Little use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a low level of community development loans.

(v) *Substantial noncompliance.* The OCC rates a bank's lending performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

(A) A very poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A very small percentage of its loans are made in its assessment area(s);

(C) A very poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A very poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A very poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) No use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made few, if any, community development loans.

(2) *Investment performance rating.* The OCC assigns each bank's investment performance one of the five following ratings.

(i) *Outstanding.* The OCC rates a bank's investment performance ''outstanding'' if, in general, it demonstrates:

(A) An excellent level of qualified investments, particularly those that are not routinely provided by private investors, often in a leadership position;

(B) Extensive use of innovative or complex qualified investments; and

(C) Excellent responsiveness to credit and community development needs.

(ii) *High satisfactory.* The OCC rates a bank's investment performance ''high satisfactory'' if, in general, it demonstrates:

(A) A significant level of qualified investments, particularly those that are not routinely provided by private investors, occasionally in a leadership position;

(B) Significant use of innovative or complex qualified investments; and

(C) Good responsiveness to credit and community development needs.

(iii) *Low satisfactory.* The OCC rates a bank's investment performance ''low satisfactory'' if, in general, it demonstrates:

(A) An adequate level of qualified investments, particularly those that are not routinely provided by private investors, although rarely in a leadership position;

(B) Occasional use of innovative or complex qualified investments; and

(C) Adequate responsiveness to credit and community development needs.

(iv) *Needs to improve.* The OCC rates a bank's investment performance ''needs to improve'' if, in general, it demonstrates:

(A) A poor level of qualified investments, particularly those that are not routinely provided by private investors;

(B) Rare use of innovative or complex qualified investments; and

(C) Poor responsiveness to credit and community development needs.

(v) *Substantial noncompliance.* The OCC rates a bank's investment performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

(A) Few, if any, qualified investments, particularly those that are not routinely provided by private investors;

(B) No use of innovative or complex qualified investments; and

(C) Very poor responsiveness to credit and community development needs.

(3) *Service performance rating.* The OCC assigns each bank's service performance one of the five following ratings.

(i) *Outstanding.* The OCC rates a bank's service performance ''outstanding'' if, in general, the bank demonstrates:

(A) Its service delivery systems are readily accessible to geographies and individuals of

different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has improved the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It is a leader in providing community development services.

(ii) *High satisfactory.* The OCC rates a bank's service performance ''high satisfactory'' if, in general, the bank demonstrates:

(A) Its service delivery systems are accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides a relatively high level of community development services.

(iii) *Low satisfactory.* The OCC rates a bank's service performance ''low satisfactory'' if, in general, the bank demonstrates:

(A) Its service delivery systems are reasonably accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides an adequate level of community development services.

(iv) *Needs to improve.* The OCC rates a bank's service performance ''needs to improve'' if, in general, the bank demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has adversely affected the accessibility its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides a limited level of community development services.

(v) *Substantial noncompliance.* The OCC rates a bank's service performance as being in ''substantial noncompliance'' if, in general, the bank demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to significant portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has significantly adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides few, if any, community development services.

(c) *Wholesale or limited purpose banks.* The OCC assigns each wholesale or limited purpose bank's community development performance one of the four following ratings.

(1) *Outstanding.* The OCC rates a wholesale or limited purpose bank's community development performance ''outstanding'' if, in general, it demonstrates:

(i) A high level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Extensive use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Excellent responsiveness to credit and community development needs in its assessment area(s).

(2) *Satisfactory.* The OCC rates a wholesale or limited purpose bank's community development performance ''satisfactory'' if, in general, it demonstrates:

(i) An adequate level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Occasional use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Adequate responsiveness to credit and community development needs in its assessment area(s).

(3) *Needs to improve.* The OCC rates a wholesale or limited purpose bank's community development performance as ''needs to improve'' if, in general, it demonstrates:

(i) A poor level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Rare use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Poor responsiveness to credit and community development needs in its assessment area(s).

(4) *Substantial noncompliance.* The OCC rates a wholesale or limited purpose bank's community development performance in ''substantial noncompliance'' if, in general, it demonstrates:

(i) Few, if any, community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) No use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Very poor responsiveness to credit and community development needs in its assessment area(s).

(d) *Banks evaluated under the small bank performance standards.* The OCC rates the performance of each bank evaluated under the small bank performance standards as follows:

(1) *Eligibility for a satisfactory rating.* The OCC rates a bank's performance ''satisfactory'' if, in general, the bank demonstrates:

(i) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(ii) A majority of its loans and, as appropriate, other lending-related activities are in its assessment area(s);

(iii) A distribution of loans to and, as appropriate, other lending related-activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's assessment area(s);

(iv) A record of taking appropriate action, as warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(v) A reasonable geographic distribution of loans given the bank's assessment area(s).

(2) *Eligibility for an outstanding rating.* A bank that meets each of the standards for a ''satisfactory'' rating under this paragraph and exceeds some or all of those standards may warrant consideration for an overall rating of ''outstanding.'' In assessing whether a bank's performance is ''outstanding,'' the OCC considers the extent to which the bank exceeds each of the performance standards for a ''satisfactory'' rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that

enhance credit availability in its assessment area(s).

(3) *Needs to improve or substantial noncompliance ratings.* A bank also may receive a rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

(e) *Strategic plan assessment and rating*—(1) *Satisfactory goals.* The OCC approves as ''satisfactory'' measurable goals that adequately help to meet the credit needs of the bank's assessment area(s).

(2) *Outstanding goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as ''satisfactory,'' the OCC will approve those goals as ''outstanding.''

(3) *Rating.* The OCC assesses the performance of a bank operating under an approved plan to determine if the bank has met its plan goals:

(i) If the bank substantially achieves its plan goals for a satisfactory rating, the OCC will rate the bank's performance under the plan as ''satisfactory.''

(ii) If the bank exceeds its plan goals for a satisfactory rating and substantially achieves its plan goals for an outstanding rating, the OCC will rate the bank's performance under the plan as ''outstanding.''

(iii) If the bank fails to meet substantially its plan goals for a satisfactory rating, the OCC will rate the bank as either ''needs to improve'' or ''substantial noncompliance,'' depending on the extent to which it falls short of its plan goals, unless the bank elected in its plan to be rated otherwise, as provided in § 25.27(f)(4).

Appendix B to Part 25—CRA Notice

(a) *Notice for main offices and, if an interstate bank, one branch office in each state.*

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Comptroller of the Currency evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Comptroller also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the Comptroller; and comments received from the public relating to our performance in helping to meet community credit needs, as well as our responses to those comments. You may review this information today.

At least 30 days before the beginning of each quarter, the Comptroller publishes a nationwide list of the banks that are scheduled for CRA examination in that quarter. This list is available from the Deputy Comptroller (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and Deputy Comptroller (address). Your letter, together with any response by us, will be considered by the Comptroller in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Deputy Comptroller. You may also request from the Deputy Comptroller an announcement of our applications covered by the CRA filed with the Comptroller. We are an affiliate of (name of holding company), a bank holding company. You may request from the (title of responsible official), Federal Reserve Bank of _____ (address) an announcement of applications covered by the CRA filed by bank holding companies.

(b) *Notice for branch offices.*

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Comptroller of the Currency evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Comptroller also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA. You may review today the public section of our most recent CRA evaluation, prepared by the Comptroller, and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us: (1) A map showing the assessment area containing this branch, which is the area in which the Comptroller evaluates our CRA performance in this community; (2) information about our branches in this assessment area; (3) a list of services we provide at those locations; (4) data on our lending performance in this assessment area; and (5) copies of all written comments received by us that specifically relate to our CRA performance in this assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire bank is available at (name of office located in state), located at (address).]

At least 30 days before the beginning of each quarter, the Comptroller publishes a nationwide list of the banks that are scheduled for CRA examination in that quarter. This list is available from the Deputy Comptroller (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and Deputy Comptroller (address). Your letter, together with any response by us, will be considered by the Comptroller in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Deputy Comptroller. You may also request from the Deputy Comptroller an announcement of our applications covered by the CRA filed with the Comptroller. We are an affiliate of (name of holding company), a bank holding company. You may request from the (title of responsible official), Federal Reserve Bank of _____ (address) an announcement of applications covered by the CRA filed by bank holding companies.

§§ 25.1, 25.2, 25.8, and 25.101, and the undesignated center heading preceding § 25.101 [Removed]

3. Sections 25.1, 25.2, 25.8 and 25.101 and the undesignated center heading preceding § 25.101 are removed effective July 1, 1995.

§§ 25.3, 25.4, 25.5, 25.6, 25.7, and Subpart D [Removed]

4. Sections 25.3, 25.4, 25.5, 25.6, and 25.7 and subpart D, consisting of § 25.51, are removed effective July 1, 1997.

Dated: April 19, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System

12 CFR CHAPTER II

For the reasons outlined in the joint preamble, the Board of Governors of the Federal Reserve System amends 12 CFR chapter II as set forth below:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

1. The authority citation for part 228 is revised to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

2. Part 228 is amended by adding Subparts A through D and Appendices A and B to read as follows:

Subpart A—General

Sec.

228.11 Authority, purposes, and scope.
228.12 Definitions.

Subpart B—Standards for Assessing Performance

228.21 Performance tests, standards, and ratings, in general.
228.22 Lending test.
228.23 Investment test.
228.24 Service test.
228.25 Community development test for wholesale or limited purpose banks.
228.26 Small bank performance standards.
228.27 Strategic plan.
228.28 Assigned ratings.
228.29 Effect of CRA performance on applications.

Subpart C—Records, Reporting, and Disclosure Requirements

228.41 Assessment area delineation.
228.42 Data collection, reporting, and disclosure.
228.43 Content and availability of public file.

228.44 Public notice by banks.
228.45 Publication of planned examination schedule.

Subpart D—Transition Rules

228.51 Transition rules.

Appendix A to Part 228—Ratings

Appendix B to Part 228—CRA Notice

Subpart A—General

§ 228.11 Authority, purposes, and scope.

(a) *Authority.* The Board of Governors of the Federal Reserve System (the Board) issues this part to implement the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*) (CRA). The regulations comprising this part are issued under the authority of the CRA and under the provisions of the United States Code authorizing the Board:

(1) To conduct examinations of State-chartered banks that are members of the Federal Reserve System (12 U.S.C. 325);

(2) To conduct examinations of bank holding companies and their subsidiaries (12 U.S.C. 1844); and

(3) To consider applications for:

(i) Domestic branches by State member banks (12 U.S.C. 321);

(ii) Mergers in which the resulting bank would be a State member bank (12 U.S.C. 1828(c));

(iii) Formations of, acquisitions of banks by, and mergers of, bank holding companies (12 U.S.C. 1842); and

(iv) The acquisition of savings associations by bank holding companies (12 U.S.C. 1843).

(b) *Purposes.* In enacting the CRA, the Congress required each appropriate Federal financial supervisory agency to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the agency's evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the Board assesses a bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank; and

(2) Providing that the Board takes that record into account in considering certain applications.

(c) *Scope*—(1) *General.* This part applies to all banks except as provided in paragraph (c)(3) of this section.

(2) *Foreign bank acquisitions.* This part also applies to an uninsured State branch (other than a limited branch) of a foreign bank that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)). The terms ''State branch'' and ''foreign bank'' have the same meanings as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*); the term ''uninsured State branch'' means a State branch the deposits of which are not insured by the Federal Deposit Insurance Corporation; the term ''limited branch'' means a State branch that accepts only deposits that are permissible for a corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*).

(3) *Certain special purpose banks.* This part does not apply to special purpose banks that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operations. These banks include banker's banks, as defined in 12 U.S.C. 24 (Seventh), and banks that engage only in one or more of the following activities: providing cash management controlled disbursement services or serving as correspondent banks, trust companies, or clearing agents.

§ 228.12 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company. The term ''control'' has the meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

(b) *Area median income* means:

(1) The median family income for the MSA, if a person or geography is located in an MSA; or

(2) The statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.

(c) *Assessment area* means a geographic area delineated in accordance with § 228.41.

(d) *Automated teller machine (ATM)* means an automated, unstaffed banking facility owned or operated by, or operated exclusively for, the bank at which deposits are received, cash dispersed, or money lent.

(e) *Bank* means a State member bank as that term is defined in section 3(d)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(d)(2)), except as provided in § 228.11(c)(3), and includes an uninsured State branch (other than a limited branch) of a foreign bank described in § 228.11(c)(2).

(f) *Branch* means a staffed banking facility approved as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization.

(g) *CMSA* means a consolidated metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(h) *Community development* means:

(1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals;

(2) Community services targeted to low- or moderate-income individuals;

(3) Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of 13 CFR 121.802(a)(2) or have gross annual revenues of $1 million or less; or

(4) Activities that revitalize or stabilize low- or moderate-income geographies.

(i) *Community development loan* means a loan that:

(1) Has as its primary purpose community development; and

(2) Except in the case of a wholesale or limited purpose bank:

(i) Has not been reported or collected by the bank or an affiliate for consideration in the bank's assessment as a home mortgage, small business, small farm, or consumer loan, unless it is a multifamily dwelling loan (as described in Appendix A to Part 203 of this chapter); and

(ii) Benefits the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(j) *Community development service* means a service that:

(1) Has as its primary purpose community development;

(2) Is related to the provision of financial services; and

(3) Has not been considered in the evaluation of the bank's retail banking services under § 228.24(d).

(k) *Consumer loan* means a loan to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. Consumer loans include the following categories of loans:

(1) *Motor vehicle loan,* which is a consumer loan extended for the purchase of and secured by a motor vehicle;

(2) *Credit card loan,* which is a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a ''credit card,'' as this term is defined in § 226.2 of this chapter;

(3) *Home equity loan,* which is a consumer loan secured by a residence of the borrower;

(4) *Other secured consumer loan,* which is a secured consumer loan that is not included in one of the other categories of consumer loans; and

(5) *Other unsecured consumer loan,* which is an unsecured consumer loan that is not included in one of the other categories of consumer loans.

(l) *Geography* means a census tract or a block numbering area delineated by the United States Bureau of the Census in the most recent decennial census.

(m) *Home mortgage loan* means a ''home improvement loan'' or a ''home purchase loan'' as defined in § 203.2 of this chapter.

(n) *Income level* includes:

(1) *Low-income,* which means an individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent, in the case of a geography.

(2) *Moderate-income,* which means an individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 and less than 80 percent, in the case of a geography.

(3) *Middle-income,* which means an individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 and less than 120 percent, in the case of a geography.

(4) *Upper-income,* which means an individual income that is 120 percent or more of the area median income, or a median family income that is 120 percent or more, in the case of a geography.

(o) *Limited purpose bank* means a bank that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose bank is in effect, in accordance with § 228.25(b).

(p) *Loan location.* A loan is located as follows:

(1) A consumer loan is located in the geography where the borrower resides;

(2) A home mortgage loan is located in the geography where the property to which the loan relates is located; and

(3) A small business or small farm loan is located in the geography where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

(q) *Loan production office* means a staffed facility, other than a branch, that is open to the public and that provides lending-related services, such as loan information and applications.

(r) *MSA* means a metropolitan statistical area or a primary metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Qualified investment* means a lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

(t) *Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had total assets of less than $250 million and was independent or an affiliate of a holding company that, as of December 31 of either of the prior two calendar years, had total banking and thrift assets of less than $1 billion.

(u) *Small business loan* means a loan included in ''loans to small businesses'' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(v) *Small farm loan* means a loan included in ''loans to small farms'' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(w) *Wholesale bank* means a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale bank is in effect, in accordance with § 228.25(b).

Subpart B—Standards for Assessing Performance

§ 228.21 Performance tests, standards, and ratings, in general.

(a) *Performance tests and standards.* The Board assesses the CRA performance of a bank in an examination as follows:

(1) *Lending, investment, and service tests.* The Board applies the lending, investment, and service tests, as provided in §§ 228.22 through 228.24, in evaluating the performance of a bank, except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(2) *Community development test for wholesale or limited purpose banks.* The Board applies the community development test for a wholesale or limited purpose bank, as provided in § 228.25, except as provided in paragraph (a)(4) of this section.

(3) *Small bank performance standards.* The Board applies the small bank performance standards as provided in § 228.26 in evaluating the performance of a small bank or a bank that was a small bank during the prior calendar year, unless the bank elects to be assessed as provided in paragraphs (a)(1), (a)(2), or (a)(4) of this section. The bank may elect to be assessed as provided in paragraph (a)(1) of this section only if it collects and reports the data required for other banks under § 228.42.

(4) *Strategic plan.* The Board evaluates the performance of a bank under a strategic plan if the bank submits, and the Board approves, a strategic plan as provided in § 228.27.

(b) *Performance context.* The Board applies the tests and standards in paragraph (a) of this section and also considers whether to approve a proposed strategic plan in the context of:

(1) Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to a bank's assessment area(s);

(2) Any information about lending, investment, and service opportunities in the bank's assessment area(s) maintained by the bank or obtained from community organizations, state, local, and tribal governments, economic development agencies, or other sources;

(3) The bank's product offerings and business strategy as determined from data provided by the bank;

(4) Institutional capacity and constraints, including the size and financial condition of the bank, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the bank's ability to provide lending, investments, or services in its assessment area(s);

(5) The bank's past performance and the performance of similarly situated lenders;

(6) The bank's public file, as described in § 228.43, and any written comments about the bank's CRA performance submitted to the bank or the Board; and

(7) Any other information deemed relevant by the Board.

(c) *Assigned ratings.* The Board assigns to a bank one of the following four ratings pursuant to § 228.28 and Appendix A of this part: ''outstanding''; ''satisfactory''; ''needs to improve''; or ''substantial noncompliance'' as provided in 12 U.S.C. 2906(b)(2). The rating assigned by the Board reflects the bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank.

(d) *Safe and sound operations.* This part and the CRA do not require a bank to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the Board anticipates banks can meet the standards of this part with safe and sound loans, investments, and

services on which the banks expect to make a profit. Banks are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations.

§ 228.22 Lending test.

(a) *Scope of test.* (1) The lending test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a bank's business, the Board will evaluate the bank's consumer lending in one or more of the following categories: motor vehicle, credit card, home equity, other secured, and other unsecured loans. In addition, at a bank's option, the Board will evaluate one or more categories of consumer lending, if the bank has collected and maintained, as required in § 228.42(c)(1), the data for each category that the bank elects to have the Board evaluate.

(2) The Board considers originations and purchases of loans. The Board will also consider any other loan data the bank may choose to provide, including data on loans outstanding, commitments and letters of credit.

(3) A bank may ask the Board to consider loans originated or purchased by consortia in which the bank participates or by third parties in which the bank has invested only if the loans meet the definition of community development loans and only in accordance with paragraph (d) of this section. The Board will not consider these loans under any criterion of the lending test except the community development lending criterion.

(b) *Performance criteria.* The Board evaluates a bank's lending performance pursuant to the following criteria:

(1) *Lending activity.* The number and amount of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, in the bank's assessment area(s);

(2) *Geographic distribution.* The geographic distribution of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:

(i) The proportion of the bank's lending in the bank's assessment area(s);

(ii) The dispersion of lending in the bank's assessment area(s); and

(iii) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the bank's assessment area(s);

(3) *Borrower characteristics.* The distribution, particularly in the bank's assessment area(s), of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:

(i) Home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) Small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(iii) Small business and small farm loans by loan amount at origination; and

(iv) Consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals;

(4) *Community development lending.* The bank's community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and

(5) *Innovative or flexible lending practices.* The bank's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) At a bank's option, the Board will consider loans by an affiliate of the bank, if the bank provides data on the affiliate's loans pursuant to § 228.42.

(2) The Board considers affiliate lending subject to the following constraints:

(i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and

(ii) If a bank elects to have the Board consider loans within a particular lending category made by one or more of the bank's affiliates in a particular assessment area, the bank shall elect to have the Board consider, in accordance with paragraph (c)(1) of this section, all the loans within that lending category in that particular assessment area made by all of the bank's affiliates.

(3) The Board does not consider affiliate lending in assessing a bank's performance under paragraph (b)(2)(i) of this section.

(d) *Lending by a consortium or a third party.* Community development loans originated or purchased by a consortium in which the bank participates or by a third party in which the bank has invested:

(1) Will be considered, at the bank's option, if the bank reports the data pertaining to these loans under § 228.42(b)(2); and

(2) May be allocated among participants or investors, as they choose, for purposes of the lending test, except that no participant or investor:

(i) May claim a loan origination or loan purchase if another participant or investor claims the same loan origination or purchase; or

(ii) May claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.

(e) *Lending performance rating.* The Board rates a bank's lending performance as provided in Appendix A of this part.

§ 228.23 Investment test.

(a) *Scope of test.* The investment test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(b) *Exclusion.* Activities considered under the lending or service tests may not be considered under the investment test.

(c) *Affiliate investment.* At a bank's option, the Board will consider, in its assessment of a bank's investment performance, a qualified investment made by an affiliate of the bank, if the qualified investment is not claimed by any other institution.

(d) *Disposition of branch premises.* Donating, selling on favorable terms, or making available on a rent-free basis a branch of the bank that is located in a predominantly minority neighborhood to a minority depository institution or women's depository institution (as these terms are defined in 12 U.S.C. 2907(b)) will be considered as a qualified investment.

(e) *Performance criteria.* The Board evaluates the investment performance of a bank pursuant to the following criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

(f) *Investment performance rating.* The Board rates a bank's investment performance as provided in Appendix A of this part.

§ 228.24 Service test.

(a) *Scope of test.* The service test evaluates a bank's record of helping to

meet the credit needs of its assessment area(s) by analyzing both the availability and effectiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services.

(b) *Area(s) benefitted.* Community development services must benefit a bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(c) *Affiliate service.* At a bank's option, the Board will consider, in its assessment of a bank's service performance, a community development service provided by an affiliate of the bank, if the community development service is not claimed by any other institution.

(d) *Performance criteria—retail banking services.* The Board evaluates the availability and effectiveness of a bank's systems for delivering retail banking services, pursuant to the following criteria:

(1) The current distribution of the bank's branches among low-, moderate-, middle-, and upper-income geographies;

(2) In the context of its current distribution of the bank's branches, the bank's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;

(3) The availability and effectiveness of alternative systems for delivering retail banking services (*e.g.*, ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals; and

(4) The range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(e) *Performance criteria—community development services.* The Board evaluates community development services pursuant to the following criteria:

(1) The extent to which the bank provides community development services; and

(2) The innovativeness and responsiveness of community development services.

(f) *Service performance rating.* The Board rates a bank's service performance as provided in Appendix A of this part.

§ 228.25 Community development test for wholesale or limited purpose banks.

(a) *Scope of test.* The Board assesses a wholesale or limited purpose bank's record of helping to meet the credit needs of its assessment area(s) under the community development test through its community development lending, qualified investments, or community development services.

(b) *Designation as a wholesale or limited purpose bank.* In order to receive a designation as a wholesale or limited purpose bank, a bank shall file a request, in writing, with the Board, at least three months prior to the proposed effective date of the designation. If the Board approves the designation, it remains in effect until the bank requests revocation of the designation or until one year after the Board notifies the bank that the Board has revoked the designation on its own initiative.

(c) *Performance criteria.* The Board evaluates the community development performance of a wholesale or limited purpose bank pursuant to the following criteria:

(1) The number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the bank, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;

(2) The use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and

(3) The bank's responsiveness to credit and community development needs.

(d) *Indirect activities.* At a bank's option, the Board will consider in its community development performance assessment:

(1) Qualified investments or community development services provided by an affiliate of the bank, if the investments or services are not claimed by any other institution; and

(2) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in § 228.22(c) and (d).

(e) *Benefit to assessment area(s)*—(1) *Benefit inside assessment area(s).* The Board considers all qualified investments, community development loans, and community development services that benefit areas within the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(2) *Benefit outside assessment area(s).* The Board considers the qualified investments, community development loans, and community development services that benefit areas outside the bank's assessment area(s), if the bank has adequately addressed the needs of its assessment area(s).

(f) *Community development performance rating.* The Board rates a bank's community development performance as provided in Appendix A of this part.

§ 228.26 Small bank performance standards.

(a) *Performance criteria.* The Board evaluates the record of a small bank, or a bank that was a small bank during the prior calendar year, of helping to meet the credit needs of its assessment area(s) pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(b) *Small bank performance rating.* The Board rates the performance of a bank evaluated under this section as provided in Appendix A of this part.

§ 228.27 Strategic plan.

(a) *Alternative election.* The Board will assess a bank's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The bank has submitted the plan to the Board as provided for in this section;

(2) The Board has approved the plan;

(3) The plan is in effect; and

(4) The bank has been operating under an approved plan for at least one year.

(b) *Data reporting.* The Board's approval of a plan does not affect the bank's obligation, if any, to report data as required by § 228.42.

(c) *Plans in general*—(1) *Term.* A plan may have a term of no more than five years, and any multi-year plan must

include annual interim measurable goals under which the Board will evaluate the bank's performance.

(2) *Multiple assessment areas.* A bank with more than one assessment area may prepare a single plan for all of its assessment areas or one or more plans for one or more of its assessment areas.

(3) *Treatment of affiliates.* Affiliated institutions may prepare a joint plan if the plan provides measurable goals for each institution. Activities may be allocated among institutions at the institutions' option, provided that the same activities are not considered for more than one institution.

(d) *Public participation in plan development.* Before submitting a plan to the Board for approval, a bank shall:

(1) Informally seek suggestions from members of the public in its assessment area(s) covered by the plan while developing the plan;

(2) Once the bank has developed a plan, formally solicit public comment on the plan for at least 30 days by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and

(3) During the period of formal public comment, make copies of the plan available for review by the public at no cost at all offices of the bank in any assessment area covered by the plan and provide copies of the plan upon request for a reasonable fee to cover copying and mailing, if applicable.

(e) *Submission of plan.* The bank shall submit its plan to the Board at least three months prior to the proposed effective date of the plan. The bank shall also submit with its plan a description of its informal efforts to seek suggestions from members of the public, any written public comment received, and, if the plan was revised in light of the comment received, the initial plan as released for public comment.

(f) *Plan content*—(1) *Measurable goals.* (i) A bank shall specify in its plan measurable goals for helping to meet the credit needs of each assessment area covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and services, as appropriate.

(ii) A bank shall address in its plan all three performance categories and, unless the bank has been designated as a wholesale or limited purpose bank, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its assessment area(s), considering public comment and the bank's capacity and constraints, product offerings, and business strategy.

(2) *Confidential information.* A bank may submit additional information to the Board on a confidential basis, but the goals stated in the plan must be sufficiently specific to enable the public and the Board to judge the merits of the plan.

(3) *Satisfactory and outstanding goals.* A bank shall specify in its plan measurable goals that constitute ''satisfactory'' performance. A plan may specify measurable goals that constitute ''outstanding'' performance. If a bank submits, and the Board approves, both ''satisfactory'' and ''outstanding'' performance goals, the Board will consider the bank eligible for an ''outstanding'' performance rating.

(4) *Election if satisfactory goals not substantially met.* A bank may elect in its plan that, if the bank fails to meet substantially its plan goals for a satisfactory rating, the Board will evaluate the bank's performance under the lending, investment, and service tests, the community development test, or the small bank performance standards, as appropriate.

(g) *Plan approval*—(1) *Timing.* The Board will act upon a plan within 60 calendar days after the Board receives the complete plan and other material required under paragraph (d) of this section. If the Board fails to act within this time period, the plan shall be deemed approved unless the Board extends the review period for good cause.

(2) *Public participation.* In evaluating the plan's goals, the Board considers the public's involvement in formulating the plan, written public comment on the plan, and any response by the bank to public comment on the plan.

(3) *Criteria for evaluating plan.* The Board evaluates a plan's measurable goals using the following criteria, as appropriate:

(i) The extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;

(ii) The amount and innovativeness, complexity, and responsiveness of the bank's qualified investments; and

(iii) The availability and effectiveness of the bank's systems for delivering retail banking services and the extent and innovativeness of the bank's community development services.

(h) *Plan amendment.* During the term of a plan, a bank may request the Board to approve an amendment to the plan on grounds that there has been a material change in circumstances. The bank shall develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (c) of this section.

(i) *Plan assessment.* The Board approves the goals and assesses performance under a plan as provided for in Appendix A of this part.

§ 228.28 Assigned ratings.

(a) *Ratings in general.* Subject to paragraphs (b) and (c) of this section, the Board assigns to a bank a rating of ''outstanding,'' ''satisfactory,'' ''needs to improve,'' or ''substantial noncompliance'' based on the bank's performance under the lending, investment and service tests, the community development test, the small bank performance standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The Board assigns a rating for a bank assessed under the lending, investment, and service tests in accordance with the following principles:

(1) A bank that receives an ''outstanding'' rating on the lending test receives an assigned rating of at least ''satisfactory'';

(2) A bank that receives an ''outstanding'' rating on both the service test and the investment test and a rating of at least ''high satisfactory'' on the lending test receives an assigned rating of ''outstanding''; and

(3) No bank may receive an assigned rating of ''satisfactory'' or higher unless it receives a rating of at least ''low satisfactory'' on the lending test.

(c) *Effect of evidence of discriminatory or other illegal credit practices.* Evidence of discriminatory or other illegal credit practices adversely affects the Board's evaluation of a bank's performance. In determining the effect on the bank's assigned rating, the Board considers the nature and extent of the evidence, the policies and procedures that the bank has in place to prevent discriminatory or other illegal credit practices, any corrective action that the bank has taken or has committed to take, particularly voluntary corrective action resulting from self-assessment, and other relevant information.

§ 228.29 Effect of CRA performance on applications.

(a) *CRA performance.* Among other factors, the Board takes into account the

record of performance under the CRA of:

(1) Each applicant bank for the:

(i) Establishment of a domestic branch by a State member bank; and

(ii) Merger, consolidation, acquisition of assets, or assumption of liabilities requiring approval under the Bank Merger Act (12 U.S.C. 1828(c)) if the acquiring, assuming, or resulting bank is to be a State member bank; and

(2) Each insured depository institution (as defined in 12 U.S.C. 1813) controlled by an applicant and subsidiary bank or savings association proposed to be controlled by an applicant:

(i) To become a bank holding company in a transaction that requires approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842);

(ii) To acquire ownership or control of shares or all or substantially all of the assets of a bank, to cause a bank to become a subsidiary of a bank holding company, or to merge or consolidate a bank holding company with any other bank holding company in a transaction that requires approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842); and

(iii) To own, control or operate a savings association in a transaction that requires approval under section 4 of the Bank Holding Company Act (12 U.S.C. 1843).

(b) *Interested parties.* In considering CRA performance in an application described in paragraph (a) of this section, the Board takes into account any views expressed by interested parties that are submitted in accordance with the Board's Rules of Procedure set forth in part 262 of this chapter.

(c) *Denial or conditional approval of application.* A bank's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(d) *Definitions.* For purposes of paragraph (a)(2) of this section, ''bank,'' ''bank holding company,'' ''subsidiary,'' and ''savings association'' have the meanings given to those terms in section 2 of the Bank Holding Company Act (12 U.S.C. 1841).

Subpart C—Records, Reporting, and Disclosure Requirements

§ 228.41 Assessment area delineation.

(a) *In general.* A bank shall delineate one or more assessment areas within which the Board evaluates the bank's record of helping to meet the credit needs of its community. The Board does not evaluate the bank's delineation of its assessment area(s) as a separate performance criterion, but the Board reviews the delineation for compliance with the requirements of this section.

(b) *Geographic area(s) for wholesale or limited purpose banks.* The assessment area(s) for a wholesale or limited purpose bank must consist generally of one or more MSAs (using the MSA boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the bank has its main office, branches, and deposit-taking ATMs.

(c) *Geographic area(s) for other banks.* The assessment area(s) for a bank other than a wholesale or limited purpose bank must:

(1) Consist generally of one or more MSAs (using the MSA boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

(2) Include the geographies in which the bank has its main office, its branches, and its deposit-taking ATMs, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans (including home mortgage loans, small business and small farm loans, and any other loans the bank chooses, such as those consumer loans on which the bank elects to have its performance assessed).

(d) *Adjustments to geographic area(s).* A bank may adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual configuration, or divided by significant geographic barriers.

(e) *Limitations on the delineation of an assessment area.* Each bank's assessment area(s):

(1) Must consist only of whole geographies;

(2) May not reflect illegal discrimination;

(3) May not arbitrarily exclude low- or moderate-income geographies, taking into account the bank's size and financial condition; and

(4) May not extend substantially beyond a CMSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a bank serves a geographic area that extends substantially beyond a state boundary, the bank shall delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends substantially beyond a CMSA boundary, the bank shall delineate separate assessment areas for the areas inside and outside the CMSA.

(f) *Banks serving military personnel.* Notwithstanding the requirements of this section, a bank whose business predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area may delineate its entire deposit customer base as its assessment area.

(g) *Use of assessment area(s).* The Board uses the assessment area(s) delineated by a bank in its evaluation of the bank's CRA performance unless the Board determines that the assessment area(s) do not comply with the requirements of this section.

§ 228.42 Data collection, reporting, and disclosure.

(a) *Loan information required to be collected and maintained.* A bank, except a small bank, shall collect, and maintain in machine readable form (as prescribed by the Board) until the completion of its next CRA examination, the following data for each small business or small farm loan originated or purchased by the bank:

(1) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(2) The loan amount at origination;

(3) The loan location; and

(4) An indicator whether the loan was to a business or farm with gross annual revenues of $1 million or less.

(b) *Loan information required to be reported.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall report annually by March 1 to the Board in machine readable form (as prescribed by the Board) the following data for the prior calendar year:

(1) *Small business and small farm loan data.* For each geography in which the bank originated or purchased a small business or small farm loan, the aggregate number and amount of loans:

(i) With an amount at origination of $100,000 or less;

(ii) With amount at origination of more than $100,000 but less than or equal to $250,000;

(iii) With an amount at origination of more than $250,000; and

(iv) To businesses and farms with gross annual revenues of $1 million or less (using the revenues that the bank considered in making its credit decision);

(2) *Community development loan data.* The aggregate number and aggregate amount of community

development loans originated or purchased; and

(3) *Home mortgage loans.* If the bank is subject to reporting under part 203 of this chapter, the location of each home mortgage loan application, origination, or purchase outside the MSAs in which the bank has a home or branch office (or outside any MSA) in accordance with the requirements of part 203 of this chapter.

(c) *Optional data collection and maintenance*—(1) *Consumer loans.* A bank may collect and maintain in machine readable form (as prescribed by the Board) data for consumer loans originated or purchased by the bank for consideration under the lending test. A bank may maintain data for one or more of the following categories of consumer loans: motor vehicle, credit card, home equity, other secured, and other unsecured. If the bank maintains data for loans in a certain category, it shall maintain data for all loans originated or purchased within that category. The bank shall maintain data separately for each category, including for each loan:

(i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(ii) The loan amount at origination or purchase;

(iii) The loan location; and

(iv) The gross annual income of the borrower that the bank considered in making its credit decision.

(2) *Other loan data.* At its option, a bank may provide other information concerning its lending performance, including additional loan distribution data.

(d) *Data on affiliate lending.* A bank that elects to have the Board consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, shall collect, maintain, and report for those loans the data that the bank would have collected, maintained, and reported pursuant to paragraphs (a), (b), and (c) of this section had the loans been originated or purchased by the bank. For home mortgage loans, the bank shall also be prepared to identify the home mortgage loans reported under part 203 of this chapter by the affiliate.

(e) *Data on lending by a consortium or a third party.* A bank that elects to have the Board consider community development loans by a consortium or third party, for purposes of the lending or community development tests or an approved strategic plan, shall report for those loans the data that the bank would have reported under paragraph (b)(2) of this section had the loans been originated or purchased by the bank.

(f) *Small banks electing evaluation under the lending, investment, and service tests.* A bank that qualifies for evaluation under the small bank performance standards but elects evaluation under the lending, investment, and service tests shall collect, maintain, and report the data required for other banks pursuant to paragraphs (a) and (b) of this section.

(g) *Assessment area data.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall collect and report to the Board by March 1 of each year a list for each assessment area showing the geographies within the area.

(h) *CRA Disclosure Statement.* The Board prepares annually for each bank that reports data pursuant to this section a CRA Disclosure Statement that contains, on a state-by-state basis:

(1) For each county (and for each assessment area smaller than a county) with a population of 500,000 persons or fewer in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in low-, moderate-, middle-, and upper-income geographies;

(ii) A list grouping each geography according to whether the geography is low-, moderate-, middle-, or upper-income;

(iii) A list showing each geography in which the bank reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(2) For each county (and for each assessment area smaller than a county) with a population in excess of 500,000 persons in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in geographies with median income relative to the area median income of less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(ii) A list grouping each geography in the county or assessment area according to whether the median income in the geography relative to the area median income is less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(iii) A list showing each geography in which the bank reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(3) The number and amount of small business and small farm loans located inside each assessment area reported by the bank and the number and amount of small business and small farm loans located outside the assessment area(s) reported by the bank; and

(4) The number and amount of community development loans reported as originated or purchased.

(i) *Aggregate disclosure statements.* The Board, in conjunction with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, prepares annually, for each MSA (including an MSA that crosses a state boundary) and the non-MSA portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 25, 345, or 563e of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the Board may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

(j) *Central data depositories.* The Board makes the aggregate disclosure statements, described in paragraph (i) of this section, and the individual bank CRA Disclosure Statements, described in paragraph (h) of this section, available to the public at central data depositories. The Board publishes a list of the depositories at which the statements are available.

§ 228.43 Content and availability of public file.

(a) *Information available to the public.* A bank shall maintain a public file that includes the following information:

(1) All written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the bank's performance in helping to meet community credit needs, and any response to the comments by the bank, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the bank or publication of which would violate specific provisions of law;

(2) A copy of the public section of the bank's most recent CRA Performance Evaluation prepared by the Board. The bank shall place this copy in the public file within 30 business days after its receipt from the Board;

(3) A list of the bank's branches, their street addresses, and geographies;

(4) A list of branches opened or closed by the bank during the current year and each of the prior two calendar years, their street addresses, and geographies;

(5) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the bank's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. At its option, a bank may include information regarding the availability of alternative systems for delivering retail banking services (*e.g.*, ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs);

(6) A map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list; and

(7) Any other information the bank chooses.

(b) *Additional information available to the public*—(1) *Banks other than small banks.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall include in its public file the following information pertaining to the bank and its affiliates, if applicable, for each of the prior two calendar years:

(i) If the bank has elected to have one or more categories of its consumer loans considered under the lending test, for each of these categories, the number and amount of loans:

(A) To low-, moderate-, middle-, and upper-income individuals;

(B) Located in low-, moderate-, middle-, and upper-income census tracts; and

(C) Located inside the bank's assessment area(s) and outside the bank's assessment area(s); and

(ii) The bank's CRA Disclosure Statement. The bank shall place the statement in the public file within three business days of its receipt from the Board.

(2) *Banks required to report Home Mortgage Disclosure Act (HMDA) data.* A bank required to report home mortgage loan data pursuant to part 203 of this chapter shall include in its public file a copy of the HMDA Disclosure Statement provided by the Federal Financial Institutions Examination Council pertaining to the bank for each of the prior two calendar years. In addition, a bank that elected to have the Board consider the mortgage lending of an affiliate for any of these years shall include in its public file the affiliate's HMDA Disclosure Statement for those years. The bank shall place the statement(s) in the public file within three business days after its receipt.

(3) *Small banks.* A small bank or a bank that was a small bank during the prior calendar year shall include in its public file:

(i) The bank's loan-to-deposit ratio for each quarter of the prior calendar year and, at its option, additional data on its loan-to-deposit ratio; and

(ii) The information required for other banks by paragraph (b)(1) of this section, if the bank has elected to be evaluated under the lending, investment, and service tests.

(4) *Banks with strategic plans.* A bank that has been approved to be assessed under a strategic plan shall include in its public file a copy of that plan. A bank need not include information submitted to the Board on a confidential basis in conjunction with the plan.

(5) *Banks with less than satisfactory ratings.* A bank that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The bank shall update the description quarterly.

(c) *Location of public information.* A bank shall make available to the public for inspection upon request and at no cost the information required in this section as follows:

(1) At the main office and, if an interstate bank, at one branch office in each state, all information in the public file; and

(2) At each branch:

(i) A copy of the public section of the bank's most recent CRA Performance Evaluation and a list of services provided by the branch; and

(ii) Within five calendar days of the request, all the information in the public file relating to the assessment area in which the branch is located.

(d) *Copies.* Upon request, a bank shall provide copies, either on paper or in another form acceptable to the person making the request, of the information in its public file. The bank may charge a reasonable fee not to exceed the cost of copying and mailing (if applicable).

(e) *Updating.* Except as otherwise provided in this section, a bank shall ensure that the information required by this section is current as of April 1 of each year.

§ 228.44 Public notice by banks.

A bank shall provide in the public lobby of its main office and each of its branches the appropriate public notice set forth in Appendix B of this part. Only a branch of a bank having more than one assessment area shall include the bracketed material in the notice for branch offices. Only a bank that is an affiliate of a holding company shall include the next to the last sentence of the notices. A bank shall include the last sentence of the notices only if it is an affiliate of a holding company that is not prevented by statute from acquiring additional banks.

§ 228.45 Publication of planned examination schedule.

The Board publishes at least 30 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA examinations in that quarter.

Subpart D—Transition Rules

§ 228.51 Transition rules.

(a) *Effective date.* Sections of this part become applicable over a period of time in accordance with the schedule set forth in paragraph (c) of this section.

(b) *Data collection and reporting; strategic plan; performance tests and standards.* (i) On January 1, 1996, the data collection requirements set forth in § 228.42 (except § 228.42(b) and (g)) become applicable.

(ii) On January 1, 1997, the data reporting requirements set forth in § 228.42(b) and (g) become applicable.

(2) *Small banks.* Beginning January 1, 1996, the Board evaluates banks that qualify for the small bank performance standards described in § 228.26 under that section.

(3) *Strategic plan.* Beginning January 1, 1996, a bank that elects to be

evaluated under an approved strategic plan pursuant to § 228.27 may submit its strategic plan to the Board for approval.

(4) *Other performance tests.* (i) Beginning January 1, 1996, a bank may elect to be evaluated under the pertinent revised performance tests described in §§ 228.22, 228.23, 228.24, and 228.25, if the bank provides the necessary data to permit evaluation.

(ii) Beginning July 1, 1997, the Board evaluates all banks under the pertinent revised performance tests.

(c) *Schedule.* (1) On July 1, 1995, §§ 228.11, 228.12, 228.29, and 228.51 become applicable, and §§ 228.1, 228.2, 228.8, and 228.100 expire.

(2) On January 1, 1996, § 228.41 and the pertinent provisions of Subpart B of this part will apply to banks that elect to be evaluated under §§ 228.22 through 228.25, banks that submit for approval strategic plans under § 228.27, and banks that qualify for the small bank performance standards described in § 228.26.

(3) On January 1, 1996, §§ 228.42 (except § 228.42(b) and (g)) and 228.45 become applicable.

(4) On January 1, 1997, §§ 228.41 and 228.42(b) and (g) become applicable.

(5) On July 1, 1997, §§ 228.21 through 228.28, 228.43, and 228.44 become applicable, and §§ 228.3 through 228.7, and 228.51 expire.

Appendix A to Part 228—Ratings

(a) *Ratings in general.* (1) In assigning a rating, the Board evaluates a bank's performance under the applicable performance criteria in this part, in accordance with § 228.21, and § 228.28, which provides for adjustments on the basis of evidence of discriminatory or other illegal credit practices.

(2) A bank's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The bank's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(b) *Banks evaluated under the lending, investment, and service tests*—(1) *Lending performance rating.* The Board assigns each bank's lending performance one of the five following ratings.

(i) *Outstanding.* The Board rates a bank's lending performance ''outstanding'' if, in general, it demonstrates:

(A) Excellent responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A substantial majority of its loans are made in its assessment area(s);

(C) An excellent geographic distribution of loans in its assessment area(s);

(D) An excellent distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) An excellent record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Extensive use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It is a leader in making community development loans.

(ii) *High satisfactory.* The Board rates a bank's lending performance ''high satisfactory'' if, in general, it demonstrates:

(A) Good responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A high percentage of its loans are made in its assessment area(s);

(C) A good geographic distribution of loans in its assessment area(s);

(D) A good distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A good record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a relatively high level of community development loans.

(iii) *Low satisfactory.* The Board rates a bank's lending performance ''low satisfactory'' if, in general, it demonstrates:

(A) Adequate responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) An adequate percentage of its loans are made in its assessment area(s);

(C) An adequate geographic distribution of loans in its assessment area(s);

(D) An adequate distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) An adequate record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Limited use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made an adequate level of community development loans.

(iv) *Needs to improve.* The Board rates a bank's lending performance ''needs to improve'' if, in general, it demonstrates:

(A) Poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A small percentage of its loans are made in its assessment area(s);

(C) A poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Little use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a low level of community development loans.

(v) *Substantial noncompliance.* The Board rates a bank's lending performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

(A) A very poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A very small percentage of its loans are made in its assessment area(s);

(C) A very poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A very poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A very poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) No use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made few, if any, community development loans.

(2) *Investment performance rating.* The Board assigns each bank's investment performance one of the five following ratings.

(i) *Outstanding.* The Board rates a bank's investment performance ''outstanding'' if, in general, it demonstrates:

(A) An excellent level of qualified investments, particularly those that are not routinely provided by private investors, often in a leadership position;

(B) Extensive use of innovative or complex qualified investments; and

(C) Excellent responsiveness to credit and community development needs.

(ii) *High satisfactory.* The Board rates a bank's investment performance ''high satisfactory'' if, in general, it demonstrates:

(A) A significant level of qualified investments, particularly those that are not routinely provided by private investors, occasionally in a leadership position;

(B) Significant use of innovative or complex qualified investments; and

(C) Good responsiveness to credit and community development needs.

(iii) *Low satisfactory.* The Board rates a bank's investment performance ''low satisfactory'' if, in general, it demonstrates:

(A) An adequate level of qualified investments, particularly those that are not routinely provided by private investors, although rarely in a leadership position;

(B) Occasional use of innovative or complex qualified investments; and

(C) Adequate responsiveness to credit and community development needs.

(iv) *Needs to improve.* The Board rates a bank's investment performance ''needs to improve'' if, in general, it demonstrates:

(A) A poor level of qualified investments, particularly those that are not routinely provided by private investors;

(B) Rare use of innovative or complex qualified investments; and

(C) Poor responsiveness to credit and community development needs.

(v) *Substantial noncompliance.* The Board rates a bank's investment performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

(A) Few, if any, qualified investments, particularly those that are not routinely provided by private investors;

(B) No use of innovative or complex qualified investments; and

(C) Very poor responsiveness to credit and community development needs.

(3) *Service performance rating.* The Board assigns each bank's service performance one of the five following ratings.

(i) *Outstanding.* The Board rates a bank's service performance ''outstanding'' if, in general, the bank demonstrates:

(A) Its service delivery systems are readily accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has improved the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It is a leader in providing community development services.

(ii) *High satisfactory.* The Board rates a bank's service performance ''high satisfactory'' if, in general, the bank demonstrates:

(A) Its service delivery systems are accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides a relatively high level of community development services.

(iii) *Low satisfactory.* The Board rates a bank's service performance ''low satisfactory'' if, in general, the bank demonstrates:

(A) Its service delivery systems are reasonably accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides an adequate level of community development services.

(iv) *Needs to improve.* The Board rates a bank's service performance ''needs to improve'' if, in general, the bank demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has adversely affected the accessibility its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides a limited level of community development services.

(v) *Substantial noncompliance.* The Board rates a bank's service performance as being in ''substantial noncompliance'' if, in general, the bank demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to significant portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has significantly adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides few, if any, community development services.

(c) *Wholesale or limited purpose banks.* The Board assigns each wholesale or limited purpose bank's community development performance one of the four following ratings.

(1) *Outstanding.* The Board rates a wholesale or limited purpose bank's community development performance ''outstanding'' if, in general, it demonstrates:

(i) A high level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Extensive use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Excellent responsiveness to credit and community development needs in its assessment area(s).

(2) *Satisfactory.* The Board rates a wholesale or limited purpose bank's community development performance ''satisfactory'' if, in general, it demonstrates:

(i) An adequate level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Occasional use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Adequate responsiveness to credit and community development needs in its assessment area(s).

(3) *Needs to improve.* The Board rates a wholesale or limited purpose bank's community development performance as ''needs to improve'' if, in general, it demonstrates:

(i) A poor level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Rare use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Poor responsiveness to credit and community development needs in its assessment area(s).

(4) *Substantial noncompliance.* The Board rates a wholesale or limited purpose bank's

community development performance in ''substantial noncompliance'' if, in general, it demonstrates:

(i) Few, if any, community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) No use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Very poor responsiveness to credit and community development needs in its assessment area(s).

(d) *Banks evaluated under the small bank performance standards.* The Board rates the performance of each bank evaluated under the small bank performance standards as follows.

(1) *Eligibility for a satisfactory rating.* The Board rates a bank's performance ''satisfactory'' if, in general, the bank demonstrates:

(i) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(ii) A majority of its loans and, as appropriate, other lending-related activities are in its assessment area(s);

(iii) A distribution of loans to and, as appropriate, other lending related-activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's assessment area(s);

(iv) A record of taking appropriate action, as warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(v) A reasonable geographic distribution of loans given the bank's assessment area(s).

(2) *Eligibility for an outstanding rating.* A bank that meets each of the standards for a ''satisfactory'' rating under this paragraph and exceeds some or all of those standards may warrant consideration for an overall rating of ''outstanding.'' In assessing whether a bank's performance is ''outstanding,'' the Board considers the extent to which the bank exceeds each of the performance standards for a ''satisfactory'' rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(3) *Needs to improve or substantial noncompliance ratings.* A bank also may receive a rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

(e) *Strategic plan assessment and rating*—(1) *Satisfactory goals.* The Board approves as ''satisfactory'' measurable goals that adequately help to meet the credit needs of the bank's assessment area(s).

(2) *Outstanding goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as ''satisfactory,'' the Board will approve those goals as ''outstanding.''

(3) *Rating.* The Board assesses the performance of a bank operating under an approved plan to determine if the bank has met its plan goals:

(i) If the bank substantially achieves its plan goals for a satisfactory rating, the Board will rate the bank's performance under the plan as ''satisfactory.''

(ii) If the bank exceeds its plan goals for a satisfactory rating and substantially achieves its plan goals for an outstanding rating, the Board will rate the bank's performance under the plan as ''outstanding.''

(iii) If the bank fails to meet substantially its plan goals for a satisfactory rating, the Board will rate the bank as either ''needs to improve'' or ''substantial noncompliance,'' depending on the extent to which it falls short of its plan goals, unless the bank elected in its plan to be rated otherwise, as provided in § 228.27(f)(4).

Appendix B to Part 228—CRA Notice

(a) Notice for main offices and, if an interstate bank, one branch office in each state.

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Federal Reserve Board (Board) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Board also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the Federal Reserve Bank of _____ (Reserve Bank); and comments received from the public relating to our performance in helping to meet community credit needs, as well as our responses to those comments. You may review this information today.

At least 30 days before the beginning of each quarter, the Federal Reserve System publishes a list of the banks that are scheduled for CRA examination by the Reserve Bank in that quarter. This list is available from (title of responsible official), Federal Reserve Bank of _____ (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and (title of responsible official), Federal Reserve Bank of _____ (address). Your letter, together with any response by us, will be considered by the Federal Reserve System in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Reserve Bank. You may also request from the Reserve Bank an announcement of our applications covered by the CRA filed with the Reserve Bank. We are an affiliate of (name of holding company), a bank holding company. You may request from (title of responsible official), Federal Reserve Bank of _____ (address) an announcement of applications covered by the CRA filed by bank holding companies.

(b) Notice for branch offices.

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Federal Reserve Board (Board) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Board also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA. You may review today the public section of our most recent CRA evaluation, prepared by the Federal Reserve Bank of _____ (address), and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us: (1) a map showing the assessment area containing this branch, which is the area in which the Board evaluates our CRA performance in this community; (2) information about our branches in this assessment area; (3) a list of services we provide at those locations; (4) data on our lending performance in this assessment area; and (5) copies of all written comments received by us that specifically relate to our CRA performance in this assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire bank is available at (name of office located in state), located at (address).]

At least 30 days before the beginning of each quarter, the Federal Reserve System publishes a list of the banks that are scheduled for CRA examination by the Reserve Bank in that quarter. This list is available from (title of responsible official), Federal Reserve Bank of _____ (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and (title of responsible official), Federal Reserve Bank of _____ (address). Your letter, together with any response by us, will be considered by the Federal Reserve System in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Reserve Bank. You may also request from the Reserve Bank an announcement of our applications covered by the CRA filed with the Reserve Bank. We are an affiliate of (name of holding company), a bank holding company. You may request from (title of responsible official), Federal Reserve Bank of _____ (address) an

announcement of applications covered by the CRA filed by bank holding companies.

§§ 228.1, 228.2, 228.8, and 228.100 [Removed]

3. Sections 228.1, 228.2, 228.8, and 228.100 are removed effective July 1, 1995.

§§ 228.3, 228.4, 228.5, 228.6, and 228.7, and Subpart D [Removed]

4. Sections 228.3, 228.4, 228.5, 228.6, and 228.7, and Subpart D, consisting of § 228.51 are removed effective July 1, 1997.

By order of the Board of Governors of the Federal Reserve System, April 24, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

For the reasons outlined in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends 12 CFR chapter III as set forth below:

PART 345—COMMUNITY REINVESTMENT

1. The authority citation for part 345 is revised to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2907, 3103–3104, and 3108(a).

2. Part 345 is amended by adding Subparts A through D and Appendices A and B to read as follows:

Subpart A—General

Sec.
345.11 Authority, purposes, and scope.
345.12 Definitions.

Subpart B—Standards for Assessing Performance

345.21 Performance tests, standards, and ratings, in general.
345.22 Lending test.
345.23 Investment test.
345.24 Service test.
345.25 Community development test for wholesale or limited purpose banks.
345.26 Small bank performance standards.
345.27 Strategic plan.
345.28 Assigned ratings.
345.29 Effect of CRA performance on applications.

Subpart C—Records, Reporting, and Disclosure Requirements

345.41 Assessment area delineation.
345.42 Data collection, reporting, and disclosure.
345.43 Content and availability of public file.
345.44 Public notice by banks.
345.45 Publication of planned examination schedule.

Subpart D—Transition Rules

345.51 Transition rules.

Appendix A to Part 345—Ratings

Appendix B to Part 345—CRA Notice

Subpart A—General

§ 345.11 Authority, purposes, and scope.

(a) *Authority and OMB control number*—(1) *Authority.* The authority for this part is 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2907, 3103–3104, and 3108(a).

(2) *OMB control number.* The information collection requirements contained in this part were approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 3064–0092.

(b) *Purposes.* In enacting the Community Reinvestment Act (CRA), the Congress required each appropriate Federal financial supervisory agency to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the agency's evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the Federal Deposit Insurance Corporation (FDIC) assesses a bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank; and

(2) Providing that the FDIC takes that record into account in considering certain applications.

(c) *Scope*—(1) *General.* Except for certain special purpose banks described in paragraph (c)(3) of this section, this part applies to all insured State nonmember banks, including insured State branches as described in paragraph (c)(2) and any uninsured State branch that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

(2) *Insured State branches.* Insured State branches are branches of a foreign bank established and operating under the laws of any State, the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act. In the case of insured State branches, references in this part to ''main office'' mean the principal branch within the United States and the term ''branch'' or ''branches'' refers to any insured State branch or branches located within the United States. The ''assessment area'' of an insured State branch is the community or communities located within the United States served by the branch as described in § 345.41.

(3) *Certain special purpose banks.* This part does not apply to special purpose banks that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operations. These banks include banker's banks, as defined in 12 U.S.C. 24 (Seventh), and banks that engage only in one or more of the following activities: providing cash management controlled disbursement services or serving as correspondent banks, trust companies, or clearing agents.

§ 345.12 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company. The term ''control'' has the meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

(b) *Area median income* means:

(1) The median family income for the MSA, if a person or geography is located in an MSA; or

(2) The statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.

(c) *Assessment area* means a geographic area delineated in accordance with § 345.41.

(d) *Remote Service Facility (RSF)* means an automated, unstaffed banking facility owned or operated by, or operated exclusively for, the bank, such as an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility, at which deposits are received, cash dispersed, or money lent.

(e) *Bank* means a State nonmember bank, as that term is defined in section 3(e)(2) of the Federal Deposit Insurance Act, as amended (FDIA) (12 U.S.C. 1813(e)(2)), with Federally insured deposits, except as provided in § 345.11(c). The term bank also includes an insured State branch as defined in § 345.11(c).

(f) *Branch* means a staffed banking facility authorized as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local

business or nonprofit organization. The term ''branch'' only includes a ''domestic branch'' as that term is defined in section 3(o) of the FDIA (12 U.S.C. 1813(o)).

(g) *CMSA* means a consolidated metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(h) *Community development* means:

(1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals;

(2) Community services targeted to low- or moderate-income individuals;

(3) Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of 13 CFR 121.802(a)(2) or have gross annual revenues of $1 million or less; or

(4) Activities that revitalize or stabilize low- or moderate-income geographies.

(i) *Community development loan* means a loan that:

(1) Has as its primary purpose community development; and

(2) Except in the case of a wholesale or limited purpose bank:

(i) Has not been reported or collected by the bank or an affiliate for consideration in the bank's assessment as a home mortgage, small business, small farm, or consumer loan, unless it is a multifamily dwelling loan (as described in Appendix A to Part 203 of this title); and

(ii) Benefits the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(j) *Community development service* means a service that:

(1) Has as its primary purpose community development;

(2) Is related to the provision of financial services; and

(3) Has not been considered in the evaluation of the bank's retail banking services under § 345.24(d).

(k) *Consumer loan* means a loan to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. Consumer loans include the following categories of loans:

(1) *Motor vehicle loan,* which is a consumer loan extended for the purchase of and secured by a motor vehicle;

(2) *Credit card loan,* which is a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a ''credit card,'' as this term is defined in § 226.2 of this title;

(3) *Home equity loan,* which is a consumer loan secured by a residence of the borrower;

(4) *Other secured consumer loan,* which is a secured consumer loan that is not included in one of the other categories of consumer loans; and

(5) *Other unsecured consumer loan,* which is an unsecured consumer loan that is not included in one of the other categories of consumer loans.

(l) *Geography* means a census tract or a block numbering area delineated by the United States Bureau of the Census in the most recent decennial census.

(m) *Home mortgage loan* means a ''home improvement loan'' or a ''home purchase loan'' as defined in § 203.2 of this title.

(n) *Income level* includes:

(1) *Low-income,* which means an individual income that is less than 50 percent of the area median income or a median family income that is less than 50 percent in the case of a geography.

(2) *Moderate-income,* which means an individual income that is at least 50 percent and less than 80 percent of the area median income or a median family income that is at least 50 and less than 80 percent in the case of a geography.

(3) *Middle-income,* which means an individual income that is at least 80 percent and less than 120 percent of the area median income or a median family income that is at least 80 and less than 120 percent in the case of a geography.

(4) *Upper-income,* which means an individual income that is 120 percent or more of the area median income or a median family income that is 120 percent or more in the case of a geography.

(o) *Limited purpose bank* means a bank that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose bank is in effect, in accordance with § 345.25(b).

(p) *Loan location.* A loan is located as follows:

(1) A consumer loan is located in the geography where the borrower resides;

(2) A home mortgage loan is located in the geography where the property to which the loan relates is located; and

(3) A small business or small farm loan is located in the geography where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

(q) *Loan production office* means a staffed facility, other than a branch, that is open to the public and that provides lending-related services, such as loan information and applications.

(r) *MSA* means a metropolitan statistical area or a primary metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Qualified investment* means a lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

(t) *Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had total assets of less than $250 million and was independent or an affiliate of a holding company that, as of December 31 of either of the prior two calendar years, had total banking and thrift assets of less than $1 billion.

(u) *Small business loan* means a loan included in ''loans to small businesses'' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(v) *Small farm loan* means a loan included in ''loans to small farms'' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(w) *Wholesale bank* means a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale bank is in effect, in accordance with § 345.25(b).

Subpart B—Standards for Assessing Performance

§ 345.21 Performance tests, standards, and ratings, in general.

(a) *Performance tests and standards.* The FDIC assesses the CRA performance of a bank in an examination as follows:

(1) *Lending, investment, and service tests.* The FDIC applies the lending, investment, and service tests, as provided in §§ 345.22 through 345.24, in evaluating the performance of a bank, except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(2) *Community development test for wholesale or limited purpose banks.* The FDIC applies the community development test for a wholesale or limited purpose bank, as provided in § 345.25, except as provided in paragraph (a)(4) of this section.

(3) *Small bank performance standards.* The FDIC applies the small bank performance standards as provided in § 345.26 in evaluating the performance of a small bank or a bank that was a small bank during the prior calendar year, unless the bank elects to be assessed as provided in paragraphs (a)(1), (a)(2), or (a)(4) of this section. The bank may elect to be assessed as provided in paragraph (a)(1) of this section only if it collects and reports the data required for other banks under § 345.42.

(4) *Strategic plan.* The FDIC evaluates the performance of a bank under a strategic plan if the bank submits, and the FDIC approves, a strategic plan as provided in § 345.27.

(b) *Performance context.* The FDIC applies the tests and standards in paragraph (a) of this section and also considers whether to approve a proposed strategic plan in the context of:

(1) Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to a bank's assessment area(s);

(2) Any information about lending, investment, and service opportunities in the bank's assessment area(s) maintained by the bank or obtained from community organizations, state, local, and tribal governments, economic development agencies, or other sources;

(3) The bank's product offerings and business strategy as determined from data provided by the bank;

(4) Institutional capacity and constraints, including the size and financial condition of the bank, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the bank's ability to provide lending, investments, or services in its assessment area(s);

(5) The bank's past performance and the performance of similarly situated lenders;

(6) The bank's public file, as described in § 345.43, and any written comments about the bank's CRA performance submitted to the bank or the FDIC; and

(7) Any other information deemed relevant by the FDIC.

(c) *Assigned ratings.* The FDIC assigns to a bank one of the following four ratings pursuant to § 345.28 and Appendix A of this part: ''outstanding''; ''satisfactory''; ''needs to improve''; or ''substantial noncompliance'' as provided in 12 U.S.C. 2906(b)(2). The rating assigned by the FDIC reflects the bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank.

(d) *Safe and sound operations.* This part and the CRA do not require a bank to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the FDIC anticipates banks can meet the standards of this part with safe and sound loans, investments, and services on which the banks expect to make a profit. Banks are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations.

§ 345.22 Lending test.

(a) *Scope of test.* (1) The lending test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a bank's business, the FDIC will evaluate the bank's consumer lending in one or more of the following categories: motor vehicle, credit card, home equity, other secured, and other unsecured loans. In addition, at a bank's option, the FDIC will evaluate one or more categories of consumer lending, if the bank has collected and maintained, as required in § 345.42(c)(1), the data for each category that the bank elects to have the FDIC evaluate.

(2) The FDIC considers originations and purchases of loans. The FDIC will also consider any other loan data the bank may choose to provide, including data on loans outstanding, commitments and letters of credit.

(3) A bank may ask the FDIC to consider loans originated or purchased by consortia in which the bank participates or by third parties in which the bank has invested only if the loans meet the definition of community development loans and only in accordance with paragraph (d) of this section. The FDIC will not consider these loans under any criterion of the lending test except the community development lending criterion.

(b) *Performance criteria.* The FDIC evaluates a bank's lending performance pursuant to the following criteria:

(1) *Lending activity.* The number and amount of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, in the bank's assessment area(s);

(2) *Geographic distribution.* The geographic distribution of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:

(i) The proportion of the bank's lending in the bank's assessment area(s);

(ii) The dispersion of lending in the bank's assessment area(s); and

(iii) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the bank's assessment area(s);

(3) *Borrower characteristics.* The distribution, particularly in the bank's assessment area(s), of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:

(i) Home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) Small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(iii) Small business and small farm loans by loan amount at origination; and

(iv) Consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals;

(4) *Community development lending.* The bank's community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and

(5) *Innovative or flexible lending practices.* The bank's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) At a bank's option, the FDIC will consider loans by an affiliate of the bank, if the bank provides data on the affiliate's loans pursuant to § 345.42.

(2) The FDIC considers affiliate lending subject to the following constraints:

(i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and

(ii) If a bank elects to have the FDIC consider loans within a particular lending category made by one or more of the bank's affiliates in a particular assessment area, the bank shall elect to have the FDIC consider, in accordance with paragraph (c)(1) of this section, all the loans within that lending category in that particular assessment area made by all of the bank's affiliates.

(3) The FDIC does not consider affiliate lending in assessing a bank's performance under paragraph (b)(2)(i) of this section.

(d) *Lending by a consortium or a third party.* Community development loans originated or purchased by a consortium in which the bank participates or by a third party in which the bank has invested:

(1) Will be considered, at the bank's option, if the bank reports the data pertaining to these loans under § 345.42(b)(2); and

(2) May be allocated among participants or investors, as they choose,

for purposes of the lending test, except that no participant or investor:

(i) May claim a loan origination or loan purchase if another participant or investor claims the same loan origination or purchase; or

(ii) May claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.

(e) *Lending performance rating.* The FDIC rates a bank's lending performance as provided in Appendix A of this part.

§ 345.23 Investment test.

(a) *Scope of test.* The investment test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(b) *Exclusion.* Activities considered under the lending or service tests may not be considered under the investment test.

(c) *Affiliate investment.* At a bank's option, the FDIC will consider, in its assessment of a bank's investment performance, a qualified investment made by an affiliate of the bank, if the qualified investment is not claimed by any other institution.

(d) *Disposition of branch premises.* Donating, selling on favorable terms, or making available on a rent-free basis a branch of the bank that is located in a predominantly minority neighborhood to a minority depository institution or women's depository institution (as these terms are defined in 12 U.S.C. 2907(b)) will be considered as a qualified investment.

(e) *Performance criteria.* The FDIC evaluates the investment performance of a bank pursuant to the following criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

(f) *Investment performance rating.* The FDIC rates a bank's investment performance as provided in Appendix A of this part.

§ 345.24 Service test.

(a) *Scope of test.* The service test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) by analyzing both the availability and effectiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services.

(b) *Area(s) benefited.* Community development services must benefit a bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(c) *Affiliate service.* At a bank's option, the FDIC will consider, in its assessment of a bank's service performance, a community development service provided by an affiliate of the bank, if the community development service is not claimed by any other institution.

(d) *Performance criteria—retail banking services.* The FDIC evaluates the availability and effectiveness of a bank's systems for delivering retail banking services, pursuant to the following criteria:

(1) The current distribution of the bank's branches among low-, moderate-, middle-, and upper-income geographies;

(2) In the context of its current distribution of the bank's branches, the bank's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;

(3) The availability and effectiveness of alternative systems for delivering retail banking services (*e.g.*, RSFs, RSFs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals; and

(4) The range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(e) *Performance criteria—community development services.* The FDIC evaluates community development services pursuant to the following criteria:

(1) The extent to which the bank provides community development services; and

(2) The innovativeness and responsiveness of community development services.

(f) *Service performance rating.* The FDIC rates a bank's service performance as provided in Appendix A of this part.

§ 345.25 Community development test for wholesale or limited purpose banks.

(a) *Scope of test.* The FDIC assesses a wholesale or limited purpose bank's record of helping to meet the credit needs of its assessment area(s) under the community development test through its community development lending, qualified investments, or community development services.

(b) *Designation as a wholesale or limited purpose bank.* In order to receive a designation as a wholesale or limited purpose bank, a bank shall file a request, in writing, with the FDIC, at least three months prior to the proposed effective date of the designation. If the FDIC approves the designation, it remains in effect until the bank requests revocation of the designation or until one year after the FDIC notifies the bank that the FDIC has revoked the designation on its own initiative.

(c) *Performance criteria.* The FDIC evaluates the community development performance of a wholesale or limited purpose bank pursuant to the following criteria:

(1) The number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the bank, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;

(2) The use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and

(3) The bank's responsiveness to credit and community development needs.

(d) *Indirect activities.* At a bank's option, the FDIC will consider in its community development performance assessment:

(1) Qualified investments or community development services provided by an affiliate of the bank, if the investments or services are not claimed by any other institution; and

(2) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in § 345.22 (c) and (d).

(e) *Benefit to assessment area(s)*—(1) *Benefit inside assessment area(s).* The FDIC considers all qualified investments, community development loans, and community development services that benefit areas within the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(2) *Benefit outside assessment area(s).* The FDIC considers the qualified investments, community development loans, and community development services that benefit areas outside the bank's assessment area(s), if the bank

has adequately addressed the needs of its assessment area(s).

(f) *Community development performance rating.* The FDIC rates a bank's community development performance as provided in Appendix A of this part.

§ 345.26 Small bank performance standards.

(a) *Performance criteria.* The FDIC evaluates the record of a small bank, or a bank that was a small bank during the prior calendar year, of helping to meet the credit needs of its assessment area(s) pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(b) *Small bank performance rating.* The FDIC rates the performance of a bank evaluated under this section as provided in Appendix A of this part.

§ 345.27 Strategic plan.

(a) *Alternative election.* The FDIC will assess a bank's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The bank has submitted the plan to the FDIC as provided for in this section;

(2) The FDIC has approved the plan;

(3) The plan is in effect; and

(4) The bank has been operating under an approved plan for at least one year.

(b) *Data reporting.* The FDIC's approval of a plan does not affect the bank's obligation, if any, to report data as required by § 345.42.

(c) *Plans in general*—(1) *Term.* A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the FDIC will evaluate the bank's performance.

(2) *Multiple assessment areas.* A bank with more than one assessment area may prepare a single plan for all of its assessment areas or one or more plans for one or more of its assessment areas.

(3) *Treatment of affiliates.* Affiliated institutions may prepare a joint plan if the plan provides measurable goals for each institution. Activities may be allocated among institutions at the institutions' option, provided that the same activities are not considered for more than one institution.

(d) *Public participation in plan development.* Before submitting a plan to the FDIC for approval, a bank shall:

(1) Informally seek suggestions from members of the public in its assessment area(s) covered by the plan while developing the plan;

(2) Once the bank has developed a plan, formally solicit public comment on the plan for at least 30 days by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and

(3) During the period of formal public comment, make copies of the plan available for review by the public at no cost at all offices of the bank in any assessment area covered by the plan and provide copies of the plan upon request for a reasonable fee to cover copying and mailing, if applicable.

(e) *Submission of plan.* The bank shall submit its plan to the FDIC at least three months prior to the proposed effective date of the plan. The bank shall also submit with its plan a description of its informal efforts to seek suggestions from members of the public, any written public comment received, and, if the plan was revised in light of the comment received, the initial plan as released for public comment.

(f) *Plan content*—(1) *Measurable goals.* (i) A bank shall specify in its plan measurable goals for helping to meet the credit needs of each assessment area covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and services, as appropriate.

(ii) A bank shall address in its plan all three performance categories and, unless the bank has been designated as a wholesale or limited purpose bank, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its assessment area(s), considering public comment and the bank's capacity and constraints, product offerings, and business strategy.

(2) *Confidential information.* A bank may submit additional information to the FDIC on a confidential basis, but the goals stated in the plan must be sufficiently specific to enable the public and the FDIC to judge the merits of the plan.

(3) *Satisfactory and outstanding goals.* A bank shall specify in its plan measurable goals that constitute ''satisfactory'' performance. A plan may specify measurable goals that constitute ''outstanding'' performance. If a bank submits, and the FDIC approves, both ''satisfactory'' and ''outstanding'' performance goals, the FDIC will consider the bank eligible for an ''outstanding'' performance rating.

(4) *Election if satisfactory goals not substantially met.* A bank may elect in its plan that, if the bank fails to meet substantially its plan goals for a satisfactory rating, the FDIC will evaluate the bank's performance under the lending, investment, and service tests, the community development test, or the small bank performance standards, as appropriate.

(g) *Plan approval*—(1) *Timing.* The FDIC will act upon a plan within 60 calendar days after the FDIC receives the complete plan and other material required under paragraph (d) of this section. If the FDIC fails to act within this time period, the plan shall be deemed approved unless the FDIC extends the review period for good cause.

(2) *Public participation.* In evaluating the plan's goals, the FDIC considers the public's involvement in formulating the plan, written public comment on the plan, and any response by the bank to public comment on the plan.

(3) *Criteria for evaluating plan.* The FDIC evaluates a plan's measurable goals using the following criteria, as appropriate:

(i) The extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;

(ii) The amount and innovativeness, complexity, and responsiveness of the bank's qualified investments; and

(iii) The availability and effectiveness of the bank's systems for delivering retail banking services and the extent and innovativeness of the bank's community development services.

(h) *Plan amendment.* During the term of a plan, a bank may request the FDIC to approve an amendment to the plan on grounds that there has been a material change in circumstances. The bank shall

develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (c) of this section.

(i) *Plan assessment.* The FDIC approves the goals and assesses performance under a plan as provided for in Appendix A of this part.

§ 345.28 Assigned ratings.

(a) *Ratings in general.* Subject to paragraphs (b) and (c) of this section, the FDIC assigns to a bank a rating of ''outstanding,'' ''satisfactory,'' ''needs to improve,'' or ''substantial noncompliance'' based on the bank's performance under the lending, investment and service tests, the community development test, the small bank performance standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The FDIC assigns a rating for a bank assessed under the lending, investment, and service tests in accordance with the following principles:

(1) A bank that receives an ''outstanding'' rating on the lending test receives an assigned rating of at least ''satisfactory'';

(2) A bank that receives an ''outstanding'' rating on both the service test and the investment test and a rating of at least ''high satisfactory'' on the lending test receives an assigned rating of ''outstanding''; and

(3) No bank may receive an assigned rating of ''satisfactory'' or higher unless it receives a rating of at least ''low satisfactory'' on the lending test.

(c) *Effect of evidence of discriminatory or other illegal credit practices.* Evidence of discriminatory or other illegal credit practices adversely affects the FDIC's evaluation of a bank's performance. In determining the effect on the bank's assigned rating, the FDIC considers the nature and extent of the evidence, the policies and procedures that the bank has in place to prevent discriminatory or other illegal credit practices, any corrective action that the bank has taken or has committed to take, particularly voluntary corrective action resulting from self-assessment, and other relevant information.

§ 345.29 Effect of CRA performance on applications.

(a) *CRA performance.* Among other factors, the FDIC takes into account the record of performance under the CRA of each applicant bank in considering an application for approval of:

(1) The establishment of a domestic branch or other facility with the ability to accept deposits;

(2) The relocation of the bank's main office or a branch;

(3) The merger, consolidation, acquisition of assets, or assumption of liabilities; and

(4) Deposit insurance for a newly chartered financial institution.

(b) *New financial institutions.* A newly chartered financial institution shall submit with its application for deposit insurance a description of how it will meet its CRA objectives. The FDIC takes the description into account in considering the application and may deny or condition approval on that basis.

(c) *Interested parties.* The FDIC takes into account any views expressed by interested parties that are submitted in accordance with the FDIC's procedures set forth in part 303 of this chapter in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

(d) *Denial or conditional approval of application.* A bank's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

Subpart C—Records, Reporting, and Disclosure Requirements

§ 345.41 Assessment area delineation.

(a) *In general.* A bank shall delineate one or more assessment areas within which the FDIC evaluates the bank's record of helping to meet the credit needs of its community. The FDIC does not evaluate the bank's delineation of its assessment area(s) as a separate performance criterion, but the FDIC reviews the delineation for compliance with the requirements of this section.

(b) *Geographic area(s) for wholesale or limited purpose banks.* The assessment area(s) for a wholesale or limited purpose bank must consist generally of one or more MSAs (using the MSA boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the bank has its main office, branches, and deposit-taking RSFs.

(c) *Geographic area(s) for other banks.* The assessment area(s) for a bank other than a wholesale or limited purpose bank must:

(1) Consist generally of one or more MSAs (using the MSA boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

(2) Include the geographies in which the bank has its main office, its branches, and its deposit-taking RSFs, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans (including home mortgage loans, small business and small farm loans, and any other loans the bank chooses, such as those consumer loans on which the bank elects to have its performance assessed).

(d) *Adjustments to geographic area(s).* A bank may adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual configuration, or divided by significant geographic barriers.

(e) *Limitations on the delineation of an assessment area.* Each bank's assessment area(s):

(1) Must consist only of whole geographies;

(2) May not reflect illegal discrimination;

(3) May not arbitrarily exclude low- or moderate-income geographies, taking into account the bank's size and financial condition; and

(4) May not extend substantially beyond a CMSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a bank serves a geographic area that extends substantially beyond a state boundary, the bank shall delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends substantially beyond a CMSA boundary, the bank shall delineate separate assessment areas for the areas inside and outside the CMSA.

(f) *Banks serving military personnel.* Notwithstanding the requirements of this section, a bank whose business predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area may delineate its entire deposit customer base as its assessment area.

(g) *Use of assessment area(s).* The FDIC uses the assessment area(s) delineated by a bank in its evaluation of the bank's CRA performance unless the FDIC determines that the assessment area(s) do not comply with the requirements of this section.

§ 345.42 Data collection, reporting, and disclosure.

(a) *Loan information required to be collected and maintained.* A bank, except a small bank, shall collect, and maintain in machine readable form (as prescribed by the FDIC) until the

completion of its next CRA examination, the following data for each small business or small farm loan originated or purchased by the bank:

(1) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(2) The loan amount at origination;

(3) The loan location; and

(4) An indicator whether the loan was to a business or farm with gross annual revenues of $1 million or less.

(b) *Loan information required to be reported.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall report annually by March 1 to the FDIC in machine readable form (as prescribed by the FDIC) the following data for the prior calendar year:

(1) *Small business and small farm loan data.* For each geography in which the bank originated or purchased a small business or small farm loan, the aggregate number and amount of loans:

(i) With an amount at origination of $100,000 or less;

(ii) With an amount at origination of more than $100,000 but less than or equal to $250,000;

(iii) With an amount at origination of more than $250,000; and

(iv) To businesses and farms with gross annual revenues of $1 million or less (using the revenues that the bank considered in making its credit decision);

(2) *Community development loan data.* The aggregate number and aggregate amount of community development loans originated or purchased; and

(3) *Home mortgage loans.* If the bank is subject to reporting under part 203 of this title, the location of each home mortgage loan application, origination, or purchase outside the MSAs in which the bank has a home or branch office (or outside any MSA) in accordance with the requirements of part 203 of this title.

(c) *Optional data collection and maintenance.*—(1) *Consumer loans.* A bank may collect and maintain in machine readable form (as prescribed by the FDIC) data for consumer loans originated or purchased by the bank for consideration under the lending test. A bank may maintain data for one or more of the following categories of consumer loans: motor vehicle, credit card, home equity, other secured, and other unsecured. If the bank maintains data for loans in a certain category, it shall maintain data for all loans originated or purchased within that category. The bank shall maintain data separately for each category, including for each loan:

(i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(ii) The loan amount at origination or purchase;

(iii) The loan location; and

(iv) The gross annual income of the borrower that the bank considered in making its credit decision.

(2) *Other loan data.* At its option, a bank may provide other information concerning its lending performance, including additional loan distribution data.

(d) *Data on affiliate lending.* A bank that elects to have the FDIC consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, shall collect, maintain, and report for those loans the data that the bank would have collected, maintained, and reported pursuant to paragraphs (a), (b), and (c) of this section had the loans been originated or purchased by the bank. For home mortgage loans, the bank shall also be prepared to identify the home mortgage loans reported under part 203 of this title by the affiliate.

(e) *Data on lending by a consortium or a third party.* A bank that elects to have the FDIC consider community development loans by a consortium or third party, for purposes of the lending or community development tests or an approved strategic plan, shall report for those loans the data that the bank would have reported under paragraph (b)(2) of this section had the loans been originated or purchased by the bank.

(f) *Small banks electing evaluation under the lending, investment, and service tests.* A bank that qualifies for evaluation under the small bank performance standards but elects evaluation under the lending, investment, and service tests shall collect, maintain, and report the data required for other banks pursuant to paragraphs (a) and (b) of this section.

(g) *Assessment area data.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall collect and report to the FDIC by March 1 of each year a list for each assessment area showing the geographies within the area.

(h) *CRA Disclosure Statement.* The FDIC prepares annually for each bank that reports data pursuant to this section a CRA Disclosure Statement that contains, on a state-by-state basis:

(1) For each county (and for each assessment area smaller than a county) with a population of 500,000 persons or fewer in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in low-, moderate-, middle-, and upper-income geographies;

(ii) A list grouping each geography according to whether the geography is low-, moderate-, middle-, or upper-income;

(iii) A list showing each geography in which the bank reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(2) For each county (and for each assessment area smaller than a county) with a population in excess of 500,000 persons in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in geographies with median income relative to the area median income of less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(ii) A list grouping each geography in the county or assessment area according to whether the median income in the geography relative to the area median income is less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(iii) A list showing each geography in which the bank reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(3) The number and amount of small business and small farm loans located inside each assessment area reported by the bank and the number and amount of small business and small farm loans located outside the assessment area(s) reported by the bank; and

(4) The number and amount of community development loans reported as originated or purchased.

(i) *Aggregate disclosure statements.* The FDIC, in conjunction with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, prepares annually, for each MSA (including an MSA that crosses a state boundary) and the non-MSA portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 25, 228, or 563e of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the FDIC may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

(j) *Central data depositories.* The FDIC makes the aggregate disclosure statements, described in paragraph (i) of this section, and the individual bank CRA Disclosure Statements, described in paragraph (h) of this section, available to the public at central data depositories. The FDIC publishes a list of the depositories at which the statements are available.

§ 345.43 Content and availability of public file.

(a) *Information available to the public.* A bank shall maintain a public file that includes the following information:

(1) All written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the bank's performance in helping to meet community credit needs, and any response to the comments by the bank, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the bank or publication of which would violate specific provisions of law;

(2) A copy of the public section of the bank's most recent CRA Performance Evaluation prepared by the FDIC. The bank shall place this copy in the public file within 30 business days after its receipt from the FDIC;

(3) A list of the bank's branches, their street addresses, and geographies;

(4) A list of branches opened or closed by the bank during the current year and each of the prior two calendar years, their street addresses, and geographies;

(5) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the bank's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. At its option, a bank may include information regarding the availability of alternative systems for delivering retail banking services (*e.g.*, RSFs, RSFs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs);

(6) A map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list; and

(7) Any other information the bank chooses.

(b) *Additional information available to the public*—(1) *Banks other than small banks.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall include in its public file the following information pertaining to the bank and its affiliates, if applicable, for each of the prior two calendar years:

(i) If the bank has elected to have one or more categories of its consumer loans considered under the lending test, for each of these categories, the number and amount of loans:

(A) To low-, moderate-, middle-, and upper-income individuals;

(B) Located in low-, moderate-, middle-, and upper-income census tracts; and

(C) Located inside the bank's assessment area(s) and outside the bank's assessment area(s); and

(ii) The bank's CRA Disclosure Statement. The bank shall place the statement in the public file within three business days of its receipt from the FDIC.

(2) *Banks required to report Home Mortgage Disclosure Act (HMDA) data.* A bank required to report home mortgage loan data pursuant part 203 of this title shall include in its public file a copy of the HMDA Disclosure Statement provided by the Federal Financial Institutions Examination Council pertaining to the bank for each of the prior two calendar years. In addition, a bank that elected to have the FDIC consider the mortgage lending of an affiliate for any of these years shall include in its public file the affiliate's HMDA Disclosure Statement for those years. The bank shall place the statement(s) in the public file within three business days after receipt.

(3) *Small banks.* A small bank or a bank that was a small bank during the prior calendar year shall include in its public file:

(i) The bank's loan-to-deposit ratio for each quarter of the prior calendar year and, at its option, additional data on its loan-to-deposit ratio; and

(ii) The information required for other banks by paragraph (b)(1) of this section, if the bank has elected to be evaluated under the lending, investment, and service tests.

(4) *Banks with strategic plans.* A bank that has been approved to be assessed under a strategic plan shall include in its public file a copy of that plan. A bank need not include information submitted to the FDIC on a confidential basis in conjunction with the plan.

(5) *Banks with less than satisfactory ratings.* A bank that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The bank shall update the description quarterly.

(c) *Location of public information.* A bank shall make available to the public for inspection upon request and at no cost the information required in this section as follows:

(1) At the main office and, if an interstate bank, at one branch office in each state, all information in the public file; and

(2) At each branch:

(i) A copy of the public section of the bank's most recent CRA Performance Evaluation and a list of services provided by the branch; and

(ii) Within five calendar days of the request, all the information in the public file relating to the assessment area in which the branch is located.

(d) *Copies.* Upon request, a bank shall provide copies, either on paper or in another form acceptable to the person making the request, of the information in its public file. The bank may charge a reasonable fee not to exceed the cost of copying and mailing (if applicable).

(e) *Updating.* Except as otherwise provided in this section, a bank shall ensure that the information required by this section is current as of April 1 of each year.

§ 345.44 Public notice by banks.

A bank shall provide in the public lobby of its main office and each of its branches the appropriate public notice set forth in Appendix B of this part. Only a branch of a bank having more than one assessment area shall include the bracketed material in the notice for branch offices. Only a bank that is an affiliate of a holding company shall include the next to the last sentence of

the notices. A bank shall include the last sentence of the notices only if it is an affiliate of a holding company that is not prevented by statute from acquiring additional banks.

§ 345.45 Publication of planned examination schedule.

The FDIC publishes at least 30 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA examinations in that quarter.

Subpart D—Transition Rules

§ 345.51 Transition rules.

(a) *Effective date.* Sections of this part become applicable over a period of time in accordance with the schedule set forth in paragraph (c) of this section.

(b) *Data collection and reporting; strategic plan; performance tests and standards*—(1) *Data collection and reporting.* (i) On January 1, 1996, the data collection requirements set forth in § 345.42 (except § 345.42(b) and (g)) become applicable.

(ii) On January 1, 1997, the data reporting requirements set forth in § 345.42(b) and (g) become applicable.

(2) *Small banks.* Beginning January 1, 1996, the FDIC evaluates banks that qualify for the small bank performance standards described in § 345.26 under that section.

(3) *Strategic plan.* Beginning January 1, 1996, a bank that elects to be evaluated under an approved strategic plan pursuant to § 345.27 may submit its strategic plan to the FDIC for approval.

(4) *Other performance tests.* (i) Beginning January 1, 1996, a bank may elect to be evaluated under the pertinent revised performance tests described in §§ 345.22, 345.23, 345.24, and 345.25, if the bank provides the necessary data to permit evaluation.

(ii) Beginning July 1, 1997, the FDIC evaluates all banks under the pertinent revised performance tests.

(c) *Schedule.* (1) On July 1, 1995, §§ 345.11, 345.12, 345.29, and 345.51 become applicable, and §§ 345.1, 345.2, 345.8, 345.101 and 345.102 expire.

(2) On January 1, 1996, § 345.41 and the pertinent provisions of Subpart B of this part will apply to banks that elect to be evaluated under §§ 345.22 through 345.25, banks that submit for approval strategic plans under § 345.27, and banks that qualify for the small bank performance standards described in § 345.26.

(3) On January 1, 1996, §§ 345.42 (except § 345.42(b) and (g)) and 345.45 become applicable.

(4) On January 1, 1997, §§ 345.41 and 345.42(b) and (g) become applicable.

(5) On July 1, 1997, §§ 345.21 through 345.28, 345.43, and 345.44 become applicable, and §§ 345.3 through 345.7, and 345.51 expire.

Appendix A to Part 345—Ratings

(a) *Ratings in general.*—(1) In assigning a rating, the FDIC evaluates a bank's performance under the applicable performance criteria in this part, in accordance with § 345.21, and § 345.28, which provides for adjustments on the basis of evidence of discriminatory or other illegal credit practices.

(2) A bank's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The bank's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(b) *Banks evaluated under the lending, investment, and service tests.*—(1) *Lending performance rating.* The FDIC assigns each bank's lending performance one of the five following ratings.

(i) *Outstanding.* The FDIC rates a bank's lending performance ''outstanding'' if, in general, it demonstrates:

(A) Excellent responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A substantial majority of its loans are made in its assessment area(s);

(C) An excellent geographic distribution of loans in its assessment area(s);

(D) An excellent distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) An excellent record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Extensive use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It is a leader in making community development loans.

(ii) *High satisfactory.* The FDIC rates a bank's lending performance ''high satisfactory'' if, in general, it demonstrates:

(A) Good responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A high percentage of its loans are made in its assessment area(s);

(C) A good geographic distribution of loans in its assessment area(s);

(D) A good distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A good record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a relatively high level of community development loans.

(iii) *Low satisfactory.* The FDIC rates a bank's lending performance ''low satisfactory'' if, in general, it demonstrates:

(A) Adequate responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) An adequate percentage of its loans are made in its assessment area(s);

(C) An adequate geographic distribution of loans in its assessment area(s);

(D) An adequate distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) An adequate record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Limited use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made an adequate level of community development loans.

(iv) *Needs to improve.* The FDIC rates a bank's lending performance ''needs to improve'' if, in general, it demonstrates:

(A) Poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A small percentage of its loans are made in its assessment area(s);

(C) A poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Little use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a low level of community development loans.

(v) *Substantial noncompliance.* The FDIC rates a bank's lending performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

(A) A very poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A very small percentage of its loans are made in its assessment area(s);

(C) A very poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A very poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A very poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) No use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made few, if any, community development loans.

(2) *Investment performance rating.* The FDIC assigns each bank's investment performance one of the five following ratings.

(i) *Outstanding.* The FDIC rates a bank's investment performance ''outstanding'' if, in general, it demonstrates:

(A) An excellent level of qualified investments, particularly those that are not routinely provided by private investors, often in a leadership position;

(B) Extensive use of innovative or complex qualified investments; and

(C) Excellent responsiveness to credit and community development needs.

(ii) *High satisfactory.* The FDIC rates a bank's investment performance ''high satisfactory'' if, in general, it demonstrates:

(A) A significant level of qualified investments, particularly those that are not routinely provided by private investors, occasionally in a leadership position;

(B) Significant use of innovative or complex qualified investments; and

(C) Good responsiveness to credit and community development needs.

(iii) *Low satisfactory.* The FDIC rates a bank's investment performance ''low satisfactory'' if, in general, it demonstrates:

(A) An adequate level of qualified investments, particularly those that are not routinely provided by private investors, although rarely in a leadership position;

(B) Occasional use of innovative or complex qualified investments; and

(C) Adequate responsiveness to credit and community development needs.

(iv) *Needs to improve.* The FDIC rates a bank's investment performance ''needs to improve'' if, in general, it demonstrates:

(A) A poor level of qualified investments, particularly those that are not routinely provided by private investors;

(B) Rare use of innovative or complex qualified investments; and

(C) Poor responsiveness to credit and community development needs.

(v) *Substantial noncompliance.* The FDIC rates a bank's investment performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

(A) Few, if any, qualified investments, particularly those that are not routinely provided by private investors;

(B) No use of innovative or complex qualified investments; and

(C) Very poor responsiveness to credit and community development needs.

(3) *Service performance rating.* The FDIC assigns each bank's service performance one of the five following ratings.

(i) *Outstanding.* The FDIC rates a bank's service performance ''outstanding'' if, in general, the bank demonstrates:

(A) Its service delivery systems are readily accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has improved the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It is a leader in providing community development services.

(ii) *High satisfactory.* The FDIC rates a bank's service performance ''high satisfactory'' if, in general, the bank demonstrates:

(A) Its service delivery systems are accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides a relatively high level of community development services.

(iii) *Low satisfactory.* The FDIC rates a bank's service performance ''low satisfactory'' if, in general, the bank demonstrates:

(A) Its service delivery systems are reasonably accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides an adequate level of community development services.

(iv) *Needs to improve.* The FDIC rates a bank's service performance ''needs to improve'' if, in general, the bank demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has adversely affected the accessibility its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides a limited level of community development services.

(v) *Substantial noncompliance.* The FDIC rates a bank's service performance as being in ''substantial noncompliance'' if, in general, the bank demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to significant portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has significantly adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides few, if any, community development services.

(c) *Wholesale or limited purpose banks.* The FDIC assigns each wholesale or limited purpose bank's community development performance one of the four following ratings.

(1) *Outstanding.* The FDIC rates a wholesale or limited purpose bank's community development performance ''outstanding'' if, in general, it demonstrates:

(i) A high level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Extensive use of innovative or complex qualified investments, community

development loans, or community development services; and

(iii) Excellent responsiveness to credit and community development needs in its assessment area(s).

(2) *Satisfactory.* The FDIC rates a wholesale or limited purpose bank's community development performance ''satisfactory'' if, in general, it demonstrates:

(i) An adequate level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Occasional use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Adequate responsiveness to credit and community development needs in its assessment area(s).

(3) *Needs to improve.* The FDIC rates a wholesale or limited purpose bank's community development performance as ''needs to improve'' if, in general, it demonstrates:

(i) A poor level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Rare use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Poor responsiveness to credit and community development needs in its assessment area(s).

(4) *Substantial noncompliance.* The FDIC rates a wholesale or limited purpose bank's community development performance in ''substantial noncompliance'' if, in general, it demonstrates:

(i) Few, if any, community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) No use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Very poor responsiveness to credit and community development needs in its assessment area(s).

(d) *Banks evaluated under the small bank performance standards.* The FDIC rates the performance of each bank evaluated under the small bank performance standards as follows.

(1) *Eligibility for a satisfactory rating.* The FDIC rates a bank's performance ''satisfactory'' if, in general, the bank demonstrates:

(i) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(ii) A majority of its loans and, as appropriate, other lending-related activities are in its assessment area(s);

(iii) A distribution of loans to and, as appropriate, other lending related-activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's assessment area(s);

(iv) A record of taking appropriate action, as warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(v) A reasonable geographic distribution of loans given the bank's assessment area(s).

(2) *Eligibility for an outstanding rating.* A bank that meets each of the standards for a ''satisfactory'' rating under this paragraph and exceeds some or all of those standards may warrant consideration for an overall rating of ''outstanding.'' In assessing whether a bank's performance is ''outstanding,'' the FDIC considers the extent to which the bank exceeds each of the performance standards for a ''satisfactory'' rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(3) *Needs to improve or substantial noncompliance ratings.* A bank also may receive a rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

(e) *Strategic plan assessment and rating.* (1) *Satisfactory goals.* The FDIC approves as ''satisfactory'' measurable goals that adequately help to meet the credit needs of the bank's assessment area(s).

(2) *Outstanding goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as ''satisfactory,'' the FDIC will approve those goals as ''outstanding.''

(3) *Rating.* The FDIC assesses the performance of a bank operating under an approved plan to determine if the bank has met its plan goals:

(i) If the bank substantially achieves its plan goals for a satisfactory rating, the FDIC will rate the bank's performance under the plan as ''satisfactory.''

(ii) If the bank exceeds its plan goals for a satisfactory rating and substantially achieves its plan goals for an outstanding rating, the FDIC will rate the bank's performance under the plan as ''outstanding.''

(iii) If the bank fails to meet substantially its plan goals for a satisfactory rating, the FDIC will rate the bank as either ''needs to improve'' or ''substantial noncompliance,'' depending on the extent to which it falls short of its plan goals, unless the bank elected in its plan to be rated otherwise, as provided in § 345.27(f)(4).

Appendix B to Part 345—CRA Notice

(a) *Notice for main offices and, if an interstate bank, one branch office in each state.*

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Federal Deposit Insurance Corporation (FDIC) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The FDIC also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the FDIC; and comments received from the public relating to our performance in helping to meet community credit needs, as well as our responses to those comments. You may review this information today.

At least 30 days before the beginning of each quarter, the FDIC publishes a nationwide list of the banks that are scheduled for CRA examination in that quarter. This list is available from the Regional Manager, Division of Compliance and Consumer Affairs, FDIC (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and FDIC Regional Manager. Your letter, together with any response by us, will be considered by the FDIC in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the FDIC Regional Manager. You may also request from the FDIC Regional Manager an announcement of our applications covered by the CRA filed with the FDIC. We are an affiliate of (name of holding company), a bank holding company. You may request from the (title of responsible official), Federal Reserve Bank of _____ (address) an announcement of applications covered by the CRA filed by bank holding companies.

(b) *Notice for branch offices.*

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Federal Deposit Insurance Corporation (FDIC) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The FDIC also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA. You may review today the public section of our most recent CRA evaluation, prepared by the FDIC, and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us: (1) a map showing the assessment area containing this branch, which is the area in which the FDIC evaluates our CRA performance in this community; (2) information about our branches in this assessment area; (3) a list of services we provide at those locations; (4) data on our lending performance in this

assessment area; and (5) copies of all written comments received by us that specifically relate to our CRA performance in this assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire bank is available at (name of office located in state), located at (address).]

At least 30 days before the beginning of each quarter, the FDIC publishes a nationwide list of the banks that are scheduled for CRA examination in that quarter. This list is available from the Regional Manager, Division of Compliance and Consumer Affairs, FDIC (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and the FDIC Regional Manager. Your letter, together with any response by us, will be considered by the FDIC in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the FDIC Regional Manager. You may also request from the FDIC Regional Manager an announcement of our applications covered by the CRA filed with the FDIC. We are an affiliate of (name of holding company), a bank holding company. You may request from the (title of responsible official), Federal Reserve Bank of _____ (address) an announcement of applications covered by the CRA filed by bank holding companies.

§§ 345.1, 345.2, 345.8, 345.101, and 345.102, and the undersigned center heading preceding § 345.101 [Removed]

3. Sections 345.1, 345.2, 345.8, 345.101 and 345.102, and the undersigned center heading preceding § 345.101 are removed effective July 1, 1995.

§§ 345.3, 345.4, 345.5, 345.6, 345.7, and subpart D [Removed]

4. Sections 345.3, 345.4, 345.5, 345.6, 345.7, and 345.51 are removed effective July 1, 1997.

By order of the Board of Directors of the Federal Deposit Insurance Corporation:

Dated: April 24, 1995.

Robert E. Feldman,

Acting Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

For the reasons outlined in the joint preamble, the Office of Thrift Supervision amends 12 CFR chapter V as set forth below:

PART 563e—COMMUNITY REINVESTMENT

1. The authority citation for part 563e is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c), and 2901 through 2907.

2. Part 563e is amended by adding Subparts A through D and Appendices A and B to read as follows:

Subpart A—General

Sec.

563e.11 Authority, purposes, and scope.
563e.12 Definitions.

Subpart B—Standards for Assessing Performance

563e.21 Performance tests, standards, and ratings, in general.
563e.22 Lending test.
563e.23 Investment test.
563e.24 Service test.
563e.25 Community development test for wholesale or limited purpose savings associations.
563e.26 Small savings association performance standards.
563e.27 Strategic plan.
563e.28 Assigned ratings.
563e.29 Effect of CRA performance on applications.

Subpart C—Records, Reporting, and Disclosure Requirements

563e.41 Assessment area delineation.
563e.42 Data collection, reporting, and disclosure.
563e.43 Content and availability of public file.
563e.44 Public notice by savings associations.
563e.45 Publication of planned examination schedule.

Subpart D—Transition Rules

563e.51 Transition rules.

Appendix A to Part 563e—Ratings

Appendix B to Part 563e—CRA Notice

Subpart A—General

§ 563e.11 Authority, purposes, and scope.

(a) *Authority and OMB control number*—(1) *Authority.* This part is issued under the Community Reinvestment Act of 1977 (CRA), as amended (12 U.S.C. 2901 *et seq.*); section 5, as amended, and sections 3, 4, and 10, as added, of the Home Owners' Loan Act of 1933 (12 U.S.C. 1462a, 1463, 1464, and 1467a); and sections 4, 6, and 18(c), as amended of the Federal Deposit Insurance Act (12 U.S.C. 1814, 1816, 1828(c)).

(2) *OMB control number.* The information collection requirements contained in this part were approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 1550–0012.

(b) *Purposes.* In enacting the CRA, the Congress required each appropriate Federal financial supervisory agency to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the agency's evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the OTS assesses a savings association's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the savings association; and

(2) Providing that the OTS takes that record into account in considering certain applications.

(c) *Scope.* This part applies to all savings associations as defined in § 561.43 of this subchapter.

§ 563e.12 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company. The term ''control'' has the meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

(b) *Area median income* means:

(1) The median family income for the MSA, if a person or geography is located in an MSA; or

(2) The statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.

(c) *Assessment area* means a geographic area delineated in accordance with § 563e.41.

(d) *Automated teller machine (ATM)* means an automated, unstaffed banking facility owned or operated by, or operated exclusively for, the savings association at which deposits are received, cash dispersed, or money lent.

(e) *Branch* means a staffed banking facility authorized as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization.

(f) *CMSA* means a consolidated metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(g) *Community development* means:

(1) Affordable housing (including multifamily rental housing) for low or moderate-income individuals;

(2) Community services targeted to low- or moderate-income individuals;

(3) Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of 13 CFR 121.802(a)(2) or have gross annual revenues of $1 million or less; or

(4) Activities that revitalize or stabilize low- or moderate-income geographies.

(h) *Community development loan* means a loan that:

(1) Has as its primary purpose community development; and

(2) Except in the case of a wholesale or limited purpose savings association:

(i) Has not been reported or collected by the savings association or an affiliate for consideration in the savings association's assessment as a home mortgage, small business, small farm, or consumer loan, unless it is a multifamily dwelling loan (as described in Appendix A to Part 203 of this title); and

(ii) Benefits the savings association's assessment area(s) or a broader statewide or regional area that includes the savings association's assessment area(s).

(i) *Community development service* means a service that:

(1) Has as its primary purpose community development;

(2) Is related to the provision of financial services; and

(3) Has not been considered in the evaluation of the savings association's retail banking services under § 563e.24(d).

(j) *Consumer loan* means a loan to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. Consumer loans include the following categories of loans:

(1) *Motor vehicle loan,* which is a consumer loan extended for the purchase of and secured by a motor vehicle;

(2) *Credit card loan,* which is a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a ''credit card,'' as this term is defined in § 226.2 of this title;

(3) *Home equity loan,* which is a consumer loan secured by a residence of the borrower;

(4) *Other secured consumer loan,* which is a secured consumer loan that is not included in one of the other categories of consumer loans; and

(5) *Other unsecured consumer loan,* which is an unsecured consumer loan that is not included in one of the other categories of consumer loans.

(k) *Geography* means a census tract or a block numbering area delineated by the United States Bureau of the Census in the most recent decennial census.

(l) *Home mortgage loan* means a ''home improvement loan'' or a ''home purchase loan'' as defined in § 203.2 of this title.

(m) *Income level* includes:

(1) *Low-income,* which means an individual income that is less than 50 percent of the area median income or a median family income that is less than 50 percent in the case of a geography.

(2) *Moderate-income,* which means an individual income that is at least 50 percent and less than 80 percent of the area median income or a median family income that is at least 50 and less than 80 percent in the case of a geography.

(3) *Middle-income,* which means an individual income that is at least 80 percent and less than 120 percent of the area median income or a median family income that is at least 80 and less than 120 percent in the case of a geography.

(4) *Upper-income,* which means an individual income that is 120 percent or more of the area median income or a median family income that is 120 percent or more in the case of a geography.

(n) *Limited purpose savings association* means a savings association that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose savings association is in effect, in accordance with § 563e.25(b).

(o) *Loan location.* A loan is located as follows:

(1) A consumer loan is located in the geography where the borrower resides;

(2) A home mortgage loan is located in the geography where the property to which the loan relates is located; and

(3) A small business or small farm loan is located in the geography where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

(p) *Loan production office* means a staffed facility, other than a branch, that is open to the public and that provides lending-related services, such as loan information and applications.

(q) *MSA* means a metropolitan statistical area or a primary metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(r) *Qualified investment* means a lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

(s) *Small savings association* means a savings association that, as of December 31 of either of the prior two calendar years, had total assets of less than $250 million and was independent or an affiliate of a holding company that, as of December 31 of either of the prior two calendar years, had total banking and thrift assets of less than $1 billion.

(t) *Small business loan* means a loan included in ''loans to small businesses'' as defined in the instructions for preparation of the Thrift Financial Report.

(u) *Small farm loan* means a loan included in ''loans to small farms'' as defined in the instructions for preparation of the Thrift Financial Report.

(v) *Wholesale savings association* means a savings association that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale savings association is in effect, in accordance with § 563e.25(b).

Subpart B—Standards for Assessing Performance

§ 563e.21 Performance tests, standards, and ratings, in general.

(a) *Performance tests and standards.* The OTS assesses the CRA performance of a savings association in an examination as follows:

(1) *Lending, investment, and service tests.* The OTS applies the lending, investment, and service tests, as provided in §§ 563e.22 through 563e.24, in evaluating the performance of a savings association, except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(2) *Community development test for wholesale or limited purpose savings associations.* The OTS applies the community development test for a wholesale or limited purpose savings association, as provided in § 563e.25, except as provided in paragraph (a)(4) of this section.

(3) *Small savings association performance standards.* The OTS applies the small savings association performance standards as provided in § 563e.26 in evaluating the performance of a small savings association or a savings association that was a small savings association during the prior calendar year, unless the savings association elects to be assessed as provided in paragraphs (a)(1), (a)(2), or (a)(4) of this section. The savings association may elect to be assessed as provided in paragraph (a)(1) of this section only if it collects and reports the data required for other savings associations under § 563e.42.

(4) *Strategic plan.* The OTS evaluates the performance of a savings association under a strategic plan if the savings

association submits, and the OTS approves, a strategic plan as provided in § 563e.27.

(b) *Performance context.* The OTS applies the tests and standards in paragraph (a) of this section and also considers whether to approve a proposed strategic plan in the context of:

(1) Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to a savings association's assessment area(s);

(2) Any information about lending, investment, and service opportunities in the savings association's assessment area(s) maintained by the savings association or obtained from community organizations, state, local, and tribal governments, economic development agencies, or other sources;

(3) The savings association's product offerings and business strategy as determined from data provided by the savings association;

(4) Institutional capacity and constraints, including the size and financial condition of the savings association, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the savings association's ability to provide lending, investments, or services in its assessment area(s);

(5) The savings association's past performance and the performance of similarly situated lenders;

(6) The savings association's public file, as described in § 563e.43, and any written comments about the savings association's CRA performance submitted to the savings association or the OTS; and

(7) Any other information deemed relevant by the OTS.

(c) *Assigned ratings.* The OTS assigns to a savings association one of the following four ratings pursuant to § 563e.28 and Appendix A of this part: ''outstanding''; ''satisfactory''; ''needs to improve''; or ''substantial noncompliance,'' as provided in 12 U.S.C. 2906(b)(2). The rating assigned by the OTS reflects the savings association's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the savings association.

(d) *Safe and sound operations.* This part and the CRA do not require a savings association to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the OTS anticipates savings associations can meet the standards of this part with safe and sound loans, investments, and services on which the savings associations expect to make a profit. Savings associations are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations.

§ 563e.22 Lending test.

(a) *Scope of test.* (1) The lending test evaluates a savings association's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a savings association's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a savings association's business, the OTS will evaluate the savings association's consumer lending in one or more of the following categories: motor vehicle, credit card, home equity, other secured, and other unsecured loans. In addition, at a savings association's option, the OTS will evaluate one or more categories of consumer lending, if the savings association has collected and maintained, as required in § 563e.42(c)(1), the data for each category that the savings association elects to have the OTS evaluate.

(2) The OTS considers originations and purchases of loans. The OTS will also consider any other loan data the savings association may choose to provide, including data on loans outstanding, commitments and letters of credit.

(3) A savings association may ask the OTS to consider loans originated or purchased by consortia in which the savings association participates or by third parties in which the savings association has invested only if the loans meet the definition of community development loans and only in accordance with paragraph (d) of this section. The OTS will not consider these loans under any criterion of the lending test except the community development lending criterion.

(b) *Performance criteria.* The OTS evaluates a savings association's lending performance pursuant to the following criteria:

(1) *Lending activity.* The number and amount of the savings association's home mortgage, small business, small farm, and consumer loans, if applicable, in the savings association's assessment area(s);

(2) *Geographic distribution.* The geographic distribution of the savings association's home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:

(i) The proportion of the savings association's lending in the savings association's assessment area(s);

(ii) The dispersion of lending in the savings association's assessment area(s); and

(iii) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the savings association's assessment area(s);

(3) *Borrower characteristics.* The distribution, particularly in the savings association's assessment area(s), of the savings association's home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:

(i) Home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) Small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(iii) Small business and small farm loans by loan amount at origination; and

(iv) Consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals;

(4) *Community development lending.* The savings association's community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and

(5) *Innovative or flexible lending practices.* The savings association's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) At a savings association's option, the OTS will consider loans by an affiliate of the savings association, if the savings association provides data on the affiliate's loans pursuant to § 563e.42.

(2) The OTS considers affiliate lending subject to the following constraints:

(i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and

(ii) If a savings association elects to have the OTS consider loans within a particular lending category made by one or more of the savings association's affiliates in a particular assessment area, the savings association shall elect to have the OTS consider, in accordance with paragraph (c)(1) of this section, all

the loans within that lending category in that particular assessment area made by all of the savings association's affiliates.

(3) The OTS does not consider affiliate lending in assessing a savings association's performance under paragraph (b)(2)(i) of this section.

(d) *Lending by a consortium or a third party.* Community development loans originated or purchased by a consortium in which the savings association participates or by a third party in which the savings association has invested:

(1) Will be considered, at the savings association's option, if the savings association reports the data pertaining to these loans under § 563e.42(b)(2); and

(2) May be allocated among participants or investors, as they choose, for purposes of the lending test, except that no participant or investor:

(i) May claim a loan origination or loan purchase if another participant or investor claims the same loan origination or purchase; or

(ii) May claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.

(e) *Lending performance rating.* The OTS rates a savings association's lending performance as provided in Appendix A of this part.

§ 563e.23 Investment test.

(a) *Scope of test.* The investment test evaluates a savings association's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the savings association's assessment area(s).

(b) *Exclusion.* Activities considered under the lending or service tests may not be considered under the investment test.

(c) *Affiliate investment.* At a savings association's option, the OTS will consider, in its assessment of a savings association's investment performance, a qualified investment made by an affiliate of the savings association, if the qualified investment is not claimed by any other institution.

(d) *Disposition of branch premises.* Donating, selling on favorable terms, or making available on a rent-free basis a branch of the savings association that is located in a predominantly minority neighborhood to a minority depository institution or women's depository institution (as these terms are defined in 12 U.S.C. 2907(b)) will be considered as a qualified investment.

(e) *Performance criteria.* The OTS evaluates the investment performance of a savings association pursuant to the following criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

(f) *Investment performance rating.* The OTS rates a savings association's investment performance as provided in Appendix A of this part.

§ 563e.24 Service test.

(a) *Scope of test.* The service test evaluates a savings association's record of helping to meet the credit needs of its assessment area(s) by analyzing both the availability and effectiveness of a savings association's systems for delivering retail banking services and the extent and innovativeness of its community development services.

(b) *Area(s) benefitted.* Community development services must benefit a savings association's assessment area(s) or a broader statewide or regional area that includes the savings association's assessment area(s).

(c) *Affiliate service.* At a savings association's option, the OTS will consider, in its assessment of a savings association's service performance, a community development service provided by an affiliate of the savings association, if the community development service is not claimed by any other institution.

(d) *Performance criteria—retail banking services.* The OTS evaluates the availability and effectiveness of a savings association's systems for delivering retail banking services, pursuant to the following criteria:

(1) The current distribution of the savings association's branches among low-,moderate-, middle-, and upper-income geographies;

(2) In the context of its current distribution of the savings association's branches, the savings association's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;

(3) The availability and effectiveness of alternative systems for delivering retail banking services (*e.g.*, ATMs, ATMs not owned or operated by or exclusively for the savings association, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals; and

(4) The range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(e) *Performance criteria—community development services.* The OTS evaluates community development services pursuant to the following criteria:

(1) The extent to which the savings association provides community development services; and

(2) The innovativeness and responsiveness of community development services.

(f) *Service performance rating.* The OTS rates a savings association's service performance as provided in Appendix A of this part.

§ 563e.25 Community development test for wholesale or limited purpose savings associations.

(a) *Scope of test.* The OTS assesses a wholesale or limited purpose savings association's record of helping to meet the credit needs of its assessment area(s) under the community development test through its community development lending, qualified investments, or community development services.

(b) *Designation as a wholesale or limited purpose savings association.* In order to receive a designation as a wholesale or limited purpose savings association, a savings association shall file a request, in writing, with the OTS, at least three months prior to the proposed effective date of the designation. If the OTS approves the designation, it remains in effect until the savings association requests revocation of the designation or until one year after the OTS notifies the savings association that the OTS has revoked the designation on its own initiative.

(c) *Performance criteria.* The OTS evaluates the community development performance of a wholesale or limited purpose savings association pursuant to the following criteria:

(1) The number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the savings association, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;

(2) The use of innovative or complex qualified investments, community development loans, or community development services and the extent to

which the investments are not routinely provided by private investors; and

(3) The savings association's responsiveness to credit and community development needs.

(d) *Indirect activities.* At a savings association's option, the OTS will consider in its community development performance assessment:

(1) Qualified investments or community development services provided by an affiliate of the savings association, if the investments or services are not claimed by any other institution; and

(2) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in § 563e.22 (c) and (d).

(e) *Benefit to assessment area(s).*—(1) *Benefit inside assessment area(s).* The OTS considers all qualified investments, community development loans, and community development services that benefit areas within the savings association's assessment area(s) or a broader statewide or regional area that includes the savings association's assessment area(s).

(2) *Benefit outside assessment area(s).* The OTS considers the qualified investments, community development loans, and community development services that benefit areas outside the savings association's assessment area(s), if the savings association has adequately addressed the needs of its assessment area(s).

(f) *Community development performance rating.* The OTS rates a savings association's community development performance as provided in Appendix A of this part.

§ 563e.26 Small savings association performance standards.

(a) *Performance criteria.* The OTS evaluates the record of a small savings association, or a savings association that was a small savings association during the prior calendar year, of helping to meet the credit needs of its assessment area(s) pursuant to the following criteria:

(1) The savings association's loan-to-deposit ratio, adjusted for seasonal variation and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the savings association's assessment area(s);

(3) The savings association's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the savings association's loans; and

(5) The savings association's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(b) *Small savings association performance rating.* The OTS rates the performance of a savings association evaluated under this section as provided in Appendix A of this part.

§ 563e.27 Strategic plan.

(a) *Alternative election.* The OTS will assess a savings association's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The savings association has submitted the plan to the OTS as provided for in this section;

(2) The OTS has approved the plan;

(3) The plan is in effect; and

(4) The savings association has been operating under an approved plan for at least one year.

(b) *Data reporting.* The OTS's approval of a plan does not affect the savings association's obligation, if any, to report data as required by § 563e.42.

(c) *Plans in general.* (1) *Term.* A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the OTS will evaluate the savings association's performance.

(2) *Multiple assessment areas.* A savings association with more than one assessment area may prepare a single plan for all of its assessment areas or one or more plans for one or more of its assessment areas.

(3) *Treatment of affiliates.* Affiliated institutions may prepare a joint plan if the plan provides measurable goals for each institution. Activities may be allocated among institutions at the institutions' option, provided that the same activities are not considered for more than one institution.

(d) *Public participation in plan development.* Before submitting a plan to the OTS for approval, a savings association shall:

(1) Informally seek suggestions from members of the public in its assessment area(s) covered by the plan while developing the plan;

(2) Once the savings association has developed a plan, formally solicit public comment on the plan for at least 30 days by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and

(3) During the period of formal public comment, make copies of the plan available for review by the public at no cost at all offices of the savings association in any assessment area covered by the plan and provide copies of the plan upon request for a reasonable fee to cover copying and mailing, if applicable.

(e) *Submission of plan.* The savings association shall submit its plan to the OTS at least three months prior to the proposed effective date of the plan. The savings association shall also submit with its plan a description of its informal efforts to seek suggestions from members of the public, any written public comment received, and, if the plan was revised in light of the comment received, the initial plan as released for public comment.

(f) *Plan content*—(1) *Measurable goals.* (i) A savings association shall specify in its plan measurable goals for helping to meet the credit needs of each assessment area covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and services, as appropriate.

(ii) A savings association shall address in its plan all three performance categories and, unless the savings association has been designated as a wholesale or limited purpose savings association, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its assessment area(s), considering public comment and the savings association's capacity and constraints, product offerings, and business strategy.

(2) *Confidential information.* A savings association may submit additional information to the OTS on a confidential basis, but the goals stated in the plan must be sufficiently specific to enable the public and the OTS to judge the merits of the plan.

(3) *Satisfactory and outstanding goals.* A savings association shall specify in its plan measurable goals that constitute ''satisfactory'' performance. A plan may specify measurable goals that constitute ''outstanding'' performance. If a savings association submits, and the OTS approves, both ''satisfactory'' and ''outstanding'' performance goals, the OTS will consider the savings association eligible for an ''outstanding'' performance rating.

(4) *Election if satisfactory goals not substantially met.* A savings association may elect in its plan that, if the savings

association fails to meet substantially its plan goals for a satisfactory rating, the OTS will evaluate the savings association's performance under the lending, investment, and service tests, the community development test, or the small savings association performance standards, as appropriate.

(g) *Plan approval*—(1) *Timing.* The OTS will act upon a plan within 60 calendar days after the OTS receives the complete plan and other material required under paragraph (d) of this section. If the OTS fails to act within this time period, the plan shall be deemed approved unless the OTS extends the review period for good cause.

(2) *Public participation.* In evaluating the plan's goals, the OTS considers the public's involvement in formulating the plan, written public comment on the plan, and any response by the savings association to public comment on the plan.

(3) *Criteria for evaluating plan.* The OTS evaluates a plan's measurable goals using the following criteria, as appropriate:

(i) The extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;

(ii) The amount and innovativeness, complexity, and responsiveness of the savings association's qualified investments; and

(iii) The availability and effectiveness of the savings association's systems for delivering retail banking services and the extent and innovativeness of the savings association's community development services.

(h) *Plan amendment.* During the term of a plan, a savings association may request the OTS to approve an amendment to the plan on grounds that there has been a material change in circumstances. The savings association shall develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (c) of this section.

(i) *Plan assessment.* The OTS approves the goals and assesses performance under a plan as provided for in Appendix A of this part.

§ 563e.28 Assigned ratings.

(a) *Ratings in general.* Subject to paragraphs (b) and (c) of this section, the OTS assigns to a savings association a rating of ''outstanding,'' ''satisfactory,'' ''needs to improve,'' or ''substantial noncompliance'' based on the savings association's performance under the lending, investment and service tests, the community development test, the small savings association performance standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The OTS assigns a rating for a savings association assessed under the lending, investment, and service tests in accordance with the following principles:

(1) A savings association that receives an ''outstanding'' rating on the lending test receives an assigned rating of at least ''satisfactory'';

(2) A savings association that receives an ''outstanding'' rating on both the service test and the investment test and a rating of at least ''high satisfactory'' on the lending test receives an assigned rating of ''outstanding''; and

(3) No savings association may receive an assigned rating of ''satisfactory'' or higher unless it receives a rating of at least ''low satisfactory'' on the lending test.

(c) *Effect of evidence of discriminatory or other illegal credit practices.* Evidence of discriminatory or other illegal credit practices adversely affects the OTS's evaluation of a savings association's performance. In determining the effect on the savings association's assigned rating, the OTS considers the nature and extent of the evidence, the policies and procedures that the savings association has in place to prevent discriminatory or other illegal credit practices, any corrective action that the savings association has taken or has committed to take, particularly voluntary corrective action resulting from self-assessment, and other relevant information.

§ 563e.29 Effect of CRA performance on applications.

(a) *CRA performance.* Among other factors, the OTS takes into account the record of performance under the CRA of each applicant savings association, and for applications under section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)), of each proposed subsidiary savings association, in considering an application for:

(1) The establishment of a domestic branch or other facility that would be authorized to take deposits;

(2) The relocation of the main office or a branch;

(3) The merger or consolidation with or the acquisition of the assets or assumption of the liabilities of an insured depository institution requiring OTS approval under the Bank Merger Act (12 U.S.C. 1828(c));

(4) A Federal thrift charter; and

(5) Acquisitions subject to section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)).

(b) *Charter application.* An applicant for a Federal thrift charter shall submit with its application a description of how it will meet its CRA objectives. The OTS takes the description into account in considering the application and may deny or condition approval on that basis.

(c) *Interested parties.* The OTS takes into account any views expressed by interested parties that are submitted in accordance with the applicable comment procedures in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

(d) *Denial or conditional approval of application.* A savings association's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(e) *Insured depository institution.* For purposes of this section, the term ''insured depository institution'' has the meaning given to that term in 12 U.S.C. 1813.

Subpart C—Records, Reporting, and Disclosure Requirements

§ 563e.41 Assessment area delineation.

(a) *In general.* A savings association shall delineate one or more assessment areas within which the OTS evaluates the savings association's record of helping to meet the credit needs of its community. The OTS does not evaluate the savings association's delineation of its assessment area(s) as a separate performance criterion, but the OTS reviews the delineation for compliance with the requirements of this section.

(b) *Geographic area(s) for wholesale or limited purpose savings associations.* The assessment area(s) for a wholesale or limited purpose savings association must consist generally of one or more MSAs (using the MSA boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the savings association has its main office, branches, and deposit-taking ATMs.

(c) *Geographic area(s) for other savings associations.* The assessment area(s) for a savings association other than a wholesale or limited purpose savings association must:

(1) Consist generally of one or more MSAs (using the MSA boundaries that

were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

(2) Include the geographies in which the savings association has its main office, its branches, and its deposit-taking ATMs, as well as the surrounding geographies in which the savings association has originated or purchased a substantial portion of its loans (including home mortgage loans, small business and small farm loans, and any other loans the savings association chooses, such as those consumer loans on which the savings association elects to have its performance assessed).

(d) *Adjustments to geographic area(s).* A savings association may adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual configuration, or divided by significant geographic barriers.

(e) *Limitations on the delineation of an assessment area.* Each savings association's assessment area(s):

(1) Must consist only of whole geographies;

(2) May not reflect illegal discrimination;

(3) May not arbitrarily exclude low- or moderate-income geographies, taking into account the savings association's size and financial condition; and

(4) May not extend substantially beyond a CMSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a savings association serves a geographic area that extends substantially beyond a state boundary, the savings association shall delineate separate assessment areas for the areas in each state. If a savings association serves a geographic area that extends substantially beyond a CMSA boundary, the savings association shall delineate separate assessment areas for the areas inside and outside the CMSA.

(f) *Savings associations serving military personnel.* Notwithstanding the requirements of this section, a savings association whose business predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area may delineate its entire deposit customer base as its assessment area.

(g) *Use of assessment area(s).* The OTS uses the assessment area(s) delineated by a savings association in its evaluation of the savings association's CRA performance unless the OTS determines that the assessment area(s) do not comply with the requirements of this section.

§ 563e.42 Data collection, reporting, and disclosure.

(a) *Loan information required to be collected and maintained.* A savings association, except a small savings association, shall collect, and maintain in machine readable form (as prescribed by the OTS) until the completion of its next CRA examination, the following data for each small business or small farm loan originated or purchased by the savings association:

(1) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(2) The loan amount at origination;

(3) The loan location; and

(4) An indicator whether the loan was to a business or farm with gross annual revenues of $1 million or less.

(b) *Loan information required to be reported.* A savings association, except a small savings association or a savings association that was a small savings association during the prior calendar year, shall report annually by March 1 to the OTS in machine readable form (as prescribed by the OTS) the following data for the prior calendar year:

(1) *Small business and small farm loan data.* For each geography in which the savings association originated or purchased a small business or small farm loan, the aggregate number and amount of loans:

(i) With an amount at origination of $100,000 or less;

(ii) With amount at origination of more than $100,000 but less than or equal to $250,000;

(iii) With an amount at origination of more than $250,000; and

(iv) To businesses and farms with gross annual revenues of $1 million or less (using the revenues that the savings association considered in making its credit decision);

(2) *Community development loan data.* The aggregate number and aggregate amount of community development loans originated or purchased; and

(3) *Home mortgage loans.* If the savings association is subject to reporting under part 203 of this title, the location of each home mortgage loan application, origination, or purchase outside the MSAs in which the savings association has a home or branch office (or outside any MSA) in accordance with the requirements of part 203 of this title.

(c) *Optional data collection and maintenance*—(1) *Consumer loans.* A savings association may collect and maintain in machine readable form (as prescribed by the OTS) data for consumer loans originated or purchased by the savings association for consideration under the lending test. A savings association may maintain data for one or more of the following categories of consumer loans: motor vehicle, credit card, home equity, other secured, and other unsecured. If the savings association maintains data for loans in a certain category, it shall maintain data for all loans originated or purchased within that category. The savings association shall maintain data separately for each category, including for each loan:

(i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(ii) The loan amount at origination or purchase;

(iii) The loan location; and

(iv) The gross annual income of the borrower that the savings association considered in making its credit decision.

(2) *Other loan data.* At its option, a savings association may provide other information concerning its lending performance, including additional loan distribution data.

(d) *Data on affiliate lending.* A savings association that elects to have the OTS consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, shall collect, maintain, and report for those loans the data that the savings association would have collected, maintained, and reported pursuant to paragraphs (a), (b), and (c) of this section had the loans been originated or purchased by the savings association. For home mortgage loans, the savings association shall also be prepared to identify the home mortgage loans reported under part 203 of this title by the affiliate.

(e) *Data on lending by a consortium or a third-party.* A savings association that elects to have the OTS consider community development loans by a consortium or third party, for purposes of the lending or community development tests or an approved strategic plan, shall report for those loans the data that the savings association would have reported under paragraph (b)(2) of this section had the loans been originated or purchased by the savings association.

(f) *Small savings associations electing evaluation under the lending, investment, and service tests.* A savings association that qualifies for evaluation under the small savings association performance standards but elects

evaluation under the lending, investment, and service tests shall collect, maintain, and report the data required for other savings associations pursuant to paragraphs (a) and (b) of this section.

(g) *Assessment area data.* A savings association, except a small savings association or a savings association that was a small savings association during the prior calendar year, shall collect and report to the OTS by March 1 of each year a list for each assessment area showing the geographies within the area.

(h) *CRA Disclosure Statement.* The OTS prepares annually for each savings association that reports data pursuant to this section a CRA Disclosure Statement that contains, on a state-by-state basis:

(1) For each county (and for each assessment area smaller than a county) with a population of 500,000 persons or fewer in which the savings association reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in low-, moderate-, middle-, and upper-income geographies;

(ii) A list grouping each geography according to whether the geography is low-, moderate-, middle-, or upper-income;

(iii) A list showing each geography in which the savings association reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(2) For each county (and for each assessment area smaller than a county) with a population in excess of 500,000 persons in which the savings association reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in geographies with median income relative to the area median income of less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(ii) A list grouping each geography in the county or assessment area according to whether the median income in the geography relative to the area median income is less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(iii) A list showing each geography in which the savings association reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(3) The number and amount of small business and small farm loans located inside each assessment area reported by the savings association and the number and amount of small business and small farm loans located outside the assessment area(s) reported by the savings association; and

(4) The number and amount of community development loans reported as originated or purchased.

(i) *Aggregate disclosure statements.* The OTS, in conjunction with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, prepares annually, for each MSA (including an MSA that crosses a state boundary) and the non-MSA portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 25, 228, or 345 of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the OTS may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

(j) *Central data depositories.* The OTS makes the aggregate disclosure statements, described in paragraph (i) of this section, and the individual savings association CRA Disclosure Statements, described in paragraph (h) of this section, available to the public at central data depositories. The OTS publishes a list of the depositories at which the statements are available.

§ 563e.43 Content and availability of public file.

(a) *Information available to the public.* A savings association shall maintain a public file that includes the following information:

(1) All written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the savings association's performance in helping to meet community credit needs, and any response to the comments by the savings association, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the savings association or publication of which would violate specific provisions of law;

(2) A copy of the public section of the savings association's most recent CRA Performance Evaluation prepared by the OTS. The savings association shall place this copy in the public file within 30 business days after its receipt from the OTS;

(3) A list of the savings association's branches, their street addresses, and geographies;

(4) A list of branches opened or closed by the savings association during the current year and each of the prior two calendar years, their street addresses, and geographies;

(5) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the savings association's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. At its option, a savings association may include information regarding the availability of alternative systems for delivering retail banking services (*e.g.*, ATMs, ATMs not owned or operated by or exclusively for the savings association, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs);

(6) A map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list; and

(7) Any other information the savings association chooses.

(b) *Additional information available to the public*—(1) *Savings associations other than small savings associations.* A savings association, except a small savings association or a savings association that was a small savings association during the prior calendar year, shall include in its public file the following information pertaining to the savings association and its affiliates, if

applicable, for each of the prior two calendar years:

(i) If the savings association has elected to have one or more categories of its consumer loans considered under the lending test, for each of these categories, the number and amount of loans:

(A) To low-, moderate-, middle-, and upper-income individuals;

(B) Located in low-, moderate-, middle-, and upper-income census tracts; and

(C) Located inside the savings association's assessment area(s) and outside the savings association's assessment area(s); and

(ii) The savings association's CRA Disclosure Statement. The savings association shall place the statement in the public file within three business days of its receipt from the OTS.

(2) *Savings associations required to report Home Mortgage Disclosure Act (HMDA) data.* A savings association required to report home mortgage loan data pursuant to part 203 of this title shall include in its public file a copy of the HMDA Disclosure Statement provided by the Federal Financial Institutions Examination Council pertaining to the savings association for each of the prior two calendar years. In addition, a savings association that elected to have the OTS consider the mortgage lending of an affiliate for any of these years shall include in its public file the affiliate's HMDA Disclosure Statement for those years. The savings association shall place the statement(s) in the public file within three business days after its receipt.

(3) *Small savings associations.* A small savings association or a savings association that was a small savings association during the prior calendar year shall include in its public file:

(i) The savings association's loan-to-deposit ratio for each quarter of the prior calendar year and, at its option, additional data on its loan-to-deposit ratio; and

(ii) The information required for other savings associations by paragraph (b)(1) of this section, if the savings association has elected to be evaluated under the lending, investment, and service tests.

(4) *Savings associations with strategic plans.* A savings association that has been approved to be assessed under a strategic plan shall include in its public file a copy of that plan. A savings association need not include information submitted to the OTS on a confidential basis in conjunction with the plan.

(5) *Savings associations with less than satisfactory ratings.* A savings association that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The savings association shall update the description quarterly.

(c) *Location of public information.* A savings association shall make available to the public for inspection upon request and at no cost the information required in this section as follows:

(1) At the main office and, if an interstate savings association, at one branch office in each state, all information in the public file; and

(2) At each branch:

(i) A copy of the public section of the savings association's most recent CRA Performance Evaluation and a list of services provided by the branch; and

(ii) Within five calendar days of the request, all the information in the public file relating to the assessment area in which the branch is located.

(d) *Copies.* Upon request, a savings association shall provide copies, either on paper or in another form acceptable to the person making the request, of the information in its public file. The savings association may charge a reasonable fee not to exceed the cost of copying and mailing (if applicable).

(e) *Updating.* Except as otherwise provided in this section, a savings association shall ensure that the information required by this section is current as of April 1 of each year.

§ 563e.44 Public notice by savings associations.

A savings association shall provide in the public lobby of its main office and each of its branches the appropriate public notice set forth in Appendix B of this part. Only a branch of a savings association having more than one assessment area shall include the bracketed material in the notice for branch offices. Only a savings association that is an affiliate of a holding company shall include the last two sentences of the notices.

§ 563e.45 Publication of planned examination schedule.

The OTS publishes at least 30 days in advance of the beginning of each calendar quarter a list of savings associations scheduled for CRA examinations in that quarter.

Subpart D—Transition Rules

§ 563e.51 Transition rules.

(a) *Effective date.* Sections of this part become applicable over a period of time in accordance with the schedule set forth in paragraph (c) of this section.

(b) *Data collection and reporting; strategic plan; performance tests and standards*—(1) *Data collection and reporting.* (i) On January 1, 1996, the data collection requirements set forth in § 563e.42 (except § 563e.42(b) and (g)) become applicable.

(ii) On January 1, 1997, the data reporting requirements set forth in § 563e.42(b) and (g) become applicable.

(2) *Small savings associations.* Beginning January 1, 1996, the OTS evaluates savings associations that qualify for the small savings association performance standards described in § 563e.26 under that section.

(3) *Strategic plan.* Beginning January 1, 1996, a savings association that elects to be evaluated under an approved strategic plan pursuant to § 563e.27 may submit its strategic plan to the OTS for approval.

(4) *Other performance tests.* (i) Beginning January 1, 1996, a savings association may elect to be evaluated under the pertinent revised performance tests described in §§ 563e.22, 563e.23, 563e.24, and 563e.25, if the savings association provides the necessary data to permit evaluation.

(ii) Beginning July 1, 1997, the OTS evaluates all savings associations under the pertinent revised performance tests.

(c) *Schedule.* (1) On July 1, 1995, §§ 563e.11, 563e.12, 563e.29, and 563e.51 become applicable, and §§ 563e.1, 563e.2, and 563e.8 expire.

(2) On January 1, 1996, § 563e.41 and the pertinent provisions of Subpart B of this part will apply to savings associations that elect to be evaluated under §§ 563e.22 through 563e.25, savings associations that submit for approval strategic plans under § 563e.27, and savings associations that qualify for the small savings association performance standards described in § 563e.26.

(3) On January 1, 1996, §§ 563e.42 (except § 563e.42(b) and (g)) and 563e.45 become applicable.

(4) On January 1, 1997, §§ 563e.41 and 563e.42(b) and (g) become applicable.

(5) On July 1, 1997, §§ 563e.21 through 563e.28, 563e.43, and 563e.44 become applicable, and §§ 563e.3 through 563e.7, and 563e.51 expire.

Appendix A to Part 563e—Ratings

(a) *Ratings in general.* (1) In assigning a rating, the OTS evaluates a savings association's performance under the applicable performance criteria in this part, in accordance with § 563e.21 and § 563e.28, which provides for adjustments on the basis of evidence of discriminatory or other illegal credit practices.

(2) A savings association's performance need not fit each aspect of a particular rating profile in order to receive that rating, and

exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The savings association's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(b) *Savings associations evaluated under the lending, investment, and service tests.* (1) *Lending performance rating.* The OTS assigns each savings association's lending performance one of the five following ratings.

(i) *Outstanding.* The OTS rates a savings association's lending performance ''outstanding'' if, in general, it demonstrates:

(A) Excellent responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A substantial majority of its loans are made in its assessment area(s);

(C) An excellent geographic distribution of loans in its assessment area(s);

(D) An excellent distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the savings association;

(E) An excellent record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Extensive use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It is a leader in making community development loans.

(ii) *High satisfactory.* The OTS rates a savings association's lending performance ''high satisfactory'' if, in general, it demonstrates:

(A) Good responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A high percentage of its loans are made in its assessment area(s);

(C) A good geographic distribution of loans in its assessment area(s);

(D) A good distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the savings association;

(E) A good record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a relatively high level of community development loans.

(iii) *Low satisfactory.* The OTS rates a savings association's lending performance ''low satisfactory'' if, in general, it demonstrates:

(A) Adequate responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) An adequate percentage of its loans are made in its assessment area(s);

(C) An adequate geographic distribution of loans in its assessment area(s);

(D) An adequate distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the savings association;

(E) An adequate record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Limited use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made an adequate level of community development loans.

(iv) *Needs to improve.* The OTS rates a savings association's lending performance ''needs to improve'' if, in general, it demonstrates:

(A) Poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A small percentage of its loans are made in its assessment area(s);

(C) A poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the savings association;

(E) A poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Little use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a low level of community development loans.

(v) *Substantial noncompliance.* The OTS rates a savings association's lending performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

(A) A very poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A very small percentage of its loans are made in its assessment area(s);

(C) A very poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A very poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the savings association;

(E) A very poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) No use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made few, if any, community development loans.

(2) *Investment performance rating.* The OTS assigns each savings association's investment performance one of the five following ratings.

(i) *Outstanding.* The OTS rates a savings association's investment performance ''outstanding'' if, in general, it demonstrates:

(A) An excellent level of qualified investments, particularly those that are not routinely provided by private investors, often in a leadership position;

(B) Extensive use of innovative or complex qualified investments; and

(C) Excellent responsiveness to credit and community development needs.

(ii) *High satisfactory.* The OTS rates a savings association's investment performance ''high satisfactory'' if, in general, it demonstrates:

(A) A significant level of qualified investments, particularly those that are not routinely provided by private investors, occasionally in a leadership position;

(B) Significant use of innovative or complex qualified investments; and

(C) Good responsiveness to credit and community development needs.

(iii) *Low satisfactory.* The OTS rates a savings association's investment performance ''low satisfactory'' if, in general, it demonstrates:

(A) An adequate level of qualified investments, particularly those that are not routinely provided by private investors, although rarely in a leadership position;

(B) Occasional use of innovative or complex qualified investments; and

(C) Adequate responsiveness to credit and community development needs.

(iv) *Needs to improve.* The OTS rates a savings association's investment performance ''needs to improve'' if, in general, it demonstrates:

(A) A poor level of qualified investments, particularly those that are not routinely provided by private investors;

(B) Rare use of innovative or complex qualified investments; and

(C) Poor responsiveness to credit and community development needs.

(v) *Substantial noncompliance.* The OTS rates a savings association's investment performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

(A) Few, if any, qualified investments, particularly those that are not routinely provided by private investors;

(B) No use of innovative or complex qualified investments; and

(C) Very poor responsiveness to credit and community development needs.

(3) *Service performance rating.* The OTS assigns each savings association's service performance one of the five following ratings.

(i) *Outstanding.* The OTS rates a savings association's service performance ''outstanding'' if, in general, the savings association demonstrates:

(A) Its service delivery systems are readily accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has improved the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It is a leader in providing community development services.

(ii) *High satisfactory.* The OTS rates a savings association's service performance ''high satisfactory'' if, in general, the savings association demonstrates:

(A) Its service delivery systems are accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides a relatively high level of community development services.

(iii) *Low satisfactory.* The OTS rates a savings association's service performance ''low satisfactory'' if, in general, the savings association demonstrates:

(A) Its service delivery systems are reasonably accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides an adequate level of community development services.

(iv) *Needs to improve.* The OTS rates a savings association's service performance ''needs to improve'' if, in general, the savings association demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides a limited level of community development services.

(v) *Substantial noncompliance.* The OTS rates a savings association's service performance as being in ''substantial noncompliance'' if, in general, the savings association demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to significant portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has significantly adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides few, if any, community development services.

(c) *Wholesale or limited purpose savings associations.* The OTS assigns each wholesale or limited purpose savings association's community development performance one of the four following ratings.

(1) *Outstanding.* The OTS rates a wholesale or limited purpose savings association's community development performance ''outstanding'' if, in general, it demonstrates:

(i) A high level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Extensive use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Excellent responsiveness to credit and community development needs in its assessment area(s).

(2) *Satisfactory.* The OTS rates a wholesale or limited purpose savings association's community development performance ''satisfactory'' if, in general, it demonstrates:

(i) An adequate level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Occasional use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Adequate responsiveness to credit and community development needs in its assessment area(s).

(3) *Needs to improve.* The OTS rates a wholesale or limited purpose savings association's community development performance as ''needs to improve'' if, in general, it demonstrates:

(i) A poor level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Rare use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Poor responsiveness to credit and community development needs in its assessment area(s).

(4) *Substantial noncompliance.* The OTS rates a wholesale or limited purpose savings association's community development performance in ''substantial noncompliance'' if, in general, it demonstrates:

(i) Few, if any, community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) No use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Very poor responsiveness to credit and community development needs in its assessment area(s).

(d) *Savings associations evaluated under the small savings association performance standards.* The OTS rates the performance of each savings association evaluated under the small savings association performance standards as follows:

(1) *Eligibility for a satisfactory rating.* The OTS rates a savings association's performance ''satisfactory'' if, in general, the savings association demonstrates:

(i) A reasonable loan-to-deposit ratio (considering seasonal variations) given the savings association's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(ii) A majority of its loans and, as appropriate, other lending-related activities are in its assessment area(s);

(iii) A distribution of loans to and, as appropriate, other lending related-activities for individuals of different income levels (including low- and moderate-income

individuals) and businesses and farms of different sizes that is reasonable given the demographics of the savings association's assessment area(s);

(iv) A record of taking appropriate action, as warranted, in response to written complaints, if any, about the savings association's performance in helping to meet the credit needs of its assessment area(s); and

(v) A reasonable geographic distribution of loans given the savings association's assessment area(s).

(2) *Eligibility for an outstanding rating.* A savings association that meets each of the standards for a ''satisfactory'' rating under this paragraph and exceeds some or all of those standards may warrant consideration for an overall rating of ''outstanding.'' In assessing whether a savings association's performance is ''outstanding,'' the OTS considers the extent to which the savings association exceeds each of the performance standards for a ''satisfactory'' rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(3) *Needs to improve or substantial noncompliance ratings.* A savings association also may receive a rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

(e) *Strategic plan assessment and rating.* (1) *Satisfactory goals.* The OTS approves as ''satisfactory'' measurable goals that adequately help to meet the credit needs of the savings association's assessment area(s).

(2) *Outstanding goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as ''satisfactory,'' the OTS will approve those goals as ''outstanding.''

(3) *Rating.* The OTS assesses the performance of a savings association operating under an approved plan to determine if the savings association has met its plan goals:

(i) If the savings association substantially achieves its plan goals for a satisfactory rating, the OTS will rate the savings association's performance under the plan as ''satisfactory.''

(ii) If the savings association exceeds its plan goals for a satisfactory rating and substantially achieves its plan goals for an outstanding rating, the OTS will rate the savings association's performance under the plan as ''outstanding.''

(iii) If the savings association fails to meet substantially its plan goals for a satisfactory rating, the OTS will rate the savings association as either ''needs to improve'' or ''substantial noncompliance,'' depending on the extent to which it falls short of its plan goals, unless the savings association elected in its plan to be rated otherwise, as provided in § 25.27(f)(4).

Appendix B to Part 563e—CRA Notice

(a) *Notice for main offices and, if an interstate savings association, one branch office in each state.*

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Office of Thrift Supervision (OTS) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The OTS also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the OTS; and comments received from the public relating to our performance in helping to meet community credit needs, as well as our responses to those comments. You may review this information today.

At least 30 days before the beginning of each quarter, the OTS publishes a nationwide list of the savings associations that are scheduled for CRA examination in that quarter. This list is available from the Regional Director (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at savings association) and OTS (address). Your letter, together with any response by us, will be considered by the OTS in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Regional Director. You may also request from the Regional Director an announcement of our applications covered by the CRA filed with the OTS. We are an affiliate of (name of holding company), a savings and loan holding company. You may request from the Regional Director an announcement of applications covered by the CRA filed by savings and loan holding companies.

(b) *Notice for branch offices.*

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Office of Thrift Supervision (OTS) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The OTS also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA. You may review today the public section of our most recent CRA evaluation, prepared by the OTS, and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us: (1) A map showing the assessment area containing this branch, which is the area in which the OTS evaluates our CRA performance in this community; (2) information about our branches in this assessment area; (3) a list of services we provide at those locations; (4) data on our lending performance in this assessment area; and (5) copies of all written comments received by us that specifically relate to our CRA performance in this assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire savings association is available at (name of office located in state), located at (address).]

At least 30 days before the beginning of each quarter, the OTS publishes a nationwide list of the savings associations that are scheduled for CRA examination in that quarter. This list is available from the Regional Director (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at savings association) and the Regional Director (address). Your letter, together with any response by us, will be considered by the OTS in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Regional Director. You may also request from the Regional Director an announcement of our applications covered by the CRA filed with the OTS. We are an affiliate of (name of holding company), a savings and loan holding company. You may request from the Regional Director an announcement of applications covered by the CRA filed by savings and loan holding companies.

§§ 563e.1, 563e.2, and 563e.8 [Removed]

3. Sections 563e.1, 563e.2, and 563e.8 are removed effective July 1, 1995.

§§ 563e.3, 563e.4, 563e.5, 563e.6, and 563e.7 and Subpart D [Removed]

4. Sections 563e.3, 563e.4, 563e.5, 563e.6 and 563e.7, and subpart D, consisting of 563e.51 are removed effective July 1, 1997.

Dated: April 19, 1995.

By the Office of Thrift Supervision.

Jonathan L Fiechter,

Acting Director.

[FR Doc. 95–10503 Filed 5–3–95; 8:45 am]

BILLING CODES 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–0848]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a final rule to amend Regulation C (Home Mortgage Disclosure) and the instructions that financial institutions

must use to comply with the annual reporting requirements under the regulation. The amendments conform Regulation C to reflect revisions adopted by the Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision to their regulations implementing the Community Reinvestment Act (CRA). Under the joint CRA rule (published elsewhere in today's **Federal Register**), banks or savings associations that report data about their home mortgage lending pursuant to the Home Mortgage Disclosure Act (HMDA)—and that have assets of $250 million or more, or that are subsidiaries of a holding company with total banking and thrift assets of $1 billion or more—will collect and report geographic information on loans and loan applications relating to property located outside the Metropolitan Statistical Areas (MSAs) in which the institution has a home or branch office, or outside any MSA. Currently, geographic identification is required only within MSAs where these lenders have a home or branch office. Data will be collected and reported in accordance with the instructions in Regulation C. The agencies believe that these data will provide geographic detail on home mortgage lending that will facilitate more complete CRA assessments for institutions that do not qualify as small banks or thrifts.

DATES: This final rule is effective May 1, 1995. Compliance is mandatory for loan and application data collected beginning January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell or W. Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Board's Regulation C (12 CFR Part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq*). HMDA requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity. Annually, lenders must report that data to their federal supervisory agencies and disclose the data to the public. The reports and disclosures cover loan originations, applications that do not result in originations (for example, applications that are denied or withdrawn), and loan purchases. Information reported includes the location of the property to which the loan or application relates; the race or national origin, gender, and gross annual income of the borrower or applicant; and the type of purchaser for loans sold in the secondary market.

II. Summary of Amendment

In October 1994 (59 FR 51232, October 7, 1994), the federal financial regulatory agencies proposed amendments to their CRA regulations requiring banks or savings associations that report data about their home mortgage lending pursuant to HMDA—and that have assets of $250 million or more, or that are subsidiaries of a holding company with total banking and thrift assets of $250 million or more—to collect and report geographic information on loans and applications relating to property located in metropolitan areas whether or not the institution has a home or branch office there. They also would report geographic information for property located outside any MSA. (This proposal did not affect the current exemption in § 203.3 of Regulation C for banks and savings associations; institutions whose assets are $10 million or less remain exempt.) Currently, lenders have the option of collecting this information but are not required to do so. The agencies believed that these data would provide geographic detail on home mortgage lending that would facilitate more complete CRA assessments for institutions that do not qualify as small banks or thrifts.

Commenters were divided on the proposal. Several commenters expressed concern about the administrative burden and costs of complying with the expanded reporting requirements. Many of those commenters asserted that comprehensive, accurate geographic information often is difficult to obtain. Other commenters indicated that the regulatory burden of the expanded reporting requirements would not be significant and noted that the additional data would facilitate a more precise and quantifiable CRA assessment process. Several commenters believed that it would be difficult to comply with the proposed amendment by July 1995 and that half-year data would be of limited usefulness. These commenters suggested that expanded data collection requirements should go into effect on January 1, 1996. A number of commenters addressed the reporting exemption for small banks, with some suggesting that assets should be measured at the level of the financial institution, not the bank holding company.

The Board believes that the expanded reporting requirements will provide information about lenders' overall mortgage lending activity that will assist in developing a more accurate CRA assessment. The final amendments address concerns expressed by commenters. As required by agency regulations implementing CRA, bank and savings associations that are subsidiaries of a holding company with total banking and thrift assets of $1 billion or more are covered by the reporting rules; the proposal would have covered such subsidiaries of a holding company with total assets of $250 million or more. Institutions must collect these data if the bank or savings association had assets of $250 million or more (or are subsidiaries of a holding company with total banking and thrift assets of $1 billion or more) for the prior two consecutive years (as of December 31). The data collection requirements go into effect for calendar year 1996, with institutions required to report the data in 1997.

The Board believes that the benefits of this additional information outweigh any additional compliance burdens. Based on the comments received and further analysis, the Board is adopting final amendments to Regulation C. Set forth below is a discussion of the final rule.

Section 203.4—Compilation of Loan Data

Paragraph (e)—Data Reporting Under CRA

The final rule adds a new paragraph to implement revisions to the agencies' CRA regulations. Under the joint CRA rule, banks or savings associations that report data about their home mortgage lending pursuant to HMDA—and have assets of $250 million or more, or are subsidiaries of a holding company with total banking and thrift assets of $1 billion or more—will collect and report geographic information for all loans and applications, not just for loans and applications relating to property in MSAs where the institution has a home or branch office. The requirement also applies to property located outside any MSA. The agencies believe that incorporating these reporting requirements in Regulation C will facilitate compliance for lenders.

Appendix A—Form and Instructions for Completion of HMDA Loan/Application Register

V. Instructions for Completion of Loan/Application Register

C. Property Location

The Board is adding a new paragraph to conform Regulation C to the CRA reporting requirements for banks and savings associations with assets of $250 million or more and banks and savings associations that are subsidiaries of a holding company with total banking and thrift assets of $1 billion or more.

III. Regulatory Flexibility Analysis

The Board's Office of the Secretary has prepared an economic impact analysis of the amendments to Regulation C. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or by telephone at (202) 452–3245.

IV. Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Ch. 35; 5 CFR 1320.13), the amended information collection has been reviewed by the Board under the authority delegated to the Board by the Office of Management and Budget after consideration of comments received during the public comment period.

The collection of information in this rule is in 12 CFR 203.4. This additional information will provide geographic detail on home mortgage lending that will facilitate more complete CRA assessments for institutions that do not qualify as small banks or thrifts.

The estimated annual burden per respondent varies from 10 to 10,000 hours, depending on individual circumstances, with an estimated average of 200 hours. The revision is expected to affect about 5 percent of the loans reported by large state members banks, adding approximately 5 minutes, on average, to the time required to complete the report. There will be an estimated 507 state member bank reporters, averaging 202 hours and an estimated 84 mortgage banking subsidiaries, averaging 160 hours.

List of Subjects in 12 CFR Part 203

Banks, banking, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 203 to read as set forth below:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

2. Section 203.4 is amended by adding a new paragraph (e) to read as follows:

§ 203.4 Compilation of loan data.

* * * * *

(e) *Data reporting under CRA for banks and savings associations with total assets of $250 million or more and banks and savings associations that are subsidiaries of a holding company whose total banking and thrift assets are $1 billion or more.* As required by agency regulations that implement the Community Reinvestment Act, banks and savings associations that had total assets of $250 million or more (or are subsidiaries of a holding company with total banking and thrift assets of $1 billion or more) as of December 31 for each of the immediately preceding two years, shall also collect the location of property located outside the MSAs in which the institution has a home or branch office, or outside any MSAs.

3. Appendix A to Part 203 is amended by revising the introductory text of paragraph V.C. and by adding a new paragraph V.C.7. to read as follows:

Appendix A to Part 203—Form and Instructions for Completion of HMDA Loan/Application Register

* * * * *

V. * * *

C. Property Location

In these columns enter the applicable codes for the MSA, state, county, and census tract for the property to which a loan relates. For home purchase loans secured by one dwelling, but made for the purpose of purchasing another dwelling, report the property location for the property in which the security interest is to be taken. If the home purchase loan is secured by more than one property, report the location data for the property being purchased. (See paragraphs 5., 6., and 7. of paragraph V.C. of this appendix for treatment of loans on property outside the MSAs in which you have offices.)

* * * * *

7. Data Reporting Under CRA for Banks and Savings Associations With Total Assets of $250 Million or More and Banks and Savings Associations That Are Subsidiaries of a Holding Company Whose Total Banking and Thrift Assets Are $1 Billion or More

If you are a bank or savings association with total assets of $250 million or more as of December 31 for each of the immediately preceding two years, you must also enter the location of property located outside the MSAs in which you have a home or branch office, or outside any MSA. You must also enter this information if you are a bank or savings association that is a subsidiary of a holding company with total banking and thrift assets of $1 billion or more as of December 31 for each of the immediately preceding two years.

* * * * *

By order of the Board of Governors of the Federal Reserve System, April 24, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–10475 Filed 5–3–95; 8:45 am]

BILLING CODE 6210–01–P

Federal Register

Thursday
May 4, 1995

Part IV

Environmental Protection Agency

40 CFR Part 131

Stay of Federal Water Quality Criteria for Metals; Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance—Revision of Metals Criteria; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–5196–2]

Stay of Federal Water Quality Criteria for Metals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Administrative stay.

SUMMARY: In December 1992, EPA promulgated water quality criteria for toxic pollutants in order to protect human health and aquatic life in fourteen states that had not adopted the necessary toxics criteria as required by the Clean Water Act. Some of the criteria are for protection of aquatic life from the effects of metals in the water. After EPA promulgated the rule, EPA issued a new policy for setting water quality criteria for metals. In order to allow permitting authorities in the states covered by the rule the flexibility to follow EPA's new policy, the Agency is staying the effectiveness of specific metals criteria promulgated in the rule. The stay will remain in effect until EPA promulgates new metals criteria for the states covered by the rule.

EFFECTIVE DATE: This stay is effective April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Tim Kasten, Office of Science and Technology, Office of Water (4304), USEPA, 401 M Street SW., Washington, D.C. 20460, (202) 260–5994.

SUPPLEMENTARY INFORMATION:

Background

In the National Toxics Rule (''NTR''), EPA promulgated numeric water quality criteria for toxic pollutants for fourteen states and jurisdictions that had not adopted sufficient criteria (''NTR states''). 57 FR 60848 (December 22, 1992). That action brought those states into compliance with section 303(c)(2)(B) of the Clean Water Act (''CWA'') which requires states to adopt criteria for all toxic pollutants the discharge or presence of which could interfere with state designated uses of waters, and for which EPA had published criteria.

Among the criteria that EPA promulgated for the NTR states were aquatic life water quality criteria for metals (''metals criteria''). Aquatic life water quality criteria are estimates of the highest concentration of a substance that may be present in water while maintaining the protection of aquatic life from acute or chronic effects. A central issue in establishing and implementing metals criteria is how to accurately determine the fraction of the total metal that is biologically available and toxic.

At the time that EPA promulgated the NTR, the Agency's policy was to express metals criteria using total recoverable metal concentrations (''total recoverable metal''). While metals criteria could be implemented by measuring either total recoverable metal or dissolved metal, total recoverable metal measurement, being more conservative, provided a greater level of protection than dissolved metal measurement. Because the NTR was to cover a substantial number of water bodies, EPA chose the simplest, most protective approach, and the one reflected in its criteria documents to implement the metals criteria, and promulgated metals criteria based on total recoverable metal.

After promulgation of the NTR, the Agency continued to address the issue of how best to express metals criteria. EPA held a meeting with invited experts in January 1993 in Annapolis, Maryland to further elicit comment on the use of total recoverable metal versus dissolved metal in developing national metals criteria. The Agency solicited comments on the recommendations made by presenters at the meeting in the **Federal Register** on July 9, 1993 (58 FR 32131). Subsequently, EPA determined that dissolved metal approximates the biologically available fraction of waterborne metals for aquatic organisms better than total recoverable metal. On October 1, 1993, the Agency issued guidance on the interpretation and implementation of metals criteria providing that ''[i]t is now the policy of the Office of Water that the use of dissolved metal to set and measure compliance with water quality standards is the recommended approach * * *''. *Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria.*

A number of parties brought lawsuits challenging the NTR metals criteria. The Plaintiffs in those lawsuits wanted the permitting authorities in the NTR states to use criteria based on dissolved metal. EPA has concluded that it is in the public interest to revise the metals criteria promulgated in the NTR to reflect the new metals policy. In settlement of the litigation, EPA has agreed to stay the numeric aquatic life water quality criteria (expressed as total recoverable metal) for: arsenic, cadmium, chromium (III), chromium (VI), copper, lead, mercury (acute only), nickel, selenium (saltwater only), silver, and zinc. This stay will be in effect until EPA takes action to amend the NTR by promulgating new metals criteria based on dissolved metal.

Effective Date of the Stay

Pursuant to section 705 of the Administrative Procedure Act (APA) (5 U.S.C. 705), ''when an agency finds that justice so requires, it may postpone the effective date of actions taken by it, pending judicial review.'' EPA has determined that this stay is necessary pending resolution of the litigation. Consequently, EPA finds issuance of this stay is in the interests of justice.

In addition, under section 553 of the APA (5 U.S.C. 553), when an Agency finds good cause to exist, it may issue a rule without first providing notice and comment and make the rule immediately effective. EPA believes that it has good cause both to issue this stay without notice and comment and to make the stay immediately effective.

A stay of the metals criteria is central to the settlement of the pending litigation, and it is in the public interest to avoid costly and potentially protracted litigation by issuing a stay. Further, the stay relieves a burden on the regulated community. The stay will avoid potential harm to dischargers in the NTR states for which National Pollutant Discharge Elimination System permits are being issued pursuant to section 402 of the Clean Water Act by allowing permitting authorities to establish permit limits based on dissolved metal concentrations consistent with current Agency policy. It is not in the public interest to require permitting authorities in the NTR states to impose effluent limitations based on total recoverable metal ambient water quality criteria which EPA now considers to be more stringent than may be necessary to protect designated uses.

EPA considers staying the metals criteria to be in the public interest as noted above, and therefore good cause exists to issue the stay without notice and comment and to make the stay immediately effective.

Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (56 FR 51735, October 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 and review by the Office of Management and Budget). 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 entitlements, 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 order. Pursuant to the terms of this order, EPA has determined that this stay would not be ''significant''.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is certifying that a stay of these criteria would not have a significant impact on a substantial number of small businesses.

C. Paperwork Reduction Act

There are no information collection requirements associated with this administrative stay covered under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 131

Environmental protection, Water pollution control, Water quality standards, Toxic pollutants.

Dated: April 14, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 131 of title 40 of the Code of Federal Regulations is amended as follows:

PART 131—[AMENDED]

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.

2. Part 131 is amended by adding at the end of § 131.36(b)(1) the following ''Note to paragraph (b)(1)'':

§ 131.36 Toxics criteria for those States not complying with Clean Water Act Section 303(c)(2)(B).

* * * * *

(b)(1) * * *

Note to paragraph (b)(1): On April 14, 1995, the Environmental Protection Agency issued a stay of certain criteria in paragraph (b)(1) of this section as follows: the criteria in columns B and C for arsenic, cadmium, chromium (VI), copper, lead, nickel, silver, and zinc; the criteria in B1 and C1 for mercury; the criteria in column B for chromium (III); and the criteria in column C for selenium. The stay remains in effect until further notice.

[FR Doc. 95–10147 Filed 5–3–95; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[WH–FRL–5196–1]

Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance—Revision of Metals Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule, notice of data availability and request for comments.

SUMMARY: EPA is promulgating new aquatic life metals criteria for nine States, Puerto Rico, and the District of Columbia, that are subject to EPA's 1992 National Toxics Rule (''NTR''). These new metals criteria reflect EPA's current policy for setting water quality criteria for metals. This interim final rule establishes metals criteria that are protective of aquatic life and approximate, better than the 1992 criteria, the biologically available fraction of water borne metals to aquatic organisms. Use of the new metals criteria will allow permitting authorities in the nine States, Puerto Rico and the District of Columbia, to establish effluent limitations based on the new metals criteria rather than the 1992 criteria which EPA now considers to be more stringent than may be necessary to protect designated uses for aquatic life. The interim final rule will be in effect while EPA considers public comments and develops a final rule. This rule terminates the Administrative Stay published elsewhere in this issue of the **Federal Register**.

DATES: This interim final rule is effective April 15, 1995. Comments on the interim final rule and other data noticed in this preamble will be accepted until July 3, 1995.

ADDRESSES: An original and 3 copies of all comments and references on the interim final rule and data should be addressed to: Revision of the National Toxics Rule-Dissolved Metals Criteria, Comment Clerk; Water Docket (MC–4101), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The administrative record for this rulemaking is available for review and copying at the Environmental Protection Agency, Office of Water Docket, 401 M Street SW, Washington DC, 20460, Room L102, on weekdays during EPA's normal business hours of 8 a.m. until 4:30 p.m. For access to the Docket materials, call (202) 260–3027 between 9:00a.m.–3:30p.m., for an appointment. A reasonable fee will be charged for photocopies.

FOR FURTHER INFORMATION CONTACT: Timothy J. Kasten, telephone 202–260–5994.

SUPPLEMENTARY INFORMATION:

A. General Background

1. Regulatory Background

In the NTR, EPA promulgated numeric water quality criteria for 12 States, Puerto Rico, and the District of Columbia, that failed to comply fully with Section 303(c)(2)(B) of the Clean Water Act. (57 FR 60848, December 22, 1992 codified in the Code of Federal Regulations at 40 CFR 131.36).[1] Those criteria became the legally enforceable water quality standards in the named States, Puerto Rico, and the District of Columbia, for all purposes and programs under the Clean Water Act on February 5, 1993. Included among the water quality criteria promulgated in the NTR were numeric criteria for the protection of aquatic life for 11 metals: arsenic, cadmium, chromium (III), chromium (VI), copper, lead, mercury, nickel, selenium, silver, and zinc.

The Agency received extensive public comment during the development of the NTR regarding the most appropriate approach for expressing the metals criteria. The principal issue was the correlation between metals that are measured and metals that are bioavailable and toxic to aquatic life.

2. Policy on Aquatic Life Metals Criteria

At the time of the NTR promulgation, Agency policy was to express metals criteria, as recommended in its Section 304(a) criteria documents, as total recoverable metal measurements. Agency guidance prior to the NTR promulgation indicated that metals criteria may be expressed either as total recoverable metal or dissolved metal.[2]

[1] In the NTR, EPA determined compliance with Section 303(c)(2)(B) based on the status of State compliance as of 1991, the date of the proposed rulemaking, and then took into account EPA approval actions between the proposed and final rulemaking for those States included in the proposed rule. EPA acknowledges that, due to subsequent State actions to delete or otherwise modify toxics criteria (*e.g.*, see Table 1, 57 FR 60856, December 22, 1992), all States and Territories currently may not be in full compliance with Section 303(c)(2)(B).

[2] Interim Guidance on Interpretation and Implementation of Aquatic Life Criteria for Metals,

Continued

Because the NTR was to cover a substantial number of water bodies of varying water quality, EPA selected what it considered the simplest, more conservative approach and the approach reflected in its criteria documents, to implement the metals criteria, namely the total recoverable method. Accordingly, the metals criteria promulgated in the NTR were expressed as total recoverable metals, although EPA also provided for site-specific criteria development.[3]

Thereafter, EPA continued to work with States and other interested parties on the issue of metals bioavailability and toxicity. EPA held a workshop of invited experts on this issue; the results of the consultations were published at 58 FR 32131, June 8, 1993. As a result of these consultations, the Agency issued a policy memorandum on October 1, 1993, entitled: *Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria* (''Metals Policy''). (The complete October 1, 1993 memorandum can be obtained from EPA's Office of Water Resource Center (202) 260–7786 or the Office of Water Docket.) The Metals Policy states:

> It is now the policy of the Office of Water that the use of dissolved metal to set and measure compliance with water quality standards is the recommended approach, because dissolved metal more closely approximates the bioavailable fraction of metal in the water column than does total recoverable metal.

It further states:

> Until the scientific uncertainties are better resolved, a range of different risk management decisions can be justified. EPA recommends that State water quality standards be based on dissolved metal. EPA will also approve a State risk management decision to adopt standards based on total recoverable metal, if those standards are otherwise approvable as a matter of law. (See Section 510, Federal Water Pollution Control Act, Public Law 100–4, 33 U.S.C. 466 et seq.)

The adoption of the Metals Policy did not change the Agency's position that the existing total recoverable criteria published under Section 304(a) of the Clean Water Act continue to be scientifically defensible. EPA developed the total recoverable criteria using high-quality analytical data and are still scientifically defensible criteria. When developing and adopting its own standards, a State, in making its risk management decision, may wish to consider sediment, food chain effects and other fate-related issues and decide to adopt total recoverable or dissolved metals criteria.

In general, EPA continues to conduct research on metals toxicity to further refine the criteria and their implementation. However, the aim of both the Clean Water Act and EPA policy is that a more effective way of incorporating new science into the water quality program is for the States to promulgate their own standards and implementation policies. The States can then make appropriate updates, rather than relying on Federal promulgations such as today's rule.

3. Litigation and Settlement of NTR Metals Issues

A number of parties brought lawsuits challenging the NTR metals criteria. See *American Forest and Paper Ass'n, Inc. et al.* v. *EPA*, Consolidated case No. 93–0694 RMU (D.D.C.) The Plaintiffs in those lawsuits wanted the permitting authorities in the NTR States to use criteria based on dissolved metal rather than total recoverable. After careful consideration of the issue, EPA concluded that it was in the public interest to revise the metals criteria promulgated in the NTR to reflect the Office of Water's new metals policy. On February 15, 1995, EPA and the Plaintiffs filed a partial settlement agreement with the court. Pursuant to the terms of the partial settlement agreement, EPA agreed to issue an administrative stay of the numeric aquatic life water quality criteria (expressed as total recoverable metal) for: arsenic, cadmium, chromium (III), chromium (VI), copper, lead, mercury (acute only), nickel, selenium (saltwater only), silver, and zinc. That stay is published in a separate notice in today's **Federal Register**. The stay is intended to be in effect only until EPA takes action to amend the NTR by promulgating new metals criteria based on dissolved metal. With today's interim final rule, EPA is promulgating new metals criteria for those metals listed in the stay based on dissolved metal and therefore this action will supersede the administrative stay.

B. Today's Interim Final Rule

EPA's action today revises the NTR that established numeric aquatic life metals criteria for 9 States, Puerto Rico and the District of Columbia (Table 1). (Of the 12 NTR States, aquatic life metals criteria were only promulgated for nine.) The numeric criteria in today's rule reflect the Office of Water's current policy with respect to metals. This action promulgates dissolved metals criteria for those total recoverable metals criteria subject to the Agency's administrative stay.

TABLE 1.—STATES SUBJECT TO THE REVISED METALS CRITERIA [1]

Alaska
Arkansas
California
Idaho
Kansas
Michigan
New Jersey
Vermont
Washington
District of Columbia
Puerto Rico

[1] Today's interim final rule may have differing applicability for each of the States in this table depending on the State's individual compliance with Section 303(c)(2)(B) of the Clean Water Act. See 40 CFR 131.36(d) for State applicability.

C. Conversion Factors: Total Recoverable to Dissolved Metal

Because EPA's Section 304(a) criteria are expressed as total recoverable metal, to express the criteria as dissolved, application of a conversion factor is necessary to account for the particulate metal present in the laboratory toxicity tests used to develop the total recoverable criteria. Initially, EPA included a set of recommended freshwater conversion factors with the Metals Policy. Based on additional laboratory evaluations that simulated the original toxicity tests, EPA has refined the procedures used to develop freshwater conversion factors for aquatic life criteria. EPA made new conversion factors available for public comment in the context of EPA's Proposed Guidance for the Great Lakes System on August 30, 1994, at 59 FR 44678.

EPA has also conducted saltwater laboratory simulation tests for the development of conversion factors for saltwater metals criteria. The saltwater simulation tests were conducted using the same methodology as the freshwater tests with minor modifications, necessary to account for saltwater. The saltwater test results are being made available with today's rule. The conversion factors in this rule and other technical reports referenced herein, supersede the conversion factors presented in Attachment #2 of the Metals Policy.

Total recoverable to dissolved metal conversion factors were attached to the partial settlement agreement in the form of a draft guidance entitled, *Guidance to States Subject to the National Toxics Rule For Setting NPDES Limits During the Stay of the Metals Criteria.* (The partial settlement agreement is available from the Water Docket.) The draft guidance used data that were available through December 21, 1994. The

U.S. EPA, May 1992. (Notice of availability published at 57 FR 24041, June 5, 1992.)

[3] See Interim Guidance on the Determination and Use of Water-Effect Ratios for Metals, February 1994, EPA 823–B–94–001.

conversion factors presented in today's rule reflect the best science available to EPA at the time of promulgation and contain minor modifications from those in the attachment to the February 15 partial settlement agreement. For each metal specific conversion factor, the changes between the draft guidance and today's rule are less than 10%. EPA has determined these changes to be minor.

1. Freshwater Criteria Conversion Factors

The final freshwater conversion factors used in today's rule are contained in: ''Derivation of Conversion Factors for the Calculation of Dissolved Freshwater Aquatic Life Criteria for Metals'' (U.S. EPA, 1995), available from the Water Docket and are presented in Table 2 below. This study did not include laboratory simulation tests for mercury or silver, therefore, the freshwater conversion factors for mercury and silver used today are from the Metals Policy.

The conversion factors for most freshwater metals were established as constant values. For cadmium and lead however, EPA found that water hardness mediated the conversion factor and should be taken into account when converting total recoverable cadmium and lead criteria to dissolved. Table 2 presents the hardness-dependent conversion factors for cadmium and lead. The hardness-dependent conversion factor for lead was included in the August 30, 1994 Notice of Availability (59 FR 44678). In today's action, EPA is specifically requesting comment on the use of hardness-dependent conversion factor for cadmium.

TABLE 2.—FRESHWATER CRITERIA CONVERSION FACTORS FOR DISSOLVED METALS

Metal	Conversion factors [a]	
	Acute	Chronic
Arsenic	1.000	1.000
Cadmium [b]	0.944	0.909
Chromium (III)	0.316	0.860
Chromium(VI)	0.982	0.962
Copper	0.960	0.960
Lead [b]	0.791	0.791
Mercury	[c] 0.85	[d] N/A
Nickel	0.998	0.997
Silver	[c] 0.85	[e] N/A
Zinc	0.978	0.986

[a] The conversion factors are given to three decimal places because they are intermediate values in the calculation of dissolved criteria.

[b] Conversion factors are hardness-dependent. The values shown are with a hardness of 100 mg/L as calcium carbonate ($CaCO_3$). Conversion factors (CF) for any hardness can be calculated using the following equations:

Cadmium
Acute: CF=1.136672-[(ln hardness)(0.041838)]
Chronic: CF=1.101672-[(ln hardness)(0.041838)]
Lead (Acute and Chronic): CF=1.46203-[(ln hardness)(0.145712)]

[c] Conversion factor from: Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria, October 1, 1993. Factors were expressed to two decimal places.

[d] CCC for mercury cannot be converted to dissolved, because it is based on mercury residues in aquatic organisms rather than toxicity.

[e] Not applicable, EPA has not published final chronic criteria values for silver.

2. Saltwater Criteria Conversion Factors

Acute saltwater conversion factors are being made available through today's rule. The data and the acute criteria conversion factors for saltwater are contained in: ''Derivation of Conversion Factors for the Calculation of Dissolved Saltwater Aquatic Life Criteria for Metals'' (U.S. EPA 1995). This summary report and its supporting data are available from the Water Docket. Saltwater chronic conversion factors have not been developed separately and therefore are not available for today's rule. Based on close similarities between the freshwater acute and chronic conversion factors, EPA believes that, if calculated, the chronic saltwater conversion factors would be nearly the same as the acute saltwater factors. In the absence of these chronic conversion factors, the saltwater acute conversion factors will apply. The saltwater conversion factors are presented in Table 3 below. Saltwater simulation tests were not completed for mercury or silver, therefore the conversion factors from the Metals Policy will continue to apply.

TABLE 3.—SALTWATER CRITERIA CONVERSION FACTORS FOR DISSOLVED METALS

Metal	Conversion factors [a]
Arsenic	1.000
Cadmium	0.994
Chromium (III)	[d]
Chromium (VI)	0.993
Copper	0.83
Lead	0.951
Mercury	[b c] 0.85
Nickel	0.990
Selenium	0.998
Silver	[b] 0.85
Zinc	0.946

[a] Conversion factors on this table were calculated for acute criteria only. Conversion factors for chronic criteria are not currently available. In the absence of chronic conversion factors saltwater acute conversion factors are used.

[b] Conversion factor from: Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria, October 1, 1993. Factors were expressed to two decimal places.

[c] CCC for mercury cannot be converted to dissolved, because it is based on mercury residues in aquatic organisms rather than toxicity.

[d] No saltwater criteria.

D. Applicability Requirements for Metals Criteria

Through today's action, EPA is also requesting comments on the applicability requirements in 40 CFR 131.36(c) as they apply to the metals criteria. In particular, EPA is requesting comments on § 131.36(c)(4)(i) regarding the calculation of hardness-dependent freshwater metals criteria. Section 131.36(c)(4)(i) describes the minimum and maximum hardness values (25 mg/L and 400 mg/L as $CaCO_3$, respectively) to be used when calculating hardness-dependent freshwater metals criteria. This requirement is not changed by today's interim final rule, however EPA is requesting comment on an alternative approach. Most of the data used to develop these hardness formulas were in the hardness range of 25 mg/L to 400 mg/L as $CaCO_3$. The formulas are therefore most accurate in this range. Using a hardness of 25 mg/L for calculating criteria, when the actual ambient hardness is less than 25 mg/L, could result in criteria that are under-protective of aquatic life. EPA is therefore requesting comments on the use of the actual ambient hardness for calculating criteria when the hardness is below 25 mg/L as $CaCO_3$.

Most freshwaters of the U.S. have an ambient hardness of less than 400 mg/L as $CaCO_3$. Using 400 mg/L to calculate criteria, for waters with an ambient hardness of greater than 400 mg/L, may result in over-protective criteria because at a hardness above 400 mg/L, other confounding factors, which may cause this hardness, can also affect the toxicity. EPA is requesting comment on an approach that would make two options available for calculating metals criteria for waters with a hardness of greater than 400 mg/L as $CaCO_3$: *Option 1*—use 400 mg/L as $CaCO_3$ for the criteria calculation or, *Option 2*—use the actual hardness and require the use of the water-effect ratio to modify the final criteria value to more accurately reflect ambient conditions. (EPA notes that in the NTR States, the use of the water-effect ratio is assigned a value of 1.0, unless otherwise specified by the permitting authority. See 40 CFR 131.36(c)(4)(iii).)

E. Calculation of Dissolved Metals Criteria

Metals criteria values in 40 CFR 131.36(b)(1), as amended today, are now shown as dissolved metal. These criteria have been calculated in one of two ways. For freshwater metals criteria that are hardness-dependent (denoted by footnote ''e'' in the matrix), the dissolved metal criteria value must be calculated separately for each hardness using the table at § 131.36(b)(2), as amended today. The hardness-dependent freshwater criteria values presented in the matrix at § 131.36(b)(1) have been calculated using a hardness of 100 mg/L $CaCO_3$ for comparative purposes only. Saltwater metals criteria and freshwater criteria that are not hardness-dependent (criteria denoted by footnote ''m'' in the matrix) are calculated by taking the total recoverable criteria values (from EPA National Ambient Water Quality Criteria Documents) before rounding, and multiplying them by the appropriate conversion factors from Table 2 or 3 of Section C of this preamble. (The total recoverable criteria values are shown to four figures, where available, because they are intermediate values in the calculation of dissolved metals criteria.) The final dissolved metals criteria values, as they appear in the matrix at § 131.36(b)(1), are rounded to two significant figures. Tables 4a and 4b below, summarize the conversions for saltwater criteria and freshwater criteria that are not hardness-dependent.

EPA notes that if a non-NTR State adopts standards, or an NTR State adopts its own standards (for subsequent withdrawal from the NTR), it may prefer a more conservative approach and adopt total recoverable metals criteria. In doing so, the State may use EPA's total recoverable criteria from Tables 4a and 4b (rounded to two significant figures) or, for hardness-dependent freshwater criteria, omit the conversion factor from the formula presented in § 131.36(b)(2).

Tables 4a and 4b use the following abbreviations and formulas for calculating dissolved metals criteria (CMC and CCC are defined in 40 CFR 131.36(b)(1), footnote d):

CMC—Criterion Maximum Concentration

CCC—Criterion Continuous Concentration

CF—Conversion Factor

Formulas for Calculating Dissolved Metals Criteria:

$CMC_{dissolved} = CMC_{total\ recoverable} \times$ Acute CF

$CCC_{dissolved} = CCC_{total\ recoverable} \times$ Chronic CF

TABLE 4a.—CALCULATION OF FRESHWATER DISSOLVED METALS CRITERIA THAT ARE NOT HARDNESS-DEPENDENT

METAL	Total Recoverable Metals Criteria [1] (μg/L)		Conversion factors [2]		Dissolved metals criteria [3]	
	CMC	CCC	Acute	Chronic	CMC	CCC
Arsenic	359.1	188.9	1.000	1.000	360	190
Chromium(VI)	15.74	10.80	0.982	0.962	15	10
Mercury	2.428	0.0122	0.85	N/A	2.1	N/A

[1] From EPA National Ambient Water Quality Criteria Documents.
[2] From Table 2.
[3] Final dissolved metals criteria have been rounded to two significant figures.

TABLE 4b.—CALCULATION OF SALTWATER DISSOLVED METALS CRITERIA

Metal	Total recoverable metals criteria [1] (μg/L)		Conversion factors [2]		Dissolved metals criteria [3]	
	CMC	CCC	Acute	Chronic	CMC	CCC
Arsenic	68.55	36.05	1.000	1.000	69	36
Cadmium	42.54	9.345	0.994	0.994	42	9.3
Chromium (III)	N/A[4]	N/A[4]	N/A[4]	N/A[4]	N/A[4]	N/A[4]
Chromium (VI)	1079	49.86	0.993	0.993	1100	50
Copper	2.916	2.916	0.83	0.83	2.4	2.4
Lead	217.16	8.468	0.951	0.951	210	8.1
Mercury	2.062	.0250	0.85	N/A[5]	1.8	N/A[5]
Nickel	74.60	8.293	0.990	0.990	74	8.2
Selenium	293.8	70.69	0.998	0.998	290	71
Silver	2.3	N/A[4]	0.85	N/A[4]	1.9	N/A[4]
Zinc	95.10	86.14	0.946	0.946	90	81

[1] From EPA National Ambient Water Quality Criteria Documents.
[2] From Table 3.
[3] Final dissolved metals criteria have been rounded to two significant figures.
[4] Not applicable, national criteria not available.
[5] The CCC for mercury is expressed as total recoverable.

F. Site-Specific Criteria Modifications

EPA has issued guidance (Water Quality Standards Handbook, Second Edition-1993, EPA–823–B–93–002 and update #1, EPA–823–B–94–006, August 1994, at page 3–38 and Appendix L), describing three site-specific criteria development methodologies: recalculation procedure, indicator species procedure (also known as the water-effect ratio (WER)) and resident species procedure. Only the first two of these have been widely used.

In the NTR, EPA identified the WER as the method for optional site-specific criteria development for certain metals. On February 22, 1994, EPA issued *Interim Guidance on the Determination and Use of Water-Effect Ratios for Metals,* EPA 823–B–94–001, now incorporated into the updated Second Edition of the Water Quality Standards Handbook, Appendix L. In accordance with the WER guidance and where application of the WER is deemed

appropriate, EPA strongly encourages the application of the WER on a watershed or waterbody basis as opposed to application on a discharger-by-discharger basis. This approach is technically sound, an efficient use of resources, and allowable for permitting authorities under the NTR.

EPA's endorsement of the use of the WER is not affected by today's rule. As noted in the NTR at 57 FR 60879, the WER is a more comprehensive mechanism for addressing bioavailability issues than simply expressing the criteria in terms of dissolved metal. Consequently, expressing the criteria in terms of dissolved metal, as done in today's rule, does not completely eliminate the utility of the WER. This is particularly true for copper, a metal that forms reduced-toxicity complexes with dissolved organic matter.

The *Interim Guidance on Determination and Use of Water-Effect Ratios for Metals,* Appendix D, explains the relationship between WERs for dissolved criteria, and WERs for total recoverable criteria. Dissolved measurements are to be used in the site-specific toxicity testing underlying the WERs for dissolved criteria. Because WERs for dissolved criteria generally are little affected by elevated particulate concentrations, EPA expects those WERs to be somewhat less than WERs for total recoverable criteria in such situations. Nevertheless, after the site-specific ratio of dissolved to total metal has been taken into account, EPA expects a permit limit derived using a WER for a dissolved criterion to be similar to the permit limit that would be derived from the WER for the corresponding total recoverable criterion.

Because WERs for dissolved criteria generally are little affected by particulate concentrations, those WERS also may often exhibit less time variability than WERs for total recoverable criteria. Consequently, WER-adjusted dissolved criteria may have somewhat greater certainty than WER-adjusted total recoverable criteria.

EPA expects the use of WERs for dissolved criteria to provide the same level of protection as the use of WERs for total recoverable criteria in the NTR. However, the increased reliability of the dissolved criteria prior to WER adjustment (compared to the total recoverable criteria unadjusted) will reduce the need for site-specific WER determinations.

G. Technical Guidance

EPA continues to urge the States affected by this rule to adopt their own standards and negate the need for Federal action. Should a State choose to adopt dissolved criteria, EPA recommends use of the Metals Policy, its attachments (as updated herein) and other guidance referenced in this preamble for implementation of dissolved metals criteria. Attachments to the Metals Policy include: guidance on dynamic modeling and translators (Attachment #3), and clean analytical techniques and monitoring (Attachment #4). Additional guidance on clean and ultra-clean techniques is available and under development (see discussion below). EPA will continue to update implementation guidance as needed in the future.

1. Total Maximum Daily Loads (TMDLs) and National Pollutant Discharge Elimination System (NPDES) Permits

EPA's NPDES regulations require that limits for metals in permits be stated as total recoverable in most cases {see 40 CFR § 122.45(c)} except when an effluent guideline specifies the limitation in another form of the metal, the approved analytical methods measure only dissolved metal, or the permit writer expresses a metal's limit in another form (e.g., dissolved, specific valence, or total) when required to carry out provisions of the Clean Water Act. This is because the chemical conditions in ambient waters frequently differ substantially from those in the effluent and there is no assurance that effluent particulate metal would not dissolve after discharge. The NPDES permit regulations do not require that State water quality standards be expressed as total recoverable; rather, the regulations require permit writers to develop permit limits that are expressed in terms of metals concentrations and loadings that are measured using the total recoverable method. Expressing criteria as dissolved metal requires translation between different metal forms in the calculation of the permit limit so that a total recoverable permit limit can be established that will achieve water quality standards. Both the TMDL and NPDES permit use of water quality criteria in NTR States now require the ability to translate between dissolved metal in ambient waters and total recoverable metal in effluents. In addition to the guidance on dynamic modeling and translators attached to the Metals Policy, EPA's *Interim Guidance on the Determination and Use of Water-Effect Ratios for Metals,* February 1994, EPA 823–B–94–001 (pages 116 and 128–130), presents an effluent-specific approach for calculating a total recoverable metal permit limit from a dissolved metal criterion. EPA is expecting to complete additional guidance on translators in 1995.

2. Monitoring

a. Use of Clean Sampling and Analytical Techniques

In assessing waterbodies to determine the potential for toxicity problems due to metals, the quality of the data used is an important issue. Depending on the concentration of metal present, the use of ''clean'' and ''ultra-clean'' techniques for sampling and analysis may be critical to accurate data for implementation of aquatic life criteria for metals.

''Clean'' techniques refer to those requirements (or practices for sample collection and handling) necessary to produce reliable analytical data in the microgram per liter (µg/L) or part per billion (ppb) range. ''Ultra-clean'' techniques refer to those requirements or practices necessary to produce reliable analytical data in the nanogram per liter (ng/L) or part per trillion (ppt) range. Because typical concentrations of metals in surface waters and effluents vary from one metal to another, the effect of contamination on the quality of metals monitoring data varies appreciably.

EPA has developed protocols on the use of clean techniques in coordination with the United States Geological Survey (USGS). The guidance, entitled *Method 1669: Sampling Ambient Water for Determination of Trace Metals at EPA Water Quality Criteria Levels* is available from the Office of Water Resource Center as part of the Trace Metals Package. Draft protocols for ultra-clean techniques will be available in late calendar year 1995.

H. Saltwater Copper Criteria

The saltwater copper criteria in today's interim final rule are 2.4 µg/L dissolved copper for both CMC and CCC based on conversion of 2.9 µg/L for both the CMC and CCC from total recoverable to dissolved metal. New data collected from a study for the New York/New Jersey Harbor indicate the potential need to revise the copper criteria document to reflect a change in the saltwater CMC and CCC aquatic life values. A comprehensive literature search was conducted and toxicity test data for seven new species were added to the database for the saltwater copper criteria. EPA believes these new data have national implications and indicate the national criteria may be more accurate at a CMC of 4.8 µg/L dissolved and a CCC of 3.1 µg/L dissolved. In today's rulemaking, EPA is noticing the availability of data to support these

potential changes in the national saltwater copper criteria and solicits comments. The data can be found in the draft document entitled, *Ambient Water Quality Criteria—Copper, Addendum 1995.* This document is available from the Office of Water Resource Center or Water Docket. Based on those comments, the saltwater copper criteria in this interim final rule may be revised in the final rule to reflect these new data.

I. Procedural Requirements

Section 553 of the Administrative Procedure Act provides that when an agency, for good cause, finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, it may first issue a rule without providing notice and an opportunity to comment. EPA has concluded that there is good cause to issue this interim final rule without notice and comment and to make the rule effective immediately.

In 1987, Congress amended the Clean Water Act to provide that States must adopt numeric criteria to control the discharge of toxic pollutants. Before this requirement was enacted, few States had adopted numeric criteria for toxic pollutants and had to rely on ''narrative'' criteria (*e.g.,* ''free from toxics in toxic amounts'') to set discharge limits for such pollutants. Congress, expressing concern over the calculation of discharge limitations for toxics without numeric criteria, required States to adopt numeric, pollutant-specific criteria for toxic pollutants (56 FR 58423–58424, Nov. 19, 1991).

Following promulgation of the NTR, EPA continued to evaluate available information on metals. EPA held a public meeting of experts in which a recommendation was made to express the ambient water criteria as dissolved metal. This recommendation and others, were noticed for public comment at 58 FR 32131, June 8, 1993. It is EPA's judgment that aquatic life criteria for metals, when expressed as dissolved metal provide a more accurate measurement of metals bioavailability to organisms in the water column than when expressed as total recoverable metal. Thus, in some situations, the total recoverable metals criteria in the NTR may result in permit limits that are more stringent than if the criteria were expressed in a dissolved form. As a result, in these situations, permitting authorities in the NTR States may be imposing more stringent (and potentially more costly) effluent limitations on their dischargers than will be required to meet the new dissolved metals aquatic life criteria put in place today.

EPA considered the impacts of a stay of the current metals criteria while it undertook a standard rulemaking (*i.e.*, proposed rule followed by a final) to revise the aquatic life metals criteria to express them in a dissolved form. However, during the effective period of the stay (the interim between proposal and final rule), permitting authorities for the NTR States would generally need to use the States' narrative criteria (*e.g.,* free from toxics in toxic amounts) to develop permit limits for the discharge of toxics. Because the Congressional directive is clear that States must have numeric criteria for toxic pollutants, EPA rejected this approach in favor of an interim final rule.

By today's action the Agency upholds the intent of § 303(c)(2)(B) of the Clean Water Act and avoids the need for permitting authorities to rely on narrative criteria to develop permit limits. Further, this interim final rule is a temporary measure. The Agency notes that considerable public comment has already been obtained on the Metals Policy and the specific criteria being issued in this interim final rule. EPA held a meeting with invited experts in January 1993 in Annapolis, Maryland to further elicit comment on the use of dissolved metals for developing national metals criteria. The Agency solicited comments on the recommendations made by presenters at that meeting in the Federal Register on July 9, 1993 (58 FR 32131). The Metals Policy issued in October 1993 has received wide-spread distribution and informal response from many interested parties. In August 1994, EPA issued a **Federal Register** notice indicating that the Agency was considering the use of the Metals Policy to develop metals criteria in the Great Lakes Initiative (59 FR 44678, August 30, 1994) and comments were received on this issue. Today's action has the additional benefit of the comments received from the August 1994 notice on the Great Lakes Initiative.

EPA therefore concludes that public comment on this interim measure is unnecessary because ample comment has already been received on the numeric dissolved metals criteria and additional comment is being solicited and will be considered before a final rule is issued. Further, a public comment process before adopting the new metals criteria is contrary to the public interest because: 1) the current metals criteria place a potentially unnecessary regulatory burden on dischargers in the States covered by this rule, without necessarily providing additional protection to aquatic life in the water column and 2) it is in the public interest for the States to have numeric criteria protective of aquatic life.

Because of the potential adverse effect on public interest noted above, the Agency has determined there is good cause for making this regulation effective immediately.

J. Regulatory Assessment Requirements

1. Unfunded Mandates Reform Act of 1995

Section 201 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, requires each Agency, unless prohibited by law, to assess the effects of Federal regulation on State, local and tribal governments and the private sector under section 202 of the Act. EPA must prepare a written statement to accompany any rules where the estimated costs to State, local and tribal governments, in the aggregate, or to the private sector will be $100 million or more in any one year. Under section 205, for rules that require a written statement under section 202, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of such a rule and that is consistent with statutory requirements. Also, for such rules, section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly and uniquely affected by the rule.

EPA estimates that the costs to State, local, and tribal governments, or to the private sector, from today's interim final rule will not be $100 million or more. EPA has determined that this rule should reduce current regulatory requirements imposed by the NTR. By promulgating the metals criteria in the NTR as dissolved metals, rather than total recoverable, EPA is reducing potential costs to discharge permittees and other parties subject to the water quality criteria. Therefore, an unfunded mandates statement pursuant to section 202 is not necessary.

While an unfunded mandates statement is not necessary for this rule, EPA notes that it has previously considered the costs and benefits of promulgating Federal water quality criteria when the Agency issued the NTR in 1992. See 57 FR 60903–60909 (December 22, 1992). That analysis would continue to be relevant with respect to this issue of costs and benefits arising from Federal promulgation of criteria for states. Of course, to the extent today's interim final rule is putting in place less burdensome

requirements than the 1992 rule, the Agency is reducing any potential costs. It is important to note that the Federal criteria in today's rule, as the Federal criteria in the 1992 rule, only impose requirements until the States adopt, and EPA approves, criteria meeting the requirements of section 303(c)(2)(B) of the Clean Water Act. EPA continues to work with the States to assist them in adopting their own criteria thereby enabling EPA to withdraw the Federal criteria.

While section 205 of the Unfunded Mandates Act is not applicable to today's rule because the rule does not require a written statement under section 202, the Agency does believe that today's rule is consistent with the intent of section 205. Section 205 directs agencies to consider regulatory alternatives and to select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA's decision to promulgate metals criteria expressed as dissolved rather than total recoverable represents the Agency's selection of the least costly, most cost-effective and least burdensome alternative for setting metals criteria. The Agency addressed this issue in detail in the development of the Great Lakes Water Quality Guidance, promulgated on March 13, 1995 (60 FR 15366, March 23, 1995). For today's rule the Agency was obligated pursuant to section 303 to promulgate water quality criteria for states not in compliance with section 303(c)(2)(B). Today's rule achieves that objective consistent with the intent of section 205.

Finally, because today's rule relieves a regulatory requirement, EPA does not believe that the rule will establish requirements that might significantly or uniquely affect small governments within the meaning of section 203. However, the Agency is committed to working with affected small governments by providing notice of requirements that might potentially affect them, enable them to provide meaningful and timely input, and to inform, educate and advise small governments on compliance with any requirements. With respect to today's interim final rule, representatives of State and local governments participated in the development of, and provided comments to the Office of Water's current metals policy. The Agency recognizes the importance of soliciting the input of small governments and will be available to work with them to address any issues related to compliance with today's rule.

2. Executive Order 12866

Under Executive Order 12866 (56 FR 51735, October 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 and review by the Office of Management and Budget). 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 entitlements, 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 order. Pursuant to the terms of this order, EPA has determined that this interim final rule would not be ''significant''.

3. Presidential Review of the Code of Federal Regulations

On February 22, 1995, President Clinton announced a review of the Code of Federal Regulations by all Federal agencies. The objective of the review is to: eliminate obsolete regulations, withdraw outdated or superseded regulations, propose modifications to simplify or reduce burden, and to identify legislation for needed change. Today's rule, revising the NTR, is consistent with the review announced by the President. EPA has reviewed the NTR (40 CFR 131.36) and determined that the use of dissolved metals criteria in the NTR States, for the metals listed in this rule, should reduce potential regulatory burden.

4. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*, Pub. L. 96–354) requires EPA to assess whether its regulations create a disproportionate effect on small entities. EPA discussed in the NTR rulemaking (December 22, 1992, 57 FR 60909), the potential effects of the rulemaking on small entities. The Agency concluded that the rulemaking would not result in a significant impact on small entities and a final regulatory flexibility analysis was not required.

Because the potential impact on small entities as a result of this interim final rule revision will be less burdensome on small entities than the original rule, EPA, based on the same factors discussed in the previous final rulemaking, continues to conclude this action will not result in a significant impact on small entities.

5. Paperwork Reduction Act

This interim final rule places no information collection activities on the affected States and therefore no information collection requirement will be submitted to the Office of Management and Budget for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 131

Environmental Protection, Water pollution control, Water quality standards, Toxic pollutants.

Dated: April 14, 1995.

Carol Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I part 131 of the Code of Federal Regulations is amended as follows:

PART 131–WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.

2. Section 131.36 is amended by revising entries 2, 4, 5a,5b,6,7,8,9,10,11, and 13 of the table at paragraph (b)(1), revising footnotes ''e'' and ''l'' adding footnotes ''o'' and ''p'' to the table in paragraph (b)(1), removing the ''Note to paragraph (b)(1)'', revising paragraph (b)(2) and by revising the first two sentences of paragraph (c)(4)(iii) to read as follows:

§ 131.36 Toxics criteria for those States not complying with Clean Water Act Section 303(c)(2)(B).

* * * * *

(b)(1) *EPA's Section 304(a) Criteria for Priority Toxic Pollutants.*

A		B		C		D	
		Freshwater		Saltwater		Human health (10^{-6} risk for carcinogens)	
(#) Compound	CAS N.	Criteria Maximum Conc.[d] (ug/L) B1	Criteria Continuous Conc.[d] (ug/L) B2	Criteria Maximum Conc.[d] (ug/L) C1	Criteria Continuous Conc.[d] (ug/L) C2	For consumption of: Water & Organisms (ug/L) D1	For consumption of: Organisms only (ug/L) D2
* *	*	*	*	*	*		*
2 Arsenic	7440382	[m] 360	[m] 190	[m] 69	[m] 36	[a,b,c] 0.018 a,b,c	[a,b,c] 0.14
* *	*	*	*	*	*		*
4 Cadmium	7440439	[e] 3.7	[e] 1.0	[m] 42	[m] 9.3	[n]	[n]
5a Chromium (III)	16065831	[e] 550	[e] 180	.....	.....	[n]	[n]
b Chromium (VI)	18540299	[m] 15	[m] 10	[m] 1100	[m] 50	[n]	[n]
6 Copper	7440508	17 [e]	11 [e]	[m] 2.4	[m] 2.4	.....	.....
7 Lead	7439921	[e] 65	[e] 2.5	[m] 210	[m] 8.1	[n]	[n]
8 Mercury	7439976	[m] 2.1	[i,p] 0.012	[m] 1.8	[i,p] 0.025	0.14	0.15
9 Nickel	7440020	[e] 1400	[e] 160	[m] 74	[m] 8.2	[a] 610	[a] 4600
10 Selenium	7782492	[p] 20	[p] 5.0	[m] 290	[m] 71	[n]	[n]
11 Silver	7440224	[e] 3.4	[m] 1.9				
* *	*	*	*	*	*		*
13 Zinc	7440666	[e] 110	[e] 100	[m] 90	[m] 81		
* *	*	*	*	*	*		*

Footnotes:

a. Criteria revised to reflect current agency q_1* or RfD, as contained in the Integrated Risk Information System (IRIS). The fish tissue bioconcentration factor (BCF) from the 1980 criteria documents was retained in all cases.

b. The criteria refers to the inorganic form only.

c. Criteria in the matrix based on carcinogenicity (10^{-6} risk). For a risk level of 10^{-5}, move the decimal point in the matrix value one place to the right.

d. Criteria Maximum Concentration (CMC) = the highest concentration of a pollutant to which aquatic life can be exposed for a short period of time (1-hour average) without deleterious effects. Criteria Continuous Concentration (CCC) = the highest concentration of a pollutant to which aquatic life can be exposed for an extended period of time (4 days) without deleterious effects. ug/L = micrograms per liter

e. Freshwater aquatic life criteria for these metals are expressed as a function of total hardness (mg/L as $CaCO_3$), the pollutant's water effect ratio (WER) as defined in § 131.36(c) and multiplied by an appropriate dissolved conversion factor as defined in § 131.36(b)(2). For comparative purposes, the values displayed in this matrix are shown as dissolved metal and correspond to a total hardness of 100 mg/L and a water effect ratio of 1.0.

* * * * * * *

i. If the CCC for total mercury exceeds 0.012 ug/l more than once in a 3-year period in the ambient water, the edible portion of aquatic species of concern must be analyzed to determine whether the concentration of methyl mercury exceeds the FDA action level (1.0 mg/kg). If the FDA action level is exceeded, the State must notify the appropriate EPA Regional Administrator, initiate a revision of its mercury criterion in its water quality standards so as to protect designated uses, and take other appropriate action such as issuance of a fish consumption advisory for the affected area.

* * * * * * *

l. [Reserved: this letter not used as a footnote].

m. Criteria for these metals are expressed as a function of the water effect ratio, WER, as defined in 40 CFR 131.36 (c).

CMC=column B1 or C1 value x WER

CCC=column B2 or C2 value x WER

n. EPA is not promulgating human health criteria for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the State's existing narrative criteria for toxics.

o. [Reserved: This letter not used as a footnote].

p. Criterion expressed as total recoverable.

* * * * * * *

(2) Factors for Calculating Hardness-Dependent, Freshwater Metals Criteria

CMC=WER exp $\{m_A[\ln(\text{hardness})]+b_A\}$ x Acute Conversion Factor

CCC=WER exp $\{m_C[\ln(\text{hardness})]+b_C\}$ x Chronic Conversion Factor

Final CMC and CCC values should be rounded to two significant figures.

Metal	m_A	b_A	m_C	b_C	Freshwater conversion factors	
					Acute	Chronic
Cadmium	1.128	–3.828	0.7852	–3.490	[a] 0.944	[a] 0.909
Chromium (III)	0.8190	3.688	0.8190	1.561	0.316	0.860
Copper	0.9422	–1.464	0.8545	–1.465	0.960	0.960
Lead	1.273	-1.460	1.273	–4.705	[a] 0.791	[a] 0.791
Nickel	0.8460	3.3612	0.8460	1.1645	0.998	0.997
Silver	1.72	–6.52	[b] N/A	[b] N/A	0.85	[b] N/A
Zinc	0.8473	0.8604	0.8473	0.7614	0.978	0.986

Note to table: The term ''exp'' represents the base e exponential function.

Footnotes to table:

[a] The freshwater conversion factors (CF) for cadmium and lead are hardness-dependent and can be calculated for any hardness [see limitations in § 131.36(c)(4)] using the following equations:

Cadmium

Acute: CF=1.136672—[(ln hardness)(0.041838)]

Chronic: CF=1.101672—[(ln hardness)(0.041838)]

Lead (Acute and Chronic): CF = 1.46203—[(ln hardness)(0.145712)]

[b] No chronic criteria are available for silver.

(c) * * *

(4) * * *

(iii) Except where otherwise noted, the criteria for metals (compounds #2, #4–# 11, and #13, in paragraph (b) of this section) are expressed as dissolved metal. For purposes of calculating aquatic life criteria for metals from the equations in footnote m. in the criteria matrix in paragraph (b)(1) of this section and the equations in paragraphs (b)(2) of this section, the water-effect ratio is computed as a specific pollutant's acute or chronic toxicity values measured in water from the site covered by the standard, divided by the respective acute or chronic toxicity value in laboratory dilution water. * * *

* * * * *

[FR Doc. 95–10148 Filed 5–3–95; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday
May 4, 1995

Part V

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Indiana; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN42–2–6876; FRL–5184–1]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On January 10, 1995, the USEPA proposed to conditionally approve a State Implementation Plan (SIP) revision request submitted by the State of Indiana, governing the control of Volatile Organic Compound (VOC) emissions from graphic arts facilities with the potential to emit 25 tons per year or more of VOC, as part of the Reasonably Available Control Technology (RACT) Catch-Up requirements for the Indiana severe ozone nonattainment area (Lake and Porter Counties). Public comments were solicited on the proposed SIP revision, and on USEPA's proposed rulemaking action. The public comment period ended on February 10, 1995, and no public comments were received. This rulemaking action conditionally approves, in final, this SIP revision request for Indiana.

EFFECTIVE DATE: This final rulemaking becomes effective on June 5, 1995.

ADDRESSES: Copies of the State's submittal, and other materials relating to this rulemaking are available at the following address for review: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

The docket may be inspected between the hours of 8:30 a.m. and 12 noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by the USEPA for copying docket material.

A copy of this SIP revision is available for inspection at: Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), room 1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Regulation Development Branch, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6082.

Anyone wishing to visit the Region 5 offices should first contact Mark J. Palermo.

SUPPLEMENTARY INFORMATION:

Background

The State of Indiana submitted a revision request for its ozone SIP on February 25, 1994, amending the graphic arts rule. The amendments for graphic arts (326 IAC 8–5–5) function to reduce the source size applicability cut-off for graphic arts facilities located in the severe ozone nonattainment area (Lake and Porter Counties) from 100 to 25 tons of VOC per year (potential to emit) as required by the Clean Air Act (the Act), as amended in 1990. The USEPA's preliminary analysis of this submittal found that although the revision was generally acceptable, the recordkeeping and reporting requirements, contained in 326 IAC 8–1–2, do not provide for adequate enforcement of the graphic arts rule. USEPA has provided the Indiana Department of Environmental Management with a copy of the June 1992 Model VOC Rules, on which USEPA based its analysis. Indiana submitted to USEPA a letter dated December 14, 1994, committing to the necessary rule revision. In accordance with an attached schedule, Indiana expects a final rule to be adopted and submitted to USEPA by January 31, 1996.

Final Rulemaking Action

The USEPA conditionally approves the Indiana requested ozone SIP revision, rule 326 IAC 8–5–5, governing the control of VOC emissions from graphic arts facilities located in the Indiana severe ozone nonattainment area (Lake and Porter Counties) which have the potential to emit 25 tons per year or more of VOC, submitted on February 25, 1994. The conditional approval is based on the State's commitment, submitted in a letter on December 14, 1994, to correct deficiencies to Indiana's recordkeeping and reporting requirements, contained in 326 IAC 8–1–2, by January 31, 1996.

In order to correct the necessary deficiencies, the State must meet three requirements. The first requirement is for the monitoring, recordkeeping and reporting (MRR) requirements in the Indiana rules to be made more comprehensive to include more than: (1) Daily volume-weighted averages of all coatings applied in a coating or printing line; and (2) records of daily usage of gallons of solids coating and VOC content for each coating or ink solvent. Alternatively, when a source complies by using control devices, then records of monitoring parameters and other information must also be kept. The MRR requirements should also specify a period of time (i.e., 5 years) during which records shall be maintained at the facility (See June 1992 Model VOC Rules).

The second requirement is for the Indiana rules to be revised to require maintenance of records and reports of new or existing control devices. Records and reports that should be maintained include monitoring data, calibration and maintenance logs, and logs of operating time (See Model VOC Rules).

The third requirement is for the Indiana rules to be revised to require the maintenance of records and reports for exempt sources such as: Information pertaining to the initial certification, calculations demonstrating that total potential emissions of VOC from all flexographic and rotogravure printing presses at the facility will be less than the required limits for each year, the maintenance of record for a period of 5 years, and the requirement that any exceedances will be reported to the Administrator within 30 days after the exceedance occurs. Exempt sources should calculate: (1) Yearly potential emissions, (2) yearly actual emissions, and (3) the name, identification, VOC content, and yearly volume of coatings/inks (see Model VOC Rules). If the State ultimately fails to meet its commitment to meet these requirements within one year of final conditional approval, then USEPA's action for the State's requested SIP revision will automatically convert to a final disapproval.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

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

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 3, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2) of the Act.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Volatile organic compounds.

Dated: March 22, 1995.

David A. Ullrich,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.769 is amended by revising the introductory text and adding paragraph (b) to read as follows:

§ 52.769 Identification of plan—conditional approval.

The plan revision commitment listed in paragraphs (a) and (b) of this section were submitted on the dates specified.

* * * * *

(b) On February 25, 1994, Indiana submitted an amendment to Title 326 of the Indiana Administrative Code (326 IAC) 8–5–5 to add Volatile Organic Compound (VOC) Reasonably Available Control Technology (RACT) requirements for graphic arts facilities in the Indiana severe ozone nonattainment area (Lake and Porter Counties) which have the potential to emit 25 tons per year or more of VOC. The United States Environmental Protection Agency (USEPA) is conditionally approving the State's graphic arts facilities VOC RACT rule, contingent on fulfillment of the State's commitment to adopt and submit a State Implementation Plan (SIP) revision that would correct deficiencies in the State's recordkeeping and reporting requirements, contained in 326 IAC 8–1–2, by May 6, 1996. In order to correct the deficiencies, the State must meet three requirements.

The first requirement is for the monitoring, recordkeeping and reporting (MRR) requirements in the Indiana rules to be made more comprehensive to include more than: Daily volume-weighted averages of all coatings applied in a coating or printing line; and records of daily usage of gallons of solids coating and VOC content for each coating or ink solvent. Alternatively, when a source complies by using control devices, then records of monitoring parameters and other information must also be kept. The MRR requirements should also specify a period of time (i.e., 5 years) during which records shall be maintained at the facility. The second requirement is for the Indiana rules to be revised to require maintenance of records and reports of new or existing control devices. Records and reports that should be maintained include monitoring data, calibration and maintenance logs, and logs of operating time. The third requirement is for the Indiana rules to be revised to require the maintenance of records and reports for exempt sources such as: Information pertaining to the initial certification, calculations demonstrating that total potential emissions of VOC from all flexographic and rotogravure printing presses at the facility will be less than the required limits for each year, the maintenance of record for a period of 5 years, and the requirement that any exceedance will be reported to the Administrator within 30 days after the exceedance occurs. Exempt sources should calculate: Yearly potential emissions, yearly actual emissions, and the name, identification, VOC content, and yearly volume of coatings/inks. If the State ultimately fails to meet its commitment to meet these requirements by the date listed above, then USEPA's action for the State's requested SIP revision will automatically convert to a final disapproval without further regulatory action.

(1) Incorporation by reference.

(i) (A) 326 IAC 8–5–5 Graphic arts operations. Filed with the Secretary of State, August 9, 1993, effective September 8, 1993, Published at Indiana Register, Volume 16, Number 12, September 1, 1993.

[FR Doc. 95–10974 Filed 5–3–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IN45–2–6877; FRL–5184–2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On January 11, 1995, the USEPA proposed to conditionally approve a State Implementation Plan (SIP) revision request submitted by the State of Indiana for the purpose of remaining consistent with Federal Volatile Organic Compound (VOC) definition requirements. The public comment period ended on February 10, 1995, and no public comments were received. This rulemaking action conditionally approves, in final, this SIP revision request for Indiana.

EFFECTIVE DATE: This final rulemaking becomes effective on June 5, 1995.

ADDRESSES: Copies of the State's submittal, and other materials relating to this rulemaking are available at the following address for review: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

The docket may be inspected between the hours of 8:30 a.m. and 12 noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by the USEPA for copying docket material.

A copy of this SIP revision is available for inspection at: Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), Room 1500, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Regulation Development Branch, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6082.

Anyone wishing to visit the Region 5 offices should first contact Mark J. Palermo.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 1992, USEPA promulgated a revised Federal definition for VOC (57 FR 3945). 40 CFR 51.100(s). For purposes of meeting the requirements of this revised Federal definition of VOC, the State of Indiana submitted on February 25, 1994, a revision to the SIP which consists of a two-part revised VOC definition, located under Title 326 Indiana Administrative Code (IAC) 1–2–48 (for ''nonphotochemically reactive hydrocarbon'') and 326 IAC 1–2–90 (for ''VOC''). The nonphotochemically reactive hydrocarbon definition at 326 IAC 1–2–48 is amended to add five halocarbon compounds and four classes of perfluorocarbons determined by USEPA to have negligible photochemical reactivity. In 326 IAC 1–2–90, Indiana amends the definition of VOC by excluding five carbon compounds determined by USEPA to

have negligible photochemical reactivity as well as excluding the organic compounds listed in 326 IAC 1–2–48. The amendments, as described, comport with the Federal requirements.

However, Indiana also added an exclusion of vegetable oils to the VOC definition, which USEPA has not determined to have negligible photochemical reactivity and is not listed for exclusion in the February 3, 1992 final rule. This exclusion of vegetable oils makes the Indiana VOC definition inconsistent with Federal requirements. Vegetable processing sources cannot be exempted from the VOC definition rule, as proposed by the State of Indiana. Subject sources, however, may be able to seek source category exemptions under the generic non-Control Technology Guideline (non-CTG sources) RACT rule, if supported by documentation acceptable to the USEPA.

Based on USEPA's preliminary analysis that the State's submittal was unapprovable because the exclusion of vegetable oil from the definition of VOC is inconsistent with the February 3, 1992, Federal VOC definition, Indiana submitted to USEPA, a letter dated December 14, 1994, committing to the necessary rule revision to correct the deficiency. In accordance with an attached schedule, Indiana expects a final rule to be adopted and submitted to USEPA by January, 1996.

Final Rulemaking Action

The USEPA conditionally approves the two-part VOC definition located under 326 IAC 1–2–48 and 326 IAC 1–2–90 because Indiana has committed to correct the rule so that it fully comports with USEPA requirements as established in the February 3, 1992 final rule. If the State ultimately fails to meet its commitment within one year of final conditional approval, then USEPA's action for the State's requested SIP revision will automatically convert to a final disapproval.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

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

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 3, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2) of the Act.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Volatile organic compounds.

Dated: March 22, 1995.

David A. Ullrich,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.769 is added to read as follows:

§ 52.769 Identification of plan—conditional approval.

The plan revision commitment listed in paragraph (a) of this section was submitted on the date specified.

(a) On February 25, 1994, Indiana submitted a revision to the definition of Volatile Organic Compound (VOC) in two parts as amendments to Title 326 of the Indiana Administrative Code (326 IAC) 1–2–48 (for nonphotochemically reactive hydrocarbon) and 1–2–90 (for VOC). The United States Environmental Protection Agency (USEPA) is conditionally approving the State's VOC definition, contingent on fulfillment of the State's commitment to adopt and submit a State Implementation Plan revision that would eliminate provisions which exclude vegetable oil from the State's definition of VOC by May 6, 1996. If the State fails to meet its commitment by the date listed above, the USEPA's conditional approval will automatically become a disapproval without further regulatory action.

(1) Incorporation by reference.

(i) (A) 326 IAC 1–2–48 Nonphotochemically reactive hydrocarbon definition and 1–2–90 Volatile Organic Compound definition. Filed with the Secretary of State, August 9, 1993, effective September 8, 1993, Published at Indiana Register, Volume 16, Number 12, September 1, 1993.

(b) (Reserved)

[FR Doc. 95–10975 Filed 5–3–95; 8:45 am]

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Federal Register

Thursday
May 4, 1995

Part VI

The President

Presidential Determination No. 95–20—Suspending Prohibitions on Certain Sales and Leases Under the Anti-Economic Discrimination Act of 1994

Federal Register
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Thursday, May 4, 1995

Presidential Documents

Title 3—

The President

Presidential Determination No. 95–20 of May 1, 1995

Suspending Prohibitions on Certain Sales and Leases Under the Anti-Economic Discrimination Act of 1994

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 564 of the Foreign Relations Authorization Act (''the Act''), Fiscal Years 1994 and 1995, Public Law 103–236, as amended, I hereby:

(1) determine and certify that the following countries do not currently maintain a policy or practice of sending letters to United States firms requesting compliance with, or soliciting information regarding compliance with, the Arab League secondary or tertiary boycott of Israel:

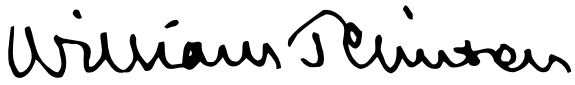
Djibouti, Egypt, Morocco, Nigeria, Pakistan, Somalia, Sri Lanka, Tanzania, Tunisia, and Uganda.

(2) determine that suspension of the application of section 564(a) of the Act to the following countries until May 1, 1996, is in the national interest of the United States, and will promote the objectives of section 564 to eliminate the Arab boycott:

Algeria, Bahrain, Bangladesh, Jordan, Kuwait, Mauritania, Oman, Qatar, Saudi Arabia, and the United Arab Emirates.

(3) determine that it is in the national security interest of the United States to suspend until May 1, 1996, the application of subsection (a) of section 564 of the Act with respect to Lebanon.

You are authorized and directed to report this determination to the appropriate committees of the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, May 1, 1995.

[FR Doc. 95–11195
[Filed 5–3–95; 9:37 am]
Billing code 4710–10–M

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