7–25–95
Vol. 60 No. 142
Pages 37933–38226

federal register

Tuesday
July 25, 1995

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: September 12 at 9:00 am

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)

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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 60, No. 142
Tuesday, July 25, 1995

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

RIN 0563–AA80

General Crop Insurance Regulations; Late and Prevented Planting for Various Crop Endorsements

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts regulations to insure late and prevented planting for specific crop provisions contained in the General Crop Insurance Regulations, effective for the 1994 and succeeding crop years. The intended effect of this action is to revise the late planting and prevented planting provisions of the corn, grain sorghum, and soybean endorsements. Additionally, this rule serves to incorporate the late and prevented planting coverage into the hybrid sorghum seed, rice, cotton, barley, oats, and wheat crop endorsements and to incorporate the prevented planting coverage into the ELS cotton endorsement.

EFFECTIVE DATE: November 30, 1993.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Federal Crop Insurance Corporation, Regulatory and Procedural Development Staff, Suite 500, 2101 L Street NW., Washington, DC 20037. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture (''USDA'') procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of the corn, grain sorghum, hybrid sorghum seed, rice, cotton, ELS cotton, barley, oats, wheat, and soybean endorsement regulations affected by this rule under those procedures. The sunset review dates established for these regulations are as follows: corn, grain sorghum, hybrid sorghum seed, soybeans, cotton, ELS cotton, and rice, March 1, 1999; and barley, oats, and wheat, July 1, 1998.

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

The provisions set forth in this rule do not impose burdensome information collection requirements that require clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This regulation will not have a significant impact on a substantial number of small entities. The amount of work required of the insurance companies delivering these policies and the procedures therein will not increase from the amount required to deliver previous policies. In fact, this action reduces the paperwork burden on the insured farmer and insurance providers. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule are retroactively effective as of November 30, 1993, and will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J or promulgated by the National Appeals Division, whichever is applicable, must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Wednesday, December 22, 1993, FCIC published an interim rule in the **Federal Register** at 58 FR 67630 to amend the General Crop Insurance Regulations (7 CFR part 401) by revising the late and prevented planting provisions of the corn endorsement (§ 401.111), grain sorghum endorsement (§ 401.113), and the soybean endorsement (§ 401.117), effective for the 1994 and succeeding crop years, as well as incorporating late and prevented planting provisions into the hybrid sorghum seed (§ 401.109), rice (§ 401.120), cotton (§ 401.119), barley (§ 401.103), oats (§ 401.105), and wheat (§ 401.101) endorsements. In addition, the ELS cotton (§ 401.121) endorsement was revised by incorporating the prevented planting provisions into that policy. Since this rule benefited the insured by improving coverage for policyholders, good cause was found to make the interim rule retroactively effective as of November 30, 1993.

The changes were effective for the 1994 and succeeding crop years in all counties for corn, cotton, ELS cotton, grain sorghum, hybrid sorghum seed, rice, and soybeans; and for barley, oats, and wheat only in counties with a December 31 contract change. The changes will be effective for all barley, oat, and wheat counties for the 1995 and succeeding crop years.

Following publication of the interim rule, the public was afforded 60 days to submit written comments, data and opinions, but none were received. Therefore, the interim rule as published on December 22, 1993, at 58 FR 67630 is hereby adopted as a final rule.

List of Subjects in 7 CFR Part 401

Crop insurance, barley, corn, cotton, ELS cotton, grain sorghum, hybrid sorghum seed, oats, rice, soybeans and wheat.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) and for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby adopts as a final rule, the interim rule as published at 58 FR 67630 on December 22, 1993.

Done in Washington, D.C., on July 18, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–18210 Filed 7–24–95; 8:45 am]

BILLING CODE 3410–08–P

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7 CFR Part 457

RIN 0563–AB03

Common Crop Insurance Regulations; Fig Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation hereby adopts regulations to add the fig regulations, the Fig Crop Insurance Provisions, to the common crop insurance regulations. The intended effect of this action is to provide quality adjustment provisions and reflect the lower prices received for figs based on the grades contained in the recently amended marketing order.

EFFECTIVE DATE: February 1, 1994.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, 2101 L Street, Suite 500, Washington, D.C. 20036. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture (''USDA'') procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is March 1, 1999.

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

This rule does not impose burdensome information collection provisions that would require clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this final rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This regulation will not have a significant impact on a substantial number of small entities. This action requires no more of the reinsured company or the producer than was necessary to deliver previous policies. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt any state or local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J or promulgated by the National Appeals Division, whichever is applicable, must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Tuesday, March 1, 1994, FCIC published an interim rule in the **Federal Register** at 59 FR 9614 to revise the Common Crop Insurance Regulations by adding provisions for fig crop insurance. Following publication of the interim rule, the public was afforded 60 days to submit written comments, data, and opinions but none were received. Therefore, the interim rule as published on March 1, 1994, is hereby adopted as a final rule.

List of Subjects in 7 CFR Part 457

Crop insurance, figs.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby adopts as a final rule the interim rule as published at 59 FR 9614 on March 1, 1994.

Done in Washington, D.C. on July 18, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–18211 Filed 7–24–95; 8:45 am]

BILLING CODE 3410–08–P

Agricultural Marketing Service

7 CFR Part 953

[Docket No. FV95–953–1FIR]

Southeastern Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that generated funds to pay those expenses. Authorization of this budget enables the Southeastern Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: June 1, 1995, through May 31, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 104 and Order No. 953, both as amended (7 CFR part 953), regulating the handling of Irish potatoes grown in two southeastern States (Virginia and North Carolina). The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Virginia-North Carolina potatoes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1995–96 fiscal period, which began June 1, 1995, and ends May 31, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 150 producers of Southeastern potatoes under this marketing order, and approximately 60 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Southeastern potato producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the Southeastern Potato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Southeastern potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Southeastern potatoes, based on last season's assessable shipments of approximately 1,124,736 hundredweight. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met April 20, 1995, and unanimously recommended a 1995–96 budget of $12,000, $1,000 more than the previous year. The budget item for 1995–96 which has increased compared to that budgeted for 1994–95 (in parentheses) is: Manager's salary, $5,800 ($4,800). All other items are budgeted at last year's amounts.

The Committee also recommended an assessment rate of $0.0050 per hundredweight, $0.0025 less than last season's rate. When the Committee met, planting for the 1995 crop had not been completed. Current indications are that assessable shipments may be slightly higher than last season and that about $6,000 in assessment income will be generated. This, along with funds from the Committee's reserve, will be adequate to cover the expenses incurred. Funds remaining at the end of the 1995–96 fiscal period should be within the maximum permitted by the order of approximately one fiscal period's expenses.

An interim final rule was published in the **Federal Register** on June 2, 1995 (60 FR 28701). That interim final rule added § 953.252 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through July 3, 1995. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 fiscal period began on June 1, 1995. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable Irish potatoes handled during the fiscal period. In addition, handlers are aware of this rule which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

List of Subjects in 7 CFR Part 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 953 is amended as follows:

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

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

Accordingly, the interim final rule adding § 953.252 which was published at 60 FR 28701, is adopted as a final rule without change.

Dated: July 20, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–18245 Filed 7–24–95; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 112

[Docket No. 92–098–4]

Viruses, Serums, Toxins, and Analogous Products; Packaging and Labeling

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; confirmation of effective date.

SUMMARY: This document confirms that the final rule on the packaging and labeling of veterinary biological products becomes effective on August 19, 1995. Upon the effective date, the final rule prohibits the repackaging and relabeling, for further sale or distribution, of final containers of product that are imported or that are prepared at licensed establishments.

After the effective date, veterinary biological products that have been repackaged before that date may continue to be distributed for further sale for a period of 6 months until February 19, 1996, to permit final distribution of repackaged biologics that remain in marketing channels. During the course of the six-month period, APHIS will be closely monitoring the availability of single-dose or individually-packaged products for use by non-veterinarians.

EFFECTIVE DATE: The effective date of the final rule published at 59 FR 43441 (August 24, 1994) and postponed at 60 FR 2876 (January 12, 1995) is confirmed as August 19, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, 4700 River Road Unit 148, Riverdale, MD, 20737–1237, (301) 734–8245.

SUPPLEMENTARY INFORMATION: Under authority of the Virus-Serum-Toxin Act (21 U.S.C. 151–159), as amended by the Food Security Act of 1985, the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, published a proposed rule on April 28, 1993 (58 FR 25786–25788, Docket No. 92–098–1) concerning repackaging and relabeling of veterinary biologics. During the 60-day comment period, thirty-nine comments were received. Thirty-six comments were in support of the rule; three were not. The final rule was published on August 24, 1994 (59 FR 43441–43445, Docket No. 92–098–2) with a 180-day transition period before the rule was scheduled to become effective on February 21, 1995. The purpose of the rule is to ensure that products are not repackaged or relabeled after leaving a licensed establishment.

To allow additional time for arrangements to be made for the production of single-dose or individually-packaged biological products that would be in compliance with the provisions of the final rule, APHIS postponed the effective date of the rule an additional 180 days until August 19, 1995 (60 FR 2876–2877, Docket No. 92–098–3, January 12, 1995). Several manufacturers are currently producing such products for distributors for further sale to consumers.

This document provides notice to interested persons that the final rule on the repackaging and relabeling of veterinary biologics will take effect on August 19, 1995, as announced in the January 12, 1995, **Federal Register** notice.

After the August 19, 1995, effective date of the rule, veterinary biological products that have already been repackaged before that date may continue to be distributed for further sale for a period of 6 months until February 19, 1996, to permit final distribution of repackaged biologics in marketing channels. Distribution of products repackaged after August 19, 1995, would not be allowed.

During the course of the six-month transition period, APHIS will be closely monitoring the availability of single-dose products for use by non-veterinarians. APHIS is committed to ensuring the availability of single-dose products and will take whatever action may be necessary to assure that sufficient product is available for use by consumers.

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 19th day of July, 1995.

Terry Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–18227 Filed 7–21–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–08–AD; Amendment 39–9304; AD 95–15–01]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped with Over-Wing Escape Slides

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes equipped with over-wing escape slides, that currently requires modification of the trailing edge panels and the aft flaps. That amendment was prompted by the results of functional tests of over-wing escape slides, which revealed that some slides were damaged when they were deployed across sharp corners on the trailing edge of the wing and the large gaps between the trailing edge panels of the wing. This amendment expands the applicability of the existing AD to include additional airplanes. The actions specified by this AD are intended to prevent damage to the over-wing escape slide, which could hinder inflation of the slide to a usable configuration during an emergency evacuation.

DATES: Effective August 24, 1995.

The incorporation by reference of Boeing Service Bulletin 767–57–0043, Revision 3, dated February 2, 1995, as listed in the regulations, is approved by the Director of the Federal Register as of August 24, 1995.

The incorporation by reference of certain other publications listed in the regulations was approved previously by the Director of the Federal Register as of January 31, 1994 (58 FR 69221, December 30, 1993).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorothy Lundy, Aerospace Engineer, ANM–120S, Airframe Branch, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1675; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–25–06, amendment 39–8772 (58 FR 69221, December 30, 1993), which is applicable to certain Boeing Model 767 series airplanes equipped with over-wing escape slides, was published in the **Federal Register** on April 3, 1995 (60 FR

16817). That action proposed to continue to require modification of the trailing edge panels and the aft flaps. The action also proposed to revise the applicability of the existing rule to include additional airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter requests that the FAA revise the term ''serial numbers'' to ''line numbers'' in paragraphs (a) and (b) of the proposal. The FAA concurs. The FAA has determined that the commenter's wording is more accurate, and has revised the final rule accordingly.

The commenter requests that the FAA revise paragraph (b) of the proposal to include Boeing Service Bulletin 767–57–0043, Revision 1, dated May 6, 1993, and Revision 2, dated September 16, 1993, as additional sources of service information. The commenter states that the modification procedures described in those revisions are identical to those described in Revision 3 of Boeing Service Bulletin 767–57–0043, dated February 2, 1995 [referenced in paragraph (b) of the proposal as the appropriate source of service information.] The FAA has reviewed Revision 1 and Revision 2 of Boeing Service Bulletin 767–57–0043 and has determined that the modification procedures described in those service bulletins are essentially identical to Revision 3 of the Boeing service bulletin. Revision 3 of the Boeing service bulletin only revises the effectivity listing to include additional airplanes. Therefore, the FAA has revised paragraph (b) of the final rule to reference Revision 1 and Revision 2 of Boeing Service Bulletin 767–57–0043 as additional sources of service information.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 542 Model 767 series airplanes equipped with over-wing escape slides of the affected design in the worldwide fleet. The FAA estimates that 178 airplanes of U.S. registry will be affected by this AD, that it will take approximately 40 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $427,200, or $2,400 per airplane.

However, approximately 166 U.S.-registered airplanes previously were required by AD 93–25–06 to accomplish the subject modification. This AD will affect only 12 additional U.S.-registered airplanes. Therefore, the cost to modify these 12 newly added airplanes is estimated to be $28,800, or $2,400 per airplane.

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

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 removing amendment 39–8772 (58 FR 69221, December 30, 1993), and by adding a new airworthiness directive (AD), amendment 39–9304, to read as follows:

95–15–01 Boeing: Amendment 39–9304. Docket 95–NM–08–AD. Supersedes AD 93–25–06, Amendment 39–8772.

Applicability: Model 767 series airplanes, having line positions 1 through 542 inclusive, and equipped with over-wing escape slides; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD 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 damage to the over-wing escape slide, which could hinder inflation of the slide to a usable configuration during an emergency evacuation, accomplish the following:

(a) For airplanes having line numbers 1 through 476 inclusive: Within 15 months after January 31, 1994 (the effective date of AD 93–25–06, amendment 39–8772), modify the trailing edge panels and the aft flaps, in accordance with Boeing Service Bulletin 767–57–0043, Revision 1, dated May 6, 1993; Revision 2, dated September 16, 1993; or Revision 3, dated February 2, 1995.

(b) For airplanes having line numbers 477 through 542 inclusive: Within 15 months after the effective date of this AD, modify the trailing edge panels and the aft flaps, in accordance with Boeing Service Bulletin 767–57–0043, Revision 1, dated May 6, 1993; Revision 2, dated September 16, 1993; or Revision 3, dated February 2, 1995.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

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

(e) The modifications shall be done in accordance with Boeing Service Bulletin 767–57–0043, Revision 1, dated May 6, 1993; Boeing Service Bulletin 767–57–0043, Revision 2, dated September 16, 1993; or Boeing Service Bulletin 767–57–0043, Revision 3, dated February 2, 1995; as applicable. The incorporation by reference of Boeing Service Bulletin 767–57–0043, Revision 3, dated February 2, 1995, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of the remainder of the service documents listed above was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of January 31, 1994 (58 FR 69221, December 30, 1993). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 24, 1995.

Issued in Renton, Washington, on July 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–17031 Filed 7–24–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 73

[Airspace Docket No. 95–AGL–3]

Change Time of Designation for Restricted Areas R–6903 Sheboygan, R–6904A and R–6904B, Volk Field; WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reduces the time of designation for Restricted Areas R–6903, Sheboygan, R–6904A, and R–6904B, Volk Field; WI. The Department of the Air Force has reviewed current requirements for these areas and determined that the current designated times may be reduced. This action increases the availability of restricted airspace for public use.

EFFECTIVE DATE: 0901 UTC, September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Jim Robinson, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 493–4050.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations amends the time of designation for Restricted Areas R–6903, R–6904A, and R–6904B. The time of designation for R–6903 is reduced from ''Continuous, sunrise to sunset,'' to ''Intermittent by NOTAM.'' The time of designation for R–6904A and R–6904B is reduced from ''Sunrise to 1900 local time, other times by NOTAM,'' to ''0800–1600 local time, Tuesday through Saturday, other times by NOTAM.'' I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.69 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

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

Environmental Review

The action reduces the restricted areas time of designation. In accordance with FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts,'' this action is not subject to environmental assessments and procedures and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

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

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.69 [Amended]

2. Section 73.69 is amended as follows:

R–6903 Sheboygan, WI [Amended]

By removing the existing ''Time of designation. Continuous, sunrise to sunset.'' and substituting the following: ''Time of designation. Intermittent by NOTAM.''

R–6904A Volk Field, WI [Amended]

By removing the existing ''Time of designation. Sunrise to 1900 local time. Other times by NOTAM.'' and substituting the following: ''Time of designation. 0800–1600 local time, Tuesday through Saturday. Other times by NOTAM.''

R–6904B Volk Field, WI [Amended]

By removing the existing ''Time of designation. Sunrise to 1900 local time. Other times by NOTAM.'' and substituting the following: ''Time of designation. 0800–1600 local time, Tuesday through Saturday. Other times by NOTAM.''

Issued in Washington, DC, on July 12, 1995.

Nancy B. Kalinowski,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 95–17902 Filed 7–24–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–235; Amendment Number 70R]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Ohio regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The

amendment was initiated by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations concerning the frequency of inspections at abandoned coal mining operations.

EFFECTIVE DATE: July 25, 1995.

FOR FURTHER INFORMATION CONTACT:
Ms. Beverly C. Brock, Acting Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232; Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.15, and 935.16.

II. Discussion of the Proposed Amendment

The Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment Number 70 by letter dated March 28, 1995 (Administrative Record No. OH–2104). In this amendment, Ohio proposed to revise one rule at Ohio Administrative Code (OAC) section 1501:13–14–01 to make the Ohio program as effective as the corresponding Federal regulations concerning the frequency of inspections at abandoned coal mining operations.

OSM announced receipt of PA 70 in the April 11, 1995, **Federal Register** (60 FR 18380), and, in the same document, opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on May 11, 1995.

On May 11, 1995, OSM notified Ohio of its one comment about PA 70 (Administrative Record No. OH–2128). In response to that OSM comment, Ohio submitted Revised Program Amendment Number 70 (PA 70R) by letter dated May 31, 1995 (Administrative Record No. OH–2127). In PA 70R, Ohio proposed one further revision to OAC section 1501:13–14–01 paragraph (A)(3)(c)(ii).

OSM announced receipt of PA 70R in the June 16, 1995, **Federal Register** (60 FR 31661), and in the same document, opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on July 3, 1995.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program. Only substantive changes to Ohio's rules are discussed below. Rule revisions which are not discussed below concern editorial changes intended to improve the clarity and readability of the rules.

A. Revisions to Ohio's Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

State regulations (OAC section 1501:13–14–01)	Subject	Federal regulations (30 CFR Part 840)
(A)(3)	Definition of "Abandoned Coal Mining and Reclamation Operation".	840.11(g)
(E)	Alternative inspection frequency at abandoned sites.	840.11(h)

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that these proposed rules are no less effective than the Federal rules.

B. Revisions to the Ohio's Regulations With No Corresponding Federal Provisions

1. OAC Section 1501:13–14–01 Paragraph (A)(4)

Ohio is revising its definition of "active coal mining and reclamation operation" to mean an operation other than an inactive or abandoned coal mining reclamation operation. Although there is no corresponding Federal definition of this term, the Director finds that Ohio's definition is not inconsistent with the Federal regulations at 30 CFR 840.11 or with the revisions which Ohio is making elsewhere in this rule.

IV. Summary and Disposition of Comments

Public Comments

On April 11 and June 16, 1995, the Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received. No public hearings were held as no one requested the opportunity to provide testimony.

Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from the Regional Director of the U.S. Environmental Protection Agency (EPA) and from the heads of four other Federal agencies and one State agency with an actual or potential interest in the Ohio program.

The EPA commented that abandoned sites can result in acid or other polluted mine drainage which may vary in severity over the seasons. EPA stated that it is important that Ohio consider this seasonal variation and other variable factors when determining the necessary inspection frequency. One inspection per year may be reasonable for non-polluting abandoned sites. However, Ohio should inspect polluting abandoned sites more frequently than one per year to assess changes in severity and the priority of the site for environmental cleanup. Polluting abandoned sites with forfeited reclamation bond should be reclaimed as soon as possible. If forfeited bonds are not sufficient to cover reclamation costs, Ohio should pursue the responsible party for available resources.

The Director concurs with EPA's comments and OSM and Ohio staff have discussed these comments. Ohio will consider actual existing pollutants, seasonal variation, and potential generation of pollutants in evaluating and establishing any modified inspection frequency at abandoned sites. Ohio will give priority to reclaiming polluting forfeited sites and will seek recovery of any additional funds necessary within its statutory authority.

Nonsubstantive comments were also received from the Mine Safety and Health Administration. No other agency comments were received.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Ohio on March 28, 1995, and revised on May 31, 1995.

The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In the oversight of the Ohio program, the Director will recognize only the approved program, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Ohio of such provisions.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 17, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 935.15 is amended by adding new paragraph (yyy) to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(yyy) The following amendment (Program Amendment 70R) pertaining to the Ohio regulatory program, as submitted to OSM on March 28, 1995, and revised on May 31, 1995, is approved, effective July 25, 1995: Inspection frequency at abandoned sites, at OAC rule 1501:13–14–01.

[FR Doc. 95–18221 Filed 7–24–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 550

Libyan Sanctions Regulations; Specially Designated Nationals List

AGENCY: Office of Foreign Assets Control, Treasury.

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

SUMMARY: The Office of Foreign Assets Control is amending the Libyan Sanctions Regulations to add three hotels in Malta, Mistra Village Ltd., Hotel Milano Due, and Marina San Gorg Co. Ltd., to appendix A, Organizations Determined to be Within the Term ''Government of Libya'' (Specially Designated Nationals of Libya).

EFFECTIVE DATE: July 25, 1995.

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

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512–1387 and type ''/GO/FAC'' or call 202/512–1530 for disks or paper copies. This file is available for downloading in WordPerfect 5.1, ASCII, and Postscript formats. The document is also accessible for downloading in ASCII format without charge from Treasury's

Electronic Library (''TEL'') in the ''Business, Trade and Labor Mall'' of the FedWorld bulletin board. By modem dial 703/321–3339, and select self–expanding file ''T11FR00.EXE'' in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205).

Background

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

Appendix A to part 550 is amended to provide public notice of the designation of three Malta hotels, *i. e.*, Mistra Village Ltd., Hotel Milano Due, and Marina San Gorg Co. Ltd, as Specially Designated Nationals of Libya.

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

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

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

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

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply.

List of Subjects in 31 CFR Part 550

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

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

PART 550—LIBYAN SANCTIONS REGULATIONS

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

Authority: 50 U.S.C. 1701–1706; 50 U.S.C. 1601–1651; 22 U.S.C. 287c; 49 U.S.C. App. 1514; 22 U.S.C. 2349aa–8 and 2349aa–9; 3 U.S.C. 301; E.O. 12543, 51 FR 875, 3 CFR, 1986 Comp., p. 181; E.O. 12544, 51 FR 1235, 3 CFR, 1986 Comp., p. 183; E.O. 12801, 57 FR 14319, 3 CFR, 1992 Comp., p. 294.

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

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

* * * * *

HOTEL MILANO DUE,
Gzira, Malta.

* * * * *

MARINA SAN GORG CO. LTD.
(a.k.a. Marina San Gorg Holiday Complex), Malta.

* * * * *

MISTRA VILLAGE LTD.
22 Europa Centre, Floriana, Malta (registered address);
Xemija Hill, St. Paul's Bay, Malta (operating address).

* * * * *

Dated: June 28, 1995.

R. Richard Newcomb,
Director, Office of Foreign Assets Control.

Approved: June 30, 1995.

Dennis M. O'Connell,
Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–18204 Filed 7–20–95; 11:41 am]

BILLING CODE 4810–25–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD08–94–006]

RIN 2115–AE81

Regulated Navigation Area; Mississippi River, Miles 88 to 240 Above Head of Passes

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting as final, an interim final rule published in April 1994 extending the upper limits of the Mississippi River Regulated Navigation Area to cover the area between river miles 127 and 240, above Head of Passes, up to the Port of Baton Rouge. This regulation is necessary to improve the safety of barge fleeting areas that exist on the Mississippi River between New Orleans and Baton Rouge, Louisiana, an extremely confined navigation area with a high volume of marine traffic. The Coast Guard believes that the extension of the Regulated Navigation Area has resulted in a decrease in the number of barge breakaways along the lower Mississippi River between New Orleans and Baton Rouge, Louisiana, although the lack of a high water season earlier this spring

may have also contributed to this reduction.

EFFECTIVE DATE: This rule is effective on July 25, 1995.

FOR FURTHER INFORMATION CONTACT: CDR Harvey R. Dexter, Marine Safety Division, Eighth Coast Guard District, telephone: (504) 589–6271.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LT Jeff Novotny, project officer for the Captain of the Port, New Orleans, Louisiana, LT Verne Gifford, project officer, Eighth Coast Guard District Marine Safety Division, and LT Elisa Holland, project attorney, Eighth District Legal Office.

Regulatory History

On April 28, 1994, the Coast Guard issued an Interim Final Rule extending the upper limits of the Mississippi River Regulated Navigation Area, 33 CFR 165.803, to cover the area between river miles 88 and 240, above Head of Passes, up to the Port of Baton Rouge. (59 FR 21933) This rule was published as an interim rule, effective on the date of publication. The original comment period expired on June 27, 1994. The Coast Guard received three comments during this period. In response to requests from some commenters who wished to gather and provide additional information prior to the issuance of the final rule, the Coast Guard announced a public hearing and reopened the comment period for an additional 90 days on August 12, 1994. (59 FR 41407). Four written comments were received. A public hearing was held on September 2, 1994. Nine persons made oral comments. Of those nine oral commenters, four also provided their comments in written form, two during the original comment period and two during the reopened comment period. Based upon oral testimony and written comments, the Coast Guard prepared this final rule. This rule is being made effective on the date of publication. The interim final rule, effective since April 28, 1994, has contributed to a decrease in barge breakaways. In addition, high water conditions have recently developed and are expected to continue throughout the summer. Therefore, the Coast Guard for good cause finds, under 5 U.S.C. 553(d)(3), that this rule should be made effective in less than 30 days after publication.

Background and Purpose

The regulation was published as an interim final rule in April 1994 due to barge fleet breakaways on the Mississippi River within the Captain of the Port New Orleans zone, high water conditions and higher than normal river stages which were expected to continue during the summer of 1994. The interim final rule extended the then-existing Regulated Navigation Area (mile 88 to mile 127) (hereinafter referred to as the old RNA) to mile 240 above Head of Passes. The regulation consisted of general procedural and equipment requirements for mooring of barge fleets on the Mississippi River and also outlined additional specific fleeting requirements during periods of high water.

The Regulated Navigation Area extension from mile 127 to mile 240 (hereinafter referred to as the new RNA) was deemed necessary due to data showing that more barge fleet breakaways were occurring in the new RNA than in the old RNA. Casualty investigations appeared to indicate that a majority of the breakaways occurred as the result of a passing tow or deep draft vessel striking the fleet or from large wakes generated by passing vessels. Both of those causal factors increase during high water conditions. Coast Guard fleet inspectors also found that many of the fleeting operations located in the new RNA not only did not conform with the mooring regulations in the old RNA, but also had weak and inadequate moorings and therefore were more vulnerable to breakaways during high water. At the public hearing held on September 2, 1994, the Coast Guard provided statistics showing barge breakaways for the period 1990–July 1994 in both the old and new RNA's. Those statistics supported, in part, the assertions in the interim final rule.

Discussion of Comments and Changes

Seven written comments were received in response to the interim final rule. Six comments contain significant criticism of the interim final rule and the seventh comment supported the Coast Guard's decision to extend the Regulated Navigation Area. Nine oral comments were received at the hearing. Of those nine oral comments, four were also provided in written form. Specific comments are discussed below.

One commenter pointed out that the regulations adopted in the Interim Final Rule were twenty years old and suggested that the regulatory requirements should be reviewed throughout the entire Regulated Navigation Area due to changes in the industry. Four other commenters also made recommendations that a comprehensive review of the regulations was in order. The Coast Guard agrees. Changes in the barge industry, marine traffic within the RNA, and barge handling and mooring technology make it appropriate to conduct a comprehensive review of these regulations. One commenter recommended the formation of a quality action team composed of industry and Coast Guard personnel to undertake such a review. At a future date, the Coast Guard will publish an advance notice of proposed rulemaking to solicit public comment and participation in comprehensive review of the rules in place throughout the RNA. At that time, a decision will be made concerning the best mechanism for obtaining public input and participation. However, until such time as this review has been completed and changes, if any, are made, the safety of persons and vessels operating within the RNA as well as the environment require that the existing Interim Final Regulations, as modified in this Final Rule, remain in effect.

One commenter stated that the present rule (33 CFR 165.803(d)(2)) allows for subjective determination of the condition of mooring wires and lines and recommended that the Coast Guard work with industry to establish guidelines to be used by Coast Guard inspectors and fleet personnel in determining whether a line is worn or defective. One commenter suggested that the captain of the vessel rather than the person actually inspecting the mooring be able to initial each inspection in the vessel log as required by 33 CFR 165.803 (h) and (i). The Coast Guard will work with industry to arrive at some general guidelines for determining when a line is excessively worn or defective and will examine the possibility of having the master of the tug rather than the person conducting the inspection as part of the comprehensive review of these regulations referred to above. However, we feel that if the person actually completing the inspection were to document the inspection by initiating the log, it will engender a greater sense of responsibility and will result in better inspection of the lines. One commenter recommended that the Regulated Navigation Area should include all fleets, not just those with eight or more barges, that different regulations should be established for different size fleets, and that the regulation should also cover dock facilities. This recommendation will be considered as part of the comprehensive review referred to above.

''Breakaway'' is presently defined as ''a barge that is adrift and is not under the control of a towing vessel''. 33 CFR 165.803(a)(1). One commenter recommended that the definition of breakaway be redefined to mean a barge that is adrift and is not under the control of or being worked by a towing vessel. It is the Coast Guard's position that the present definition is sufficiently broad to exclude barges that are briefly or temporarily adrift but that are being worked by a tow boat. At the present time, the Coast Guard plans no changes to the definition.

Three commenters recommended that the Coast Guard pursue an aggressive role in monitoring the speed and performance of deep draft vessels operating in the Regulated Navigation Area. The Coast Guard does not have the resources to monitor every deep draft vessel in the Regulated Navigation Area. The Coast Guard relies, in part, on the skill and judgment of the master and pilot to navigate safety. However, the Coast Guard actively investigates barge breakaway incidents involving deep draft vessels if the vessel is clearly identified, and encourages parties to accurately report deep draft vessels navigating unsafely. The Coast Guard will investigate, and, if appropriate, take action against the vessel, the vessel's master or the pilot.

Two comments questioned why the new RNA was extended to mile 240 AHP since the 190 Highway bridge in Baton Rouge at mile 234 AHP is the northern-most point reachable by deep-draft vessel and the interim final rule focuses on deep-draft vessels as the primary cause of barge breakaways. This is an incorrect interpretation of the interim final rule. While deep-draft vessels may contribute to barge breakaways, the main concerns of the Regulated Navigation Area is barge fleeting safety, adequacy of barge moorings, and the additional hazards posed by high water conditions. Although deep-draft vessels cannot transit the Mississippi River further than mile 234 AHP, barge fleeting facilities extend above mile 234 AHP. Both the Port of Baton Rouge and the 190 Highway bridge are at or above mile 234 AHP and a barge breakaway in the river above mile 234 AHP could cause property damage, bridge damage or loss of life. Therefore, the Coast Guard believes the Regulated Navigation Area should remain extended to mile 240 AHP.

Three commenters stated that it would be physically impossible to immediately comply with the stern mooring requirement of 33 CFR 165.803(e)(1) and (2). A number of reasons were cited including high water, availability of contractors and the Army Corps of Engineers permitting process. Two commenters stated that installing stern moorings would be a significant capital expense, approximately $8,000 per anchor pile. Three commenters suggested that handling additional and, in many cases, heavier wires would increase the risk of personal injury to crew members. In addition, two commenters stated that the annual operating cost to the facility for maintaining stern wires and boat time for handling stern wires would increase by approximately 10%. For these reasons, as well as those discussed below, at the present time, the Coast Guard will not require stern moorings in the new RNA (mile 127 to mile 240). Stern moorings will still be required in the old RNA (mile 88 to mile 127). Barge fleeting facilities in the old RNA may apply for a waiver of the stern mooring requirement and the COTP, as authorized by 33 CFR 165.803(b), may, if warranted, grant such a waiver. Several commenters made comments which indirectly called into question the usefulness of the stern wires in reducing the likelihood of breakaways. The Coast Guard believes that stern wires do in fact reduce barge breakaways, and is continuing to collect data concerning this issue. However, this requirement will be reviewed as part of the comprehensive review referred to above. Three commenters also requested that enforcement of the interim final rule be postponed until the issues raised during the comment period had been resolved. Based on the comments above concerning the economic impact of stern wire installation and use, the Coast Guard has exercised its enforcement discretion and has not been actively enforcing the requirements of 33 CFR 165.803(e)(1) and (2) in the new RNA. To the best of the Coast Guard's knowledge, no barge fleeting facility in the new RNA has installed stern moorings.

All six commenters took issue with the provisions of 33 CFR 165.803(m)(2)(i) and (iii) and the Coast Guard's interpretation of those provisions. Those provisions require that, during high water, each fleet of between eight and 100 barges be attended by one radar-equipped towboat. The towboat must be immediately operational and within 500 yards of the barges. Those provisions have, in the past, been interpreted to mean that the towboat must stand by and could not perform any work in the fleet. All of the commenters stated that not allowing the stand by tug to work would create an economic hardship. One commenter noted that requiring a stand by boat would cost an additional $600,000 annually. Another commenter stated the cost of a stand by boat would be approximately $180,000 per year per additional standby boat. Both commenters noted that it would be difficult to pass these costs on to the customers. In addition, two commenters noted that there are not enough towboats available. The Coast Guard believes that the goals of promoting safety and preventing barge breakaways in the Regulated Navigation Area can be satisfied if the towboat required by 33 CFR 165.803(m)(2)(i) and (iii) is able to work within the fleet. This is permitted by the language of the existing regulation and no enforcement action will be taken against operators because a boat is being used to work the fleet.

Regulatory Evaluation

In the interim final rule, the Coast Guard asserted that the rule was not a significant regulatory action under section 3(f) of Executive Order 12866 and did not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Coast Guard also asserted that the rule was not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11034), February 26, 1979 and that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of the Department of Transportation was unnecessary. The Coast Guard received four comments addressing the issue of whether the interim final rule was a significant regulatory action. Two comments generally stated that the interim final rule, with its requirement of stern moorings and additional standby boats could force barge fleeting facilities out of business. One commenter noted that the requirement of stern moorings would require an immediate capital investment of $400,000 plus additional operating costs of $150,000. In addition, the commenter noted that requiring a stand-by boat would cost an additional $600,000 annually. In short, the commenter stated, the interim final rule would cost him $1,150,000 the first year and $750,000 each year thereafter and would put him out of business. The commenter stated this rule would catastrophically disrupt the inland river transportation system. Another commenter echoed these comments, stating that these costs would be prohibitive for most fleets. The final rule deletes the requirement for stern moorings in the new RNA. Additionally, the standby boats required by 33 CFR 165.803(m)(2) (i) and (iii) may perform work within the fleet thereby reducing the economic impact of this requirement. No other requirements contained in the Regulated Navigation

Area constitute a significant regulatory action under section 6(a)(3) of Executive Order 12866. Therefore, this regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11034), February 26, 1979). The economic impact of this rule is so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

The Coast Guard asserted in the interim final rule that since the rule did not require a general notice of proposed rulemaking (as it was published as an interim final rule as allowed by 5 U.S.C. 553(b)(B) & (d)(3)), it was exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. section 601 *et seq.*). However, the Coast Guard did review the rule for potential impact on small entities and took the position that the interim final rule would not have a significant economic impact on a substantial number of small entities. The Coast Guard invited comment from parties who felt they were a small entity on which the rule would have significant economic impact. One commenter took issue with the Coast Guard's assertion that notice and public procedure prior to the effective date of the rule would be contrary to public interest, arguing that the extension of the regulated navigation area was not a minor or technical amendment to a rule as contemplated by 5 U.S.C. 553(b)(3) & (d)(3). The commenter stated that an initial and final flexibility analysis under 5 U.S.C. 603 *et seq.*, should be done. The commenter provided information to support the assertion that it was a small entity as defined by 15 U.S.C. 632(a). The commenter noted that the requirement of stern moorings would require an immediate capital investment of $400,000 plus additional operating costs of $150,000. In addition, the commenter noted that requiring a stand-by boat would cost an additional $500,000 annually. In short, the commenter stated, the interim final rule would cost him $1,150,000 the first year and $750,000 each year thereafter and would put him out of business. The commenter asserted that the interim final rule would have a significant economic impact on all of the barge fleeting facilities in the new RNA.

Another commenter took exception to the Coast Guard's assertion that the interim final rule would not have a significant economic impact on any small entities. The commenter stated stern moorings would cost approximately $8,000 per mooring plus 10% in additional operating costs annually. The cost of a standby boat would be approximately $180,000 per year per additional standby boat. The commenter stated the interim final rule would impose a substantial economic impact on the barge fleets in the RNA if the standby boats were prohibited from working within the barge fleet. As previously noted, this final rule deletes the requirement of stern moorings in the new RNA and the standby boats required by 33 CFR 165.803(m)(2) (i) and (iii) are able to perform work within the fleet. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection-of-information requirements. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The section number is § 165.803(i) and the corresponding OMB approval number is OMB Control Number 2115–0092.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not raise sufficient federalism concerns to warrant the preparation of a Federalism Assessment.

Environmental Consideration

This final rule has been thoroughly reviewed by the Coast Guard, the lead Federal agency for purposes of the National Environmental Policy Act (NEPA). It has been determined not to have a significant effect on the human environment or environmental conditions and to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c. of Commandant Instruction M16475.1B.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

Accordingly, the interim final rule amending 33 CFR part 165 which was published at 59 FR 21933 on April 28, 1994, is adopted as a final rule with the following changes:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. In § 165.803, the introductory text and paragraphs (e)(1) and (e)(2) are revised to read as follows:

§ 165.803 Mississippi River—regulated navigation area.

The following is a Regulated Navigation Area—The waters of the Mississippi River between miles 88 and 240 above Head of Passes.

* * * * *

(e) *Mooring to a mooring device.* (1) A barge may be moored to mooring devices if the upstream end of that barge is secured to at least one mooring device and the downstream end is secured to at least one other mooring device, except that from mile 127 to mile 240 a barge may be moored to mooring devices if the upstream end of that barge is secured to at least one mooring device.

(2) Barges moored in tiers may be shifted to mooring devices if the shoreward barge at the upstream end of the tier is secured to at least one mooring device, and the shoreward barge at the downstream end of the tier is secured to at least one other mooring device, except that from mile 127 to mile 240 barges moored in tiers may be shifted to mooring devices if the shoreward barge at the upstream end of the tier is secured to at least one mooring device.

* * * * *

Dated: June 20, 1995.

C.B. Newlin,

Captain, U.S. Coast Guard Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 95–18252 Filed 7–24–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–5225–7]

RIN 2060–AC65

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Regulations Requiring On-Board Diagnostic (OBD) Systems—Regulations Allowing Optional Compliance with California OBD II Requirements as Satisfying Federal OBD

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Due to one adverse comment, EPA is removing one specific provision of the recent direct final rule revising requirements associated with on-board diagnostic (OBD) systems. That direct final rule was published in the **Federal Register** on March 23, 1995 (60 FR 15242). EPA is removing only the provision concerning the acceptance of revised California OBD II as satisfying federal OBD requirements through the 1998 model year. Because that provision is being removed, the Agency intends to issue a notice of proposed rulemaking (NPRM) in the near future to reinstate the intent of allowing optional compliance with revised OBD II requirements.

EFFECTIVE DATE: June 30, 1995.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–90–35, and are available for public inspection and photocopying between 8 a.m. and 5:30 p.m. Monday through Friday. The telephone number is (202) 260–7548 and the facsimile number is (202) 260–4400. A reasonable fee may be charged by EPA for copying docket material.

FOR FURTHER INFORMATION CONTACT: Todd Sherwood, (313) 668–4405.

SUPPLEMENTARY INFORMATION: On March 23, 1995, EPA published a direct final rule revising requirements associated with on-board diagnostic systems. EPA believed that this direct final rule would not be controversial. In that direct final rule, EPA stated that, ''If notice is received that any person or persons wish to submit adverse comments regarding some, but not all of the actions taken in this rulemaking, then EPA shall withdraw this final action and publish a proposal only with regard to the actions for which notice has been received.'' EPA stated that it would make such a withdrawal if adverse comment was received by April 24, 1995.

EPA has received adverse comment from the Motor and Equipment Manufacturers Association (MEMA). This adverse comment has been placed in the public docket for viewing. The comments submitted by MEMA are adverse with regard to a revision of 40 CFR 86.094–17(j) that would allow manufacturers the option of complying with the recently revised California OBD II requirements (California Air Resources Board Mail-Out #95–03). (MEMA had initially objected to other specific provisions of the direct final rule, but MEMA withdrew these objections in a letter signed May 18, 1995.) Therefore, EPA is removing the provision of that direct final rule that pertains to optional compliance with the revised OBD II requirements of ARB Mail-Out #95–03. The language of the prior final rule published on February 19, 1993 (58 FR 9468) allowing compliance with California OBD II requirements is reinstated in § 86.094–17(j) as they existed on that date.

It is important to note that EPA's removal of this regulatory change is not based on EPA's agreement or disagreement with the adverse comment received. The removal is based solely on EPA's determination, announced in the direct final rule, that the provisions of the direct final rule would go into effect only if no persons submitted adverse comments.

EPA is removing this provision without providing prior notice and comment because it finds good cause with the meaning of 5 U.S.C. 553(b). Notice and comment would be impracticable, as EPA needs to remove this revision quickly because it went into effect May 22, 1995. Also, EPA has already informed the public it would withdraw any provision that received adverse or critical comments.

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Gasoline, Incorporation by reference, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: June 30, 1995.

Fred Hansen,

Acting Administrator.

For the reasons set out in the preamble, part 86 of title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a), Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

Subpart A—[Amended]

2. Section 86.094–17 is amended by revising paragraph (j) to read as follows:

§ 86.094–17 Emission control diagnostic system for 1994 and later light-duty vehicles and light-duty trucks.

* * * * *

(j) Demonstration of compliance with California OBD II requirements (Title 13 California Code section 1968.1) shall satisfy the requirements of this section through the 1998 model year except that compliance with Title 13 California Code section 1968.1(d), pertaining to tampering protection, is not required to satisfy the requirements of this section.

[FR Doc. 95–17477 Filed 7–24–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 712

[OPPTS–82046A; FRL–4968–4]

Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: In the **Federal Register** of July 5, 1995, EPA issued a final rule adding certain chemical substances to two model information-gathering rules: the TSCA Section 8(a) Preliminary Assessment Information Rule (PAIR) and the TSCA Section 8(d) Health and Safety Data Reporting Rule. This document corrects two typographical errors that appeared in that final rule.

EFFECTIVE DATE: This rule is effective July 25, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. E–543, Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 5, 1995 (60 FR 34879), EPA issued a final rule adding 24 chemical substances to the PAIR and 12 chemical substances to the section 8(d) Health and Safety Data Rule. In the regulatory text for § 712.30(e), on page 34883, the reporting date for Isophorone (CAS No. 78–59–1) and Isobutyl alcohol (CAS No. 78–83–1) was incorrectly listed as ''8/4/95'', the reporting date should have read ''10/3/95.''

List of Subjects in 40 CFR Part 712

Environmental protection, Chemicals, Hazardous substances, Health and safety data, Recordkeeping and reporting requirements.

Dated: July 13, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

In the **Federal Register** of July 5, 1995, on page 34883, in § 712.30(e), under the category ''OSHA Chemicals in Need of Dermal Absorption Testing,'' under the reporting date column, the reporting date for CAS No. entries for 78–59–1 and 78–83–1 are both corrected to read ''10/3/95.''

[FR Doc. 95–17761 Filed 7–24–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Chatom, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document dismisses a petition for reconsideration filed on behalf of Creek Indian Enterprises, licensee of Station WYDH(FM), Channel 290A, Atmore, Alabama, of the Commission's letter action dated April 26, 1995, which denied the petitioner's request to change the reference coordinates for vacant Channel 291C3 at Chatom, Alabama. The petitioner's request, which is premised on its desire to maximize its signal coverage in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules without requiring a change in the FM Table of Allotments at Chatom, is inconsistent with Commission policy. The Commission has determined that Creek Indian Enterprises has not presented any new arguments or facts in its request for reconsideration, as required pursuant to Section 1.429 of the Commission's Rules, and therefore, its request is dismissed. With this action, the proceeding is terminated.

EFFECTIVE DATE: July 25, 1995.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* adopted July 10, 1995, and released July 18, 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, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–18197 Filed 7–24–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

Radio Broadcasting Services; Various Communities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to Permit FM Channel and Class Modifications [Upgrades] by Application*, 8 FCC Rcd 4735 (1993).

EFFECTIVE DATE: July 25, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, adopted July 11, 1995, and released July 18, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alaska, is amended by removing Channel 274C and adding Channel 274A at Juneau.

3. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 252C2 and adding Channel 252C1 at Bentonville; by removing Channel 260A and adding Channel 260C3 at Monticello; and by removing Channel 223C3 and adding Channel 223C2 at Wynne.

4. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 240A and adding Channel 239B1 at Carlsbad.

5. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 234A and adding Channel 234C3 at Sterling.

6. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 269A and adding Channel 268C3 at Richmond.

7. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 271C3 and adding Channel 271C2 at Basile.

8. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 234C3 and adding Channel 234C2 Staples.

9. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 287C3 and adding Channel 287C2 at Aberdeen; by removing Channel 232A and adding Channel 232C2 at Bay Springs; by removing Channel 282C2 and adding

Channel 282C3 at Greenwood; and by removing Channel 230A and adding Channel 230C3 at Pearl.

10. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 256A and adding Channel 256C3 at Halfway and by removing Channel 224A and adding Channel 225A at Ironton.

11. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 231C and adding Channel 231C1 at Billings.

12. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 234C and adding Channel 234C1 at Chadron.

13. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 249C and adding Channel 249C1 at Belen and by removing Channel 298C and adding Channel 298C3 at Los Alamos.

14. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 232A and adding Channel 232C3 at Elk City and by removing Channel 258A and adding Channel 258C3 at Lawton.

15. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Channel 296A and adding Channel 296C2 at Mullins.

16. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 254A and adding Channel 254C3 at Oliver Springs.

17. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 253C3 and adding Channel 253C2 at Clarksville.

18. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by removing Channel 277A and adding Channel 277C3 at Waterbury.

19. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 269A and adding Channel 266A at Hayward.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–18200 Filed 7–24–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to Permit FM Channel and Class Modifications [Upgrades] by Applications*, 8 FCC Rcd 4735 (1993).

EFFECTIVE DATE: July 25, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 414–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. , adopted July 12, 1995, and released July 19, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 258A and adding Channel 258C3 at Huntsville.

3. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 291A and adding Channel 291B1 at Arnold.

4. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 239A and adding Channel 239C3 at Ormond-by-the-Sea.

5. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 298C2 and adding Channel 298C1 at Des Moines.

6. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 299C3 and adding Channel 300C1 at Erath.

7. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 262C2 and adding Channel 262C1 at Grayling and by removing Channel 250C1 and adding Channel 250C2 at Newberry.

8. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by removing Channel 267A and adding Channel 267C2 at Fallon.

9. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 249A and adding Channel 249C3 at Cuero.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–18201 Filed 7–24–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

Radio Broadcasting Services; Milledgeville, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document denies the petition for reconsideration filed by Radio Perry, Inc. (''Perry''). Perry seeks review of an action taken by the Chief, Allocations Branch on August 17, 1993, returning its petition for rule making by letter as unacceptable for consideration. Perry's proposal sought to downgrade Station WLRR(FM) from Channel 264C3 to Channel 264A at Milledgeville, Georgia. The Commission has determined that Perry has not presented any new arguments or facts in this proceeding. Therefore, we will deny the petition for reconsideration. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 25, 1995.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* adopted July 11, 1995, and released July 18, 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, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M

Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–18198 Filed 7–24–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–36; RM–8547]

Radio Broadcasting Services; Billngs, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 298C to Billings, Montana, in response to a petition filed by Conway Broadcasting. *See* 60 FR 19206, April 17, 1995. Channel 298C can be allotted to Billings without a site restriction at coordinates 45–46–48 and 108–30–18. With this action, this proceeding is terminated.

DATES: Effective September 5, 1995. The window period for filing applications will open on September 5, 1995, and close on October 6, 1995.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 95–36, adopted July 11, 1995, and released July 19, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Channel 298C at Billings.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–18199 Filed 7–24–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 93–91; RM–8197 and RM–8279]

Radio Broadcasting Services; Berlin, De Forest, Markesan & Wautoma, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 226A to De Forest, Wisconsin, in response to a petition filed by De Forest Broadcasting Company. *See* 58 FR 25594, April 27, 1993. The coordinates for Channel 226A are 43–16–08 and 89–20–09. There is a site restriction 1.9 kilometers (1.2 miles) north of the community. To accommodate Channel 226A at De Forest we shall substitute Channel 272A for Channel 226A at Wautoma, Wisconsin, at coordinates 44–04–18 and 89–17–30. Wautoma Radio is the sole applicant for the channel at Wautoma and will be allowed to amend its application and retain cut-off protection. We shall also substitute Channel 284A for Channel 272A at Berlin, Wisconsin, and modify the license for Station WISS-FM accordingly at coordinates 43–56–55 and 88–59–09. The counterproposal filed by Markesan Broadcasting Company to allot Channel 284A to Markesan, Wisconsin, has been dismissed. With this action, this proceeding is terminated.

DATES: Effective September 5, 1995. The window period for filing applications will open on September 5, 1995, and close on October 6, 1995.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 93–91, adopted July 12, 1995, and released July 19, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding De Forest, Channel 226A, by removing Channel 226A and adding Channel 272A at Wautoma, and by removing Channel 272A and adding Channel 284A at Berlin.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–18202 Filed 7–24–95; 8:45 am]

BILLING CODE 6712–01–F

Proposed Rules

Federal Register
Vol. 60, No. 142
Tuesday, July 25, 1995

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 437

[Docket No. EE-RM–95–202]

RIN 1904–AA 74

Voluntary Home Energy Rating System Guidelines

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: Today, the U.S. Department of Energy (''Department'' or ''DOE'') is proposing statutorily required voluntary guidelines for home energy rating systems. The proposed voluntary guidelines are designed to encourage uniformity among systems for rating the annual energy efficiency of new and existing residential buildings. They provide for a uniform rating method; procedures for certification of the technical accuracy of the building energy analysis tools used to determine energy efficiency ratings; training of personnel conducting energy efficiency ratings; data collection and reporting; quality control; and monitoring and evaluation. The voluntary guidelines are intended for use by state and local governments, utilities, builders, real estate agents, lenders, agencies in mortgage markets, and others, to enable and encourage the assignment of energy efficiency ratings to residential buildings and the development of criteria for attractive financial instruments for energy efficient homes.

DATES: Written comments on the proposed rule (10 copies) must be received by the Department by October 23, 1995.

A public hearing will be held on October 2, 1995.

Requests to speak at the public hearing must be received by the Department by 4 pm on or before September 13, 1995. Ten copies of statement to be given at the public hearing must be received by the Department by 4 pm September 28, 1995.

ADDRESSES: All written comments (10 copies), requests to speak at the public hearing, and requests for the supporting documentation are to be submitted to: Voluntary Residential Energy Efficiency Rating Guidelines, Docket Number EE-RM–95–202, Buildings Division, EE–432, Office of Codes and Standards, U. S. Department of Energy, 1000 Independence Avenue, SW., Room 1J–018, Washington, DC. 20585

The public hearing will begin at 9:00 a.m., and will be held at the following location: Washington, D.C.: U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Room 1E–245 (1st Floor, E Corridor), Washington, D.C. 20585.

Copies of the transcripts of the public hearing, individual oral statements, and the written public comments received may be viewed and/or obtained from the DOE, Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue S.W., Washington, D.C. 20585, (202) 586–6020, 9:00 a.m.-4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Robert Mackie, Buildings Division, EE–432, U.S. Department of Energy, Room 1J–018, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–7892

Diana Dean, Office of General Counsel, GC–12, U.S. Department of Energy, Room 6B–231, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–7440

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority

Section 102 of the Energy Policy Act of 1992 (Pub L. 102–486), amended Title II of the National Energy Conservation Policy Act (Act) by adding sections 271–273 (42 U.S.C. 8236–8236b). Section 271 of the Act directs the Department to issue, by rule, voluntary guidelines that may be used by state and local governments, utilities, builders, real estate agents, lenders, agencies in mortgage markets, and others, to enable and encourage the assignment of energy efficiency ratings to residential buildings. Section 271 requires the Department to consult with the Secretary of Housing and Urban Development, the Secretary of Veterans Affairs, representatives of existing home energy rating programs, and other appropriate persons. In terms of specified content, section 271 provides that the voluntary guidelines shall:

(1) encourage uniformity with regard to systems for rating the annual energy efficiency of residential buildings;

(2) establish protocols and procedures for (A) certification of the technical accuracy of building energy analysis tools used to determine energy efficiency ratings;

(B) training of personnel conducting energy efficiency ratings;
(C) data collection and reporting;
(D) quality control; and
(E) monitoring and evaluation;
(3) encourage consistency with, and support for, the uniform plan for Federal energy efficient mortgages, including that developed under section 946 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12712 note) and pursuant to sections 105 and 106 of the Energy Policy Act of 1992;
(4) provide that rating systems take into account local climate conditions and construction practices, solar energy collected on-site, and the benefits of peak load shifting construction practices, and not discriminate among fuel types; and
(5) establish procedures to ensure that residential buildings can receive an energy efficiency rating at the time of sale and that such rating is communicated to potential buyers.

Section 105 of the Energy Policy Act of 1992 amends section 104 of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. 12704, by defining an ''energy efficient mortgage'' as a mortgage that provides financing incentives for the purchase of energy efficient homes, or that provides financing incentives to make energy efficiency improvements in existing homes by incorporating the cost of such improvements in the mortgage.

The Department is developing the guidelines through notice and comment rulemaking because section 271 specifically requires that they be developed ''by rule.'' Nevertheless, compliance with the final guidelines is strictly voluntary.

B. General Purpose

The principal purpose of a home energy rating system is to calculate a descriptive rating of the energy performance of a residential building. An accurate home energy rating system will give the lending industry the confidence it needs to underwrite energy efficient mortgages, offer financing mechanisms, and provide the real estate and appraisal industries with a basis for valuing energy efficiency in the home sale and resale markets. It is anticipated that by providing an accurate technical basis for projecting energy savings from installations of energy efficiency measures, the guidelines, when finalized, will play a critical role in establishing a market-based system to encourage homeowners to improve the energy efficiency of new, reconstructed or existing housing.

Reliable and consistent energy analysis systems are prerequisites for financing residential energy efficiency through the mortgage process with energy efficient mortgages or energy efficient loans. Variation in current local and statewide home energy rating programs impedes the implementation of energy efficient mortgage programs because the Federal mortgage agencies and lenders are uncertain as to the reliability of the ratings.

As of 1993, a number of states had developed their own unique home energy rating programs. The National Association of State Energy Officials (NASEO) stated that 14 states have state-wide or city-wide, scaled home energy rating programs for new and existing homes. Thirty-three states had utility-run home energy rating certification programs for new homes in at least some areas of the state. In some areas both state and utility rating programs were in use.

Today's proposed rule responds to the need of mortgage lending institutions for a reliable technical basis upon which to underwrite energy efficient mortgages. Providing this solid footing for mortgage underwriting will encourage lenders to issue a variety of energy-related financial products which in turn will help stimulate the market for energy efficient housing measures.

Along with access to attractive financing, homeowners could be encouraged to make investments in energy efficiency if they are valued in the real estate market. Currently, appraisals are based on comparables that do not necessarily value energy efficiency measures. A reliable home energy rating gives appraisers a sound basis for recognizing energy efficient measures that have been installed.

Uniformity across different home energy rating systems could benefit consumers and the housing industry by making energy ratings a standard part of the real estate process. As ratings become widely utilized, consistency among systems will promote proper market valuation of improvements. Expanded use of home energy rating systems could stimulate increased use of energy efficiency and renewable energy technologies by making energy efficiency a quantitative, visible, and recognized attribute as homes are designed, built, bought, and remodeled.

C. Guideline Development

The Department's Office of Building Technologies contracted with the Home Energy Rating Systems Council (HERS Council) in 1993 for the development of a Technical Report to be used as a basis for the guidelines proposed today. The Department acted in response to the provisions set forth in the Act to develop voluntary guidelines in consultation with the Secretary of Housing and Urban Development, the Secretary of Veterans Affairs, representatives of existing home energy rating programs, and other appropriate persons.''

The HERS Council is a not-for-profit, corporation with a nineteen-member board representing various stakeholders in the matter of home energy ratings. The HERS Council's membership includes builders, mortgage lenders, HERS providers, consumer groups, State energy offices, utilities, real estate agents and appraisers, and product manufacturers.

The HERS Council formed a Technical Committee comprised of representatives from electric and gas utilities and utility trade associations, home energy rating providers, software developers, builders, state organizations, product manufacturers, and the heating, ventilation and air-conditioning industry. The Department also provided resources from the National Renewable Energy Laboratory to give technical support to the HERS Council during their work on the Technical Report.

The Department, working through the HERS Council, attempted to reach all possible stakeholders to obtain comments during the development of these proposed guidelines. Representatives from the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Veterans Affairs (VA) attended HERS Council and Technical Committee meetings to remain apprised of the material being developed and the Department has consulted with both HUD and VA on the contents of these proposed guidelines.

Many of the larger and more active rating organizations participated in this effort, but the Department is aware that there are some home energy rating organizations not participating in the HERS Council. Therefore, the Technical Report created by the HERS Council, via a consensus process, may not reflect all opinions on the content of these guidelines. The proposed guidelines allow for delayed compliance as described below. The Department invites all interested parties to provide the Department with their views regarding the proposed guidelines in comments responding to this notice and at the public hearing.

D. Rating Method Development

The proposed guidelines provide for a single method of rating homes that is consistent with the statutory requirement in section 271 of the Act to encourage uniformity with regard to systems for rating the annual energy efficiency of residential buildings. The HERS Council and the Technical

Committee considered several existing rating methods. Many of the existing methods considered utilize a 100-point scale, and therefore, a large portion of consumers and financial institutions should find this type of scale an appropriate basis for ratings.

Many of the existing 100-point methods, however, lack consistency in the specification of the extremes of the scale (0 and 100 points). In some of the existing methods, the least efficient fuel and type of heating system is used to define the least efficient end of the scale. In other existing methods, the best available technology is used to define the most efficient end of the scale. The exact parameters that determine the ''least efficient'' and ''most efficient'' ends of the scale are selected individually by each HERS provider which can result in a lack of consistency among providers.

To promote consistency, the proposed scale utilizes a single fixed reference point from which energy efficiency is measured. The reference point is fixed at 80 points, and the proposed method assumes zero purchased energy at the top end of the 100-point scale. The top of the scale (100) represents a one hundred percent improvement over the reference point. Therefore, each point above 80 represents a five percent reduction in energy consumption from the reference point. Conversely, at a five percent increase in consumption per point, zero would represent purchased energy that is five (or more) times greater than the purchased energy consumed at the reference point. By selecting the energy efficiency of a hypothetical building (reference house) that remains constant as the reference point, the rating scale becomes both uniform and consistent over time. If no changes occur to the rated features of a home, then the rating also remains consistent over time.

1. Reference House

The approach used to create the specifications for the reference home was to base the proposed scale specifications on an already recognized standard for ''energy efficiency.'' Two recognized standards for energy efficiency that are national in scope are the Council of American Building Officials (CABO), Model Energy Code (CABO–MEC) and the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) Standard 90.2.

The HERS Council Technical Committee compared the specifications of these two documents. Using computer programs that met the preliminary requirements of the proposed tool certification process found in proposed section 437.200, a comparison was made of calculated energy consumption for two standard prototype homes located in seven cities in the United States. The predicted energy consumption was similar for either standard in most climates. In predominantly heating climates, CABO was slightly more stringent, whereas ASHRAE tended to be slightly more stringent in climates where cooling was the greater need. The difference was not considered to be substantial.

The HERS Technical Committee recommended the use of CABO–MEC as the basis for the reference home in the proposed rating method. CABO–MEC is the qualifying threshold for the energy efficient mortgage program of the Federal National Mortgage Association (Fannie Mae), and the Federal Housing Administration. Further, Section 101 of the Energy Policy Act of 1992 uses CABO–MEC as the benchmark for residential buildings in the Department's Building Energy Efficiency Standards Program.

On the basis of the foregoing, the Department accepts the HERS Technical Committee's recommendations to use CABO–MEC. (See proposed section 437.102, ''Section Description of the Guidelines'', ''Configuration of the Reference Home.'')

As previously stated, several secondary mortgage programs, including HUD insured mortgages, recognize CABO–MEC as providing a level of energy efficiency that qualifies buyer for increases in their debt to income ratio limits. These programs currently reference the 1992 edition of CABO–MEC. The Department selected the 1993 edition to establish insulation levels for the reference home because it provides for more realistic (higher) levels of efficiency in multi-family homes than those provided in the 1992 edition. In addition, some elements to define a reference home and a standard set of operating conditions are not present in the 1992 or 1993 editions of CABO–MEC, so they are taken from the 1994 Amendments. Details are provided in Section II.B. ''Sections Descriptions'' under proposed section 437.103, ''Configuration of the reference home'' and proposed section 437.105, ''Operating condition assumptions.''

2. Star Rating Method

Many of the existing HERS systems provide ''star'' ratings as a way of summarily representing the point scores. Many of the providers support the concept that a ''four star'' rating should denote efficiency. The proposed guidelines include the use of a ''star'' system. Under this system, which uses a ''one star'' to ''five stars-plus'' scale, the reference home located at 80 points is awarded four stars.

The divisions of the ''star'' scale in the proposed rating method were created by the HERS Technical Committee based on a study of calculated energy consumption. The HERS Technical Committee used incremental levels of efficiency to look at the range of performance that might be found in the existing housing stock. (For example, a pre-1940 home with no modifications consumes approximately four times the energy used by a reference home.) The study also looked at logical incremental increases in levels of thermal performance above the levels found in the reference home. To attain those higher levels, the study looked at improved insulation equipment efficiency and the use of renewable energy sources such as passive and active solar. The ''star'' breakpoints presented in the proposed guidelines have their origins in this analysis by the HERS Technical Committee. Copies of the results of this study are available from the Department information contact listed in the ''Addresses'' paragraph of this proposed rulemaking. The Department has also placed a copy in its Freedom of Information Reading Room.

Thus, the guidelines proposed today are based on the principle of a reference house and logical incremental changes in energy consumption. The expression of the results is captured in the ''star'' categories of energy efficiency.

The Department invites comments regarding the potential acceptance of these guidelines by existing home energy rating providers and invites specific comments on the content of the guidelines. Commenters should bear in mind that these guidelines would not in themselves set any ''acceptable'' level of energy efficiency and that existing programs could use any point or points on the proposed scale for comparisons that encourage efficiency. Commenters are also encouraged to provide specific examples if comparisons to existing programs are offered.

II. Description of the Proposed Rule

A. Summary of the Proposed Voluntary Guidelines

The proposed voluntary guidelines would establish: (1) A uniform national rating method, and protocols and procedures for certification of the technical accuracy of building energy analysis tools used to determine energy efficiency ratings; (2) training of personnel conducting energy efficiency ratings; (3) data collection and reporting; (4) quality control; (5) and monitoring and evaluation. They take into account local climate conditions and construction practices, solar energy collected on site, and the benefits of peak load shifting construction practices. They are designed not to discriminate among fuel types.

The Department proposes to incorporate by reference test procedures, U values and U_o values, and on site inspection procedures upon publication of this rule as final. These materials are listed below:

The ''Home Energy Rating Systems Building Simulation Test (HERS-BESTTEST)'', NREL/TP–472–7332, National Renewable Energy Laboratory. The U values and U_o values, of paragraph 502.2 of the Model Energy Code, 1993 Edition, Council of American Building Officials. ''On Site Inspection Procedures'', Guidelines No. 10, Home Energy Rating Systems Council.

Copies of these document may be reviewed at the Department of Energy, Freedom of Information Reading Room at the address stated above. Copies of these documents may also be obtained from the organizations and addresses listed below:

''Home Energy Rating Systems Building Simulation Test,'' NREL/TP–472–7332, National Renewable Energy Laboratory, 1617 Cole Boulevard, Golden, CO 80401–3393.

''Model Energy Code,'' 1993 Edition, Council of American Building Officials, 5203 Leesburg Pile, Falls Church, VA 22041.

''On Site Inspection Procedures,'' Guidelines No. 10, HERS Council, 1511 K Street, NW, Washington, DC 20005.

B. Section Descriptions

Subpart A—General Provisions

Proposed Section 437.1: Purpose

Proposed § 437.1 defines the purpose of part 437 as the establishment of voluntary guidelines to be used by Home Energy Rating System Providers to provide a consistent and uniform approach to rating homes for energy efficiency.

Proposed Section 437.2: Scope

Proposed § 437.2 specifies the types of homes that may be rated using the voluntary guidelines. Section 271 of the Act calls for the development of guidelines for ''residential buildings'' but does not define that term or otherwise dictate the types of homes to be covered by the guidelines. Consistent with the decision to base the proposed voluntary guidelines on CABO–MEC, the proposed scope is limited to residential buildings covered by CABO–MEC.

Included are: (a) one and two family dwellings; and (b) all other residential buildings, three stories or less in height. As required by section 271, both existing and proposed homes are included in the proposed scope of the voluntary guidelines.

Proposed Section 437.3: General Definitions and Acronyms

Proposed § 437.3 provides a listing of all the general definitions and acronyms used in section 437. ''Home'' is defined in this section as a residence or dwelling unit in detached or attached structures of three stories or less. The rating industry as it exists today favors the term ''home energy rating'' and the Department elects to follow that convention. ''HERS provider'' is defined as a person or organization that develops, manages and operates a home energy rating system or ''HERS''. The rating industry as it exists today tends to use the term ''HERS provider'' to describe a person or organization that provides HERS generated ratings.

Proposed Section 437.4 Availability of Ratings

To respond to the statutory requirement ''to ensure that residential buildings can receive an energy efficiency rating at the time of sale and that such rating is communicated to potential buyers,'' proposed § 437.4 recommends certain actions by people or organizations that are typically involved with the sale of a home or the creation of a mortgage.

The Department is of the view that informing home buyers of any available financing incentives related to energy efficiency will encourage consumers to take steps that will reduce energy use in this country. Consistent with that view, proposed § 437.4(b) provides for encouraging multiple listing services to include available home energy rating information. The Department understands that there is concern among stakeholders that buyers may need additional time to investigate available incentives and, if necessary, have a rating conducted. In doing so, the process of home selling might be delayed. However the Department believes that delays can be minimized by lenders with proper administrative procedures.

The Department also recognizes further concern that some existing homes may be viewed as less marketable as the result of a rating and therefore some homeowners may oppose the concept of rating homes. However the Department is not proposing that such a rating should be prerequisite to listing a home sale.

Proposed Section 437.100: Rating Procedure

Proposed § 437.100 sets forth a standard procedure to be used by each provider who voluntarily follows the proposed guidelines. A site visit would be required to collect data that is used in making a comparison of estimated yearly energy consumption between the home being rated and a standard reference home of the same size and shape. Only the energy consumed for heating, cooling and water heating would be used in this comparison. The reference home would be defined under proposed § 437.103.

Proposed Section 437.101: Rating Point Score and Star Rating

This proposed section describes the calculation procedure for determining a point score and star rating. The procedure would use the estimated energy consumption of the rated and reference houses to determine a rating score between 0 and 100 points. A score of 0 indicates that the rated home consumes five times or more energy than reference home and is considered profoundly inefficient; a score of 100 indicates that the rated home has zero annual purchased energy consumption for heating, cooling and water heating.

In addition to a numerical score, the rating is expressed by a ''star'' value of between one and five stars (five divisions) with a sixth division called ''Five Plus''. This section identifies the relationship of the numerical score to its corresponding ''star'' value.

Proposed Section 437.102: Rating Report

Proposed § 437.102 lists the minimum information that each rating provides. Proposed paragraphs (a)(5) and (a)(6) of this section would require each HERS provider to report the name of the agency certifying the accuracy of the energy analysis tool and the margin of error accepted by that agency. Section 271 of the Act requires that the guidelines establish procedures for certifying the technical accuracy of energy analysis tools, but gives no definition as to what constitutes ''technical accuracy.'' As proposed in section 437.200, these guidelines look to the accrediting agency to establish pass/fail criteria for energy analysis tools. The Department believes that the acceptable margin of error is an issue to be decided by the users of these ratings, such as consumers and lenders.

Therefore, the purpose of these two proposed reporting requirements is to provide information that allows users to decide for themselves if the accuracy of the energy analysis tool, as defined by the accrediting body, is acceptable. The Department expects and encourages comments from the financial community on this issue.

Proposed paragraph (a)(7) of this section requires each HERS provider to report the level of their accreditation as either ''basic compliance'' or ''full accreditation''. Existing HERS providers may have functioning systems that would comply, or could readily be made to comply with the majority of these guidelines, but would require lengthy periods of time to come into full compliance. In response to this situation, the Department proposes two levels of performance, basic compliance and full accreditation, with the opportunity for any existing HERS provider to meet certain guidelines with their present system for a period of up to two years, during which time they may represent themselves as being in basic, but not full compliance with the guidelines. The Department invites comments on the advisability of such a structure.

Paragraph (a)(9) provides for the reporting of previous energy consumption data if it is made available by the homeowner. Various factors such as prior home improvements or unusual weather conditions make it necessary for the rater to determine the usefulness of such information and to determine if it should be included in the report.

To facilitate energy efficient mortgages and loans as provided in section 271 of the Act, paragraph (b) of this proposed section provides for the report to include the estimated energy cost savings available with the rated home reconfigured with possible improvements to the minimum rated features. Paragraph (b)(2) also provides for reporting of ''The Present Worth Value'' of the energy cost savings and the discount rate used to calculate that value. The Department considers this information necessary because it is used in the qualification process for Federally backed energy efficient mortgage programs such as those provided by the Department of Housing and Urban Development (HUD). The Department is not proposing a specific discount rate.

Proposed Section 437.103: Reference House Configuration

Proposed § 437.103 establishes the level of energy efficiency of the reference home. The insulation levels are those that are required by the Council of American Building Officials Model Energy Code, 1993 edition (CABO-MEC), therefore, specific reference is made in this proposed section to have the enclosure elements configured to Paragraph 502.2 of CABO-MEC. This paragraph establishes the criteria for building envelope components according to the severity of the normal winter weather conditions for the geographic location of the home. The Department considers this procedure to be appropriate for the determination of insulation levels for the reference home.

To be responsive to the language in section 271 of the Act regarding the need to take into account ''solar energy collected on-site,'' this proposed section would create what the Department considers a ''solar neutral '' reference home by fixing the following components:

Fenestration Area—In proposed paragraph (a)(5)(i), the fenestration area is fixed at 18 percent of the conditioned floor area. The requirements for wall assemblies in CABO-MEC are based on the average U-values of those assemblies and therefore the total U-value of the wall assemblies including windows and doors is calculated, then divided by the gross wall area to determine the average. Since the area of glazing may vary depending on the thermal performance of the window itself and/or the opaque wall area, it is considered necessary to fix the amount of glazing to create consistency in the reference home. In the case of multi-family homes, where 18 percent of the conditioned floor area may exceed the actual exposed wall area, a formula is provided in proposed section 437.103 to establish the reference home fenestration on a ratio of exposed and common wall areas.

Orientation—Also in proposed paragraph (a)(6)(i), glazing in the reference home would be distributed equally in each of four cardinal directions—north, south, east and west. As a result, the reference home is assumed to experience equally beneficial solar gains during heating season and equally detrimental solar gains during cooling. The rated home would reflect the benefits of favorable orientation and/or the negative impact of poor orientation. This principle is also utilized with regard to multi-family homes, which would assume hypothetical glazing in walls even though the actual wall in the rated home may be common with an adjoining unit and not have any windows.

Adjustment to Fenestration Area—Proposed paragraph (a)(7) specifies the percentage of the fenestration area that be assumed as frame or sash. This serves to further refine the actual glazed area for purposes of solar contribution for heating or solar load for cooling. The value of 27 percent is taken from the information in Chapter 27 of the 1993 ASHRAE Handbook of Fundamentals which specifies a 27 percent frame area for a 3 ft. by 4 ft. operable wood residential window. Frame and sash adjustments to fenestration area in the rated home are based on the actual windows in use or as proposed for retrofit or to be built homes.

Shading Coefficient—Proposed paragraph (a)(8) fixes the shading coefficient at 0.70 during the cooling season. This is consistent with the provisions for a reference house in section 8.8.3.2 of ASHRAE Standard 90.2, for energy efficient design of low rise residential buildings. It is also consistent with the provisions found in the 1994 amendments to CABO–MEC. The 1994 amendments were used as a source of information to define this feature of the reference home because the 1993 code lacks clarity on these necessary specifications. It should be noted that CABO states the use of draperies without providing a specific shading coefficient which still leaves some ambiguity that is avoided by following the ASHRAE approach. This part of the proposed guidelines also fixes the shading coefficient for the glazing area at 0.88 during heating. This value is as stated in Chapter 27 of the 1989 ASHRAE Handbook of Fundamentals for clear double ⅛ inch glass. Shading coefficients for glazing in the rated home are based on the actual windows in use or as proposed, but also assuming the use of non-white draperies on the same schedule as is specified for the reference home.

In response to the language in section 271 of the Act that requires that these proposed guidelines not discriminate among fuel types, proposed paragraph (a)(10) provides that the reference home utilize the same energy sources for the same purposes as in the rated home. In the case of ratings that include proposed upgrades, this eliminates the possibility of a better rating by fuel switching. Energy suppliers are free to promote their particular fuel type by providing comparative operating costs but should do so outside of the information provided in the rating of the home as it exists.

In proposed paragraph (a)(12), the equipment efficiencies specified for HVAC systems and domestic hot water equipment in the reference home, are the minimum efficiencies initially established by the National Appliance Energy Conservation Act of 1987 (NAECA)(Pub.L. 100–12). In proposed paragraph (a)(11), the reference home is also assumed to have the same type of HVAC system, e.g., forced air or hot water, as the rated home, except that in the case of homes heated electrically, the reference home is assumed to be heated with an air source heat pump. The Department considers this to be consistent with the use of the minimum equipment efficiency established by NAECA, but acknowledges the fact that in some homes with an extremely efficient envelope, the use of resistance heat might very well represent the best value when life-cycle costing principals are applied. However, it is considered a greater risk to allow the combined inefficiency of a poor envelope using resistance heat to be mitigated if a heat pump system is not specified in the reference home.

Proposed paragraph (a)(13) provides for standard adjustments to HVAC systems for duct or piping losses when the rated home has all or part of its distribution system outside of the conditioned space. The adjustment factors are consistent with those found in the 1994 Amendments to CABO–MEC.

Proposed paragraph (a)(14) provides specifications for water heater efficiency expressed as an energy factor (EF). The values specified are those found in the NAECA requirements for domestic water heaters.

The seasonal average air leakage rate of 0.67 air changes per hour (ACH) established for the reference house in proposed paragraph (a)(15) is consistent with the 1994 amendments to CABO–MEC. Consideration was given to reducing that value to 0.50 air changes per hour as was done in the 1995 edition of CABO–MEC, but at 0.67 there can be a greater incentive to test with diagnostic equipment such as a blower door. With the reference home set at the lower level of 0.50, a tested home would receive minimal credit (0.15 ACH) in the rating before reaching the current ASHRAE minimum of 0.35 ACH assumed necessary for adequate ventilation. With an 0.67 rate as the basis for the reference home, a tested home has the opportunity to demonstrate a 0.32 ACH advantage in the rating. The minimum standard default value in proposed section 437.104, unless diagnostic testing is conducted, is 0.67 so in no case could a rated house claim any advantage over the reference home without testing.

Proposed paragraph (a)(16) sets standard assumptions for the building mass found in the reference building that would be considered when evaluating the benefits of mass for heat storage during both heating and cooling seasons. This approach allows designers of the rated home to incorporate passive solar strategies into the design and to receive full credit for mass provided for that purpose. The internal and structural mass values used are those found in the 1994 Amendments to CABO–MEC.

The reference home defined by proposed section 437.103 represents a fixed rating point that will not change over time. Homes which have been rated will never need to be re-rated unless modifications have been made to the home which affect its energy efficiency.

The Department invites comments on the configuration of the reference house but reminds comment writers that it is not the intention of these guidelines to use the reference house to set any specific level of efficiency. While the specifications happen to be consistent with some current energy efficient mortgage programs, anyone offering incentives for energy efficiency in financing or otherwise, is free to select any point on the rating scale as their ‘‘threshold of energy efficiency’’ or other basis for comparison. The objective in defining and using the reference home is consistency and the fact that it is fixed in time has no bearing on future definitions of ‘‘energy efficiency’’ or future qualifications for energy efficient financing programs.

Proposed Section 437.104: Minimum Rated Features

Proposed § 437.104 provides in Table 5, a list of building components and a corresponding list of features of those building components that must be considered when calculating the energy consumption for the rated home as required by § 437.100. The Department recognizes that there are numerous additional features or devices that might affect energy consumption in buildings. Examples are ceiling fans, whole house fans, moveable insulation, etc., most of which are occupant controlled. The Department believes that those listed in Table 5 represent all the major influences on energy consumption and that it is not necessary to require that each HERS provider be able to evaluate all options and to do so would place an undue burden on many existing systems. Paragraph (h) of this section states that any HERS provider may base a rating on additional features if the energy analysis tool being used is capable of doing so.

Proposed paragraph (c) provides methods, listed in the preferred order of use, to determine building envelope thermal characteristics.

Proposed paragraph (d) allows for the use of default values when data for the minimum rated features is not available without expensive and destructive disassembly of the home. The Department believes that these default values are best determined by a person or persons knowledgeable about typical construction practices used in any given time frame for homes in any given area. For this reason, this section places the responsibility for establishing or approving default values on the accrediting body and reflects the expectation that the required expertise is present in that body.

Paragraph (e) of this section deals specifically with air leakage. It states that if diagnostic testing equipment is not used to determine leakage, then based on observations of the general tightness of construction, a value of 0.67 air changes per hour or greater is to be used. This precludes the use of a lower, more efficient value in a rated home than is used for the reference home unless testing is done. It does not ensure that the energy consumption attributable to air leakage is accurately reported in the rating but neither do the models used to extrapolate annual average air leakage rates from a single diagnostic test. An experienced and well trained rater may make reasonable estimates of air leakage and doing so without the expense of diagnostic equipment reduces the cost of completing a rating. The Department invites comments on the sensitivity of the possible range of error which can occur with either estimated air leakage or in the models for diagnostic testing.

Proposed paragraph (f) of this section provides methods, listed in a preferred order of use, for determining efficiencies of primary types of mechanical equipment. Proposed paragraph (g) provides as the last in order of preference, an age-based table of default values for typical space conditioning and domestic water heating equipment. A non-aged based table of default values is provided for less common types of mechanical equipment.

These tables identified as Tables 6 and 7, were developed from the following references:

Department of Energy Residential Conservation Services Training Manual (1981)

California Home Energy Efficiency Rating System (CHEERS) equipment default table

Air Conditioning & Refrigeration Institute (ARI) historic equipment shipment data, weighted averages

Gas Appliance Manufacturers Association (GAMA) historic equipment shipment data, weighted averages

Oil equipment shipment data compiled by R. Krajewksi (Brookhaven National Laboratory), weighted averages

Proposed Section 437.105: Operating Condition Assumptions

These guidelines are to be used to rate homes and not the occupants of the home. Therefore occupant dependent factors e.g., thermostat set points, are to be disregarded when estimating the energy consumption of the rated and reference homes. Instead, the standard operating conditions provided in proposed § 437.105 are to be assumed.

Proposed paragraph (a) of this section provides standard temperature control setpoints of 68 °F for heating and 78 °F for cooling which are consistent with those found in the 1994 Amendments to CABO–MEC. When programmable offsets are available in the rated home, proposed paragraph (b) of this section specifies assumptions for the periods of offset and the amount of offset (5 °F). These values are based on information obtained from an industry survey conducted by Minneapolis Honeywell that reported typical use of programmable thermostats. The Department considers these schedules and offsets to be conservative and therefore suitable as an operating conditioning assumption when the rated home is so equipped.

Proposed paragraph (c) sets standard values for internal gains from lights, people and equipment to be used when calculating the space conditioning loads and energy consumption. These values are consistent with those found in the 1994 Amendments to CABO–MEC.

Proposed paragraph (d) provides a formula for the determination of domestic hot water usage. This formula for daily usage, (30 gallons + (10 gallons × number of bedrooms)), is consistent with the formulas found in the 1994 Amendments to CABO–MEC and in ASHRAE Standard 90.2 that establish domestic hot water usage.

Proposed paragraph (e) would require the HERS provider to make a determination as to what weather data is to be used when calculating energy usage. The normal source of weather information is to be found in the typical meteorological year (TMY) data published by the National Climatic Center, Asheville, NC. The term ‘‘climatologically most representative’’ is used regarding the choice of location of the TMY data to be used. This is because the Department recognizes the possibility that the closest TMY weather site geographically may not be truly representative of the weather conditions found at the site of the home being rated. This proposed paragraph also allows interpolation of weather data if the interpolated weather information is consistent among all HERS providers operating within a State and is approved by the accrediting body.

Proposed paragraph (f) provides that operating adjustments to equipment efficiencies are to be made to correct for climate and mis-sizing of equipment. These correction factors may be obtained from recognized sources. The most logical sources of this information are the Air Conditioning and Refrigeration Institute (ARI) or ASHRAE. The requirements of this proposed paragraph would be met if the adjustments are either provided by or approved by the accrediting body and are consistent among all HERS providers operating within a State.

Proposed paragraph (g) would require each HERS provider to use local utility or energy rates when calculating costs for reporting as required in proposed section 437.102. This paragraph also would provide for consistency among HERS providers on the updating of the rate information by requiring each HERS provider operating within a State to update information on the same schedule which is established by the accrediting body.

Proposed Section 437.106: Non-Rated Energy Consuming Devices

The energy consumed by appliances and lights is not included in consumption used to determine the rating. Proposed § 437.106 would establish standard consumption values for energy consuming devices such as appliances and lights since it is necessary to estimate the energy usage of these non-rated devices to comply with proposed § 437.102 (Rating Report). Proposed § 437.102 would require that, in addition to reporting the estimated energy use for heating, cooling and water heating, each HERS provider reports the estimated energy use and cost of all other energy used in the rated home.

The Department recognizes the fact that some appliances, especially refrigerators, may have a wide variance in energy use. There are also dramatic savings available with the use of alternative lighting fixtures. The primary reason behind the decision to neutralize the affect of appliances in the rating process is that the rating should not be based on items that are not a permanent part of the structure. Refrigerators and other appliances can be moved with the occupants or can be replaced with models that are more or less efficient. In the case of lighting, there are opportunities to include permanently wired fixtures in the rating but it is necessary to know the operating schedule of the lighting to properly identify savings. Therefore the rating would be based on the occupants and not on the house. In addition, the number of permanently wired fixtures in the typical home is limited and, in most cases, represent only a small part of the total energy use.

In proposed § 437.100(d), each HERS provider is encouraged to provide separate information on the cost of operating appliances.

The electric energy use values proposed in Table 8 of this section are taken from documents published by the Electric Power Research Institute (EPRI). Those documents include: EPRI Residential End-Use Energy Consumption: A Survey of Conditional Demand Estimates 1989 and EPRI Residential Energy Usage Comparison Project: An Overview 1990.

The gas energy use values proposed in this section are taken from documents published by the Gas Research Institute (GRI). Those documents are: GRI Baseline Projection Data Book, 1994 Edition; and GRI Interim Technical Input to NAECA Rulemaking for Gas-Fired Ranges, 1993.

Proposed Section 437.107 Projected Ratings for To-Be-Built Homes

This section recognizes that homebuilders may wish to offer standard models that may be built on sites that vary in orientation. This would prevent a rater from meeting a provision of section 437.104 which lists window and skylight orientation as a minimum rated feature. Therefore, a projected rating for to-be-built homes may be based on plans by estimating the energy consumption for each of the four cardinal orientations, (north, south, east and west), and basing the projected rating on the orientation that results in the greatest energy consumption.

Projected ratings for to-be-built homes must also use a default value for air leakage of no less than 0.67 air changes per hour. The rating may be revised upon completion of the home if diagnostic testing results in a lower air leakage rate (and/or on the basis of actual orientation). The Department recognizes that this may be unfair to builders who consistently deliver homes with tighter construction because the projected rating will not reflect the benefit of additional investment in tightening of the home and may cause the rating to fall short of a level required to obtain a particular incentive. The final rulemaking could address this issue by allowing an exception to the default value for demonstrated consistency of tightness by a builder and the Department solicits comments on the appropriate basis on which that exception might be made (number of homes with demonstrated tightness, etc.).

Subpart C—How to Administer a Home Energy Rating System

Proposed Section 437.200: Energy Analysis Tool Requirements

Proposed § 437.200 establishes the minimum capabilities that an energy analysis tool must have in order to produce the information used in determining a rating. These include the ability to consider the effect of the following items when estimating energy use:

Building types. (Proposed § 437.2);
Reference home configuration. (Proposed § 437.103);
Minimum rated features. (Proposed § 437.104);
Operating condition assumptions. (Proposed § 437.105);
Non rated energy consuming devices. (Proposed § 437.106).

Proposed paragraph (a)(5) is provided in response to section 271(b)(2) of the Act which requires that the voluntary guidelines include protocols and procedures for certification of the technical accuracy of building energy analysis tools used to determine energy efficiency ratings.

The National Renewable Energy Laboratory (NREL) has developed a Home Energy Rating System Building Energy Simulation Test (HERS BESTEST) for this purpose. HERS–BESTEST is published as a technical report identified as NREL/TP–472–7332, and is available from the information contact identified at the beginning of this notice or from the National Technical Information Service, U. S. Department of Commerce, Springfield, Virginia 22161.

In developing HERS BESTEST, NREL used the results of three public domain dynamic analysis programs with time steps of one hour or less to establish reference energy consumption values as a basis for comparison of the energy consumption calculations generated by HERS tools. The programs used were DOE 2.1E, BLAST 3.0, and SERI–RES.

The NREL report establishes the procedures to administer HERS–BESTEST. The NREL report also provides suggested pass/fail criteria for certification of a rating tool based on the tools ability to correctly calculate, within an allowable deviation, building energy loads for a series of tests identified as Test Suite 1 of the HERS–BESTEST process.

A single story slab on grade house with typical glazing and insulation is used as a base case with the HERS–BESTEST Tier 1 test suite consisting of variations to the building in these elements:

- Air leakage.
- Wall and ceiling R-value.
- Glazing area.
- Glazing physical properties.
- Glazing orientation.
- South overhang.
- Uninsulated slab.
- Insulated slab.
- Uninsulated basement.
- Insulated basement.
- Internal loads.
- Crawl space.
- Exterior surface color.
- Combination of features using the least energy efficient specifications for each.

In each of the variations listed above, the energy loads calculated by the three public domain dynamic analysis programs differ by varying amounts. The variation can be up to fifteen percent of the mean of all three results. Thus a ''band width'' of results is created for each test case.

Proposed § 437.206 (Accreditation) provides that it is the responsibility of a State or any other organization established as an accrediting body, to establish the pass/fail criteria for certification of the tool. The suggested pass/fail criteria provided in the NREL report are based on the widest interval produced by either a deviation of four million BTU outside, on either side of the ''band width'' created in HERS–BESTEST or an interval produced by the 90% confidence interval for the population mean using a Students t distribution based on the reference results of HERS–BESTEST.

Proposed paragraph (b) of this section provides for future energy analysis tool requirements. The Department believes that the accuracy of ratings will be improved with tools that utilize hourly simulations to handle the variables provided for in this proposed paragraph. Proposed paragraph (b) of this section sets a period of four years from the date of final rulemaking for HERS providers to improve their tools to meet the requirements of this part.

The Department invites comments on the need for the degree of accuracy expected to result from the HERS–BESTEST procedure. Specific questions are: Can accuracy be best determined using empirical data that compares predictions to actual consumptions? Also, should HERS providers be able to self-certify the accuracy of the energy analysis tools?

Proposed Section 437.201: Site Data Collection Manual

Proposed § 437.100 states that data is to be collected at the site of the rated home. Proposed § 437.201 would require each HERS provider to supply each data collector with a manual containing approved data collection procedures. Proposed paragraph (a) of this section provides, as a reference source for such procedures, Guideline No. 10 of the Home Energy Rating Systems Council HERS Guidelines. The Department has placed a copy of this guideline in the public file for this notice.

The Department believes that a manual of this type can be most useful if it is directed to local building practice and history. Therefore, proposed paragraph (a) states that a HERS provider may use procedures established by the accrediting body or may create its own material as long as the procedures used are approved by the accrediting body.

Proposed Section 437.202: Training Home Energy Raters

Proposed § 437.202 would require each HERS provider to provide training to any employee who will be involved in the rating process. This section provides for the development of a syllabus to be used in this training.

Proposed paragraph (a) of this section identifies the subject matter for a classroom training segment of the training. Proposed paragraph (b) would require a written examination. Paragraph (c) would require field training. Paragraph (d) specifies a probationary period.

Proposed paragraph (e) provides for the use of a challenge test of competency for rater personnel with prior experience. The challenge test, if passed, would allow the HERS provider to waive the classroom training required by paragraph (a) of this proposed section.

The classroom training agenda in proposed paragraph (a) was developed from information provided to the Department by the HERS Council Technical Committee and is based on recommendations made by personnel representing the following organizations: California Home Energy Efficiency Rating System (CHEERS), Energy Rated Homes of America (ERHA), Oregon Department of Energy, Policy & Planning Division, Western Massachusetts Electric Co. Energy Crafted Home Program.

The Department considers these organizations to be among the most experienced HERS providers operating today. The Department also believes that the proposed training requirements are based on sound principles.

Proposed Section 437.203: Quality Control

Proposed paragraph (a) requires each HERS provider to establish a Quality Assurance Plan and specifies the minimum elements of that plan. The first element listed as paragraph (a)(1) is the use of a peer review where other raters would be asked to critique the work of each rater as part of a continuing re-evaluation program. Proposed paragraph (b) would require HERS providers to establish a Quality Assurance File and specifies the minimum contents of that file. This paragraph further provides for a minimum updating cycle of two years for the information in this file, or sooner if changes are made to the HERS providers system.

Proposed paragraph (c) would require HERS providers to maintain an electronic database of specific information on each home rated and specifies the minimum content of that database. The main purpose of maintaining this data is to support the monitoring and evaluation activities provided in proposed section 437.204. It may also be possible in the future to link these databases with National or State databases that track default data on mortgages or loans. Only selected parts of the database such as the unique ID number would be needed for that purpose.

The specification of individual elements listed in proposed paragraphs (a), (b) and (c) is based on recommendations from the same organizations referenced in the discussion above on the development of proposed § 437.202 and the Department considers the requirements to represent the minimum effort expected for quality control. Specific recommendations or comments are invited on this subject.

Proposed Section 437.204: Monitoring and Evaluation

Proposed § 437.204 requires each HERS provider to semi-annually evaluate the accuracy of ratings being performed by a periodic comparison of predicted and actual energy use.

The Department believes that HERS providers should maintain certain information that would facilitate both their own monitoring and evaluation program and that of an accrediting body or other third-party reviewer. Proposed section 437.204 specifies that, in addition to the data specified in proposed § 437.203, each HERS provider shall maintain a database consisting of authorizations for the release of consumption information by utility companies. Optimally, the HERS provider could maintain actual consumption data for each rated home, but even if the information were readily available that would place a significant administrative burden on the provider. The Department also recognizes the fact that in many cases these authorizations may be difficult or impossible to obtain, but believes the need exists to make a reasonable effort to do so. This data must be retained for a minimum of 10 percent of the ratings performed or 500 homes, whichever is less, in order to allow the accrediting body or other monitoring entity to make random selections of ratings to review.

Proposed Section 437.205: Guideline Compliance

Proposed § 437.205 sets forth two levels of compliance for HERS providers and also sets future requirements for energy analysis tool capabilities. The Department considers this to be a phased-in approach to allow any existing HERS provider to represent themselves as operating in basic compliance with the requirements of this part while in the process of revising certain elements of their existing system to become fully accredited.

Proposed paragraph (a) of this section provides a list of what must be demonstrated to be deemed fully accredited. Proposed paragraph (a)(4) sets forth requirements for the energy analysis tool to pass both Tier 1 and Tier 2 sets of tests of HERS-BESTEST. The Tier 2 set of tests test for the ability to evaluate the following features related to high mass passive solar design:

- Variations in mass;
- Glazing orientation;
- Glazing area;
- South overhang;
- East and west shading.

Proposed paragraph (b) of this section provides for ''basic compliance'' by providing exceptions (with a maximum two year duration) to the full requirements provided in proposed paragraph (a) of this section.

The exception permitted in paragraph (b)(1)is the acceptance of simplified utility rate structures. Since the rating is based on consumption, the rating accuracy is not compromised and only minor inaccuracies are anticipated in operating cost estimates.

Paragraph (b)(2) allows an exception to the minimum rated features but it is unlikely that any key features would be excluded because the HERS provider would not pass the HERS-BESTEST procedure. The exception is most likely to be used because of the inability of existing systems to evaluate active solar water heating or passive solar systems.

The exception to the use of standard operating conditions allowed by paragraph (b)(3) is also considered to have minimal impact because of the need to pass HER-BESTEST. If a HERS provider does not use the exact prescribed standard operating conditions the results could be slightly less accurate but they must still be within HERS-BESTEST parameters.

Paragraph (b)(4) allows a HERS provider to be in basic compliance by passing only the Tier 1 set of HERS-BESTEST tests. The additional requirements found in the Tier 2 tests are all related to a high mass passive solar building and are not considered critical for basic compliance.

The exception to specific training requirements allowed under paragraph (b)(5)is provided to recognize the fact that many successful HERS providers may not have training programs that exactly match the syllabus set forth in these proposed guidelines, and therefore are given an opportunity to demonstrate that suitable training has been provided.

The Department believes that the exceptions listed will not significantly compromise the accuracy or the utility of ratings and provide for a reasonable period of time to become fully accredited.

Proposed Section 437.206: Accreditation

Proposed § 437.206 states a requirement that each HERS provider operating in voluntary compliance with these guidelines shall be accredited by an accrediting body such as a State or an independent entity meeting the criteria set forth in this section.

In it's consultation with various stakeholders in the development of these proposed guidelines, the Department has received conflicting commentary on the need for a system of accrediting HERS providers and certifying the energy analysis tools used by these providers. The leading proponent of accreditation is the HERS Council, supported by its financial community members. Opposition is primarily found in existing operating HERS systems where an accreditation process and/or changes to meet the proposed guidelines could be disruptive to their present systems. Many of the proposed guidelines state that when certain information needed for the rating process is not readily available without destructive disassembly of the home or without costly diagnostic procedures, then standard default values may be used. Such default values are best developed by local entities based on local experience or historic data for building practice. The accreditation process would assure that the default values used were consistent among HERS providers operating within a defined area such as a State.

As the proposed guidelines are themselves voluntary, a voluntary system, probably a combination of states and national entities, could be developed for home energy rating providers seeking accreditation and tool certification.

The Department requests comments on the processes of accreditation and tool certification, and the establishment of appropriate entities for these purposes. Specific questions are:

Should a national entity be created for accreditation of HERS?

Should States accredit HERS and if so, who would accredit HERS in states where the State is unwilling or unable to do so?

Should guidelines be developed for the accreditation process itself and if so, who should develop them?

Is self-accreditation a viable approach and what process should be implemented to do so?

III. Procedural Requirements

A. Environmental Review

The proposed quidelines were reviewed under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality regulations implementing the provisions of the National Environmental Policy Act (40 CFR parts 1500–1508), and the Department's regulations for compliance with the National Environmental Policy Act (10 CFR part 1021).

DOE concludes that, under Category A11 (Technical advice and assistance) of Appendix A to Subpart D, ''Categorical Exclusions Applicable to General Agency Actions'', of 10 CFR part 1021, the voluntary guidelines are categorically excluded from further environmental documentation.

B. Regulatory Planning and Review

The proposed guidelines do not constitutes a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735), and has not been reviewed by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

C. Federalism

The proposed guidelines have been reviewed in accordance with Executive Order 12612, ''Federalism'' (52 FR 41685), which directs agencies to consider the impact of Federal actions on States, on the relationship between the Federal Government and the States, and on the distribution of power and responsibilities among the various levels of government.

The guidelines proposed by DOE are strictly voluntary. No requirements or inducements have been placed upon the States to adopt the guidelines. Consequently, the guidelines do not contain sufficient federalism implications to warrant the preparation of a federalism assessment.

D. Regulatory Flexibility Act

The proposed guidelines were analyzed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which directs agencies to prepare a regulatory flexibility analysis for each proposed rule or certify that the rule will not have a ''significant economic impact on a substantial number of small entities.''

The proposed guidelines are expected to have a minimal effect on small entities. The guidelines described are voluntary and no requirements or burdens have been imposed on any entity. As permitted by section 605 of the Regulatory Flexibility Act, DOE certifies that the proposed guidelines will not have a significant economic impact on a substantial number of small entities. Consequently, no regulatory flexibility analysis will be produced.

E. Paperwork Reduction Act

These proposed guidelines were examined with respect to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, which directs agencies to minimize Federal information collection and reporting burdens imposed on individuals, small businesses, and State and local governments.

These proposed guidelines establish voluntary guidelines for residential energy efficiency ratings and do not impose requirements for the collection or reporting of information to the Federal Government. Accordingly, clearance under the Paperwork Reduction Act of 1980 is not required by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

IV. Public Comment Procedures

A. Public Participation

The Department encourages the maximum level of public participation in developing these guidelines. Individuals, Federal agencies, architects, engineers, utilities, States and local governments, building code organizations, builders, builder associations, building owners, building owner associations, consumers, mortgage lenders, and others are urged to submit written statements on the proposal. The Department also encourages interested persons to participate in the public hearing to be held in Washington, D.C., at the time and place indicated at the beginning of this Notice.

The Department has established a comment period of 90 days following publication of this notice, for interested persons to comment on this proposal. All comments will be available for review in the Department's Freedom of Information Reading Room.

B. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth in the beginning of this notice and below.

Comments (with 7 copies) should be labeled both on the envelope and on the documents, ''Residential Energy Efficiency Rating Guidelines'' (Docket No. EE–RM–95–202)'' and must be received by the date indicated in the beginning of this notice, in order to insure full consideration. Additionally, the Department would appreciate an electronic copy of the comments to the extent possible. The Department is currently using the WordPerfect 5.1 word processing program. All comments received by the date specified at the beginning of this notice and other relevant information will be considered by the Department before final action is taken on the proposed regulation.

All written comments received on the proposed voluntary guidelines will be available for public inspection at the Department's Freedom of Information Reading Room as provided at the beginning of this notice.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data which the submitting person believes to be confidential and exempt by law from public disclosure, should submit one complete copy of the document, and 7 copies, if possible, from which the information believed to be confidential has been deleted. The submitter is to include a statement specifying why the information is privileged or confidential. The Department will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

C. Public Hearing

1. Procedure for Submitting Requests To Speak

In order to have the benefit of a broad range of public viewpoints in, developing these guidelines the Department will hold a public hearing. Listed earlier in this notice is the date and address for the hearing. Any person who has an interest in these proceedings, or who is a representative of any group or class of persons having an interest, may make a request for an opportunity to make an oral presentation at the public hearing. Such requests should be labeled both on the letter and the envelope, ''Residential Energy Efficiency Rating Guidelines'' (Docket No. EE–RM–95–202)'' and should be sent to the address and must be received by the time specified at the beginning of this notice.

The person making the request should briefly describe the interest concerned and, if appropriate, state why he or she is a proper representative of the group or class of persons that has such an interest, and give a telephone number where he or she may be contacted. Each person selected to be heard will be so notified by the Department as to the approximate time they will be speaking.

Each person to be heard is requested to bring to the hearing seven copies of their statement. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made with the Office of Hearings and Dockets in advance by so indicating in a letter requesting to make an oral presentation.

A list of the persons to be heard at the hearing will be available upon request from the Office of Hearings and Dockets. The list will also be available for inspection in the Department's Freedom of Information Reading Room.

2. Conduct of Hearing

The Department reserves the right to select the persons to be heard at the public hearing, to schedule the representative presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 20 minutes.

A Department official will be designated to preside at the hearing. The hearing will not be judicial or evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and Section 501 of the Department of Energy Organization Act, 42 U.S.C. 7191. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statements will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any interested person may submit to the presiding official written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant or whether time limitations permit it to be presented for a response.

Further questioning of speakers may be permitted by the Department. The presiding official will afford any interested person an opportunity to question the interested persons who made oral presentations, and employees of the United States who have made written or oral presentation with respect to disputed issues of material fact relating to the proposed rule. This opportunity will be afforded after any rebuttal statements, to the extent that the presiding official determines that such questioning is likely to result in a more timely and effective resolution of such issues. If the time provided is insufficient, the Department will consider affording an additional opportunity for questioning at a mutually convenient time. Persons interested in making use of this opportunity must submit their request to the presiding official no later than shortly after the completion of any rebuttal statements and be prepared to state specific justifications, including why the issue is one of disputed fact and how the proposed questions would expedite their resolution.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

Transcripts of the hearing will be made, and the entire record of this rulemaking, including the transcripts, will be retained by the Department and made available for inspection at the Department's Freedom of Information Reading Room as provided at the beginning of this notice. Any person may also purchase a copy of the transcript from the transcribing reporter.

The Department may cancel the public hearing if the Department does not receive sufficient interest concerning the hearing. The Department will include for the record a copy of the statement of any person who requested to speak at a hearing that was canceled by the Department.

List of Subjects in 10 CFR Part 437

Buildings, Energy conservation, Housing standards, Mortgages.

Issued in Washington, DC, on July 11, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, it is proposed to amend 10 CFR Chapter II by adding part 437 to read as follows:

PART 437—VOLUNTARY HOME ENERGY RATING SYSTEM GUIDELINES

Subpart A—General Provisions

Subpart B—How To Rate a Home

Subpart C—How To Administer a Home Energy Rating System

Authority: 42 U.S.C. 8236–8236b

Subpart A—General Provisions

§ 437.1 Purpose.

The provisions of this part establish voluntary guidelines which any provider of home energy ratings may follow to produce uniform energy efficiency ratings for residential buildings. The energy efficiency ratings produced under this part may be used to enable and encourage the use of home mortgages or home improvement loans that include incentives for energy efficiency in homes.

§ 437.2 Scope.

These guidelines apply to existing or proposed site-constructed or manufactured residential buildings that are either one and two family dwellings, or other residential dwellings three stories or less in height excepting hotels and motels.

§ 437.3 General definitions and acronyms.

As used in this part—

Accrediting body means a State, local government, or other independent agency that meets the criteria provided in § 437.206 of these guidelines for the accreditation of HERS providers.

AGA means American Gas Association

Annual Fuel Utilization Efficiency or *AFUE* means the ratio of annual output energy to annual input energy that includes any non-heating season pilot input loss.

Conditioned space, directly means an enclosed space having heating equipment with a capacity of 10 BTU/(hr-ft^2), or cooling equipment with a capacity exceeding 10 BTU/(hr-ft^2). An exception is if the heating and cooling equipment is designed and thermostatically controlled to maintain a process environment temperature less than 65° Fahrenheit or greater than 85° Fahrenheit for the whole space the equipment serves.

Conditioned space, indirectly means enclosed space that is not directly conditioned space:

(1) With area weighted heat transfer coefficient (U-value) to directly conditioned space exceeding that to the outdoors or to unconditioned spaces; or

(2) Through which air from directly conditioned spaces is transferred at a rate exceeding three air changes per hour.

COP means Coefficient of Performance, which is the ratio of the rate of heat delivered to the rate of energy input, in consistent units, for a complete heat pump system under designated operating conditions.

Data analyst means a person trained to enter the information compiled by a data collector into the rating tool and to produce the energy efficiency rating of a home.

Data collector means a person trained to evaluate the minimum rated features of a home on site and collect all the information required to create a rating.

Detached one- and two-family dwelling means a building with one or two independent dwelling units with an individual or central HVAC system.

Energy analysis tool means a calculation procedure for determining a home's energy efficiency rating and estimating annual purchased energy consumption and cost.

EER means Energy Efficiency Ratio, which is the ratio of net equipment cooling capacity in Btu/h to total rate of electric input in watts under designated operating conditions.

Energy efficiency rating or *rating* means an unbiased indication of a home's relative energy efficiency based on consistent inspection procedures, operating assumptions, climate data and calculation methods.

Energy factor means a measure of water heater energy efficiency as determined under Department of Energy Regulations. 10 CFR 430.23(e)(2)(ii).

Estimated annual energy cost savings means positive dollar difference between estimated annual energy costs for a home with energy saving measures and estimated annual energy costs of the same home in its current condition.

Fenestration means a glazed opening in a building.

Full rater means the person trained to perform the functions of both a data collector and a data analyst.

HERS-BESTEST means the Home Energy Ratings System Building Simulation Test published in NREL Report No. NREL/TP–472–7332.

HERS provider means a person or organization that develops, manages and operates a home energy rating system.

Home means a one or two family dwelling, or multi-family dwelling of three stories or less.

Home energy rater or *rater* means the person trained to inspect a home to evaluate the minimum rated features and prepare an energy efficiency rating. (see also Data collector, Data analyst, Full rater)

Home Energy Rating System or *HERS* means the materials and procedures needed to operate a home energy rating program including but not limited to: marketing materials, training, publications, rating tool, quality control, data base collection and maintenance, agreements, data collection sheets, home owner reports, and other related materials and services.

HSPF means Heating Seasonal Performance Factor which is the total heating output of a heat pump during its normal annual usage period for heating, in Btu, divided by the total electric energy input during the same period, in watt-hours.

HVAC means Heating, Ventilating and Air Conditioning.

Internal gains means the heat gains within a home attributable to lights, people, and miscellaneous equipment including domestic hot water equipment losses.

NREL means National Renewable Energy Laboratory.

Purchased energy means the portion of the total energy requirement of a home that is purchased from a utility or other energy supplier.

Reference home means a hypothetical home configured to the specifications set forth in section 437.103 of these guidelines.

R-value means thermal resistance value.

SEER means seasonal energy efficiency ratio, which is the total cooling output of an air conditioner during its normal annual usage period for cooling, in Btu/h, divided by the total electric energy input during the same period, in watt-hours.

Thermal storage mass means materials or equipment incorporated into a home that will store heat, produced by renewable or non renewable energy, for release at a later time.

Trombe wall means a heavy mass wall, usually of masonry materials or containing water, constructed adjacent to a glazed area, for the purpose of collecting and storing solar energy.

Typical Meteorological Year or *TMY Data* means hourly data published by the National Climatic Center, Asheville, NC. based on historical weather data for 216 locations.

U-value means thermal transmittance value.

§ 437.4 Availability of ratings.

The purposes of this rating system are to permit:

(a) Each builder, real estate agent, lender, or organization in the mortgage business—

(1) When rating information is available, to communicate that information in writing to home buyers prior to sale; and

(2) To advise each applicant for financing of a home of incentives relating to qualification criteria, rate structure, or otherwise, available based on the energy efficiency of the home as measured by ratings conducted under these guidelines,

(b) Each multi-listing service (MLS) to include available home energy rating information on any applicable listing.

Subpart B—How To Rate a Home

§ 437.100 Rating procedure.

(a) To determine the energy efficiency rating of a home, each HERS provider shall—

(1) If the rating is being conducted for an existing home, visit the site of the home being rated to collect the data needed to conduct the rating;

(2) If the rating is being conducted for a to be built home, follow the procedures set forth in § 437.107 of these guidelines to collect the data needed to conduct the rating;

(3) Use the collected data to estimate the annual purchased energy consumption for heating, cooling and water heating for both the rated home and the reference home defined in § 437.103.

(4) If the energy efficiency rating is conducted to evaluate proposed energy

conserving improvements to the home, conduct additional estimates of annual purchased energy consumption with the home reconfigured to include those improvements sufficient to consider interactions among improvement options.

(b) Estimates completed by each HERS provider under paragraphs (a)(3) and (4) of this section must be—

(1) Based on the minimum rated features set forth in § 437.104 of these guidelines;

(2) Conducted using the standard operating assumptions established in § 437.105;

(3) Conducted using an energy analysis tool that has been certified for accuracy under § 437.200.

(c) Each HERS provider shall compare the estimates provided under paragraph (a) of this section to determine the energy efficiency rating of the home and if applicable, the energy efficiency rating of the home with proposed conservation measures installed.

(d) To encourage the use of energy efficient appliances, each HERS provider may provide additional information on estimated appliance energy consumption of the appliances in use in the rated home. This information will not change the rating procedure set forth in this section.

§ 437.101 Rating point score and star rating.

(a) Point score. The reference home has a score of 80 points on a 0 to 100 point scale. A rated home with the same annual purchased energy consumption as its associated reference home also has a score of 80 points. Every 0.05 decrease in the ratio (from 1:1) of the rated home's annual purchased energy consumption to the reference home's annual purchased energy consumption translates to an increase in the rated home's score of 1 point. An increase of 0.05 in the ratio translates to a decrease in the rated home's score of one point. Equation 1 is used to calculate the point score.

Equation 1

Point score = 100-((ER/EC)/.05)

Where—

ER=Estimated purchased energy consumption for heating, cooling and water heating of rated home (Btu).

EC=Estimated purchased energy consumption for heating, cooling and water heating of reference home (Btu).

(b) Star rating. The rated home will be given a star rating between one and five-plus stars, determined by the numerical score and the corresponding number of stars depicted in Table 1;

TABLE 1.—SCORE AND STAR SCALES FOR RATED HOMES

Score	Stars	Annual purchased energy consumption
0–39	One	> 3.0×Reference house.
40–59	Two	> 2.0 and < 3.0×Reference House.
60–79	Three	> 1.0 and <= 2.0×Reference House.
80–85	Four	> 0.70 and <= 1.0×Reference House.
86–91	Five	> 0.40 and <= 0.70×Reference House.
92–100	Five Plus	>= zero and <= 0.40×Reference House.

(c) Homes that utilize no purchased energy due to the use of technologies such as wind generation or photo voltaic power systems will require no calculations and will automatically be given a 100 point score and a five-plus star rating

§ 437.102 Rating report.

(a) For each rating conducted under this part, a report is to be prepared containing the following information:

(1) The numerical rating score determined in § 437.101;

(2) The star rating determined in § 437.101;

(3) The estimated annual purchased energy consumption by fuel type of space heating, space cooling, domestic hot water, and all other energy use, and the total of these four estimates;

(4) The estimated annual energy cost by fuel type of space heating, space cooling, domestic hot water, and all other energy use, and the total of these four estimates;

(5) The name of the accrediting body certifying the accuracy of the energy analysis tool under § 437.200.

(6) The margin of estimating error accepted by the accrediting body certifying the energy analysis tool;

(7) The level of accreditation, stated as either basic compliance or full accreditation determined under § 437.205 (a) and Guidelines compliance; and

(8) Whether infiltration was tested using diagnostic equipment or estimated by the HERS provider.

(9) Any available and pertinent prior energy consumption data.

(b) If ratings are conducted to evaluate energy saving improvements to the home, in addition to the information set forth under paragraph (a) this section, each rating report must include—

(1) The estimated annual energy cost savings available with the home reconfigured to include those improvements;

(2) The discount rate applied to, and present worth value of, the energy cost savings; and

(3) The financing interest rate and life of the measure used by the HERS provider to determine the present worth value.

(c) The rating report must also provide either:

(1) The estimated appliance energy consumption of the rated home: or

(2) Information that additional energy savings related to appliance use may be attainable and that the information available on Energy Guide labels and from other recognized sources may be used to consider the energy efficiency of appliances.

(d) If the rating is a projected rating for a to-be-built home, conducted under § 437.104(d) the rating shall be identified as a rating based on plans.

(e) For each rating conducted under these guidelines, the following items are to be prominently displayed on all reports and labels:

(1) Date of the rating;

(2) Annual estimated energy costs for heating, cooling, water heating and all other use:

(3) Rating point score: and

(4) Star rating.

§ 437.103 Reference home configuration.

(a) To conduct each rating under this part, each HERS provider shall establish a reference home that is used in an annual purchased energy consumption comparison with the rated home. The reference home is a hypothetical home configured using—

(1) The same shape and size as the rated home;

(2) The same area of surfaces bounding conditioned space as the rated home, but not including surfaces that neither gain nor lose heat;

(3) All enclosure elements that meet, but not exceed, the requirements, expressed as U and Uo values, of

paragraph 502.2 of the 1993 CABO Model Energy Code;

(4) An area of exterior doors of 40 square feet and with the door U-value at 0.20.

(5) Vertical fenestration area equal to—

(i) For detached homes, 18% of the floor area of directly conditioned space;

(ii) For attached homes, F×18% of the floor area of directly conditioned space where:

F=(exposed wall area)/(exposed wall area+common wall area)>=.56

(6) Vertical fenestration distributed—

(i) For detached homes, equally in each of the four cardinal directions, north, south, east and west; and

(ii) For attached homes, equally in each of the four cardinal directions, north, south, east and west, which if necessary may assume fenestration in common walls;

(7) A frame factor equal to 27% of the gross fenestration area calculated under paragraph (a)(5) of this section;

(8) The glazed area of the fenestration with a shading coefficient (SC) of 0.70 assumed during the cooling season, which represents the combined SC of the glazing and the use of nonwhite draperies and with a SC of 0.88 representing the SC of the glazing only assumed at all other times;

(9) No external shading assumed at any time;

(10) The same energy sources for heating, cooling and water heating used in the rated home;

(11) The same type of HVAC system(s) as the rated home except that if the rating is for any electrically heated home, the reference home HVAC system is an air source heat pump;

(12) The efficiencies of HVAC systems set forth in Table 2;

TABLE 2

Type	Units	Rating
Heating Equipment:		
Gas or Oil Warm Air Furnace.	AFUE	0.78
Gas Boiler (water)	AFUE	0.80
Gas Boiler (steam)	AFUE	0.75
Oil Boiler (water or steam).	AFUE	0.80
Air Source Heat Pump:		
(split system)	HSPF	6.80
(package system)	HSPF	6.60
Cooling Equipment:		
Central Air Conditioner:		
(split system)	SEER	10.00
(package system)	SEER	9.70
Heat Pump:		
(split system)	SEER	10.00
(package system)	SEER	9.70

(13) The heating and cooling system efficiencies proportionally adjusted for sections of ductwork located outside or inside conditioned space, with adjustment based on the configuration of the ductwork in the rated home and using the values set forth in Table 3 and Equation 2;

TABLE 3.—FORCED AIR AND HYDRONIC DISTRIBUTION SYSTEM LOSS FACTORS

Within conditioned space	Outside conditioned space	Unconditioned basement
Forced Air Systems—Duct Location		
Heating 1.00	0.72	0.80
Cooling 1.00	0.72	0.80
Hydronic Systems—Piping Location		
1.00	0.95	0.95

Equation 2

Adjusted Efficiency=Equipment Efficiency × Distribution Loss Factor

(14) The energy factor for the water heater set forth in Table 4 for the size used in the rated house;

TABLE 4

Water heating		Rated storage capacity (gallons)			
Type	Unit	30 gal	40 gal	50 gal	60 gal
Gas	EF	0.56	0.54	0.53	0.51
Oil	EF	0.53	0.53	0.50	0.48
Electric	EF	0.91	0.90	0.88	0.87

[1] EF=Energy Factor.

(15) A seasonal average air leakage rate of 0.67 air changes per hour;

(16) An internal mass of 8 pounds per square foot of floor area and a structural mass of 3.5 pounds per square foot of floor area; and

(17) No heat capacitance associated with solar storage mass within the thermal envelope of the rated home.

(b) For walls of attached homes, the U-value calculation set forth under paragraph (a)(3) of this section is completed using the fenestration area calculated as F in paragraph (a)(5)(ii) of this section and the actual area of walls that experience heat loss or gain. Common walls that separate homes are not included in this calculation.

§ 437.104 Minimum rated features.

(a) Each HERS provider shall complete the annual purchased energy consumption estimates for heating, cooling and water heating set forth in § 437.100 of these guidelines using the energy loss and gain associated with the minimum features set forth in Table 5.

(b) For existing homes, the envelope thermal characteristics of building elements 1 through 7 set forth in Table 5 are determined by site observation.

(c) If data for the minimum rated features set forth in paragraph (b) of this section can not be obtained by observation or without destructive disassembly of the home, each HERS provider shall use default values. The default values are determined from the following sources listed in the preferential order of use—

(1) for manufactured homes, available manufacturer's data;

(2) current and historical local building practices; or

(3) current and historical local building codes.

(d) Default values set forth in paragraph (c) of this section will be established or approved by the accrediting body and consistent for each HERS provider operating within a state.

(e) For existing homes, the determination of air leakage and duct leakage values set forth as building elements 10 and 11 in Table 5 are determined by data collected on site using the following procedures listed in preferential order of use:

(1) current on-site diagnostic test data; or

(2) observations of the condition of the building and duct system made by the HERS provider. Based on these observations values used will be;

(i) for air leakage, 0.67 air changes per hour or greater with the minimum value of 0.67 to be used only when the rater observes features that denote tight construction; and

(ii) for duct leakage, default values approved or established by the accrediting body.

(f) For existing homes, the energy efficiency of the mechanical equipment set forth as building elements 12 through 14 in Table 5 is determined by data collected on site using the following sources listed in preferential order of use:

(1) current on-site diagnostic test data;
(2) name plate data;
(3) manufacturer's data sheet; or
(4) equipment directories.

(g) If information on the energy efficiency of mechanical equipment cannot be determined from the sources listed in paragraph (f) of this section, the values set forth in Tables 6 and 7 shall be used.

(h) Any HERS provider may base annual purchased energy consumption estimates for the rated home on additional features if the HERS provider's energy analysis tool is capable of doing so.

TABLE 5.—MINIMUM RATED FEATURES

Building element	Minimum rated features
1. Floor/Foundation Assembly.	Construction type (slab-on-grade, crawl space, basement), insulation (edge, under slab, cavity, sheathing), vented or unvented (crawl space), capacitance (if slab or basement receives appreciable solar gain).
2. Walls	Construction type, insulation value (cavity, sheathing), capacitance, color (light, medium, or dark).
3. Roof/Ceiling Assembly	Construction type, insulation value (cavity, sheathing), roof color (light, medium, or dark).
4. Rim Joist	Insulation value (cavity, sheathing).
5. Doors	Construction type, insulation value.
6. Windows	Construction type, orientation, U-value (of complete assembly), solar heat gain coefficient, shading.
7. Skylights	Construction type, orientation, tilt, U-value (of complete assembly), heat gain coefficient, shading.
8. Passive Solar System (Direct Gain System).	Solar aperture area and orientation, thermal storage mass.
9. Solar Domestic Hot Water Equipment.	System type, collector type and area, orientation, tilt, efficiency, storage tank size, pipe insulation value.
10. Air Leakage	Air leakage measurement type (estimate, blower door test, tracer gas test), volume of conditioned space.
11. Distribution System	System type, location, insulation value (duct and pipe), air leakage (ducted systems only).
12. Heating Equipment	Equipment type, location, efficiency (AFUE, HSPF).
13. Cooling Equipment	Equipment type, location, efficiency (SEER, COP).
14. Domestic Hot Water Equipment.	Equipment type, location, energy factor or seasonal efficiency, extra tank insulation value, pipe insulation value.
15. Control Systems	Thermostat type.

TABLE 6.—MECHANICAL

Mechanical Systems	Units	Pre-1960	1960–69	1970–74	1975–83	1984–87	1988–91	1992 to present
Heating:								
Gas Furnace	AFUE	0.60	0.60	0.65	0.65	0.68	0.76	0.78
Gas Boiler	AFUE	0.60	0.60	0.65	0.65	0.70	0.77	0.80
Oil Furnace or Boiler	AFUE	0.60	0.65	0.72	0.75	0.80	0.80	0.80
Air-Source Heat Pump	HSPF	4.50	4.50	4.70	5.50	6.30	6.80	6.80
Ground-Water Geothermal Heat Pump.	COP	2.70	2.70	2.70	3.00	3.10	3.20	3.50
Ground-Coupled Geothermal Heat Pump.	COP	2.30	2.30	2.30	2.50	2.60	2.70	3.00
Cooling:								
Air-Source Heat Pump	SEER	5.00	6.10	6.50	7.40	8.70	9.40	10.00
Ground-Water Geothermal Heat Pump.	EER	10.00	10.00	10.00	13.00	13.00	14.00	16.00
Ground-Coupled Geothermal Heat Pump.	EER	8.00	8.00	8.00	11.00	11.00	12.00	14.00
Central Air Conditioner	SEER	5.00	6.10	6.50	7.40	8.70	9.40	10.00
Room Air Conditioner	EER	5.00	6.10	6.10	6.70	7.70	8.10	8.50
Water Heating:								
Storage Gas	EF	0.47	0.47	0.47	0.49	0.55	0.56	0.56
Storage Oil	EF	0.47	0.47	0.47	0.48	0.49	0.54	0.56
Storage Electric	EF	0.79	0.80	0.80	0.81	0.83	0.87	0.88

TABLE 7.—MECHANICAL EQUIPMENT EFFICIENCY VALUES (Not Age-Based)

	Units	Rating
Heating:		
Gas Wall Furnace (Fan).	SE	0.70
Gas Wall Heater (Gravity).	SE	0.65
Gas Floor Furnace	SE	0.60
Gas Water Heater (Space Heating).	AFUE	0.75
Electric Furnace	HSPF	3.413
Electric Radiant	HSPF	3.413
Heat Pump Water Heater (Space).	HSPF	5.11
Electric Water Heater (Space).	HSPF	2.73

TABLE 7.—MECHANICAL EQUIPMENT EFFICIENCY VALUES(Not Age-Based)—Continued

	Units	Rating
Cooling:		
Electric Evaporative Cooling.	EER_{rc}	30
Gas Absorption Cooler	COP	0.40
Water Heating:		
Heat Pump	COP	2.00
Instantaneous Electric	EF	0.87
Instantaneous Gas	EF	0.75
Solar (Use SRCC Adjustment Procedures).	EF	2.00

§ 437.105 Operating condition assumptions.

To conduct each rating under these guidelines, each HERS provider shall estimate the annual purchased energy consumption for heating, cooling and water heating for both the rated home and the reference home using the following assumptions—

(a) Temperature control set points for heating and cooling of 68° F and 78° F; .

(b) Where programmable offsets are available in the rated home, 5° F temperature control point offsets with an 11 PM to 7 AM schedule for heating and a 9 AM to 3 PM schedule for cooling, and with no offsets assumed for the reference home;

(c) Internal heat gains from lights, people and equipment of 3000 Btu/hr for detached homes and 1500 Btu/hr for attached homes;

(d) Estimated hot water usage based on Equation 3.

Equation 3

Gallons/day=30 gallons+(10 gallons * number of bedrooms).

(e) the climatologically most representative TMY or equivalent weather data, which may be interpolated between weather sites if interpolation is established or approved by the accrediting body and consistent for each HERS provider operating within a state.

(f) Corrections for climate conditions and mis-sizing of equipment, using correction factors to HSPF, SEER and AFUE that are established or approved by the accrediting body and consistent for each HERS provider operating within a state.

(g) Local residential energy or utility rates that—

(1) Include fuel/energy unit rates;

(2) Include fuel/energy unit demand rates;

(3) Include fuel/energy block rates;

(4) Include customer service and fuel charges;

(5) Are updated at least annually; and

(6) Are confirmed by the accrediting body

§ 437.106 Non-rated energy consuming devices.

Consistent with § 437.102(a) (3) and (4) of these guidelines each HERS provider shall calculate and report the annual purchased energy consumption and energy cost for the operation of all non-rated energy consuming devices in the rated and reference homes. Actual efficiency of these devices is not considered and usage estimates are based on Table 8. The data in table 8 may be modified if they are established or approved by the accrediting body and consistent for each HERS provider operating within the state.

TABLE 8.—ANNUAL ENERGY USE FOR NON-RATED FEATURES

End use	Units/year	Energy estimate	Applicability
Ceiling Fan	kWh	220/ea	If present.
Dishwasher	kWh	299/per cooking area	If present, or if space is dedicated for DW.
Dryer, electric	kWh	875/ea	If present, or if 220V wiring is present @ dryer location.
Dryer, gas	Therms	60/ea	If present, or if gas piping is present @ dryer location.
	kWh	100/ea	
Lights	kWh	940	All homes.
Microwave Oven-built-in	kWh	191/per cooking area	If permanently installed.
Miscellaneous Plug Loads	kWh	500	All homes.
Pool Pump	kWh	1700/ea	If present.
Range/Oven Combo-electric	kWh	450/per cooking area	If present, or if 220V wiring is present @ range location.
Range/Oven Combo-gas w/pilot	Therms	44/per cooking area	If present, or if gas piping is present @ range location.
Range/Oven Combo-gas w/o pilot	Therms	22/per cooking area	If present.
Refrigerator	kWh	1150	Each one present.
Television	kWh	720	All homes.
Washer, clothes	kWh	99/ea	If present, or facilities present for washer.
Well pump	kWh	288/ea	If present.

§ 437.107 Projected ratings for to-be-built homes.

(a) A HERS provider may calculate the projected rating of a to-be-built home based on architectural drawings with material, mechanical and electrical specifications; and by—

(1) Using a default value for air leakage of 0.67 air changes per hour; and

(2) Using the planned location and orientation of the proposed home, or if the proposed orientation is unknown, calculating ratings for the home facing each of the four cardinal directions, north, south, east and west, and using the lowest rating score as the projected rating.

(b) Upon completion of construction and verification of the proposed specifications, the rating may be revised using the air leakage rate based on on-site testing and the actual orientation of the home.

Subpart C—How To Administer a Home Energy Rating System

§ 437.200 Energy analysis tool requirements.

(a) In order to be certified for the purpose of providing home energy ratings under these guidelines, an energy analysis tool must—

(1) Demonstrate the ability to calculate annual purchased energy consumption for each building type for which ratings are provided;

(2) Estimate the total annual purchased energy consumption associated with the minimum rated features set forth in § 437.104;

(3) Calculate energy use of non-rated energy consuming devices set forth in § 437.105 of these guidelines;

(4) Reflect the operating conditions assumptions described in § 437.105 of these guidelines; and

(5) Pass all tests in Tier 1 and Tier 2 of the Home Energy Ratings System Building Energy Simulation Test (HERS-

BESTEST)—NREL Report no. NREL/TP–472–7332 which is administered by, and has pass-fail criteria set by the accrediting body.

(b) Future tool requirements. On or before [insert date four years from the date of the final rule], each HERS provider accredited under these guidelines, shall have updated their energy analysis tool to be capable of rating the following additional features—

(1) Thermostat set-back and set-up;

(2) Effects of part load and weather conditions on HVAC systems;

(3) Demand and time of use utility rates;

(4) Solar water heating;

(5) Trombe walls;

(6) Sunspaces; and

(7) Whole house fans.

(c) Energy analysis tools that are certified under paragraph (a)(5) of this section must be retested and recertified if a new version of the tool is released that includes changes to the engineering algorithms.

§ 437.201 Site data collection manual.

Each HERS provider shall provide each data collector with a manual containing procedures for the on site collection of data that are:

(a) Consistent with those provided in Guideline No. 10 of the Home Energy Rating Systems Council HERS Guidelines, titled ''On Site Inspection Procedures''; or

(b) Established or approved by the accrediting body and updated as supplemental or revised information becomes available.

§ 437.202 Training home energy raters.

Each person seeking a position as a full rater, data collector, or data analyst for any HERS provider shall receive training prior to performing rating tasks without supervision. The training will be conducted in accordance with a syllabus developed by each HERS provider. The syllabus must specify subjects that are applicable to each position (i.e. full rater, data collector or data analyst) and must include—

(a) Classroom training. Each rater shall receive classroom training on—

(1) Basic principles of heat transfer (i.e., viewing the home as a system);

(2) The minimum rated features of buildings;

(3) Variations in construction types and their ramifications;

(4) Types and efficiencies of windows;

(5) Types and efficiencies of heating, cooling, water heating, and lighting systems;

(6) Types and characteristics of space conditioning and domestic hot water distribution systems;

(7) Types of thermostatic controls;

(8) Determination of azimuth;

(9) Determination of air leakage;

(10) Determination of fuels used by major appliances;

(11) Utility rate structures;

(12) On-site inspection procedures;

(13) Producing a scale and dimension drawing of a home;

(14) Calculating the area of rectangles, triangles, circles, ovals and combinations of these shapes;

(15) Calculating the volume of boxes, pyramids, spheres, and other geometric shapes;

(16) Communicating the benefits of energy saving measures and practices to the consumer; and

(17) Quality assurance.

(b) Written examination. Each rater shall be given a written examination that evaluates the rater's understanding of the subjects in paragraph (a) of this section.

(c) Field training. Each rater shall perform two ratings (or portions of ratings for those seeking to be data collectors or data analysts), including software operations, in the presence of trainers.

(d) Probationary period. Each rater shall complete a probationary period where close supervision is provided. This period covers a minimum of five ratings, after which the supervisor shall determine if additional training is needed.

(e) Challenge test. A challenge test may be taken, which, if passed in all competencies, will waive the classroom training requirement. The requirements of paragraphs (c) and (d) of this section may not be waived.

§ 437.203 Quality control.

(a) Each HERS provider shall establish a quality assurance plan that includes—

(1) Periodic peer review and re-evaluation of raters;

(2) Random auditing of each rater's work;

(3) Evaluation of the training program by raters after field experience;

(4) Customer evaluation of rating services;

(5) Random review of the inputs into the rating tool to ensure that they are consistent with the data collected in the field; and

(6) Verification of the accuracy and completion of the input forms and output of the first five ratings performed by each rater.

(b) Each HERS provider shall maintain a permanent quality assurance file that is updated at least every two years or when changes to the system are made, and contains—

(1) A description of local rate structures for electricity, gas and other locally used fuels;

(2) A description of climatological data (including interpolation methods) used;

(3) A description of the data storage and maintenance systems including—

(i) Software for database;

(ii) Training for data entry personnel; and

(iii) Data quality assurance procedures that will be exercised;

(4) A description of each rating tool that the HERS provider uses including a list of which home types the tool supports;

(5) The results and date of the certified accuracy test conducted for the rating tool;

(6) An example of the rating outputs that are produced;

(7) The materials and tests used to provide training for home energy raters;

(8) The materials used to document the site data collection procedures; and

(9) A description of the individual elements of the quality assurance plan set forth in paragraph (a) of this section.

(c) Each HERS provider shall maintain an electronic database of information for each home rated. The minimum content of the database is—

(1) A unique file reference or ID number;

(2) Date of on-site inspection;

(3) Raters name;

(4) Tool name and version;

(5) Identification of weather data used for the rating;

(6) Type of rating, either complete or projected;

(7) Use of rating, either—

(i) Time of sale rating;

(ii) Pre-home improvement rating;

(iii) Post home improvement rating; or

(iv) Information only rating;

(8) Address of rated home;

(9) Home type;

(10) Floor area of conditioned space;

(11) Fuel types used by building HVAC and water heating systems;

(12) Minimum rated feature energy efficiency data used to determine the rating;

(13) In the four categories of heating, cooling, water heating and all other uses, the—

(i) Estimated annual purchased energy consumption in total;

(ii) Estimated annual purchased energy consumption by fuel;

(iii) Estimated annual energy cost in total; and

(iv) Estimated annual energy cost by fuel.

(14) Estimated total annual energy cost for all uses; and

(15) Rating score of the rated home on 0–100 points scale and 1–5+ stars category.

§ 437.204 Monitoring and evaluation.

(a) Each HERS provider shall at least semi-annually evaluate the accuracy of consumption and cost estimates by comparing predicted energy usage and costs to actual billing records.

(b) To allow the accrediting body to monitor the accuracy of ratings, each HERS provider shall for 10% or for 500 of the homes rated annually, whichever is less, maintain a database of the following—

(1) Homeowners authorization for the release of consumption information by utility company(s);

(2) Weather data site selected for energy estimation;

(3) Any energy efficiency improvements made to the home, date of completion, and whether the improvement plans were evaluated in the rating report.

§ 437.205 Guideline compliance.

(a) Full accreditation. Any HERS provider may be accredited as being in full compliance with these guidelines if it demonstrates that it can—

(1) Conducts ratings in accordance with the provisions of § 437.100;

(2) Reports the results of ratings in accordance with the provisions of § 437.102 of these guidelines;

(3) Produces documentation of a correctly configured reference home in accordance with the provisions of § 437.103;

(4) Provides documentation that their energy analysis tool is certified under § 437.200 as having passed all HERS–BESTEST tests designated as Tier 1 and Tier 2 tests;

(5) Provides training in accordance with the provisions of § 437.202;

(6) Provides documentation of a quality control plan and a permanent quality assurance file in accordance with the provisions of § 437.203; and

(7) Provides documentation of a monitoring and evaluation program in accordance with the provisions of § 437.204.

(b) Basic compliance. Any existing HERS provider may be accredited for a period of up to two years from [insert date of issuing final rule], as being in basic compliance with these guidelines, by demonstrating that it meets all the provisions of paragraph (a) of this section except that it may—

(1) Use a simplification of utility rate structures;

(2) Rate only the features set forth by § 437.104, that may be rated with its existing system capabilities;

(3) Use only those standard operating conditions set forth in § 437.105 that can be handled by their existing energy analysis tool;

(4) Pass only the Tier 1 set of HERS–BESTEST tests;

(5) Meet the training requirements of § 437.202 by—

(i) Verification that each person with responsibilities in the conduction of ratings has completed classroom training on all items set forth in § 437.202 (a) of these guidelines;

(ii) Verification that each person with responsibilities for the conduction of ratings has received field training;

(iii) Verification that all personnel have successfully passed a written objective examination in all areas applicable to their designated job descriptions; and

(iv) Verification of a probationary period set forth in § 437.202 (d); and

(6) Use an existing program to monitoring and evaluate the accuracy of ratings;

§ 437.206 Accreditation.

(a) Each HERS provider operating in voluntary compliance with these guidelines shall be accredited only by a State or other independent accrediting body having a person or persons—

(1) Qualified to establish and coordinate standard default values within a State, for—

(i) Default values for minimum rated features set forth in section 437.104;

(ii) Operating condition assumptions and local climatic data interpolation set forth in section 437.105 of these guidelines;

(2) Qualified to administer the procedures for certification of energy analysis tools established by HERS–BESTEST set forth in the NREL Report no. NREL/TP–472–7332 referenced in § 437.200;

(3) Qualified to evaluate the training syllabus and procedures set forth in § 437.202;

(4) Qualified to review and evaluate the quality control procedures set forth in § 437.203.

(b) Any Lender or agency in a mortgage business who offers mortgage or loan incentives for energy efficiency on the basis of a home energy rating should require that any HERS provider conducting those ratings be accredited under these guidelines.

[FR Doc. 95–18015 Filed 7–20–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–27–AD]

Airworthiness Directives; Jetstream Aircraft Limited HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Jetstream Aircraft Limited (JAL) HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. The proposed action would require inspecting (one-time) the threaded portion of the aileron mounting spigots for cracks, replacing any cracked spigots, and replacing the securing nut assemblies with newly designed special nut assemblies and new split pins. The proposed action is prompted by reports of cracked mounting spigots caused by stress corrosion. The actions specified by the proposed AD are intended to prevent damage to the aileron control systems, which if not detected and corrected, could cause loss of lateral control and eventual loss of control of the airplane.

DATES: Comments must be received on or before September 29, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–27–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, D.C. 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East

Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. Sam Lovell, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64105; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes 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 No. 95–CE–27–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–27–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on JAL HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. The CAA advises that damage to the aileron mounting spigot could occur when removing the securing nut assemblies during servicing. The damage is from stress corrosion caused by a combination of the torque load required to align the split pin holes and the dissimilar materials of the securing nuts and the mounting spigots and could result in damage to the aileron control system. Damage to the aileron control systems, if not detected and corrected, could cause loss of lateral control and loss of control of the airplane.

JAL has issued Jetstream Service Bulletin (SB) 57–JA 921140, which incorporates the following pages and revision levels:

Pages	Revision level	Date
4, 5, 8, 9, 10, 12, 13, and 14.	Original Issue	February 24, 1993.
1, 2, 3, 6, 7, and 11.	Revision 1	February 3, 1994.

This SB specifies procedures for inspecting the mounting spigots using both visual and fluorescent dye penetrant methods, and replacing the existing securing nut assemblies and split pins with newly designed special nut assemblies, and new split pins.

In order to assure the continued airworthiness of these airplanes in the United Kingdom, the CAA classified this service bulletin as mandatory. The CAA classifying a service document as mandatory is the same for airplanes registered in the United Kingdom as the FAA issuing an AD for airplanes registered in the United States.

This airplane model is manufactured in the United Kingdom 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 between the United States and the United Kingdom. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified and is likely to exist or develop in other JAL HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes of the same type design, the proposed AD would require inspecting (using both visual and fluorescent dye penetrant methods) the mounting spigots for cracks; replacing any cracked spigots; and replacing the securing nut assemblies with newly designed special nut assemblies and new split pins to prevent future damage to the spigots.

The FAA estimates that 160 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 22 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts will be provided by the manufacturer at no cost to the owners/operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $211,200 or $1,320 per airplane. This figure is based on the assumption that no owner/operators has accomplished the proposed inspection and modification.

The compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time compliance is the most desirable method because the unsafe condition described by this AD is caused by stress corrosion. Stress corrosion initiates as a result of airplane operation, but can continue to develop regardless of whether the airplane is in service or in storage. Therefore, to ensure that the above-referenced condition is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours TIS is required.

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 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) 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 has been placed 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 a new AD to read as follows:

Jetstream Aircraft Limited: Docket No. 95–CE–27–AD.

Applicability: HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD 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 within the next 6 calendar months after the effective date of this AD, unless already accomplished.

To prevent damage to the aileron control systems, accomplish the following:

(a) Inspect the mounting spigots for cracks using both visual and fluorescent dye penetrant methods in accordance with the *Accomplishment Instructions* section of Jetstream Service Bulletin (SB) 57–JA 921140, which incorporates the following pages and revision levels:

Pages	Revision level	Date
4, 5, 8, 9, 10, 12, 13 and 14.	Original Issue	February 24, 1993.
1, 2, 3, 6 7, and 11.	Revision 1	February 3, 1994.

(1) Prior to further flight, replace any cracked spigots with applicable parts specified in the Parts Table in paragraph 5 of the *Accomplishment Instructions* section of Jetstream SB 57–JA 921140.

(2) Prior to further flight, replace the securing nut assemblies and split pins with new special nut assemblies, (Part No. SL45022 (Qty. 2)), and new split pins (Part No. SP90–C8 and SP90–C6), in accordance with the *Accomplishment Instructions* section of Jetstream SB 57–JA 921140. This replacement is required regardless of the results of the inspection required in paragraph (a) of this AD.

(b) 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.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office.

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

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request from Jetstream Aircraft Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, D.C. 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 18, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18184 Filed 7–24–95; 8:45 am]

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14 CFR Part 39

[Docket No. 95–CE–28–AD]

Airworthiness Directives; Piper Aircraft Corporation PA28 and PA32 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Federal Aviation Administration (FAA) recently became aware of two incidents in the Netherlands where corrosion on the wing spars of Piper Aircraft Corporation (Piper) PA28 series airplanes was so extensive that the wings were replaced. The corrosion, which was discovered in the wing tank area, caused the wing spar material to come off in flakes and strips (exfoliation). A review of the U.S. service difficulty history on Piper PA28 and PA32 series airplanes revealed several incidents where exfoliation corrosion was found on the wing spar in the wing tank area. The purpose of this advance notice is to seek comments from interested persons regarding the best action (if any) to take in order to correct any possible problems with exfoliation corrosion on the wing spar on Piper PA28 and PA32 series airplanes. All comments will be evaluated by the FAA and the FAA will research the situation to decide whether rulemaking is needed.

DATES: Comments must be received on or before October 20, 1995.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–28–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of any proposed rulemaking actions that may occur as a result of this ANPRM by submitting such written data or views as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before any proposed rulemaking is initiated.

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 document 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 No. 95–CE–28–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of ANPRM's

Any person may obtain a copy of this ANPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–28–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA is currently reviewing two incidents in the Netherlands where corrosion on the wing spars of Piper Aircraft Corporation (Piper) PA28 series airplanes was so extensive that the wings were replaced. The corrosion, which was discovered in the wing tank area, caused the wing spar material to come off in flakes and strips (exfoliation).

A review of the U.S. service difficulty history on Piper PA28 and PA32 series airplanes revealed several incidents where exfoliation corrosion was found on the wing spar. The corrosion specified in these reports showed that the exfoliation corrosion also was in the wing tank area. In at least two instances, the exfoliation corrosion was found on the affected airplanes upon removal of the fuel tanks during a repair.

In order to adequately make a determination as to what type of action to take (if any) regarding possible exfoliation corrosion on Piper PA28 and PA32 series airplanes, the FAA is issuing this advance notice of proposed rulemaking (ANPRM) to provide an opportunity for the general public to participate in the decision whether to initiate rulemaking. Interested persons are encouraged to provide information that describes what they consider the best action (if any) to be taken to correct the possible problem. In this regard, the FAA is especially interested in comments and viewpoints on the following:

1. Have you removed or had the fuel tanks removed on one of the affected airplanes? If so, did you detect or was corrosion detected on the wing spar (upper cap, lower cap, or web) in the fuel tank bay?

2. Did you detect or has corrosion been detected on the main wing spar in the vicinity of the fuel tanks (inboard of the fuel tank or outboard of the fuel tank)? If so, where was the corrosion and how much corrosion was found?

3. Did you repair or replace the wing or has the wing been repaired or replaced because of corrosion in the fuel tank area?

4. In your opinion, how accessible is the main wing spar in the vicinity of the fuel tank for inspection purposes? Would it be helpful to install additional access plates inboard and outboard of the fuel tank?

5. Please provide the following:

a. model, serial number, and total number of hours time-in-service of the airplane.

b. the present geographical location of your airplane and the known geographical history of the airplane.

Issued in Kansas City, Missouri, on July 17, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18246 Filed 7–24–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 95–AAL–3]

Proposed Modification of Class E Airspace; Nome and Unalakleet, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E2 and E5 airspace areas at Nome, and Unalakleet, Alaska. The intended effect of this proposal is to provide controlled airspace for aircraft executing the Standard Instrument Approach Procedure (SIAP) at the Nome and Unalakleet Airports. The area would be depicted on aeronautical charts.

DATES: Comments must be received on or before September 4, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Federal Aviation Administration, Docket No. 95–AAL–3, 222 West 7th Avenue, #14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, AAL–531, 222 West 7th Avenue #14, Anchorage, AK 99513–7587; telephone: (907) 271–5898.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–AAL–3.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch, AAL–530, 222 West 7th Avenue, #14, Anchorage, AK 99513–7587 or by calling (907) 271–5898. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the existing Class E airspace to provide additional controlled airspace for Instrument Flight Rules (IFR) procedures at the Nome and Unalakleet

Airports. The FAA has recomputed the terminal airspace requirements which will now include airspace for newly developed Microwave Landing System (MLS) approaches at Nome and Unalakleet; and Global Positioning System (GPS) approach at Unalakleet. The additional airspace would provide required controlled airspace for IFR procedures at the Nome and Unalakleet Airports. The areas would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1, and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

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

* * * * *

AAL AK E2 Nome, AK [Revised]

Nome Airport, AK
(Lat. 64°30′44″ N, long. 165°26′43″ W)
Nome VORTAC
(Lat. 64°29′06″ N, long. 165°15′11″ W)
Nome MLS Azimuth
(Lat. 64°30′28″ N, long. 165°25′35″ W)

Within a 3.9-mile radius of the Nome Airport and within 3.4 miles each side of the Nome VORTAC 106° radial, extending from the 3.9-mile radius to 12.1 miles east of the airport and within 2.3 miles each side of the OME MLS Azimuth west course (110°T), extending from the 3.9-mile radius to 9.1 miles west of the airport.

* * * * *

AAL AK E2 Unalakleet, AK [Revised]

Unalakleet Airport, AK
(Lat. 63°53′17″ N, long. 160°47′55″ W)
North River NDB
(Lat. 63°54′27″ N, long. 160°48′43″ W)
Unalakleet VORTAC
(Lat. 63°53′31″ N, long. 160°41′04″ W)

Within a 4.2-mile radius of Unalakleet Airport and within 3.5 miles each side of the North River NDB 314° bearing extending from the 4.2-mile radius of Unalakleet Airport to 8.4 miles west of the North River NDB and within 1.6 miles each side of the 289° radial of the Unalakleet VORTAC extending from the 4.2 mile radius to 11 miles west of the Unalakleet VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska (Airport/Facility Directory).

* * * * *

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

* * * * *

AAL AK E5 Nome, AK [Revised]

Nome Airport, AK
(Lat. 64°30′44″ N, long. 165°26′43″ W)
Nome VORTAC
(Lat. 64°29′06″ N, long. 165°15′11″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Nome Airport and within 14 miles of the Nome VORTAC extending clockwise from the 002° radial to the 185° radial of the VORTAC and within 20 miles of the Nome VORTAC extending clockwise from the 185° radial to the 305° radial of the VORTAC and within 4 miles north and 8 miles south of the 106° radial of the Nome VORTAC extending from the VORTAC to 16 miles east and within 4 miles north and 8 miles south of the Nome VORTAC 271° radial extending from the 6.6-miles radius to 27 miles west of the VORTAC; and that airspace extending upward from 1,200 feet above the surface within a 39-mile radius of the Nome VORTAC and within 39 miles each side of the Nome VORTAC 092° radial extending from the 39-mile radius to 77.4 miles east of the VORTAC; excluding that airspace more than 12 miles from the shoreline.

* * * * *

AAL AK E5 Unalakleet, AK [Revised]

Unalakleet Airport, AK
(Lat. 63°53′17″ N, long. 160°47′55″ W)
Unalakleet VORTAC
(Lat. 63°53′31″ N, long. 160°41′04″ W)
Unalakleet Localizer
(Lat. 63°52′52″ N, long. 160°47′42″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Unalakleet Airport and within 2 miles each side of the 289° radial of the Unalakleet VORTAC extending from the 6.7-mile radius to 14.1 miles west of the VORTAC and within 3 miles east and 3 miles west of the Unalakleet Localizer front course extending from the 6.7-mile radius to 12.9 miles north of the airport; and that airspace extending upward from 1,200 feet above the surface within a 20-mile radius of the Unalakleet VORTAC extending clockwise from the 165° radial to the 322° radial and within 4 miles east and 8 miles west of the Unalakleet Localizer front course extending from the Localizer to 21.7 miles north of the airport and within 4 miles north and 8 miles south of the Unalakleet VORTAC 289° radial extending from 11 miles west of the VORTAC to 27 miles west of the VORTAC; excluding that airspace more than 12 miles from the shoreline.

* * * * *

Issued in Anchorage, Alaska on July 14, 1995.

Kleve M. Record,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 95–18268 Filed 7–24–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ASO–14]

Proposed Establishment of Class E Airspace; Knoxville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E2 airspace at Knoxville, TN for Knoxville Downtown Island Airport, which has a LOC RWY 26 Standard Instrument Approach Procedure (SIAP) and a VOR/DME or GPS–B SIAP. Knoxville McGhee-Tyson Airport Tower provides approach control service to the surface at Knoxville Downtown Island Airport. Therefore Class E2 airspace is required to accommodate these SIAPs and for instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before September 10, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 95–ASO–14, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Stanley Zylowski, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written date, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ASO–14.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E2 airspace at Knoxville, TN for Knoxville Downtown Island Airport, which has a LOC RWY 26 SIAP and a VOR/DME or GPS–B SIAP. Knoxville McGhee-Tyson Airport Tower provides approach control service to the surface at Knoxville Downtown Islands Airport. Therefore Class E2 airspace is required to accommodate these SIAPs and for IFR operations at the airport. Class E airspace areas designated as a surface area for an airport are published in Paragraph 6002 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

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

* * * * *

ASO TN E2 Knoxville, TN [New]

Knoxville Downtown Island Airport, TN
(lat. 35°57′50″N, long. 83°52′26″ W)

Within a 4.5-mile radius of Knoxville Downtown Island Airport, excluding that airspace within the Knoxville McGhee Tyson Airport, TN Class C airspace area.

* * * * *

Issued in College Park, Georgia, on July 14, 1995.

Stanley Zylowski,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–18270 Filed 7–24–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ACE–7]

Proposed Amendment to Class E Airspace; Clay Center, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Clay Center, KS. The development of a new Standard Instrument Approach Procedure (SIAP) at Clay Center Municipal Airport based on the Global Positioning System has made the

proposal necessary. The intended effect of this proposal is to provide controlled airspace for aircraft executing the SIAP at Clay Center, KS.

DATES: Comments must be received on or before September 4, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 95–ACE–7, 601 East 12th Street, Kansas City, MO. 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Operations Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, ACE–530c, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ACE–7.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for Instrument Flight Rules (IFR) procedures at the Clay Center Municipal Airport due to the development of a new SIAP. The additional airspace would segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

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

* * * * *

ACE KS E5 Clay Center, KS [Revised]

Clay Center Municipal Airport, KS.
(lat. 39°23′14″ N, long. 97°09′26″ W)

Clay Center NDB
(lat. 39°22′51″ N, long. 97°09′40″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Clay Center Municipal Airport and within 2.6 miles each side of the 167° bearing from the Clay Center NDB extending from the 6-mile radius to 7 miles southeast of the airport and within 2 miles each side of the 001° bearing from the Clay Center Airport extending from the 6-mile radius to 10 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on June 15, 1995.

H.J. Lyons, Jr.,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 95–18269 Filed 7–24–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–229; Amendment Number 66]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations concerning the number and frequency of premining water quality samples required for previously mined permit areas.

This document sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., E.D.T. on August 24, 1995. If requested, a public hearing on the proposed amendment will be held at 1 p.m., E.D.T. on August 21, 1995. Requests to speak at the hearing must be received by 4 p.m., E.D.T. on August 9, 1995.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Ms. Beverly C. Brock, Acting Director, Columbus Field Office, at the address listed below.

Copies of the Ohio program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement.

Columbus Field Office, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT:

Ms. Beverly C. Brock, Acting Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendment

The Ohio Department of Natural resources, Division of reclamation (Ohio) submitted proposed Program Amendment Number 66 (PA 66) by letter dated July 3, 1995 (Administrative Record No. OH–2143). In this amendment, Ohio is proposing to revise one rule at Ohio Administrative Code (OAC) section 1501:13–4–15 to make the Ohio program as effective as the corresponding Federal regulations concerning the number and frequency of premining water quality samples required for previously mined permit areas. Ohio is revising paragraph (D)(2) of this rule to require that permit applicants submit data from a minimum of 12 water quality samples from each sampling location to determine the base line pollution load of the proposed pollution abatement area. These samples shall be taken at regular intervals and shall be collected over a period of at least 12 months or longer, as determined by the chief of the Ohio Department of Natural Resources, Division of Reclamation.

Also as part of PA 66, Ohio is proposing to revise two of its Policy/Procedure Directives (PPD) to reflect the rule changes described above. Ohio is revising PPD Permitting 92–3 to require the 12 water quality samples, to specify that sites may be sampled no more frequently than once per month, and to change the name of Ohio's Remining Program contact person. Ohio is revising PPD Regulatory 93–4 to clarify that pollution abatement areas can include contiguous undisturbed areas which must be affected to improve the base line pollutional load, to clarify the definition of ''no longer exceeding,'' and to change the name of Ohio's Remining Program contact person.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Ohio satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under ''DATES'' or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.D.T. on August 9, 1995. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Columbus Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 19, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 95–18222 Filed 7–24–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 264, and 265

[FRL–5263–3]

Hazardous Waste Management System; Testing and Monitoring Activities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing to revise certain testing methods used in complying with the requirements of subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended. EPA also is proposing to add several new testing methods that may be used in complying with the requirements of subtitle C of RCRA. These new and revised methods, designated as Update III, are proposed to be added to the Third Edition of the EPA-approved test methods manual ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846. In addition, EPA proposes to delete several obsolete methods from SW–846 and the RCRA regulations. The intent of this action is to provide state-of-the-art analytical technologies for RCRA-related testing and thus promote cost effectiveness in choosing analytical test methods.

DATES: Comments on this proposed rule must be submitted on or before September 25, 1995.

ADDRESSES: The public should submit an original and two copies of their comments on this proposed rule to the Docket Clerk (OS–305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The official record for this rulemaking (Docket No. F–95–WT3P–FFFFF) is located at the above address in Room M–2616, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy a maximum of 100 pages of material from any one regulatory docket at no cost; additional copies cost $0.15 per page.

Copies of the Third Edition of SW–846, as amended by Updates I, II, IIA, and IIB, and the proposed Update III are part of the official docket for this rulemaking, and also are available from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402, (202) 512–1800. The GPO document number is 955–001–00000–1. Copies of the Third Edition and its updates are also available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424–9346 (toll free) or call (703) 412–9810; or, for hearing impaired, call TDD (800) 553–7672 or TDD (703) 412–3323. For technical information, contact Kim Kirkland or Barry Lesnik, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–4761.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

These regulations are being promulgated under the authority of sections 1006, 2002(a), 3001–3007, 3010, 3013–3018, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (commonly known as RCRA), as amended (42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934–6939, and 6974).

II. Background Summary and Regulatory Framework

EPA Publication SW–846, ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' contains the analytical and test methods that EPA has evaluated and found to be among those acceptable for testing under subtitle C of the Resource Conservation and Recovery Act (RCRA) and that are required for specific regulations as discussed below. These methods are intended to promote accuracy, sensitivity, specificity, precision, and comparability of analyses and test results. In situations where the regulations require the use of appropriate SW–846 methods, the regulations specify use of the Third Edition of EPA's SW–846 manual as amended by Updates I, II, IIA, and IIB. SW–846 will be amended further to include the new and revised methods contained in this proposed Update III, and to delete those methods deemed obsolete in this proposal, if this proposal is adopted in final form.

Several of the hazardous waste regulations under subtitle C of RCRA require that specific testing methods described in SW–846 be employed for certain applications. Any reliable analytical method may be used to meet other requirements in 40 CFR parts 260 through 270. Listed below are a number of provisions found in 40 CFR parts 260 through 270 that require use of a specific method for a particular application, or the use of appropriate SW–846 methods in general:

(1) Section 260.22(d)(1)(i)—Submission of data in support of petitions to exclude a waste produced at a particular facility (i.e., delisting petitions);

(2) Section 261.22(a)(1) and (2)—Evaluation of a waste against the corrosivity characteristic;

(3) Section 261.24(a)—Leaching procedure for evaluation of a waste against the toxicity characteristic;

(4) Section 261.35(b)(2)(iii)(A)—Testing rinsates from wood preserving cleaning processes;

(5) Sections 264.190(a), 264.314(c), 265.190(a), and 265.314(d)—Evaluation of a waste to determine if free liquid is a component of the waste;

(6) 264.1034(d)(1)(iii) and 265.1034(d)(1)(iii)—Testing total organic concentration for monitoring compliance with air emission standards for process vents;

(7) 264.1063(d)(2) and 265.1063(d)(2)—Testing total organic concentration for monitoring compliance with air emission standards for equipment leaks;

(8) Section 266.106(a)—Analysis in support of compliance with standards to control metals emissions from burning hazardous waste in boilers and industrial furnaces;

(9) Section 266.112(b)(1) and (2)(i)—Certain analyses in support of exclusion from the definition of a hazardous waste of a residue which was derived from burning hazardous waste in boilers and industrial furnaces;

(10) Section 268.32(i)—Evaluation of a waste to determine if it is a liquid for purposes of certain land disposal prohibitions;

(11) Sections 268.40(a), (b) and (f), 268.41(a), and 268.43(a)—Leaching procedure for evaluation of waste extract to determine compliance with land disposal treatment standards;

(12) Section 268.7(a)—Leaching procedure for evaluation of a waste to determine if the waste is restricted from land disposal;

(13) Sections 270.19(c)(1)(iii) and (iv), and 270.62(b)(2)(i)(C) and (D)—Analysis and approximate quantification of the hazardous constituents identified in the waste prior to conducting a trial burn in support of an application for a hazardous waste incineration permit; and

(14) Sections 270.22(a)(2)(ii)(B) and 270.66(c)(2)(i) and (ii)—Analysis conducted in support of a destruction and removal efficiency (DRE) trial burn waiver for boilers and industrial furnaces burning low-risk wastes, and analysis and approximate quantification conducted for a trial burn in support of an application for a permit to burn hazardous waste in a boiler and industrial furnace.

In other situations, SW–846 functions as a guidance document setting forth acceptable, although not required, methods to be implemented by the user, as appropriate, in responding to RCRA-related sampling and analysis requirements.

SW–846 is a document that changes over time as new information and data are developed. Advances in analytical instrumentation and techniques are continually reviewed by the Agency and periodically incorporated into SW–846 to support changes in the regulatory program and to improve method performance. Update III represents such an incorporation. Therefore, EPA solicits any available data and information that may affect the usefulness of SW–846.

III. Proposal

A. Revised Methods and Chapters

The Agency is today proposing to revise several methods contained in the Third Edition[1] of SW–846 and its Updates I, II, IIA, and IIB, as incorporated by reference into 40 CFR 260.11(a). These proposed revisions would improve the methods and provide additional performance information for each method. The Agency is also proposing to revise SW–846 Chapters Two, Three, Four, Five, Six, and Ten to incorporate new methods and method revisions into SW–846.

Table 1 lists the 37 methods and the six chapters that are proposed for revision. The revised methods and chapters are available from the Government Printing Office (GPO) and the National Technical Information Service (NTIS), and are part of the official docket for this rulemaking. For comparison purposes, original versions of the methods and chapters before these revisions can be found in Docket Nos. F–93–WTMF–FFFFF (Third Edition and Update I) and F–94–WT2F–FFFFF (Update II). The revised methods of proposed Update III can be found in Docket No. F–95–WT3P–FFFFF. Those with SW–846 subscriptions can refer to their copies of the Third Edition of SW–846 as amended by Updates I, II, IIA, and IIB; and to their copy of proposed Update III. The Agency is soliciting comments on all parts of each revised method, with the exception of Method 9095A for the reasons explained in section III.D of this proposed rule.

In its ongoing program to promote pollution prevention, the Agency notes that eighteen (see method numbers identified by an asterisk in Table 1) of the organic sample preparatory and cleanup methods which are proposed to be revised in Update III of SW–846 utilize a modified Kuderna-Danish (K–D) apparatus to concentrate sample extracts and minimize the evaporation of extraction solvents into the air. Specifically, the modified K–D apparatus in these methods includes a solvent recovery system. The recovered solvent can be properly disposed instead of released to the air as previously done. (Note: The K–D apparatus found in new Methods 3535 and 3542 of proposed Update III also include this pollution prevention improvement.)

[1] For an exception, see footnote number 1 of Table 1.

B. New Methods

The Agency is today proposing to add 61 new methods to the Third Edition of SW–846 (Table 2). If finalized, these new methods will provide additional flexibility in method selection and also may be used during the analyses of some analytes for which other SW–846 methods may be less than adequate performers. These new methods are available from GPO and NTIS, and are part of the official docket for this rulemaking. The Agency is soliciting comments on all sections of these methods.

EPA's Office of Solid Waste is also considering adopting the Environmental Monitoring Management Council (EMMC) format for use with new SW–846 methods in a future proposed revision (other than Update III) to SW–846. As part of its efforts to promote consolidation and integration between EPA Program Offices, the EMMC developed the consensus format for analytical methods. The Agency plans to consider adopting this format to be consistent with an intra-agency effort to achieve uniformity in analytical method format among all Agency programs. The use of this new format for new methods of SW–846 will be proposed per comment in a future rulemaking. The Agency is not soliciting comment at this time on its plans to adopt the EMMC format.

C. Deletion of Obsolete Methods

The Agency is also proposing today to delete sixteen obsolete methods (Table 3) from the Third Edition of SW–846, for the reasons delineated in the following paragraphs. The Agency is soliciting comments on the removal of the methods from SW–846.

Fourteen packed column gas chromatographic (GC) methods are proposed for deletion from SW–846 because they have been superseded by capillary column methods or other method techniques that provide better resolution, selectivity and sensitivity. Capillary columns have an inherently greater ability to separate analytes than packed columns. A survey performed in 1991 found that few analysts actually use packed columns in their laboratories anymore (Environmental Science and Technology, 26, 1285–1287, 1992). These packed column GC methods are also proposed for deletion to be consistent with other Agency program offices, *e.g.*, the Office of Water, which has withdrawn packed column methods from its list of approved drinking water methods (see 59 FR 62456, December 5, 1994).

Method 9200, the brucine-sulfanilamide method for nitrate determination, is proposed for deletion because it generates unreliable results. It was recently demonstrated to be unreliable by both the Agency's Environmental Monitoring Systems Laboratory in Cincinnati (EMSL-Ci) and the American Water Works Association (AWWA). The unstable nature of the analytical reagents and excessively tight temperature control requirements were among the factors contributing to the method's unreliability. In fact, on December 15, 1993 (58 FR 65622), the Agency proposed to remove Method 353.1 (EPA 600/4–79–020, ''*Methods for the Chemical Analysis of Water and Wastes*'') which contains a brucine-sulfanilic acid procedure. Method 419 D, a brucine-sulfanilic acid method, was also removed by the American Water Works Association from the publication ''*Standard Methods for the Examination of Water and Wastewater*'', Fifteenth Edition. Therefore, to be consistent with these and any other related Agency actions, the Agency is proposing to remove Method 9200 from SW–846. In the rare cases where nitrate is a target analyte for RCRA-related analyses, the regulated community may use Method 9056—The Determination of Inorganic Anions by Ion Chromatography (currently in SW–846). Another appropriate method may be Method 9210—Nitrate in Aqueous Samples by Ion-Selective Electrode, which is a proposed Update III method and listed in Table 2 of this notice. Alternative methods are also available from other sources, including, but not limited to, the ''*Annual Book of ASTM Methods*'' (American Society for Testing and Materials, Philadelphia, PA); ''*Standard Methods for the Examination of Water and Wastewater*'' (Eighteenth Edition, 1992, American Public Health Association, the American Water Works Association, and the Water Environment Federation, Washington, DC); and the Office of Water methods manual ''*Methods for the Chemical Analysis of Water and Wastes*'' (EPA, March 1983, NTIS PB84–128677)

Method 9252A—Chloride (Titrimetric, Mercuric Nitrate) is proposed to be deleted from SW–846 as part of the Agency's ongoing efforts to promote pollution prevention measures. Although the method does give reliable results, it can generate a mercury-containing RCRA hazardous waste, which may cause disposal or contamination problems for the laboratory. Several alternative methods for the determination of chloride are available both in SW–846 (*e.g.*, Methods 9250, 9251 and 9253) and from other sources including, but not limited to, the ''*Annual Book of ASTM Methods*'' (American Society for Testing and Materials, Philadelphia, PA), ''*Standard Methods for the Examination of Water and Wastewater*'' (Eighteenth Edition, 1992, American Public Health Association, the American Water Works Association, and the Water Environment Federation, Washington, DC), and the Office of Water methods manual, ''*Methods for the Chemical Analysis of Water and Wastes*'' (EPA, March 1983, NTIS PB84–128677).

D. Request for Comment Only on Certain Sections of Method 9095A

Revised Method 9095A (''Paint Filter Liquids Test'') contains revisions to sections 6.2, 7.2, 7.3 and 7.4 that provide direction on how to prepare sorbent materials that do not conform to the shape of the paint filter. This direction is intended to facilitate use of the method for the testing of containerized liquids to which sorbents have been added before land disposal. The Agency adopted Method 9095A for this purpose on November 18, 1992 (see 57 FR 54452, the ''Liquids in Landfills'' rule). Method 9095A also contains a new section 3.2 which clarifies use of the method during freezing conditions. The Agency is requesting comment only on the sections of Method 9095A listed above, is not requesting comment on other sections of the method (which were not revised), and is also not requesting comment on method appropriateness for free liquid determinations.

E. Deleting References to Method 8240 in §§ 264.1034(d)(iii) and (f), 264.1063(d)(2), 265.1034(d)(1)(iii) and (f), and 265.1063(d)(2)

The Agency is proposing to delete all references to Method 8240 (Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry) of SW–846 found in 40 CFR 264.1034(d)(1)(iii) and (f), 264.1063(d)(2), 265.1034(d)(1)(iii) and (f), and 265.1063(d)(2) of the RCRA regulations. The Agency is proposing this action because a method involving the determination of volatile organic compounds (*e.g.*, Method 8240 or 8260) is not an appropriate method alternative for the total organic carbon analysis addressed by 40 CFR 264.1034(d)(1)(iii) and (f), 264.1063(d)(2), 265.1034(d)(1)(iii) and (f), and 265.1063(d)(2), since it exhibits no direct correlation with analytical results obtained using Method 9060. In addition, Method 8240 is a packed column method and, for the reasons explained in section III.C of this proposal, the Agency is removing Method 8240 (and all other packed column methods) from SW–846.

TABLE 1.—LIST OF PROPOSED REVISED METHODS AND CHAPTERS

Method No.	Title
	Chapter Two—Choosing the Correct Procedure
	Chapter Three—Metallic Analytes
	Chapter Four—Organic Analytes
	Chapter Five—Miscellaneous Test Methods
	Chapter Six—Properties
	Chapter Ten—Sampling Methods
3040A ...	Dissolution Procedure for Oils, Greases, or Waxes
3050B ...	Acid Digestion of Sediments, Sludges, and Soils
3060A [1] .	Alkaline Digestion for Hexavalent Chromium
3500B ...	Organic Extraction and Sample Preparation
3510C* ..	Separatory Funnel Liquid-Liquid Extraction
3520C* ..	Continuous Liquid-Liquid Extraction
3540C* ..	Soxhlet Extraction
3550B* ..	Ultrasonic Extraction
3600C ...	Cleanup
3610B* ..	Alumina Cleanup
3611B* ..	Alumina Column Cleanup and Separation of Petroleum Wastes
3620B* ..	Florisil Cleanup
3630C* ..	Silica Gel Cleanup
3650B* ..	Acid-Base Partition Cleanup
3660B* ..	Sulfur Cleanup
3665A* ..	Sulfuric Acid/Permanganate Cleanup
4010A ...	Screening for Pentachlorophenol by Immunoassay
5030B ...	Purge-and-Trap for Aqueous Samples
5041A ...	Analysis of Sorbent Cartridges from Volatile Organic Sampling Train (VOST): Capillary GC/MS Technique
6010B ...	Inductively Coupled Plasma—Atomic Emission Spectroscopy
8000B ...	Determinative Chromatographic Separations
8015B ...	Nonhalogenated Organics Using GC/FID
8021B ...	Halogenated Volatiles by Gas Chromatography Using Photoionization and Electrolytic Conductivity Detectors in Series: Capillary Column Technique
8032A* ..	Acrylamide by Gas Chromatography
8061A* ..	Phthalate Esters by Capillary Gas Chromatography with Electron Capture Detection (GC/ECD)
8070A* ..	Nitrosamines by Gas Chromatography
8081A ...	Organochlorine Pesticides by Capillary Column Gas Chromatography
8151A* ..	Chlorinated Herbicides by GC Using Methylation or Pentafluorobenzylation Derivatization: Capillary Column Technique
8260B ...	Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS): Capillary Column Technique
8270C ...	Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS): Capillary Column Technique
8275A ...	Semivolatile Organic Compounds (PAHs and PCBs) in Soils/Sludges and Solid Wastes Using Thermal Extraction/Gas Chromatography/Mass Spectrometry (TE/GC/MS)
8280A* ..	The Analysis of Polychlorinated Dibenzo-p-dioxins and Polychlorinated Dibenzofurans by High Resolution Gas Chromatography/Low Resolution Mass Spectrometry (HRGC/LRMS)
8315A* ..	Determination of Carbonyl Compounds by High Performance Liquid Chromatography (HPLC)
8321A* ..	Solvent Extractable Non-Volatile Compounds by High Performance Liquid Chromatography/Thermospray/Mass Spectrometry (HPLC/TS/MS) or Ultraviolet (UV) Detection
9012A ...	Total and Amenable Cyanide (Colorimetric, Automated UV)
9050A ...	Specific Conductance
9095A ...	Paint Filter Liquids Test (sections 3.2, 6.2, 7.2, 7.3, and 7.4)

NOTE: A suffix of ''A'' in the method number indicates revision one (the method has been revised once). A suffix of ''B'' in the method number indicates revision two (the method has been revised twice). A suffix of ''C'' in the method number indicates revision three (the method has been revised three times).

* Indicates method revisions which include a modification to a Kuderna-Danish (K-D) apparatus to promote pollution prevention.

[1] Method 3060, ''Alkaline Digestion for Hexavalent Chromium,'' was in the Second Edition of SW–846, but was not included in SW–846, Third Edition, due to perceived poor performance. The method has since been extensively studied, modified, and validated, and Method 3060A is now being proposed for inclusion as a revised method to SW–846.

TABLE 2.—LIST OF NEW METHODS PROPOSED FOR ADDITION TO SW–846

Method No.	Title
0011	Sampling for Formaldehyde Emissions from Stationary Sources
0023A [1] .	Sampling Method for Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofuran Emissions from Stationary Sources
0031	Sampling Method for Volatile Organic Compounds (SMVOC)
0040	Sampling of Principal Organic Hazardous Constituents from Combustion Sources Using Tedlar® Bags
0050	Isokinetic HCl/Cl_2 Emission Sampling Train
0051	Midget Impinger HCl/Cl_2 Emission Sampling Train
0060	Determination of Metals in Stack Emissions
0061	Determination of Hexavalent Chromium Emissions from Stationary Sources
0100	Sampling for Formaldehyde and Other Carbonyl Compounds in Indoor Air
1030	Ignitability of Solids
1120	Dermal Corrosion
3031	Acid Digestion of Oils for Metals Analysis by FLAA or ICP Spectroscopy
3052	Microwave Assisted Acid Digestion of Siliceous and Organically Based Matrices
3535*	Solid Phase Extraction (SPE)
3542*	Extraction of Semivolatile Analytes Collected Using Modified Method 5 (Method 0010) Sampling Train
3545	Accelerated Solvent Extraction (ASE)
3560	Supercritical Fluid Extraction of Total Recoverable Petroleum Hydrocarbons (TRPH)
3561	Supercritical Fluid Extraction of Polynuclear Aromatic Hydrocarbons
3585	Waste Dilution for Volatile Organics
4000	Immunoassay
4015	Screening for 2,4–Dichlorophenoxyacetic Acid by Immunoassay
4020	Screening for Polychlorinated Biphenyls by Immunoassay
4030	Soil Screening for Petroleum Hydrocarbons by Immunoassay
4035	Soil Screening for Polynuclear Aromatic Hydrocarbons (PAHs) by Immunoassay
4040	Soil Screening for Toxaphene by Immunoassay
4041	Soil Screening for Chlordane by Immunoassay
4042	Soil Screening for DDT by Immunoassay
4050	TNT Explosives in Water and Soils by Immunoassay
4051	Hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX) in Soil and Water by Immunoassay

TABLE 2.—LIST OF NEW METHODS PROPOSED FOR ADDITION TO SW–846—Continued

Method No.	Title
5000	Sample Preparation for Volatile Organic Compounds
5021	Volatile Organic Compounds in Soils and Other Solid Matrices Using Equilibrium Headspace Apparatus
5031	Volatile, Nonpurgeable, Water-Soluble Compounds by Azeotropic Distillation
5032	Volatile Organic Compounds by Vacuum Distillation
5035	Closed-System Purge-and-Trap and Extraction for Volatile Organics in Soil and Waste Samples
7063	Arsenic in Aqueous Samples and Extracts by Anodic Stripping Voltammetry (ASV)
7199	Determination of Hexavalent Chromium in Drinking Water, Groundwater and Industrial Wastewater Effluents by Ion Chromatography
7472	Mercury in Aqueous Samples and Extracts by Anodic Stripping Voltammetry (ASV)
7521	Nickel (Atomic Absorption, Furnace Method)
7580	White Phosphorus (P_4) by Solvent Extraction and Gas Chromatography
8033	Acetonitrile by Gas Chromatography with Nitrogen-Phosphorus Detection
8041	Phenols by Gas Chromatography: Capillary Column Technique
8082	Polychlorinated Biphenyls (PCBs) by Capillary Column Gas Chromatography
8091	Nitroaromatics and Cyclic Ketones: Capillary Column Technique
8111	Haloethers: Capillary Column Technique
8131	Aniline and Selected Derivatives by GC: Capillary Column Technique
8325	Solvent Extractable Non-Volatile Compounds by High Performance Liquid Chromatography/Particle Beam/Mass Spectrometry (HPLC/PB/MS)
8332	Nitroglycerine by High Performance Liquid Chromatography
8430	Analysis of Bis(2-chloroethyl)ether Hydrolysis Products by Direct Aqueous Injection GC/FT-IR
8440	Total Recoverable Petroleum Hydrocarbons by Infrared Spectrophotometry
8515	Colorimetric Screening Method for Trinitrotoluene (TNT) in Soil
8520	Continuous Measurement of Formaldehyde in Ambient Air
9023	Extractable Organic Halides (EOX) in Solids
9057	Determination of Chloride from HCl/HCl_2 Emission Sampling Train (Methods 0050 and 0051) by Anion Chromatography
9078	Screening Test Method for Polychlorinated Biphenyls in Soil
9079	Screening Test Method for Polychlorinated Biphenyls in Transformer Oil
9210	Potentiometric Determination of Nitrate in Aqueous Samples with Ion-Selective Electrode
9211	Potentiometric Determination of Solubilized Bromide in Aqueous Samples with Ion-Selective Electrode
9212	Potentiometric Determination of Chloride in Aqueous Samples with Ion-Selective Electrode
9213	Potentiometric Determination of Solubilized Cyanide in Aqueous Samples and Distillates with Ion-Selective Electrode
9214	Potentiometric Determination of Fluoride in Aqueous Samples with Ion-Selective Electrode
9215	Potentiometric Determination of Sulfide in Aqueous Samples and Distillates with Ion-Selective Electrode

*Includes a Kuderna-Danish (K-D) apparatus with a solvent recovery system to promote pollution prevention.

[1] This method is an updated version of the "Method 23" currently found in 40 CFR part 60, Appendix A. Therefore, the Agency has added the "A" suffix to indicate that Method 0023A of SW–846 is revised from Method 23 of 40 CFR part 60.

TABLE 3.—LIST OF METHODS PROPOSED FOR REMOVAL FROM SW–846

Method No.	Title
5040A	Analysis of Sorbent Cartridges from Volatile Organic Sampling Train (VOST): Gas Chromatography/Mass Spectrometry Technique
8010B	Halogenated Volatile Organics by Gas Chromatography
8020A	Aromatic Volatile Organics by Gas Chromatography
8030A	Acrolein and Acrylonitrile by Gas Chromatography
8040A	Phenols by Gas Chromatography
8060	Phthalate Esters
8080A	Organochlorine Pesticides and Polychlorinated Biphenyls by Gas Chromatography
8090	Nitroaromatics and Cyclic Ketones
8110	Haloethers by Gas Chromatography
8120A	Chlorinated Hydrocarbons by Gas Chromatography
8140	Organophosphorus Pesticides
8150B	Chlorinated Herbicides by Gas Chromatography
8240B	Volatile Organics by Gas Chromatography/Mass Spectrometry (GC/MS)
8250A	Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS)
9200	Nitrate
9252A	Chloride (Titrimetric, Mercuric Nitrate)

NOTE: A suffix of "A" in the method number indicates revision one (the method has been revised once). A suffix of "B" in the method number indicates revision two (the method has been revised twice).

IV. State Authority

Today's rule, if promulgated, will provide standards that are not immediately effective in authorized States since the requirements are being imposed pursuant to pre-HSWA authority. *See* RCRA section 3006. The requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law. Procedures and deadlines for State program revisions are set forth in 40 CFR 271.21. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

V. Regulatory Analyses

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Agency has determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review and the requirements of the Executive Order.

B. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), Pub. L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, and tribal governments in the aggregate, or to the private sector, in any one year. This is due to the fact that this rule simply revises available test methods for complying with existing regulatory requirements, and in most cases, the SW–846 test methods are provided as guidance, not requirements. Even where the use of a specific test method is required, the Agency does not believe that the revised methods will result in significant cost increases and indeed, most of the revised methods are expected to result in reduced costs. For example, new immunoassay methods can be run in the field, replacing expensive gas chromatographic laboratory work; this will allow for more and faster sampling, helping to reduce the cost of cleanups. Thus, today's notice is not subject to the written statement requirements in sections 202 and 205 of the Act.

As for section 203 of the Act, today's rule is not expected to have any ''unique'' effects on small governments; the only expected effects on a small government would be where that government is itself managing hazardous wastes, and is using one or more test methods for complying with RCRA regulations. Further, for the reasons set out in the prior paragraph, the revised test methods would not be expected to have a ''significant'' effect on small governments (or other users of test methods). Thus, today's notice is not subject to the requirements of section 203 of the Act.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. section 601–612, Pub. L. 96–354, September 19, 1980), whenever an agency publishes a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis (RFA) that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the Agency certifies that the rule will not have a significant impact on a substantial number of small entities.

This rule will not require the purchase of new instruments or equipment. The regulation requires no new reports beyond those now required. This rule will not have an adverse economic impact on small entities since its effect will be to provide greater flexibility and utility to all of the regulated community, including small entities, by providing an increased choice of appropriate analytical methods for RCRA applications. Therefore, in accordance with 5 U.S.C. section 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Thus, the regulation does not require an RFA.

D. Paperwork Reduction Act

There are no additional reporting, notification, or recordkeeping provisions associated with today's proposed rule. Such provisions, were they included, would be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Incorporation by reference.

40 CFR Part 264

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

Dated: May 25, 1995.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, Chapter I, of the Code of Federal Regulations is amended as set forth below:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

2. Section 260.11 (a) is amended by revising the ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' reference to read as follows:

§ 260.11 References.

(a) * * *

''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846 [Third Edition (November 1986), as amended by Updates I (July, 1992), II (September, 1994), IIA (August, 1993), IIB (January, 1995), and III]. The Third Edition of SW–846 and Updates I, II, IIA, IIB, and III (document number 955–001–00000–1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800. Copies of the Third Edition and its updates are also available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart AA—Air Emission Standards for Process Vents

4. Section 264.1034 is amended by revising paragraphs (d)(1)(iii) and (f) to read as follows:

§ 264.1034 Test methods and procedures.

* * * * *

(d) * * *

(1) * * *

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060 of SW–846 (incorporated by reference under § 260.11 of this chapter).

* * * * *

(f) When an owner or operator and the Regional Administrator do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, an appropriate procedure referenced in § 260.11(a) of this chapter may be used to resolve the dispute.

* * * * *

Subpart BB—Air Emission Standards for Equipment Leaks

5. Section 264.1063 is amended by revising paragraph (d)(2) to read as follows:

§ 264.1063 Test methods and procedures.

* * * * *

(d) * * *

(2) Method 9060 of SW–846 (incorporated by reference under § 260.11 of this chapter); or

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

6. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6935, and 6936, unless otherwise noted.

Subpart AA—Air Emission Standards for Process Vents

7. Section 265.1034 is amended by revising paragraphs (d)(1)(iii) and (f) to read as follows:

§ 265.1034 Test methods and procedures.

* * * * *

(d) * * *

(1) * * *

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060 of SW–846 (incorporated by reference under § 260.11 of this chapter).

* * * * *

(f) When an owner or operator and the Regional Administrator do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, an appropriate procedure referenced in § 260.11(a) of this chapter may be used to resolve the dispute.

* * * * *

Subpart BB—Air Emission Standards for Equipment Leaks

8. Section 265.1063 is amended by revising paragraph (d)(2) to read as follows:

§ 265.1063 Test methods and procedures.

* * * * *

(d) * * *

(2) Method 9060 of SW–846 (incorporated by reference under § 260.11 of this chapter); or

* * * * *

[FR Doc. 95–18257 Filed 7–24–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61 and 63

[IB Docket No. 95–118, FCC 95–286]

Streamlining the International Section 214 Authorization Process and Tariff Requirements

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: The Federal Communications Commission is proposing rules to streamline the international Section 214 authorization process and tariff requirements. The Commission proposes to streamline many Section 214 authorization requirements as well as tariff requirements. The Commission believes that the proposals will greatly lessen the regulatory burdens on applicants, authorized carriers, and the Commission and allow carriers to operate more efficiently and respond better to customers' needs in a timely manner. Additionally, the Commission's proposals will enable international carriers to enter, expand, and exit the market more quickly.

DATES: Comments must be submitted on or before August 23, 1995. Reply comments must be submitted on or before September 7, 1995.

ADDRESSES: All comments and reply comments concerning these proposals should be addressed to: Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Helene T. Schrier or Troy F. Tanner, Attorney-Advisors, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted on July 13, 1995 and released July 17, 1995. The full text of this notice is available for inspection and copying during normal business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. The complete text of this notice also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800.

Initial Regulatory Flexibility Act

A. Reason for Action

This rulemaking proceeding was initiated to obtain comment regarding proposed changes to the Commission's international Section 214 authorization process and tariff requirements.

B. Objectives

The Commission seeks to streamline the international Section 214 authorization process and tariff requirements to greatly lessen the regulatory burdens on applicants, authorized carriers, and the Commission and enable them to operate more efficiently and respond better to customers' needs in a timely manner.

Such proposals also seek to enable international carriers to enter and exit the market more quickly with greater flexibility to meet the evolving needs of a global telecommunications market.

C. Legal Basis

The proposed action is authorized under Sections 4 and 203 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 203 (1995).

D. Reporting, Recordkeeping and Other Compliance Requirements

None.

E. Federal Rules That Overlap, Duplicate or Conflict With These Rules

None.

F. Description, Potential Impact, and Number of Small Entities Involved

The proposals discussed in this notice of proposed rulemaking will reduce regulatory requirements on small resellers and facilities-based providers who file international Section 214 authorization applications and tariffs. These proposals also are intended to enable these carriers to enter and exit the market more quickly thereby enabling increased competition in the international markets. Copies of this notice will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With Stated Objective(s)

None.

Summary of Notice of Proposed Rulemaking

The Notice of Proposed Rulemaking proposes to streamline the international Section 214 authorization process and tariff requirements. The proposed rules would greatly reduce the regulatory burdens on applicants, authorized carriers, and the Commission and make it easier for carriers to enter, expand and exit the international service market.

The notice proposes to ease entry into the marketplace by enabling a nondominant carrier to obtain a global Section 214 authorization, which is not limited to specific carrier facilities. This authorization would allow carriers to provide international services to virtually all points in the world, using any licensed facility. This authorization would be subject to an exclusion list that the Commission would publish identifying countries or facilities for which there are restrictions. To further ease entry into the international marketplace, the Notice proposes to simplify and accelerate the Section 214 and cable landing license application process. The notice proposes to reduce the detailed information now required of these applicants. To accelerate the Commission's processing of applications, the Notice proposes to shorten the comment period on applications that are subject to streamlined processing for facilities-based and resale applicants from 30 to 21 days and for nonstreamlined applications from 30 to 28 days and proposes a 14 day reply period for all applications. The notice also proposes to encourage electronic filing of international Section 214 applications and to require that applications in foreign languages be accompanied with a certified translation in English.

The notice also would eliminate several regulatory requirements that delay carriers from expanding their services. Under the proposals, resellers could provide international resale services via any authorized common carrier, except those affiliated with the reseller, without obtaining additional authority. Private line resale carriers could resell interconnected private lines for switched services to all designated "equivalent" countries, without obtaining additional authority to serve each equivalent county. Carriers may add circuits on private satellite or cable systems, without obtaining prior authority.

The notice also eases exit from the market, as the proposals allow dominant carriers to automatically convey transmission capacity in submarine cables to other carriers without obtaining prior Section 214 authority. Additionally, the proposals allow nondominant carriers to provide 60, as opposed to 120, days' notice to their customers before discontinuing service or retiring facilities.

The notice also proposes to further streamline the tariff requirements for nondominant international resale and facilities-based carriers by permitting them to file their international tariffed rates on one day's notice instead of the current 14 days' notice. And, the Commission seeks comment, in general, on whether to streamline the international tariff process.

Finally, the Commission seeks comments on what, if any, Section 214 authorization requirements it should forbear from applying if given forbearance authority by Congress.

List of Subjects

47 CFR Part 61

Communications common carriers.

47 CFR Part 63

Communications common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–18316 Filed 7–24–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–142; RM–8208]

Television Broadcasting Services; Willits, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a petition filed on behalf of Granite Broadcasting Corporation and KNTV, Inc., owner and licensee, respectively of Station KNTV(TV), Channel 11, San Jose, California, seeking the deletion of vacant VHF television Channel 11 at Willits, California, to accommodate its preference to relocate the transmitter of Station KNTV(TV) to a seismologically safer site. *See* 58 FR 31686, June 4, 1993. An expression of interest in retaining vacant Channel 11 at Willits, combined with the petitioner's inability to demonstrate a compelling showing that the public interest would be better served by its proposal, precludes deletion of the Willits allotment. With this action, the proceeding is terminated.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 93–142, adopted July 11, 1995, and released July 19, 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, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–18203 Filed 7–24–95; 8:45 am]

BILLING CODE 6712–01–F

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1523 and 1552

[FRL–5260–5]

Acquisition Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This document proposes to add coverage to the EPA Acquisition Regulation (EPAAR) on energy-efficient computer equipment. This proposed rule is necessary for ensuring that all purchases of microcomputers, including personal computers, monitors, and printers meet ''EPA Energy Star'' requirements for energy efficiency, unless exempted.

DATES: Written comments on this proposed rule must be received on or before September 25, 1995.

ADDRESSES: Comments should be addressed to the Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attn: Paul Schaffer (Mail Code 3802F). Comments may also be transmitted electronically by electronic mail (e-mail) to Schaffer.paul @ epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments will also be accepted on disk in Wordperfect in 5.1 file format or ASCII file format. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments of the proposed rule may be filed online at many Federal Deposit Libraries.

FOR FURTHER INFORMATION CONTACT: Paul Schaffer at (202) 260–9032.

SUPPLEMENTARY INFORMATION:

A. Background

Executive Order 12845 (April 23, 1993) requires the Federal Government to purchase only microcomputers, including personal computers, monitors and printers, which meet ''EPA Energy Star'' requirements for energy efficiency.

B. Executive Order 12866

This final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore no review is required at the Office of Information and Regulatory Affairs within OMB.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not propose any information collection requirements which would require the approval of OMB under 44 U.S.C. 3501, *et seq*.

D. Regulatory Flexibility Act

The EPA certifies this proposed rule does not exert a significant economic impact on a substantial number of small entities. The proposed rule establishes EPA policy for purchasing microcomputers, including personal computers, monitors, and printers which must meet ''EPA Energy Star'' requirements for energy efficiency. The ''Energy Star Program'' is a voluntary partnership effort with the computer industry, which includes small entities, to promote the introduction of energy-efficient personal computers, monitors, and printers which can reduce air pollution caused by utility power generation. The ''Energy Star Program'' has no barriers to entry for small entities to procure or develop the necessary technology or components to manufacture Energy Star compliant computers, monitors and printers. Therefore, no regulatory flexibility analysis has been prepared.

E. Unfunded Mandates

This proposed rule will not impose unfunded mandates on state or local entities or others.

List of Subjects in 48 CFR Parts 1523 and 1552

Environmental Conservation, and Environmental Safety, Solicitation Provisions and Contract Clauses.

For the reasons set out in the preamble, Chapter 15 of Title 48 Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for Parts 1523 and 1552 continues to read as follows:

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

2. Subpart 1523.70 is added to read as follows:

PART 1523 ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE.

Subpart 1523.70—Energy-Efficient Computer Equipment

1523.7000 Background.

(a) Executive Order 12845 requires the Federal Government to purchase only microcomputers, including personal computers, monitors and printers, which meet ''EPA Energy Star'' requirements for energy efficiency. This equipment is often identified by the Energy Star TM logo and is capable of entering and recovering from an energy-efficient low power state.

(b) The EPA Energy Star Computer Program is a voluntary partnership effort with the computer industry to promote the introduction of energy-efficient personal computers, monitors, and printers which can reduce air pollution caused by utility power generation, and ease the burden on building air conditioning and electrical systems. The Energy Star Program is designed to be a self-certifying computer industry program, policed informally by the computer industry itself.

(c) FIRMR Bulletin C–35 (dated 11/19/93) describes procedures that will promote the acquisition of energy-efficient microcomputers and associated computer equipment.

1523.7001 Policy.

(a) The ''Energy Star'' Executive Order *applies* to the following equipment:

(1) Personal Computers (stand-alone).

(2) Personal Computers (end-user on network).

(3) Notebook and other portable computers.

(4) PC printers—laser, inkjet or dot matrix (stand-alone or networked).

(5) High-speed printers used on a PC network (less than approximately 20 pages per minute).

(6) Monitors (CRT or Flat-panel LCD).

(b) ''Energy Star'' requirements *do not* apply to the following equipment:

(1) Workstations.

(2) File servers.

(3) Mainframe equipment.

(4) Minicomputers.

(5) High-speed printers used with mainframe computers (30 or more pages per minute).

(6) Mainframe or ''dumb'' terminals.

(7) X-terminals.

(c) All new acquisitions for microcomputers, including personal computers, monitors, and printers shall contain specifications which meet EPA Energy Star requirements for energy efficiency unless a waiver has been obtained in accordance with internal Agency procedures.

(d) The Energy Star requirement also applies to all applicable equipment ordered from GSA Schedule Contracts, open market buys, Bankcard purchases (Bankcard purchases of equipment in excess of $1,000 are prohibited), contractor-acquired property where title reverts to the Agency upon completion of the contract, and Government-furnished property.

1523.7002 Waivers.

(a) There are several types of computer equipment which technically fall under the current Energy Star

Program, but for which EPA established blanket waivers because Energy Star compliant versions of this equipment were unavailable in the marketplace. Blanket waivers apply to the following types of equipment:

(1) LAN servers, including file servers; application servers; communication servers; including bridges and routers;

(2) UNIX RISC based processors with their high-end monitors;

(3) Large LAN printers (greater than 19 pages/minute output); and

(4) Scientific computing equipment which is used for real-time data acquisition and which, if subjected to a power down mode, would jeopardize the research project.

(b) It is anticipated that there will be Energy Star models of this equipment in the future; but in the near term, EPA will not specify Energy Star qualifications when purchasing the above items.

1523.7003 Contract Clause.

The Contracting Officer shall insert the clause at 1552.239–103, for the acquisition of microcomputers, including personal computers, monitors, printers, which are Energy Star compliant in all solicitations and contracts, including contractor-acquired property where the title reverts to the Agency upon completion of the contract.

3. Section 1552.239–103 is added to read as follows:

1552.239–103 Acquisition of Energy Star Compliant Microcomputers, Including Personal Computers, Monitors and Printers.

Acquisition of Energy Star Compliant Microcomputers, Including Personal Computers, Monitors, and Printers

July 1995

(a) The Contractor shall provide computer products that meet EPA Energy Star requirements for energy efficiency. By acceptance of this contract, the Contractor certifies that all microcomputers, including personal computers, monitors, and printers, meet EPA Energy Star requirements for energy efficiency.

(b) The Contractor shall ship all products with the standby feature activated or enabled.

(c) The Contractor shall provide models that have equivalent functionality to similar non-power managed models. This functionality should include as a minimum:

(1) The ability to run commercial off-the-shelf software both before and after recovery from a low power state, including retention of files opened (with no loss of data) before the power management feature was activated.

(2) If equipment will be used on a local area network (LAN), the contractor shall provide equipment that is fully compatible with network environments, e.g., PC's resting in a low-power state should not be disconnected from the network.

(d) The contractor shall provide monitors that are capable of being powered down when connected to the accompanying PC.

(End of Clause)

July 7, 1995.

Jeanette L. Brown,

Acting Director, Office of Acquisition Management.

[FR Doc. 95–17765 Filed 7–24–95; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1809, 1830, and 1831

NASA FAR Supplement; Rewrite of NASA Policy on Contractor Qualifications, Cost Accounting Standards Administration, and Contract Cost Principles and Procedures

AGENCY: Office of Procurement, Contract Management Division, National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This is a proposed revision of the NASA FAR Supplement in order to rewrite NASA policy on Contractor Qualifications, Cost Accounting Standards Administration, and Contract Cost Principles and Procedures. The changes are intended to streamline the regulation.

DATES: Comments are due on or before September 25, 1995.

ADDRESSES: Comments should be addressed to: National Aeronautics and Space Administration, Contract Management Division (Code HK/Beck), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: David K. Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Background

We are rewriting the NASA FAR Supplement in order to streamline the regulation, delegate authority to the lowest possible level, and eliminate unnecessary reports and requirements. This rule proposes revisions to three parts of the NASA FAR Supplement. Although the revisions are minor, we are publishing these changes for comment because the parts cover topics of considerable interest to NASA contractors.

Summary of Changes

The policy on Canadian subcontractors is shortened and relocated to § 1809.104–4. The policy on contractor use of ''Made in America'' labels is removed because the topic is addressed by FAR 9.406–2(a)(4). The discussion of conditions for preaward surveys at § 1809.106–1 is removed because it is unnecessary guidance.

Several changes are made to § 1809.106–70 on preaward surveys. Paragraphs (d) (2) and (3) are changed in order to remove unnecessary words and provide additional guidance on requesting surveys. Unnecessary words are removed from paragraphs (j)(4) and (k)(1).

In paragraph 1809.202(a), the responsibility for justifying qualification requirements is restated. Paragraphs 1809.203–70(a) and 1809.206–1(b) are changed to indicate current organizational names. Paragraph 1809.203–70(c) is removed because it is not needed in this regulation.

Subpart 1809.4 on debarment is revised in order to show reassignment of this responsibility in NASA's Office of Procurement, reorganize the material for clarity, and remove redundant or unnecessary material.

The following sections on cost accounting standards (CAS) administration are removed because they provide unnecessary guidance: § 1830.101 on ''national defense'' contracts, § 1830.7000 on incentive contracts, § 1830.7001–2 on preaward facilities capital applications, and §§ 1830.7002 through 1830.7002–2 on facilities capital employed for facilities under construction. The remaining CAS sections are revised for clarity.

In subpart 1831 on cost principles, § 1831.205–670 is revised in order to shorten the section.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the NASA FAR Supplement do not impose any new recordkeeping requirements or new collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

Regulatory Flexibility Act

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 48 CFR Parts 1809, 1830, and 1831

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1809, 1830, and 1831 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1809, 1830, and 1831 continues to read as follows:

Authority: 42 U.S.C. 2473 (c)(1).

PART 1809—CONTRACTOR QUALIFICATIONS

2. Sections 1809.102 and 1809.102–70 are removed.

3. Section 1809.104 and 1809.104–4 are added to read as follows:

1809.104 Standards.

1809.104–4 Subcontractor responsibility.

Generally, a Canadian firm proposed by the Canadian Commercial Corporation (CCC) as its subcontractor shall be accepted as responsible by the contracting officer. However, when the CCC determination of responsibility is not consistent with other available information, the contracting officer shall request from CCC and any other appropriate sources additional information or plant surveys needed in order to make the determination of responsibility required by FAR 9.103(b).

1809.104–70 and 1809.106 [Removed]

4. Sections 1809.104–70 and 1809.106–1 are removed.

5. Section 1809.106–70 is amended by revising the section heading, revising paragraphs (d)(2) and (3), revising paragraph (g), removing the paragraph headings from paragraphs (j)(4)(i) and (ii), and in paragraph (k)(1) by revising the paragraph heading and the first sentence to read as follows:

1809.106–70 NASA preaward surveys.

* * * * *

(d) * * *

(2) Any information indicating previous unsatisfactory contract performance shall be furnished to the survey activity with the preaward survey request.

(3) If the survey activity is a DOD agency, the request is to be sent to the appropriate office shown in the DOD Directory of Contract Administration Services Components, DLAH 4105.4, Attn: Preaward Survey Monitor. The date on which the completed survey report is desired should be indicated. DOD normally allows seven working days in which to conduct a full survey and submit the report to the requesting agency, however, more time should be allowed for the particular circumstances of the survey. For example complex items, new or inexperienced contractors, and time-consuming requirements, such as, secondary surveys, accounting system reviews, financial capability analysis, or purchasing activity participation may require additional time.

* * * * *

(g) *Steps for survey performance.* Three steps in performing a preaward survey are—

(1) Preliminary analysis;

(2) Development and evaluation of information; and

(3) Preparation and review of the preaward survey report.

* * * * *

(k) * * *

(1) *Findings and recommendations of team.* When the required information has been gathered, each participant shall (i) analyze it and evaluate the prospective contractor's capability to perform with respect to the functions or elements investigated and (ii) provide findings and recommendations to the monitor on one or more of the appropriate forms (see FAR 9.106–4(a)) or on attachments. * * *

* * * * *

6. Paragraph (a) of section 1809.202 is revised to read as follows:

1809.202 Policy.

(a) The cognizant technical activity is responsible for meeting the requirements of FAR 9.202(a) with approval by the installation's competition advocate.

* * * * *

7. Section 1809.203–70 is amended by revising paragraph (a) and removing paragraph (c) to read as follows:

1809.203–70 General.

(a) The Director, Quality Management Division (QW), is responsible for justifying, determining, and approving NASA's need for inclusion and continued use of qualification requirements in specifications under the NASA Microelectronics Reliability Program.

(b) * * *

8. Paragraph (b) section 1809.206–1 is revised to read as follows:

9.206–1 General.

(a) * * *

(b) Requests not to enforce a qualification requirement in a non-emergency situation shall be prepared by the cognizant requirements office and approved by the Headquarters Office of Safety and Mission Assurance (Code Q).

(c) * * *

9. Section 1809.404 is revised to read as follows:

1809.404 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(a) NASA Headquarters, Office of Procurement, Program Operations Division (Code HS) is responsible for taking the actions enumerated under FAR 9.404(c).

(b) In compliance with FAR 9.404(c)(5), contracting officers shall consult the list entitled Parties Excluded from Procurement Programs, which is contained in the GSA publication entitled, Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs, to ensure that they do not award contracts to or consent to subcontracts with listed parties, except as provided in FAR 9.405.

(c) For the purpose of obtaining copies of the list, field installation procurement offices shall notify NASA Headquarters, Office of Procurement, Program Operations Division (Code HS) of how many copies they want and provide a single mailing address at the installation. Code HS will, in turn, place the order for the copies which will be mailed directly to the installation.

10. Section 1809.405 is revised to read as follows:

1809.405 Effect of listing.

If a contract, or subcontract subject to contracting officer consent, must be awarded, renewed, or otherwise extended with a listed party, the procurement officer shall prepare a request for a determination with all necessary supporting documentation and forward it to the Associate Administrator for Procurement (Code HS) for approval. Some examples of circumstances that may constitute a compelling reason under FAR 9.405(a), 9.405–1(b), or 9.405–2(a) for award, renewal, or extension include the following:

(a) The property or services to be acquired are available only from the listed party.

(b) The urgency of the requirement dictates that NASA deal with the listed party.

(c) Other reasons related to the national defense or program requirements that necessitate continued business dealings with the listed party.

11. Section 1809.405–1 is revised to read as follows:

1809.405–1 Continuation of current contracts.

The contracting officer may terminate a contract under FAR 9.405–1(a) if it is in the best interest of the Government to do so, unless directed otherwise by the Associate Administrator for Procurement.

12. Sections 1809.405–2, 1809.406, 1809.406–3, 1809.407, and 1809.407–3 are removed.

13. Paragraphs (b), (d), and (e) of section 1809.408 are revised to read as follows:

1809.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.

(a) * * *

(b) If the offeror indicates that it is presently debarred, suspended, or proposed for debarment, the contracting officer may make a non-responsibility determination without notifying the Associate Administrator for Procurement. If the contracting officer determines that award must be made to such firm, follow the procedures set out in 1809.405, FAR 9.405–1(b), 9.405–2, 9.406–1(c) or 9.407–1(d).

(c) * * *

(d) If the offeror indicates that it has been indicted, charged, convicted, or had a civil judgment rendered against it, the contracting officer, in accordance with FAR 9.408(a), shall immediately notify the Associate Administrator for Procurement (Attn: Code HS), providing details as known, and shall await a response from Code H before awarding the contract.

(e) If the offeror discloses information that indicates a need for a debarment or suspension determination by the agency debarring official, the contracting officer shall report the facts to the Associate Administrator for Procurement (Code HS) in accordance with 1809.470.

14. Section 1809.470–1 is amended by revising the introductory text, revising paragraph (b), and adding paragraph (c) to read as follows:

1809.470–1 Situations requiring reports.

A report incorporating the information required by 1809.470–2 below shall be forwarded by the procurement officer to the Associate Administrator for Procurement (Code HS) when a contractor—

(a) * * *

(b) Is suspected of attempting to evade the prohibitions of a debarment or suspension by change of address, multiple addresses, formation of new companies, or other devices.

(c) This report is not necessary if the NASA Office of the Inspector General (OIG) has recommended that the Associate Administrator for Procurement take debarment or suspension action.

15. Paragraph (h) of section 1809.470–2 is revised to read as follows:

1809.470–2 Contents of reports.

* * * * *

(h) A complete summary of all pertinent evidence. If a request for debarment or suspension is based on an indictment or a conviction, provide copies of those documents.

* * * * *

16. Section 1809.470–3 is revised to read as follows:

1809.470–3 Addresses and copies of reports.

Reports, including enclosures, shall be submitted in duplicate to the Associate Administrator for Procurement (Code HS).

PART 1830—COST ACCOUNTING STANDARDS ADMINISTRATION

17. Subpart 1830.1 is removed.

18. Section 1830.201–5 is revised to read as follows:

1830.201–5 Waiver.

After the contracting officer has made the determination required by FAR 30.201–5, the procurement officer shall forward all requests for waiver of CAS requirements to the Associate Administrator for Procurement (Code HC) for submittal to the CAS Board.

19. Section 1830.7001 is removed.

20. Section 1830.7001–1 is redesignated as section 1830.7001 and revised to read as follows:

1830.7001 Contract facilities capital estimates.

(a) After the appropriate Cost Accounting Standards Board-Cost of Money (CASB–CMF) Forms have been analyzed and cost of money factors (CMFs) have been developed, the contracting officer can estimate the facilities capital cost of money and capital employed for a contract proposal. DD Form 1861 ‘‘Contract Facilities Capital Cost of Money’’ shall be used for this purpose and, when properly completed, becomes a connecting link between the Forms CASB–CMF and any applicable agency structured approach to determination of profit or fee objectives.

(b) The structure and allocation base units-of-measure must be compatible on the DD 1861, the proposal, and the CASB–CMF. Overhead pools, for example, engineering, manufacturing, and G&A, are listed by year in the first column of the DD Form 1861 labeled POOL. The allocation base figure for each overhead pool objective is extracted from the evaluated cost breakdown or pre-negotiation cost objective and listed by year in the second column. Each allocation base is then multiplied by the recommended facilities capital cost of money factor calculated on the CASB–CMF for that base. The total facilities capital cost of money amounts appearing in the last column labeled AMOUNT are totaled in the space provided in the line labeled TOTAL. This total represents the estimated facilities capital cost of money amount for the contract and is the figure to be used to calculate the prenegotiation position memorandum objective cost and to reduce the profit objective in accordance with 1815.970–3(a). The lines labeled TREASURY RATE and FACILITIES CAPITAL EMPLOYED (TOTAL DIVIDED BY TREASURY RATE) and Section 7 of the form labeled DISTRIBUTION OF FACILITIES CAPITAL EMPLOYED do not apply to NASA and should be ignored.

1830.7001–2 [Removed]

21. Sections 1830.7001–2 is removed.

22. Section 1830.7002 is removed and Section 1830.7001–3 is redesignated as section 1830.7002 and revised to read as follows:

1830.7002 Payments for facilities capital.

(a) *Interim billings based on costs incurred.* Contract Facilities Capital Cost of Money may be included in cost reimbursement and progress payment invoices. The amount that qualifies as cost incurred for purposes of the Allowable Cost and Payment or Progress Payment clause of the contract is the result of multiplying the incurred portions of the indirect cost pool allocation bases by the latest available CMFs. Like applied overhead at forecasted overhead rates, such computations are interim estimates subject to adjustment. As each year’s data are finalized by computation of the actual CFMs under CAS 414 and FAR 31.205–10, the new factors should be used to calculate contract facilities cost of money for the next accounting period.

(b) *Final settlement.* Contract Facilities Capital Cost of Money for final cost determination or repricing is based on each year’s final CMFs determined under CAS 414 and supported by separate Forms CASB–CMF. Contract cost must be separately computed in a manner similar to yearly final overhead rates. Also like overhead costs, the final settlement will include an adjustment from interim to final contract cost of money. However, estimated or target cost will not be adjusted.

23. Sections 1830.7002–1 through 1830.7002–2 are removed.

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

24. Section 1831.205–670 is revised to read as follows:

1831.205–670 Evaluation of contractor and subcontractor compensation for service contracts.

(a) The contracting officer shall evaluate the reasonableness of employee compensation in service contracts:

(1) Prior to the award of a cost reimbursement or noncompetitive fixed-price type contract which has a total potential value in excess of $500,000, and

(2) Periodically after award for cost reimbursement contracts and subcontracts, but at least every three years.

(b) The contracting officer shall ensure the reasonableness of compensation is evaluated for cost reimbursement and non-competitive fixed-price type service subcontracts under a prime contract meeting the criteria in paragraph (a)(1) of this section if:

(1) The subcontract has a total potential value in excess of $500,000; and

(2) The cumulative value of all of a subcontractor's service subcontracts under the prime contract is in excess of 10 percent of the prime contract's total potential value.

(c) The results of the contracting officer's evaluation, including any excessive compensation found and its planned resolution, shall be addressed in the prenegotiation position memorandum, with the final resolution discussed in the price negotiation memorandum. The results of the periodic evaluations of contractor and subcontractor compensation after contract award shall be documented in the contract file.

[FR Doc. 95–18122 Filed 7–24–95; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–50; Notice 02]

RIN 2127–AF74

Federal Motor Vehicle Safety Standards; Reflecting Surfaces

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: On June 26, 1995, NHTSA published a notice of proposed rulemaking to rescind Federal Motor Vehicle Safety Standard No. 107, *Reflecting Surfaces*. The NPRM stated that the comment period ends July 26, 1995. In response to a petition from an interested party, NHTSA extends the comment period to August 25, 1995. The extension of time is granted to all persons.

DATES: Comments must be received on or before August 25, 1995.

ADDRESSES: Comments must refer to Docket No. 95–50, Notice 1 and be submitted to: Docket Section, Room 5109, NHTSA, 400 Seventh Street SW., Washington, DC 20590. It is requested, but not required, that 10 copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Van Iderstine, Office of Vehicle Safety Standards, Office of Safety Performance Standards, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Mr. Van Iderstine's telephone number is (202) 366–5280, and his FAX number is (202) 366–4329.

SUPPLEMENTARY INFORMATION

Notice of Proposed Rulemaking

On June 26, 1995, NHTSA published in the **Federal Register** a notice of proposed rulemaking (NPRM) (60 FR 32935) to rescind Federal Motor Vehicle Safety Standard No. 107, *Reflecting Surfaces* (49 CFR § 571.107). The proposed action is part of NHTSA's efforts to implement the President's Regulatory Reinvention Initiative to remove unnecessary regulations. The proposed action discussed why NHTSA believes Standard No. 107 can be rescinded without adversely affecting motor vehicle safety. That belief is based primarily on the vehicle manufacturers' established practice of using nonglossy materials and finishes on regulated and nonregulated components in the driver's forward field of view. Since the nonregulated components are not glossy, NHTSA believes that currently regulated components would not become glossy if they were deregulated. The NPRM stated that public comments must be received on or before July 26, 1995.

Extension of Comment Period

In a letter dated July 6, 1995, Advocates for Highway and Auto Safety (Advocates) petitioned for a 45-day extension of the comment period, i.e., until September 11, 1995. Advocates explained that in its view, the NPRM's comment period did not provide enough time to evaluate the proposed rescission of a safety standard. Advocates cited a desire to investigate the history of Standard No. 107, including past NHTSA actions described in the NPRM. Advocates argued that public interest in Standard No. 107 has continued, and extending the public comment period ''will enable interested parties to supply informed comments to the docket.''

NHTSA has decided to grant Advocates' request for an extension of the public comment period. NHTSA will extend the comment period an additional 30 days, to August 25, 1995. NHTSA has granted the additional time because Advocates has shown good cause for the extension of time and that the extension is consistent with the public interest. The extension of time is granted to all persons.

NHTSA believes that an additional 30 days should be sufficient to examine the Standard's rather limited history. Since Standard No. 107 took effect on January 1, 1968, it has been the subject of little rulemaking activity. The two most notable Standard No. 107 rulemaking proceedings (neither of which resulted in amendments to the standard) were discussed in NHTSA's June 26, 1995 NPRM.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–18276 Filed 7–24–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD37

Endangered and Threatened Wildlife and Plants; Proposed Rule to List Three Plants From the Channel Islands of Southern California as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list *Cercocarpus traskiae* (Catalina Island mountain-mahogany), *Lithophragma maximum* (San Clemente Island woodland-star), and *Sibara filifolia* (Santa Cruz Island rockcress) as endangered throughout their respective ranges on the Channel Islands of southwestern California, pursuant to the Endangered Species Act of 1973, as amended (Act). *Cercocarpus traskiae* is found primarily in coastal scrub habitats on Santa Catalina Island. *Lithophragma maximum* is found in rock crevices within coastal bluff scrub on San Clemente Island. *Sibara filifolia* is found on talus slopes in coastal scrub on San Clemente Island. These plants are threatened by a variety of factors including grazing, competition from non-native plant species, erosion, hybridization, stochastic events, and the inadequacy of existing regulations. This proposed rule, if made final, would implement the Federal protection and recovery provisions under the Act for these three species.

DATES: Comments from all interested parties must be received by October 9, 1995. Public hearing requests must be received by September 25, 1995.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Gail Kobetich, Field Supervisor, at the above address (telephone 619/431–9440; facsimile 619/431–9624).

SUPPLEMENTARY INFORMATION:

Background

Cercocarpus traskiae (Catalina Island mountain-mahogany), *Lithophragma maximum* (San Clemente Island woodland-star), and *Sibara filifolia* (Santa Cruz Island rockcress) are endemic to the Channel Islands of southern California. These three species are restricted primarily to San Clemente and Santa Catalina Islands. *Cercocarpus traskiae* is currently found only on Santa Catalina Island and a single plant is also known from the Santa Monica Mountains. *Lithophragma maximum* and *Sibara filifolia* occur on San Clemente Island. *Sibara filifolia* was historically found on Santa Cruz and Santa Catalina Islands.

The Channel Islands are composed of igneous and sedimentary rocks that have been uplifted and folded by tectonic activity (Raven 1963, Thorne 1967, Schaffer 1993). The maritime climate of the islands is characterized by hot, dry summers and mild, wet winters with periodic severe droughts and frequent fog (Minnich 1980, Johnson 1980). The archipelago is made up of two chains of islands. The Northern Channel Islands include the islands of San Miguel, Santa Rosa, Santa Cruz and Anacapa. The Southern Channel Islands are San Nicholas, Santa Barbara, Santa Catalina and San Clemente islands (Raven 1967).

The Channel Islands are rich in endemic species as a result of their geographic isolation. A number of species have persisted on the islands, although their mainland counterparts have been extirpated by climatic change and other factors over geologic time (Raven 1963). The decline of endemic species, including the three plants under consideration herein, began before thorough botanical studies on the islands were completed. Their original range and distribution is speculative because their original habitats are now dominated by non-native plants. Although these islands have been occupied by humans for at least 10,000 years, non-native plants have only become naturalized on the islands since their introduction by Euro-Americans during the last 200 years (Dr. Mark Raab, California State University, Northridge, pers. comm. 1994). Overgrazing and trampling of native vegetation by domestic animals facilitated the spread of these non-native plants (Raven 1963, Raven 1967, Thorne 1967, Philbrick 1980). Severe erosion resulting from overgrazing was exacerbated by a series of droughts in the 1860's, the first of several periods of severe vegetation and soil stripping on the islands (Johnson 1980).

Santa Catalina Island is the largest of the southern Channel Islands, measuring 194 square kilometers (sq km) (75 square miles (sq mi)) in area. The terrain is rugged and mountainous, with a maximum elevation of 648 meters (m) (2,125 feet (ft)) (Powers 1980). Due to its proximity to the mainland, the flora of Santa Catalina Island is very similar to the flora of the mainland (Thorne 1967). Habitats on the island include oak woodlands, chaparral, coastal sage scrub, and grasslands (Minnich 1980). Santa Catalina is the home of *Cercocarpus traskiae* and a historical locality for *Sibara filifolia* (Thorne 1967).

San Clemente Island is the southernmost of the Channel Islands in California. Its terrain is marked by a broad, high, plateau surrounded by deeply incised cliffs. The highest elevation on the 145 sq km (56 sq mi) island is 600 m (1,965 ft) (Powers 1980).

Santa Cruz is the largest of the northern Channel Islands (250 sq km (96 sq mi)) with a maximum elevation of 753 m (2,470 ft) (Powers 1980). The island's north shore is mountainous and rugged; the topography of the southern side is gentle and rolling. The Nature Conservancy currently owns approximately 90 percent of Santa Cruz Island. The remainder is owned by the National Park Service (Schuyler 1980).

Cercocarpus traskiae was first described by Alice Eastwood (1898) based on a specimen collected by Blanche Trask in 1897. Dunkle (1940) reduced the rank of *C. traskiae* to a variety of *C. betuloides.* Although Martin (1950) subsequently transferred this taxon to a variety of *C. montanus,* Munz (1959) retained it as *C. betuloides* var. *traskiae.* Munz (1968) later elevated *C. betuloides* var. *traskiae* to *C. traskiae.* Murray (1982) changed the rank of this taxon to a subspecies of *C. betuloides;* however, the name *C. traskiae* has been retained by both Munz (1974) and Lis (1993).

Cercocarpus traskiae, a member of the rose family (Rosaceae), is an evergreen shrub or small tree that blooms from March to May. The flowers lack petals and occur in clusters of 4 to 10. The hypanthium (floral structure derived from the fused lower portions of petals, sepals, and stamens) is densely white-woolly, and is approximately 7 to 14 millimeters (mm) (0.5 inch (in.)) long (Lis 1993). The fruit is an achene with a persistent plumose style, which dries in a spiral, typical of the genus. The leathery, clustered leaves are simple, serrate (toothed), and range from 2.5 to 6 centimeters (cm) (1 to 2.5 in.) long. The upper surface of the leaf is glabrous (smooth); the undersurface is densely white-woolly. *Cercocarpus betuloides* var. *blancheae,* a relatively common endemic on the island, is considered to be distinct from *C. traskiae* (Eastwood 1898, Cole and Lu 1979). It is differentiated by its strigose (stiff, sharp, appressed) hairs on the undersides of the leaves and on the floral tube. In addition, the leaves of *C. betuloides* var. *blancheae* are not leathery (Eastwood 1898, Lis 1993).

Cercocarpus traskiae is one of California's rarest trees. It is endemic to a particular soil type, derived from sausserite gabbro parent material (Gaye 1991), and is only found in Wild Boar Gully, a steep-sided, narrow arroyo located on southwestern Santa Catalina Island (Thorne 1967). *Cercocarpus traskiae* occurs in a coastal sage scrub containing *Eriogonum fasciculatum* (California buckwheat), *Salvia mellifera* (black sage), and *Rhus integrifolia* (lemonade berry). All of the habitat occupied by *C. traskiae* on Santa Catalina Island is owned by The Santa Catalina Island Conservancy (a private organization), which manages 86 percent of the land on the island.

About 40 or 50 individuals of *Cercocarpus traskiae* were identified from Wild Boar Gully when this taxon was originally discovered (Eastwood 1898). The population has since been reduced to 11 mature trees (Cole and Lu 1979, Gaye 1991). The Santa Catalina Island Conservancy has planted *C. traskiae* seedlings in Campo Blanco Canyon, Ironwood Grove, and the Santa Catalina Island Nature Center in cooperation with the California Department of Fish and Game (Gaye, pers. comm. 1994).

In 1993, a single individual of *Cercocarpus traskiae* was discovered in the Santa Monica Mountains by David Carroll (Rieseberg and Swensen 1994; Loren Rieseberg, geneticist, Indiana State University, pers. comm. 1993; David Carroll, botanist, Carroll and Associates, Topanga, California, pers. comm. 1994). Although additional individuals may exist in the Santa Monica Mountains, this taxon is not likely to be widespread. It may represent a remnant of an ancestral or sister population of *C. traskiae,* or a hybrid between *C. traskiae* and the mainland variety, *C. betuloides* var. *betuloides* (Rieseberg and Swensen 1994). This individual may indicate a formerly widespread distribution of ancestral stock (Raven 1963). However, it is also possible that this tree was planted (L. Rieseberg, pers. comm. 1993). Additional data or information on this particular occurrence is being solicited.

Lithophragma maximum was first collected by Mrs. Nell Murbarger in 1936 on San Clemente Island. It was originally described as *Lithophragma maxima* by Rimo Bacigalupi (1963). The specific epithet was later changed from *L. maxima* to *L. maximum* (Bacigalupi 1979). Although it was not recognized by Taylor (1965), *L. maximum* was retained by Munz (1968, 1974) and Elvander (1993).

Lithophragma maximum is a member of the saxifrage family (Saxifragaceae) and blooms from April to June. It is a rhizomatous, perennial herb with two or three stout flowering stems from 40 to 60 cm (16 to 24 in.) high. Each flower-bearing stem produces 20 or more white, campanulate (bell-shaped) flowers, each about 1 cm (0.5 in.) in length (Bacigalupi 1963). The leaves are palmately compound and arise from the base on slender petioles 15 cm (6 in.) long. *Lithophragma maximum* is differentiated from other *Lithophragma* by its compound trifoliate leaves (Munz 1968, Elvander 1993).

Lithophragma maximum was thought to be extinct until it was rediscovered in 1979 by Mitchell Beauchamp (Bacigalupi 1979). The number of plants on the island at Bryce Canyon has declined from between 12 and 15 plants (Beauchamp 1980) to 9 plants since its rediscovery (Beauchamp 1987, Mistretta 1992). Three of the 15 plants originally discovered are believed to remain at the bottom of Eagle Canyon (Kellogg and Kellogg 1993). Both locations are deeply incised canyons on the northeast side of the island. Sixteen additional plants were found in Near Death Canyon in 1990. However, less than 30 individuals of the species are known to exist (California Natural Diversity Data Base (CNDDB) 1993, Mistretta 1992).

Sibara filifolia was first collected by E.L. Greene in 1886 and described under the name *Cardamine filifolia* (Greene 1887a). Greene (1887b) later transferred it to *Arabis filifolia.* He proposed the new genus *Sibara* in 1896 and transferred *A. filifolia* to *Sibara filifolia* (Greene 1896). *Sibara filifolia* has been retained by Munz and Keck (1959), Munz (1968, 1974), and Rollins (1993).

Sibara filifolia is a slender annual herb of the mustard family (Brassicaceae) that blooms from March to April (Hochberg *et al.* 1980b). It is 13 to 38 cm (5 to 15 in.) tall. The flowers are pink to purplish with spoon-shaped petals 3 to 6 mm (1/8 to 1/4 in.) in length. The pinnately compound leaves are 2.5 to 5 cm (1 to 2 in.) long, with narrow linear lobes. The fruit is a slender pod (celiac), 1.5 to 3 cm (3/5 to 1 in.) long, that contains many wingless seeds. *Sibara filifolia* is differentiated from *S. virginica,* which has white to pinkish petals and narrowly winged seeds, and from *S. rosulata* and *S. deserti,* which have white petals. Neither *S. rosulata* nor *S. deserti* occur on the Channel Islands (Munz 1974).

The type location for *Sibara filifolia* is on Santa Cruz Island (Greene 1887a). It was last seen in 1936 and was not relocated during the 1985 survey of Santa Cruz Island (CNDDB 1993). It is thought to have once been common as well as wide ranging, since it was collected on two distant islands, Santa Catalina and Santa Cruz. Blanche Trask collected *S. filifolia* in 1901 on Santa Catalina Island where she reported it to be common in two locations (Thorne 1967). Its extirpation on Santa Cruz Island was brought about rapidly by intensive browsing of feral goats (Hochberg *et al.* 1980b).

Sibara filifolia had never been known to occur on San Clemente Island (Oberbauer, in litt. 1980) until 1986 when it was discovered in two locations near Pyramid Head by Mitchell Beauchamp (Beauchamp 1987). Previously, it was thought to be extinct. The extent of its original range on San Clemente Island is unknown.

Sibara filifolia presently exists solely on a sea terrace on the southern part of San Clemente Island, near Pyramid Head. It grows on volcanic rock scree (talus) in association with *Opuntia prolifera* (cholla), *Selaginella bigelovii* (spike-moss), and *Lotus argophyllus* (birds-foot trefoil) (CNDDB 1993, Beauchamp 1987). This area receives the highest amount of solar radiation on the island (Kellogg, pers. comm. 1994), which conflicts with records of historical localities indicating that *S. filifolia* ''is to be sought in shady places on the northward slope [on Santa Cruz Island]'' (Greene 1887a). There are 400 or 500 of these plants currently located on San Clemente Island. Others are expected to be found on cool, north-facing cliff faces, perhaps at China Canyon (Beauchamp, pers. comm. 1994). However, the presence of *S. filifolia* at this location has yet to be verified.

Previous Federal Action

Federal government action on two of the plant taxa considered in this rule began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened or extinct. This report, designated as House Document No. 94–51, and presented to Congress on January 9, 1975, recommended *Cercocarpus traskiae* and *Lithophragma maximum* (as *L. maxima*) for endangered status and *Sibara filifolia* as threatened. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823), of its acceptance of the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act, and of the Service's intention to review the status of the plant taxa named therein, including *C. traskiae, L. maximum* and *S. filifolia.* The Service published a proposal in the June 16, 1976, **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plants to be endangered species pursuant to section 4 of the Act. *Cercocarpus traskiae* and *L. maximum* were also included in this **Federal Register** notice. This list contained only proposed endangered species; therefore, *Sibara filifolia* was not included on the list.

General comments received in response to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** (43 FR 17909) notice. The Endangered Species Act amendments of 1978 required all proposals over 2 years old to be withdrawn, although a 1-year grace period was given to those proposals. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal for that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published a Notice of Review for plants in the **Federal Register** on December 15, 1980 (45 FR 82480). This notice listed the status of *Cercocarpus traskiae* and *Lithophragma maximum* as Category 1 candidate taxa (species for which data in the Service's possession are sufficient to support a proposal for listing) and also added *Sibara filifolia* to the list as a Category 1* candidate taxon (species for which Service data indicate likely extinction). The status of the three species remained unchanged until the Notice of Review for plants published in the **Federal Register** on February 21, 1990, when *Sibara filifolia* was changed to Category 1 status following its rediscovery on San Clemente Island.

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended in 1982, requires the Secretary to make findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Cercocarpus traskiae* and *Lithophragma maximum* because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing proposals of higher priority, pursuant to section 4(b)(3)(B)(iii) of the Act. Notification of this finding was published in the **Federal Register** on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The petition was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, and 1993. Publication of this proposal constitutes the final finding for these three plant taxa.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533 *et seq.*) and regulations (50 CFR 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cercocarpus traskiae* Eastwood (Catalina Island mountain-mahogany), *Lithophragma maximum* Bacigalupi (San Clemente Island woodland-star), and *Sibara filifolia* Greene (Santa Cruz Island rockcress) are as follows:

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* Destruction of habitat by feral animals has caused long-term impacts to the structure of the habitat on all the Channel Islands. Loss of habitat for endemic species was precipitated by defoliation from overgrazing, the loss of topsoil, and formation of incised canyons due to increased erosion (Kellogg and Kellogg 1994). The loss of soil organic matter and reduction of soil nutrient cycling and water-holding capacity promoted the invasion of non-native plants.

The decline of the native flora of Santa Catalina Island began with the proliferation of introduced herbivores (Thorne 1969). Goats were introduced to the island as early as 1807 (Misty Gaye, naturalist, Catalina Island Conservancy, pers. comm. 1994). Goats are known to consume coarse vegetation such as shrubs and trees, including *Cercocarpus traskiae* (Coblentz 1980). Sheep ranching became important on the island in the 1850's (Minnich 1980). Sheep eat herbaceous vegetation that would have included *Sibara filifolia.* Other non-native herbivores introduced to Santa Catalina Island included pigs, bison, and deer. Pigs uprooted seedlings and impacted both *S. filifolia* and *C. traskiae* (Thorne 1969; Gaye, pers. comm. 1994). Although the Santa Catalina Island Company eliminated sheep grazing in the 1950's (Thorne 1969), the population of feral goats and pigs continued to increase. A goat and pig management program has reduced the number of feral herbivores that threaten native plant species but the threat still remains (see Factor C) (Dave Garcelon, depredation control biologist, Institute For Wildlife, Santa Catalina Island, pers. comm. 1994; Gaye, pers. comm. 1994).

Pigs continue to degrade the habitat of *Cercocarpus traskiae* on Santa Catalina Island by preventing surface litter from accumulating. Surface litter holds moisture and seeds on the steep slopes. Pigs also create a network of bare trails with compacted soils. The vegetation loses its tiered, overlapping structure because shrubs become isolated by surrounding trails (Gaye, pers. comm. 1994). A noticeable increase in surface litter and a corresponding increase in seedlings of all types have been observed since the numbers of pigs and goats have declined, but trails and bare soil are still common (Gaye, pers. comm. 1994).

The San Clemente Island Sheep and Wool Company leased that island from the U.S. Government from 1877 to 1934 (Raven 1963). The island's ownership was subsequently transferred to the Department of Defense (Navy). The island is currently used as an artillery practice range and as a ship-to-shore bombing area (Kellogg and Kellogg 1994). Goats were present on San Clemente Island prior to 1827 (Dunkle 1950). Although the Navy eliminated sheep grazing in 1934, the goat population proliferated (Kellogg and Kellogg 1994). In addition, the California Department of Fish and Game introduced pigs to the island in 1951 and mule deer in 1962. Populations of feral pigs and goats ranged between 15,000 and 25,000. The Navy removed all feral goats and pigs by 1991, in an effort to preserve endemic flora and fauna (Clark Winchell, biologist, Navy, Department of Natural Resources, pers. comm. 1994).

The decline of Santa Cruz Island's flora, including extirpated populations of *Sibara filifolia*, is primarily due to overgrazing by sheep and other non-native herbivores. Sheep, cattle, horses, and pigs were introduced to Santa Cruz Island (Steve Junak, herbarium curator, Santa Barbara Botanic Gardens, pers. comm. 1994). The population of sheep has ranged from between 20,000 and 50,000 or more (Schuyler 1980, Brumbaugh 1980). Cycles of defoliation and erosion are evident in the stratigraphic studies of deposits from debris slides and correlate with the introduction of sheep to the island and periods of drought (Brumbaugh 1980).

Most feral herbivores have been removed but pigs remain (see Factor C).

B. *Overutilization for commercial, recreational, scientific, or educational purposes*. Due to its extreme rarity, *Cercocarpus traskiae* may become vulnerable to collecting by curiosity seekers as a result of increased publicity following the publication of a listing proposal. Overutilization is not known to be applicable for *Lithophragma maximum* and *Sibara filifolia*. Both species occur on San Clemente Island, where public access is restricted by the Navy.

C. *Disease or predation*. Feral herbivores continue to threaten the survival of *Cercocarpus traskiae* on Santa Catalina Island and the possible reappearance of *Sibara filifolia* on Santa Catalina and Santa Cruz Islands. Non-native mule deer (*Odocoileus hemionus*) and goats (*Capra hircus*) consume endemic plants including *Cercocarpus traskiae*. Severe browsing may kill plants directly and prevent successful reproduction of surviving individuals (Thorne 1969; Gaye, pers. comm. 1994).

The decline of *Cercocarpus traskiae* is primarily due to grazing by feral goats and pigs (*Sus scrofa*). They nearly extirpated this taxon by the early 1970's (Gaye, pers. comm. 1994). Fencing was installed around the last two individuals known to exist at that time (Rieseberg 1991). This fencing was improved to exclude pigs in 1985, and perimeter fencing was added to limit access by other non-native animals (Gaye 1991). As a result, seedling counts increased from 1 in 1984 to 55 in 1986 and 74 seedlings in 1987 (CNDDB 1993, Gaye 1988). In 1994, however, a total of only 54 seedlings was found (Gaye, pers. comm. 1994). Most of the *C. traskiae* trees do not have individual pig-proof fencing around them and the perimeter fencing does not exclude pigs (Gaye, pers. comm. 1994). Pigs are limiting the recovery of *C. traskiae* seedlings because they uproot new seedlings while searching for bulbs. Approximately 2,000 pigs remain on Santa Catalina Island. The Santa Catalina Island Conservancy pig removal program is keeping the populations from increasing (Dave Garcelon, pers. comm. 1994).

Although managers for the Santa Catalina Island Conservancy have removed more than 8,000 goats from the island, 300 to 400 goats remain on the island. Populations of introduced mule deer are increasing, now that goat populations have been reduced (Garcelon, pers. comm. 1994). Reduced predation by goats has resulted in successful basal sprouting of *Cercocarpus traskiae*, but a continued increase in deer populations might reverse this trend. Although the perimeter fencing along Wild Boar Gully limits the access of deer and goats to *Cercocarpus*, it does not entirely exclude them (Gaye 1988).

Sibara filifolia was apparently extirpated from Santa Cruz Island by overgrazing (Hochberg *et al.* 1980b). Although some areas have been fenced, sheep and pigs continue to re-invade these areas and their numbers appear to be increasing. It is possible that *Sibara filifolia* could be rediscovered on Santa Cruz Island; however, grazing by non-native animals may prevent its re-establishment (Steve Junak, pers. comm. 1994).

D. *The inadequacy of existing regulatory mechanisms*. Existing regulatory mechanisms that could provide some protection for these species include: (1) Listing under the California Endangered Species Act (CESA); (2) the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA); (3) conservation provisions under section 404 of the Federal Clean Water Act (CWA) and section 1603 of the California Fish and Game Code; (4) occurrence with other species protected by the Federal Endangered Species Act or other Federal laws; and (5) local laws and regulations.

The California Fish and Game Commission has listed *Cercocarpus traskiae* and *Lithophragma maximum* as endangered under the Native Plant Protection Act (NPPA) (Division 2, chapter 10, section 1900 et seq. of the California Fish and Game Code) and the California Endangered Species Act (CESA) (Division 3, chapter 1.5, section 2050 *et seq.*). Listing by the State of California requires individuals to obtain a memorandum of understanding with the California Department of Fish and Game (CDFG) to possess or ''take'' a listed species. Although both statutes prohibit the ''take'' of State-listed plants (chapter 10, section 1908 and chapter 1.5, section 2080, California Fish and Game Code), State law appears to exempt the taking of such plants via habitat modification or land use change by the landowner. After the CDFG notifies a landowner that a State listed plant occurs on his or her property, State law requires only that the landowner notify the agency ''at least 10 days in advance of changing the land use to allow salvage of such plant'' (Chapter 10, section 1913, California Fish and Game Code). *Sibara filifolia* is not State-listed and has no protection under these laws.

The California Environmental Quality Act (CEQA) (Public Resources Code, section 21000 *et seq.*) requires that the potential environmental impacts of proposed projects be disclosed to the public. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to ''reduce the number or restrict the range of a rare or endangered plant or animal.'' Once significant effects are identified, the lead agency may either require mitigation or determine that ''overriding social and economic considerations'' make mitigation infeasible (California Public Resources Code, Guidelines, section 15093). In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered plant species or their habitat. Small projects on private lands, such as road building or fence installation, often qualify for an exemption under CEQA known as a ''negative declaration.'' These projects do not require a full environmental assessment. Consequently, take of endangered species could result because the existence of the plant at the project site may have been overlooked.

Like CEQA, the National Environmental Policy Act (NEPA) requires disclosure of the environmental effects of projects under Federal jurisdiction. *Sibara filifolia* and *Lithophragma maximum* are found on San Clemente Island, which is federally owned. However, the Service's comments through NEPA's environmental review processes are only advisory. Project proponents are not required to avoid impacts to these species, and proposed mitigation measures are frequently not adequately implemented.

Section 1603 of the California Fish and Game Code authorizes the Department of Fish and Game to regulate streambed alteration. The Department must be notified and approve any work that substantially diverts, alters, or obstructs the natural flow or substantially changes the bed, channel, or banks of any river, stream, or lake. If an existing fish or wildlife resource may be substantially adversely affected by a project, CDFG must submit proposals to protect the species within 30 days. However, if the Department does not respond within 30 days of notification, the applicant may proceed with the work.

Section 404 of the Clean Water Act authorizes the U.S. Army Corps of

Engineers (Corps) to regulate the discharge of dredged or fill materials into waters of the United States (33 CFR parts 230–330). Waters of the United States include navigable and other waters, their headwaters (streams with an average annual flow of less than 5 cubic feet per second), and wetlands (either adjacent to other waters or isolated). Section 404 regulations require that applicants obtain an individual permit for projects that do not meet the terms and conditions of any available Nationwide permits (33 CFR part 330). Projects that qualify for authorization under Nationwide Permit 26 (NWP 26) will adversely impact 0.40 to 4.0 hectares (1 to 10 acres) of isolated or headwater wetlands, and cause only minimal environmental impacts. These projects can usually be permitted with minimal environmental review by the Corps. Projects that qualify for authorization under NWP 26 and that affect less than 0.41 hectares (1 acre) of isolated waters or headwaters may proceed without notifying the Corps. Evaluation of impacts of such projects is thus precluded under the section 404 permit process, although an individual permit may be required by the Corps if projects otherwise qualifying under NWP 26 would have greater than minimal environmental impacts. The Corps, however, is generally reluctant to withhold authorization under NWP 26 unless the existence of a federally listed threatened or endangered species would be jeopardized. Candidate species receive no special consideration under section 404, regardless of the type of permit deemed necessary. Thus, these three taxa currently receive insufficient protection under section 404. *Cercocarpus traskiae* and *Lithophragma maximum* may grow in gullies and canyons that may be regulated as jurisdictional waterways under section 404 of the CWA or section 1603 of the California Fish and Game Code. These waterways do not have running water most of the year and plants could be damaged when project planners fail to recognize that a section 404 or section 1603 permit is required for the intended action.

The location of extant populations of these three species does not coincide with that of federally listed plant species on the islands. Therefore, Federal protection under the Act does not currently extend to the species being proposed (Kellogg and Kellogg 1994; Gaye, pers. comm. 1994). Local laws and regulations are currently providing inadequate protection for these species. Laws prohibiting ''take'' of native plants do not protect them from feral herbivores. Although managers of San Clemente Island have removed herbivores from the island, natural threats and impacts from activities such as fires, bombing, and bulldozing continue (Kellogg, pers. comm. 1994).

E. *Other natural or manmade factors affecting their continued existence.* As a consequence of habitat degradation on the islands, the proportion of invasive exotic plant species to native and endemic species has increased. On San Clemente Island, 98 species are exotic (Kellogg and Kellogg 1994), compared to 1886 when Lyon's ''Flora of our southwestern archipelago'' listed only 10 exotic plant species (Lyon 1886). Naturalized exotics have permanently altered the species composition of natural communities and increased competition with native species. Non-native plants have invaded native habitat and removed niches for rare and sensitive species (Hochberg *et al.* 1980a). The abundance of exotic plants continues to adversely affect the island's endemic plant species and contributes to their slow recovery from predation by feral animals prior to their removal in 1991 (Kellogg and Kellogg, 1993). The disparity between the reported habitat of *Sibara filifolia* on shady north-facing slopes and its present habitat on grass-free, south-facing slopes suggests that grasses may prevent the expansion of *S. filifolia* into otherwise suitable habitat (Green 1887a; Kellogg, pers. comm. 1994).

Lithophragma maximum is thought to have existed on the plateau area of San Clemente Island before the invasion of non-native grasses (Kellogg, pers. comm. 1994). The remaining habitat of *L. maximum* persists only within steep canyons. Erosion threatens not only the individual plants but the entire habitat that supports them. During the winter of 1979–1980, ''large portions of canyon walls were observed to have sloughed off taking large numbers of endemic plants with them'' (Beauchamp and Ferguson 1980).

Fires related to military activities, drought, and erosion have contributed to the decline of *Lithophragma maximum, Sibara filifolia,* and other species endemic to San Clemente Island (Kellogg and Kellogg 1994).

Cercocarpus traskiae is threatened by hybridization with the locally common *C. betuloides* var. *betuloides.* Because only 12 mature individuals of *C. traskiae* are known to exist, genetic swamping of the species would be the probable outcome of hybridization. The uniqueness of the species would be compromised or lost due to the influx of variability from the larger population. Rieseberg has recommended elimination of mature hybrids as a means of preserving the species (Rieseberg *et al.* 1989).

Stochastic (random) events threaten the continued existence of *Cercocarpus traskiae, Lithophragma maximum,* and *Sibara filifolia* by virtue of their small population sizes and limited distribution. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the remaining individuals. *Cercocarpus traskiae* is known from only 2 populations with 12 mature individuals. Two populations comprising fewer than 30 individuals of *L. maximum* are known to exist. *Sibara filifolia* is known from only 1 population of 400 to 500 individuals.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Cercocarpus traskiae, Sibara filifolia,* and *Lithophragma maximum* as endangered. Two of the species are known from fewer than 30 individuals. All three species are known from no more than two populations. The three species are threatened by one or more of the following: degradation of habitat and predation by feral animals, competition with exotic plant species, erosion, hybridization, and inadequacy of existing regulatory mechanisms. Small population size and limited distribution make these species particularly vulnerable to extinction and/or reduced reproductive vigor from stochastic events. Because these species are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act. Critical habitat is not being proposed for these species at this time for reasons discussed below.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

The Service finds that designation of critical habitat is not prudent at this time for *Cercocarpus traskiae*. All known populations of this species are on privately owned lands with little or no Federal involvement. The additional protection of critical habitat is achieved through Federal agency consultation under section 7 of the Act. The Santa Catalina Island Conservancy is aware of the presence of the species, supports the proposal to list the species, and is currently working to protect the population. Therefore the designation of critical habitat for *C. traskiae* would not appreciably benefit the species. Additionally, maps published in the **Federal Register** giving precise locations of populations of *C. traskiae*, as required for designation of critical habitat, may increase incidents of vandalism or collection of this species by collectors or curiosity seekers.

The Service also determines that designation of critical habitat is not prudent for *Sibara filifolia* or *Lithophragma maximum*. Extant populations of these two species occur on Federal lands managed by the Navy and are subject to section 7 consultation and recovery planning under the Act. San Clemente Island is owned by the Navy and contains the only known populations of these two species (with the exception of one mainland individual of *Lithophragma maximum*). The present range of *Sibara filifolia* is within the ship to shore bombing area on San Clemente Island. Section 7 consultation (50 CFR 402 subpart B) requires that Federal agencies confer with the Service to evaluate the potential impacts of any federally executed, funded, or authorized actions on listed and proposed species or critical habitat. Listing of these two species as endangered would ensure that consultation occurs and potential impacts to the species are considered. Due to the limited, insular range of *Sibara filifolia* and *Lithophragma maximum*, designation of critical habitat would not provide any additional benefit to them.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery plans be developed for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

The U.S. Army Corps of Engineers would be involved through their permitting authority under section 404 of the CWA. The Navy owns San Clemente Island and administers lands containing *Sibara filifolia* and *Lithophragma maximum* and authorizes, funds, or otherwise conducts activities that may affect these species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued for these species since they are not in cultivation or common in the wild.

It is the policy of the Service, published in the **Federal Register** (59 FR 34272) on July 1, 1994, to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. *Sibara filifolia* and *Lithophragma maximum* are known to occur on lands under the jurisdiction of the Navy. Collection, damage, or destruction of listed species on these lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. Such activities on non-Federal lands, as would be the case for *Cercocarpus traskiae*, would constitute a violation of section 9, if activities were conducted in knowing violation of State law or regulations or in violation of State criminal trespass law. The Service is not aware of any otherwise lawful activities currently being conducted or proposed by the public that would be affected by this listing and result in a violation of section 9.

Questions regarding whether specific activities would constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Carlsbad Field Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S.

Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Sibara filifolia, Lithophragma maximum,* and *Cercocarpus traskiae;*

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received by September 25, 1995. Such requests must be made in writing and addressed to the Field Supervisor of the Carlsbad Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments or Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the U.S. Fish and Wildlife Service, Carlsbad Field Office (see **ADDRESSES** section).

Author. The primary author of this document is Debra Kinsinger, Carlsbad Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Cercocarpus traskiae.	Catalina Island mountain-mahogany.	U.S.A. (CA)	Rosaceae	E	....	NA	NA
*	*	*	*	*	*	*	
Lithophragma maximum.	San Clemente Island woodland-star.	U.S.A. (CA)	Saxifragaceae	E	....	NA	NA
*	*	*	*	*	*	*	
Sibara filifolia	Santa Cruz Island rockcress.	U.S.A. (CA)	Brassicaceae	E	....	NA	NA
*	*	*	*	*	*	*	

Dated: July 5, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–18241 Filed 7–24–95; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018–AD39

Endangered and Threatened Wildlife and Plants; Proposed Rule for 16 Plant Taxa From the Northern Channel Islands, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for 16 plant taxa from the northern Channel Islands, California: *Arabis hoffmannii* (Hoffmann's rock-cress), *Arctostaphylos confertiflora* (Santa Rosa Island manzanita), *Berberis pinnata* ssp. *insularis* (island barberry), *Castilleja mollis* (soft-leaved paintbrush), *Dudleya*

blochmaniae ssp. *insularis* (Santa Rosa Island dudleya), *Dudleya* sp. nov. ''East Point'' (munchkin dudleya), *Dudleya nesiotica* (Santa Cruz Island dudleya), *Galium buxifolium* (island bedstraw), *Gilia tenuiflora* ssp. *hoffmannii* (Hoffmann's slender-flowered gilia), *Helianthemum greenei* (island rush-rose), *Heuchera maxima* (island alumroot), *Malacothamnus fasciculatus* ssp. *nesioticus* (Santa Cruz Island bushmallow), *Malacothrix indecora* (Santa Cruz Island malacothrix), *Malacothrix squalida* (island malacothrix), *Phacelia insularis* ssp. *insularis* (island phacelia), and *Thysanocarpus conchuliferus* (Santa Cruz Island fringepod). The 16 plant taxa and their habitats have been variously affected or are currently threatened by one or more of the following: soil loss; habitat alteration by mammals alien to the Channel Islands (pigs, goats, sheep, donkeys, cattle, deer, elk, bison); direct predation by these same alien mammals; habitat alteration by native seabirds; habitat alteration due to vehicular traffic; overcollection for scientific or recreational purposes; competition with alien plant taxa; reduced genetic viability; depressed reproductive vigor; and the chance of stochastic extinction resulting from small numbers of individuals and populations.

DATES: Comments from all interested parties must be received by October 9, 1995. Public hearing requests must be received by September 25, 1995.

ADDRESSES: Comments and materials should be sent to the Field Supervisor, Ventura Field Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Carl Benz, Assistant Field Supervisor, Ventura Field Office (see **ADDRESSES** section) (telephone number 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

Arabis hoffmanii (Hoffmann's rock-cress), *Arctostaphylos confertiflora* (Santa Rosa Island manzanita), *Berberis pinnata* ssp. *insularis* (island barberry), *Castilleja mollis* (soft-leaved paintbrush), *Dudleya blochmaniae* ssp. *insularis* (Santa Rosa Island dudleya), *Dudleya* sp. nov. ''East Point'' (munchkin dudleya), *Dudleya nesiotica* (Santa Cruz Island dudleya), *Galium buxifolium* (island bedstraw), *Gilia tenuiflora* ssp. *hoffmannii* (Hoffmann's slender-flowered gilia), *Helianthemum greenei* (island rush-rose), *Heuchera maxima* (island alumroot), *Malacothamnus fasciculatus* ssp. *nesioticus* (Santa Cruz Island bushmallow), *Malacothrix indecora* (island malacothrix), *Malacothrix squalida* (Santa Cruz Island malacothrix), *Phacelia insularis* ssp. *insularis* (island phacelia), and *Thysanocarpus conchuliferus* (Santa Cruz Island fringepod) are California Channel Island endemics. The only species in this group that is not exclusive to the northern island group is the island rush-rose, with one population known from Santa Catalina Island.

Located offshore and south of Santa Barbara County, the four northern islands (from west to east: San Miguel, Santa Rosa, Santa Cruz, and Anacapa) are the highest points on a 130 kilometer (km) (80 mile (mi)) long seamount (Dibblee 1982). They are included within the boundaries of the Channel Islands National Park (CINP). Anacapa Island is the smallest of the four northern islands and is divided into east, middle, and west islands totalling 2.9 square km (1.1 square mi); it is the closest island to the mainland at a distance of 20 km (13 mi). East and Middle Anacapa islands are flat-topped, wave-cut terraces largely surrounded by steep cliffs. West Anacapa is the highest of the three, reaching 283 meters (m) (930 feet (ft)) above sea level. Santa Cruz Island is the largest of the California Channel Islands at 249 square km (96 square mi) with the highest point being 753 m (2,470 ft) above sea level and has a fault-controlled central valley that creates a dry interior condition. Santa Rosa Island is 217 square km (84 square mi) in area and 475 m (1,560 ft) at its highest point. San Miguel Island, the westernmost of the northern group, is 37 square km (14 square mi) in area and 253 m (830 ft) in height. Santa Catalina Island (south Los Angeles County) is 194 square km (75 square mi) in area and its highest elevation is 648 m (2,125 ft) above sea level (Power 1980).

Much of the northern Channel Islands are managed by Federal agencies. San Miguel Island is under the jurisdiction of the U.S. Department of the Navy (Navy), but the National Park Service (NPS) has operational jurisdiction through a Memorandum of Agreement. Anacapa Island is managed by the NPS with an inholding for the U.S. Coast Guard lighthouse. The western 90 percent of Santa Cruz Island is owned and managed by The Nature Conservancy (TNC). Almost all of the remaining 10 percent of the island is under the jurisdiction of the NPS. Except for the City of Avalon, Santa Catalina Island is privately owned and managed by the Catalina Island Conservancy.

Anacapa and Santa Barbara islands were set aside as a National Monument in 1938. In 1980 the U.S. Congress abolished the National Monument and incorporated those lands, waters and interests into National Park status, adding Santa Cruz Island and Santa Rosa Island (at that time privately owned) within the boundaries. The NPS acquisition of Santa Rosa Island in 1986 was accomplished by outright fee purchase from the Vail and Vickers Ranching Company. This acquisition included the potential option for a 25-year continuation of cattle ranching and a subleased commercial deer and elk hunting operation, of which 18 years remain, as long as the Secretary of the Interior determines that the property is being used for purposes compatible with the administration of the park or with the preservation of its resources.

In 1769 in San Diego, the establishment of the mission system began. Attempts to remove the native Chumash Indian populations from Santa Cruz Island to the mainland were completed by 1814 (Hobbs 1983). Subsequent land use practices on the islands focused on the introduction of a variety of livestock (sheep (*Ovis domesticus*), goats (*Capra hircus*), cattle (*Bos taurus*), burros (*Equus asinus*), and horses (*E. caballus*)) and game species (pigs (*Sus scrofa*), deer (*Odocoilius hemionus*), elk (*Cervus canadensis roosevelti*), rabbits (*Oryctolagus cuniculus*), wild turkey (*Melegris gallopavo*), California quail (*Callipepla californica*), and chukar (*Alectoris chuckar*)) for ranching and hunting purposes (Hochberg *et al.* 1980a, Minnich 1980, Jones *et al.* 1989).

The introduction of domestic animals to island ecosystems has had catastrophic effects on the vegetation. Because of the absence of natural population controls such as disease and predation, livestock overpopulated the islands. The ultimate control on population sizes for livestock on islands has been starvation (Sauer 1988). Records for Santa Cruz Island indicate that sheep had been introduced in the early 1830's; by 1875, sheep stocking was around 50,000 head (Hobbs 1983). In 1890, perhaps as many as 100,000 sheep grazed on Santa Cruz Island (Hochberg *et al.* 1980a). Pigs had been released on Santa Cruz Island by 1854 (Hobbs 1983). Conditions of overgrazing combined with drought occurred in 1864, 1870–72, 1877, 1893–1904, 1923–24, 1935, 1946–48, 1964, (Dunkle 1950, Johnson 1980) and most recently 1986–

91 (Halvorson 1993). These episodes resulted in livestock losses to starvation (Johnson 1980). Manipulation of the vegetation by over 150 years of intensive grazing and browsing has resulted in the replacement of native plant communities with non-native grasslands (Minnich 1980, Hobbs 1983).

Several non-native weedy plant species have invaded the disturbed habitats of the islands. One of the most obvious problem species is fennel (*Foeniculum vulgare*) on Santa Cruz Island. Fennel and other aggressive non-native weed species displace native species and further threaten the insular ecosystems (Smith 1989, Simberloff 1990). Research methods and results to date for the control of fennel were the topics of many presentations at the fourth Channel Islands symposium held in March 1994 (Brenton and Klinger 1994, Dash and Gliessman 1994, Gliessman 1994).

Some progress has been made toward eliminating alien animals from the islands. TNC has eliminated the sheep from the western portion of Santa Cruz Island; however, sheep from the eastern portion of the island are reinvading westward. The NPS has recently removed all the pigs from Santa Rosa Island. A program to control goats and pigs is being implemented on western Santa Catalina Island. However, no action has been taken to eliminate deer and elk from Santa Rosa Island, or pigs and the remaining sheep from Santa Cruz Island, or bison from Santa Catalina Island.

The main habitat types on the islands include coastal dune, coastal bluff, grasslands, coastal sage scrub, chaparral, oak and ironwood woodlands, riparian woodlands, and conifer forest; various subdivisions of these types have been described by Dunkle (1950), Philbrick and Haller (1977), Minnich (1980), and Clark *et al.* (1990). The floristics of the islands are composed of elements that have a variety of origins. Relictual species (wide ranging paleobotanic fossil records) such as the endemic island ironwoods (*Lyonothamnus floribundus*) and species with disjunct distributions with the mainland such as the Torrey pine (*Pinus torreyana*) occur in canyons and slopes that provide higher moisture levels than the surrounding areas. Unique insular endemics, including all of the species in this proposed rule, have been discussed by Raven (1967), Philbrick (1980), and Wallace (1985).

Coastal beach and associated dune habitats occur in the windiest sandy locations on the three westernmost islands. These coastal habitats appear to be relatively undisturbed compared to mainland sites where development and recreation have largely eliminated them. Coastal bluff habitat has provided a refugium from habitat elimination that accompanies grazing by non-native animals (Minnich 1980, Halvorson *et al.* 1992). The upland habitat was largely shrubland; many of the representative species are now found only on bluff sites (D'Antonio *et al.* 1992). The grasslands are largely composed of non-native annual species and have greatly expanded at the expense of most other habitat types (Hobbs 1983, Cole 1994). Historic photographs reveal the loss of woody vegetation from the islands during the last 100 years (Hobbs 1980, Minnich 1980). The coastal sage scrub habitat has increased in importance on Anacapa and San Miguel Islands where grazing effects have been removed (Johnson 1980). There, the controlling effects of grazing on the elimination of shrubs and the artificial maintenance of grasslands have been reversed. The coastal sage habitat is composed of soft-leaved, soft-stemmed plants that are palatable to browsers and grazers. The original coastal sage scrub habitat has been reduced by overgrazing to the extent that it persists only in locations that are inaccessible to grazing and browsing animals, as in patches of cactus and on bluffs (Minnich 1980, Hobbs 1983).

The pre-grazing importance of cactus in the island communities will never be known. Overgrazing results in the spread of cactus to areas that have been denuded by livestock. Overgrazing on Santa Cruz Island greatly facilitated the spread of cactus to the point that over 40 percent of the ''rangeland'' was rendered useless (Hochberg *et al.* 1980a). Cactus habitats on Santa Cruz and Santa Rosa Islands have been dramatically reduced to improve cattle operations by the introduction of biological controls (Hochberg *et al.* 1980a).

The physical condition of the remnant chaparral habitats has been modified by grazing and browsing such that shrubs form arborescent (treelike) shapes. The continued browsing by deer and elk on Santa Rosa Island has created an open ''skeleton'' community reticulated by game trails that provide access to nearly 100 percent of the habitat (Hochberg *et al.* 1980a; Tim Thomas, U. S. Fish and Wildlife Service (USFWS), pers. obs., 1993). Historic reports of the conditions on the islands indicate that the brushlands were impenetrable (Hochberg *et al.* 1980a). Island woodlands are dominated by unique endemic species and heavily affected by grazing, browsing, and rooting animals seeking summer shelter and food (Clark *et al.* 1990, Halvorson 1993). The riparian habitats are heavily modified physically and structurally, and in some areas they have been completely eliminated (Hochberg *et al.* 1980a, Minnich 1980). Normally, a canyon with year-round water will have well-developed riparian vegetation that includes willows (*Salix* spp.), sycamores (*Platanus racemosa*), cottonwoods (*Populus* spp.) and oaks (*Quercus* spp.). This vegetation would typically support a rich diversity of organisms, especially neo-tropical migratory bird species (Paul Collins, Santa Barbara Museum of Natural History, pers. comm., 1994). The riparian habitat is one of the most significant on the islands. Years of livestock overutilization have considerably reduced this resource-rich habitat. The pine forests that are protected from grazing have well-developed foliar cover and pine reproduction (Hobbs 1978). In contrast, Clark *et al.* (1990) report that pine forests that are subjected to grazing lack the protective nutrient layer of ground litter and exhibit no reproduction. Pigs, cattle, deer, goats, sheep, and bison continue to threaten and further degrade whole ecosystems on the islands (Sauer 1988, Halvorson 1993).

Islands, with their many endemic species of plants and animals, have long attracted the attention of biologists and are among the world's most fragile and unique ecosystems. Fifty-four island endemic plant species are known from the northern Channel Islands; 15 species are single island endemics (Halvorson *et al.* 1987). Some of the most striking examples of extinction have occurred from islands around the world; from the Channel Islands, notable extinctions include the Santa Barbara Island song sparrow (*Melospiza melodia cooperi*) and the Santa Cruz Island monkeyflower (*Mimulus brandegei*). Twelve plant species have been extirpated from various islands within the northern island group: three from Santa Cruz (*Malacothrix incana, Mimulus brandegei,* and *Sibaria filifolia*), three from Santa Rosa (*Berberis pinnata* ssp. *insularis, Phacelia insularis* ssp. *insularis,* and *Helianthemum greenei*), and six from San Miguel (*Grindelia latifolia, Ceanothus megacarpus* ssp. *insularis, Rhamnus pirifolia, Haplopappus ericoides, Castilleja mollis,* and *Dithyrea maritima*) (Philbrick 1980, Halvorson *et al.* 1987, Clark *et al.* 1990).

Discussion of the Taxa Included in This Proposal

Table 1 summarizes the growth habit and population distribution for the 16 taxa in this proposal.

TABLE 1.—GROWTH HABIT, ESTIMATED POPULATIONS WITHIN THE LAST FIVE YEARS, AND INSULAR DISTRIBUTION OF SIXTEEN PROPOSED ENDANGERED PLANT TAXA FROM THE NORTHERN CHANNEL ISLANDS, CALIFORNIA; mA=MIDDLE ANACAPA, wA=WEST ANACAPA, CR=SANTA CRUZ, RO=SANTA ROSA, MI=SAN MIGUEL, CA=SANTA CATALINA, ( )=HISTORIC DISTRIBUTION BUT BELIEVED EXTIRPATED FROM THIS LOCATION

Scientific name	Growth habit	Est. pops.	Distribution
Arabis hoffmanii	Perennial herb	3	(RO), CR, (wA)
Arctostaphylos confertifolia	Shrub	Less than 10	RO
Berberis pinnata ssp. *insularis*	Shrub/Vine	5	(RO), CR, wA
Castilleja mollis	Perennial	2	(MI), RO
Dudleya blochmaniae ssp. *insularis*	Succulent	1	RO
Dudleya sp. nov. ‘‘East Point’’	Succulent	1	RO
Dudleya nesiotica	Succulent	1	CR
Galium buxifolium	Sub-shrub	10	MI, CR
Gilia tenuiflora ssp. *hoffmannii*	Annual	1	RO
Helanthemum greenei	Sub-shrub	7	(RO), CR, CA
Heuchera maxima	Perennial	27	RO, CR, wA
Malacothamnus fasciculatus ssp. *nesioticus*	Shrub	2	CR
Malacothrix indecora	Annual	1	(MI), CR
Malacothrix squalida	Annual	3	CR, mA
Phacelia insularis ssp. *insularis*	Annual	5	MI, (RO)
Thysanocarpus conchuliferus	Annual	8	CR

Hoffmann’s rock-cress (*Arabis hoffmannii*) was first described by Philip Alexander Munz as *Arabis maxima* var. *hoffmannii* in 1935 based on specimens collected by Ralph Hoffmann at the ‘‘sea cliffs east of Dick’s Harbor,’’ now known as Platts Harbor, on Santa Cruz Island in 1932 (Rollins 1936). However, the first collection of this rock-cress was made by T.S. Brandegee in 1888 from an unspecified location on Santa Cruz Island. In 1936, Reed Clark Rollins elevated the taxon to species status by publishing the name *Arabis hoffmannii.* This nomenclature is upheld in the most recent treatment for the genus (Rollins 1993).

Arabis hoffmannii is a slender herbaceous perennial in the mustard (Brassicaceae) family. The one to several stems reach 0.6 m (2.0 ft) high, and have slightly toothed basal leaves. The white flowers, comprised of four petals 1 centimeter (cm) (0.4 inch (in)) long, are found at the tips of the stems. The slightly curved fruits are borne on long stalks and enclose two rows of seeds in each of two chambers. The only other rock-cress that occurs on the islands, *Arabis glabra* var. *glabra*, is a taller plant with cream colored flowers, and occurs as an alien in open meadows and slopes.

Since Brandegee’s collection was made in 1888, very few collections of *Arabis hoffmannii* have been made. On Santa Cruz Island, Reid Moran made a collection from the ‘‘Central Valley’’ in 1950, and Jim McPherson collected the plant near Centinela Grade, possibly the same location, in 1967 (Steve Junak, pers. comm. 1993). It was not until 1985 that Steve Junak relocated a population at this location (Schuyler 1986). For many decades, Hoffmann’s original collection site, near Platts Harbor on Santa Cruz Island, was in ‘‘an area of intense feral animal (sheep) disturbance,’’ and no plants could be found (Hochberg *et al.* 1980a). However, surveys conducted by TNC in 1985 were successful in relocating two small populations, one comprising three individual plants, near Platts Harbor (Schuyler 1986).

According to Reid Moran’s field notes, he collected *Arabis hoffmannii* from Anacapa Island in 1941 ‘‘on the slopes above Frenchy’s Cove’’ (S. Junak, pers. comm. 1993). However, no specimens from this collection have been found in herbaria with known collections of island species, and recent surveys by Junak have failed to relocate the plant on Anacapa Island (S. Junak, pers. comm. 1993). Ralph Hoffmann reported the plant from ‘‘the bank above Water Canyon’’ on Santa Rosa Island in 1930, but numerous recent surveys have failed to locate any plants on that island (S. Junak, pers. comm. 1993).

Arabis hoffmannii is currently known from three small populations that collectively cover less than 0.4 hectare (1 acre) on Santa Cruz Island. The two populations near Platts Harbor are located on rocky volcanic cliffs along a north-facing canyon on lands owned by TNC. Because of their inaccessibility, and the loose structure of the volcanic rock, the two cliff populations have not been thoroughly surveyed. Only a few dozen plants have been directly observed, but the cliffs may support additional individuals. The population near Centinela Grade is growing on Santa Cruz Island volcanics and is associated with giant coreopsis (*Coreopsis gigantea*), Santa Cruz Island buckwheat (*Eriogonum arborescens*), and coastal prickly pear (*Opuntia littoralis*), on lands owned and managed by TNC. When Junak relocated this population, approximately 30 individuals were seen. TNC has monitored this population since 1990, with fewer than 30 plants observed each year (Klinger 1994a). The major threats to *Arabis hoffmannii* are loss of soil, habitat degradation, and predation resulting from feral pig rooting. Because of the small numbers of populations and individuals, the taxon is also vulnerable to stochastic (random) extinction by such events as storms, drought, landslide, or fire. Small numbers of isolated populations and individuals also make the taxon vulnerable to reduced reproductive vigor.

Santa Rosa Island manzanita (*Arctostaphylos confertiflora*) was first described by Alice Eastwood as *Arctostaphylos confertiflora* in 1934 from a collection made by Hoffmann four years earlier ''in a sheltered dell south of Black Mountain'' on Santa Rosa Island (Eastwood 1934). Abrams (1951) synonymized the taxon with *Arctostaphylos subcordata*; eight years later, Munz published the new combination *Arctostaphylos subcordata* var. *confertiflora* (Munz and Keck 1973). However, in treatments of the genus, including the most recent, Wells (1968, 1993) has continued to uphold the original taxonomy.

Arctostaphylos confertiflora is a perennial shrub in the heath (Ericaceae) family that grows 0.1 to 2.0 m (4 in to 6.5 ft) high (Wells 1993). The plant has smooth, dark red-purple bark, densely hairy branchlets, bracts, and pedicels, and light green, round-ovate leaves. The flowers are borne in numerous dense panicles that mature into flattened reddish-brown fruits (McMinn 1951). The only other manzanita that occurs on Santa Rosa Island, *Arctostaphylos tomentosa*, forms a fire-resistant burl at the base of the stems; *Arctostaphylos confertiflora* is not burl-forming and is considered an obligate seeder, requiring fire for regeneration. It occurs in prostrate and upright forms, the former most likely due to climatic and herbivorous influences (McMinn 1951).

Arctostaphylos confertiflora is known only from two areas on Santa Rosa Island. In the northeast portion of the island near, and east of, Black Mountain, individual plants have been observed at scattered sites from upper Lobos Canyon east to the Torrey pine groves along Becher's Bay, a distance of about 5 km (3 mi). The plant occurs on sedimentary substrates, which consist of Monterey shales and soft volcanoclastic sediments derived from San Miguel volcanics (Weaver *et al.* 1969). Near the southern tip of the island, a few individuals are scattered on the slopes above South Point on sandstone outcrops. The taxon occurs as a component of mixed chaparral, mixed woodland, Torrey pine woodland, and island pine woodland communities. Junak estimated that total habitat for the plant comprises only a few acres (S. Junak, pers. comm. 1994); Clark *et al.* (1990) noted that it occurs in very low numbers. The major threats to *Arctostaphylos confertiflora* are soil loss, habitat alteration and predation caused by cattle grazing and elk and deer browsing, which have resulted in reproductive failure. Because of the small numbers of isolated populations and individuals, the taxon is also vulnerable to stochastic extinction by such events as storms, drought, or fire. Small numbers of populations and individuals also make the taxon vulnerable to reduced reproductive vigor.

Island barberry (*Berberis pinnata* ssp. *insularis*) was first described by Munz and Roos (1950) as *Berberis pinnata* ssp. *insularis* based on a specimen collected by Carl B. Wolf in 1932 ''west of summit of Buena Vista Grade (also known as Centinela Grade), interior of Santa Cruz Island.'' In 1981, James Roof realigned this taxon with the genus *Mahonia* because the leaves are compound, in contrast with the simple leaves of *Berberis* (Roof 1981). However, Moran (1982) made the case that this one character was insufficient to defend *Mahonia* as a distinct natural group; subsequent treatments have included all North American taxa previously referred to *Mahonia* as *Berberis*. Therefore, this taxon has been referred to as *Berberis pinnata* ssp. *insularis* by Munz (1974), Smith (1976), and Williams (1993).

Berberis pinnata ssp. *insularis* is a perennial shrub in the barberry family (Berberidaceae). The plant has spreading stems that reach 2 to 8 m (5 to 25 ft) high, with large leaves divided into 5 to 9 glossy green leaflets. Clusters of yellow flowers at the branch tips develop into blue berries covered with a white bloom (waxy coating). Because new shoots can sprout from underground rhizomes, many stems may actually represent one genetic clone (Hochberg *et al.* 1980b, California Native Plant Society (CNPS) 1984, Williams 1993).

Berberis pinnata ssp. insularis is found in moist, shaded canyons on Santa Cruz and West Anacapa Island. Hoffmann found several individuals ''in Elder canyon that runs from west into Canada de la Casa'' on Santa Rosa Island in 1930 (California Natural Diversity Data Base (CNDDB) 1993); however, in spite of recent surveys, no plants have been found on the island since that time. Dunkle collected *Berberis pinnata* ssp. *insularis* on West Anacapa Island in 1940; the plant was not found there again until 1980. One clone is found in Summit Canyon associated with chaparral species, including poison oak (*Toxicodendron diversilobum*), monkeyflower (*Diplaucus parviflorus*), coyote bush (*Baccharis* sp.), goldenbush (*Haplopappus detonsus*), island alum-root (*Heuchera maxima*) and wild cucumber (*Marah macrocarpus*). Four populations occur on Santa Cruz Island. One population on the north slope of Diablo Peak comprises 24 large ''stems'' and 75 small ''stems'' (Klinger 1994c); this number of stems may represent one or several clonal individuals. In 1979, the two populations near Campo Raton were estimated to be less than 10 individuals; in 1985, only one plant was seen (CNDDB 1994). The size of the population at Hazard's Canyon has not been determined due to inaccessibility.

Berberis pinnata ssp. *insularis* is threatened by soil loss and habitat alteration caused by feral pig rooting. Because of the small numbers of populations and individuals, the taxon is also vulnerable to stochastic extinction by such events as storms, drought, or fire. Small numbers of isolated populations and individuals also make the taxon vulnerable to reduced reproductive vigor.

Soft-leaved paintbrush (*Castilleja mollis*) was first described by Francis W. Pennell as *Castilleja mollis* in 1947, based on material collected on Santa Rosa Island in 1939 (Ingram 1990, Heckard and Ingram 1991). Munz and Keck (1973) and Hoover (1970) included plants of coastal sand dunes of San Luis Obispo County in the description of this taxon. However, Ingram (1990) has concluded that the taxon is endemic to Santa Rosa Island.

Castilleja mollis is a presumably partially parasitic perennial herb in the figwort (Scrophulariaceae) family. The plant has semi-prostrate branches that reach 40 cm (16 in) in length, with bracts and upper leaves that are grayish, fleshy, broad and rounded and crowded at the apex, and the bract and calyx are yellow to yellowish green above (Heckard and Ingram 1991). Ingram's studies outlined a number of morphological differences between *Castilleja mollis* and the similar *Castilleja affinis*, including the indument (covering) of distinctive branched hairs and rounded stem leaves in the former taxon.

Two collections of *Castilleja mollis* were also made by F.H. Elmore from Point Bennett on San Miguel Island in 1938 (Heckard and Ingram 1991); despite recent searches, the taxon has not been seen on the island since then (S. Junak, pers. comm. 1994). *Castilleja mollis* is known from two areas on Santa Rosa Island: Carrington Point in the northeast corner of the island, and west of Jaw Gulch and Orr's Camp (this location also referred to as Pocket Field) along the north shore of the island. At Carrington Point, the plant is associated with stabilized dune scrub vegetation that is dominated by goldenbush (*Isocoma venetus* var. *sedoides*), lupine (*Lupinus albifrons*), and Pacific ryegrass (*Leymus pacificus*). At the Pocket Field location, the paintbrush is associated with the non-native iceplant (*Carpobrotus* spp. and *Mesembryanthemum* spp.), native milkvetch (*Astragalus miguelensis*), and alien grasses.

In 1993, the Jaw Gulch population was estimated to comprise up to 1,000 individuals covering an area of less than 2 hectares (5 acres) (C. Rutherford and T. Thomas, USFWS, pers. obs. 1993). During Ingram's field studies in 1990, the Carrington Point population consisted of only 20 individuals (Ingram 1990); more favorable climatic conditions in the past few years may have resulted in higher numbers of plants, perhaps as many as several hundred. The Jaw Gulch population was also used as a bedding area for deer during the fall of 1993 (Dan Richards, CINP, pers. comm. 1994). Threats to *Castilleja mollis* are soil loss, habitat alteration and predation caused by cattle grazing, deer and elk browsing, deer bedding, and competition with alien plant taxa. Because of the small numbers of isolated populations and individuals, the taxon is also vulnerable to stochastic extinction by such events as storms, drought, or fire. Small numbers of populations and individuals also make the taxon vulnerable to reduced reproductive vigor.

Santa Rosa Island dudleya (*Dudleya blochmaniae* ssp. *insularis*) was first described as *Hasseanthus blochmaniae* ssp. *insularis* by Reid Moran (1950a) based on a collection made at ''Old Ranch Point'' on Santa Rosa Island in 1950. Moran (1953) combined the genus *Hasseanthus* as a subgenus of *Dudleya*; *Hasseanthus* had previously been segregated from *Dudleya* on the basis of stem characteristics and the presence of vernal (withering) leaves. In so doing, he published the new combination *Dudleya blochmaniae* ssp. *insularis* (Moran 1953). A recent attempt was made by Thompson (1993) to resegregate *Hasseanthus* from *Dudleya;* however, because rules of nomenclature were not followed and the morphological differences between these two groups do not appear to merit recognition at the genus level, the taxon will be recognized in this proposed rule under the name *Dudleya blochmaniae* ssp. insularis.

Dudleya blochmaniae ssp. *insularis* is a small succulent perennial in the stonecrop family (Crassulaceae). The plant has a corm-like root structure, and 15 to 30 oblanceolate leaves in a basal rosette, from which several flowering stems 3 to 7 cm (1.2 to 2.8 in) long arise. The white, five-petaled flowers and the resulting fruits are fused at the base and wide-spreading distally. This subspecies is distinguished from two other mainland subspecies of *Dudleya blochmaniae* on the basis of the more numerous rosette leaves, shorter floral stems, more pronounced glaucousness of young floral stems and their leaves, and the size and shape of the lower bracts (Moran 1950a, Bartel 1993).

Dudleya blochmaniae ssp. *insularis* is only known from the type locality near Old Ranch Point, also known as Marsh Point, on the east end of the island. The taxon occupies an area of less than 1 hectare (2 acres) of an ancient marine terrace with a cobbly surface, and associated with owl's clover (*Castilleja exserta*), goldfields (*Lasthenia californica*), and alien annual grasses. The number of individuals is estimated to be 2,000 (Rutherford and Thomas, pers. obs. 1993). Threats to *Dudleya blochmaniae* ssp. *insularis* are soil loss; habitat alteration caused by cattle, elk, and deer trampling; vehicle access; and collecting. Because this taxon is restricted to one population, the plant is also vulnerable to stochastic extinction by such events as storms, drought, or fire. The single population and restricted number of individuals also make the taxon vulnerable to reduced reproductive vigor.

Munchkin dudleya (*Dudleya* sp. nov. ''East Point'' (S. McCabe, pers. comm. 1994)) was first collected by Reid Moran in 1950. In his dissertation on the genus *Dudleya,* he included it in the description of *Dudleya greenei,* but remarked upon how it differed, and described it as ''forma nana.'' Subsequent floras treated the form in synonymy with *Dudleya greenei* (Munz and Keck 1973, Smith 1976). In 1993, Paul H. Thomson illegitimately published the name *Dudleya nana,* based on the description of forma nana in Moran's dissertation. Stephen McCabe has submitted an article describing a new species of *Dudleya* to the journal Madroño (S. McCabe, pers. comm. 1994).

Like *Dudleya blochmaniae* ssp. *insularis* described above, this plant is a small succulent perennial in the stonecrop family (Crassulaceae). The plant has a short caudex-like stem, and small, gray, ovate to oblanceolate leaves in a cluster of up to 20 basal rosettes, from which several flowering stems 2.5 to 7 cm (1 to 2.75 in) long arise. The pale yellow, five-petaled flowers are fused at the base and spread only at the tips.

Dudleya sp. nov. ''East Point'' is known only from one population comprising three colonies near East Point on Santa Rosa Island. The total number of individuals in the three colonies has been estimated to be 3,200 (S. McCabe, pers. comm. 1994). The colonies occur on a low windswept ridge with a cobbly soil surface, which is bereft of any other vegetation save scattered alien annual grasses. Several hundred plants were observed uprooted with roots exposed during the spring of 1993, most likely a result of cattle grazing and trampling (S. Chaney, CINP, pers. comm. 1993). Threats to *Dudleya* sp. nov. ''East Point'' are soil loss, habitat alteration, and predation caused by cattle and deer trampling and grazing. Because it is restricted to one population, the taxon is vulnerable to stochastic extinction by such events as storms, drought, or fire. The single population and limited number of individuals also make the taxon vulnerable to reduced reproductive vigor.

Santa Cruz Island dudleya (*Dudleya nesiotica*) was first described by Reid Moran (1950b) as *Hasseanthus nesioticus* based on a specimen collected from ''flat area near edge of sea bluff, Fraser Point,'' on the west end of Santa Cruz Island in 1950. Three years later, Moran (1953) transferred the species to the genus *Dudleya*, thereby forming the new combination *Dudleya* nesiotica.

Like the two previously described dudleyas, *Dudleya nesiotica* is a succulent perennial in the stonecrop family (Crassulaceae). The plant has a corm-like stem with 8 to 16 oblanceolate leaves in a basal rosette from which several flowering stems 3 to 10 cm (1.2 to 4.0 in) tall arise. The five white-petaled flowers and resulting fruits are erect to ascending.

Dudleya nesiotica is known only from one population comprising two colonies within 1.6 km (1 mi) of the type locality at Fraser Point on the west end of Santa Cruz Island. Approximately 1,000 plants occupy less than 10 acres of habitat. The colonies are situated on the lowest marine terrace in association with iceplant (*Mesembryanthemum crystallinum* and *M. nodiflorum*), alkali heath (*Frankenia salina*), goldfields, and pickleweed (*Salicornia virginica*). Threats to *Dudleya nesiotica* are soil loss, habitat alteration, and predation caused by pig rooting. Like many dudleyas, *Dudleya nesiotica* is also threatened by collecting for botanical or horticultural use (Moran 1979). Because the taxon is restricted to only one population, it is also vulnerable to stochastic extinction by such events as storms, drought, or fire. The single population and limited number of individuals also make the taxon vulnerable to reduced reproductive vigor.

Island bedstraw (*Galium buxifolium*) was first described by E.L. Greene as *Galium buxifolium* in 1886 based on specimens collected on Santa Cruz Island (Ferris 1960). In 1958, Lauramay Dempster (1958) described the taxon as a variety of *Galium catalinense.* Ferris

(1960) suggested that the taxon was subspecifically distinct, but still synonymized the taxon with *Galium catalinense.* Thirteen years later, Dempster (1973) reestablished the taxon as a separate species based on differences in the nutlet hairs between it and *Galium catalinense.*

Galium buxifolium is a small, stout woody shrub in the bedstraw (Rubiaceae) family. The plant grows to 12 decimeters (dm) (4 ft) in height, and has swollen nodes bearing numerous leafy branches. The leaves are larger than those of most other *Galium* taxa, and have conspicuous lateral veins with stout hairs on the lower surface (Dempster 1973). The relatively broad leaves and the tiny upward-curved hairs that cover the fruits are unique characteristics that distinguish it from the six other species of *Galium* that occur on the islands (Hochberg *et al.* 1980b).

A putative collection of *Galium buxifolium* was made from the ''Torrey Pine grove, Santa Rosa Island,'' in 1941 by Reid Moran; apparently this was a misidentified collection of *Galium nuttallii* (York, in litt. 1987). Therefore no known collections of this taxon are known from Santa Rosa Island. *Galium buxifolium* is currently known from Santa Cruz and San Miguel Islands where it occurs on north-facing sea cliffs. Eight populations occur on TNC lands on Santa Cruz Island. In 1980, Hochberg *et al.* (1980b) noted that 2 of these populations comprised fewer than 50 individuals each, and the remaining populations comprised less than 6 individuals each. Two populations were located on San Miguel Island in 1993, 1 comprising about 200 individuals, and 1 comprising fewer than 10. Five other historical collections have been made from the island, but none have been seen for almost 30 years.

The plant occurs on ''bluffs and rocky slopes'' (Dempster 1973) in coastal sage scrub and island pine forest. Threats to *Galium buxifolium* are soil loss, habitat alteration, and predation caused by feral pig rooting and sheep grazing. Because of the small numbers of isolated populations and individuals, the taxon is also vulnerable to stochastic extinction by such events as storms, drought, or fire. Small numbers of populations and individuals also make the taxon vulnerable to reduced reproductive vigor.

Hoffmann's slender-flowered gilia (*Gilia tenuiflora* var. *hoffmannii*) was first described as *Gilia hoffmannii* by Alice Eastwood in 1940 based on collections made by Ralph Hoffmann ''in sandy soil at East Point'' on Santa Rosa Island ten years earlier (Eastwood 1940). Eastwood remarked that, although the taxon is related to *Gilia tenuiflora,* no variation of the latter included the leafy stems and terminal congested inflorescence of *Gilia hoffmannii* (Eastwood 1940). Nevertheless, Jepson (1943) included the taxon in the description of *Gilia tenuiflora* var. *tenuiflora* in his flora of California, as did Abrams (1951) in his flora of the Pacific states. In 1959, Munz renamed the varieties of *tenuiflora* as subspecies, including ssp. *hoffmannii* (Munz and Keck 1973). This nomenclature has been upheld in the latest treatment of the genus (Day 1993). Of the four subspecies of *Gilia tenuiflora,* the subspecies *hoffmannii* is the only one that occurs in southern California. Two other *Gilia* species occur on Santa Rosa Island; *Gilia tenuiflora* ssp. *hoffmannii* is distinguished from them by the presence of arachnoid woolly pubescence at the base of the stem.

Gilia tenuiflora ssp. *hoffmannii* is a small, erect annual herb in the phlox (Polemoniaceae) family. The central stem grows 6 to 12 cm (2.4 to 4.7 in) tall, arising from a rosette of densely hairy, strap-shaped, short-lobed leaves. The flowers are purplish and funnel-shaped below, widening to five pinkish corolla lobes.

Gilia tenuiflora ssp. *hoffmannii* has only been collected from two locations on Santa Rosa Island. A collection was made by Reid Moran from the ''arroyo between Ranch and Carrington Point'' in 1941 (Rutherford and Thomas 1994); however, numerous surveys conducted in recent years have failed to relocate the plant at this location. This location most likely falls within the parcel of property, adjacent to the ranchhouse, that has been heavily disturbed by cattle ranching operations. The only currently extant population occurs at the type locality near East Point on Santa Rosa Island. Here, it occurs as a component of dune scrub vegetation with sand verbena (*Abronia maritima*), silver beach-weed (*Ambrosia chamissonis*), saltgrass (*Distichlis spicata*), miniature lupine (*Lupinus bicolor*), plantain (*Plantago erecta*), and sand-dune bluegrass (*Poa douglasii*) (T. Thomas, in litt. 1993). The population consists of several hundred individuals and occupies an area of not more than 0.8 hectares (2 acres). Threats to *Gilia tenuiflora* ssp. *hoffmannii* are soil loss, habitat alteration and predation caused by cattle grazing, and elk and deer browsing. A sandy service road used by NPS and ranchers bisects the population. Because the taxon is restricted to one population, it is also vulnerable to stochastic extinction by such events as storms, drought, or fire. The single population and limited number of individuals also make the taxon vulnerable to reduced reproductive vigor.

Island rush-rose (*Helianthemum greenei*) was first described by Robinson as *Helianthemum greenei* in 1895 (Abrams 1951). The type locality is described as ''a dry summit near the central part of the island of Santa Cruz'' (Abrams 1951). This nomenclature has been upheld in the most recent treatment for the genus (McClintock 1993).

Helianthemum greenei is a small shrub in the rock-rose (Cistaceae) family. The plant grows to 0.5 m (18 in) tall and has alternate leaves covered with star-shaped hairs. The reddish, glandular stalks support yellow-petalled flowers to 2.5 cm (1 in) wide. The fruit is a pointed capsule 0.6 cm (0.25 in) long. A more abundant species found on the islands, *Helianthemum scoparium,* is similar in appearance, but is not glandular-hairy and has greenish stalks and smaller fruits (Hochberg 1980b).

McMinn (1951) and later Thorne (1967) report seeing *Helianthemum greenei* on San Miguel Island, but there are no collections in island herbaria (Hochberg *et al.* 1980b, Wallace n.d.). Two collections of the plant were made from Santa Rosa Island by Epling and Erickson and Dunn in the 1930's (Wallace 1985); however, no collections on Santa Rosa Island have been made since that time, despite recent surveys. *Helianthemum greenei* was reported from the northeast side of Black Jack Mountain on Santa Catalina Island by Thorne (1967) in 1966; no collections have been made since then, but a population of three individuals was recently reported from this location (Janet Takara, Catalina Island Conservancy, pers. comm. 1994). Habitat for the plant on Santa Catalina Island is being grazed by goats, mule deer, and bison, and is being rooted by pigs.

In addition to the one population on Santa Catalina Island, *Helianthemum greenei* is currently known from ten populations on Santa Cruz Island. The taxon is found in open, exposed areas in chaparral, coastal sage scrub, and island pine forest. In 1980, prior to sheep removal from TNC lands on Santa Cruz Island, Hochberg *et al.* (1980b) found that, of ten populations, only two comprised several dozen individuals, and six others comprised less than six individuals. Hochberg *et al.* (1980b) indicated that the plant is eliminated by intense feral animal disturbance, and noted that the population recorded by Abrams and Wiggins in 1930 at Pelican

Bay has not been relocated. The major threats to *Helianthemum greenei* are soil loss, altered fire frequencies and intensities, rooting by feral pigs, sheep grazing, and competition with other shrubs that have increased in cover due to a release in grazing pressure. Because of the small numbers of isolated populations and individuals, the taxon is also vulnerable to stochastic extinction by such events as storms, drought, or fire.

Island alumroot (*Heuchera maxima*) was first described by E.L. Greene (1886a) as *Heuchera maxima* based on collections from the ''northward slope of Santa Cruz Island.'' This nomenclature has been upheld in the most recent treatment of the genus (Elvander 1993). *Heuchera maxima* is a perennial herb in the saxifrage (Saxifragaceae) family. The round basal leaves are up to 7 cm (2.8 in) broad on long petioles up to 25 cm (10 in) in length. The flowering stalks are up to 6.1 dm (2 ft) long and scattered with small white-petaled flowers (Hochberg 1980b). No other *Heuchera* species occurs on the islands; however, young plants of *Heuchera maxima* could resemble species of *Jepsonia, Lithophragma,* or *Saxifraga* that occurs on the islands. *Heuchera maxima* can be distinguished from these other taxa by its larger size at maturity, and flowers with ten stamens rather than five.

Heuchera maxima grows primarily on moist, shady, north-facing canyon bottoms, walls, and seacliffs, but occurs in a few interior localities as well. Collections of *Heuchera maxima* were made from Santa Rosa Island by Hoffmann in 1929 and Dunkle in 1939; however, locality information for these collections is vague. More recently, the plant has been collected from four locations on Santa Rosa Island (Cherry, Lobos, Ranch, and Windmill Canyons) (Rutherford and Thomas 1994). *Heuchera maxima* is also known from 11 locations on West Anacapa Island (Rutherford and Thomas 1994; S. Junak, in litt. 1984). On Santa Cruz Island, 12 populations occur along the west half of the north shore. All populations observed by Hochberg *et al.* (1980b) on Santa Cruz Island comprised less than 50 individuals each, and in some cases comprised less than 6 individuals each. Threats to *Heuchera maxima* are soil loss, habitat alteration and predation resulting from cattle grazing, feral pig rooting, and elk and deer browsing. Because of the small numbers of populations and individuals, the taxon is also vulnerable to stochastic extinction by such events as storms, drought, or fire.

Santa Cruz Island bushmallow (*Malacothamnus fasciculatus* var. *nesioticus*) was first described by James W. Robinson as *Malvastrum nesioticum* in Asa Gray's Flora of North America in 1897, based on material collected by E.L. Greene in 1886 (Abrams 1951). Over the next four decades, the taxon was placed in several different genera, as *Malacothamnus nesioticus* by Abrams, *Sphaeralcea nesiotica* and later *Sphaeralcea fasciculata* var. *nesiotica* by Jepson, and *Malvastrum fasciculatum* var. *nesioticum* by McMinn (Kearney 1951). Kearney (1951) published the new combination *Malacothamnus fasciculatus* var. *nesioticus.* In 1993, David Bates synonymized var. *nesioticus,* as well as seven other taxa, with *Malacothamnus fasciculatus,* a highly variable species ''with many indistinct and intergrading local forms'' (Bates 1993). Of var. *nesioticus,* he notes that the taxon is essentially indistinguishable from the mainland ''var. *nuttallii*.'' However, recent studies on the genetics of *Malacothamnus* have determined that var. *nesioticus* is a distinct variety (Swenson *et al.* in prep.).

Malacothamnus fasciculatus var. *nesioticus* is a small soft-woody shrub in the mallow (Malvaceae) family. The plant reaches up to 2 m (6 ft) tall, and has slender branches covered with star-shaped hairs. The palmately shaped leaves are dark green on the upper surface and gray on the lower surface. The rose-colored flowers are up to 3.75 cm (1.5 in) broad and scattered along the ends of the branches (Hochberg *et al.* 1980b). It is differentiated from the mainland var. *nuttallii* by its bicolored leaves and genetic distinction (Swenson *et al.* in prep.).

Malacothamnus fasciculatus var. *nesioticus* is known from only two small populations on Santa Cruz Island where it occurs within a coastal sage scrub community. One population of less than 50 individuals (10 clones) is located on the west shore of the island near the historic Christi Ranch. A second population was discovered in 1993 in the Central Valley near the University of California Field Station (Swensen *et al.* in prep.). Recent genetic analyses of the Central Valley population indicated that, although there are 19 individual shrubs, they comprise only 3 genotypes, or 3 clones. Threats to *Malacothamnus fasciculatus* var. *nesioticus* are soil loss, habitat alteration and predation resulting from past sheep grazing and current feral pig rooting. Because of the small numbers of populations and individuals, the plant is also vulnerable to stochastic extinction by such events as storms, drought, or fire. The small numbers of isolated populations and restricted number of individuals also make the taxon vulnerable to reduced reproductive vigor.

Santa Cruz Island malacothrix (*Malacothrix indecora*) was first described by E.L. Greene (1886) as *Malacothrix indecora* based on specimens collected from ''islets close to the northern shore'' of Santa Cruz Island (Smith 1976). In 1957, E. Williams published the combination *Malacothrix foliosa* var. *indecora* (Ferris 1960); Munz (1974) subsequently synonymized the taxon with *Malcothrix foliosa.* However, Ferris (1960) and others (Smith 1976, Davis 1980) continued to recognize the taxon as a separate species with the name *Malacothrix indecora.* This nomenclature is upheld in the most recent treatment of the genus (Davis 1993).

Malacothrix indecora is an annual herb in the aster (Asteraceae) family. The 20 to 40 cm (8 to 16 in) tall stems support numerous broadly lobed fleshy leaves with blunt tips. The greenish yellow flowers are in hemispheric heads surrounded by linear bracts (Hochberg 1980b; Scott in Junak *et al.*, in prep.). Two other annual species of *Malacothrix* occur on the same islands as *Malacothrix indecora*; however, the achenes (seeds) of *Malacothrix similis* are topped with 18 teeth and 1 bristle and *Malacothrix squalida* is topped with irregular teeth and no bristle, whereas *Malacothrix indecora* has neither of these features (Scott in Junak *et al.*, in prep.).

Collections of *Malacothrix indecora* were made from several locations along the northeast shore of San Miguel Island and on Prince Island by Greene, and later by Hoffmann (Hochberg *et al.* 1979; Davis 1987). In 1978, Hochberg *et al.* (1979) observed three populations; Halvorson *et al.* (1992) reported finding this species at one location during surveys in 1988 and 1989, but no collections were made to confirm identification of the taxon. On Santa Cruz Island, *Malacothrix indecora* was first collected near Twin Harbor by Williams in 1939 (Davis 1987); this population has not been relocated.

Malacothrix indecora is currently known from only one population discovered by Junak in 1980 at Black Point on the west end of Santa Cruz Island. Several hundred individuals were observed there by Junak in 1985 in exposed coastal flats and associated with Santa Cruz Island buckwheat (*Eriogonum grande* var. *rubescens*) and iceplant (*Mesembryanthemum nudiflorum*) (CNDDB 1991). On a subsequent trip in 1989, only 50 plants were observed in the same location (S. Junak, pers. comm. 1994). Threats to *Malacothrix indecora* are soil loss, habitat alteration and predation resulting from feral pig rooting and seabird activity. Historic habitat for *Malacothrix indecora* on San Miguel Island and Prince Island has been altered by seabird nesting activity. Because of the small numbers of populations and individuals, the taxon is also vulnerable to stochastic extinction by such events as storms, drought, or fire. The small numbers of populations and restricted number of individuals also make the taxon vulnerable to reduced reproductive vigor.

Island malacothrix (*Malacothrix squalida*) was first described by E.L. Greene in 1886 from specimens collected above Prisoner's Harbor on Santa Cruz Island (Davis, in litt. 1987). In 1957, E. Williams published the combination *Malacothrix foliosa* var. *squalida*; a year later, Roxana Ferris (1960) published the combination *Malacothrix insularis* var. *squalida*. In 1959, Munz recognized the taxon as *Malacothrix squalida;* however, 14 years later, he synonymized it with *M. foliosa* (Munz 1974). In a review of insular species of *Malacothrix*, Davis (1980) recognized the taxon as *Malacothrix squalida*.

Like *Malacothrix indecora*, *Malacothrix squalida* is an annual herb in the aster family. However, the plant only reaches 9 cm (3.5 in) tall, and has linear to widely lanceolate leaves that are irregularly toothed or lobed. The light yellow flowers are clustered in hemispheric heads 12 to 15 millimeters (mm) (0.5 to 0.6 in) long. *Malacothrix indecora* is the only other annual *Malacothrix* that occurs on the same island as *M. squalida*; however, the latter is a much larger species, and also differs in the achene characteristics previously mentioned (Scott in Junak *et al.*, in prep.).

Malacothrix squalida has been collected from two locations along the north shore of Santa Cruz Island; Greene collected it near Prisoner's Harbor in 1886, but the species was not seen on the island again until Philbrick and Benedict collected it in 1968 near Potato Harbor (Rutherford and Thomas 1994). On Middle Anacapa Island, the plant was first collected by Martin Piehl in 1963, and more recently in 1978 and 1986. The plant is known from several small colonies atop coastal bluffs on the east end of the island. Surveys by Junak and Davis in 1989 failed to find any individuals; however, this may have been the result of a drought year (S. Junak, pers. comm. 1994). Threats to *Malacothrix squalida* are soil loss, habitat alteration and predation resulting from sheep grazing, feral pig rooting, and seabird nesting. Because of the small numbers of isolated populations and individuals, the taxon is also vulnerable to stochastic extinction by such events as storms, drought, or fire. The small numbers of isolated populations and restricted number of individuals also make the taxon vulnerable to reduced reproductive vigor.

Island phacelia (*Phacelia insularis* ssp. *insularis*) was first described by Munz as *Phacelia insularis* in 1932 based on plants growing ''on sand dunes at northeastern part of Santa Rosa Island'' (Munz 1932). Jepson published the new combination *Phacelia curvipes* var. *insularis* in 1943. After examining specimens from coastal northern California and determining their affinity to the island plants, John Thomas Howell re-elevated the taxon to specific level, separating out the northern California plants as *Phacelia insularis* var. *continentalis,* leaving *Phacelia insularis* var. *insularis* to refer to the island plants (Howell 1945). In 1951, Abrams, who did not have access to collections of *Phacelia* from northern California, included the taxon in the description of *Phacelia divaricata,* a taxon common in southern California. In 1959, Munz published the new combination *Phacelia divaricata* var. *insularis* (Constance 1979). Lincoln Constance agreed with Howell's interpretation and has referred to the taxon as *Phacelia insularis* var. *insularis* (Constance 1979). This nomenclature has been upheld in the latest treatment of the genus (Wilken *et al.* 1993).

Phacelia insularis ssp. *insularis* is a decumbent (reclining), branched annual of the waterleaf (Hydrophyllaceae) family. The short-hairy and glandular stems grow to 1.5 dm (6 in) high from a basal rosette of leaves. The small lavender to violet, bell-shaped flowers are borne in loose cymes. The other variety of *Phacelia insularis,* the variety *continentalis,* is found on the mainland of northern California. *Phacelia insularis* var. *insularis* can be distinguished from the other species of *Phacelia* on the islands based on the hastate leaf shape with basal lobes. The other *Phacelia* have pinnately divided or undivided but ovate leaves.

Phacelia insularis ssp. *insularis* occurs on Santa Rosa Island and San Miguel Island. However, the last collections from Santa Rosa Island were made by Clifton Smith at Carrington Point in 1973; the plant has not been observed on the island since then despite recent searches. On San Miguel Island, *Phacelia insularis* ssp. *insularis* was collected by Hoffmann in 1930 and by Munz in 1932. It was not collected again until 1978, when four populations were found (Hochberg *et al.* 1979). A fifth population was discovered by Charles Drost on a bluff above Cuyler Harbor in 1984 (Halvorson *et al.* 1992). *Phacelia insularis* ssp. *insularis* is found within the island grassland community which is dominated by alien grasses, including slender wild oat (*Avena barbata*), wild oat (*Avena fatua*), ripgut (*Bromus diandrus*), and soft chess (*Bromus hordeaceus*), with scattered occurrences of native bunchgrasses, shrubs, and herbs (Hochberg *et al.* 1979). Threats to *Phacelia insularis* ssp. *insularis* are soil loss, habitat alteration caused by cattle grazing and elk and deer browsing. Because of the small numbers of populations and individuals, the plant is also vulnerable to stochastic extinction by such events as storms, drought, or fire. The small numbers of populations and restricted number of individuals also make the taxon vulnerable to reduced reproductive vigor.

Santa Cruz Island fringepod (*Thysanocarpus conchuliferus*) was first described as *Thysanocarpus conchuliferus* by E.L. Greene in 1886 based on material he and Brandegee collected where they found it ''common on mossy shelves and crevices of high rocky summits and northward slopes'' on Santa Cruz Island (Greene 1886b). Four decades later, Jepson published the new combination *Thysanocarpus laciniatus* var. *conchuliferus* as one of three varieties of *Thysanocarpus laciniatus* (Jepson 1925). Abrams re-elevated the taxon to species status in 1944. Munz, however, republished the taxon as one of six varieties of *T. laciniatus* in 1959 (Munz and Keck 1973). In the most recent treatment of the genus, Reed C. Rollins re-elevated the taxon to species status (Rollins 1993).

Thysanocarpus conchuliferus is a small delicate annual herb in the mustard (Brassicaceae) family. The one to several branches grow 5 to 12.7 cm (2 to 5 in) high. The narrow, linearly lobed leaves alternate along the stems, which terminate in a raceme of minute pink to lavender flowers. While all members of this genus have round, flattened fruits that are fringed with wings, *Thysanocarpus conchuliferus* is the only species with a bowl-shaped fruit; this taxon is also smaller in stature than *T. lacianatus,* which occurs in the same habitat (Rutherford and Thomas 1994).

In 1932, Ralph Hoffmann reported that *Thysanocarpus conchuliferus* was ''frequent. . . from the north shore to the southwest portion of the island'' (Hochberg *et al.* 1980a). A total of 14 historical locations are known from herbarium records. In 1980, eight of these populations were relocated (Hochberg *et al.* 1980b); in 1991, individuals were found at six of these locations, and none were found at five other locations (Klinger 1994b). In 1993, no individuals were found at any of the 14 known locations. Survey reports indicate that, in addition to abundant rainfall that may have increased competition from alien grasses, rooting by feral pigs was observed at all 14 locations (Klinger 1994b).

Thysanocarpus conchuliferus occurs on rocky outcrops on ridges and canyon slopes, and is associated with a variety of herbs, ferns, grasses, dudleya, and *Selaginella* (Santa Barbara Botanical Garden 1994). Threats to *Thysanocarpus conchuliferus* are soil loss, habitat alteration and predation resulting from feral pig rooting. In favorable years, competition with luxuriant alien grasses may also constitute a threat (Klinger 1994b). Because of the small numbers of isolated populations and individuals, the plant is also vulnerable to stochastic extinction by such events as storms, drought, landslide, or fire. The small numbers of populations and restricted number of individuals also make the taxon vulnerable to reduced reproductive vigor.

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Arabis hoffmannii, Castilleja mollis, Dudleya blochmaniae* ssp. *insularis, Galium buxifolium, Gilia tenuiflora* ssp. *hofmannii,* and *Berberis pinnata* ssp. *insularis* were considered to be endangered, and *Dudleya nesiotica* and *Malacothamnus fasciculatus* var. *nesiotica* (as *Malacothamnus fasciculatus*) were considered to be threatened. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposal in the **Federal Register** (42 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Dudleya nesiotica* was included in the June 16, 1976, **Federal Register** document.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the portion of the June 6, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Arabis hoffmannii, Castilleja mollis, Dudleya blochmaniae* ssp. *insularis, Dudleya nesiotica,* and *Malacothamus fasciculatus* var. *nesiotica* as Category 1 taxa. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. *Arctostaphylos confertiflora* and *Galium buxifolium* were included as Category 2 taxa. Category 2 taxa are those for which data in the Service's possession indicate listing is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules. On November 28, 1983, the Service published in the **Federal Register** a supplement to the Notice of Review (48 FR 53640), in which *Arabis hoffmannii* was listed as a Category 1* taxon, the asterisk indicating that the species is believed to be extinct. In the same notice, *Castilleja mollis, Dudleya blochmaniae* ssp. *insularis, Dudleya nesiotica, Helianthemum greenei, Heuchera maxima, Berberis pinnata* ssp. *insularis, Malacothamnus fasciculatus, Phacelia insularis* var. *insularis,* and *Thysanocarpus conchuliferus* were included as Category 2 candidates.

The plant notice was revised again on September 27, 1985 (50 FR 39526). In that notice, all taxa maintained their previous status. On February 21, 1990 (55 FR 6184), the plant notice was again revised. In this notice, *Arabis hoffmannii* was included as a Category 1 candidate, as individuals of this taxon had been rediscovered since the previous Notice of Review. *Arctostaphylos confertiflora, Castilleja mollis, Dudleya blochmaniae* ssp. *insularis, Dudleya nesiotica, Galium buxifolium, Gilia tenuiflora* ssp. *hoffmannii, Helianthemum greenei, Heuchera maxima, Berberis pinnata* ssp. *insularis, Malacothamnus fasciculatus, Phacelia insularis* var. *insularis,* and *Thysanocarpus conchuliferus* were included as Category 2 candidates. *Malacothrix indecora* was included in the February 21, 1990, notice for the first time as a Category 2 candidate.

The plant notice was revised on September 30, 1993 (58 FR 51144). In this notice, *Arabis hoffmannii, Arctostaphylos confertiflora, Castilleja mollis, Dudleya blochmaniae* ssp. *insularis, Galium buxifolium, Gilia tenuiflora* ssp. *hoffmannii, Berberis pinnata* ssp. *insularis, Malacothamnus fasciculatus* var. *nesioticus, Malacothrix indecora, Phacelia insularis* var. *insularis,* and *Thysanocarpus conchuliferus* were included as Category 1 candidates. *Dudleya nesiotica, Helianthemum greenei,* and *Heuchera maxima* were included as Category 2 candidates; *Malacothrix squalida* was included for the first time as a Category 2 candidate. *Dudleya nesiotica, Helianthemum greenei, Heuchera maxima,* and *Malacothrix squalida* are being included in this proposal based on a more thorough review of existing information, and additional information that was brought to the attention of the Service by Steve Junak, botanist at Santa Barbara Botanic Garden. *Dudleya* sp. nov. ''East Point'' is being included in this proposal on the basis of new published information concerning its distinctness as a taxon and a review of existing biological information that indicates the species should be elevated to Category 1 status and that listing is warranted.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Arabis hoffmannii, Castilleja mollis, Dudleya blochmaniae* ssp. *insularis, Dudleya nesiotica, Galium buxifolium, Gilia tenuiflora* ssp. *hoffmannii, Berberis pinnata* ssp. *insularis,* and *Malacothamnus fasciculatus* var. *nesioticus* because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, and 1993. Publication of this proposal constitutes the warranted finding for these species, as well as for *Arctostaphylos confertiflora, Helianthemum greenei, Heuchera maxima, Malacothrix indecora, Malacothrix squalida, Phacelia insularis* var. *insularis,* and *Thysanocarpus conchuliferus.*

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Arabis hoffmannii* (Munz) Roll., *Arctostaphylos confertiflora* Eastw., *Berberis pinnata* Lag. ssp. *insularis* Munz, *Castilleja mollis* Penn., *Dudleya blochmaniae* (Eastw.) Moran ssp. *insularis* (Moran) Moran, *Dudleya nesiotica* (Moran) Moran, *Dudleya* sp. nov. ''East Point'' (S. McCabe), *Galium buxifolium* E. Greene, *Gilia tenuiflora* Benth. ssp. *hoffmannii* (Eastw.) A.& V. Grant, *Helianthemum greenei* Rob., *Heuchera maxima* E. Greene, *Malacothamnus fasciculatus* (Nutt.) E. Greene ssp. *nesioticus* (Rob.) Kearn., *Malacothrix indecora* E. Greene, *Malacothrix squalida* E. Greene, *Phacelia insularis* Munz var. *insularis,* and *Thysanocarpus conchuliferus* E. Greene are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The single most important loss of resources to insular ecosystems is the loss of soils, as the soils are the foundation for the unique island ecosystems and the insular endemic species found within them. This loss of soils is the result of historic grazing and browsing by sheep, goat, cattle, deer, elk, and bison, and rooting by pigs on the various islands starting in the early 1800's, and in certain cases, continuing today.

The increased loss of soils and the resulting change in vegetation have been documented from sediment and pollen records in a soil core dating back 5,200 years from the Old Ranch Canyon marsh on eastern Santa Rosa Island (Cole 1994). Rates of sedimentation prior to the introduction of livestock averaged 9 mm/year (yr) (0.35 in/yr), increasing to 58 mm/yr (2.28 in/yr) after the introduction of grazing (Cole 1994). Pollen records demonstrate that the conversion of brushland to grassland occured with the onset of ranching in the early 1800's. This change in vegetation is reflected by an increased abundance of grass pollen, a decrease in pollen from the mint and pea families, and a massive increase in sediment (Cole 1994). The potential for large sediment loads is also illustrated by the recent attempts to stabilize soils at Johnson's Lee on the south side of Santa Rosa Island; rice straw wattles placed along hillside contours trapped large volumes of sediment after only one season of rains (Sellgren 1994).

A comparison of historical descriptions of island vegetation with current conditions indicates that large-scale alteration of habitats caused by large numbers of non-native mammals on the islands resulted in significant loss of soils as well as changes in plant communities in terms of structural composition, species richness, species composition, and absolute cover. In 1883, Thompson and West described the effects of sheep grazing on Santa Cruz Island: ''The island becomes at some times overstocked, and may be said to be in that condition much of the time. The result is that the grasses, being cropped so close, die out, and allow the loosened soil to be removed by wind and rain'' (Hochberg *et al.* 1980a). However, at that time, vegetation elsewhere on the island was still relatively intact; Greene described mixed forests of large-leaved maple (*Acer macrophyllum*), live oak (*Quercus agrifolia*), black cottonwood (*Populus trichocarpa*), and willow (*Salix laevigata*) thriving in the canyons (Hochberg *et al.* 1980a). Another account was given by Delphine Adelaide Caire in 1933, who reflected on the conditions of Santa Cruz Island: ''Its present natural beauty does not come up to that of the past. The bed of the stream that skirts the Main Ranch on its way from Pacacho Diablo was much narrower than it is today; mountain slopes were heavily wooded and centuries-old oaks were numerous. In the course of years, rains have accomplished their ruinous work, carrying off a great amount of topsoil, the innumerable trails cut by sharp sheep trotters having been a contributing factor in such devastation'' (Hochberg *et al.* 1980a).

The importance of soils in maintaining habitat for the proposed taxa is found not only in their physical properties, but in their biotic properties as well. Healthy soils play host to a complex matrix of soil organisms, including fragile microbial components, that assist in such processes as water-holding capacity, soil fertility, and nutrient cycling. These processes have been adversely affected by the activities of alien mammals. For instance, the loss of leaf litter from trampling and rooting changes soil temperatures, increases the loss of moisture, reduces the humus layers, and results in a reduced soil fauna (Bennett 1993). The breakdown of organic material, transport of fungal spores, and nutrient recycling have been documented for soil mites on Santa Catalina Island (Bennett 1993). Soil mite diversity decreased with increased disturbance, creating impoverished nutrient levels in the soil (Bennett 1993). A feature of arid-land soils (typical of the island soils) is the presence of a cyanobacterial-lichen crust that facilitates stabilization of steep slopes and nutrient cycling (Belnap 1994). The crusts are extremely brittle during the dry summer months and can be eliminated by the shattering influences of trampling by non-native herbivores (Belnap 1994). The historic and current presence of non-native herbivores and pigs has reduced leaf litter and compacted and degraded the soil structure, resulting in accelerated rates of erosion (Klinger *et al.* 1994, Nishida 1994).

Even after the agents that initiated erosion have been removed, loss of soils continues (Clark *et al.* 1990, Halvorson 1993). Because both the biotic and physical properties of the soils have been degraded or lost altogether, the soils that remain behind provide poor conditions for seedlings to germinate and establish. On Santa Rosa Island, a grove of island oaks (*Quercus tomentella*), a Category 2 candidate for Federal listing, has shown few signs of regeneration on soils severely affected by erosion even after an exclosure was built to eliminate cattle, elk, and deer (Danielsen 1989a, 1989b). All 16 taxa in this proposed rule are threatened with habitat instability due to the loss and degradation of soils on all islands.

Several historic accounts include specific references to the abundance and distribution of several of the proposed taxa, which can be compared to current abundance and distribution information. In a letter to Hoffmann in 1932 concerning *Berberis pinnata* ssp. *insularis,* Munz remarked that, ''Brandegee says of *B. pinnata,* that it is 'common' on S.C.'' (S. Junak, in litt. 1994); *Berberis pinnata* ssp. *insularis* is currently known from three small populations. In 1890, Brandegee wrote that *Heuchera maxima* was ''not uncommon throughout Santa Cruz Island'' (Hochberg *et al.* 1980a); it is currently reduced to 12 populations on that island, and 11 populations on West Anacapa Island. Apparently, *Malacothamnus fasciculatus* var. *nesioticus* was already rare by the turn of the century; Greene wrote that the plant was ''rare; only two bushes seen, and these under the protection of large opuntias; perhaps thus kept from the sheep'' (Hochberg *et al.* 1980a).

Seabirds have altered historic habitat for *Malacothrix indecora* on San Miguel Island and Prince Island, and known sites for *Malacothrix squalida* on Anacapa Island. CINP has been monitoring certain seabirds, including the double-crested cormorant (*Phalacrocorax auritus*), the pelagic cormorant (*Phalacrocorax pelagicus*), the federally endangered brown pelican (*Pelecanus occidentalis*), the western gull (*Larus occidentalis*), and Cassin's auklet (*Ptychoramphus aleuticus*), on islands within CINP since 1985. Many of these bird species experienced severe population declines in the late 1960's and early 1970's as a result of DDT-related reproductive failures (Ingram 1994). However, monitoring results indicate that populations of most of these birds have increased over the past decade. Seabirds use local vegetation to construct nests on cliff and blufftop sites, create localized soil disturbances that facilitate establishment of alien plant species, and promote erosion of coastal bluffs. Seabird activity has been noted on Middle Anacapa Island within habitat for *Malacothrix squalida* (S. Junak, pers. comm. 1994).

In 1990, seabirds on Prince Island included 10,000 Cassin's auklets and 240 double-crested cormorants (Ingram 1994); other seabirds that nest on the island but were not monitored include the ashy storm-petrel (*Oceanodroma homochroa*), Leach's storm-petrel (*Oceanodroma lencorhoa*), Brandt's cormorant (*Phalacrocorax penicillatus*), pelagic cormorant, brown pelican, western gull, pigeon guillemot (*Cepphus columba*), and Xantus' murrelet (*Synthliboramphus hypoleuca*). Due to the degree of protection afforded this nesting activity by CINP, surveys for *Malacothrix indecora* within historic habitat have not been done since the taxon was last seen there in 1978. Given the size of the island (24 hectares (60 acres)) and the number of nesting birds, habitat for *Malacothrix indecora* has likely been affected.

Compaction of soils and crushing of plants resulting from vehicle traffic is a potential threat to three of the proposed taxa on Santa Rosa Island: *Dudleya blochmaniae* ssp. *insularis, Dudleya* sp. nov. ''East Point,'' and *Gilia tenuiflora* ssp. *hoffmannii.* Populations of all three taxa occur at sites where vehicles were historically or are currently used. The only known population of *Gilia tenuiflora* ssp. *hoffmannii* is bisected by a road.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Unrestricted collecting for scientific or horticultural purposes and excessive visits by individuals interested in seeing rare plants constitutes a potential threat to certain of the taxa in this proposal. In particular, the collection of whole plants or reproductive parts of those annual or herbaceous perennial taxa with fewer than 100 individuals, including *Arabis hoffmannii, Berberis pinnata* ssp. *insularis, Malacothamnus fasciculatus* var. *nesioticus, Malacothrix indecora, Malacothrix squalida,* and *Thysanocarpus conchuliferus,* could adversely affect the genetic viability and survival of those taxa. In the horticultural trade, *Dudleya* species have, in particular, been favorite collection items. *Dudleya* sp. nov. ''East Point'' was collected and introduced into the horticultural trade long ago as ''white sprite.'' *Dudleya blochmaniae* ssp. *insularis* and *Dudleya nesiotica,* though not in the trade, have been cultivated by Dudleya enthusiasts. The limited distribution of these three taxa makes them vulnerable to such enthusiasts. *Heuchera maxima* is also found in cultivation; the threat of collection for this taxon is unknown.

C. Disease or Predation

In 1875, when sheep stocking on Santa Cruz Island was around 50,000 head, botanist J.T. Rothrock reported that the island was so overgrazed that ''it was with difficulty that I could get even a decent botanical specimen'' (Hobbs 1983). Although sheep grazing has been removed as a current threat, the decades of overgrazing by sheep have had long-term effects in reducing the reproductive capabilities and distribution of many of the taxa included in this proposal. A review of literature pertinent to effects of sheep on island vegetation is included in Hochberg *et al.* (1980a). Feral pigs, feral goats, sheep, deer, elk, horses, and bison currently occur in habitats that support populations of most of the taxa included in this proposal. In addition to modifying habitat through altering the structure and composition of plant communities, altering hydrologic and soil characteristics, and increasing the potential for erosion as discussed under Factor A, non-native mammals also affect the proposed plant taxa through direct herbivory. The effects of defoliation on plants include decreased aboveground biomass, fewer stems, less seed, reduced height of leaves and stems, decreased root biomass, reduced root length, decreased carbohydrate reserves, and reduced vigor (Heady in Willoughby 1986).

The effects of grazing animals on plants can be demonstrated by studies on oaks and pines on the Channel Islands. On Santa Cruz Island, oak groves are more numerous and in better condition than those on Santa Rosa Island, but still show no signs of recruitment due to pig rooting. A recent comparison of fenced and unfenced sites under live oak (*Quercus agrifolia*) tree canopies showed a significant number of oak seedlings within the fenced sites (Peart *et al.* 1994). On Santa Cruz Island, the removal of feral sheep has been credited with allowing the reestablishment of native woody perennials including the Bishop pine (*Pinus muricata*) (Wehtje 1994). On Santa Rosa Island, the Bishop pine continues to display low recruitment and high older-tree mortality caused by deer browsing, placing the population ''at risk'' (of extirpation) under present conditions (Viers and Halvorson 1994). The Santa Cruz Island ironwood (*Lyonothamnus floribundus* ssp. *asplenifolius*), a Category 2 candidate for Federal listing, is similarly lacking in recruitment on Santa Rosa Island.

Clark *et al.* (1990) noted that most individuals of Santa Rosa Island manzanita suffer from severe browsing by elk and deer. The shape of individual shrubs has been modified as a result of browsing. Short-statured shrubs have been hedged to the point that they do not grow above a certain height; in shrubs that attained a taller stature before browsing pressure became severe, all lower limbs and leaves have been stripped, resulting in a ''lollipop'' or tree-shaped shrub. Apparently, the browsing pressure on Santa Rosa Island manzanita has affected its ability to reproduce; Clark reported not seeing a single seedling during a survey in 1988 (Ronilee Clark, ecologist, California Park Service, pers. comm. 1994).

The widespread effects of grazing on island vegetation have been illustrated through the above examples; similar effects on the proposed taxa are inferred. However, specific examples of browsing or grazing by alien mammals on certain proposed taxa have been observed, including *Castilleja mollis, Gilia tenuiflora* ssp. *hoffmannii, Arabis hoffmannii,* and *Thysanocarpus conchuliferus.* In 1993, perhaps as much as 20 percent of the Carrington Point populations of *Castilleja mollis* were consumed by deer. Individual plants were excavated, leaving depressions in the sandy soils where plants had been observed five months earlier (Sarah Chaney, CINP, pers. comm. 1993).

Grazing can completely eliminate plants and prevent the supplement of seed to the seed bank. Of the six collections of *Gilia* in the herbarium at the Santa Barbara Botanic Garden, only two collections made during April 1941 show no signs of browsing. The remaining four collections were made between the months of May and June between 1963 and 1978, and all show signs of having been browsed (Rutherford and Thomas, in litt. 1994). In 1993, Thomas visited the *Gilia* population twice; during the first visit in April, the *Gilia* had not been browsed, but by the second visit in May, the *Gilia* had been browsed (Thomas, in litt. 1993). In response to such browsing, the annual *Gilia* forms multiple side branches; an individual plant may produce a greater number of flowers, but this does not necessarily increase the fecundity of the plant (Painter and Belsky 1993). Flowers produced later in the season out of synchrony with pollinator activity lowers seed productivity.

The Nature Conservancy has been monitoring population sizes for *Arabis hoffmannii* on Santa Cruz Island since 1990. In 1993, only 19 individuals were observed in the Centinela population; this represented a net loss of 13 individuals from the previous year, with mortality of 9 of those plants ''directly attributed to pig rooting'' (Klinger 1994a). Pigs also ''rooted up entirely'' 6 out of 14 populations of *Thysanocarpus conchuliferus* that were monitored in 1993 (Klinger 1994b).

All of the taxa included in this proposal, with the exception of *Berberis pinnata* ssp. *insularis,* have populations that are subject to predation by one or more non-native mammals. Apparently, the roots of *Berberis* species are often toxic (Williams 1993), making consumption by feral pigs unlikely.

The response of plant communities to the removal of grazing depends in part on the degree of disturbance that has already been caused by grazing. Lightly grazed areas may return to pregrazing conditions more quickly. In areas that have been more heavily grazed, the loss of soils and their physical and biotic properties may favor the recovery of certain species over others once grazing has been eliminated. If ecosystem processes have been reduced or eliminated through heavy and/or long-term grazing, pre-grazing conditions may never be attained during the recovery process. The effects of the removal of grazing from the proposed taxa are unknown. While populations of other island taxa have increased once grazing pressure has been removed (Peart *et al.* 1994, Wehtje 1994), other taxa, such as the insular form of Torrey pine (Pinus torreyana), may decrease with a reduction in grazing pressure (Viers and Halvorson 1994). Junak observed that after sheep were removed in 1989, Helianthemum greenei populations increased in size for several years, most likely in response to the release of grazing pressure. However, with grazing pressure removed, other shrub taxa also increased in cover, leading to increased competition for resources, and a subsequent decline in *Helianthemum greenei* population sizes (S. Junak, pers. comm. 1994).

Diseases are not specifically known to threaten any of the taxa included in this proposal.

D. The Inadequacy of Existing Regulatory Mechanisms

Under the Native Plant Protection Act (sec. 1900 *et seq.* of the Fish and Game Code) and the California Endangered Species Act (sec. 2050 *et seq.*), the California Fish and Game Commission has listed *Dudleya nesiotica* and *Galium buxifolium* as rare and *Berberis pinnata* ssp. *insularis* and *Malacothamnus fasciculatus* ssp. *nesiotica* as endangered. The remaining taxa included in this listing proposal, excepting *Dudleya* sp. nov. ''East Point,'' are on List 1B of the California Native Plant Society's Inventory (Smith and Berg 1988), indicating that, in accordance with sec. 1901, chapter 10 of the California Department of Fish and Game Code, they are eligible for State listing. Though both the Native Plant Protection Act and the California Endangered Species Act prohibit the ''take'' of State-listed plants (sec. 1908 and sec. 2080 of the Fish and Game Code), State law appears to exempt the destruction of such plants via habitat modification or land use change by the landowner. After the California Department of Fish and Game notifies a landowner that a State-listed plant grows on his or her property, State law requires only that the landowner notify the agency ''at least 10 days in advance of changing the land use to allow salvage of such plant'' (sec. 1913). Privately owned lands that support populations of the taxa in this proposal include most of Santa Cruz Island, 90 percent of which is owned by TNC; the remaining 10 percent is owned jointly by NPS and a private landowner. On Santa Catalina Island, habitat for *Helianthemum greenei* occurs on land managed by the Catalina Conservancy, a private conservancy owned by the Catalina Island Company. In general, these State regulatory mechanisms would not likely be invoked, because major changes in land use, such as development projects, are not likely to be proposed on these properties. Furthermore, without such proposed changes in land use, the State is unlikely to take regulatory action over ongoing activities, such as cattle, sheep, goat, and bison grazing, and deer browsing.

The California Fish and Game Commission (Commission) also regulates hunting on private and public lands by issuing permits for the take of a specified number of animals and taking measures to manage herd sizes. The Commission issues permits for deer hunting on Santa Catalina Island. In 1993, the Commission issued 300 tags for deer hunting on the island; due to an increasing herd size, the Commission may grant a request from the Catalina Island Company to issue a larger number of tags in 1994 (Ken Mayer, California Department of Fish and Game (CDFG), pers. comm. 1994). Pigs are considered livestock if they are fenced or marked, but considered wild game if they are unfenced and unmarked. The Catalina Island Company has entered into a Memorandum of Understanding (MOU) with CDFG to allow eradication of feral pigs on Catalina Island (Mayer, pers. comm. 1994). A similar MOU between CDFG and TNC exists for the removal of pigs from Santa Cruz Island. Bison, which occur on Santa Catalina Island, are considered livestock and therefore not regulated by any agency. Apparently, the Commission has no regulatory authority over hunting or herd size of deer and elk on Santa Rosa Island, because these ungulates were originally transported there under a game breeder's permit in the early 1900's.

Several Federal laws, Department of the Interior policies, and National Park Service policies and guidelines apply to the management of NPS lands. These laws and guidelines include the National Environmental Policy Act (NEPA), the Endangered Species Act, NPS guidelines for natural resources management (NPS 1991), and the CINP Statement for Management (NPS 1985). The 1980 Congressional legislation enabling purchase of Santa Rosa Island as a national park from the Vail and Vickers Company stated that the owner ''may retain for himself a right of use and occupancy of all or such portion of the property as the owner may elect for a definite term of not more than twenty-five years, or ending at the death of the owner, or his spouse, whichever is later. The owner shall elect the term to be reserved. Any such right retained pursuant to this subsection with respect to any property shall be subject to termination by the Secretary upon his determination that such property is being used for any purpose which is incompatible with the administration of the park, or with the preservation of the resources therein, and it shall terminate by operation of law upon notification by the Secretary to the holder of the right of such determination and tendering to him the amount equal to the fair market value of that portion which remains unexpired'' (Public Law 96–199, 94 Stat. 67, March 5, 1980). The legislation also directed the Secretary to complete a natural resources study within two years that would supply an inventory of all terrestrial and marine species, indicating their population dynamics, and probable trends as to future numbers and welfare, and to recommend action that should be adopted to better protect the natural resources of the park.

Under this legislation, the former owners, the Vail and Vickers Company, chose to retain the rights to occupy 3.1 hectares (7.6 acres), to continue the cattle ranching operation, and to continue a commercial deer and elk hunting operation. To allow such continued use, NPS issues Special Use Permits (SUP) for five-year terms. The first SUP that was issued to Vail and Vickers Company included a condition that a range management plan be developed within five years. The plan, however, does not address protection of the proposed taxa (USFWS 1991, 1992, 1993). Due to unresolved NEPA issues (the apparent need to prepare an Environmental Impact Statement for the first SUP), the Record of Decision for the document has not been signed.

In a recent review of the range management plan, the Service found that measuring residual dry matter, the proposed means of determining appropriate stocking rates, is inadequate to monitor other indicators of ecosystem health, including composition and diversity of species, and the condition of candidate plant species (USFWS 1993). The monitoring of sensitive resources within grazed areas is commonly recommended (NPS 1991, Ruyle 1987, Willoughby 1986), but in this case has not been included in the range management plan. Currently, the condition of the vegetation on Santa Rosa Island is monitored by assessing the residual dry matter of grassland vegetation, which is composed primarily of non-native species (NPS 1993).

San Miguel Island and adjacent Prince Island (a small islet) are under the jurisdiction of the Department of the Navy (Navy), but NPS assists in the management of natural, historic, and scientific values of San Miguel Island through a Memorandum of Agreement (MOA) originally signed in 1963, an amendment signed in 1976, and a supplemental Interagency Agreement (IA) signed in 1985. The MOA states that the ''paramount use of the islands and their environs shall be for the purpose of a missile test range, and all activities conducted by or in behalf of the Department of the Interior on such islands, shall recognize the priority of such use'' (Department of the Navy 1963). In addition to San Miguel Island, four other islands including Anacapa, Santa Barbara, Santa Cruz, and Santa Rosa lie wholly within the Navy's Pacific Missile Test Center (PMTC) Sea Test Range. The 1985 IA provides for PMTC to have access and use of portions of those islands, for expeditious processing of any necessary permits by NPS, and for mitigation of damage of park resources from any such activity (Department of the Navy 1985). Should the Navy no longer require use of the islands, NPS would seek authorization for the islands to be preserved and protected as units within the NPS system (Department of the Navy 1976). To date, conflicts concerning protection of sensitive resources on San Miguel Island have not occurred; however, protection and management for the three proposed taxa that occur on the island, Galium buxifolium, Malacothrix squalida, and Phacelia insularis ssp. insularis, have not been addressed, leaving in question which agency has ultimate responsibility to do so.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Several species of non-native aggressive plant species are considered problematic invaders, including Australian fireweed (Erechtites glomerata), several species of iceplant (Carpobrotus spp., Mesembryanthemum spp.), several thistle species (Centaurea spp., Cirsium spp., Silybum sp.), German ivy (Senecio mikanoides), hoary cress (Cardaria draba), and Russian thistle (Salsola iberica). Over 180 species of non-native plant species have been documented from the northern island group (Hochberg et al. 1979, Halvorson et al. 1987). Displacement of native habitats and species has been a concern for the natural resource managers on the islands.

Fennel (Foeniculum vulgare) has apparently become widespread since the removal of sheep from Santa Cruz Island. Fennel was noticed as a pest species prior to the removal of sheep as reported in Hobbs (1983). Sheep kept the plant from growing to its full height of 2 m (6 ft); since their removal, the plant has ''appeared'' over large areas of the island. Several papers were presented at a recent (1994) symposium on techniques used to control fennel (Brenton and Klinger 1994, Dash and Gliessman 1994, Gliessman 1994), which, when left unchecked, completely dominates the habitats it occupies to the exclusion of other species. Fennel apparently contains a chemical that prevents other species from competing for occupied sites (Gliessman 1994).

Incidental introductions of seed to the Channel Islands occur constantly; sources include wind-blown seed from the mainland, introductions from restocking non-native animals, and operational equipment (vehicles and construction materials). Deliberate introductions of seed also occur; during the 1960's, one pilot recalled scattering bags of commercial wildflower and grass seed on most of the northern Channel Islands (Rutherford, in litt. 1994). When new introductions and established seed sources occur in areas with consistent disturbance resulting from grazing, browsing, and rooting by non-native mammals, the invasions can become overwhelming. These invasive species have a high probability of preventing recruitment and causing habitat displacement of all taxa in this proposed rule.

TNC acquired nine-tenths of Santa Cruz Island from the previous landowner in 1987. TNC's general goals for preserve management include the preservation, protection, restoration, and understanding of the natural resources (Rob Klinger, TNC, Santa Cruz Island, pers. comm. 1994). Although a specific management plan for the Santa Cruz Island Preserve has not been developed, certain management activities have already been undertaken. These activities include long-term monitoring of specific plant communities and rare plant populations; trial programs in feral pig removal, herbicide treatment of alien plant species, and controlled burns in grassland and island pine communities; and research on specific species, and response of plant communities to removal of non-native mammals. A five-year trial feral pig removal program was successful in removing all but a few pigs from a 2,400-hectare (6,000-acre) exclosure on the south side of the island. The number of pigs has begun to increase. TNC also took immediate steps to remove sheep upon acquiring the property, but has been unable to manage the apparent rapid invasion of alien fennel that resulted from the release of grazing pressure. TNC is exploring options for implementing island-wide feral pig removal and other management activities; these options may include developing an agreement with NPS for that agency to manage the island.

The species that occupy insular habitats, like those found on the nearby mainland, have characteristics that enable them to recover from fire events. These characteristics include the production of seeds that respond favorably to fire temperatures and chemical products (charates) and root burls that resprout following a fire (Carroll *et al.* 1993). Tree ring histories from island Torrey pines with fire scars reveal that pre-livestock fire events occurred at 20 to 30 year intervals (Viers and Halvorson 1994). Since little evidence exists that lightning fires occur at these frequencies (Carroll *et al.* 1993), man is implicated as the principal agent of ignition (Timbrook *et al.* 1982).

Fire has been removed as a functioning ecological process on the islands for over 150 years. The absence of fire has created an imbalance in recruitment and regeneration of ecosystem components, including many of the proposed species. Therefore, the current distribution of island vegetation does not represent prehistoric conditions (Minnich 1980). Many of the brushland species will not regenerate without fire and with age will die back. Browsing and grazing animals reduce the probability of survival for these fire-adapted species by removing seed and seedlings. This could be devastating to recruitment following a fire event. Seedling consumption could effectively terminate the subsequent generation necessary to re-establish the seed bank.

The fuel load (the amount of standing and downed vegetation) has been dramatically altered from heavy (brush) to light (grass) through the agents of ranching and sport hunting management. The characteristic fire intensities and durations shifted from long duration and high intensity with brush fuels to short duration and light intensities with grass fuels. The life history requirements of most taxa in this proposed rule (*Arabis hoffmannii, Arctostaphylos confertiflora, Berberis pinnata* ssp. *insularis, Castilleja mollis, Galium buxifolium, Helianthemum greenei, Malacothamnus fasciculatus* var. *nesioticus, Malacothrix indecora, Malacothrix squalida, Phacelia insularis* ssp. *insularis,* and *Thysanocarpus conchuliferus*) are based upon the occurrence of fires to promote reproduction and reduce competition with other species.

Many of the known pollinators on the islands are ground-nesting insects (Miller 1985, Miller and Davis 1985). The habitat of these ground-nesting insects has been and is being degraded by trampling and serious loss of soils to active erosion on all of the islands.

The small numbers of isolated populations and individuals of most of these taxa increase the potential for extinction from stochastic events. Five of the proposed taxa, *Dudleya blochmaniae* ssp. *insularis, Dudleya* sp. nov. ''East Point,'' *Dudleya nesiotica, Gilia hoffmannii,* and *Malacothrix indecora,* are known from single populations. Six other proposed taxa, *Arabis hoffmannii, Berberis pinnata* ssp. *insularis, Castilleja mollis, Malacothamnus fasciculatus* ssp. *nesioticus, Malacothrix squalida,* and *Phacelia insularis* ssp. *insularis,* are known from only two to five populations.

Species with small numbers of populations and individuals are subject to the threat of stochastic extinction in several ways. First, the loss of genetic diversity may decrease the species' ability to maintain fitness within the environment, and is frequently manifested in depressed reproductive vigor. From the genetic analyses conducted for the two populations of *Malacothamnus fasciculatus* var. *nesioticus,* Swenson *et al.* (in prep.) concluded that the two genotypes represented in each of the two populations ''probably represent only a portion of the diversity once present in var. *nesioticus.*'' Elisens (1994) documented reduced levels of genetic diversity in *Galvesia speciosa,* a Channel Islands endemic plant and Category 2 candidate for Federal listing, and noted that the levels were ''likely the result of decreased population sizes initiated by human activities and herbivore introductions.''

Secondly, species with low numbers of populations or individuals may be subject to forces that affect their ability to complete their life cycle successfully. *Arctostaphylos confertiflora,* like a host of other perennial shrub and tree taxa that are candidates for Federal listing on the northern Channel Islands, provides an excellent example of this type of threat. The only remaining individuals of this species are of moderate to old age, and the establishment of new individuals is completely lacking. The effects of browsing animals on critical portions of the species' life cycle has resulted in the inability of the species to establish new individuals to replenish the population. The degree of pollination success for manzanita flowers is unknown; however, the presence of alien grazing and browsing animals has most likely depressed the number of native pollinators available to the native plants. Even if pollination occurs and results in successful fruiting, the fruits are eaten by browsing animals. Even if fruits escape predation and seeds do germinate, the seedlings are either trampled or eaten by those same animals. All of the species in this rule that occur on Santa Rosa, Santa Cruz, and Santa Catalina Islands are similarly affected.

Thirdly, catastrophic environmental events, such as storms, drought, fire, or landslides, could destroy a significant percentage of a species' individuals, or the only known extant population. *Arabis hoffmannii* and *Thysanocarpus conchuliferus* are examples of species that could sustain losses of individuals and populations through landslides and soil sloughing as a result of storm events.

In summary, stochastic events can affect species on three different levels: through loss of genetic diversity, through chance events in survival and reproduction, and through catastophic environmental events. When numbers of populations and individuals reach critically low levels, more than one of the three types of stochastic events may combine to cause extinction. For instance, a species that has had low reproductive success due to grazing or browsing pressure during a critical portion of its life cycle may subsequently be subject to a severe drought or storm event that eliminates any remaining individuals or populations. Stochastic extinction constitutes a major threat to all of the taxa being proposed.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to propose this rule. Based on this evaluation, the preferred action is to propose *Arabis hoffmannii, Arctostaphylos confertiflora, Berberis pinnata* ssp. *insularis, Castilleja mollis, Dudleya blochmaniae* ssp. *insularis, Dudleya* sp. nov. ''East Point,'' *Dudleya nesiotica, Galium buxifolium, Gilia tenuiflora* ssp. *hoffmannii, Helianthemum greenei, Heuchera maxima, Malacothamnus* *fasciculatus* ssp. *nesioticus, Malacothrix indecora, Malacothrix squalida, Phacelia insularis* ssp. *insularis,* and *Thysanocarpus conchuliferus* as endangered. Threats to the 16 taxa include soil loss, habitat alteration by mammals alien to the Channel Islands (pigs, goats, sheep, donkeys, cattle, deer, elk, horses, bison) and direct predation by these same alien mammals, habitat alteration by native seabirds, habitat alteration due to vehicular traffic, overcollection for scientific or horticultural purposes, and competition with alien plant taxa. The 16 taxa also have an increased vulnerability to extinction due to reduced genetic viability, depressed reproductive vigor, and stochastic environmental events resulting from small numbers of individuals and populations. Because these 16 taxa are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act. Critical habitat is not being proposed for these taxa for reasons discussed in the ''Critical Habitat'' section of this proposal.

Critical Habitat

Critical habitat is defined by section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring any protected species to the point at which the measures provided pursuant to the Act are no longer necessary (50 CFR 424.02(c)).

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary specify critical habitat at the time a species is proposed for listing. The Service finds that designation of critical habitat is not prudent for *Arabis hoffmannii, Arctostaphylos confertiflora, Berberis pinnata* ssp. *insularis, Castilleja mollis, Dudleya blochmaniae* ssp. *insularis, Dudleya* sp. nov. ''East Point,'' *Dudleya nesiotica, Galium buxifolium, Gilia tenuiflora* ssp. *hoffmannii, Helianthemum greenei, Heuchera maxima, Malacothamnus fasciculatus* ssp. *nesioticus, Malacothrix indecora, Malacothrix squalida, Phacelia insularis* ssp. *insularis,* and *Thysanocarpus conchuliferus* at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The National Park Service, the Department of Defense, The Nature Conservancy, and other pertinent parties have been notified of the location and importance of protecting these species' habitat. Because protection of these species' habitat will be addressed through the recovery process and through the section 7 consultation process as a result of listing these species, there would be little additional benefit to designating critical habitat. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time as such designation would provide little additional benefit beyond that provided through the section 7 consultation process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service and NPS have recently agreed to pursue development of a Conservation Agreement under the Secretary of the Interior's directive for Federal agencies to cooperate in the conservation of species for which listing may be appropriate (U.S. Dept. of Interior 1994). The Conservation Agreement would focus on the prelisting recovery needs of the other plant and animal candidate taxa from the northern Channel Islands, such that listing for some of those taxa may be avoided, and would also serve as a template for the future development of a recovery strategy for the 16 taxa included in this proposal. In addition, if threats to these 16 taxa can be reduced or eliminated, final listing of some or all of the proposed taxa may be precluded.

Of the 16 proposed taxa, all except 3 (*Dudleya nesiotica, Malacothamnus fasciculatus* ssp. *nesioticus,* and *Thysanocarpus conchuliferus*) have populations or historical habitat located on Federal lands. Three of the taxa (*Galium buxifolium, Malacothrix indecora,* and *Phacelia insularis* ssp. *insularis*) have populations or historical habitat on San Miguel Island, which is owned by the Navy and managed by NPS through a Memorandum of Agreement and Interagency Agreement. Navy activities that could potentially affect these taxa and their habitats include military exercises and equipment testing and retrieval carried out under the Executive Order that established the Pacific Missile Test Center (PMTC) Sea Test Range, which includes Anacapa, San Miguel, Santa Barbara, Santa Cruz, and Santa Rosa Islands and their environs.

Three of the taxa (*Berberis pinnata* ssp. *insularis, Heuchera maxima,* and *Malacothrix squalida*) have populations or historical habitat on Anacapa Island, which is owned and managed by NPS. Eleven of the 16 taxa have populations or historical habitat on Santa Rosa Island, which is owned and managed by NPS. Five of those 11 taxa are single island endemics (*Arctostaphylos confertiflora, Castilleja mollis, Dudleya blochmaniae* ssp. *insularis, Dudleya* sp. nov. ''East Point,'' *Gilia tenuiflora* ssp. *hoffmannii*). NPS activities that could potentially affect these taxa and their habitats include specific management plans, including those that address expansion of park facilities; expansion of visitor services; range management plans, including those that address cattle ranching and deer and elk hunting; alien plant removal programs; and other ecosystem restoration programs. Other activities include the issuing of permits, including Special Use Permits, that authorize continued ranching and hunting operations on Santa Rosa Island. Also included are permits that authorize activities by other agencies or organizations, including rights-of-way to the Department of Commerce to access lighthouse and communication facilities. The enabling legislation that authorized NPS purchase of Santa Rosa Island also provides a mechanism to ensure protection of the island's natural resources. Sections 202(d)(1) and 202(d)(2) of Title II, Public Law 96–199, state that if the Secretary of the Interior determines the property is being used for any purpose that is incompatible with the administration of the park or with the preservation of its resources, the Secretary shall terminate the retained right and use of occupancy by the former owner.

As mentioned above, there are four taxa that occur wholly on lands owned and managed by TNC. Future management of Santa Cruz Island may involve NPS as a cooperator, since the island is within National Park boundaries. NPS has already developed a keen interest in the conservation of the proposed taxa on Santa Cruz Island, and the Service would anticipate coordination with NPS on issues affecting those taxa.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

It is the policy of the Service, published in the **Federal Register**, (59 FR 34272) on July 1, 1994, to identify to the maximum extent practicable at the time a species is listed those activities that would or would not be likely to constitute a violation of section 9 of the Act. The intent of this policy is to clarify the potential impacts of a species' listing on proposed and ongoing activities within the species' range. Nine of the 16 taxa in this proposed rule are known to occur on lands under the jurisdiction of the National Park Service or Department of Defense; an additional 4 taxa historically occurred on these same Federal lands, and potential habitat may still exist. Collection, damage, or destruction of listed species on these lands is prohibited. However, authorization to incidentally remove or destroy such species on Federal lands may be granted by the Fish and Wildlife Service for any otherwise legal action funded, authorized, or implemented by a Federal agency through section 7 of the Act. The removal and reduction to possession of listed species on Federal lands for research activities may be authorized by the Service under section 10(a)(1)(B) of the Act.

Section 9 of the Act prohibits removal, cutting, digging up, damaging, or destroying listed species on Federal or non-Federal lands in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law. As an example, if individuals of a listed plant species were grazed or trampled by cattle while the livestock was trespassing on either Federal or non-Federal land, a violation of section 9 may exist. However, if the livestock grazing occurred under the authority of a local permit on non-Federal land or under a section 7 consultation on Federal land, section 9 would not be violated. Questions regarding whether specific activities would constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Ventura Field Office (see **ADDRESSES** section).

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063, facsimile 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received by September 25, 1995. Such requests must be made in writing and addressed to the Field Office Supervisor of the Ventura Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Field Office (see **ADDRESSES** section).

Authors: The primary authors of this proposed rule are Constance Rutherford and

Tim Thomas, botanists, Ventura Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Arabis hoffmannii	Hoffman's rockcress	U.S.A. (CA)	Brassicaceae—Mustard.	E		NA	NA
*	*	*	*	*	*		*
Arctostaphylos confertiflora.	Santa Rosa Island manzanita.	U.S.A. (CA)	Ericaceae—Heath	E		NA	NA
*	*	*	*	*	*		*
Berberis pinnata ssp. *insularis.*	Island barberry	U.S.A. (CA)	Berberidaceae—Barberry.	E		NA	NA
*	*	*	*	*	*		*
Castilleja mollis	Soft-leaved Indian paintbrush.	U.S.A. (CA)	Scrophulariaceae Figwort.	E		NA	NA
*	*	*	*	*	*		*
Dudleya blochmaniae ssp. *insularis.*	Santa Rosa Island dudleya.	U.S.A. (CA)	Crassulaceae—Stonecrop.	E		NA	NA
*	*	*	*	*	*		*
Dudleya sp. nov. "East Point".	Munchkin dudleya	U.S.A. (CA)	Crassulaceae—Stonecrop.	E		NA	NA
*	*	*	*	*	*		*
Dudleya nesiotica	Santa Cruz Island dudleya.	U.S.A. (CA)	Crassulaceae—Stonecrop.	E		NA	NA
*	*	*	*	*	*		*
Galium buxifolium	Island bedstraw	U.S.A. (CA)	Rubiaceae—Bed-straw.	E		NA	NA
*	*	*	*	*	*		*
Gilia tenuiflora ssp. hoffmannii.	Hoffmann's gilia	U.S.A. (CA)	Polemoniaceae—Phlox.	E		NA	NA
*	*	*	*	*	*		*
Helianthemum greenei.	Island rush rose	U.S.A. (CA)	Cistaceae—Rockrose.	E		NA	NA
*	*	*	*	*	*		*
Heuchera maxima	Island alumroot	U.S.A. (CA)	Saxifragaceae—Saxifrage.	E		NA	NA
*	*	*	*	*	*		*
Malacothamnus fasciculatus ssp. nesioticus.	Santa Cruz Island bush-mallow.	U.S.A. (CA)	Malvaceae— Mallow.	E		NA	NA

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	
Malacothrix indecora	Santa Cruz Island malacothrix.	U.S.A. (CA)	Asteraceae—Aster .	E		NA	NA
*	*	*	*	*	*	*	
Malacothrix squalida	Island malacothrix ...	U.S.A. (CA)	Asteraceae—Aster .	E		NA	NA
*	*	*	*	*	*	*	
Phacelia insularis ssp. insularis.	Island phacelia	U.S.A. (CA)	Hydrophyllaceae .... —Waterleaf	E		NA	NA
*	*	*	*	*	*	*	
Thysanocarpus conchuliferus.	Santa Cruz Island lacepod.	U.S.A. (CA)	Brassicaceae—Mustard.	E		NA	NA
*	*	*	*	*	*	*	

Dated: July 7, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–18242 Filed 7–24–95; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 950407093–5179–02; I.D. 012595A]

Endangered and Threatened Species; Proposed Threatened Status for Three Contiguous ESUs of Coho Salmon Ranging From Oregon Through Central California

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has completed a comprehensive status review of coho salmon (*Oncorhynchus kisutch*) populations from southern British Columbia to southern California, and has identified six evolutionarily significant units (ESUs) within this range. NMFS is now issuing a proposed rule to list three of these ESUs as threatened (Oregon coast, southern Oregon/northern California, and central California coast). NMFS is also adding two ESUs (Puget Sound/Strait of Georgia, lower Columbia River/southwest Washington coast) to the candidate species list because, while there is not sufficient information available at this time to indicate that coho salmon in either ESU warrant protection under the Endangered Species Act (ESA), NMFS has identified specific risk factors and concerns that need to be resolved prior to assessing the overall health of the ESUs.

NMFS is requesting public comments and input on the biological issues pertaining to the proposal. NMFS also is soliciting suggestions and input on integrated local/state/federal conservation measures that might best achieve the purposes of the ESA relative to recovering the health of coho salmon populations and the ecosystems upon which they depend. Should the proposed listings be made final, protective regulations under the Endangered Species Act (ESA) would be put into effect and a recovery program(s) would be implemented.

DATES: Comments must be received by October 23, 1995. NMFS will announce the dates and locations of public hearings in Washington, Oregon, and California in a separate **Federal Register** document. Requests for additional public hearings must be received by September 8, 1995.

ADDRESSES: Comments on this proposed rule and requests for public hearings should be sent to the Environmental and Technical Services Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, 503–230–5430, Craig Wingert, 310–980–4021, or Marta Nammack, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Petition Background

On July 21, 1993, NMFS received a petition from Oregon Trout, Portland Audubon Society, and Siskiyou Regional Educational Project (Oregon Trout et al.) to list five or more ESUs (See Consideration as a ''Species'' under the ESA) of indigenous, naturally spawning coho salmon in Oregon and to designate critical habitat under the ESA. The five ESUs identified by the petitioners included coho salmon populations from rivers south of Cape Blanco, the Coquille and Coos Rivers, the Umpqua River, rivers between the Umpqua and Nehalem rivers, and the Columbia River. On October 27, 1993, NMFS published a notice of finding (58 FR 57770) that a listing may be warranted, soliciting information about the status of all populations of coho salmon in Washington, Oregon, and California. NMFS determined that such an expanded status review was warranted due to the general decline in many West Coast coho salmon populations.

Supplemental to the July 21, 1993, petition, on October 20, 1993, NMFS received a petition from Pacific Rivers Council and 22 co-petitioners (PRC et al.) to list under the ESA, either on an emergency basis or through normal listing procedures, all coho salmon populations in Washington, Idaho, Oregon, and California, and to designate critical habitat. On January 26, 1994, NMFS published a notice of finding (59 FR 3662) that a non-emergency listing may be warranted, soliciting information about the status of all populations of coho salmon ''coastwide'' (hereinafter defined as populations in the southern portion of the species' range inhabiting rivers south of Queen Charlotte Strait, British Columbia). The notice also announced that information submitted in response to the PRC et al. petition would be used in NMFS' coastwide review of coho salmon populations already underway (58 FR 57770, October 27, 1993).

Prior to the Oregon Trout et al. and PRC et al. petitions, NMFS received two separate petitions to list and designate critical habitat for (1) lower Columbia River coho salmon (55 FR 37342, September 11, 1990), and (2) coho salmon in Scott and Waddell Creeks, CA (58 FR 33605, June 18, 1993). For both petitions, NMFS published determinations denying listings because evidence indicated that neither of the petitioned entities constituted a ''species'' under the ESA (56 FR 29553, June 27, 1991, and 59 FR 21744, April 26, 1994). Information considered in these earlier status reviews was also used in NMFS' coastwide review of coho salmon populations.

During the coastwide status review, NMFS assessed the best available scientific and commercial data and received technical information from Pacific Salmon Biological and Technical Committees (PSBTCs) in Washington, Oregon, and California; a committee was not convened in Idaho because coho salmon are extinct in that state (see ESU Determinations). The PSBTCs consisted of scientists (from Federal, state, and local resource agencies, Indian tribes, industries, professional societies, and public interest groups) that have technical expertise relevant to coho salmon. While NMFS' status review focused on coho salmon populations in Washington, Oregon, and California, the geographic scope was broadened to include populations from southern British Columbia, due to their potential similarity to coho salmon populations in Washington.

A NMFS Biological Review Team, comprised of staff from NMFS' Northwest Fisheries Science Center (NWFSC) and Southwest Regional Office, has completed a coastwide status review for coho salmon (Memorandum to G. Smith from M. Schiewe, July 5, 1994, Preliminary Conclusions of the Northwest Science Center's Review of a Petition to List Oregon Populations of Coho Salmon under the U.S. Endangered Species Act; Memorandum to W. Stelle from M. Schiewe, September 2, 1994, Status Review of Coho Salmon from California, Oregon, and Washington; Memorandum to W. Stelle from M. Schiewe, February 22, 1995, Puget Sound Coho Salmon; Memorandum to R. Schmitten from W. Stelle, March 20, 1995, Puget Sound Coho Salmon. Copies of the memoranda are available upon request (see ADDRESSES). The review, summarized below, identifies six ESUs of coho salmon from southern British Columbia, Washington, Oregon, and California. NMFS is now issuing a proposed rule to list three ESUs as threatened under the ESA. Full results of NMFS' status review of coho salmon populations will be published in a forthcoming NOAA Technical Memorandum.

Biological Background

Coho salmon are anadromous, meaning they migrate from the ocean to spawn in fresh water. The species was historically distributed throughout the North Pacific Ocean from central California to Point Hope, AK, through the Aleutian Islands, and from the Anadyr River, Russia, south to Hokkaido, Japan. Historically, this species probably inhabited most coastal streams in Washington, Oregon, and central and northern California. Some populations, now considered extinct, are believed to have migrated hundreds of miles inland to spawn in tributaries of the upper Columbia River in Washington, and the Snake River in Idaho.

In contrast to the life history patterns of other anadromous salmonids, coho salmon in the region under status review generally exhibit a relatively simple, 3 year life cycle. Adults typically begin their freshwater spawning migration in the late summer and fall, spawn by mid-winter, then die. Run and spawn timing of adult coho salmon varies between and within coastal and Columbia River Basin populations (see Ecological/Genetic Diversity). Depending on temperature, eggs incubate in ''redds'' (gravel nests excavated by spawning females) for 1.5 to 4 months before hatching as ''alevins'' (a larval life stage dependent on food stored in a yolk sac). Following yolk sac absorption, alevins emerge from the gravel as young juveniles or ''fry'' and begin actively feeding. Juveniles rear in fresh water for up to 15 months, then migrate to the ocean as ''smolts'' in the spring. Coho salmon typically spend two growing seasons in the ocean before returning to their natal stream to spawn as 3 year-olds. Some precocious males, called ''jacks,'' return to spawn after only 6 months at sea.

During this century, indigenous, naturally-reproducing populations of coho salmon are believed to have been extirpated in nearly all Columbia River tributaries and to be in decline in numerous coastal streams in Washington, Oregon, and California. At least 33 populations have been identified by agencies and conservation groups as being at moderate or high risk of extinction. In general, there is a geographic trend in the status of West Coast coho salmon stocks, with the southernmost and easternmost stocks in the worst condition.

Consideration as a ''Species'' Under the ESA

To qualify for listing as a threatened or endangered species, the identified populations of coho salmon must be considered ''species'' under the ESA. The ESA defines a ''species'' to include any ''distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' NMFS published a policy (56 FR 58612, November 20, 1991) describing how the agency will apply the ESA definition of ''species'' to anadromous salmonid species. This policy provides that a salmonid population will be considered distinct, and hence a species under the ESA, if it represents an ESU of the biological species. A population must satisfy two criteria to be considered an ESU: (1) It must be reproductively isolated from other conspecific population units, and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute, but must be strong enough to permit evolutionarily important differences to accrue in different population units. The second criterion is met if the population contributes substantially to the ecological/genetic diversity of the species as a whole. Guidance on the application of this policy is contained in a scientific paper ''Pacific Salmon (*Oncorhynchus* spp.) and the Definition of 'Species' under the Endangered Species Act'' and a NOAA Technical Memorandum ''Definition of 'Species' Under the Endangered Species Act: Application to Pacific Salmon,'' which are available upon request (see ADDRESSES). The following sections describe the genetic, ecological, and life history characteristics, as well as human-induced genetic changes that NMFS assessed to determine the number and geographic extent of coho salmon ESUs.

International ESUs

In the case of Pacific salmon and anadromous trout, it is likely that a coastwide status review will result in the identification of one or more ESUs that, from a biological standpoint, include populations from foreign countries (e.g., Canada). The ESA encourages international efforts to protect threatened or endangered species and authorizes NMFS to list species occurring in foreign countries after taking into account any efforts being made to protect the species.

Reproductive Isolation

A review of published accounts indicates that homing fidelity in coho salmon is generally strong, with low levels of straying (about 1 percent) estimated for most natural populations that have been studied. On the other hand, coho salmon habitat typically includes small tributaries that experience relatively frequent, temporary blockages, and there are a number of examples in which coho salmon have rapidly recolonized vacant habitat that had only recently become accessible to anadromous fish. Because ESU determinations focus on units that are strongly isolated over evolutionarily important time frames, NMFS concludes that, in general, local spawning populations of coho salmon are unlikely to meet the criterion of reproductive isolation. However, groups of local populations among tributaries within a river drainage may experience substantial, long-term isolation from other such groups.

Genetic data provide useful indirect information on reproductive isolation because they integrate information about migration and gene flow over evolutionarily important time frames. The Genetics Project within the NWFSC is developing a coastwide database of protein electrophoretic data for coho salmon, and the database now includes information for 53 polymorphic gene loci in samples from over 100 populations covering a geographic range from the Trinity River, CA, to Bristol Bay, AK. Published results from several other studies of genetic characteristics of coho salmon populations were also considered. These included additional studies based on protein electrophoresis (Olin 1984, Solazzi 1986, Reisenbichler and Phelps 1987, Wehrhahn and Powell 1987, Bartley 1987, Gall 1991), an agglomerative approach based on data from life history, morphology, and protein electrophoresis (Hjort and Schreck 1982), and two recent studies of variation at the DNA level (Currens and Farnsworth 1993, who examined variation at mitochondrial DNA (mtDNA) and Forbes et al. 1993, who examined variation in nuclear DNA).

Although collectively these studies show that the pattern of relationships among populations is complex, there is a strong geographic component to the observed population structure, and several major stock groupings can be identified. While a few individual samples proved to be exceptions to the general patterns, possible explanations for these results include true ancestral relationships, stock transfers, and random variation in an analysis involving a large number of samples. Major stock groupings resulting from NMFS' analysis are described below.

Southern Oregon/California—Because the NMFS data set included only a single sample from California, the analysis was supplemented with published data from Olin (1984), Bartley (1987), and Gall (1991). This resulted in data for 13 polymorphic gene loci for 26 samples from southern Oregon (south of Cape Blanco) and California, including 4 from the NMFS data set. Limitations of this analysis are that many sample sizes were small, and data were not available for some of the most variable gene loci. Nevertheless, results clearly show two major geographic clusters in this region, separated by a relatively large genetic distance. The northern (and primarily large-river) group includes 12 samples ranging from the Elk River (just south of Cape Blanco) to the Eel River (just north of Cape Mendocino). The southern (and primarily small-river) group includes 11 samples, spanning a geographic range from Fort Bragg to Tomales Bay. There is considerable genetic diversity within both groups, particularly the northern. Three small-river samples from the southern region (Scott, Cottoneva, and Pudding Creeks) are outliers to both of the major groups, and Huckleberry Creek (Eel River Basin) is only loosely allied to the northern group.

Oregon coast—The NMFS study shows that samples of coho salmon from the Oregon coast are genetically distinct from other coastal and Columbia River populations. In addition, there is evidence for genetic differentiation within this group. Samples from four hatcheries on the northern Oregon coast form a group that is well differentiated from other samples. It is not known how accurately these samples reflect genetic characteristics of coho salmon native to this area. Most samples from the Oregon coast are part of a large genetic cluster. This cluster includes both natural and hatchery populations. A third cluster within the Oregon coastal group consists of wild and hatchery samples from the Elk and Umpqua Rivers that also share some degree of similarity with a hatchery sample from the Rogue River.

Hjort and Schreck (1982) also found that a group of hatchery populations from northern Oregon was distinct from other hatchery and natural populations along the Oregon coast. Their study further indicated that Oregon coastal populations of coho salmon differed from those in other regions, including the Columbia River Basin, California, and Washington. Results obtained by Olin (1984) and Solazzi (1986) are generally consistent with the patterns described above. In addition, Solazzi (1986) found that two wild populations from the north coast of Oregon, which were not included in the NMFS data set, clustered with hatchery samples from northern Oregon.

Recent DNA data for Oregon coho salmon are largely consistent with results based on protein electrophoretic analyses. Currens and Farnsworth (1993) identified three major groups within Oregon: (1) North and central Oregon coastal populations, (2) Columbia River populations, and (3) south Oregon coastal populations and two unusual Columbia River populations—the Clatskanie and Clackamas Rivers. Forbes et al. (1993) reported highly significant differences between Columbia River and Oregon coastal coho salmon, but only marginal differences among stocks within these regions.

Lower Columbia River—Another major cluster in the NMFS analysis includes all of the lower Columbia River samples, as well as samples from the southwest Washington coast. Within this larger group, several smaller clusters can be identified. Two of the subclusters, one dominated by samples from Washington and the other by samples from Oregon, include most of the samples from the lower Columbia River. Another subcluster contains three samples from Willapa Bay on the southwest Washington coast. A final subcluster includes samples from the Clackamas and Clatskanie Rivers in the lower Columbia River and samples from the Humptulips and Simpson Hatcheries on the southwest Washington coast. As noted above, Currens and Farnsworth also found a genetic similarity between samples from the Clackamas and Clatskanie Rivers, based on mtDNA markers.

Puget Sound, Strait of Georgia, and Olympic Peninsula—The few samples NMFS examined from Alaska and the upper Fraser River, Canada, are substantially different genetically from all U.S. populations and are not considered further here. In contrast, samples NMFS has examined from Puget Sound and the Strait of Georgia form a coherent genetic cluster. Closely allied to this Puget Sound/Strait of Georgia group is a group of populations from the northwestern Olympic Peninsula (northern coast of Washington and the western end of the Strait of Juan de Fuca). In earlier studies, Reisenbichler and Phelps (1987) found little geographic structure among samples of coho salmon from the northern coast of Washington, whereas Wehrhahn and Powell (1987) found significant differences between samples from the upper Fraser River and the lower coastal mainland of British Columbia. However, because some rare alleles were shared between the latter two areas, Wehrharn and Powell concluded that there are no absolute barriers to dispersal of coho salmon between the lower coastal mainland, lower Vancouver Island, and the Fraser River.

Ecological/Genetic Diversity

Several types of physical and biological evidence were considered in evaluating the contribution of coho salmon from southern British Columbia, Washington, Oregon, and California to the ecological/genetic diversity of the biological species throughout its range. Factors examined included: (1) The physical environment—geology, soil type, air temperature, precipitation, river flow patterns, water temperature, and ocean conditions/upwelling; (2) biogeography—marine, estuarine, and freshwater fish distributions, and vegetation; and (3) life-history traits—smolt size and outmigration timing, age and size at spawning, river entry timing, spawning timing, and marine coded-wire-tag (CWT) recoveries. The relative magnitudes of potential human-induced genetic changes were also considered. The physical and zoogeographic evidence supporting the delineation of each ESU is addressed under ''ESU Determinations.'' Because life history traits provide important insight into the ecological/genetic diversity of the species and can reflect unusual or distinctive adaptations that promote evolutionary processes, a more detailed discussion has been provided below.

Coho salmon life-history traits that show some regional variation include river entry and spawning timing, age at maturity, and marine CWT recovery patterns. River entry and spawning timing patterns of coho salmon are considerably variable in time and space, but some regional patterns exist. Puget Sound coho salmon typically enter the rivers in October, but some basins have very early and late runs. Along the Washington coast, river entry generally occurs in October, with a few exceptionally late or early runs. Historically, Columbia River coho salmon entered fresh water from August through December, while Oregon coho salmon enter rivers in October. Coho salmon in southern Oregon and northern California also enter rivers in September or October. River entry is much later south of the Klamath River Basin, occurring in November and December in basins south of the Klamath River to the Mattole River, CA, and from mid-December to mid-February in rivers farther south.

Spawning timing shows less variation than river entry, but it has similar patterns. Along most of the Washington and Oregon coasts and in Puget Sound, coho salmon spawn in November and December, with exceptionally early and late runs occurring along the Washington coast, in the Columbia River, and in Puget Sound. Spawning in southern Oregon and northern California also occurs in December, but south of the Mattole River it occurs most frequently in January. Because coho salmon enter rivers late and spawn late south of the Mattole River, they spend much less time in the river prior to spawning than do coho salmon farther north. Coho salmon adults in the three-state area overwhelmingly (>95%) spawn at age 3, spending just over a year in fresh water and a year and a half in the ocean (Sandercock 1991). In contrast, many coho salmon adults from southeast Alaska spend over 2 years in fresh water and return to spawn at age 4. It is not known exactly where the transition occurs between these two age structures, but limited information suggests that an increasing proportion of 2 year-old smolts is seen in coho salmon as one approaches the north end of Vancouver Island from the south.

The life-history trait showing the clearest differentiation coastwide is the pattern of ocean distribution inferred from marine recoveries of hatchery fish carrying CWTs. These data, from the Pacific States Marine Fisheries Commission's regional Mark Information System, show that marked coho salmon from southern Oregon and northern California are most frequently recovered from California coastal waters (65 to 92 percent), with some recoveries off Oregon (7 to 34 percent), but almost none off Washington or British Columbia. In contrast, coho salmon from the Oregon coast north of Cape Blanco are recovered primarily in Oregon waters (57 to 60 percent), with significant appearance in California (27 to 39 percent), and low but fairly consistent recovery levels from British Columbia (2 to 6 percent) and Washington (2 to 9 percent). Compared to the Oregon coast populations, Columbia River populations have approximately the same proportion of British Columbia (2 to 16 percent) and Oregon (36 to 67 percent) recoveries, but the California recoveries are considerably lower (1 to 15 percent) and the Washington recoveries correspondingly higher (22 to 54 percent).

Populations from the Washington coast, Puget Sound, and British Columbia have much more northern recovery patterns than those from either the Columbia River or the Oregon coast, although distinctive patterns within Washington and British Columbia are not as obvious as those for groups farther south. Coho salmon released from central British Columbia were frequently recovered off Alaska (15 to 39 percent), with the remainder of the recoveries coming from British Columbia (61 to 85 percent). Coho salmon released along the east and west coasts of Vancouver Island and the southwest British Columbia mainland are caught almost exclusively in British Columbia (90 to 99 percent), with infrequent recoveries in Alaska (less than 1 percent), Washington (0 to 9 percent), and Oregon (less than 2 percent). Coho salmon released from Puget Sound, Hood Canal, and the Strait of Juan de Fuca are recovered from Washington (23 to 72 percent), British Columbia (27 to 74 percent), and Oregon (0 to 3 percent), with essentially no recoveries from Alaska or California. Coho salmon from the Washington coast have similar CWT recovery patterns, but have higher Oregon recoveries than Puget Sound/Hood Canal coho salmon.

Because Puget Sound and Hood Canal coho salmon are caught at high levels in Puget Sound, an area not entered by coho salmon from other areas, recoveries from this area might be considered an extension of freshwater recoveries, which were excluded from the above analyses. Removing Puget Sound recoveries from total Washington marine recoveries results in Puget Sound and Hood Canal coho salmon recovery patterns that are intermediate to those of British Columbia and the Washington coast.

Genetic Changes Due to Human Activities

The effects of artificial propagation and other human activities can be relevant to ESA listing determinations in two ways. First, such activities can genetically change natural populations so much that they no longer represent an evolutionarily significant component of the biological species (Waples 1991). For example, in 1991, NMFS concluded that, as a result of massive and prolonged effects of artificial propagation, harvest, and habitat degradation, the agency could not identify natural populations of coho salmon in the lower Columbia River that qualified for ESA consideration. Second, risks to the viability and genetic integrity of native salmon populations posed by human activities may contribute to their threatened or endangered status (Goodman 1990, Hard et al. 1992). The severity of these effects on natural populations depends both on the nature of the effects (e.g., harvest rate, gear size, or type of hatchery practice) and their magnitude (e.g., duration of a hatchery program and number and life-history stage of hatchery fish involved). Several of these factors may be important to ESA considerations of coho salmon.

Stock transfers—Stock transfers of coho salmon have been (and continue to be) common throughout the West Coast; the nature and magnitude of these transfers varies by geographic region. Compared to areas farther north, hatcheries in central California and southern Oregon/northern California are relatively small and widely dispersed, given the size of both areas. In recent years, large hatcheries in southern Oregon/northern California (e.g., Mad and Trinity Hatcheries) have produced 400,000 to 500,000 juveniles annually, while smaller hatcheries, and most hatcheries in central California, produce no more than 100,000 to 200,000 juveniles each year. There has been considerable transfer of coho salmon among hatcheries or egg-taking stations in central and northern California, with the fish eventually outplanted in either area. Northern California hatcheries have also received fairly large transplants of coho salmon from hatcheries in Washington and Oregon, which have spread to central California through stock transfers. Because of the predominance of hatchery stocks in the Klamath River Basin, stock transfers into Trinity and Iron Gate Hatcheries may have had a substantial impact on natural populations in the basin. In contrast, Cole Rivers Hatchery (on the Rogue River) appears to have relied almost exclusively on native stocks.

Most Oregon coastal hatcheries produce approximately 400,000 to 1,400,000 juveniles annually, although private hatcheries (no longer in operation) recently produced 2 to 5 million juvenile coho salmon annually. Most transfers of coho salmon into Oregon coastal hatcheries have used other Oregon coastal stocks. However, some coastal hatchery programs (notably private hatcheries no longer in existence) made extensive use of Puget Sound coho salmon stocks. Some transfers of Columbia River coho salmon into Oregon coastal hatcheries have occurred, but these were relatively infrequent and minor. Similarly, most outplants of coho salmon into Oregon coastal rivers have used Oregon coastal stocks, with outplants of stocks from other areas being relatively small and infrequent.

Southwest Washington hatcheries are relatively large and numerous for the area, and most produce 1 to 3 million juveniles annually. Hatcheries in southwest Washington have used native stocks in addition to those from Puget Sound/Strait of Georgia, Olympic Peninsula, and the Columbia River. Currently, the magnitude and frequency of stock transfers from outside the area are relatively small. Within southwest Washington, there has been some movement of stocks between rivers draining into Grays Harbor and Willapa Bay. Outplants show a similar pattern to hatchery transfers; coho salmon from Puget Sound/Strait of Georgia, Olympic Peninsula, and a limited number from the Columbia River have been outplanted in southwest Washington, but the most frequent and largest outplants have used southwest Washington stocks.

Hatchery production of coho salmon in the Columbia River far exceeds that of any other area with respect to the number of hatcheries and quantities of fish produced. Many Columbia River hatcheries produce several million smolts annually, with the largest hatcheries releasing up to 10 million smolts in a given year. Extensive stock transfers have occurred within the Columbia River, both within and between hatcheries from Washington and Oregon. Prior to about 1960, transfers of coho salmon from the Oregon coast were also common, and there have been a few introductions of Puget Sound stocks. Columbia River outplanting records show a similar pattern of extensive use of Columbia River and Oregon coast coho salmon, and some Puget Sound stocks. The Clackamas River has also been extensively outplanted with early-running Columbia River stocks and was outplanted with coho salmon from the Oregon coast in 1967.

Most Olympic Peninsula hatcheries produce approximately 1 million juvenile coho salmon annually. In addition to hatchery production, natural production in the area is relatively high, due in large part to nearly pristine habitat within the Olympic National Park. The Quillayute Hatchery has relied primarily on native stocks, while other hatcheries in the area have incorporated stocks from southwest Washington, Puget Sound, and the Columbia River, in addition to Olympic Peninsula stocks. These transfers from outside the Olympic Peninsula are generally considered to represent only a minor contribution to the existing hatchery stocks. Olympic Peninsula drainages are primarily outplanted with Olympic Peninsula stocks; however, some outplants of Puget Sound/Strait of Georgia, southwest Washington, and Columbia River stocks have occurred.

Hatchery production in the Puget Sound/Strait of Georgia is extensive, and many of the larger hatcheries produce several million smolts annually. However, this geographic area is quite large and considerable natural production also occurs. Stock transfers and outplants have also been extensive, but most stocks involved have been derived from within this area. Net pen production in Puget Sound is also fairly extensive, but unlike hatcheries, has no means to attract and spawn salmon that are released from the pens. This can result in straying of pen-reared coho salmon into adjacent rivers.

Run timing—Advancement and compression of run timing are common phenomena in hatchery populations, and these changes can affect future generations of naturally-reproducing fish. Fry of early-spawning adults generally hatch earlier and grow faster, and can thus displace fry of later-spawning natural fish (Chapman 1962). Conversely, early-spawning coho salmon redds are more prone to being destroyed by early fall floods. Consequently, early-spawning individuals may be unable to establish permanent, self-sustaining populations, but may nevertheless adversely affect existing natural populations (Solazzi et al. 1990). A recent study found that over a period of 13 years, the range of spawning timing of coho salmon at five Washington hatcheries decreased from 10 weeks to 3 weeks, causing the range of the period of return to the hatcheries to decrease by one-half (Flagg et al. in press).

Juvenile outplants—Another common hatchery practice with coho salmon is release of ''excess'' hatchery production into natural habitat as fry or parr. Outplanting large numbers of large hatchery juveniles into streams already occupied by naturally-produced juveniles may place the resident fish at a competitive disadvantage and may force them into marginal habitats that have low survival potential (Chapman 1962, Solazzi et al. 1990).

Adult size—Ricker (1981) discussed evidence for declines in size and age of Pacific salmon in this century and suggested that size-selective fisheries were an important factor in the observed trends. Gill nets are probably the most size-selective fishing gear in general use, preferentially harvesting larger fish. Gillnet fisheries are important components of coho salmon harvests in most areas of the Pacific Northwest. Between 1972 and 1993, the size of coho salmon sampled from in-river gillnet fisheries in Puget Sound decreased by about one-half, and a similar declining pattern has been observed by other researchers for the Strait of Georgia (Ricker 1981). There is some evidence for declining size of coho salmon outside the Puget Sound/Strait of Georgia area, but the trends are not as great in other areas.

Declines in adult size can have direct implications for individual reproductive success and population viability. As is the case in other salmon species, coho salmon fecundity is a non-linear function of size (Fleming and Gross 1989), such that a small reduction in size can lead to a substantial reduction in fecundity. Also, smaller coho salmon females dig fewer and significantly shallower redds than do larger females (van den Berghe and Gross 1984). This subjects the redds of smaller individuals to greater risk of destruction by superimposition of other redds or scouring by floods. Flooding frequency has increased throughout much of Puget Sound because of habitat degradation (Booth 1991), further decreasing the survival potential of redds created by small females.

It is not clear whether the dramatic size reductions observed in Puget Sound/Strait of Georgia coho salmon are due to harvest practices, effects of fish culture, declining ocean productivity, density-dependent effects in the marine environment attributable to large numbers of hatchery releases, or a combination of these factors. Similarly, it is not known whether there have been permanent genetic changes related to the size changes in the populations. Regardless of its cause or genetic basis, reduced adult size in itself poses a number of serious risks to natural populations of coho salmon, and could be a sign of other factors placing the population at risk.

ESU Determinations

This is the first NMFS status review that attempts to comprehensively determine ESUs over a broad geographic area. The ESU determinations described here represent a synthesis of a large amount of diverse information. In general, the proposed geographic boundaries for each ESU (i.e., the watersheds within which the members of the ESU are typically found) are supported by several lines of evidence that show similar patterns. However, the diverse data sets are not always entirely congruent (nor would they be expected to be), and the proposed boundaries are not necessarily the only ones possible. For example, in some cases (e.g., on the northern Olympic Peninsula moving from west to east), environmental changes occur over a transition zone rather than abruptly.

Based on the best available biological and commercial information, including the biological effects of human activities, NMFS has identified six ESUs that include coho salmon populations from southern British Columbia, Washington, Oregon, and California. The six ESUs are briefly described and characterized below. Genetic data (from studies of protein electrophoresis and DNA) were the primary evidence considered for the reproductive isolation criterion, supplemented by inferences about barriers to migration created by natural geographic features and human-induced changes resulting from artificial propagation and harvest. Factors considered to be most informative in evaluating ecological/genetic diversity include data pertaining to the physical environment, ocean conditions/upwelling, vegetation, estuarine and freshwater fish distributions, river entry and spawning timing, and marine CWT recoveries. A brief description of population segments now considered to be extinct has also been provided.

(1) Central California Coast

The geographic boundaries of this ESU extend from Punta Gorda in northern California to the San Lorenzo River, in Santa Cruz, CA, and includes coho salmon populations from several tributaries of San Francisco Bay (e.g. Corte Madera and Mill Valley Creeks). Genetic data indicate that most samples from this region differ substantially from coho salmon north of Punta Gorda. Run- and spawn-timing of coho salmon are very late (peaking in January) and appear to be timed to coincide with the single, brief peak of river flow. Freshwater fishes in the region are derived from the Sacramento River fauna. This area is characterized by very erosive soils in the coast range mountains; redwood forest is the dominant coastal vegetation for these drainages. Precipitation is lower here than in areas to the north, and elevated stream temperatures (greater than 20° C) are common in the summer. Coastal upwelling in this region is strong and consistent, resulting in a relatively productive nearshore marine environment. Limited CWT data indicate that nearly all coho salmon from this ESU are captured in California waters.

Available information indicates that the San Lorenzo River currently is the southernmost population of coho salmon, and this is the geographic boundary for the proposed ESU. However, it should be recognized that any coho salmon found spawning south of the San Lorenzo River that have not resulted from stock transfers from outside the ESU are also part of the ESU.

(2) Southern Oregon/northern California Coasts

This ESU includes coho salmon from coastal drainages between Cape Blanco in southern Oregon and Punta Gorda in northern California. Genetic data indicate that most samples from this region differ substantially from coho salmon from south of Punta Gorda. In general, populations from southern Oregon also differ from coastal Oregon populations north of Cape Blanco. However, some samples from the Rogue River show an unexplained genetic affinity to samples from outside the region, including some from the Columbia River. In addition, a sample from the Elk River (just south of Cape Blanco) clusters with samples from the Umpqua River. In contrast to coho salmon from north of Cape Blanco, which are most frequently captured off Oregon, coho salmon from this region are captured primarily in California waters. Freshwater fishes in this region include elements of the Sacramento River fauna, as well as from the Klamath-Rogue Ichthyofaunal Region.

Geologically, this region includes the Klamath Mountains Province, which is not as erosive as the Franciscan formation terrains south of the Klamath River Basin. Dominant vegetation along the coast is redwood forest, while some interior basins are much drier than surrounding areas and are characterized by many endemic species. Elevated stream temperatures are a factor in some of the larger river basins, but not to the extent that they are in river basins south of Punta Gorda. With the exception of major river basins such as the Rogue and Klamath, most rivers in this region have short duration of peak flows. Strong and consistent coastal upwelling begins at about Cape Blanco and continues south into central California, resulting in a relatively productive nearshore marine environment.

(3) Oregon Coast

This ESU includes coho salmon from Oregon coastal drainages between Cape Blanco and the Columbia River. Genetically, coastal Oregon populations are distinct from Columbia River, Washington coastal, and northern California/southern Oregon (see above) populations. Within the Oregon coast ESU, hatchery populations from the north Oregon coast form a distinctive subgroup. Adult run- and spawn-timing are similar to those along the

Washington coast and in the Columbia River, but less variable. CWT recovery patterns for coho salmon released from this area are distinctive, compared to recovery patterns for coho salmon released from ESUs to the north or south. Freshwater fish fauna are primarily of Columbia River origin. Most rivers in this area drain the Coast Range Mountains, have a single peak in flow in December or January, and have relatively low flow during summer and early fall. The coastal region receives fairly high precipitation levels, and the vegetation is dominated by Sitka spruce and western hemlock. Upwelling off the Oregon coast is much more variable and generally weaker than areas south of Cape Blanco. While marine conditions off the Oregon and Washington coasts are similar, the Columbia River has greater influence north of its mouth, and the continental shelf becomes broader off the Washington coast.

(4) Lower Columbia River/southwest Washington Coast

NMFS has concluded that, historically, this ESU included coho salmon from all tributaries of the Columbia River below approximately the Klickitat and Deschutes Rivers, as well as coastal drainages in southwest Washington between the Columbia River and Point Grenville. The Columbia River estuary and Willapa Bay and Grays Harbor in southwest Washington all have extensive intertidal mud and sand flats and differ substantially from estuaries to the north and south. This similarity results from the shared geology of the area and the transportation of Columbia River sediments northward along the Washington coast. Rivers draining into the Columbia River have their headwaters in increasingly drier areas, moving from west to east. Columbia River tributaries that drain the Cascade Mountains have proportionally higher flows in late summer and early fall than rivers on the Oregon coast. CWT data indicate a distinctive oceanic distribution pattern for Columbia River coho salmon, with a higher percentage of Washington recoveries than for Oregon coastal stocks and a much lower percentage of British Columbia recoveries than for Washington coastal populations.

Genetic data indicate that Columbia River coho salmon are distinct from coastal Oregon populations but are similar to populations from several coastal streams in southwest Washington. A major cluster includes all of the lower Columbia River samples, as well as samples from the southwest Washington coast. Within this larger group, several smaller clusters can be identified. Two of the subclusters, one dominated by samples from Washington and the other by samples from Oregon, include most of the samples from the lower Columbia River. Another subcluster contains three samples from Willapa Bay on the southwest Washington coast. A final subcluster includes samples from the Clackamas and Clatskanie Rivers in the lower Columbia River and samples from the Humptulips and Simpson Hatcheries on the southwest Washington coast.

In its 1990–91 status review for lower Columbia River coho salmon (excluding the Clackamas River), NMFS concluded that, historically, at least one ESU of coho salmon probably occurred in the lower Columbia River Basin, but the agency was unable to identify any remaining natural populations that warranted protection under the ESA (58 FR 29553, June 27, 1991). This status review has not uncovered substantial new information on coho salmon populations considered by that earlier status review. However, NMFS has concluded that, historically, coho salmon from the Clackamas River and the southwest Washington coast were probably part of the same ESU as lower Columbia River coho salmon. Late-run Clackamas River coho salmon are thought to at least partially represent native, lower Columbia River coho salmon. The relationship of coho salmon in these two areas to the historic ESU is uncertain.

The Clackamas River historically supported a native, late-run (spawning in December and January) coho salmon population, but access to the upper Clackamas River (above River Mile [RM] 29) was blocked between 1917 and 1939, when the fish ladder on Cazadero Dam failed. After fish passage was restored, late-run coho salmon recolonized the upper Clackamas River. The immigrants are thought to have been primarily natural coho salmon from either the lower Clackamas River, the lower Willamette River, or elsewhere in the lower Columbia River. In 1958, releases of early-run (spawning in October and November) coho salmon of mixed lower Columbia River lineage began in the Clackamas River. Because the timing of early-run and late-run Clackamas coho salmon overlapped extensively, the spawning timings of the two populations may have also overlapped, resulting in mixing of the stocks in the hatchery or on the spawning grounds. Recent (post-1980) divergence of run-timing between early- and late-run coho salmon in the Clackamas River is generally attributed to intensive fishing pressure during the middle part of the run.

Information available to NMFS at the present time is not sufficient to identify any native populations of coho salmon on the southwest Washington coast that would qualify for protection under the ESA. However, we cannot exclude the possibility that some native late-run coho salmon occur in the Chehalis River basin.

(5) Olympic Peninsula

The geographic boundaries of this ESU are entirely within Washington, including coastal drainages from Point Grenville to and including Salt Creek (Strait of Juan de Fuca). Genetic data show that coho salmon from this region are distinct from populations to the south and somewhat differentiated from populations in the Puget Sound area. Coho salmon from the Olympic Peninsula ESU have a more northern ocean distribution than populations from the Columbia River or coastal regions in Oregon, and are more commonly captured in Canadian and Oregonian waters than are coho salmon from the Puget Sound region. This region is characterized by high levels of precipitation and streams with cold water, high average flows, and a relatively long duration of peak flows, including a second peak later in the year resulting from snow melt. In contrast to the more inland areas of Puget Sound, where western hemlock is the dominant forest cover at sea level, lowland vegetation in this region is dominated by Sitka spruce.

The west coast of Vancouver Island in British Columbia shares many of the physical and environmental features of the Olympic Peninsula ESU. However, NMFS has little biological information for coho salmon from this area. The Strait of Juan de Fuca is potentially a strong isolating mechanism, and, although comparable data are not available for coho salmon, genetic data for chinook salmon show that populations from the west coast of Vancouver Island differ genetically from those on the northern Washington coast. Therefore, at least until more complete information becomes available, NMFS has concluded that this ESU does not include coho salmon from Vancouver Island.

(6) Puget Sound/Strait of Georgia

This ESU includes coho salmon from drainages of Puget Sound and Hood Canal, the eastern Olympic Peninsula (east of Salt Creek), and the Strait of Georgia from the eastern side of Vancouver Island and the British Columbia mainland (excluding the upper Fraser River). Genetic and CWT data both show substantial differences between coho salmon from this region and those from the Columbia River and more southern coasts, and more modest differences between coho salmon from this region and populations from the Olympic Peninsula. Coho salmon samples from Puget Sound and the Strait of Georgia form a coherent genetic cluster. The few samples NMFS has examined from Alaska and the upper Fraser River are substantially different genetically from all Washington, Oregon, and California populations. This region is drier than the rain forest area of the western Olympic Peninsula and is dominated by western hemlock forests. Streams are similar to those of the Olympic Peninsula, being characterized by cold water, high average flows, and a relatively long duration of peak flows, including a second snow-melt peak.

Drainages entering the Strait of Georgia from both sides share many of the physical and environmental features that characterize the Puget Sound area. From Vancouver Island south, coho salmon typically smolt at age 1, whereas 2-year old smolts are common from southeast Alaska north. Between the north end of Vancouver Island and southeast Alaska is a transition zone for this life history trait. At about this point (north end of Vancouver Island), the British Columbia mainland assumes more of the physical and environmental characteristics of the outer coast of Vancouver Island. However, genetic and life-history data for populations between the Strait of Georgia and Queen Charlotte Strait are insufficient to identify relationships between coho salmon in this area and those to the north and south. Therefore, NMFS has concluded that, at least until further information is developed, the geographic boundaries of this ESU extend into Canada to include drainages from both sides of the Strait of Georgia as far as the north end of the Strait.

Extinctions Within the Historical Range

Historically, coho salmon have been reported to occur in U.S. waters that are outside of the geographic areas covered by the proposed ESUs. There are few early records documenting coho salmon in the Sacramento River Basin, but it is believed that at least some populations may have existed there prior to 1850 (Brown and Moyle 1991, Bryant 1994). After that time, placer mining, dams, water diversions, and other perturbations caused extreme habitat degradation throughout the basin, and any coho salmon living there would have become extinct. In recent decades, attempts have been made to reintroduce coho salmon to the basin, but these attempts have not been successful. Intermittent reports of small numbers of coho salmon in the Sacramento River are generally attributed to strays or remnants of these stocking programs. NMFS found no evidence that coho salmon eligible for ESA consideration (i.e., indigenous, naturally-reproducing fish) presently occur in the Sacramento River.

Although several tributaries in the upper Columbia River Basin, including the Snake River, once supported coho salmon runs, NMFS is not aware of any native coho salmon production in the upper basin at the present time. Consequently, although the petitioners included Idaho coho salmon in the petition, there are no coho salmon in Idaho that would qualify for listing under the ESA. Columbia River stock summary reports (CIS 1992) identify no coho salmon of native origin in this region, except in the Hood and Deschutes Rivers in Oregon. According to Nehlsen et al. (1991), all coho salmon above Bonneville Dam are extinct, except those spawning in the Hood River. Both the Hood and Deschutes Rivers have had extensive planting of hatchery coho salmon, and no recent natural production estimates are available. Therefore, NMFS has determined that the available evidence indicates that there are no coho salmon populations above Bonneville Dam eligible for ESA consideration at this time.

Status of the Coho Salmon ESUs

The ESA defines the term ‘‘endangered species’’ as ‘‘any species which is in danger of extinction throughout all or a significant portion of its range.’’ The term ‘‘threatened species’’ is defined as ‘‘any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.’’ Thompson (1991) suggested that conventional rules of thumb, analytical approaches, and simulations may all be useful in making this determination. In previous status reviews (e.g., Johnson et al. 1991), NMFS has identified a number of factors that should be considered in evaluating the level of risk faced by an ESU, including: (1) Absolute numbers of fish and their spatial and temporal distribution; (2) current abundance in relation to historical abundance and current carrying capacity of the habitat; (3) trends in abundance; (4) natural and human-influenced factors that cause variability in survival and abundance; (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs); and (6) recent events (e.g., a drought or changes in harvest management) that have predictable short-term consequences for abundance of the ESU.

During the coastwide status review for coho salmon, NMFS evaluated both qualitative and quantitative information to determine whether any proposed ESU is threatened or endangered according to the ESA. Quantitative assessments were based on historical and recent run-size estimates and time series of freshwater spawner and juvenile survey data, angler catch estimates, harvest rate estimates, and counts of adults migrating past dams. Qualitative evaluations considered recent, published assessments by agencies or conservation groups of the status of coho salmon stocks (Nehlsen et al. 1991, Higgins et al. 1992, Nickelson et al. 1992, WDF et al. 1993). A summary of general findings from qualitative assessments follows; specific results will be discussed for each ESU.

Nehlsen et al. (1991) considered salmon stocks throughout Washington, Idaho, Oregon, and California and enumerated all stocks that they found to be extinct or at risk of extinction. They considered 15 coho salmon stocks to be extinct, 2 possibly extinct, 15 at high risk of extinction, 16 at moderate risk of extinction, and 2 of special concern. Coho salmon stocks that do not appear in their summary were either not at risk of extinction or there was insufficient information to classify them. Higgins et al. (1992) used the same classification scheme as Nehlsen et al. (1991), but provided a more detailed review of northern California salmon stocks. Of the 20 coho salmon stocks Higgins et al. identified as being at some risk of extinction, seven were classified as at high risk of extinction and the remainder were classified as of concern. Nickelson et al. (1992) rated coastal (excluding Columbia River Basin) Oregon salmon stocks on the basis of their status over the past 20 years, classifying stocks as ‘‘depressed’’ (spawning habitat underseeded, declining trends, or recent escapements below long-term average), ‘‘healthy’’ (spawning habitat fully seeded and stable or increasing trends), or ‘‘of special concern’’ (300 or fewer spawners or a problem with hatchery interbreeding). Of 55 coastal populations identified, 6 were classified as ‘‘healthy’’, 2 as ‘‘special concern’’, 41 as ‘‘depressed’’, and 6 as ‘‘unknown.’’ WDF et al. (1993) categorized all salmon stocks in Washington on the basis of stock origin (‘‘native,’’ ‘‘non-native,’’ ‘‘mixed,’’ or ‘‘unknown’’), production type (''wild,'' ''composite,'' or ''unknown'') and status (''healthy,'' ''depressed,'' ''critical,'' or ''unknown''). Of the 90 coho salmon stocks identified in Washington, 37 were classified as ''healthy,'' 35 as ''critical'' or ''depressed,'' and 18 as ''unknown.'' Of the 37 ''healthy'' stocks, only 4 (all on the Olympic Peninsula) were identified as ''native'' and ''wild'' production.

Despite recent regulations which have resulted in the closure or severe curtailment of ocean and river harvest along much of the west coast, the number of adult coho salmon returning in 1994 was very low in some river basins. Many of the coho salmon populations which are not in decline have a large hatchery-produced component that could hinder the ability of natural populations to sustain themselves in the long term. Habitat degradation, overfishing, inadequate regulatory mechanisms, negative effects of artificial propagation programs, drought and adverse ocean conditions over the last two decades are believed to be factors contributing to the species' decline.

1. *Central California Coast*—Data are limited for determining the status of this ESU. Recent population estimates have been compiled for NMFS (Brown and Moyle 1991; Brown et al. 1994). Other recent status reviews of coho salmon in California (Bryant 1994, CDFG 1994) have expanded some of the work of Brown and Moyle (1991). In compiling estimates of recent spawner abundance, Brown and Moyle relied on a ''20-fish rule'': If a stream with historic accounts of coho salmon lacked recent data, it was assumed to still support a run of 20 adults; if coho salmon were present in recent stream surveys, they used the larger of 20 or the most recent run estimate. While these estimates are crude, in most cases they are the best data available, and they are generally comparable with other estimates (Bryant 1994, CDFG 1994, Maahs and Gilleard 1994). Unless otherwise indicated, the recent abundance data used to determine the status of this ESU are taken from Brown et al. (1994).

Statewide (including areas outside this ESU) coho salmon spawning escapement in California apparently ranged between 200,000 to 500,000 adults per year in the 1940s (Brown et al. 1994). By the mid-1960s, statewide spawning escapement was estimated to have fallen to about 100,000 fish per year (CDFG 1965, California Advisory Committee on Salmon and Steelhead Trout 1988), followed by a further decline to about 30,000 fish in the mid-1980s (Wahle and Pearson 1987; Brown et al. 1994). From 1987 to 1991, spawning escapement averaged about 31,000, with hatchery populations making up 57% of this total (Brown et al. 1994). Brown et al. (1994) estimated that there are probably less than 5,000 naturally-spawning coho salmon spawning in California each year, and many of these fish are in populations that contain less than 100 individuals.

Estimated average coho salmon spawning escapement in the central California coast ESU for the period from the early 1980's through 1991 was 6,160 naturally-spawning coho salmon and 332 hatchery spawned coho salmon (Brown et al. 1994). Of the naturally-spawning coho salmon, 3,880 were from tributaries in which supplementation occurs (the Noyo River and coastal streams south of San Francisco). Only 160 fish in the range of this ESU (all in the Ten Mile River) were identified as ''native'' fish, lacking a history of supplementation with non-native hatchery stocks. Based on redd counts, the estimated run of coho salmon in the Ten Mile River during the 1991–92 spawning season was 14 to 42 fish (Maahs and Gilleard 1994).

Of 186 streams in the range of the central California ESU identified as having historic accounts of adult coho salmon, recent data exist for 133 (72 percent). Of these 133 streams, 62 (47 percent) have recent records of occurrence of adult coho salmon and 71 (53 percent) no longer have coho salmon spawning runs. Nehlsen et al. (1991) provided no information on individual coho salmon stocks in this region, but identified stocks in small coastal streams north of San Francisco as at moderate risk of extinction, and those in small coastal streams south of San Francisco as at high risk of extinction. Higgins et al. (1992) considered only drainages from the Russian River north, but four coho salmon stocks within this ESU were identified as at risk: Three of special concern and one (Gualala River) as at high risk of extinction.

In comparison with ESUs that occur to the north, it is evident that coho salmon populations in the central California ESU are more depressed and at greater risk of extinction since the abundance of fish is generally lower and a larger number of populations which occurred historically have apparently been extirpated. However, the available data for assessing population numbers and trends over time in the northern portion of this ESU are limited for making a determination as to whether or not the ESU warrants listing as threatened or endangered. In the area south of San Francisco, however, it is clear that coho salmon populations are severely depressed. For this reason, the California Department of Fish and Game (CDFG) has determined that the remaining coho populations south of San Francisco warrant protection as an endangered species under the California Endangered Species Act. However, in that portion of the ESU north of San Francisco, coho salmon populations are more abundant, and in fact most of the fish within the ESU occur there. Thus, while the southernmost populations in the ESU may warrant endangered status, it is not clear that the ESU as a whole is in imminent danger of extinction. In addition to this uncertainty, several actions have been taken or are anticipated which are expected to help protect and conserve coho populations in this ESU.

First, the State of California accepted a petition to list coho populations south of San Francisco in 1994 under the California Endangered Species Act and has been conducting a status review over the past year. Since the petition was accepted, the coho populations proposed for listing by the State have been protected under the State ESA. The CDFG recently completed its review and recommended that these populations be listed under State law as endangered. NMFS anticipates that the State Fish and Game Commission will take action to list these populations, and thereby implement protective actions, in the summer of 1995.

Second, the Pacific Fishery Management Council (PFMC) prohibited the retention of coho salmon in both the commercial and recreational salmon fisheries along the entire west coast in 1994. A similar action prohibiting the retention of coho in all salmon fisheries south of Cape Falcon has been implemented in 1995. These actions were taken because of the depressed status of Oregon and California coastal coho stocks in 1994 and 1995, and are expected to immediately benefit these stocks by increasing escapement.

Finally, the State of California Resources Agency has initiated an effort to coordinate a broad state-wide habitat conservation planning program designed to protect and conserve coho populations in California under the State's Natural Communities Conservation Planning (NCCP) program. This effort will involve the Federal government, all necessary State agencies, county and local jurisdictions, and affected stakeholders, and is aimed at developing a NCCP conservation program for coho salmon which would serve as the basis for an ESA 4(d) rule that could be promulgated by NMFS. The Resources Agency intends to model this planning effort for coho salmon after the NCCP program which was developed and implemented for the California Gnatcatcher in southern California. In a June 21, 1995 letter to NMFS, the Resources Agency emphasized its belief that the conservation and recovery of coho salmon in California can best be accomplished by development and implementation of a NCCP conservation program and promulgation of a special section 4(d) rule because of the complex nature of the habitats, ownership patterns, and interests within the range of coho salmon. In this regard, the Resources Agency has strongly urged that NMFS propose coho salmon in California be listed as threatened so that the full flexibility of section 4(d) rulemaking can be retained and the NCCP planning process can move forward. NMFS believes that the NCCP conservation planning process envisioned by the Resources Agency is the best approach for developing and implementing a successful conservation and recovery strategy for coho salmon in California. However, NMFS also believes it is essential that a NCCP program be developed and implemented as quickly as possible in order to arrest the decline of coho salmon populations in this ESU and promote their successful recovery. In its letter to NMFS, the Resources Agency recognizes the importance of making demonstrable progress in developing an acceptable program for conserving coho salmon in California.

Based on the uncertainty of the data and the high potential for success of the developing NCCP conservation plan, NMFS concludes that the central California coast coho salmon ESU should be proposed for listing as a threatened species. However, during the period between publication of this proposed rule and publication of any final rule, NMFS will be gathering additional information to aid in making a final determination concerning the status of this ESU. Specifically, NMFS will: (1) Gather additional biological information on the status of coho salmon populations in this ESU; (2) attempt to assess the response of coho populations to the fishery conservation measures implemented by the PFMC; (3) review and evaluate any new protective measures implemented by the State of California resulting from the State listing coho south of San Francisco; (4) review and evaluate any additional protective or conservation measures implemented by State or private entities; and (5) evaluate whether the Resources Agency has made satisfactory progress in coordinating the development and implementation of a long-term conservation and recovery strategy for coho salmon in California.

NMFS will consider the State's progress in developing a coho salmon habitat conservation strategy to be satisfactory if a framework protection plan and associated implementation schedule are developed in coordination with NMFS, non-federal agencies, and stakeholders within the next 9 months. To be effective, this protection plan should include both interim protective measures and a long-term protection and monitoring plan. Any implementation schedule developed for the plan should commit to implementation of the long-term component of the plan within 1–2 years of any final federal listing determination. Finally, any protection plan must incorporate increased monitoring of coho salmon populations and habitat conditions so that the continuing status of individual populations can be assessed, and the effectiveness of conservation measures can be evaluated. This coordination effort by the Resources Agency should focus on facilitating the development of local Coordinated Resource Management Planning (CRMP) groups which in turn could be integrated into larger scale bioregional planning groups. This would provide for regional coordination of locally based efforts to improve coho salmon habitat conditions. In the event that NMFS determines there is any new information indicating that coho salmon populations in this ESU are at greater risk of extinction than is currently believed, or that satisfactory progress is not being made by the Resources Agency on developing and implementing a coho conservation program, then NMFS will reconsider this determination in its final rulemaking.

2. *Southern Oregon/northern California coasts*—NMFS examined all available data for naturally-reproducing coho salmon in this ESU. Because this ESU includes spawning runs in both southern Oregon and northern California, information available for inland recoveries and spawning escapements differ widely by geographic area. Data for the Oregon portion of this ESU include adult passage counts at Gold Ray Dam in the upper Rogue River (Cramer et al. 1985), angler catch estimates for all Oregon rivers (ODFW 1992, 1993), and seine-survey estimates of adult coho salmon run size in the Rogue River (Cramer 1994).

Recently, most coho salmon production in the Oregon portion has been in the Rogue River. Recent run-size estimates (1979–86, Cramer 1994) have ranged from approximately 800 to 19,800 naturally-produced adults, and from 500 to 8,300 hatchery-produced adults. Average run sizes for this period were 4,900 natural and 3,900 hatchery fish, with the total run averaging 45 percent hatchery fish. Adult passage counts at Gold Ray Dam provide a long-term view of coho salmon abundance in the upper Rogue River (Cramer et al. 1985). In the 1940's, passage counts averaged approximately 2,000 adults per year. Numbers declined and fluctuated during the 1950's and early 1960's, then stabilized at an average of fewer than 200 adults during the late 1960's and early 1970's. In the late 1970's, the run increased with returning fish produced at Cole Rivers Hatchery. Angler catch of coho salmon in the Rogue River fluctuated considerably, ranging from less than 50 (late 1970's) to a peak of about 800 in 1991; average annual catch over the last 10 years has been about 250 fish. Angler catch in other rivers in southern Oregon has been low, representing only a minor fraction of the total south of Cape Blanco.

While there have been no directed spawner surveys for coho salmon in this region, the species would be expected to be observed in the annual chinook salmon spawner surveys. However, few coho salmon have been observed in these surveys; for example, in 23 years of chinook salmon surveys in six segments of the Elk River, the highest count of coho salmon was 20 adults in 1971. In Oregon south of Cape Blanco, Nehlsen et al. (1991) considered all but two coho salmon stocks to be at high risk of extinction; of the remaining two, one (Euchre Creek) was identified as extinct and the other (Hunter Creek) was not mentioned. (The status of coho salmon in Euchre Creek is in some doubt: No surveys have been conducted recently, but ODFW biologists believe there may be a small coho salmon population there.) South of Cape Blanco, all Oregon coho salmon stocks were rated by Nickelson et al. (1992) as depressed.

Most information for the northern California region of this ESU was recently summarized by the CDFG (CDFG 1994). They concluded that ‘‘coho salmon in California, including hatchery stocks, could be less than 6 percent of their abundance during the 1940's, and have experienced at least a 70 percent decline in numbers since the 1960's’’ (CDFG 1994, p. 5–6). The Klamath River Basin (including the Trinity River) historically supported abundant coho salmon runs. In both systems, runs have been greatly diminished and are now composed largely of hatchery fish, although there may be small wild runs remaining in some tributaries (CDFG 1994). Of 396 streams within the range of this ESU identified as once having coho salmon runs, Brown et al. (1994) were able to find recent survey information on 117 (30 percent) streams. Of these 117 streams, 73 (64 percent) still supported coho salmon runs while 42 (36 percent) have lost their coho salmon runs. The streams identified as presently lacking coho salmon runs were all tributaries of the Klamath and Eel River systems (Brown et al. 1994). The rivers and tributaries in the California portion of this ESU were estimated to have average recent runs of 7,080 natural spawners and 17,156 hatchery returns, with 4,480 identified as ''native'' fish occurring in tributaries having little history of supplementation with non-native fish. In this region of California, Nehlsen et al. (1991) identified coho salmon in the Klamath River as of special concern, and those in small northern streams as at moderate risk of extinction. Higgins et al. (1992) identified 10 coho salmon stocks as of special concern, and 6 as at high risk of extinction.

While there are limited data to assess population numbers or trends in this ESU, NMFS has determined that all coho salmon stocks between Punta Gorda and Cape Blanco are depressed relative to their past abundance. The main stocks in this region (Rogue River, Klamath River, and Trinity River) are heavily influenced by hatcheries, apparently with little natural production in mainstem rivers. The apparent declines in production in these rivers, in conjunction with heavy hatchery production, suggest that the natural populations are not self-sustaining. The status of coho salmon stocks in most small coastal tributaries is not well known, but these populations are small. NMFS concludes that coho salmon in this ESU are presently threatened, i.e., the ESU is likely to become in danger of extinction in the foreseeable future if present trends continue. At least within the California portion of this ESU, NMFS believes that the NCCP conservation planning process described for the Central California Coast ESU is the best approach for developing and implementing a successful conservation and recovery strategy for coho salmon.

3. *Oregon coast*—NMFS bases its proposed listing of this ESU on the following types of information: Historical estimates of abundance, extensive spawner survey records (Cooney and Jacobs 1994), estimates of ocean harvest rates (PFMC 1993), and previous assessments of stock status. Based on historical commercial landing statistics and estimated exploitation rates, Mullen (1981) estimated escapement of coho salmon in coastal Oregon to be nearly 1 million fish in the early 1900's, with harvest of nearly 400,000 fish. In a more extensive analysis of similar data, Lichatowich (1989) concluded that coho salmon abundance in the same region at that time was about 1.4 million fish. Lichatowich also concluded that current production potential (based on stock-recruit models) for coho salmon in Oregon coastal rivers was about 800,000 fish, a reduction of nearly 50 percent in habitat capacity. Recent spawning escapement estimates indicate an average spawning escapement of less than 30,000 adults (Jacobs and Cooney 1991, 1992, 1993). While the methods of estimating total escapement are not comparable between the historical and recent periods, these numbers suggest that current abundance of coho salmon on the Oregon coast may be less than 5 percent of that in the early part of this century.

Kostow et al. (1994) provide estimates of hatchery composition of naturally-spawning coho salmon in several Oregon coastal rivers, ranging from 18 to 62 percent. These estimates are for rivers that are known to have high hatchery influence, so do not represent the average condition along the Oregon coast. However, these rivers represent a substantial portion of natural coho salmon production in Oregon, and indicate that hatchery fish have an extensive presence within the Oregon coastal ESU.

Based on NMFS's examination of the available information, it is apparent that spawning escapements for coho salmon populations in the Oregon coastal ESU have declined substantially during this century. Average spawner abundance has been relatively constant since the late 1970's, but pre-harvest abundance has declined. Spawner-to-spawner return ratios (based on peak counts) have been below replacement in 5 of the past 6 years, in spite of reductions in harvest, and average recruits-per-spawner may also be declining. Of the 43 Oregon coho salmon stocks north of Cape Blanco identified by Nickelson et al. (1992), 31 were considered as either depressed or special concern, and only 6 stocks were considered healthy (the remaining 6 stocks were listed as ''unknown''). In this same region, Nehlsen et al. (1991), classified two stocks (Sixes River and New River) to be at high risk of extinction and 14 stocks at moderate risk of extinction. The heavy hatchery influence on many rivers within this ESU is a cause for concern about the sustainability of natural production in these systems. Also, coastwide abundance of many stocks appears to be very low this year, and there has been a complete ban of most ocean fishing for coho salmon. For these reasons, NMFS concludes that coho salmon in the Oregon coast ESU are presently threatened.

4. *Lower Columbia River/southwest Washington coast*—A status review of lower Columbia River coho salmon stocks outside of the Willamette River Basin has been published by NMFS (Johnson et al. 1991). NMFS concluded that, historically, at least one ESU of coho salmon probably occurred in the lower Columbia River Basin, but the agency was unable to identify any remaining natural populations that warranted protection under the ESA. The information considered in this earlier status review is not repeated here. Based on its present status review, NMFS has determined that the range of the historic ESU probably extended beyond the lower Columbia River to include coho salmon populations from the southwest Washington coast and the Willamette River below Willamette Falls (including the Clackamas River). However, the relationship of natural populations of coho salmon in these two areas to the historic ESU is uncertain.

Several recent reports have evaluated the status of coho salmon in the Columbia River Basin. Nehlsen et al. (1991) classified all coho salmon stocks above Bonneville Dam (except Hood River) as extinct; Hood River, Sandy River, and all other lower Columbia tributary stocks were classified as at high risk of extinction, except the Clackamas River stock, which was classified as at moderate risk of extinction. The historic ESU also included populations in portions of the southwest Washington coast. Nehlsen et al (1991) identified coho salmon stocks in Willapa Bay as at high risk of extinction. WDF et al. (1993) identified the Willapa Bay stocks as of unknown status, but of mixed origin and composite production; they identified all stocks in Grays Harbor tributaries as healthy, but of mixed origin and composite production.

The largest production of coho salmon along the southwest Washington coast is in the Chehalis River Basin. Hiss and Knudsen (1993) estimated that current coho salmon run sizes (before terminal harvest) in this basin (including the Humptulips River) total about 266,000 adults, of which 135,000 are naturally-produced and 131,000 are of hatchery origin. They noted that hatchery influence on these runs has increased rapidly since 1970. Coho salmon in the Chehalis River Basin exhibit two run timings: ''Normal,'' with spawning in early December throughout the basin, and ''late,'' with spawning in January and February in lower Chehalis River tributaries. Hiss and Knudsen suggested that the normal run is composed of a mixture of hatchery and wild fish, while the late run is virtually all wild fish (but they did not specify whether ''wild'' implies native fish, or simply natural production regardless of origin). The two run timings are treated as a single stock for fishery management purposes, and NMFS has no separate abundance estimates for the late run. Hiss and Knudsen identified three streams known to have late-run fish (Bingham Creek, the upper Wynoochee River, and the Wishkah River), and noted that this run has always been less abundant than the normal run, but has been particularly small in recent years. No escapement estimates are available for other streams in Grays Harbor or Willapa Bay.

Abundance of late-run coho salmon in the Clackamas River has been measured since 1950 as adult passage at River Mill (1950 to 1957) and North Fork (1958 to present) Dams, and total run size (early and late runs) has ranged from 416 (1950) to 4,700 (1968). The late portion of the run has ranged from 309 (1958) to 3,588 (1968), however it is unclear whether these are native fish or naturalized hatchery fish. Cramer and Cramer (1994) concluded that production of the population is depressed due to a variety of factors. They further concluded that, under current harvest rates, the population will remain stable, but it is vulnerable to overharvest. Johnson et al. (1991) briefly reviewed abundance data for this population and concluded that it had a low risk of extinction if population parameters remain stable, but recommended close monitoring of the population.

While the number of naturally-reproducing fish within the lower Columbia River/southwest Washington coast ESU is fairly large, evaluating the risk to this ESU is difficult because of the uncertainty about the relationship of the present natural populations to the historic ESU. If native coho salmon persist in the Clackamas River or in southwest Washington, they would represent a small fraction of the ESU's historical abundance. However, it is not presently possible, with the limited information available, to identify with certainty native, naturally-reproducing populations in lower Columbia River tributaries or along the Washington coast south of Point Grenville.

Therefore, NMFS concludes that a listing is not warranted for the lower Columbia River/southwest Washington coast ESU at this time. However, there is sufficient concern regarding the overall health of this ESU (especially in light of evidence that some native, naturally-reproducing fish may exist). Therefore, NMFS is adding the lower Columbia River/southwest Washington coast ESU to the Candidate List until the distribution and status of the native populations can be resolved.

During the period between this proposed rule and publication of any final rule, NMFS will conduct a thorough reevaluation of this ESU and will reconsider the present decision that a listing is not warranted. In the event that this reevaluation establishes that listing the lower Columbia River/southwest Washington coast ESU is warranted, NMFS would issue a proposed rule to list this ESU as threatened or endangered.

5. Olympic Peninsula—Evidence examined by NMFS for this ESU included trends in terminal run size (i.e., the number of adults returning to the river mouth), hatchery contribution, trends in ocean exploitation rate, and trends in the size of fish in terminal landings. Data on terminal run for stocks in this ESU are collected cooperatively by the Washington Department of Fish and Wildlife (WDFW) and the coastal tribes. Spawning escapements to most streams are estimated by extrapolating from cumulative redd counts on index reaches of the streams. Because streams within the range of this ESU typically have highly variable flows during the spawning season, (making it difficult to conduct accurate counts of spawning fish) WDFW and tribal biologists believe that redd counts provide the most reliable estimates of total escapement (PFMC 1990). These natural escapement estimates, combined with hatchery escapements, form the basis for escapement summaries for the Olympic Peninsula (WDF et al. 1993, PFMC 1994). However, no attempt has been made to estimate the number of hatchery-produced fish that spawn naturally.

No trends were detected in terminal run size, and there is no evidence for trends in ocean exploitation rates. In the stock complexes monitored and reported by the PFMC, hatchery returns accounted for 50 percent of the spawning escapement in the period from 1982 through 1992, with the majority of hatchery production contributing to the Quillayute River summer-run, Quinault River, and Queets River stocks (PFMC 1994). Of these stocks, the Quinault River and the Salmon River (tributary of the Queets River) were identified by WDF et al. (1993) as of mixed origin, while the majority of other stocks were identified as of native origin. Average recent (1989 to 1993) natural adult escapement estimates for some of these stocks are (PFMC 1994): Quinault River—4,700, Queets River—5,400, Hoh River—3,100, Quillayute River—800 summer run and 7,500 fall run. NMFS found no historical run-size estimates for these stock complexes to compare with recent abundance, but there have presumably been substantial declines in coho salmon production as a result of well-documented habitat degradation since European settlement.

NMFS also reviewed assessments of coho salmon stocks by Nehlsen et al. (1991) and WDF et al. (1993). Nehlsen et al. identified only one at risk coho salmon stock in this ESU: Lake Ozette coho salmon as of special concern. WDF et al. considered most coho salmon stocks in this ESU to be healthy or of unknown status, representing a mixture of native, mixed, and non-native origins and wild or composite (hatchery and wild) production. Some stocks along the Strait of Juan de Fuca were identified as depressed. WDF et al. identified eight stocks of native origin with wild production in this ESU, four of healthy status and four of unknown status.

NMFS has determined that, relative to the other ESUs, coho salmon abundance within the Olympic Peninsula ESU is moderate, but stable. While these stocks have been reduced from historical levels by large-scale habitat degradation in the lower river basins, there is a significant portion of coho salmon habitat in several rivers protected within the boundaries of Olympic National Park. This habitat refuge, along with the relatively moderate use of hatchery production (primarily derived from native stocks), appears to have protected these coho salmon stocks from the serious losses seen in adjacent regions. While there is continuing cause for concern about habitat destruction and hatchery practices within this ESU, NMFS believes that there is substantial native, natural production of coho salmon in the Olympic Peninsula ESU and that it is not threatened or endangered at this time.

6. Puget Sound/Strait of Georgia—To determine the status of this ESU, NMFS examined spawning escapement data, long-term trends in escapement to counting facilities, hatchery contribution rates, ocean and total exploitation rates, and trends in the size of fish in the terminal landings. Spawning escapements in the Puget

Sound portion of this ESU are estimated primarily by spawner surveys conducted by WDFW in index reaches of selected streams (PFMC 1990). Only three rivers have long-term (extending back to the 1930's or 1940's) escapement data from which to estimate trends. Long-term trap counts at Baker River and White River generally showed declining trends in the 1960's and 1970's, with some evidence of recovery in the 1980s. The number of adults passed above the hatchery racks on the Samish River showed neither increasing nor decreasing trends over a 55-year period. More recent spawner survey data are available for numerous rivers within the range of this ESU, but no reliable breakdown of natural and hatchery production is available for these data. Of the stocks examined for this review, two stocks had significant downward trends, five had significant upward trends, and the remainder had no significant trend.

Ocean exploitation rates on wild coho from the Deschutes River, Snohomish River, and Big Beef Creek declined from the late 1970s through the mid-1980s and have increased since then, but have remained in the range of 0.3 to 0.5. Total exploitation rates have shown no apparent trend, but have fluctuated in the range of 0.6 to 0.9. The average hatchery contribution rate for stocks monitored and reported by the PFMC for the period 1981 to 1992 has been 62 percent, with Nooksack/Samish and South Puget Sound stock complexes managed for, and clearly dominated by, hatchery production.

Bledsoe et al. (1989) examined changes in run sizes of Puget Sound salmon since 1896. They failed to find a statistically significant general decline in run sizes for wild runs of coho salmon in this period, although they did report a dramatic 85-percent decline of coho salmon terminal runs in the south sound from 1935 to 1975, which they attribute at least in part to increasing catch in non-terminal fisheries. Overall catch of coho salmon in Puget Sound fisheries shows a substantial decline from 1896 to the early 1940s, but this is largely attributed to the prohibition of fishing for this species with purse seines and fish traps starting in 1935. Overall catch within Puget Sound has increased gradually since that time, but has not returned to earlier levels, possibly as a result of greater interceptions of coho salmon in ocean fisheries (Bledsoe et al. 1989). Of further note is the fact that between 1972 and 1993, the average size of fish in the terminal landings has undergone a sharp decline from an average of about 4 kg to about 2 kg. This dramatic decline in average fish size, which could result from any of several causes, could seriously reduce the fecundity and fitness of naturally-reproducing fish.

The range of the ESU that includes Puget Sound coho salmon extends into southern British Columbia, for which NMFS has not received detailed abundance information. Northcote and Atagi (in preparation) have reviewed abundance trends for all salmon species in various regions of British Columbia. Two of their regions include fish that are part of this ESU. Coho salmon have shown both historical (1800's to 1953–92 average) and recent (1953 to 1992) declines both on Vancouver Island and along the south-central British Columbia coast (excluding the Fraser River). In both areas, the historical decline was roughly two-fold. On Vancouver Island, coho salmon escapements have recently declined from more than 300,000 in the mid-1950's to about 150,000 at present. Along the south-central coast, escapement declines in the same period have been more dramatic, from about 500,000 in the mid-1950's to less than 100,000 at present. This is a much more severe decline than the trends documented in the U.S. portion of the ESU. Northcote and Atagi did not address levels of hatchery production for British Columbia coho salmon. However, there has been a substantial increase in coho salmon releases from British Columbia hatcheries since 1975 (Hilborn and Winton 1993).

The stock assessment by Nehlsen et al. (1991) identified three coho salmon stocks in this region as at high risk of extinction, and one (Nooksack River) to be possibly extinct. The assessment by WDF et al. considered stocks in this region to range from healthy to critical in status, predominantly of mixed origin, and predominantly of composite production. None of the stocks in this region that they identify as healthy were of strictly native origin. Two stocks (Deer Creek and Sumas/Chilliwack) were identified as of native origin with wild production, but of unknown status.

Systematic assessments of fish habitat conditions have not been routinely conducted within Washington state. Hence it is difficult to directly assess general trends in habitat conditions, either throughout the state or within individual regions or watersheds. However, some general relationships between land use and habitat changes have been well documented. Salmon production is strongly tied to freshwater habitat conditions, which continue to be destroyed or degraded in Puget Sound.

Human population growth is probably the best overall measure of disturbance to freshwater salmonid ecosystems, because accompanying land use changes can adversely affect freshwater and marine habitats in a variety of ways; examples include reduced infiltration of water into the soil due to increases in impervious surfaces and loss of forest habitats, simplification of stream channel structure, changes in flow patterns, water quality degradation, loss of stream bank cover, loss of wetland habitats, dissociation of wetlands from stream channels, and loss of gravel sources due to bank stabilization. These changes affect all anadromous salmonids, but have particularly severe impacts on coho salmon. The population of Washington state has grown from about 1 million in 1910 to over 5 million today, and is expected to reach 7 million by 2020, with over 70 percent of this total residing in western Washington. Population densities have increased from 1.1 people/mi^2 for the entire state in 1880 to 725, 496, and 232 people/mi^2 in King, Kitsap and Snohomish Counties, respectively, in 1990. The counties encompassing the Snohomish, Stillaguamish, Skagit and Hood Canal systems have some of the highest growth rates and population densities statewide, and land use changes in those systems have drastically altered historic habitat conditions.

The areal extent of estuarine wetlands in Puget Sound is one of the few habitat characteristics for which there are historical records that can be compared to results of current surveys. During the last century, the Snohomish, Stillaguamish, and Skagit Rivers have lost 75 to 90 percent of their delta wetlands, and substantial losses (34 percent of wetlands) have also occurred in the relatively rural Skokomish River delta. The loss of freshwater wetlands, which may be even more critical to juvenile coho salmon, has not been quantified, but is extensive and continues at present.

Timber harvest and associated road building can adversely affect fish habitat in a number of ways, including disturbance of forest soils and increased erosion, more frequent landslides and debris torrents. Past logging practices have removed riparian vegetation, which increases stream temperatures and decreases the amount of large, woody debris in streams, a critical component of coho salmon habitat. The volume of timber harvest in Washington increased from approximately 3.5 billion board feet per year in the 1950's to about 5.5 billion board feet per year during much of the 1970's and 1980's. The vast majority of timberlands in Puget Sound have been logged at least once, and many areas have experienced second or third rotations. Within the Puget Sound area, the acreage of land managed for forest products has actually declined, as timberlands are converted to residential and non-forest commercial uses.

In the marine environment, increasing inputs from point and non-point discharge of pollutants and surface run-off affect water quality and the status of the marine ecosystem as a whole. Concentrations of sediment-associated chemical contaminants and disease prevalence in fish from heavily industrialized sites in Puget Sound are among the highest in the nation.

NMFS has determined that, relative to the other coho salmon ESUs, populations in the Puget Sound/Strait of Georgia ESU are abundant, and with some exceptions, run sizes and natural spawning escapements have been generally stable. However, artificial propagation of coho salmon may have had a substantial impact on native, naturally-reproducing coho salmon populations, to the point that it is difficult to identify self-sustaining, native stocks within this region. In addition, the continuing loss of habitat, extremely high harvest rates, and a potentially severe, recent decline in average size of spawners indicate that there are substantial risks to the remaining native production in this ESU.

However, each of these concerns is based as much on professional judgement as on hard data. Although the magnitude of artificial propagation in the Puget Sound region ensures that there are ample opportunities for adverse effects on natural populations, few studies have been conducted to determine the extent to which such effects actually occur. Similarly, because virtually no information is available on size of naturally spawning coho salmon in Puget Sound, NMFS' evaluation of the decline in adult size is based on data for terminal, in-river fisheries, which primarily target hatchery fish. Although harvest rates on natural populations appear to be high, whether fishing mortality is too high for natural populations to sustain has not been formally evaluated. Finally, during the course of this status review, only limited life history and abundance information was gathered for the substantial portion of this ESU that occurs in British Columbia.

Because of the general lack of definitive information on the identified risk factors, and because the number of naturally-reproducing fish within the ESU is fairly large and apparently stable, NMFS concludes that a listing is not warranted for the Puget Sound/Strait of Georgia ESU at this time. However, there is sufficient concern regarding the overall health of this ESU, and therefore, NMFS is adding the Puget Sound/Strait of Georgia ESU to the Candidate List. During the period between this proposed rule and publication of any final rule, NMFS will conduct a thorough reevaluation of the status of this ESU and will reconsider the present decision that a listing is not warranted. In the event that this reevaluation establishes that listing the Puget Sound/Strait of Georgia ESU is warranted, NMFS would issue a proposed rule to list this ESU as threatened or endangered.

Summary of Factors Affecting the Species

Section 2(a) of the ESA states that various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation. Section 4(a)(1) of the ESA and the listing regulations (50 CFR part 424) set forth procedures for listing species. NMFS must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or education purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

The factors threatening naturally-reproducing coho salmon populations are numerous and varied. Given the vast geographic scope of NMFS' status review, it is difficult to determine which factors are primarily responsible for the decline of a specific ESU. For most of the coho salmon ESUs proposed for protection under the ESA, the present condition of the population is a result of long-standing, human-induced conditions (e.g., harvest, habitat degradation and artificial propagation) that serve to exacerbate the negative effects of adverse environmental conditions (e.g., drought, poor ocean conditions). The following examples provide an overview of the types of activities and conditions that threaten the conservation of these ESUs over a significant portion of their ranges.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Logging, agricultural activities, urbanization, stream channelization, dams, wetland loss, water withdrawals and unscreened diversions for irrigation, and mining have contributed to the decline of numerous West Coast populations of coho salmon. Logging activities, and the associated road networks, often result in soil erosion and stream sedimentation such that spawning habitat is seriously degraded. Removal of trees within the riparian zone of coastal streams has resulted in increased summer water temperatures, eliminated the potential for trees to fall into streams, and altered the natural hydrograph. Decreases in large woody material in streams reduces habitat complexity and contributes to the loss of cover, shade, and pools; these habitat features are required by juvenile coho salmon. Livestock grazing can damage streambanks and eliminate streamside vegetation, thereby preventing riparian species from growing to maturity and has resulted in shallow, warm streams that are not suitable for juvenile and adult coho salmon. Agricultural activities and urbanization often result in pollution from both point and nonpoint sources, and stream channelization (e.g., for flood control) can alter the physical and hydrographic properties of streams such that the quality and amount of habitat available to coho salmon is reduced. Water withdrawals reduce stream flow and the amount of available habitat, sometimes during critical drought periods, and can contribute to high water temperatures.

B. Overutilization for Commercial, Recreational, Scientific, or Education Purposes

This species has historically been a staple of Pacific Northwest Indian tribes, and has been targeted in recreational and commercial fisheries since the early 1800's. Marine harvest of coho salmon in the range of this status review occurs primarily in nearshore waters off British Columbia, Washington, Oregon, and California. Recreational fishing for coho salmon is pursued in numerous streams when adults return on their fall spawning migration. Due to low escapements and increased concern for protecting coho and chinook salmon runs, recent regulations on ocean and river harvest have resulted in the closure or severe curtailment of fisheries along much of the West Coast. Unfortunately, the confounding effects of habitat deterioration, drought, and poor ocean conditions on coho salmon survival make it difficult to assess the degree to which recreational and commercial harvest have contributed to the overall decline of coho salmon in West Coast rivers. However, it is clear that more stringent fishing regulations have not resulted in increased returns of coho salmon. Scientific research and educational programs are believed to have had little or no impact on coho salmon populations.

C. Disease or Predation

Relative to effects of fishing, habitat degradation, and hatchery practices, disease and predation are not believed to be major factors contributing to the decline of West Coast coho salmon populations. However, disease and predation may have substantial impacts in local areas. For example, Bacterial Kidney Disease (BKD), a bacterial infection that can adversely affect salmon smolts, has been a problem in most California state fish hatcheries and the CDFG has recently initiated a treatment protocol to attempt to control BKD outbreaks in hatchery populations released into the Russian River and Scott Creek (Central California ESU).

D. Inadequacy of Existing Regulatory Mechanisms

Under the ESA, a determination to propose a species for listing as threatened or endangered requires considering the biological status of the species, as well as efforts being made to protect the species. Typically, regulatory mechanisms established by Federal, state, tribal, and local governments provide the most effective means to prevent a species from facing the peril of extinction. Unfortunately, the continued widespread decline of native, naturally-reproducing coho salmon in numerous West Coast streams suggests that management plans and practices followed by the numerous Federal, state, tribal, and local entities within the range of this status review, have not provided adequate protection for this species. Of encouraging note is a Federal interagency cooperative program, the Record of Decision for Amendments to U.S. Forest Service (USFS) and Bureau of Land Management (BLM) Planning Documents Within the Range of the Spotted Owl (i.e., the ''Forest Plan'', April 1994), that has recently been implemented to provide a coordinated management direction for the lands administered by USFS and BLM. The Forest Plan's region-wide management direction will amend existing management plans, including Forest Plans, Regional Guides, Timber Sale Plans, and Resource Management Plans for Federal lands within the range of the northern spotted owl (which overlaps considerably with the freshwater range of coho salmon). As part of the Forest Plan, implementation of an Aquatic Conservation Strategy (ACS) on Federal land is expected to reverse the trend of aquatic ecosystem degradation and contribute toward fish habitat recovery. Coordination between the Federal land management agencies and NMFS, the Environmental Protection Agency (EPA), and the U.S. Fish and Wildlife Service (USFWS) should ensure that the ACS objectives are achieved. In addition, the adoption of forest practices regulations and fisheries management plans and policies aimed at protecting and restoring naturally-reproducing fish populations in Washington, Oregon, and California emphasizes the widespread concern over declining wild salmon runs. Because most of these programs are new, it is not possible to determine if they will be adequate to reverse the declining trend in coho salmon abundance. Moreover, it is unclear what level of protection will be afforded to coho salmon habitat on private lands and in non-forested areas. During the period between this proposed rule and a final rule, NMFS will continue to evaluate the efficacy of existing efforts to protect and restore coho salmon populations (see Public Comments Solicited).

E. Other Natural or Human-made Factors Affecting its Continued Existence

Long-term trends in rainfall and marine productivity associated with atmospheric conditions in the North Pacific Ocean may have a major influence on coho salmon production. The effects of extended drought on water supplies and water temperatures are a major concern for California populations of coho salmon. Poor ocean conditions are believed to have played a prominent role in the decline of coho salmon populations in Washington, Oregon, and California. Unusually warm ocean surface temperatures and associated changes in coastal currents and upwelling, known as El Niño conditions, result in ecosystem alterations such as reductions in primary and secondary productivity and changes in prey and predator species distributions. The degree to which adverse ocean conditions can influence coho salmon production was demonstrated during the El Niño event of 1982–83, which resulted in a 24- to 27-percent reduction in fecundity and a 58-percent reduction (based on pre-return predictions) in survival of adult coho salmon stocks originating from the Oregon Production Index area (Johnson 1988).

As described previously, the widespread use of artificial propagation has undoubtedly had a significant impact on the production of West Coast coho salmon. Potential problems associated with hatchery programs include genetic impacts on indigenous, naturally-reproducing populations (see Waples 1991), disease transmission, predation on wild fish, difficulty in determination of wild run status due to incomplete marking of hatchery releases, and replacement (rather than supplementation) of wild stocks through competition and continued annual introductions of hatchery fish. During the period between this proposed rule and a final rule, NMFS will continue to evaluate the relationship between hatchery and native, naturally-reproducing populations of coho salmon in the proposed ESUs (see Public Comments Solicited).

Proposed Determination

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made to protect such species.

Based on results from its coastwide assessment, NMFS has determined that in the region south of Queen Charlotte Strait, British Columbia, there are six ESUs of coho salmon that constitute ''species'' under the ESA. NMFS has determined that three of the six ESUs are currently threatened, and therefore, proposes to list coho salmon in the central California coast, southern Oregon/northern California, and Oregon coast ESUs as threatened. The geographic boundaries (i.e., the watersheds within which the members of the ESU are typically found) for these ESUs are described under ''ESU Determinations.'' In all three ESUs, only naturally-reproducing populations are being proposed for listing as threatened at this time. However, prior to the final listing determinations, NMFS will examine and attempt to characterize the relationship of existing hatchery populations to the ESUs proposed for listing. This may result in including some existing hatchery populations in some of the ''species'' that may be listed in the final rule. NMFS has also determined that the Puget Sound/Strait of Georgia ESU and lower Columbia River/southwest Washington coast ESU do not warrant listing at this time, but because there is sufficient concern regarding the health of these ESUs, NMFS is adding them to the Candidate List. NMFS will conduct a thorough reevaluation of the status of both ESUs and will reconsider the present decision that listings are not warranted. In the event that this reevaluation establishes that listing either ESU is warranted, NMFS will issue a proposed rule to list one or both ESUs as threatened or endangered.

A Technical Memorandum will be prepared by NMFS and will provide more detailed information and references concerning the coastwide status review of coho salmon. The availability of new information may cause NMFS to re-assess these proposed listings.

Prohibitions and Proposed Protective Measures

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. Section 4(d) of the ESA allows the promulgation of regulations that modify or apply any or all of the prohibitions of section 9 to threatened species. Section 9 also prohibits violations of protective regulations for threatened species promulgated under section 4(d). As announced in a recent joint policy with the USFWS (59 FR 34272, July 1, 1994), NMFS will identify, to the extent known at the time of the final rule, specific activities that will not be considered likely to result in violation of section 9, as well as activities that will be considered likely to result in violation. For those activities whose likelihood of violation is uncertain, a contact will be identified in the final listing document to assist the public in determining whether a particular activity would constitute a prohibited act under section 9.

At this time, NMFS proposes to adopt protective measures to prohibit, with respect to the three ESUs of coho salmon proposed as threatened herein, ''taking,'' interstate commerce, and the other ESA prohibitions applicable to endangered species, with the exceptions provided under section 10 of the ESA. Under the ESA, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. This adoption is the normal course followed by the USFWS with respect to threatened listings (see 50 CFR 17.31(a)). NMFS is extending the provisions of section 9 and section 10 to these species in order to provide immediate protections to them. However, prior to the final listing determination, NMFS will consider adopting specific regulations under section 4(d) that will apply to one or more ESUs of coho salmon identified as threatened (see Public Comments Solicited). These regulations, promulgated pursuant to the Administrative Procedures Act, 5 U.S.C. 551 *et seq.*, with prior notice and opportunity for comment, may be in lieu of the Section 9 taking prohibition and Section 10 permit exception.

Available Conservation Measures

Conservation measures provided to species listed as threatened or endangered under the ESA include prohibitions on taking, recovery actions, and Federal agency consultation requirements. Recognition through listing promotes conservation actions by Federal and state agencies and private groups and individuals.

Section 7(a)(4) of the ESA requires that Federal agencies confer with NMFS on any actions likely to jeopardize the continued existence of a species proposed for listing and on actions likely to result in the destruction or adverse modification of proposed critical habitat. For listed species, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with NMFS.

Examples of Federal actions that may be affected by this proposal include various Federal land management agency activities (e.g., actions associated with timber harvest, recreation, mining, agriculture, and grazing), U.S. Army Corps of Engineers Clean Water Act section 404 permitting activities, Federal Energy Regulatory Commission licenses for nonfederal development and operation of hydropower projects, and Federal salmon hatcheries.

Based on information presented in this proposed rule, general conservation measures that could be implemented to help conserve the species are listed below. This list does not constitute NMFS' interpretation of a recovery plan under section 4(f) of the ESA.

1. Measures could be taken to promote land management practices that protect and restore coho salmon habitat. Land management practices affecting coho salmon habitat include timber harvest, road building, agriculture, livestock grazing, and urban development.

2. Evaluation of existing commercial and recreational harvest regulations for ocean and river fisheries could identify any changes necessary to protect coho salmon populations.

3. Artificial propagation programs could be required to incorporate practices that minimize impacts upon native populations of coho salmon.

4. Efforts could be made to ensure that existing and proposed dam facilities are designed and operated in a manner that will not adversely affect listed populations. For example, NMFS could require that fish passage facilities at dams effectively pass migrating juvenile and adult salmon.

5. All water diversions could have adequate headgate and staff gauge structures installed to control and monitor water usage accurately. Water rights could be enforced to prevent irrigators from exceeding the amount of water to which they are legally entitled.

6. All irrigation diversions affecting downstream migrating coho salmon could be screened. A thorough review of the impact of irrigation diversions on coho salmon could be conducted.

Should the proposed listings be made final, protective regulations under the ESA would be put into effect and a recovery program(s) would be implemented. NMFS recognizes that to be successful, protective regulations and recovery programs for coho salmon will need to be developed in the context of conserving aquatic ecosystem health. NMFS intends that Federal lands and Federal activities bear as much of the burden as possible for conserving listed populations and the ecosystems upon which they depend. However, throughout the range of all three ESUs proposed for listing, coho salmon habitat occurs and can be affected by activities on state, tribal or private (nonfederal) land. Agricultural, urban and timber management activities on nonfederal land could and should be conducted in a manner that avoids adverse effects to coho salmon aquatic habitat.

NMFS encourages nonfederal landowners to assess the impacts of their actions on potentially threatened or endangered salmonids. In particular, NMFS encourages the formulation of watershed partnerships to promote conservation in accordance with ecosystem principles. These partnerships will be successful only if all watershed stakeholders (i.e., state, tribal, and local governments, landowner representatives, and Federal and nonfederal biologists) participate and share the goal of restoring coho salmon to the watersheds. To assist with such efforts, NMFS, the USFWS and the EPA, with technical assistance from the Natural Resources Conservation Service, have contracted a study to provide technical guidance and training to agency staff. This guidance is intended to produce a technical foundation and informational support base for fostering development of conservation plans pursuant to section 10 of the ESA and cooperative agreements with the states of Washington, Oregon, and California, pursuant to section 6 of the ESA. Furthermore, NMFS intends to enlist nonfederal jurisdictions, including tribal and county governments, private organizations and affected individuals in recovery plan development and implementation.

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. However, this section of the ESA specifically precludes NMFS from designating critical habitat in foreign countries, e.g., Canada. While NMFS has completed its initial analysis of the biological status of coho salmon populations from southern British Columbia to southern California, it has not completed the analysis necessary for designating critical habitat. Therefore, to avoid delaying this listing proposal, NMFS will propose critical habitat in a separate rulemaking. Also, NMFS is nearing completion of a coastwide status review of steelhead (*O. mykiss*) populations, a species that has similar habitat requirements and considerable geographic overlap with coho salmon. Hence, a delay will allow NMFS to more clearly and efficiently identify proposed critical habitat for threatened or endangered ESUs of both species.

Public Comments Solicited

To ensure that the final action resulting from this proposal will be as accurate and as effective as possible, NMFS is soliciting comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, and any other interested parties. Public hearings will be held in various locations throughout the range of the proposed ESUs; details regarding locations, dates, and times will be published in a forthcoming Federal Register document.

NMFS is requesting information regarding: (1) The existence of native, naturally-reproducing coho salmon in the proposed ESUs, especially the lower Columbia River/southwest Washington coast ESU, and in the Puget Sound/ Strait of Georgia ESU; (2) trends in adult size of native, naturally-reproducing fish, especially in the Puget Sound/ Strait of Georgia ESU; (3) progeny/ parent return ratios for naturally-reproducing fish, both before and after harvest; (4) coho salmon escapement, particularly escapement data partitioned into natural and hatchery components; (5) the proportion of naturally-reproducing fish that were reared as juveniles in a hatchery; (6) the reproductive success of naturally-reproducing hatchery fish (i.e. hatchery fish spawning in the wild); (7) straying rates of hatchery fish to other hatcheries and into natural populations; (8) efforts being made to protect native, naturally-reproducing populations of coho salmon in British Columbia, Washington, Oregon, and California; and (9) suggestions for specific regulations under section 4(d) of the ESA that could apply to one or more ESUs of coho salmon proposed as threatened. Suggested regulations should address activities, plans, or guidelines that, despite their potential to result in the incidental take of listed fish, will ultimately promote the conservation of threatened ESUs.

In addition to comments on the proposal concerning the biological status of the stocks, NMFS is soliciting suggestions and proposals on conservation measures that might best achieve the purposes of the ESA relating to recovering the health of coho salmon populations and the ecosystems upon which they depend. These conservation measures include: (1) The best approach to integrate federal efforts with state and local efforts on habitat protection and restoration, harvest management regimes and hatchery production programs; (2) the best method to integrate and encourage private efforts at habitat protection and restoration, and the most effective role of NMFS and other federal agencies for promoting private conservation efforts for purposes of achieving the goals of the ESA; (3) the role of successful local watershed protection programs in the larger conservation effort, and the best mechanisms to encourage these efforts; (4) the most appropriate mechanisms for integrating existing harvest management regimes with the needs of coho salmon populations proposed for listing; and, (5) the most effective mechanisms for instituting necessary reforms in the hatchery production practices to support the recovery effort while achieving other related objectives of the existing programs.

NMFS also is requesting quantitative evaluations describing the quality and extent of freshwater and marine habitats for juvenile and adult coho salmon as well as information on areas that may qualify as critical habitat in Washington, Oregon, and California for the proposed ESUs. Areas that include the physical and biological features essential to the recovery of the species should be identified. Areas outside the present range should also be identified if such areas are essential to the recovery of the species. Essential features should include, but are not limited to: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

For areas potentially qualifying as critical habitat, NMFS is requesting information describing: (1) The activities that affect the area or could be affected by the designation, and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation.

The economic cost to be considered in the critical habitat designation under the ESA is the probable economic impact ‘‘of the [critical habitat] designation upon proposed or ongoing activities’’ (50 CFR 424.19). NMFS must consider the incremental costs specifically resulting from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 of the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

NMFS will review all public comments and any additional information regarding the status of the coho salmon ESUs described herein and, as required under the ESA, intends to complete a final rule within 1 year of this proposed rule. The availability of new information may cause NMFS to re-assess the status of any coho salmon ESU, including ESUs not proposed for listing at this time. In particular, NMFS will conduct a thorough reevaluation of the status of the Puget Sound/Strait of Georgia and lower Columbia River/southwest Washington coast ESUs before the final listing determination. Although NMFS has concluded that information available at the present time is not sufficient to demonstrate that a listing is warranted for these ESUs, there is concern over the health of natural populations.

Classification

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 825 (6th Cir., 1981), NMFS has categorically excluded all ESA listing actions from environmental assessment requirements of the National Environmental Policy Act under NOAA Administrative Order 216–6.

This proposed rule is exempt from review under E.O. 12866.

References

Bartley, D.M. 1987. The Genetic Structure of Chinook and Coho Salmon Populations in California, with a Note on the Genetic Variability in Sturgeon (Acipenseridae). Ph.D. Dissertation, Univ. California, Davis. 204 p.

Bledsoe, L.J., D.A. Somerton, and C.M. Lynde. 1989. The Puget Sound Runs of Salmon: An Examination of the Changes in Run Size since 1896. In C.D. Levings, L.B. Holtby, and M.A. Henderson (editors), Proceedings of the National Workshop on Effects of Habitat Alteration on Salmonid Stocks. Can. Spec. Publ. Fish. Aquat. Sci. 105:50–61.

Brown, L.R., and P.B. Moyle. 1991. Status of Coho Salmon in California. Report to the National Marine Fisheries Service, Southwest Region, Terminal Island. 114 p.

Brown, L.R., P.B. Moyle, and R.M. Yoshiyama. 1994. Historical Decline and Current Status of Coho Salmon in California. N. Am. J. Fish. Manage. 14:237–261.

Bryant, G.J. 1994. Status Review of Coho Salmon Populations in Scott and Waddell Creeks, Santa Cruz County, CA. National Marine Fisheries Service, Southwest Region, Santa Rosa. 102 p.

Booth, D.B. 1991. Urbanization and the Natural Drainage System—Impacts, Solutions, and Prognoses. Northwest Environ. J. 7:93–118.

California Advisory Committee on Salmon and Steelhead Trout. 1988. Restoring the Balance. Annual Report 124–J. 84 p.

California Department of Fish and Game (CDFG). 1994. Petition to the Board of Forestry to List Coho Salmon (*Oncorhynchus kisutch*) as a Sensitive Species. California Department of Fish and Game, Sacramento, CA, 35 p. (Available from California Board of Forestry, 1416 Ninth St., Sacramento, CA 95814.)

California Resources Agency. 1995. Letter to Hilda Diaz-Soltero, NMFS, from John Amodio, Assistant Secretary, dated June 21, 1995, regarding conservation and recovery of coho through the NCCP conservation program. (Available from National Marine Fisheries Service, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.

Chapman, D.W. 1962. Aggressive Behavior in Juvenile Coho Salmon as a Cause of Emigration. J. Fish. Res. Board Can. 19:1047–1080.

Columbia River Coordinated Information System (CIS). 1992. Stock Summary Reports for Columbia River Anadromous Salmonids, 5 volumes. U.S. Department of Energy, Bonneville Power Administration, Division of Fish and Wildlife, Portland, OR. DOE/BP–94402.

Cooney, C.X., and S.E. Jacobs. 1994. Oregon Coastal Salmon Spawning Surveys, 1992. Fish Division Information Reports 94–2. Oregon Department of Fish and Wildlife, Portland, OR. 103 p.

Cramer, D.P., and S.P. Cramer. 1994. Status and Population Dynamics of Coho Salmon in the Clackamas River. Tech. Rep., Portland General Electric Co., 105 p. (Available from Portland General Electric Co., 33831 S.E. Faraday Rd., Estacada, OR. 97023.)

Cramer, S.P. 1994. Status of Oregon's Coastal Coho and Measures for Population Rebuilding. Final Report, May 1994. Submitted to National Marine Fisheries Service by S.P. Cramer and Associates, Gresham, OR, 142 p. (Available from Environmental and Technical Services Division, Natl. Marine Fish. Serv., 525 NE Oregon St., Suite 500, Portland, OR. 97232–2737.)

Cramer, S.P., T.D. Satterthwaite, R.B. Boyce, and B.P. McPherson. 1985. Lost Creek Dam Fisheries Evaluation Phase I Completion Report. Volume I: Impacts of Lost Creek Dam on the Biology of Anadromous Salmonids in the Rogue River. Submitted to U.S. Army Corps of Engineers, Contract DACW57–77–C–0027, 271 p. (Available from Oregon Department of Fish and Wildlife, P.O. Box 59, Portland, OR. 97207.)

Currens, K.P., and D. Farnsworth. 1993. Mitochondrial DNA Variation in Oregon Coho Salmon. Report to Oregon Department of Fish and Wildlife, 16 p. (Available from Oregon Department of Fish and Wildlife, P.O. Box 59, Portland, OR 97207.)

Flagg, T.A., F.W. Waknitz, D.J. Maynard, G.B. Milner, and C.V. Mahnken. In press. Impact of Hatcheries on Native Coho Salmon Populations in the Lower Columbia River. In H. Shamm and B. Piper (editors) Proceedings of the American Fisheries Society Symposium on the Uses and Effects of Cultured Fishes in Aquatic Ecosystems, Albuquerque, New Mexico. (Available from National Marine Fisheries Service, Northwest Fisheries Science Center, 2725 Montlake Blvd. E., Seattle, WA 98112.)

Fleming, I.A., and M.R. Gross. 1989. Evolution of Adult Female Life History and Morphology in a Pacific Salmon (coho: *Oncorhynchus kisutch*). Evolution 43:141–157.

Forbes, S., K. Knudsen, and F. Allendorf. 1993. Genetic Variation in DNA of Coho Salmon from the Lower Columbia River. Final Report to the U.S. Department of Energy, Bonneville Power Administration, Division of Fish and Wildlife, Contract DE-BI79–92BP 30198, 25 p. (Available from Bonneville Power Administration, Public Information Office—ALP–22, P.O. Box 3621, Portland, OR. 97208.)

Gall, G.A.E. 1991. Allele Frequencies of Selected Stocks of California, Coastal Oregon, and Columbia River Coho Salmon. Data Submitted to ESA Administrative Record for Coho Salmon, 16 January 1991, 59 p. (Available from Environmental and Technical Services Division, Natl. Marine Fish. Serv., 525 NE Oregon St., Suite 500, Portland, OR. 97232–2737.)

Goodman, M.L. 1990. Preserving the Genetic Diversity of Salmonid Stocks: A Call for Federal Regulation of Hatchery Programs. Environ. Law 120:111–166.

Hard, J.J., R.P. Jones, M.R. Delarm, and R.S. Waples. 1992. Pacific Salmon and Artificial Propagation under the Endangered Species Act. U.S. Dep. Commer., NOAA Tech. Memo. NMFS F/NWFSC–2, 56 p.

Higgins, P., S. Dobush, and D. Fuller. 1992. Factors in Northern California Threatening Stocks with Extinction. Humboldt Chapter of the American Fisheries Society, Arcata, CA. 24 p.

Hilborn, R., and J. Winton. 1993. Learning to Enhance Salmon Production: Lessons from the Salmonid Enhancement Program. Can. J. Fish. Aquat. Sci. 50:2043–2056.

Hiss, J.M., and E.E. Knudsen. 1993. Chehalis River Basin Fishery Resources: Status, Trends, and Restoration. U.S. Fish and Wildlife Service, Western Washington Fishery Resource Office, 128 p. (Available from USFWS, Western Washington Fishery Resource Office, 2625 Parkmont Lane, Bldg. A, Olympia, WA 98502–5751.)

Hjort, R.C., and C.B. Schreck. 1982. Phenotypic Differences among Stocks of Hatchery and Wild Coho Salmon, *Oncorhynchus kisutch*, in Oregon, Washington, and California. Fish. Bull., U.S. 80:105–119.

Jacobs, S.E., and C.X. Cooney. 1991. Improvement of Methods Used to Estimate the Spawning Escapement of Oregon Coastal Natural Coho Salmon. Fish Division Progress Reports 1991, Oregon Department of Fish and Wildlife, Portland, OR, 24 p.

Jacobs, S.E., and C.X. Cooney. 1992. Improvement of Methods Used to Estimate the Spawning Escapement of Oregon Coastal Natural Coho Salmon. Fish Division Progress Reports 1992, Oregon Department of Fish and Wildlife, Portland, OR, 23 p.

Jacobs, S.E., and C.X. Cooney. 1993. Improvement of Methods Used to Estimate the Spawning Escapement of Oregon Coastal Natural Coho Salmon. Fish Division Progress Reports 1993, Oregon Department of Fish and Wildlife, Portland, OR, 28 p.

Johnson, O.W., T.A. Flagg, D.J. Maynard, G.B. Milner, and F.W. Waknitz. 1991. Status Review for Lower Columbia River Coho Salmon. U.S. Dep. Commer., NOAA Tech. Memo. NMFS F/NWC–202, 94 p.

Johnson, S.L. 1988. The Effects of the 1983 El Niño on Oregon's Coho (*Oncorhynchus* *kisutch*) and Chinook (*O. tshawytscha*) Salmon. Fish. Res. 6:105–123.

Kostow, K., and 13 coauthors. 1994. The Natural Production Program 1994 Biennial Report on the Status of Wild Fish in Oregon and the Implementation of Fish Conservation Policies. Oregon Department of Fish and Wildlife, Portland, OR. 165 p.

Lichatowich, J.A. 1989. Habitat Alteration and Changes in Abundance of Coho (*Oncorhynchus kisutch*) and Chinook (*O. tshawytscha*) Salmon in Oregon's Coastal Streams. Can. Spec. Publ. Fish. Aquat. Sci. 105:92–99.

Maahs, M., and J. Gilleard. 1994. Anadromous Salmonid Resources of Mendocino Coastal and Inland Rivers 1990–91 through 1991–92: An Evaluation of Rehabilitation Efforts Based on Carcass Recovery and Spawning Activity. Draft Final Report to California Department of Fish and Game, Fisheries Division, Fisheries Restoration Program, Contract FG–9364. 66 p.

Mullen, R.E. 1981. Estimates of the Historical Abundance of Coho Salmon *Oncorhynchus kisutch* (Walbaum), in Oregon Coastal Streams and in the Oregon Production Index Area. Oregon Department of Fish and Wildlife Population Dynamics and Statistical Services Section, Corvallis, OR. 9 p.

National Marine Fisheries Service (NMFS), Northwest Fisheries Science Center, Coastal Zone and Estuarine Studies Division. 1994. Memo to ESA Administrative Record for Coastal Coho Salmon RE: Preliminary Conclusions of the Northwest Fisheries Science Center's Review of a Petition to list Oregon Populations of Coho Salmon under the U.S. Endangered Species Act, 5 July 1994, 17 p. (Available from Environmental and Technical Services Division, Natl. Marine Fish. Serv., 525 NE Oregon St., Suite 500, Portland, OR 97232–2737.)

National Marine Fisheries Service (NMFS), Northwest Fisheries Science Center, Coastal Zone and Estuarine Studies Division. 1994. Memo to ESA Administrative Record for Coastal Coho Salmon RE: Conclusions of the Northwest Fisheries Science Center's Review of the Status of Coho Salmon from California, Oregon, and Washington under the U.S. Endangered Species Act, 2 September 1994, 41 p. (Available from Environmental and Technical Services Division, Natl. Marine Fish. Serv., 525 NE Oregon St., Suite 500, Portland, OR 97232–2737.)

National Marine Fisheries Service (NMFS), Northwest Fisheries Science Center, Coastal Zone and Estuarine Studies Division. 1994. Memo to ESA Administrative Record for Coastal Coho Salmon RE: Puget Sound Coho Salmon, 22 February 1995, 3 p. (Available from Environmental and Technical Services Division, Natl. Marine Fish. Serv., 525 NE Oregon St., Suite 500, Portland, OR 97232–2737.)

National Marine Fisheries Service (NMFS), Northwest Region. 1995. Memo to R. Schmitten from M. Schiewe RE: Puget Sound Coho Salmon—Recommendation not to propose to list as threatened under the Endangered Species Act, 20 March 1995, 14 p. (Available from Environmental and Technical Services Division, Natl. Marine Fish. Serv., 525 NE Oregon St., Suite 500, Portland, OR 97232–2737.)

Nehlsen, W., J.E. Williams, and J.A. Lichatowich. 1991. Pacific Salmon at the Crossroads: Stocks at Risk from California, Oregon, Idaho, and Washington. Fisheries (Am. Fish. Soc.) 16(2):4–21.

Nickelson, T.E., J.W. Nicholas, A.M. McGie, R.B. Lindsay, D.L. Bottom, R.J. Kaiser, and S.E. Jacobs. 1992. Status of Anadromous Salmonids in Oregon Coastal Basins. Research and Development Section and Ocean Salmon Management, Oregon Department of Fish and Wildlife, 83 p. (Available from Oregon Department of Fish and Wildlife, P.O. Box 59, Portland, OR 97207.)

Northcote, T.C., and D.Y. Atagi. In Preparation. Pacific Salmon Abundance Trends in the Fraser River Watershed Compared with other British Columbia Systems. In D.J. Stouder, P.A. Bisson, and R.J. Naiman (editors), Pacific Salmon and their Ecosystems, Status and Future Options. Chapman and Hall, Inc., New York, NY.

Olin, P.G. 1984. Genetic Variability in Hatchery and Wild Populations of Coho Salmon, *Oncorhynchus kisutch*, in Oregon. M.S. Thesis, Univ. California, Davis. 73 p.

Oregon Department of Fish and Wildlife (ODFW). 1992. Oregon Salmon and Steelhead Catch Data, 1979–91. Fish Division, Oregon Department of Fish and Wildlife, 22 p. (Available from Oregon Department of Fish and Wildlife, P.O. Box 59, Portland, OR 97207.)

ODFW. 1993. Oregon Salmon and Steelhead Catch Data, 1980–92. Fish Division, Oregon Department of Fish and Wildlife, 21 p. (Available from Oregon Department of Fish and Wildlife, P.O. Box 59, Portland, OR 97207.)

Pacific Fishery Management Council (PFMC). 1990. Scientific and Statistical Committee (SSC) Review of Washington Coastal and Puget Sound Coho Salmon Escapement Estimation Methodologies: Summary and Recommendations. SSC Supplemental Report B.5–2 from the PFMC Meeting March 1990.

PFMC. 1993. Preseason Report I: Stock Abundance Analysis for 1993 Ocean Salmon Fisheries. Pacific Fishery Management Council, Portland, OR.

PFMC. 1994. Review of 1993 Ocean Salmon Fisheries. Pacific Fishery Management Council, Portland, OR, February 1994.

Reisenbichler, R.R., and S.R. Phelps. 1987. Genetic Variation in Chinook, *Oncorhynchus tshawytscha*, and Coho, *O. kisutch*, Salmon from the North Coast of Washington. Fish. Bull., U.S. 85(4):681–701.

Ricker, W.E. 1981. Changes in Average Size and Average Age of Pacific Salmon. Can. J. Fish. Aquat. Sci. 38:1636–1656.

Sandercock, F.K. 1991. Life History of Coho Salmon (*Oncorhynchus kisutch*). In C. Groot and L. Margolis (editors), Pacific Salmon Life Histories, p. 396–445. Univ. British Columbia Press, Vancouver.

Solazzi, M.F. 1986. Electrophoretic Stock Characterization of Coho Salmon Populations in Oregon and Washington, and Coastal Chinook Salmon Populations in Oregon. Oregon Dep. Fish and Wildlife, Info. Rep. 86–5:1–16.

Solazzi, M.F., T.E. Nickelson, and S.L. Johnson. 1990. An Evaluation of the Use of Coho Salmon Presmolts to Supplement Wild Production in Oregon Coastal Streams. Oregon Department of Fish and Wildlife, Fisheries Research Report 10:1–22.

Thompson, G.G. 1991. Determining Minimum Viable Populations under the Endangered Species Act. U.S. Dep. Commer., NOAA Tech. Memo. NMFS F/NWC–198, 78 p.

van den Berghe, E.P., and M.R. Gross. 1984. Female Size and Nest Depth in Coho Salmon (*Oncorhynchus kisutch*). Can. J. Fish. Aquat. Sci. 412:204–206.

Waples, R.S. 1991. Pacific Salmon, *Oncorhynchus* Spp., and the Definition of ''Species'' under the Endangered Species Act. Mar. Fish. Rev. 53(3):11–22.

Washington Department of Fisheries (WDF). 1994. Historical Commercial Catch and Effort Database, In-river Harvest Data for Selected Washington Rivers, 1972–93. (Available from Washington Department of Fish and Wildlife, 600 Capitol Way N., Olympia, WA 98501–1091.)

WDF, Washington Department of Wildlife, and Western Washington Treaty Indian Tribes. 1993. 1992 Washington State Salmon and Steelhead Stock Inventory. Olympia, WA. 212 p.

Wehrhahn, C.F., and R. Powell. 1987. Electrophoretic Variation, Regional Differences, and Gene Flow in the Coho Salmon (*Oncorhynchus kisutch*) of Southern British Columbia. Can. J. Fish. Aquat. Sci. 44: 822–831.

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: July 19, 1995.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 227 is proposed to be amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.4, paragraphs (j), (k), and (l) are added to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(j) Central California coho salmon (*Oncorhynchus kisutch*).

(k) Southern Oregon/northern California coast coho salmon (*Oncorhynchus kisutch*).

(l) Oregon coast coho salmon (*Oncorhynchus kisutch*).

3. Section 227.21 is revised to read as follows:

§ 227.21 Threatened salmon.

(a) *Prohibitions.* The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to threatened species of salmon listed in § 227.4 (f), (g), (j), (k), and (l), except as provided in paragraph (b) of this section.

(b) *Exceptions.* The exceptions of section 10 of the Act (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, including regulations implementing such exceptions, also apply to the threatened species of salmon listed in § 227.4 (f), (g), (j), (k), and (l). This section supersedes other restrictions on the applicability of parts 217 and 222 of this chapter, including, but not limited to, the restrictions specified in §§ 217.2 and 222.22(a) of this chapter with respect to the species identified in § 227.21(a).

[FR Doc. 95–18146 Filed 7–19–95; 4:00 pm]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 60, No. 142

Tuesday, July 25, 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

Natural Resources Conservation Service

Goshen County, North Platte River Groundwater Quality Project Watershed, Goshen, WY

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Goshen County, North Platte River Groundwater Quality Project Watershed, Goshen County, Wyoming.

FOR FURTHER INFORMATION CONTACT: Lincoln E. Burton, State Conservationist, Natural Resources Conservation Service, Room 3124, Federal Building, 100 East B Street, Casper, Wyoming 82601, telephone (307) 261–5201.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Lincoln E. Burton, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is watershed protection—the on-site treatment of agricultural related pollutants for off-site benefits. The planned works of improvement include accelerated technical assistance for land treatment, accelerated financial assistance to treat 5,800 acres to reduce the amount of nitrogen available to be leached to the groundwater, and eight animal waste management facilities.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency (EPA) and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Lincoln E. Burton.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under NO. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials.)

Lincoln E. Burton,

State Conservationist.

[FR Doc. 95–18223 Filed 7–24–95; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–602]

Brass Sheet and Strip From Germany; 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 January 17, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on brass sheet and strip from Germany. The review covers exports of this merchandise to the United States by one manufacturer/exporter, Wieland-Werke AG (Wieland), during the period March 1, 1993 through February 28, 1994.

The review indicates the existence of *de minimis* dumping margins for this period.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have adjusted Wieland's margin for these final results.

EFFECTIVE DATE: July 25, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam, Chip Hayes, or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On January 17, 1995, the Department published in the **Federal Register** (60 FR 3392) the preliminary results of its 1993–94 administrative review of the antidumping duty order on brass sheet and strip from Germany (52 FR 6997, March 6, 1987).

Applicable Statute and Regulations

The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). 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.

Scope of the Review

Imports covered by this review are sales or entries of brass sheet and strip, other than leaded and tinned brass sheet and strip. The chemical composition of the products under review is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C20000 series. This review does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. The merchandise is currently classified under Harmonized Tariff Schedule (HTS) item numbers 7409.21.00 and 7409.29.20. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review period is March 1, 1993 through February 28, 1994. The review involves one manufacturer/ exporter, Wieland.

Analysis of Comments Received

We received case and rebuttal briefs from Wieland and from the petitioners, Hussey Copper, Ltd., The Miller Company, Outokumpu American Brass, Revere Copper Products, Inc., International Association of Machinists and Aerospace Workers, International Union, Allied Industrial Workers of America (AFL-CIO), Mechanics Educational Society of America (Local 56), and the United Steelworkers of America.

Model-matching Methodology

Comment 1: Wieland disputes the Department's use of specific alloy grades in matching U.S. to home market sales. Wieland would have the Department use only two classes of alloys, above or below 75 percent copper content, instead of using exact alloy grades. The respondent states that the exact-alloy comparison method which we used in the preliminary results is a change from the method used in the prior review.

The respondent further alleges that the Department used the exact-alloy method in order to conform the model-matching criteria with other orders, and that in so doing the Department ignored record evidence demonstrating that Wieland's U.S. sales cannot be ''appropriately matched'' to home market sales of identical alloys. Wieland claims that ''using alloy groups . . . provides the most practical means of achieving reasonable comparisons''.

Wieland claims that our approach is contrary to Department practice in other cases involving brass sheet and strip, because the Department failed, in this review, to determine the appropriate matching criteria on the basis of the specific nature of Wieland's sales. The respondent alleges that by relying on specific alloy grades rather than using Wieland's two alloy groups, the Department ''fails to take account of the nature of Wieland's sales''. Wieland does not make clear how our approach neglects to take account of the nature of its sales, but implies that its sales are made more often on the basis of whether products are above or below 75 percent in copper content than on the basis of exact alloys.

The respondent also asserts that, since certain other model-matching criteria, namely gauge and width, are grouped by classes, alloys should also be grouped.

The petitioners note in rebuttal that there is no industry standard to distinguish alloys for high copper content (*i.e.*, greater than 75 percent), that customers specify exact alloys in placing their orders, that in all other antidumping proceedings involving brass sheet and strip the Department has always made exact-alloy matches, and that Wieland's alloy groupings disregard the Department's conclusion in an earlier review that it should abandon the grouping methodology and instead make matches on an exact-alloy basis. The petitioners further assert that Wieland failed to establish that its home market sales, when matched to U.S. sales on the basis of exact alloys, ought not to be taken as representative of home market prices.

Department's Position: We disagree with the respondent. We did not employ the alloy-specific approach merely to conform to approaches used in reviews of other brass sheet and strip orders, but in order to follow section 771(16)(B) of the Act, which requires us to compare U.S. sales to home market merchandise which is identical or, when not identical, is ''like that (U.S.) merchandise in component material or materials and in the purposes for which used,'' prior to resorting, if necessary, to less similar merchandise as described in 771(16)(C)(i)–(iii).

Wieland does not identify which U.S. sales, if any, are not ''appropriately'' matched to home market merchandise by our method, or otherwise explain how its less specific standard would be more appropriate. Nor does Wieland explain how its grouped alloy approach would be ''the most practical means of achieving reasonable comparisons'', other than by arguing that it would make the number of home market sales used in sales comparisons ''sufficient''.

Regarding Wieland's claim that matching by alloy groups would more appropriately reflect the nature of Wieland's sales, nothing in the record supports this claim. On the contrary, according to Wieland, its customers generally specify exact alloys in their orders. While its customers may sometimes choose the lowest-cost combination of metals within a narrow range, no information on the record suggests that Wieland's customers use the standard of 75 percent copper content in ordering merchandise.

In arguing that grouping alloys would be appropriate because grouping is used for gauge and width ranges, Wieland glosses over the distinction between the gauge and width measures on the one hand, and alloy grades on the other. Gauge and width are both infinitely variable and therefore must be divided into tiers to permit any comparisons. Alloy grades, by contrast, are discretely defined proportions of metals. Matching by specific alloys provides more precision than merely differentiating between merchandise which contains above or below 75 percent copper.

The respondent's grouped-alloy approach would assign all home market merchandise to one of two groupings, would compare each U.S. sale to home market merchandise containing up to seven different alloys, and would not necessarily result in comparisons of U.S. sales to home market merchandise made of only the identical alloy, or of only the single most similar alloy. The respondent's suggested groupings could result in understated or overstated dumping margins, due to the mix of home market models which would form the basis of foreign market value (FMV). Matching by specific alloys, on the other hand, ensures that we use the most similar merchandise possible to establish FMV in our dumping calculations. Therefore, the Department has continued to use the alloy-specific matching method.

Comment 2: The respondent complains that the Department's change in model-matching methodology reduces the dumping analysis to ''little more than a game of chance,'' since, according to Wieland, the margin depends far more on the chance occurrence that a home market customer will place an order for an alloy identical to one sold in the United States than on Wieland's general pricing policies for its U.S. and home market sales. Where a single home market sale serves as the basis for comparison, Wieland argues, the results of the U.S./home market price comparison will depend completely on the date on which that home market sale was made, or, more particularly, on the metal pricing date for the metal component of the home market sale. Thus, Wieland argues, differences between U.S. and home market prices are caused by volatility in the market prices for copper, zinc, and tin, rather than by Wieland's brass sheet and strip pricing strategies. Wieland suggests that as an alternative the Department should use alloy groups for model-matching purposes. Wieland points out that differences in alloy costs could then be adjusted for with a sale-specific metal adjustment.

Department's Position: We disagree with the respondent. Wieland's ''game of chance'' complaint is not supported by the facts of the case or the methodology we used. This complaint hinges on Wieland's implicit suggestion that individual home market sales, or pairs of sales, somehow may not conform to its pricing policies. Wieland offers no evidence on the record that any home market sale prices should be excluded as unrepresentative. Wieland has not argued or demonstrated that some of its home market sales are outside the ordinary course of trade or are, for some other reason, inappropriate as the basis of FMV.

While Wieland has alleged that there is a danger that price differences for identical merchandise comparisons might result from changes in commodity prices of components, it has not demonstrated that such price fluctuations should affect the model-match methodology.

In the statutory definition of such or similar merchandise (section 771(16) of the Act) there is a clear preference for matching U.S. sales to home market merchandise which is composed of the same materials, before resorting to comparisons to less similar merchandise. Our approach reflects this preference; the respondent's approach would ignore it. We are not permitted to ignore contemporaneous sales of identical merchandise. Wieland's suggested approach simply does not conform to the requirements of the antidumping law and regulations.

The risk of price differences caused by changes in the prices of commodities used as components is not unique to this proceeding but is inherent in price comparisons in many industries. That risk has not heretofore served as justification for omitting comparisons of U.S. sales to contemporaneous home market sales of identical or most similar merchandise. Yet the respondent's approach would make comparisons to identical or most similar merchandise impossible, by defining models so broadly that all comparisons would potentially include similar merchandise as well as identical merchandise (and would thus be subject to adjustments for differences in alloy values under 19 CFR 353.57(b)). But this grouped-alloy approach would not be warranted by the regulations cited above or by the facts of this review; using exact alloy comparisons, we were able to match a substantial portion of U.S. sales to home market merchandise of identical alloys, and all the remaining U.S. sales with home market merchandise containing one of the three most similar alloys.

Comment 3: Wieland states that the Court of International Trade (CIT), addressing the model-matching issue in remanding the final results in the first administrative review, did not require the Department to abandon the use of two alloy groups, but merely asked the Department to articulate the reasons why it did not use the exact-alloy method. *See Hussey Copper Ltd.*, v. *United States*, 834 F. Supp. 413 (CIT 1993).

Department's Position: As explained in our response to Comment 2 above, the Department has concluded that the exact-alloy matching methodology more closely follows the statute, which requires us to make comparisons of identical merchandise, when this is possible, before making comparisons with similar merchandise.

Comment 4: The petitioners request that the Department alter the hierarchy of traits used in matching U.S. sales to home market sales. In particular, the petitioners ask the Department to place alloy in the third position, instead of the fifth position. According to the petitioners, alloy was placed in the third position in certain other brass sheet and strip cases, and alloy specifications are more important to customers than gauge and width differences.

Department's Position: The petitioners argue that the model-match methodology used in this review is a departure from the methodology used in reviews of brass sheet and strip from other countries. In fact, although there are many similarities in the methodologies used in the various brass sheet and strip cases, they are not identical. Because the facts of each case are distinct from those of other cases, different hierarchies are applied to the criteria to define home market sales of the most similar merchandise.

In this review, as in preceding reviews under this order, the Department used five criteria to define models in order to compare sales: Form, coating, gauge, width, and alloy. For those U.S. sales for which we did not find sales of identical home market merchandise, we determined that the most similar home market merchandise for comparison purposes was merchandise which was identical in form, coating, gauge, and width, and similar in alloy content. Therefore, we used specific programming instructions to search for contemporaneous home market sales of merchandise which was identical except for alloy. Thus, the only criterion for which we considered differences was alloy, no matter what the order of the criteria as listed in the program. Consequently, we do not agree with the petitioner's suggestion that we change the ordering of the criteria in a search for similar merchandise.

Concerning the question of whether alloy is more important to customers than gauge and width specification, as the petitioners allege, we note that Wieland states in its February 23, 1995 Rebuttal Brief (p. 3) that ''generally customers must have very precise gauges and widths to serve their particular purpose and to use with their particular equipment, and no gauge or width substitutes would be acceptable''. Notwithstanding the petitioners' allegation, there is nothing in the record of this review to confirm or support the petitioners' suggestion that customers have less flexibility in alloy than in gauge and width specifications, which typically have narrow tolerances reflecting the customers' machining or assembly requirements. Thus, the petitioners' assertion that alloy is more important than gauge and width to the respondent's customers is without foundation in the record of this review.

Therefore, we have determined for these final results to use the model-matching methodology used for the preliminary results.

Differences in Average Order Size

Comment 5: Defending its claim for adjustments in price to reflect the different average order sizes of its U.S. sales, Wieland contests our preliminary finding that it has not demonstrated a relationship between order size and price. In support of the claimed adjustment, Wieland cites the price lists in its questionnaire responses, the Department's verification report in the 1991–1992 administrative review, section 773(a)(4)(A) of the Act, and the regulations (19 CFR 353.55).

In rebuttal, the petitioners point to the Department's disallowance in the first review, as upheld by the CIT, concerning the same cost adjustment claim for different order sizes. The petitioners also note Wieland's failure to show that it met the regulatory requirement for such an adjustment, *i.e.*, that Wieland must show that it ''granted quantity discounts of at least the same magnitude on 20 percent or more of sales of such or similar merchandise * * *'' (19 CFR 353.55(b)(1)).

Department's Position: We disagree with the respondent. The regulations do not allow for adjustments to price based merely on claimed differences in per-pound costs according to order size. The adjustments allowed are only for differences in price or discounts for different quantities produced. The regulations (19 CFR 353.55(b)(2)) provide for adjustments if ''the producer demonstrates * * * that the discounts reflect savings specifically attributable to the production of the different quantities.'' In its questionnaire response Wieland complied in part, by showing the savings, in the form of differences in per-kilogram costs for processing different order quantities. But Wieland did not place on the record any evidence of quantity discounts actually given, or information showing that prices were affected by different production quantities. Indeed, Wieland's questionnaire response states unequivocally: ''Wieland does not provide price-based quantity discounts''.

The price list Wieland cites in this regard is not an adequate basis for this claim since it is a matter of record that the respondent's prices are negotiated *ad-hoc* and do not necessarily follow the price list. The verification report for a prior review, in which we noted variations in prices for varying quantities in one particular contract, is not dispositive; our inspection of a contract in a verification does not signal our acceptance of a claimed adjustment to price. Wieland has the burden, in each review, of showing how its actual prices varied according to quantity, as required by 19 CFR 353.55.

Value-added Tax

Comment 6: While conceding that the practice is consistent with current Department policy on value-added tax (VAT), Wieland contests the Department's application of a 14-percent VAT adjustment to both U.S. and home market sales in this review, and requests that the Department instead add the actual home market VAT amount to U.S. price. Wieland alleges that the use of the VAT rate on sales in both markets introduces a multiplier effect. Wieland urges the Department to instead adopt its alternative solution, at least until this issue can be resolved more definitively by the U.S. Court of Appeals for the Federal Circuit (CAFC), once an appeal is heard in the case of *Federal Mogul Corporation* v. *United States,* 834 F.Supp 1391 (Fed. Cir. 1993).

Department's Position: We disagree with Wieland. We adjusted U.S. Price (USP) and FMV for VAT in accordance with our practice, pursuant to the decision of the CIT in *Federal-Mogul Corporation and the Torrington Company* v. *United States,* 813 F. Supp. 856 (October 7, 1993) (*Federal-Mogul*) and as outlined in *Silicomanganese From Venezuela; Preliminary Determination of Sales at Less than Fair Value,* 59 FR 31204, June 17, 1994, where we address the multiplier effect issue in detail.

Comment 7: Citing 19 U.S.C. 1677a(d)(1)(C), the petitioners state that for U.S. sales not found to be sold at less than fair value, the Department must cap the absolute tax amount added to U.S. price, limiting it to the absolute amount of taxes in the home market. The petitioners argue that the absolute net U.S. price that becomes the denominator in our calculation of dumping duties is otherwise overstated, and that *ad valorem* margins are consequently reduced improperly.

The respondent, in rebuttal, argues that the petitioners cannot have it both ways, and that the Department cannot selectively apply the tax rate to sales which may have dumping margins and apply the absolute tax amount only to those sales which do not have margins.

Department Position: We disagree with the petitioners. The Department's methodology consists of applying the home market tax rate to the U.S. price at the same point in the chain of distribution at which the home market tax base is determined and then reducing the tax in each market by that portion of the tax attributable to expenses which are deducted from each price. For example, because we deduct ocean freight from U.S. price, ocean freight is also eliminated from the U.S. tax base. This is consistent with the decision of the CIT in *Federal-Mogul.* The effect of these adjustments is the same as initially calculating the tax in each market on the basis of adjusted prices.

The ''cap'' was devised at a time when the Department was not effectively calculating the tax in each market on the basis of adjusted prices. It was intended to keep differences in expenses which were eliminated through adjustments to the price in each market from continuing to affect the dumping margin by remaining in the basis upon which the tax in each market was determined. The Department's current practice of effectively using adjusted prices in each market as the tax base automatically achieves this purpose. The imputed U.S. tax will exceed the tax on home market comparison sales only where the adjusted U.S. price is higher than the adjusted home market price, *i.e.*, where there is no dumping margin. A tax cap is irrelevant for such sales, because no duties are assessed upon them and they do not contribute to the weighted-average margin. Consequently, the absolute margins obtained under the Department's current approach are identical to those which would have been obtained after imposing the tax cap.

Although applying a tax cap may affect the relative weighted-average margins, and hence deposit rates, we decline to reapply the tax cap solely to achieve this purpose. The Department includes the U.S. prices that exceed foreign market prices in the denominator of the deposit rate equation. It would be inconsistent to include that portion of the U.S. price that exceeds the home market price in that denominator, but to remove the tax on this amount. Just as we treat the tax on ocean freight consistently with ocean freight itself, where we include the full adjusted U.S. price in the denominator of the deposit rate equation, we must also leave the tax on that full U.S. price in the denominator.

Interest Rates Used in Credit Expenses

Comment 8: The petitioners claim that the Department should correct for Wieland's use of Wieland-America's short-term borrowing rate to calculate direct expenses for U.S. sales, since during the period of review U.S. customers were billed by Wieland-Werke in Germany. The petitioners argue that the U.S. imputed credit expenses should have been calculated on the basis of Wieland-Werke' short-term interest rates, rather than on the basis of Wieland-America's short-term interest rate.

The respondent argues in rebuttal that the Department correctly measured the cost of financing sales made in dollars by applying a dollar interest rate, citing Department policy in *Final Determination of Sales at Less than Fair Value: Fresh Cut Roses from Colombia,* 60 FR 6980, 6998 (1995) (Comment 21) (*Roses*). Wieland also notes that in *Final Determination of Sales at Less than Fair Value: Class 150 Stainless Steel Threaded Pipe Fittings from Taiwan* (59 FR 38432 (July 28, 1994) (*Class 150 Stainless Steel Pipe*), the Department stated that it ''is required to use the lowest rate at which the respondent has borrowed or to which the respondent has access.''

Department's Position: We disagree with the petitioners and concur with the respondent that it is reasonable to use local, dollar-denominated borrowing rates in this case. The respondent is correct in arguing that the interest rate used for credit expenses should match the currency in which the sales are denominated, as stated in *Roses.* On the question of whether the parent's or the U.S. subsidiary's dollar-denominated borrowing rate should be applied, where a company had access, directly or through its U.S. affiliate, to two different dollar-denominated rates, the lower of the two rates is presumed to have been used. See, for example, *Class 150 Stainless Steel Pipe,* where the Department calculated imputed credit for purchase price sales using the lower of two U.S. interest rates available to the respondent. In this case we are aware of only the U.S. subsidiary having U.S. borrowings during this POR. See also *Notice of Final Determinations of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products,* *Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from France,* 58 FR 37125 (1993)(Comment 30); the Department does not concern itself with determining which of the corporate entities related to the respondent actually incurs the cost of financing.

Sales to Related Parties

Comment 9: The petitioners state that the Department failed to exclude sales to related parties from home market sales, or test such sales for arm's-length pricing. In rebuttal, the respondent states that all sales between related parties are at arm's length, but that, in any case, excluding related-party sales will not significantly affect sales matching.

Department's Position: We agree with the petitioners and have included an arm's-length test in our analysis. We compared prices net of difference-in-merchandise adjustments, movement expenses, early payment discounts, commissions and after-sale rebates. The results of that test indicate that a substantial number of sales to affiliates were at lower prices than those to unrelated parties. In accordance with 19 CFR 353.45(a), we have therefore excluded those sales to related parties that were not at arm's length, and have used home market sales by Wieland to unrelated customers, and home market sales to related parties that were at arm's length, as the basis for FMV.

Clerical and Programming Errors

Comment 10: The respondent points out that adjustments for different alloys were not converted to pounds.

Department's Position: We agree with the respondent and have converted the adjustments for different alloys to pounds.

Comment 11: The petitioners state, and Wieland agrees, that for U.S. sales, the Department neglected to adjust the difference-in-merchandise data for physical characteristics and for different alloys by the VAT rate.

Department Position: We agree with the petitioners and have adjusted these data by the VAT rate.

Final Results of Review

As a result of our analysis of the comments received, we determine that the following margin exists for Wieland:

Manufacturer/exporter	Period	Percent margin
Wieland-Werke AG	3/1/93–2/28/94	[1] 0.495

[1] We have not rounded this result to two places, as is our usual practice, since doing so would indicate a margin above *de minimis*, where the actual margin is *de minimis*.

Individual differences between the USP and FMV may vary from the above percentage. The Department shall instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries.

Furthermore, the following deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Act.

(1) Because the rate for Wieland is *de minimis*, the Department shall not require cash deposits on shipments from Wieland;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 8.87 percent, the ''all others'' rate established in the LTFV investigation.

This notice also 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 the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction. This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 11, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–18262 Filed 7–24–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–549–812]

Amended Final Antidumping Duty Determination and Order; Furfuryl Alcohol From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: July 25, 1995.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Greg Thompson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5288 or (202) 482–3003, respectively.

Amended Final Determination

We presented counsel for the respondent, Indo-Rama Chemicals Ltd. (Thailand) (IRCT), and counsel for the petitioner, QO Chemicals, with the calculations and disclosure materials concerning the final determination on May 4, and 8, 1995, respectively.

The petitioner filed a timely submission alleging a ministerial error in the Department of Commerce's (Department) final determination calculations. On May 12, 1995, the petitioner alleged that the Department incorrectly calculated the number of credit days in the home market by taking the difference from the sale date to the payment date. (For specific details of these allegations and our analysis thereof, *see* Memorandum from the Easton Team to Barbara R. Stafford dated May 25, 1995).

We have reviewed the petitioner's allegation and agree that we erred in calculating the number of days for the home-market credit expense. In accordance with 19 CFR 353.28, we have corrected the calculations for the final determination. The final dumping margin for IRCT and ''All Others'' has been amended from 5.49 to 7.82 percent.

Scope of Order

The merchandise covered by this order is furfuryl alcohol ($C_4H_3OCH_2OH$). Furfuryl alcohol is a primary alcohol, and is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes.

The product subject to this order is classifiable under subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Antidumping Duty Order

On July 18, 1995, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of furfuryl alcohol from Thailand materially injure a U.S. industry. Therefore, in accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of furfuryl alcohol from Thailand. These antidumping duties will be assessed on all unliquidated entries of furfuryl alcohol from Thailand entered, or withdrawn from warehouse, for consumption on or after May 8, 1995, the date on which the Department published its final determination notice in the **Federal Register** (60 FR 22557).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-average margin percentage
Indo-Rama Chemicals Ltd. (Thailand)	7.82
All Others	7.82

This notice constitutes the antidumping duty order with respect to furfuryl alcohol from Thailand, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: July 19, 1995.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95–18263 Filed 7–24–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 071795H]

Pacific 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 Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The meetings will be held August 14–18, 1995. The Council meeting will begin on August 15, at 8:00 a.m. in a closed session (not open to the public) to discuss personnel matters and litigation. The open session will begin at 8:30 a.m. The Council meeting will reconvene at 8:00 a.m. each day, August 16, through August 18. The meetings may continue each day into the evening hours if necessary to complete business.

ADDRESSES: The meetings will be held at the Holiday Inn and Conference Center, 275 South Airport Boulevard, South San Francisco, CA 94080; telephone: (415) 873–3550.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda:

A. Call to Order

B. Pacific Halibut Management

1. Status of Fisheries

2. Scientific and Statistical Committee (SSC) Review of Bycatch Estimate

3. Proposed Changes to Sport Fishery Measures

C. Salmon Management

1. Sequence of Events and Status of Fisheries

2. Status of SSC Methodology Reviews

3. Oregon Department of Fish and Wildlife Report on Proposed Scaling of Oregon Coastal Natural Coho Spawning Escapements

D. Habitat Issues

E. Highly Migratory Species Management—Status of Data Collection

F. Groundfish Management

G. Administrative and Other Matters

Other Meetings

The Groundfish Subcommittee of the SSC will meet at 3:00 p.m. on August 13, to review groundfish stock assessments.

The Scientific and Statistical Committee will meet on

August 14–15 at 8:00 a.m., to address scientific issues related to Council agenda items.

The Groundfish Management Team will convene on August 14 at 8:00 a.m. to address groundfish management items on the Council agenda.

The Groundfish Advisory Subpanel will convene on August 14 at 1:00 p.m. to address groundfish management items on the Council agenda and will reconvene at 8:00 a.m. on August 15.

The Habitat Steering Group will meet on August 14 at 10:00 a.m. to consider activities affecting the habitat of fish stocks managed by the Council.

The Budget Committee will convene on August 14 at 3:00 p.m. to review the status of the fiscal year 1995 Council budget and the fiscal year 1996 budget proposal.

The Enforcement Consultants meet on August 15 at 7:00 p.m. to address enforcement issues related to Council agenda items.

Detailed agendas for the above advisory meetings will be available from the Council after July 28, 1995.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle M. Sailer at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: July 18, 1995.

Richard W. Surdi,

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

[FR Doc. 95–18209 Filed 7–24–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Integration Group; Notice of Advisory Committee Meetings

SUMMARY: The Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Integration Group will meet in closed session on July 31, 1995 at the Pentagon, Arlington, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

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, P.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: July 19, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18247 Filed 7–24–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board/Defense Policy Board Task Force on Theater Missile Defense (TMD); Notice of Advisory Committee Meeting

SUMMARY: The Defense Science Board/ Defense Policy Board Task Force on Theater Missile Defense (TMD) will meet in closed session on July 28, 1995 at Science Applications International Corporation (SAIC), McLean, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

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 review the purposes of the U.S. theater missile defense effort, including the nature of the threat (types and quantities of missiles and payloads); how might it evolve; the degree of defense we seek; what we wish to defend; under what circumstances; and to what levels.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.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 July 19, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18248 Filed 7–24–95; 8:45 am]

BILLING CODE 5000–04–M

Membership of the Office of the Secretary of Defense Performance Review Board

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense, the Joint Staff, the U.S. Mission to NATO, the Advanced Research Projects Agency, the Defense Commissary Agency, the Defense Investigative Service, the Defense Security Assistance Agency, the Ballistic Missile Defense Organization, the Defense Field Activities, and the U.S. Court of Military Appeals. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Secretary of Defense.

EFFECTIVE DATES: July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Christropher S. Koehle, Assistant Director for Executive Personnel and Classification, Directorate for Personnel and Security, Washington Headquarters Services, Office of the Secretary of Defense, Department of Defense, The Pentagon, (703) 697–8304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the Office of the Secretary of Defense PRB; specific PRB panel assignments will be made from this group. Executives listed will serve a one-year renewable term, effective July 1, 1995.

Office of the Secretary of Defense

Chairman

Vincent P. Roske, Jr.

Members

Ronald L. Adolphi
Howard G. Becker
Diana L. Blundell
John V. Bolino
Vernon Chang
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Barbara Ann Falkner
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Frederick C. Smith
Robert Snyder
Gordan K. Soper
Diana G. Tabler
Mary Tomkey
George G. Wauer
Karen M. Yannello

Alternates

Steven A. Austin
William S. Boone
Albert V. Conte
William N. Early
Thomas E. Ewald
Thomas F. Garnett, Jr.
Alfred Goldberg
William G. Lese
John L. Maddy
J. David Martin
John S. Mester
Kurt N. Molholm
Michael A. Parmentier
John Roth
Ronald P. Sanders
Wayne S. Sellman
John E. Smith
Alfred B. Stille, Jr.
Nicolai Timenes, Jr.
Charles M. Wiker
John A. Wiles
Samuel J. Worthington

Dated: July 19, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18249 Filed 7–24–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Nuclear Agency

Privacy Act of 1974; Notice to Delete a System of Records

AGENCY: Defense Nuclear Agency, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Defense Nuclear Agency is deleting a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The notice HDNA008, entitled Biographies, no longer qualifies as a system of records.

DATES: Deletion is effective July 25, 1995.

ADDRESSES: Send comments to General Counsel, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398

FOR FURTHER INFORMATION CONTACT: Ms. Sandy Barker at (703) 325–7681.

SUPPLEMENTARY INFORMATION: The Defense Nuclear Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Nuclear Agency is deleting a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The notice HDNA008, entitled Biographies, no longer qualifies as a system of records.

Dated: July 17, 1995.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

HDNA0008

SYSTEM NAME:

Biographies *(February 22, 1993, 58 FR 10555).*

Reason: System does not qualify as a system of records. Records have been destroyed.

[FR Doc. 95–18250 Filed 07–24–95; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board, Education.

ACTION: Notice of committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Committee on Partnerships and Outreach, Educational Research Policy and Priorities Board. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATE AND TIME: August 8, 1995, 9 a.m. to 4:30 p.m.

ADDRESS: Capitol Room, Washington Court Hotel, 525 New Jersey Avenue NW., Washington, D.C. 20001.

FOR FURTHER INFORMATION CONTACT: John Christensen, Designated Federal Official, National Educational Research Policy and Priorities Board, 555 New Jersey Avenue NW., Washington, D.C. 20208–7564. Telephone: (202) 219–2065; Fax: (202) 219–1528.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994 (the Act). The Board works collectively with the Assistant Secretary for the Office of Educational Research and Improvement (the Office) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The Act directs the Board to provide a guidance to the Congress in its oversight of the Office; to advise the United States on the Federal educational research and development effort; and to solicit advice from practitioners, policymakers, and researchers to define research needs and suggestions for research topics. The Board has designated the Committee to work on its behalf in these matters in the interim between full meetings of the Board. The meeting of the Committee on Partnerships and Outreach is open to the public. The agenda for the meeting includes discussions about strengthening linkages with representatives of research, practitioner, and policy-making communities so that research findings can improve practice.

A final agenda will be available from the Board's office on July 28, 1995.

Records are kept of all Board proceedings, and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 555 New Jersey Avenue, NW., Washington, D.C. 20208–7564.

Dated: July 19, 1995.

Sharon P. Robinson,

Assistant Secretary, Office of Education Research and Improvement.

[FR Doc. 95–18147 Filed 7–24–95; 8:45 am]

BILLING CODE 4000–01–M

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting sponsored by the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. This document is intended to notify the general public.

DATES AND TIMES: Monday, August 7, 1995, beginning at 9 a.m. and ending at 4:45 p.m. and Tuesday, August 8, 1995, beginning at 8:30 a.m. and ending at 2 p.m.

ADDRESS: Roger Williams University, School of Law, the Cafeteria, One Old Ferry Road, Bristol, Rhode Island 02809.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, 1280 Maryland Avenue SW., Suite 601, Washington, DC 20202–7582 (202) 708–7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, conducting a study of institutional lending in the Stafford Student Loan Program and an in-depth study of student loan simplification. The Advisory Committee fulfills its charge by conducting objective, nonpartisan, and independent analyses of important student aid issues. As a result of passage of the Omnibus Budget Reconciliation Act (OBRA) of 1993, Congress assigned the Advisory Committee the major task of evaluating the Ford Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP). The Committee will report to the Secretary and Congress on not less than an annual basis on the operation of both programs and submit a final report by January 1, 1997.

The Advisory Committee will meet in Bristol, Rhode Island on August 7, 1995, from 9 a.m. to 4:45 p.m. and on August 8, from 8:30 a.m. to 2 p.m.

The proposed agenda will consist of discussion sessions on the Advisory Committee's activities pertaining to the Title IV programs including the delivery system, budget reconciliation and appropriations, reauthorized, and other legislative proposals. In addition, the Committee will discuss plans for fiscal year 1996. Space is limited and you are encouraged to register early if you plan to attend. To register, please fax your name, title, affiliation, complete address (including Internet and E-Mail—if available), telephone number, and fax number to the Advisory Committee staff office at (202) 401–3467. If you are unable to fax, please mail your registration information or contact the Advisory Committee staff office at (202) 708–7439. Also, you may register through INTERNET at *Hope__Gray@DOED.gov*. The registration deadline is Tuesday, August 1, 1995.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, 1280 Maryland Avenue, SW., Suite 601, Washington, DC from the hours of 9 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: July 19, 1995.

Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 95–18183 Filed 7–24–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2110 Wisconsin]

Consolidated Water Power Company; Notice of Intent To File An Application For A New License

July 19, 1995.

Take notice that the Consolidated Water Power Company, the existing licensee for the Stevens Point Hydroelectric Project No. 2110, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2110 was issued effective January 1, 1977, and expires June 30, 2000.

The project is located on the Wisconsin River in Portage County, Wisconsin. The principal works of the Stevens Point Project include a concrete gravity dam about 28 feet high and 1,390 feet long composed of a powerhouse section, a spillway section with fifteen tainter gates, also dikes at the ends of the dam; a 3,915-acre reservoir at elevation 1,088.07 feet; a 2,000-foot-long concrete overflow weir located about ¾ mile upstream of the dam at elevation 1,088.57 feet USGS datum; a powerhouse with six generating units each rated at 640-kW; generator leads and the 2.3/46 kV substation; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 610 High Street, Wisconsin Rapids, WI 54495.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 10, 1998.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18162 Filed 7–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2192 Wisconsin]

Consolidated Water Power Company; Notice of Intent To File An Application For A New License

July 19, 1995.

Take notice that the Consolidated Water Power Company, the existing licensee for the Biron Hydroelectric Project No. 2192, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2192 was issued effective August 1, 1980, and expires June 30, 2000.

The project is located on the Wisconsin River in Wood County, Wisconsin. The principal works of the Biron Project include a 2,533-foot-long, 34-foot-high concrete gravity dam with intake section, three spillway sections, and 22 Tainter gates; a concrete seawall and earth embankments along the banks of the reservoir; a 2,078-acre reservoir at elevation 1036.1 feet USC&GS datum; a powerhouse, integral with the dam, containing two 1,450-Kw generators and an industrial building with one 400-Kw generator; generator leads, 2.4/46 Kv transformer bank, and 46 Kv bus in the substation; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 610 High Street, Wisconsin Rapids, WI 54495.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 1998.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18163 Filed 7–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–388–000]

El Paso Natural Gas Company; Notice of Tariff Filing

July 19, 1995.

Take notice that on July 14, 1995, El Paso Natural Gas Company (El Paso), tendered for filing pursuant to Part 154 of the Commission's Regulations Under the Natural Gas Act and in compliance with the Commission's Order Granting Rehearing (Order No. 577–A) issued May 31, 1995 at Docket No. RM95–5–001, certain revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1–A.

El Paso states that the tendered tariff sheets reflect the Commission's revision of Section 284.243(h)(1) of its Regulations and provide for the extension of the exception which allows shippers to release capacity without the advance posting and bidding to 31 days.

El Paso, pursuant to Section 154.51 of the Commission's Regulations, respectfully requests waiver of the notice requirement of Section 154.22 of said Regulations to permit the tendered tariff sheets to become effective on July 10, 1995 which is the date Order No. 577–A became effective.

El Paso states that copies of the filing were served upon all of El Paso's interstate pipeline system transportation customers and interested state regulatory 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 July 26, 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. 95–18164 Filed 7–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–221–049]

Frontier Gas Storage Company; Notice of Sale Pursuant to Settlement Agreement

July 19, 1995.

Take notice that on July 13, 1995, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Avenue NW., Suite 800, Washington, D.C. 20004, in compliance with the provisions of the Commission's February 13, 1985, Order in Docket No. CP82–487–000, *et al.*, submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to a daily quantity of 50,000 MMBtu, not to exceed 2 Bcf for the term of the Agreement, of Frontier's gas storage inventory on an ''as metered'' basis to Rainbow Gas Company.

Under Supart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985, Order, Frontier is ''authorized to commence the sale of its inventory under such an executed service agreement fourteen days after filing the agreement with the Commission, and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter.''

Any person desiring to be heard or to make a protest with reference to said filing should, within 10 days of the publication of such notice in the **Federal Register**, file with the Federal Energy Regulatory Commission (825 North Capitol Street, NE., Washington, D.C. 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18165 Filed 7–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–221–049]

Frontier Gas Storage Company; Notice of Sale Pursuant To Settlement Agreement

July 19, 1995.

Take notice that on July 13, 1995, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Avenue NW., Suite 800, Washington, D.C. 20004, in compliance with the provisions of the Commission's February 13, 1985, Order in Docket No. CP82–487–000, *et al.*, submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to a daily quantity of 50,000 MMBTu, not to exceed 2 Bcf for the term of the Agreement, of Frontier's gas storage inventory on an ''as metered'' basis to Rainbow Gas Company.

Under Subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985, Order, Frontier is ''authorized to commence the sale of its inventory under such an executed service agreement fourteen days after filing the agreement with the Commission, and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter.''

Any person desiring to be heard or to make a protest with reference to said filing should, within 10 days of the publication of such notice in the **Federal Register**, file with the Federal Energy Regulatory Commission (825 North Capitol Street NE., Washington, D.C. 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18166 Filed 7–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–209–043]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 19, 1995.

Take notice that on July 17, 1995, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective August 4, 1994:

Substitute First Revised Sheet No. 30
Substitute Original Sheet No. 31
Substitute Original Sheet No. 32
Substitute Original Sheet No. 33
Substitute Original Sheet No. 34
Substitute Original Sheet No. 35
Substitute Original Sheet No. 36
Substitute Original Sheet No. 37
Substitute Original Sheet No. 38

Koch Gateway states that the above referenced tariff sheets reflect Koch Gateway's compliance with the Commission's July 6, 1995 Order Granting in Part and Denying in Part Clarification. Koch Gateway states that these tariff sheets reflect the inclusion of $1,439,996 which Southern Natural Gas Company still owes Koch Gateway pursuant to the September 14, 1992 take-or-pay settlement agreement and the necessary modifications to implement the other take-or-pay settlements included in the Commission's August 4, 1994 Order 68 FERC ¶61,219 (1994) in this proceeding.

Koch Gateway states that the tariff sheets are being mailed to all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 26, 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 public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18167 Filed 7–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2161 Wisconsin]

Rhinelander Paper Company; Notice of Intent To File an Application for a New License

July 19, 1995.

Take notice that the Rhinelander Paper Company, the existing licensee for the Rhinelander Hydroelectric Project No. 2161, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2161 was issued effective January 31, 1981, and expires June 30, 2000.

The project is located on the Wisconsin River in Oneida County, Wisconsin. The principal works of the Rhinelander Project include an 180-foot-long earth dam with a concrete section containing two waste gates; a 3,576-acre reservoir with a normal water surface elevation at 1555.33 feet msl; an intake structure containing 14 gates; an intake canal about 965 feet long and 60 feet wide; a 36-foot wide tainter gate spillway adjacent to the intake canal; a brick powerhouse containing two 560-KW and one 1,000-kW generating units; transmission line connections; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 515 West Davenport Street, Rhinelander, WI 54501.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 1998.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18168 Filed 7–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1895 South Carolina]

South Carolina Electric & Gas Company; Notice of Intent To File an Application for a New License

July 19, 1995.

Take notice that the South Carolina Electric & Gas Company, the existing licensee for the Columbia Hydroelectric Project No. 1895, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 1895 was issued effective April 1, 1980, and expires June 30, 2000.

The project is located on the Broad River and the Congaree River in Richland County, South Carolina. The principal works of the Columbia Project include a diversion dam about 1,021 feet long and 14 feet high with a canal gate section; a 265 acre reservoir at elevation 153.8 feet USGS datum; a power canal, 200 feet wide and 3 miles long; a masonry and brick powerhouse containing five 1,600-Kw and two 1,300-Kw generator units; generator leads, the 4.8-Kv bus, a tie from the hydro station to the terminal substation; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 1426 Main Street, Columbia, South Carolina 29201.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 1998.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18169 Filed 7–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–112–000]

Tennessee Gas Pipeline Company; Notice of Informal Settlement Conference

July 19, 1995.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 9:00 a.m. on July 25, 1995 and continuing on July 26, 1995, at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, D.C., for the purpose of exploring the possible settlement of 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 385.214).

For additional information, contact Sandra J. Delude at (202) 208–0583 or Edith A. Gilmore at (202) 208–2158.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18170 Filed 7–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP92–137–039, RP93–136–007]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

July 19, 1995.

Take notice that on July 14, 1995, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing Substitute 1st Revised 12th Revised 2nd Revised Sheet No. 23 to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheet is proposed to be effective July 1, 1995. Transco states that the purpose of the instant filing is to revise the Non-Gas Demand Fee under Transco's sales service Rate Schedules FS and OFS based on daily billing determinants of 1,065,469 Mcf.

As background to the instant filing, on June 1, 1995 (June 1 Filing), Transco filed revised tariff sheets in compliance with a May 24, 1995 Commission order requiring Transco to reallocate approximately $5.6 million of A&G costs from its production and gathering function to its merchant service. On June 29, 1995 the Commission issued an order (June 29 Order) accepting such tariff sheets subject to Transco filing, within 15 days of the date of the order, to revise the Non-Gas Demand Fee under Transco's Rate Schedules FS and OFS based on daily billing determinants of 1,065,469 Mcf.

Accordingly, in compliance with the Commission's June 29 Order, Transco is submitting Substitute 1st Revised 12th Revised 2nd Revised Sheet No. 23 reflecting a reduced Non-Gas Demand Fee (from the fee proposed in the June 1 Filing), of $1.3601 per Mcf.

Transco states that it is serving copies of the instant filing to interested parties to Docket No. RP92–137.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 26, 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. 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. 95–18171 Filed 7–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–296–004]

Williams Natural Gas Company; Notice of Refund Report

July 19, 1995.

Take notice that on July 17, 1995, Williams Natural Gas Company (WNG) tendered for filing a report of refunds made to customers, pursuant to Commission order issued June 16, 1995 (June 16 order), in the above referenced docket.

WNG states that ordering paragraph (C) of the June 16 order directed WNG to refund those amounts, with interest, previously recovered through direct bills in this proceeding that the Commission has determined to be ineligible for direct billing, within 30 days of the issuance of the order. WNG is concurrently filing revised tariff sheets and workpapers detailing the total reduction in the direct bill amount required by the June 16 order.

WNG states that a copy of its filing was served on all customers receiving a refund, all participants listed on the service lists maintained by the Commission in the docket referenced above, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 26, 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 public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18172 Filed 7–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–296–005]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 19, 1995.

Take notice that on July 17, 1995, Williams Natural Gas Company (WNG) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective September 19, 1994

Substitute Third Revised Sheet No. 9
Substitute Second Revised Sheet No. 10

Effective March 31, 1995

Second Substitute Fourth Revised Sheet No. 9
Second Substitute Third Revised Sheet No. 10

WNG states that this filing is being made in compliance with Commission order issued June 16, 1995 in Docket No. RP94–296–000. WNG was directed to file the revisions required by the order within 30 days of the issuance of the order. The tendered tariff sheets reflect a reduction in the amount of unrecovered purchased gas costs of approximately $7.9 million.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 26, 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 public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18173 Filed 7–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–303–001]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 19, 1995.

Take notice that on July 14, 1995, Williams Natural Gas Company (WNG) tendered for filing to become a part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

First Revised First Revised Sheet No. 204
Substitute First Revised Sheet Nos. 215, 232, 233, 234, and 249
Substitute Second Revised Sheet No. 250
Substitute First Revised Sheet Nos. 257, 261, and 263
Substitute Second Revised Sheet No. 264

The proposed effective date of these tariff sheets is July 1, 1995.

WNG states that this filing is being made in compliance with Commission order issued June 30, 1995 in Docket No. RP95–303–000. WNG was directed to file the revisions required by the order within 15 days of the issuance of the order.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 26, 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 public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18174 Filed 7–24–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research; High Energy Physics Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is given of a meeting of the High Energy Physics Advisory Panel.

DATES: Monday, September 18, 1995; 9 a.m. to 6 p.m.; and Tuesday, September 19, 1995; 9 a.m.—4 p.m.

ADDRESSES: U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874.

FOR FURTHER INFORMATION CONTACT: Dr. P. K. Williams, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER–221, GTN, Germantown, Maryland 20874, Telephone: (301) 903–4829.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Monday, September 18, 1995 and Tuesday, September 19, 1995

Discussion of Department of Energy High Energy Physics Programs
Discussion of National Science Foundation Elementary Particle Physics Programs
Discussion of and Action on the Report of the Subpanel on Long Baseline Neutrino Oscillations
Discussion of High Energy Physics at Fermi National Accelerator Laboratory, Stanford Linear Accelerator Center, Brookhaven National Laboratory, Cornell University, Argonne National Laboratory, and Lawrence Berkeley Laboratory and the FY 1996 Budgets
Discussion of Status of Large Hadron Collider Project and U.S. Participation
Discussion of University-based High Energy Physics Programs
Reports on and Discussions of Topics of General Interest in High Energy Physics
Public Comment (10 minute rule)

Public Participation

The two-day meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes

Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on July 20, 1995

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–18240 Filed 7–24–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 95–38–NG]

AIG Trading Corporation; Order Granting Authorization to Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting AIG Trading Corporation (AIG) authorization to import up to 100 Bcf of natural gas each year from Canada, and to export up to 100 Bcf of natural gas each year to Canada. This import/export authorization shall extend for a period of ten years beginning on the date of the initial import or export delivery, whichever occurs first.

AIG's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., July 12, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–18237 Filed 7–24–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No 95–53–NG]

Inland Pacific Energy Services Corp.; Order Granting Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Inland Pacific Energy Services Corp. authorization to import up to 48 Bcf of natural gas from Canada over a two-year term beginning on the date of the first delivery after August 2, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., July 13, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–18239 Filed 7–24–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5263–6]

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.

DATE: Comments must be submitted on or before August 24, 1995.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA (202) 260–2740, please refer to ICR #1446.05.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Polychlorinated Biphenyls (PCBs)—Notification and Manifesting of PCB Waste Activities *and* Records of PCB Storage and Disposal. (EPA ICR No. 1446.05; OMB No. 2070–0112). This notice requests an extension of a currently approved collection.

Abstract: Under section 6(e) of the Toxic Substances Control Act (TSCA), generators of PCB waste must prepare manifests when they ship the waste for storage and disposal. The manifests enable EPA to track the chain of custody for a particular PCB waste shipment. Generators must also submit to EPA an Exception Report if, within 45 days, they do not receive a copy of the PCB waste manifest signed by the owner or operator of the PCB commercial storage and disposal facility to which the waste was shipped. They are also required to submit an annual report of unmanifested PCB waste.

All commercial storers, transporters and disposers of PCB waste must notify the EPA of their PCB waste handling activities, and they must obtain an ID number to be used on the required PCB waste manifests. Owners and operators of commercial storage and disposal facilities, must submit to the Agency an annual report of discrepancies between the quantity and type of PCB waste designated on the manifest or shipping papers, and the quantity or type of PCB waste actually delivered to, and received by, their designated facilities. Commercial storers of PCB waste must submit financial assurance and closure plans for EPA approval of their facilities. Commercial storers must also keep records of burden associated with 3rd-party notifications. In addition, users, storers, and disposers of PCB waste must keep records of all their PCB activities, including copies of manifests and all annual records of the disposition of PCBs. The Agency uses the information to monitor the movement of PCBs and their ultimate disposal, and to ensure compliance with the regulations.

Burden Statement: The estimated average public reporting burden for this collection of information is .38 hour per respondent for reporting, and 7.4 hours per recordkeeper annually. This estimate includes the time to read instructions, gather existing information and complete the required reports.

Respondents: Handlers, users, storers and disposers of PCBs, and owners and operators of PCB disposal facilities.

Estimated No. of Respondents: 22,600.

Estimated No. of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 175,648 hours.

Frequency of Collection: Annually and on occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, (please refer to EPA ICR #1446.05 and OMB #2070–0112) to:

Sandy Farmer, EPA ICR #1446.05, U.S. Environmental Protection Agency, Regulatory Information Division (2136), 401 M Street SW., Washington, DC 20460

and

Tim Hunt, OMB #2070–0112, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: June 28, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–18261 Filed 7–24–95; 8:45 am]

BILLING CODE 6560–50–M

[FRI–5263–7]

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.

DATE: Comments must be submitted on or before August 24, 1995.

FOR FURTHER INFORMATION CONTACT: For further information, or a copy of this ICR, contact Sandy Farmer at (202) 260–2740, please refer to EPA ICR #1292.04.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Enforcement Policy Regarding the Sale and Use of Aftermarket Catalytic Converters (EPA ICR #1292.04; OMB #2060–0135). This ICR requests renewal of the existing clearance.

Abstract: Manufacturers who recondition used catalytic converters and who manufacture replacement catalytic converters must submit semi-annual reports to the EPA describing the reconditioned or manufactured catalysts. For each catalyst line, the Agency requires information concerning the catalysts' design, testing and warranty as well as the make, model and year of the vehicle(s) in which the catalyst may be installed. The EPA uses this information in enforcing its policies on the sale and use of aftermarket catalytic converters.

Burden Statement: The public reporting and recordkeeping burden for this collection of information is estimated to average 4 hours per respondent, including time for reviewing instructions, testing, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: manufacturers, reconditioners and installers of aftermarket catalytic converters.

Estimated Number of Respondents: 17,020.

Estimated Total Annual Burden on Respondents: 65,288.

Frequency of Collection: semi-annually.

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 #1292.04 and OMB #2060–0135) to:

Sandy Farmer, EPA ICR #1292.04 U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street SW., Washington, DC 20460

and

Troy Hillier, OMB #2060–0135, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: July 17, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–18260 Filed 7–24–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5263–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before August 24, 1995.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740, (please refer to ICR #1760.01.)

SUPPLEMENTARY INFORMATION:

Office of Air Quality Policy and Standards

Title: Significance of Effects Resulting From Exposure to Irritant Gases: A Survey of Respiratory Physicians and Scientists.

Abstract: The Office of Air Quality Planning and Standards (OAQPS) of the Environmental Protection Agency (EPA) has prepared a statistical survey to characterize the medical significance of respiratory effects in both children and adults that are attributable to exposure to irritant gases. Under section 109 of the Clean Air Act the EPA is charged with reviewing and setting primary National Ambient Air Quality Standards (NAAQS) to protect the public health from adverse effects of selected pollutants. The survey results will assist in determining what levels of symptoms and measurable outcomes should be considered adverse health effects, which the standards are intended to prevent. Overall, the project will benefit the Agency as it reviews and sets NAAQS for irritant gases such as ozone, nitrogen dioxide, and sulfur dioxide. The EPA will collect information regarding the significance of health effects resulting from exposure to irritant gases by surveying members of the American Thoracic Society. The survey results will be stored in an OAQPS computer database.

Burden Statement: The public reporting burden for this collection of information is estimated to average 0.4 hours per response, including time for reviewing instructions, and completing and mailing the survey.

Respondents: Members of the American Thoracic Society.

Estimated Number of Respondents: 1,800.

Estimated Total Annual Burden on Respondents: 750 hours.

Frequency of Collection: One-time.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing burden, to:

Sandy Farmer, ICR Number 1760.01, U.S. Environmental Protection Agency, Regulatory Information Division (2136), 401 M Street SW., Washington, DC 20460

and

Chris Wolz, OMB #2060–XXXX, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20530.

Dated: July 13, 1995.

David Schwarz,

Acting Director, Regulatory Information Division.

[FR Doc. 95–18259 Filed 7–24–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. IN 95–12]

Expedited Processing of International Section 214 Applications

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The International Bureau will expedite the processing of international Section 214 Applications by using a grant stamp to approve Section 214 special temporary requests, and by calling status conferences in all contested section 214 proceedings.

EFFECTIVE DATE: July 25, 1995.

FOR FURTHER INFORMATION CONTACT: Troy F. Tanner, Attorney, International Bureau, (202) 418–1468.

SUPPLEMENTARY INFORMATION:

International Bureau Speeds Processing Through the Expanded Use of Grant Stamp and Status Conferences

By the Chief International Bureau:

1. In response to recent suggestions from the International Practice Committee of the Federal Communications Bar Association, the Bureau will implement the following improvements to expedite the processing of international Section 214 applications. These procedures will go into effect upon publication of this notice in the **Federal Register.**

2. The International Bureau will approve special temporary authorization requests for international Section 214 authorization from applicants that have complied with Section 63.04 of the Commission' Rules, 47 CFR 63.04, through a Grant Stamp procedure. Under this procedure, applications that have been found to be in the public interest, convenience and necessity will be stamped ''Granted.'' This stamp will also provide lines on which staff will sign and note the grant date. Applicants will be notified by Bureau staff that their applications have been granted and will be forwarded a copy of stamped application.

3. The special temporary authorizations granted under the Grant Stamp procedure are subject of the same terms and conditions as currently exist. For informational purposes, these terms and conditions are:

(a) the *Special Temporary Authority* is subject to change in any of its terms or to cancellation in its entirety at any time upon notice, but without hearing, if in the opinion of the Commission circumstances should so require.

(b) the *Special Temporary Authority* is granted without prejudice to action on any underlying Section 214 application.

(c) the *Special Temporary Authority* will automatically expire should the underlying application for regular authority be dismissed or denied.

(d) the *Special Temporary Authority* is effective upon grant and will remain in effect until further order of the Commission, but not beyond either: 180 days from the grant date if the applicant has filed a Section 214 application for permanent authorization; or thirty days from the grant date if no Section 214 application has been filed.

4. If an international Section 214 application is opposed, the Bureau will promptly call a status conference of all parties to discuss the merits of the parties' positions. During the status conference, the Bureau will seek stipulations to agreed upon facts, and explore settlement options.

Federal Communication Commission.

Scott Blake Harris,

Chief, International Bureau.

[FR Doc. 95–18220 FIled 7–24–95; 8:45 am]

BILLING CODE 6712–01–M

Applications, Hearings, Determinations, Etc.: Colemans, Chesters, et al.

1. Pursuant to Section 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. 316, the following licensees are ordered to show cause why their licenses should not be modified to specify operation on a new channel:

Licensee	Call sign	City/State	Present channel	New channel
A. Chester Coleman	KABN(AM)	Long Island, AK.	830 kHz	840kHZ
B. Aleutian Peninsula Broadcasting, Inc	KSDP(AM)	Sand Point, AK.	840 kHz	830kHz

2. Chester Coleman is ordered to show cause why the license of KABN(AM) should not be modified to specify operation on 840 kHz as authorized in its construction permit, BP–891109AD. Pursuant to Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, Chester Coleman may, not later than 30 days from the date of the *Order to Show*

Cause, request a hearing or file a written statement showing with particularity why the license of KABN(AM) should not be modified as proposed in the order to show cause. Pursuant to 47 C.F.R. § 1.87, failure to file a written statement or to request a hearing within the time specified will result in a waiver of the right to file such a statement or to request a hearing. If no written statement is filed or no request is made for a hearing, Chester Coleman will be deemed to have consented to the modification as proposed in the order to show cause and action will be taken to modify the license of KABN(AM) to 840 kHz.

3. Aleutian Peninsula Broadcasting, Inc. is ordered to show cause why the license of KSDP(AM) should not be modified to specify operation on 830 kHz as authorized in its construction permit, BP–891109AA. Pursuant to Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, Aleutian Peninsula Broadcasting, Inc. may, not later than 30 days from the date of the *Order to Show Cause* request a hearing or file a written statement showing with particularity why the license of KSDP(AM) should not be modified as proposed in the order to show cause. Pursuant to 47 C.F.R. § 1.87, failure to file a written statement or to request a hearing within the time specified will result in a waiver of the right to file such a statement or to request a hearing. If no written statement is filed or no request is made for a hearing, Aleutian Peninsula Broadcasting, Inc. will be deemed to have consented to the modification as proposed in the order to show cause and action will be taken to modify the license of KSDP(AM) to 830 kHz.

A copy of the complete *Order to Show Cause* in this proceeding 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 may also be purchased from the Commission's duplicating contractor, International Transcription Services, 2100 M Steet NW., Suite 140, Washington, D.C. 20037 (telephone 202–857–3800).

Federal Communications Commission.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 95–18148 Filed 7–24–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1054–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–1054–DE), dated June 2, 1995, and related determinations.

EFFECTIVE DATE: July 13, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated June 2, 1995, is hereby amended to including the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in this declaration of June 2, 1995:

The Counties of Barton, Cass, Dallas, and Saint Francois for Individual Assistance and Hazard Mitigation Assistance.

The Counties of Adair, Camden, Cooper, Jackson, Jasper, Lewis, Lincoln, Maries, Morgan, Newton, New Madrid, Osage, Pemiscot, Scotland, and Scott for Hazard Mitigation Assistance (already designated for Individual Assistance only).

The Counties of Barry, Clark and McDonald for Public Assistance and Hazard Mitigation Assistance (already designated for Individual Assistance.)

The Counties of Nodaway, Saline, Stone, and Sullivan for Individual Assistance, Public Assistance, and Hazard Mitigation Assistance.

The Counties of Andrew, Atchinson, Bates, Callaway, Cape Girardeau, Carroll, Chariton, Daviess, Dekalb, Gentry, Henry, Howard, Lafayette, Linn, Macon, Mississippi, Moniteau, Montgomery, Perry, Ray, Vernon, and Warren for Hazard Mitigation Assistance already designated for Individual Assistance and Public Assistance).

The City of St. Louis for Hazard Mitigation Assistance ((already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Craig S. Wingo,

Division Director, Infrastructure Support Division, Response and Recovery Directorate.

[FR Doc. 95–18228 Filed 7–24–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1050–DR]

North Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota (FEMA–1050–DR), dated May 16, 1995, and related determinations.

EFFECTIVE DATE: July 5, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 5, 1995.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–18229 Filed 7–24–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1059–DR]

Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia, (FEMA–1059–DR), dated July 1, 1995, and related determinations.

EFFECTIVE DATE: July 12, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia dated July 1, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 1, 1995:

The Counties of Amherst and Franklin for Individual Assistance, Public Assistance, and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 95–18230 Filed 7–24–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1059–DR]

Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia, (FEMA–1059–DR), dated July 1, 1995, and related determinations.

EFFECTIVE DATE: July 11, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia dated July 1, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 1, 1995:

The City of Roanoke for Hazard Mitigation Assistance (already designated for Individual Assistance.)

The City of Bedford for Hazard Mitigation Assistance (already designated for Individual Assistance and Public Assistance.)

The Counties of Albemarle, Augusta, Bath, Bedford, Campbell, Culpeper, Giles, Greene, Halifax, Madison, Orange, Pittsylvania, Rappahannock, Rockbridge and Warren, and the Cities of Buena Vista, Lexington, Lynchburg, and Staunton for Hazard Mitigation Assistance (already designated for Individual Assistance and Public Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–18232 Filed 7–24–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1059–DR]

Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia, (FEMA–1059–DR), dated July 1, 1995, and related determinations.

EFFECTIVE DATE: July 10, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia dated July 1, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 1, 1995:

The City of Bedford and Bedford County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–18231 Filed 7–24–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1060–DR]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–1060–DR), dated July 12, 1995, and related determinations.

EFFECTIVE DATE: July 12, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 12, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of West Virginia resulting from severe storms, heavy rain, and flash flooding on June 23–27, 1995, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Alfred Hahn of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of West Virginia to have been affected adversely by this declared major disaster.

Mineral and Nicholas Counties for Individual Assistance and Hazard Mitigation; and Mercer County for Individual Assistance, Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 95–18233 Filed 7–24–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1060–DR]

West Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of West Virginia, (FEMA–1060–DR), dated July 12, 1995, and related determinations.

EFFECTIVE DATE: July 19, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of West Virginia dated July 12, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 12, 1995:

The counties of Mineral and Nicholas for Public Assistance (already designated for Individual Assistance and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance

Laurence Zensinger,

Division Director, Human Services Division.

[FR Doc. 95–18234 Filed 7–24–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1060–DR]

West Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of West Virginia (FEMA–1060–DR), dated July 12, 1995, and related determinations.

EFFECTIVE DATE: July 18, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster has been changed. The incident period for this disaster is June 23, 1995 through June 28, 1995.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–18235 Filed 7–24–95; 8:45 am]

BILLING CODE 6718–02–M

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY United States Fire Administration, FEMA.

ACTION Notice.

SUMMARY The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE August 24, 1995.

ADDRESSES Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, D.C. 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, please see Supplementary Information below.

FOR FURTHER INFORMATION CONTACT: John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272.

SUPPLEMENTARY INFORMATION Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Friday, December 2, 1994, 59 FR 61932, with corrections published Monday, February 27, 1995, 60 FR 10636, and published changes approximately monthly since then.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 59 FR 50132 on September 30, 1994. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices.

Each update contains or may contain three categories: ''Additions;'' ''Corrections/changes;'' and ''Deletions.'' For the purposes of the updates, the three categories mean and include the following.

''Additions'' are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

''Corrections/changes'' are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

''Deletions'' are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows below.

Dated: July 19, 1995.

John P. Carey,

General Counsel.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST JULY 18, 1995 UPDATE

Index	Property Name	PO Box/ Rt No	Street Address	City	State/ZIP	Telephone
			ADDITIONS			
AK						
AK0046	Westmark Cape Fox Lodge.	....	800 Venetia Way	Ketchikan	AK 99901	(907)225-8001
CA						
CA1451	Hyatt Newporter	....	1107 Jamboree Road.	Newport Beach	CA 92660	(714)729-1234
IA						
IA0151	Embassy Suites	....	101 East Locust	Des Moines	IA 50309	(515)244-1700

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST JULY 18, 1995 UPDATE—Continued

Index	Property Name	PO Box/ Rt No	Street Address	City	State/ZIP	Telephone
IL						
IL0546	Comfort Suites Bloomington.	....	310 Greenbriar Dr ..	Normal	IL 61761	(309)452-8588
KY						
KY0419	Convention Center Inn.	....	2011 W. Everly Brothers Blvd.	Central City	KY 42345	(502)338-9797
KY0418	Holiday Inn—Cincinnati Riverfront.	....	600 W. Third St.	Covington	KY 41011	(606)291-4300
KY0420	Super 8 Motel	....	2030 US 41 N.	Henderson	KY 42420	( ) -
NJ						
NJ0211	The Royal Inn	....	120 Evergreen Pl. ..	East Orange	NJ 07018	(201)677-3100
NJ0212	Ramada Inn	....	109 Route 36	W. Long Branch	NJ 07764	(908)229-9000
NY						
NY0616	Holiday Inn—Turf on Western Avenue.	....	1442 Western Avenue.	Albany	NY 12203	(518)438-0001
NY0619	Steuben Athletic Club.	....	1 Steuben Place	Albany	NY 12207	(518)434-6116
NY0621	The Desmond	....	660 Albany Shaker Road.	Albany	NY 12211	(518)869-8100
NY0618	University Inn and Conference Center.	PO Box 823.	2401 North Forest Road.	Amherst	NY 142260823	(716)636-7500
NY0622	Armonk Ramada Inn.	....	94 Business Park Drive.	Armonk	NY	(914)273-9090
NY0617	Belhurst Castle	....	Rt. 14 South	Geneva	NY 14456	(315)781-0201
NY0620	Ramada Inn	....	114 Rt. 28	Kingston	NY 12401	(914)339-3900
PA						
PA0433	Howard Johnson Lodge.	....	4848 Admiral Perry Hwy.	Ebensburg	PA 15931	(814)472-7201
TX						
TX0644	Inn of the Concho's	....	2021 North Bryant ..	San Angelo	TX 76903	(915)658-2811
TX0643	Waco Fairfield Inn ..	....	5805 North Woodway Drive.	Woodway	TX 76712	(817)776-7821
			Corrections/Changes			
KY						
KY0105	Sugar Creek Inn	....	2072 US 41 N.	Henderson	KY 42420	(502)827-0127
NJ						
NJ0111	Econo Lodge University Center.	....	26 RT. 1 N.	New Brunswick	NJ 08901	(908)828-8000
NJ0174	Comfort Inn Atlantic City West.	....	7095 Black Horse Pike.	W. Atlantic City	NJ 08232	(609)645-1818
NJ0119	Sheraton Inn Atlantic City West.	....	6821 Black Horse Pike.	W. Atlantic City	NJ 08232	(609)272-0200
NJ0201	McIntosh Inn of West Long Branch.	....	294 Monmouth Park Hwy.	W. Long Branch	NJ 07764	(908)542-7900
TX						
TX0420	Embassy Suites Hotel.	....	4337 S. Padre Island Drive.	Corpus Christi	TX 78411	(512)853-7899
TX0639	Super 8 Motel & RV Park.	....	3800 IH 20 E	Eastland	TX 76448	(817)629-3336
			Deletions			
KY						
KY0001	Oak Tree Inn	....	Hwy. 52 Richmond Rd..	Irvine	KY 40336	(606)723-2600

[FR Doc. 95–18226 Filed 7–24–95; 8:45 am]

BILLING CODE 6718-26-U

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following (agreement) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in section 560.602 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200955.

Title: Howland Hook/Global Terminal Agreement.

Parties:

Howand Hook Container Terminal, Inc.

Global Terminal & Container Services, Inc.

Filing Agent: Brien E. Kehoe, Esquire, Hill, Bets & Nash, Suite 200, 1615 New Hampshire Avenue N.W., Washington, DC 20009.

Synopsis: The proposed Agreement authorizes the parties to establish a terminal conference to permit the parties to discuss, fix or regulate rates at the Port of New York and other East Coast ports.

Dated: July 20, 1995.

By order of the Federal Maritime Commission

Joseph C. Polking,

Secretary.

[FR Doc. 95–18205 Filed 7–24–95; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011507.

Title: Di Gregorio-Tricon Agreement.

Parties:

Di Gregorio Navegacao Ltda.

Tricon Parties DSR-Senator Lines Cho Yang Shipping Co., Ltd.

Synopsis: The proposed Agreement permits the parties to consult and agree upon the deployment and utilization of vessels, to charter space from one another, and to rationalize sailings in the trade between all U.S. Atlantic and Gulf Coast ports and points (Bangor, Maine/Brownsville, Texas range and ports and points on the Atlantic side of South America including the Atlantic islands. In addition, the parties may discuss and agree upon rates, charges, service items, practices and conditions of service and policy by any party or by any conference to which any party may be a member. Adherence to any agreement reached is voluntary.

Dated: July 20, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–18206 Filed 7–24–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License No.	Name/address	Date reissued
2852	Mercury International, Inc., 12850 Reeveston, Houston, TX 77039.	July 10, 1995.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 95–18207 Filed 7–24–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

James Lee Clayton, et al. Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 8, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. James Lee Clayton, Knoxville, Tennessee; to acquire 60.6 percent of the voting shares of Smoky Mountain Bancorp, Inc., Gatlinburg, Tennessee, and thereby indirectly acquire First National Bank of Gatlinburg, Gatlinburg, Tennessee.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Jack L. Grimmett, Jr., Pauls Valley, Oklahoma; to acquire an additional 23.76 percent, for a total of 34.05 percent, and Robert Brent Grimmett, Pauls Valley, Oklahoma, to acquire an additional 23.76 percent, for a total of 34.25 percent, of the voting shares of Valley Bancshares, Inc., Pauls Valley, Oklahoma, and thereby indirectly acquire The Pauls Valley National Bank, Pauls Valley, Oklahoma.

Board of Governors of the Federal Reserve System, July 19, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18186 Filed 7–24–95; 8:45 am]

BILLING CODE 6210–01–F

Comerica Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

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 to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 18, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Comerica Inc., Detroit, Michigan, and Comerica California Inc., San Jose, California; to acquire 100 percent of the voting shares of Metrobank, Los Angeles, California.

Board of Governors of the Federal Reserve System, July 19, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18187 Filed 7–24–95; 8:45 am]

BILLING CODE 6210–01–F

Riverside Bancshares, Inc.; 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 August 8, 1995.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Riverside Bancshares, Inc., Logansport, Louisiana; to engage *de novo* through its subsidiary, Gateway Finance, Inc., Logansport, Louisiana, in making and servicing loans, pursuant to section 225(b)(1)(i) of the Board's Regulation Y. The geographic scope of these activities is north of Leesville, Louisiana, and Shelby, Panola, Rusk, and Nacogdoches Counties in Texas.

Board of Governors of the Federal Reserve System, July 19, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18188 Filed 7–24–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Health Care Policy and Research Special Emphasis Panel Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of August 1995:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: August 24, 1995, 8:30 a.m.

Place: DoubleTree Hotel, 1750 Rockville Pike, Montrose Room, Rockville, Maryland 20852.

Open August 24, 8:30 a.m. to 9 a.m.

Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications for cooperative agreements to: (1) Produce reliable, valid, and rigorously tested survey protocols for collecting information from consumers regarding their assessments of health plans and services; (2) develop and test the effectiveness of different formats for conveying resulting information to consumers; (3) demonstrate the resulting survey protocols in real world settings; and (4) evaluate the usefulness of this information in assisting consumers, and purchasers acting on their behalf, in making informed selections of health care plans and services.

Agenda

The open session of the meeting on August 24, from 8:30 a.m. to 9 a.m., will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), it has been determined that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Gerald E. Calderone, Ph.D., Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, telephone (301) 594–2462.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 18, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–18264 Filed 7–24–95; 8:45 am]

BILLING CODE 4160–90–M

AGENCY FOR HEALTH CARE POLICY AND RESEARCH

Health Care Policy and Research Special Emphasis Panel Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of September 1995:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: September 22, 1995 8:30 a.m.

Place: The Double Tree, 1750 Rockville Pike, Conference Room TBA, Rockville, MD 20852.

Open September 22, 8:30 a.m. to 9:30 a.m.

Closed for remainder of meeting.

Purpose: This Panel is charged with conducting review of competing continuation of grant applications for MEDTEP Research Centers on Minority Populations.

Agenda

The open session of the meeting on September 22 from 8:30 a.m. to 9:30 a.m. will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), it has been determined that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Linda Blankenbaker, Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1438.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 11, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–18265 Filed 7–24–95; 8:45 am]

BILLING CODE 4160–90–M

Health Resources and Services Administration

RIN 0905-ZA89

Final Review Criteria for Grants for the Minority Faculty Fellowship Program for Fiscal Year 1995

The Health Resources and Services Administration (HRSA) announces the final review criteria for Grants for the Minority Faculty Fellowship Program (MFFP) under the authority of section 738(b), title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992.

Purpose

The purpose of the MFFP is to increase the number of underrepresented minority faculty members in health professions schools, i.e., schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, health administration, clinical psychology, and other public or private nonprofit health or educational entities.

Specifically, these grant awards are intended to allow institutions an opportunity to provide a fellowship to individuals who have the potential for teaching, administering programs, or conducting research as faculty members. Institutions must demonstrate a commitment and ability to identify, recruit, and select underrepresented minorities in health professions. The institutions' training programs provide the fellows with the techniques and skills needed to secure an academic career including competence in: Pedagogical skills, research methodology, development of research grant proposals, writing and publication skills, and the ability to work with minority populations and provide health services to medically underserved communities. In addition, the fellows must work under the direct supervision of a senior level faculty member engaged in the disciplines mentioned above, and upon successful completion of the program would be assured a teaching position at the institution.

Final Review Criteria

The program announcement published in the **Federal Register** at 60 FR 28619 on June 1, 1995, proposed four review criteria for this program. No comments were received within the 30 day comment period. Therefore, the following review criteria remain as proposed.

1. The extent to which the institution demonstrates that it has the commitment and ability to identify, recruit, and select underrepresented minority faculty, and its ability to provide health services to rural or medically underserved populations;

2. The extent to which the institution's training program will provide the fellow with the preparation, training and skills needed to secure an academic career. Training may include: pedagogical skills, program administration, grant writing and publication skills, research methodology and development of research grant proposals, and community service abilities;

3. The degree to which the institution's senior faculty are involved in the training and preparation of fellows pursuing an academic career, and the potential of the institution to continue the program without Federal support beyond the approved project period; and

4. The extent to which the institution meets the eligibility requirements set forth in section 738(b) of the Public Health Service Act.

In determining awards, the Secretary will also take into consideration equitable distribution among health disciplines and geographic areas.

Additional Information

If additional programmatic information is needed, please contact: Mr. Lafayette Gilchrist, Analysis and Evaluation Branch, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443–3680 FAX: (301) 443–5242.

This program, Grants for the Minority Faculty Fellowship Program, is listed at 93.923 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: July 19, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–18266 Filed 7–24–95; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute of Dental Research; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Small Business Research Program (Teleconference).
Dates: August 3, 1995.
Time: 12:00 noon.
Place: Natcher Building, Rm. 4AN–38J, National Institutes of Health, Bethesda, MD 20892.
Contact Person: Dr. George Hausch, Chief, Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda

To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Various Small Research Grants (Teleconference).
Dates: August 4, 1995.
Time: 1 p.m.
Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20893.
Contact Person: Dr. Yong Shin, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda

To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Conference Grants (Teleconference).
Dates: August 7, 1995.
Time: 2 p.m.
Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20893.
Contact Person: Dr. Yong Shin, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda

To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—NRSA & Dentist Scientist Award Review (Teleconference).
Dates: August 17, 1995.
Time: 1 p.m.
Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20893.
Contact Person: Dr. Philip Washko, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda

To evaluate and review grant applications and/or contract proposals.

The meetings will be closed in accordance with the provision set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the extramural research review cycle.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: July 19, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–18177 Filed 7–24–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda

To review individual grant applications.
Name of SEP: Clinical Sciences.
Date: August 17, 1995.
Time: 2 p.m.
Place: NIH, Rockledge II, Room 4104, Telephone Conference.
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, MD 20892, (301) 435–1787.

Name of SEP: Microbiological and Immunological Sciences.
Date: August 15, 1995.
Time: 1:30 p.m.
Place: NIH, Rockledge II, Room 4182, Telephone Conference.
Contact Person: Dr. William Branche, Jr., Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, MD 20892, (301) 435–1148.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets of commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 19, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–18178 Filed 7–24–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda

To review individual grant applications.
Name of SEP: Chemistry and Related Sciences.
Date: August 11, 1995.
Time: 9 a.m.
Place: NIH, Rockledge II, Room 4152, Telephone Conference.
Contact Person: Dr. Marcelina Powers, Scientific Review Administrator, 6701 Rockledge Drive, Room 4152, Bethesda, MD 20892, (301) 435–1720.

Name of SEP: Chemistry and Related Sciences.
Date: August 15, 1995.
Time: 9 a.m.
Place: NIH, Rockledge II, Room 4152, Telephone Conference.
Contact Person: Dr. Marcelina Powers, Scientific Review Administrator, 6701 Rockledge Drive, Room 4152, Bethesda, MD 20892, (301) 435–1720.

Name of SEP: Chemistry and Related Sciences.
Date: August 18, 1995.
Time: 9 a.m.
Place: NIH, Rockledge II, Room 4152, Telephone Conference.
Contact Person: Dr. Marcelina Powers, Scientific Review Administrator, 6701 Rockledge Drive, Room 4152, Bethesda, MD 20892, (301) 435–1720.

Name of SEP: Chemistry and Related Sciences.
Date: August 22, 1995.
Time: 1 p.m.
Place: NIH, Rockledge II, Room 5154, Telephone Conference.
Contact Person: Dr. Alec Liacouras, Scientific Review Administrator, 6701 Rockledge Drive, Room 5154, Bethesda, MD 20892, (301) 435–1740.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. Applicants and/or proposals and the discussions could reveal confidential trade secrets of commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 19, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–18180 Filed 7–24–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda

To review individual grant applications.

Name of SEP: Multidisciplinary Sciences.

Date: August 8, 1995.

Time: 1 p.m.

Place: NIH, Rockledge II, Room 5116.

Contact Person: Dr. Lee Rosen, Scientific Review Admin., 6701 Rockledge Drive, Room 5116, Bethesda, MD 20892, (301) 435–1171.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 19, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–18179 Filed 7–24–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Office of the Assistant Secretary for Health; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Presidential Advisory Council on HIV/AIDS to be held July 27 and 28, 1995, at the Madison Hotel, 15th and M Streets, NW. Washington, DC. The meeting will be held from 9 a.m. to 5 p.m. on both days. The meeting is open to the public, with attendance limited to space available.

The agenda will include: (1) A discussion of the Committee's duties and responsibilities and (2) reports on relevant Federal activities and programs.

Kimberly Farrell, Social and Scientific Systems, Inc., 301–986–4870, will furnish the meeting agenda and roster of Committee members. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other special accommodations, should contact Ms. Farrell in advance of the meeting. In light of scheduling difficulties, this notice is being provided at the earliest possible time.

Records shall be kept of all Council proceedings and shall be available for public inspection.

Dated: July 18, 1995.

Ellen Washington,

Department Committee Management Officer, HHS.

[FR Doc. 95–18158 Filed 7–24–95; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. FR–3917–N–10]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 18, 1995.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Single Family Mortgage Insurance Premium Remittance Summary.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This information is used to ensure compliance on the part of the mortgage and to ensure that HUD received all income due. Without the forms, HUD could not ensure compliance nor ensure that all income due the Government is being remitted.

Form Number: HUD–2748 and HUD–2752.

Respondents: Business or Other For-Profit.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–2748	8,000		.12		.75		72,000
HUD–2752	8,000		.12		.50		48,000

Total Estimated Burden Hours: 120,000.

Status: Reinstatement with changes.

Contact: Cyndy E. Zemitis, HUD, (202) 708–2754; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: July 18, 1995.

[FR Doc. 95–18181 Filed 7–24–95; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–9800–02] ES–47417, Group 87, Arkansas

Notice of Filing of Plat of Survey; Arkansas

The plat of the dependent resurvey of the north, south, east and west boundaries and the subdivisional lines of Township 2 South, Range 25 West, Fifth Principal Meridian, Arkansas, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on August 31, 1995.

The survey was requested by the U.S. Forest Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., August 31, 1995.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: July 17, 1995.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 95–18224 Filed 7–24–95; 8:45 am]

BILLING CODE 4310–GJ–M

[OR–942–00–14200–00; G5–165]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plan of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 30 S., R. 4 E., accepted June 30, 1995
T. 31 S., R. 4 E., accepted June 30, 1995
T. 28 S., R. 5 E., accepted June 30, 1995
T. 29 S., R. 5 E., accepted June 30, 1995
T. 30 S., R. 5 E., accepted June 30, 1995
T. 31 S., R. 5 E., accepted June 30, 1995
T. 29 S., R. 5½ E., accepted June 30, 1995
T. 29 S., R. 6 E., accepted June 30, 1995

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 SW. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision. **FOR FURTHER INFORMATION CONTACT** Bureau of Land Management, (1515 SW. 5th Avenue,) P.O. Box 2965, Portland, Oregon 97208.

Dated: July 10, 1995.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 95–18225 Filed 7–24–95; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of receipt of applications.

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.*).

Permit No. 702631

Applicant: Assistant Regional Director-Ecological Services, Region 1, U.S. Fish and Wildlife Service, Portland, Oregon.

The applicant requests amendment of his permit to allow take of the following species: whooping crane (*Grus americana*), southwestern willow flycatcher (*Empidonax traillii extimus*), Mariana mallard (*Anas oustaleti*), Micronesian Megapode (=La Perouse's) (*Megapodius laperouse*), Point Arena mountain beaver (*Aplodontia rufa nigra*), brown pelican (*Pelecanus occidentalis*), Yuma clapper rail (*Rallus longirostris yumanensis*), Morro shoulderband snail (= banded dune) (*Helminthoglyptoa walkeriana*), Arroyo southwestern toad (*Bufo microscaphus californicus*), hawksbill sea turtle (*Eretmochelys imbricata*), and leatherback sea turtle (*Dermochelys coriacea*). Authorization to collect specimens of the following plant species is also requested: *Bidens micrantha* ssp. *kalealaha* (ko'oko'alau), *Chorizanthe robusta* (robust spineflower), *Cyrtandra giffardii* (ha'iwale), *Cyanea lobata* (haha), *Neraudia sericea* (plant, no common name), *Plantago princeps* (Laukahi kuahiwi), *Poa mannii* (Mann's bluegrass), *Schiedea spergulina* var. *leiopoda* (plant, no common name), *Serianthes nelsonii* (Hayn lagu = Tronkon guafi), *Sesbania tomentosa* ('Ohai), *Solanum incompletum* (popolo ku mai), *Stenogyne angustifolia* var. *angustifolia* (plant, no common name), *Stenogyne bifida* (plant, no common name), *Stenogyne campanulata* (plant, no common name), *Adenophorus periens* (Fern, pendant kihi), and *Asplenium fragile* var. *insulare* (plant, no common name). Take and collection activities will be conducted throughout the range of the species for recovery efforts in order to enhance the propagation and survival of the species.

Permit No. 804203

Applicant: Stephen J. Myers, Riverside, California.

The applicant requests a permit to take (capture and release) the Stephen's kangaroo rat (*Dipodomys stephensi*) for presence/absence surveys in Riverside, San Bernardino, and San Diego Counties, California for the purpose of enhancing the survival of the species.

Permit No. 804207

Applicant: Robert A. Aramayo, Albany, California.

The applicant requests a permit to take (capture and release) the tidewater goby (Eucyclogobius newberryi) for presence/absence surveys in the Big Sur River lagoon, Monterey County, California for the purpose of enhancing the survival of the species.

Permit. No. 804206

Applicant: Steve Clark, Portland, Oregon.

The applicant requests a permit to take (capture and release) the salt marsh harvest mouse (*Reithrodontomys raviventris*) for presence/absence surveys on Navy installations in Alameda, Contra Costa, Napa, San Francisco, San Mateo, and Solano Counties, California for the purpose of enhancing the survival of the species.

Permit No. 775869

Applicant: Richard Friesen, Irvine, California.

The applicant requests an amendment of his permit to take (capture and release) the Pacific pocket mouse (*Perognathus longimembris pacificu*) for presence/absence surveys in Los Angeles, Orange, and San Diego Counties, California for the purpose of enhancing the survival of the species.

Permit No. 800922

Applicant: Manomet Observatory for Conservation Sciences, Manomet, Massachusetts.

The applicant requests an amendment to their permit to take (collect feather samples) the coastal California gnatcatcher (*Polioptila californica californica*) in San Diego County, California for scientific research for the purpose of enhancing the survival of the species.

Permit No. 804076

Applicant: Becky Yeager, Logan, Utah.

The applicant requests a permit to take (survey using taped vocalizations, monitor nests) the southwestern willow flycatcher (*Epidonax traillii extimus*) for presence/absence surveys along the Virgin River in Nevada for the purpose of enhancing the survival of the species.

Permit No. 804072

Applicant: Douglas Markle, Corvallis, Oregon.

The applicant requests a permit to take (capture, mark, measure, and release) the shortnose sucker (*Chasmistes brevirostris*), and Lost River sucker (*Deltistes luxatus*) in Klamath County, Oregon for scientific research for the purpose of enhancing the propagation and survival of the species. These activities were previously authorized under the Regional Director's blanket permit no. PRT–702631.

DATES: Written comments on the permit applications must be received on or before August 24, 1995.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Please refer to the respective permit number for each application when submitting comments. All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: 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, within 30 days of the date of publication of this notice, to the following office: U.S. Fish and Wildlife Service, Ecological Services, Division of Consultation and Conservation Planning, 911 NE. 11th Avenue, Portland, Oregon 97232–4181. Telephone: 503–231–2063; FAX: 503–231–6243. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: July 18, 1995.

Thomas Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–18185 Filed 7–24–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 15, 1995. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 9, 1995.

Carol D. Shull,

Keeper of the National Register.

COLORADO

Denver County

Rossonian Hotel, 2650 Welton St., Denver, 95001009

CONNECTICUT

Hartford County

Main Street Historic District, Roughly, Main St. from School St. to Summer St. and adjacent areas of Prospect St., Bristol, 95001006

New London County

The Seaside, 36 Shore Rd., Waterford, 95001007

ILLINOIS

Cook County

Dempster Street Station, 5001 Dempster St., Skokie, 95001005

MASSACHUSETTS

Worcester County

Blackstone Canal Historic District, Address Restricted, Blackstone vicinity, 95001004

NEW YORK

Oneida County

Neck Canal of 1730, Cavanaugh Rd. (Co. Rt. 30), Marcy vicinity, 95001011

Schoharie County

Schoharie County Courthouse Complex, Main St., Schoharie, 95001010

WEST VIRGINIA

Marion County

Fairmont Downtown Historic District, Along Jackson, Adams, Washington and Quincy

Sts. and Cleveland and Fairmont Aves., Fairmont, 95001008

[FR Doc. 95–18161 Filed 7–24–95; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *AAF McQuay, Inc., et al.*, Case No. 3:95–2023–0 was lodged on June 30, 1995, with the United States District Court for the District of South Carolina. This settlement agreement resolves the claims asserted by the United States in an enforcement action brought on behalf of the Environmental Protection Agency (''EPA'') against 30 Potentially Responsible Parties (''PRPs'') (referred to as the ''SEPCO Group'') pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.* The complaint alleges defendants are liable for CERCLA response costs incurred and to be incurred by the United States at the ''Carolawn Superfund Site,'' an approximately 60-acre property with an abandoned waste storage and disposal facility located near Fort Lawn, South Carolina. The Site was owned and operated as a waste storage and disposal facility by the now defunct Carolawn Company, Southeastern Pollution Control Company (''SEPCO''), and other prior owner/operators. Under the Consent Decree, the SEPCO Group shall pay $292,500 (63%) of the $465,000 in outstanding identified response costs associated with the remedial actions at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *AAF McQuay, Inc., et al.*, 90–11–2–1A.

The proposed Consent Decree may be examined at the office of the United States Attorney, 1441 Main Street, Columbia, South Carolina, the Region IV office of the U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, GA 30365, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $12.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environment and Natural Resources Division.

[FR Doc. 95–18149 Filed 7–24–95; 8:45 am]

BILLING CODE 4410–01–M

Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Notice is hereby given that on July 10, 1995, a proposed consent decree in *United States* v. *Alumet Partnership, et al.*, Civ. A. No. 95–C–1718, was lodged with the United States District Court for the District of Colorado. The complaint in this action seeks recovery of costs under Section 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). This action involves the Lowry Landfill Superfund Site in Arapahoe County, Colorado.

The consent decree is a ''cash-out'' decree which requires a payment of $7.28 million and resolves the United States' cost claims against the Alumet Partnership and certain of that partnership's present and/or former general partners.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. 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, DC 20044, and should refer to *United States* v. *Alumet Partnership, et al.*, DOJ Reference No. 90–11–2–93I. In accordance with Section 7003(d) of RCRA, 42 U.S.C. § 6973(d), commenters may request a public meeting in the affected areas.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of Colorado, 1961 Stout Street, Suit 1100, Denver, Colorado 80294; the Region VIII office of the Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202; and at the Consent Decree Library, 1120 ''G'' Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of each 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 $7.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Div.

[FR Doc. 95–18150 Filed 7–24–95; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Potomac Electric Power Company,* Civil Action No. *PJM 95–1967,* was lodged on *July 3, 1995,* with the United States District Court for the District of Maryland. The complaint alleges that PEPCO discharged fly-ash wastewater (a pollutant) into waters of the United States without a permit in violation of the Clean Water Act. 33 U.S.C. 1251, *et seq.* The consent decree requires PEPCO to pay a civil penalty of $975,000.00. No injunctive relief is imposed because the violations have ceased and PEPCO has taken appropriate steps to ensure they are not repeated.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Potomac electric Power Company,* DOJ Ref. #90–5–1–1–4153.

The proposed consent decree may be examined at the Office of the United States Attorney, 604 United States Court House, 101 West Lombard Street, Baltimore, Maryland 21201; the Regional III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $1.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–18151 Filed 7–24–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Pursuant to the National Cooperative Research and Production Act of 1993—The Asymetrical Digital Subscriber Line Forum

Notice is hereby given that, on May 15, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Asymetrical Digital Subscriber Line Forum (''ADSL''), filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identity of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: ADC Fibermux, Chatsworth, CA; Alcatel Bell, Antwerp, BELGIUM; Ameritech, Hoffman Estates, IL; Analog Devices, Inc., Wilmington, MA; Applied Innovation Inc, Dublin, OH; AT&T Paradyne, Largo, FL; Bell Atlantic, Arlington, VA; BT Labs, Ipswich, Suffolk, ENGLAND; CSELT-Stet, Torino, ITALY; DSC Communications Corp, Petaluma, CA; Ericsson Schrack, Vienna, AUSTRIA; Gorham & Partners, London, ENGLAND; GTE Laboratories, Waltham, MA; Independent Editions, Palo Alto, CA; Italtel, Milano, ITALY; Motorola, Austin, TX; Nokia Telecommunications, Helsinki, FINLAND; Orckit Communications, San Diego, CA; Pairgain Technologies, Tustin, CA; Racal-Datacom, Boxboro, MA; Samsung A.I.T., Suwon, KOREA; Telecom Italia, Rome, ITALY; US West, Denver, CO; and Westell, Inc., Aurora, IL.

The area of planned activity is to work towards facilitating development and interoperable end-to-end ADSL based networks, identify services suitable for ADSL transmission and promote the ADSL concept as one of the strategic means of interactive multimedia transmission.

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 95–18152 Filed 7–24–95; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories

In notice document 95–7108 concerning Cable Television Laboratories, Inc., appearing in the issue of Thursday, March 23, 1995 at 60 F.R. 15307, make the following corrections: In the third column; third paragraph; the notice should read ''On August 8, 1988 CableLabs filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 7, 1988 (53 Fed. Reg. 34593). The last notification was filed on September 26, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 20, 1995 (60 Fed. Reg. 14779).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–18153 Filed 7–24–95; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research and Production Act of 1993—Flat Earth Group, L.L.C.

Notice is hereby given that, on April 25, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Flat Earth Group, L.L.C., a joint venture formed as a Virginia limited liability company by the parties set forth in this notice pursuant to the Virginia Limited Liability Company Act (the ''Joint Venture''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Joint Venture and (2) the nature and objectives of the Joint Venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Media General, Inc., Richmond, VA; Multimedia, Inc., Greenville, SC; News and Observer Publishing Company, Raleigh, NC; and Evening Post Publishing Company, Charleston, SC. The general area of planned activity is to engage in developing mechanisms for presentation and marketing of information using new technologies in order to help each joint venture member and its affiliates make better individual decisions concerning the future of their respective businesses.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–18154 Filed 7–24–95; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research and Production Act of 1993—OSINET Corporation

Notice is hereby given that, on May 22, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), OSINET Corporation (''OSINET'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain information. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: Amdahl Corporation; AT&T; Data General; Lotus Development Corporation (formerly Soft-Switch); National Institute for Standards and Technology; Northern Telecom; and The Wollongong Group, Inc., ceased membership in OSINET effective December 31, 1994.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OSINET intends to file additional written notifications disclosing all changes in membership.

On April 15, 1991, OSINET filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 19, 1991 (56 Fed. Reg. 58400). The last notification was filed with the Department on March 31, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 25, 1994 (59 Fed. Reg. 27034).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–18155 Filed 7–24–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PlantSTEP, Inc.

Notice is hereby given that, on March 10, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq* (''the Act''), PlantSTEP, Inc., has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Autodesk, Inc., Sausalito, CA; Bechtel Corporation, San Francisco, CA; Bentley Systems, Houston, TX; Black & Veatch, Overland Park, KS; CADCentre, Inc., Houston, TX; Computervision Corporation, Bedford, MA; Dassault Systems of America, Burbank, CA; Eastman Chemical Company, Kingsport, TN; E.I. DuPont & Co., Inc., Wilmington, DE; H.B. Zachry Company, San Antonio, TX; Intergraph Corporation, Huntsville, AL; Jacobus Technology Inc., Gaithersburg, MD; John Brown E&C, Houston, TX; and Sunland Fabricators, Inc., Walker, LA.

The nature and objectives of this joint venture are to undertake and develop a standard, computer-intelligible product data exchange specification.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–18156 Filed 7–24–95; 8:45 am]

BILLING CODE 4410–01–M

NUCLEAR REGULATORY COMMISSION

Report to Congress on Abnormal Occurrences January–March, 1995 Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires NRC to disseminate information on abnormal occurrences (AOs) (i.e., unscheduled incidents or events that the Commission determines are significant from the standpoint of public health and safety). During the first quarter of CY 1995, the following incident at an NRC licensed facility was determined to be an AO and is described below, together with the remedial actions taken. The event is also being included in NUREG–0090, Vol. 18, No. 1, (''Report to Congress on Abnormal Occurrences: January–March 1995''). This report will be available at NRC's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC, about three weeks after the publication date of this **Federal Register** Notice.

Other NRC Licensees (Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

95–1 Medical Brachytherapy Misadministration at Welborn Memorial Baptist Hospital in Evansville, Indiana

One of the AO reporting guidelines notes that a therapeutic dose that is greater than 1.5 times the prescribed dose can be considered an abnormal occurrence.

Date and Place—November 18, 1994; Welborn Memorial Baptist Hospital, Inc.; Evansville, Indiana.

Nature and Probable Consequences—On November 18, 1994, a 73–year–old patient was prescribed to receive a brachytherapy treatment dose of 600 centigray (cGy) (600 rad) at the vaginal cavity using a GammaMed IIi high dose rate afterloading unit. However, because of a treatment error the patient received a 1250 cGy (1250 rad) dose instead of the prescribed dose.

The licensee identified the misadministration during a quality management review on November 21, 1994. The licensee reported the event to the NRC on November 22, 1994, and followed up with a written report on December 6, 1994. The referring physician was notified. The patient was notified on November 23, 1994, by the licensee's Radiation Safety Officer and was provided with a written report of the incident.

An NRC medical consultant was retained to evaluate the medical consequences of the misadministration. The medical consultant expressed concern that long term effects such as fibrosis or loss of blood supply may occur as a result of the 1250 cGy (1250 rad) treatment. The medical consultant also suggested that this case be considered for the U.S. Department of Energy (DOE), Office of Epidemiology and Health Surveillance long term medical study program. Information regarding the DOE program and a copy of the NRC medical consultant's report were provided to the referring physician.

Cause or Causes—NRC concluded that the cause of the misadministration was twofold: (1) The technologist failed to activate a button that automatically corrects for treatment time based on source decay, failed to notice a display indicating the treatment time correction that would have been entered automatically, reentered the treatment time instead, and failed to notice the error; and (2) the treatment software did not stop the technologist from proceeding after the initial error was made as it was supposed to because an integrated circuit containing the software code failed to operate.

Action Taken To Prevent Recurrence

Licensee—In order to prevent recurrence of the incident as of November 25, 1994, the licensee revised its internal ''Policy and Procedure for all HDRs'' to require both individuals operating the unit to verify the displayed time factor and compare it to the factor supplied by the manufacturer. Prior to this misadministration, the device operators were required to verify only operator entered data. Also, the unit was evaluated by the licensee's medical physicist and a GammaMed service representative. As a result of the evaluation, the printed circuit board (card) with the read-only-memory integrated circuits containing the defective software program was replaced with a card having the correct software program.

NRC—NRC conducted a safety inspection on November 30 and December 1, 1994. An interoffice review of the event was conducted through December 8, 1994, to review the circumstances of the misadministration. No violations of NRC requirements were identified. As a result of the incident, NRC contacted the manufacturer of the GammaMed IIi and sent a letter to all GammaMed IIi users to inform them of this potential problem and tell them how to test their software to prevent similar events.

* * * * *

Dated at Rockville, MD, this 19th day of July, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–18196 Filed 7–24–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–334 and 50–412]

Exemption

In the Matter of Duquesne Light Company; Ohio Edison Company; Pennsylvania Power Company; the Cleveland Electric Illuminating Company; and the Toledo Edison Company; (Beaver Valley Power Station, Unit Nos. 1 and 2).

I

Duquesne Light Company, et al. (the licensee) is the holder of Facility Operating Licenses Nos. DPR–66 and NPF–73, which authorize operation of the Beaver Valley Power Station, Unit Nos. 1 and 2. The operating licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now and hereafter in effect.

The facility comprises two pressurized-water reactors at the licensee's site in Beaver County, Pennsylvania.

II

The Code of Federal Regulations at 10 CFR 73.55, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,'' paragraph (a), in part, states that ''The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.''

Paragraph (1), ''Access Requirements,'' of 10 CFR 73.55(d), specifies that ''The licensee shall control all points of personnel and vehicle access into a protected area.'' 10 CFR 73.55(d)(5) requires that ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' 10 CFR 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual ''receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * * ''

The licensee proposed to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badge with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow contractors who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letter dated February 8, 1995, as supplemented May 12, 1995, the licensee requested an exemption from certain requirements of 10 CFR 73.55(d)(5) for this purpose.

III

Pursuant to 10 CFR 73.5, ''Specific exemptions,'' the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have ''the same high assurance objective'' and meet ''the general performance requirements'' of the regulation, and ''the overall level of system performance provides protection against radiological sabotage equivalent'' to that which would be provided by the regulation.

Currently, employee and contractor identification badges/keycards are issued and retrieved on the occasion of each entry to and exit from the protected areas of the Beaver Valley Power Station site. Station security personnel are required to maintain control of the badges/keycards while the individuals are offsite. This practice has been in effect at Beaver Valley Power Station, Unit Nos. 1 and 2 since the operating licenses were issued. Security personnel retain each identification badge/keycard when not in use by the authorized individual, within appropriately designed storage receptacles. An individual who meets the access authorization requirements is issued an individual picture badge/keycard which allows entry into preauthorized areas of the station. While entering the plant in the present configuration, an authorized individual is ''screened'' by the required detection equipment and by the issuing security officer. Having received the picture badge/keycard, the individual proceeds to the access portal, inserts the picture badge/keycard into the card reader, and passes through the turnstile which unlocks if the present criteria are met.

This present procedure is labor intensive since security personnel are required to verify badges/keycards issuance, ensure badges/keycards retrieval, and maintain the badges/keycards in orderly storage until the next entry into the protected area. The regulations permit employees to remove their badges/keycards from the site, but an exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges/keycards offsite instead of returning them when exiting the site.

Under the proposed system, all individuals authorized to gain unescorted access will have the physical characteristics of their hand (hand geometry) recorded with their badge/keycard. Since the hand geometry is unique to each individual and its application in the entry screening function would preclude unauthorized use of a badge/keycard, the requested exemption would allow employees and contractors to keep their badges/keycards at the time of exiting the protected area. The process of verifying badge/keycard issuance, ensuring badge/keycard retrieval, and maintaining badges/keycards could be eliminated while the balance of the access procedure would remain intact. Firearm, explosive, and metal detection equipment and provisions for conducting searches will remain as well. The security officer responsible for the last access control function (controlling admission to the protected area) will also remain isolated within a bullet-resistant structure in order to assure his or her ability to respond or to summon assistance.

Use of a hand geometry biometrics system exceeds the present verification methodology's capability to discern an individual's identity. Unlike the photograph identification badge/keycard, hand geometry is nontransferable. During the initial access authorization or registration process, hand measurements are recorded and the template is stored for subsequent use in the identity verification process required for entry into the protected area.

Authorized individuals insert their picture badges/keycards into the card reader and the biometrics system records an image of the hand geometry. The unique features of the newly recorded image are than compared to the template previously stored in the database. Access is ultimately granted based on the degree to which the characteristics of the image match those of the ''signature'' template.

Since both the badges/keycards and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge/keycard by an individual, as a result of taking the badge/keycard offsite, would not enable an unauthorized entry into protected areas.

The access process will continue to be under the observation of security personnel. The system of identification badges/keycards will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges/keycards will continue to be displayed by all individuals while inside the protected area. Addition of a hand geometry biometrics system will provide a significant contribution to effective implementation of the security plan at the site.

IV

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet ''the same high assurance objective,'' and ''the general performance requirements'' of the regulation and that ''the overall level of system performance provides protection against radiological sabotage equivalent'' to that which would be provided by the regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Duquesne Light Company, et al. an exemption from those requirements of 10 CFR 73.55(d)(5) relating to the returning of picture badges/keycards upon exit from the protected area such that individuals not employed by the licensee, i.e., contractors, who are authorized unescorted access into the protected area, can take their badges/ keycards offsite.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (60 FR 27922). This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 18th day of July 1995.

For the Nuclear Regulatory Commission,

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–18194 Filed 7–24–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–397]

Exemption

In the matter of Washington Public Power Supply System; (WPPSS Nuclear Project No. 2).

I

On December 20, 1983, the Commission issued Facility Operating License No. NPF–21 to Washington Public Power Supply System (the licensee) for the WPPSS Nuclear Project No. 2. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

It is stated in 10 CFR 73.55, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,'' paragraph (a), that ''the licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.''

It is specified in 10 CFR 73.55(d), ''Access Requirements,'' paragraph (1), that ''the licensee shall control all points of personnel and vehicle access into a protected area.'' Section 73.55(d)(5) requires that ''a numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' Section 73.55(d)(5) also states that an individual not employed by the licensee (e.g., contractors) may be authorized access to protected areas without escort provided the individual ''receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area.''

The licensee proposed to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at the entrance/exit location and would allow all individuals with unescorted access to keep their badge with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow personnel not employed by the licensee who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letter dated March 1, 1995, the licensee requested an exemption from certain requirements of 10 CFR 73.55(d)(5) for this purpose.

III

Pursuant to 10 CFR 73.5, ''Specific exemptions,'' the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have ''the same high assurance objective'' and meet ''the general performance requirements'' of the regulation, and ''the overall level of system performance provides protection against radiological sabotage equivalent'' to that which would be provided by the regulation.

Currently, unescorted access to the protected area of WNP–2 is controlled through the use of a photograph on a badge with a keycard attached (hereafter, these are referred to as ''the badge''). The security officers at the entrance station use the photograph on the badge to visually identify the individual requesting access. The individual is then given the badge to allow access. The badges for both licensee employees and contractor personnel who have been granted unescorted access are issued upon entrance at the access point. Another security officer in the same control area collects the badges upon exit from the protected area. The badges are then placed in a badge rack located at the badge issue station and stored at the entrance until the individual again needs access into the protected area. In accordance with 10 CFR 73.55(d)(5), individuals not employed by the licensee (e.g., contractors) are not allowed to take badges offsite.

Under the proposed system, each individual who is authorized for unescorted entry into the protected area would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control computer. Access is then initiated by the individual requesting access by placing their badge up to the card reader and their hand on a measuring surface. The computer then compares the hand geometry to that registered for the badge number. If the characteristics of the hand geometry stored in the computer match the badge number, access is granted. If the characteristics of the hand geometry do not match the badge number, access is denied. This provides a non-transferable means of identifying that the individual processing the badge is the individual who was granted unescorted access. This method also provides a positive means of assuring that a stolen or lost badge could not be used to gain access, thus eliminating the need to issue and retrieve the badges while maintaining the same high level of assurance that access is granted to only authorized individuals. All other access processes, including search function capability, would remain the same. The system will not be used for visitors requiring escorted access. The access process will continue to be under the observation of security personnel located within the hardened cubicle who have final control over the release of the entrance station turnstiles. A numbered badge identification system will continue to be used for all individuals who are authorized access to the protected areas. Badges will continue to be displayed by all individuals while inside the protected area.

The licensee will use hand geometry equipment that will meet the detection probability of 90 percent with a 95 percent confidence level. Testing evaluated by Sandia National Laboratory (Sandia report entitled, ''A Performance Evaluation of Biometric Identification Devices,'' SAND91–0276 UC–906 Unlimited Release, printed June 1991), demonstrated that the proposed hand geometry system is capable of meeting the proposed detection probability and confidence level. Based on the results of the Sandia report and on the licensee's experience with photo-identification processes, the proposed system will have a false acceptance rate less than the current system.

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet the same high assurance objective and the general performance requirements of the regulation, and that the overall level of system performance provides protection against radiological sabotage equivalent to that which would be provided by the regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the Washington Public Power Supply System an exemption from the requirements of 10 CFR 73.55(d)(5) relating to the returning of picture badges, by individuals not employed by the licensee who are authorized unescorted access to the protected area, upon exit from the protected area, such that these personnel can take their badges offsite.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (60 FR 35965).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 17th day of July 1995.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–18195 Filed 7–24–95; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Advance notice of amendment and proposed addition of four new routine uses for an existing system of records; creation of a new system of records.

SUMMARY: The Postal Service proposes to amend USPS Privacy Act System of Records 120.210, Personnel Records—Vehicle Maintenance Personnel and Operators Records, and to add USPS Privacy Act System of Records 120.091, Personnel Records—Vehicle Operators Controlled Substance and Alcohol Testing Records, to comply with the requirements of the Omnibus Transportation Employee Testing Act of 1991 (Pub. L. 102–143). This law requires the Postal Service to implement procedures for random, reasonable suspicion, post-accident, return-to-duty, and follow-up drug and alcohol testing of employees required to have commercial driver's licenses, and to create, maintain, and disclose certain subject records in conjunction with the implementation of such testing procedures. The Postal Service is implementing these procedures through a combination of activities: in the field, where testing notifications and certain follow-up activities will occur; through a contractor, who will maintain the database for employee random testing selection; and through postal medical facilities, where most of the actual testing will be done and where records of test results and associated follow-up actions will be maintained.

This notice complies with subsection (e)(11) of the Privacy Act, which requires agencies to publish advance notice for public comment of any use of information in a new system of records or any new use of information in an existing system. Any interested party may submit written comments on the proposed new uses.

DATES: This proposal will become effective without further notice August 24, 1995, unless comments are received that result in a contrary determination.

ADDRESSES: Written comments should be mailed or delivered to the Records Office, U.S. Postal Service, Room 8831, 475 L'Enfant Plaza SW., Washington, DC 20260–5240. Copies of all written comments will be available for inspection and photocopying between 8:15 a.m. and 4:45 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Sheila Allen, Records Office, (202) 268–4869.

SUPPLEMENTARY INFORMATION: The Omnibus Transportation Employee Testing Act of 1991 requires alcohol and drug testing of safety-sensitive employees in the motor vehicle industry. The U.S. Department of Transportation (DOT) published rules mandating drug and alcohol misuse prevention programs for employers of 50 or more safety-sensitive employees, including random, reasonable suspicion, and post-accident testing. To comply with these rules, which required implementation beginning in January 1995, the Postal Service has developed a comprehensive drug and alcohol testing program that will be administered by the Vice President of Operations Support and the National Medical Director at Postal Service Headquarters.

For purposes of the DOT regulations, a safety-sensitive employee is defined as one who holds a state commercial driver's license (CDL) and who drives vehicles in excess of 26,000 pounds gross vehicle weight rating (GVWR). The DOT rules cover approximately 10,000 Postal Service employees who are required to operate commercial motor vehicles during the performance of their jobs. This number includes motor vehicle operators, tractor-trailer operators, vehicle mechanics, certain plant maintenance mechanics, and some city mail carriers.

Prior to the DOT mandate, the Postal Service already had in place Privacy Act System of Records USPS 120.210, Personnel Records—Vehicle Maintenance Personnel and Operators Records. This system covers the records of postal employees who operate USPS-owned or USPS-leased vehicles and contains various records associated with that function, including driver's physical condition; licensing information; driver training, testing, and performance; and route and vehicle assignments. The records in this system are maintained in the field where postal vehicles are operated. These records are used by postal management to schedule and monitor the utilization of those vehicles and the performance of the drivers.

Because most of the individuals covered by this system are the same as those to be covered by the new DOT regulations, the Postal Service determined that it was appropriate to revise USPS 120.210 to incorporate the rules mandated by DOT. As a result, necessary changes are made to the sections covering the System Locations, Categories of Individuals Covered by the System, Categories of Records in the System, Authority for Maintenance of the System, and Purpose(s). New Routine Uses 2 through 5 are added; and the Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System are expanded to reflect the specified testing and the associated recordkeeping and reporting required by DOT, as well as the participation of the contractor in the random employee testing selection process. The title of System Manager is changed to Vice President of Operations Support, who issues policy and procedures to those field supervisors who are responsible for vehicle operator and maintenance assignments, as well as for the implementation of certain parts of the new drug and alcohol testing procedures.

Following, in Part I, is the complete text of USPS 120.210.

A new system of records, USPS 120.091, is also added to cover the collection and maintenance of controlled substance and alcohol testing records, test results, and related records under the program. These records will be kept at postal medical facilities and in the offices of certain contract medical officers. Part II contains the notice for the new system.

Part I

USPS 120.210

SYSTEM NAME:

Personnel Records—Vehicle Maintenance Personnel and Operators Records, 120.210.

SYSTEM LOCATIONS:

[CHANGE TO READ] ''Postal Service vehicle maintenance facilities; processing and distribution centers; bulk mail centers; post offices; area offices; district offices; Headquarters; and program contractor's office.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

[CHANGE TO READ] ''Current and former postal employees who operate or maintain postal vehicles, including those employees required to have commercial driver's licenses (CDLs) and who drive vehicles in excess of 26,000 pounds gross vehicle weight rating (GVWR).''

CATEGORIES OF RECORDS IN THE SYSTEM:

[CHANGE TO READ] ''Records relating to individual employee operation of USPS-owned or USPS-leased vehicles, including employee name; social security number; age; length of service; physical condition; qualifications to drive; results of driving tests; vehicle and safety training; licensing information (including revocations and suspensions); driving habits; route and vehicle assignments; vehicle accidents; driving citations and safety awards; notifications of substance and alcohol tests, with related checklists and correspondence; employee workload; work schedule; performance analysis; and work habits.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

[CHANGE TO READ] ''39 U.S.C. 401; Pub. L. 102–143; and 49 CFR 40 and 382, 391, 392, 395.''

PURPOSE(S):

[CHANGE TO READ]

''a. To provide local post office managers, supervisors, and transportation managers with information to assign routes and vehicles and to adjust workload, schedules, and type of equipment operated.

b. To serve as a basis for corrective action and presentation of safe driving awards.

c. To comply with the testing and documentation requirements of the Omnibus Transportation Employee Testing Act of 1991 (Pub. L. 102–143) implementing a controlled substance and alcohol testing program for employees required to have commercial driver's licenses (CDLs).''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements a, b, c, d, e, f, g, h, j, k, l, and m listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system.

[CHANGE TO READ] ''Other routine uses are as follows:

1. Information in these records provides GSA and Postal Service driver credentials.''

[ADD]

''2. Information in these records may be provided to the contractor responsible for maintaining the database of employees to be selected randomly for controlled substance and alcohol testing.

3. Information in these records may be provided to the Federal Highway Administration (FHWA), when requested by the Secretary of Transportation; to any U.S. Department of Transportation agency; or to any state or local official with regulatory authority over the Postal Service or its employees (as authorized by DOT agency regulations).

4. Information in these records may be provided to the National Transportation Safety Board in conjunction with an accident investigation.

5. Information in these records may be provided to the employee or to the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee and arising from the results of a controlled substance and/or alcohol test administered under the regulations issued by DOT, or from a determination that the employee engaged in conduct prohibited by Pub. L. 102–143.''

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

[CHANGE TO READ] ''Preprinted forms and paper files (including hard-copy computer printouts) and computer files.''

RETRIEVABILITY:

[CHANGE TO READ] ''Employee name; social security number; facility name; vehicle number; route number; and work order number.''

SAFEGUARDS:

[CHANGE TO READ] ''Kept in locked file cabinets in secured Postal Service and contractor facilities. Access to computer data is restricted to authorized contractor personnel.''

RETENTION AND DISPOSAL:

[CHANGE TO READ]

''a. Destroy the records related to the employee's random selection for controlled substance and alcohol testing when the records are 1 year old.

b. Destroy the checklists, correspondence, and any other documentation related to the employee's testing for controlled substances and alcohol when the records are 5 years old.

c. Destroy records maintained in the database of employees subject to Pub. L. 102–143 when the employee separates from the Postal Service or is no longer authorized to operate a Postal Service vehicle.

d. Destroy the remaining records related to the employee's operation or maintenance of Postal Service vehicles 4 years from the date of separation, transfer (unless requested by new installation or agency), expiration of license, rescission of authorization, or transfer of the employee into a nondriving status.''

SYSTEM MANAGER(S) AND ADDRESS:

[CHANGE TO READ] ''VICE PRESIDENT, OPERATIONS SUPPORT, UNITED STATES POSTAL SERVICE, 475 L'ENFANT PLAZA SW, WASHINGTON DC 20260–2402''.

NOTIFICATION PROCEDURES:

[CHANGE TO READ] ''An employee wanting to know whether information about him or her is maintained in this system of records must address inquiries to the head of the facility where the employee is employed. Inquiries must contain the employee's full name, social security number, route number, work station, and facility where employed.''

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the notification procedures above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedures and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

[CHANGE TO READ] ''Postal Service employees, supervisors, and medical staff; state motor vehicle departments; and designated contractor(s).''

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records or information in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access under 5 U.S.C. 552a(d)(5). In addition, the Postal Service has claimed exemption from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a(j) and (k). See 39 CFR 266.9. To the extent that copies of exempted records are incorporated into this system, the exemptions applicable to the original primary system must continue to apply to the incorporated records.

Part II

[ADD]

USPS 120.091

SYSTEM NAME:

Personnel Records—Vehicle Operators Controlled Substance and Alcohol Testing Records, 120.091.

SYSTEM LOCATIONS:

Postal Service medical facilities, designee medical offices, and program contractor's office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former postal employees who are or were required to have a commercial driver's license (CDL) and subject to the controlled substance and alcohol testing requirements of the Omnibus Transportation Employee Testing Act of 1991 (Pub. L. 102–143) as mandated by the U.S. Department of Transportation (DOT).

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee or applicant name; social security number; work address and telephone number; controlled substance and alcohol testing records and results, including date, time, and reason for each test; test results from former employers; medical personnel assessments of employees' test results, recommendations for action, and related documentation; employee or applicant statements concerning controlled substance and alcohol test results; and documentation of substance abuse professionals' (SAPs) determinations of employees' need for assistance and employees' compliance with SAPs' recommendations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401; Pub. L. 102–143; and 49 CFR 40 and 382, 391, 392, 395.

PURPOSE(S):

a. To comply with the requirements of the Omnibus Transportation Employee Testing Act of 1991 (Pub. L. 102–143) to implement a controlled substance and alcohol testing program for employees in safety-sensitive positions.

b. To provide for the uniform collection and compilation of controlled substance and alcohol test results for reporting, analysis, evaluation, and corrective action.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements a, b, c, d, e, f, j, k, l, and m listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system.

Other routine uses are as follows:

1. Information in these records may be provided to the Federal Highway Administration (FHWA), when requested by the Secretary of Transportation; to any U.S. Department of Transportation agency; or to any state or local official with regulatory authority over the Postal Service or its employees (as authorized by DOT agency regulations).

2. Information in these records may be provided to the National Transportation Safety Board in conjunction with an accident investigation.

3. Information in these records may be provided to a subsequent employer upon receipt of a written request from the employee, or as directed by the specific written consent of the employee to an identified individual.

4. Information in these records may be provided to the employee or to the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee and arising from the results of a controlled substance and/or alcohol test administered under the regulations issued by DOT, or from a determination that the employee engaged in conduct prohibited by Pub. L. 102–143.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Preprinted forms and paper files (including hard-copy computer printouts) and computer files.

RETRIEVABILITY:

Employee or applicant name; social security number; and chain of custody form numbers.

SAFEGUARDS:

Kept in locked file cabinets in secured Postal Service medical units and those of its designees.

RETENTION AND DISPOSAL:

a. Destroy the records related to alcohol test results indicating a breath alcohol concentration of 0.02 or greater, verified positive controlled substance test results, refusals, medical review officer's evaluations, employee statements, and substance abuse professionals' evaluations and referrals when the records are 5 years old.

b. Destroy the records related to alcohol test results indicating a breath alcohol concentration of less than 0.02 and negative and canceled controlled substance test results when the records are 1 year old.

SYSTEM MANAGER(S) AND ADDRESS:

VICE PRESIDENT, HUMAN RESOURCES, UNITED STATES POSTAL SERVICE, 475 L'ENFANT PLAZA SW, WASHINGTON DC 20260–4200.

NOTIFICATION PROCEDURES:

An employee wanting to know whether information about him or her is maintained in this system of records must address inquiries to the head of the facility where the employee is employed. Inquiries must contain the employee's or applicant's full name, social security number, and facility where employed (or tested).

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the notification procedures above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedures and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Postal Service employees, Postal Service medical staff, Postal Service designee testing facilities, substance abuse professionals, and designated contractors.''

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–18159 Filed 7–24–95; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35987; File No. SR–BSE–95–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Specialist Concentration

July 18, 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 June 19, 1995, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to obtain permanent approval of its Specialist Concentration Policy.[1] This will permit the Exchange's Executive Committee to review proposed combinations that, in the Exchange's view, may lead to undue concentration within the specialist community.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to seek permanent approval of the concentration policy, which establishes certain standards based on Consolidated Tape Association (''CTA'') ranking [2] of specialist stocks for reviewing certain proposed mergers, acquisitions and other combinations between or among specialist units. The proposed policy would authorize the Executive Committee of the Board of Governors to review proposed combinations that, in the Exchange's view, may lead to undue concentration within the specialist community.

The Executive Committee will review any arrangement where previously separate specialist organizations would be operating under common control and would comprise:

(a) 15% or more of the 100 most actively traded CTA stocks; or,

(b) 15% or more of the second 100 most actively traded CTA stocks; or,

(c) 20% or more of the third 100 most actively traded CTA stocks; or

(d) 15% or more of all the CTA stocks eligible for trading on the BSE where the Free List contains fewer than 100 issues.[3]

The Executive Committee shall approve or disapprove the proposed combination based on its assessment of the following considerations:

(a) Specialist performance and market quality in the stocks subject to the proposed combination;

(b) The effects of the proposed combination in terms of the following criteria:

(i) Strengthening the capital base of the resulting specialist organization;

(ii) Minimizing both the potential for financial failure and the negative consequences of any such failure on the specialist system as a whole; and

(iii) Maintaining or increasing operational efficiencies;

(c) Commitment to the Exchange market, focusing on whether the constituent specialist organizations engage in business activities that might detract from the resulting specialist organization's willingness or ability to act to strengthen the Exchange agency/auction market and its competitiveness in relation to other markets; and

(d) The effect of the proposed combination on overall concentration of specialist organizations.

With respect to the criteria relating to the ''commitment to the Exchange market,'' the Executive Committee would look to a variety of factors that extend beyond compliance with the Exchange's requirements for providing sufficient capital, talent and order handling services. For example, the Committee would review and assess each constituent unit's past performance on the Exchange relating to such matters as:

- Acceptance and cooperation in the development, implementation and enhancement to the Boston Exchange Automated Communications and Order-routing Network (''BEACON'');
- Efforts at resolving problems concerning customer orders;

[1] On February 7, 1990, the Commission approved, on a six-month pilot basis ending August 7, 1990, a proposed rule change by the BSE to establish procedures for reviewing proposed combinations among specialist units on the Exchange. *See* Securities Exchange Act Release No. 27684 (February 7, 1990), 55 FR 5527 (approving File No. SR–BSE–89–05). The Commission later approved the renewal of the pilot program for additional one-year periods ending August 1, 1991, August 13, 1992, August 13, 1993, and August 13, 1994. *See* Securities Exchange Act Release Nos. 28327 (August 10, 1990), 55 FR 33794 (File No. SR–BSE–90–11); 29551 (August 13, 1991), 56 FR 41380 (File No. SR–BSE–91–06); 31037 (August 13, 1992), 57 FR 37854 (File No. SR–BSE–92–08); and 32753 (August 16, 1993), 58 FR 44707 (File No. SR–BSE–93–15).

[2] The CTA disseminates last sale transaction information for trades executed on any of the participant exchanges or the Nasdaq Stock Market. The current CTA participants include the New York Stock Exchange (''NYSE''), American Stock Exchange (''Amex''), Chicago Stock Exchange (''CHX''), Philadelphia Stock Exchange (''Phlx''), Pacific Stock Exchange (''PSE''), BSE, Chicago Board Options Exchange (''CBOE''), Cincinnati Stock Exchange (''CSE''), and the National Association of Securities Dealers (''NASD''). Each specialist stock is ranked according to the number of CTA trades in such stock. The ranking is based upon the average volume of trades and shares reported to CTA over the past four quarters. Conversation between Karen Aluise, BSE, and Amy Bilbija, SEC, on July 12, 1995.

[3] The Free List is made up of securities that are not registered to certain specialists and can be traded by any specialist.

• Willingness to facilitate early openings in order to compete effectively with other exchanges; and

• Willingness to voluntarily provide Execution Guarantees beyond the minimum required under Rule 2039A.[4]

2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed policy is Section 6(b)(5) in that the policy enables the Exchange to monitor the tendencies toward concentration in the specialist community and to intervene to prevent undue concentration. As such, it is designed to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purpose of this title or the administration of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–95–12 and should be submitted by August 15, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18214 Filed 7–24–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35989; File No. SR–CBOE–95–37]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing of Options on the CBOE Technology Index

July 18, 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 July 14, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to list and trade options on the CBOE Technology Index (''Tech Index'' or ''Index''). The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style [1] stock index options on the Tech Index. The Exchange represents that the Tech Index meets the generic criteria for listing options on narrow-based indexes set forth in Exchange Rule 24.2 and the Commission's order approving that Rule.[2] Accordingly, the CBOE is submitting this proposed rule change pursuant to, and in accordance with, the procedures set forth in CBOE Rule 24.2. In accordance with Rule 24.2, the CBOE proposes to list and trade options on the Tech Index beginning 30 days from July 14, 1995, the filing date of this proposed rule change.

The Tech Index consists of the stocks of 30 issuers involved in various high technology industries, including: computer services, telecommunications equipment, server software and hardware, design software, PC software and hardware, networking, peripherals, and semiconductors.[3] The Exchange represents that no proxy for the performance of the high technology sector is currently available in the U.S. derivative markets. The Exchange believes, therefore, that options on the Index will provide investors with a low-

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[4] *See* BSE Rule 2039A. The Rule states that the BSE Execution Guarantee shall be available to each member firm in all issues traded through the Intermarket Trading System (ITS) registered to a member specialist of the Exchange. The Rule imposes an obligation upon specialists to guarantee executions on all agency orders from 100 up to and including 1,299 shares.

[1] European-style options may only be exercised during a specified period prior to expiration of the options.

[2] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994) (''Generic Index Approval Order'').

[3] The components of the Index are: Apple Computer, Inc.; Adobe Systems Inc.; ADC Telecommunications Inc.; Adaptec Inc.; Advanced Micro Devices Inc.; Bay Networks Inc.; Computer Associates International; 3Com Corp; Compaq Computer Corp; Cirrus Logic Inc.; Cabletron Systems Inc.; Computer Sciences Corp.; Cisco Systems Inc.; Digital Equipment Corp.; DSC Communications Corp.; Hewlett Packard Co.; IBM; Intel Corp.; Motorola Inc.; Microsoft Corp.; Micron Technology Inc.; Novell Inc.; Oracle Corporation; Picturetel Corp.; Parametric Technology Corp.; Seagate Technology Inc.; Silicon Graphics Inc.; Synopsys Inc.; Tellabs Inc.; and Xilinx Inc.

cost means of participating in the performance of the high technology sector or hedging against the risks of investing in high tech industries.

Stocks Comprising the Index

All of the stocks in the Index are securities of U.S. issuers and currently trade on the New York Stock Exchange (''NYSE'') or as National market securities traded through Nasdaq. Additionally, all of the stocks are ''reported securities'' as defined in Rule 11Aa3–1 under the Exchange Act.

The Exchange represents that all of the stocks in the Index meet the CBOE's listing criteria for equity options as set forth in CBOE Rule 5.3. Accordingly, 100% of the stocks in the index—both by number and by weight—are eligible for standardized options trading pursuant to CBOE rules. In fact, all of the stocks are currently the subject of listed options trading in the U.S.

In accordance with CBOE Rule 24.2, the Exchange further represents that each of the stocks in the index has a market capitalization well in excess of $75 million. Specifically, the stocks comprising the Index ranged in capitalization from $736 million to $55.4 billion as of June 27, 1995. The total capitalization as of that date was $370.4 billion, and the mean and median capitalizations were $12.3 billion and $5.0 billion, respectively.

In addition, each of the component stocks in the index has had monthly trading volumes in excess of one million shares over the six month period ending on May 31, 1995. The average monthly trading volumes per Index component over this six month period ranged from a low of 4.5 million shares to a high of 265.4 million shares. As of June 27, 1995, the largest stock in the Index, by weight, accounted for 5.97% of the Index, while the smallest represented 0.35% of the Index. Also on that date, the top 5 stocks in the Index accounted for 26.14% of the weight of the Index.

Accordingly, the Exchange represents that the Index satisfies the CBOE's generic listing standards for options on narrow-based stock indexes.

Calculation

The Index is price-weighted and reflects changes in the prices of the component stocks relative to the Index base date, January 3, 1995, when the Index was set to 200.00. Specifically, the Index value is calculated by adding the prices of the component stocks and then dividing this sum by the Index divisor. The Index divisor is adjusted to reflect non-market related changes in the prices of the component securities as well as changes in the composition of the Index. Changes which may result in divisor changes include, but are not limited to, stock splits and dividends, spin-offs, certain rights issuances and mergers and acquisitions.

The value of the Index will be calculated on a real-time basis using last-sale prices by the CBOE or its designee, and will be disseminated every 15 seconds by the CBOE. If a component stock is not currently being traded, the most recent price at which the stock traded will be used in the Index calculation. The value of the Index at the close on June 27, 1995 was 289.07.

Maintenance

The Index will be maintained by the CBOE. The Index is reviewed on approximately a monthly basis by the CBOE staff. The CBOE may change the composition of the Index at any time to reflect changes affecting the components of the Index or the technology industry generally. If it becomes necessary to remove a stock from the Index (for example, because of a takeover or merger), the CBOE will only add a stock having characteristics that will permit the Index to remain within the maintenance criteria specified in CBOE's Rules and the Generic Index Approval Order.[4] The CBOE will take into account the capitalization, liquidity, volatility, and name recognition of any proposed replacement stock.

Absent prior Commission approval, the CBOE will not increase to more than 40, or decrease to fewer than 20, the number of stocks in the Index. Additionally, the CBOE will not make any change in the composition of the Index that would cause fewer than 90% of the stocks by weight, or fewer than 80% of the total number of stocks in the index, to qualify as stocks eligible for equity options trading under CBOE Rule 5.3.

[4] These maintenance criteria provide, among other things, that each component security must have (1) a market capitalization of at least $75 million, except that securities accounting for no more than 10% of the weight of the Index may have market capitalizations of at least $50 million, and (2) trading volume of at least 500,000 shares in each of the last six months, except that securities accounting for no more than 10% of the weight of the Index may have trading volumes of at least 400,000 shares in each of the last six months. Additionally, no single security may account for over 25% of the weight of the Index and no five securities may account for over 50% of the weight of the Index. Furthermore, each component security must be a reported security as defined in Rule 11Aa3–1 of the Act. Finally, at least 90% of the weight of the Index and 80% of the number of components in the Index must be eligible for standardized options trading pursuant to CBOE Rule 5.3. *See* CBOE Rule 24.2 and Generic Index Approval Order, *supra* note 2.

If the Index fails at any time to satisfy the maintenance criteria discussed above, the Exchange will immediately notify the Commission of that fact and will not open for trading any additional series of options on the Index unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of options on the Tech Index has been approved by the Commission under Section 19(b)(2) of the Exchange Act.

Index Option Trading

The Exchange proposes to base trading in options on the Tech Index on the full value of that Index. The Exchange may also list full-value long-term index option series (''Index LEAPS'') on the Tech Index having expirations of up to 60 months from the date of issuance, as provided in CBOE Rule 24.9. The Exchange also may provide for the listing of reduced-value Index LEAPS, for which the underlying value would be computed at one-tenth of the value of the Index. The current and closing index value of any such reduced-value Index LEAPS will, after such initial computation, be rounded to the nearest one-hundredth.

Exercise and Settlement

Tech Index options will have European-style exercise and will be ''A.M.-settled index options'' within the meaning of the Rules in Chapter XXIV, including Rule 24.9, which is being amended to refer specifically to Tech Index options. The Index options will expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in a expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

Exchange Rules Applicable

Except as modified herein, the Rules in Chapter XXIV will be applicable to Tech Index options. Index option contracts based on the Tech Index will be subject to the position limit requirements of Rule 24.4A, which presently would result in position limits for full-value Tech Index options of 10,500 contracts. Positions in Index options and full and reduced-value Index LEAPS will be aggregated for position and exercise limit purposes. Ten reduced-value options will equal one full-value contract for such purposes.

The CBOE represents that it has the necessary systems capacity to support new series that would result from the introduction of Tech Index options. The

CBOE also represents that the Options Price Reporting Authority (''OPRA'') has the capacity to support such new series.[5]

The CBOE 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) of the Act, in particular, in that it will permit trading in options based on the Tech Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby will provide investors with the ability to invest in options based on an additional index.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change complies with the standards set forth in CBOE Rule 24.2 and the Generic Index Approval Order,[6] it has become effective pursuant to section 19(b)(3)(A) of the Act. Pursuant to CBOE Rule 24.2 and the Generic Index Approval Order, the Exchange may not list Tech Index options for trading until 30 days after July 14, 1995, the date the proposed rule change was filed with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–37 and should be submitted by August 15, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18215 Filed 7–24–95; 8:45 am]

BILLING CODE 8010–01–M

[5] *See* Letter from Joe Corrigan, Executive Director, OPRA, to Eileen Smith, Director, Product Development, Research Department, CBOE, dated June 29, 1995.

[6] *See supra* note 2.

[7] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35984; File No. SR–MSTC–95–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Securities Trust Company Relating to Access to the Legal Expert System

July 18, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 8, 1995, the Midwest Securities Trust Company (''MSTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by MSTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

MSTC proposes to make its inquiry-only Legal Expert System [2] available to transfer agents that are not participants of MSTC pursuant to individually negotiated contracts with MSTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide transfer agents that are not MSTC participants with access to MSTC's inquiry-only Legal Expert System (''LES''). LES is a menu-driven computer program that allows a user to inquire about the documentation necessary for effecting a legal transfer of securities. The information found in LES is based on standard industry criteria as well as on individual state regulations for effecting legal transfers.

LES provides the user with a main registration menu and a submenu for specific transfer situations. The self-help narratives guide the user through the system by providing information and examples for each certificate registration classification. The user is prompted to answer basic questions about the certificate registration and transfer situation to determine the legal delivery requirements and documentation needed for the specific state involved.

LES will be available to nonparticipant transfer agents pursuant to individually negotiated contracts between MSTC and individual transfer agents. Among other things, the contracts will contain provisions that at a minimum waive MSTC's liability to the same extent as provided in MSTC's rules. The contracts also will require that transfer agents post a deposit with MSTC to protect MSTC against any unpaid fees. The fees that MSTC will charge the transfer agents (*i.e.,* the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] For a complete description of the Legal Expert System, refer to Securities Exchange Act Release Nos. 33756 (March 11, 1994), 59 FR 13350 [File No. SR–MSTC–94–02] (order approving a rule change regarding the Legal Expert System's fees and a clarification disclaiming any liability on MSTC's part for any misinformation contained in the Legal Expert System); 35098 (December 13, 1994), 59 FR 65551 [SR–MSTC–94–17] (order modifying the pricing structure of the Legal Expert System); and 35447 (March 6, 1995) 60 FR 15177 [SR–MSTC–95–03] (order waiving the fees associated with the Legal Expert System until March 1, 1995).

[3] The Commission had modified the text of the summaries prepared by MSTC.

terminal inquiry fee, leased line fee, and communications fee) will be identical to the fees charged participants.

MSTC believes that the proposed rule change is consistent with Section 17A of the Act because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC believes that no burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

MSTC neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) [4] of the Act and Rule 19b–4(e)(4) [5] thereunder because it effects a change in an existing service that does not adversely affect the safeguarding of securities or funds in the custody or control of MSTC or for which MSTC is responsible and does not significantly affect the respective rights or obligations of MSTC or persons using the service. At any time within sixty days of the filing of this rule change, the Commission may summarily abrogate this rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR–MSTC–95–07 and should be submitted by August 15, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority. [6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18216 Filed 7–24–95; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[5] 17 CFR 240.19b–4(e)(4) (1994).

[6] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35988; File No. SR–MSRB–95–12]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Report of Sales and Purchases and Associated Transaction Reporting Procedures

July 18, 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 June 22, 1995, the Municipal Securities Rulemaking Board, Inc (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing a proposed rule change to rule G–14, on reports of sales and purchases and associated transaction reporting procedures, to enhance the Board's transaction reporting pilot program to provide improved support of market surveillance and enforcement of Board rules. The proposed rule change would require brokers, dealers, and municipal securities dealers (''dealers'') that clear transactions for other dealers to identify the dealers that executed the transaction, when submitting transaction information to the Board under rule G–14. This would make available reliable information concerning each broker or dealer that is party to a transaction, including introducing brokers who are currently not identified on some transactions submitted to the Board. Such information would be made available through the Board's pilot automated transaction reporting system to the Commission and to organizations charged with inspection for compliance with, and enforcement of, Board rules (''enforcement agencies''). The Board requests that the proposed rule change be effective July 24, 1995.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Purpose Rule Change

1. Purpose

On November 9, 1994, the Commission approved an amendment to Board rule G–14, on reports of sales or purchase of municipal securities, and associated transaction reporting procedures.[1] Approval of the amendment represented a first step in achieving transparency in the municipal securities market, as it requires dealers to report to the Board or its designee [2] information on each inter-dealer transaction in municipal securities, for public dissemination and for surveillance and enforcement uses. The amendment enabled implementation of the Board's transaction reporting pilot program and operation of an automated information system for transaction reporting (''system'').[3]

[1] *See* Securities Exchange Act Release No. 34955 (November 9, 1994), 59 FR 59810.

[2] The Board has designated National Securities Clearing Corporation (''NSCC'') as its agent for receiving interdealer transaction information. Before this designation, NSCC already was receiving transaction information in its role as the central facilities provider of the automated comparison system.

[3] Other required information was also submitted by the Board to the Commission before the pilot system became operational. *See* Securities Exchange Act Release No. 35181 (December 30,

Continued

The system produces daily, public reports of frequently traded issues [4] and summary volume and price information about the inter-dealer market on the previous business day (''daily report''), and is building a surveillance database of detailed records about every inter-dealer transaction that has been successfully compared [5] by the automated comparison system. Dealers report transaction information to the Board, pursuant to rule G–14, through the automated comparison system. The transaction reporting system has been operational and has been collecting and publicly reporting inter-dealer transaction information since January 23, 1995. The Board had begun working with the National Association of Securities Dealers (''NASD'') and the bank regulatory agencies to establish detailed operational arrangements by which comprehensive information will be made available.[6] This information includes, among other things identification of parties to each compared trade and the prices of all securities traded, and is not limited to transactions in issues that are traded four or more times a day.

The Commission has often noted the need to make an ''integrated audit trail'' of transaction information available to the agencies charged with enforcement of Board rules. The Commission believes that an audit trail will ''provide valuable information for market surveillance and inspection purposes to the MSRB, the Commission, the NASD, and the relevant banking agencies.''[7]

The surveillance databases of transactions being built as part of the transaction reporting system will provide an effective audit trail for the enforcement agencies. The proposed rule change will help to ensure that the audit trail contains the identify of all dealers involved in each compared inter-dealer municipal securities transaction.

Currently, transaction information reported to the Board under rule G–14 through the automated comparison system always includes a numerical identifier for the dealer that ''clears'' the transaction through NSCC. In many cases, this dealer, called the ''clearing broker,'' is also the dealer that executed the transaction. In other cases, the ''clearing broker'' submits the trade on behalf of another dealer that executed the transaction. In a clearing-introducing broker arrangement, the clearing broker may submit transaction information on behalf of the introducing broker. In this case, the introducing broker generally is identified as the ''executing broker'' in the comparison system.

During the first months of transaction reporting operations, the Board has noted that a substantial number of transactions submitted under G–14 do not include any indication whether the trade is actually done by the ''clearing broker'' or on behalf of another ''executing broker.'' [8] Under these circumstances, the surveillance database does not reflect the identity of all dealers involved in the transaction. The identity of the actual executing brokers on each transaction is critical to the surveillance database and to monitoring individual dealers' compliance with the requirement for trade comparison on the night of trade date.[9]

The proposed rule change would require dealers who clear transactions for other dealers to identify the executing dealers involved in the trade. This would involve relatively minor changes in current practice. Clearing brokers would have to ensure the presence of the executing broker identification for both the ''buy side'' and the ''sell side'' for every transaction submitted to the automated comparison system.[10] In addition, each executing broker of municipal securities transactions that has not yet been assigned an executing broker symbol would have to request an assignment.[11]

2. Statutory Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C), which requires, in pertinent part, that the Board's rules:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, * * * to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. * * *

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition in that it applies equally to all dealers in municipal securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed rule Change Received From Members, Participants or Others

The Board has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) was provided to the Commission for its review at least five days prior to the filing date; and (4) does not become operative for thirty days from the date of its filing on June 22, 1995, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder. In particular, the Commission believes the proposed rule change would qualify as a ''non-controversial filing'' in that the proposed standards do not significantly affect the protection of investors or the public interest and do not impose any

1994), 60 FR 2412, and *see* letters from Larry M. Lawrence, MSRB, to Keith Riley, SEC, dated December 31, 1994, and January 23, 1995.

[4] Currently, only issues that are traded four or more times during a day are included in the next day's daily report.

[5] In general, a ''compared'' transaction is one for which salient information items, provided by both parties to a trade, are matched and found to agree by the automated comparison system.

[6] Cooperation between the Board and the enforcement agencies was noted by the Commission as important in the enforcement of the customer protection rules, and the Commission's order approving the system described the NASD as the primary entity responsible for conducting market surveillance. The NASD already has requested and received transaction information from the surveillance database, as part of its enforcement activities. The Board is making arrangements to further automate the process of making surveillance information available to the NASD and to expand such support to all enforcement agencies.

[7] *See* note 1, *supra.*

[8] Clearing brokers have the option of including the identity of the introducing brokers when reporting a transaction, in which case the introducing broker identifiers are entered into the Board's surveillance database. The database lacks the introducing broker identifier of transactions for which the clearing broker chooses not to identify the introducing broker.

[9] Clearing and introducing brokers are jointly responsible for submitting transaction information for automated comparison under rule G–12(f). *See* ''Enforcement Initiative,'' *MSRB Reports,* Vol. 14, No. 3 (June 1994), at 35. Therefore, the clearing broker bears responsibility for obtaining accurate and timely information from its executing brokers and submitting it for comparison in time to achieve comparison on the night of trade data. However, charting the performance of individual executing brokers would be helpful both to the clearing brokers and to the enforcement agencies, since it would indicate which executing brokers are presenting problems.

[10] A clearing broker that uses an ''omnibus'' account to handle introducing brokers' trades might have to change its practices to identify the introducing broker in each case, rather than using its own clearing broker symbol.

[11] The NASD assigns executing broker symbols to brokers, dealers, and municipal securities dealers. A self-clearing broker may use an NASD-assigned symbol to identify itself in its role as executing broker, or it may use its NSCC-assigned broker number for this purpose.

significant burden on competition. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the MSRB. All submissions should refer to File No. SR–MSRB–95–12 and should be submitted by August 15, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18175 Filed 7–24–95; 8:45 am]

BILLING CODE 8610–01–M

[Release No. 34–35983; File No. SR–NSCC–95–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Reducing Networking Account Fees

July 18, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 21, 1995, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested person.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

NSCC is filing the proposed rule change to reduce certain of the Networking service[2] account fees charged to NSCC participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to reduce the Networking service monthly account base fees charged to NSCC participants in order that such fees will reflect more accurately the current costs of providing the service. For accounts with funds paying dividends monthly, the monthly account base fee will be reduced from $.045 per side to $.035 per networking subaccount. Similarly, for accounts with funds paying dividends less frequently than monthly, the monthly account base fee will be reduced from $.03 per side to $.023 per networking subaccount. This reduced fee structure will take effect on June 1, 1995.

Section 17A(b)(3)(D) of the Act[4] requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. NSCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(D) of the Act because the new fee schedule allocates fees more equitably among NSCC participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

NSCC neither solicited nor received written comments on the proposed rule change. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[5] of the Act and Rule 19b-4(e)(2)[6] thereunder because the rule change establishes or changes a due, fee, or other charge. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Networking is NSCC's centralized and standardized data communications system that enables members to transmit mutual fund customer account data and to settle mutual fund payments between themselves. For a complete description of the Networking service, refer to Securities Exchange Act Release No. 26376 (December 28, 1988), 53 FR 52544 [File No. SR–NSCC–88–08] (order granting approval to NSCC's Networking service).

[3] The Commission has modified the text of the summaries prepared by NSCC.

[4] 15 U.S.C. 78q-1(b)(3)(D) (1988).

[5] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[6] 17 CFR 240.19b-4(e)(2) (1994).

office of NSCC. All submissions should refer to File No. SR–NSCC–95–07 and should be submitted by August 15, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18217 Filed 7–24–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35982; File No. SR–OCC–95–03]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to OCC's Exercise-by-Exception Procedures Applicable to Expiring Index Options

July 18, 1995.

On February 16, 1995, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–OCC–95–03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on April 11, 1995.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposal

The purpose of the proposed rule change is to modify the exercise threshold for expiring index option contracts, including American,[3] European,[4] and Capped [5] Quarterly Index Expiration option contracts, carried in a clearing member's customer account in connection with OCC's exercise-by-exception (''ex-by-ex'') processing procedures. The ex-by-ex exercise threshold used for flexibility structured index options is not effected by the rule change.

Ex-by-ex processing presumes that clearing members desire to exercise all options that are in-the-money by a specified threshold immediately prior to expiration. Accordingly, all options subject to ex-by-ex processing are identified as being in-the-money, at-the-money, or out-of-the-money in a report provided to each clearing member through OCC's Clearing/Management and Control System (''C/MACS'') [6] or by hard copy on each expiration date. After receipt and review of its report, each clearing member resubmits its report to OCC reflecting that the clearing member is instructing OCC to exercise all options that are in-the-money by the certain threshold amount. However, the clearing member can issue contrary instructions (''Contrary Exercise Advice'') to OCC by notating on the report additional contracts it desires to exercise and contracts that are in the money by the threshold amount that it does not want exercised.

OCC's Rules currently specify two ex-by-ex processing thresholds for index options.[7] The first threshold applies to index options carried in clearing members' customers' accounts, and the second threshold applies to index options carried in all other clearing members' accounts.[8] The current aggregate price threshold for customer positions is $25.00 per index option contract, and the aggregate price threshold for all other positions is $1.00 per index option contract. OCC's rule change reduces the aggregate price threshold for customer positions to $1.00 per index option contract. Now, any index option contract position, whether carried in clearing members' customers' accounts or in any of their other accounts, in-the-money by that amount or more, will be exercised immediately prior to expiration unless the clearing member submits a timely, contrary instruction to OCC. The proposed change to the threshold for ex-by-ex processing of certain index options carried in customers' accounts will not affect clearing members' obligations to their customers or correspondent brokers, which are determined by contract and by generally applicable principles of law.

II. Discussion

Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[9] As discussed below, the Commission believes that OCC's proposed rule change is consistent with this obligation because it should facilitate the prompt and accurate clearance and settlement of index options transactions by providing promptness and precision in the exercise of certain in-the-money index options.

The rule change should assure that certain customer-held index option contracts that are in-the-money by $1 or more will not go unexercised unless the clearing member provides contrary exercise advice. By lowering the ex-by-ex threshold for index option contracts carried in customer accounts from $25 to $1, OCC has reduced the burden placed on clearing members to provide exercise advice on index options in-the-money by $1 or more that are due to expire. Reducing the ex-by-ex processing threshold to $1 per index option contract will mean that clearing members will have to manually identify for exercise only those customer-held index option contracts that are in-the-money by less than $1.00 per contract; therefore, the cost associated with manually exercising customer-held index option contracts should be reduced. The proposal also should reduce the risk that a clearing member will fail to exercise a customer-held index option because under the new lower threshold only those options that are in-the-money by less than $1.00 will not be exercised.[10]

Originally, the $25 threshold was established because of the anticipation of transaction costs related to the exercise and settlement of index option contracts. Because index options are cash settled and the exercise fees for such options either do not exist, are waived, or are not expected to exceed the exercise proceeds, OCC believes that a lower ex-by-ex threshold can be applied and that its clearing members will not charge a fee for the cash settlement of an index option where a customer will be left with a loss.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–95–03) be, and hereby is, approved.

[7] 17 CFR 200.30-3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 35566 (April 5, 1995), 60 FR 18435.

[3] OCC defines the term ''American'' option to mean an option contract that may be exercised at any time from its commencement time until its expiration.

[4] OCC defines the term ''European'' option to mean an option contract that may be exercised only on its expiration date.

[5] OCC defines the term ''Capped'' option to mean an option contract in a series which has a cap price at which all options in such series will be automatically exercised and which otherwise may only be exercised on its expiration date.

[6] C/MACS is an on-line, menu-driven system that allows OCC member firms to access or input trade information directly from or to OCC's clearing systems.

[7] Different ex-by-ex thresholds are applied to equity options.

[8] OCC Rule 1804(a) and (b).

[9] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[10] As discussed earlier, clearing members can issue Contrary Exercise Advice instructions to exempt specified customer-held index option contracts from ex-by-ex processing.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18218 Filed 7–24–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35993; File Nos. SR–Phlx–95–08, SR–Amex–915–12, SR–PSE–95–07, SR–CBOE–95–19, SR–NYSE–95–12]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the Philadelphia Stock Exchange, Inc., the American Stock Exchange, Inc., the Pacific Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., and the New York Stock Exchange, and Amendment No. 1 by the Chicago Board Options Exchange, Inc., Amendment No. 1 by the Pacific Stock Exchange, Inc., Amendment No. 1 by the New York Stock Exchange, and Amendments Nos. 1 and 2 by the Philadelphia Stock Exchange, Inc., and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 by the Philadelphia Stock Exchange, Inc., Amendment No. 2 by the Pacific Stock Exchange, Inc., Amendment No. 2 by the Chicago Board Options Exchange, Inc., and Amendment No. 1 by the American Stock Exchange, Inc., to Adopt a 2½ Point Strike Price Pilot Program

July 19, 1995.

I. Introduction

On February 6, March 8, March 8, March 15, and March 22, 1995, respectively, the Philadelphia Stock Exchange, Inc. (''Phlx''), the American Stock Exchange, Inc. (''Amex''), the Pacific Stock Exchange, Inc. (''PSE''), the Chicago Board Options Exchange, Inc. (''CBOE''), and the New York Stock Exchange (''NYSE'') (collectively the ''Exchanges'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] proposed rule changes to adopt a pilot program, whereby the Exchanges may select a certain number of their listed options for inclusion in a twelve month pilot program for the listing of strike prices at 2½ point intervals.

On March 10, 1995, the Phlx submitted to the Commission Amendment No. 1 to its proposal.[3] On March 24, March 27, March 29 and March 29, 1995, the PSE, the CBOE, the Phlx, and the NYSE submitted Amendment Nos. 1, 1, 2, and 1, respectively, to their proposals.[4] On June 14, June 14, June 30, and July 6, the Phlx, the PSE, the CBOE, and the Amex submitted Amendments Nos. 3, 2, 2, and 1, respectively, to their proposals.[5]

Notices of the Exchanges' proposals and Amendment No. 1 to the CBOE's proposal, Amendment No. 1 to the PSE's proposal, Amendment Nos. 1 and 2 to the Phlx's proposal, and Amendment No. 1 to the NYSE's proposal were published for comment in the **Federal Register** on May 12, 1995.[6] No comments were received on the proposals.[7] This order approves the proposed rule changes, as amended.

II. Description of the Proposals

The Exchanges have submitted a joint proposal regarding the listing of 2½ point strike prices for selected equity options on a pilot basis. The pilot program would operate for a twelve-month period commencing on Monday, July 24, 1995, which is the Monday following the July 1995 expiration. Currently, the Exchanges list strike prices for equity options at 5 point intervals, where the strike price is between $25 and $200.[8]

The Exchanges propose to list selected options trading at a strike price greater than $25 but less than $50 [9] (*i.e.*, 27½, 32½, 37½, 42½ and 47½ [10] at 2½

[11] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Phlx submitted Amendment No. 1 to add the phrase ''or greater'' to the last clause of the text in Phlx Rule 1012, Commentary .05, in order to be consistent with CBOE Rule 5.5, Interpretation .01, in that strike price intervals may be $10 ''or greater'' where the strike price is $200 or more. *See* Letter from Gerald O'Connell, First Vice President, Market Regulation and Trading Operations, Phlx, to Michael Walinskas, Branch Chief, Office of Market Supervision (''OMS''), Division of Market Regulation (''Market Regulation''), Commission, dated March 10, 1995 (''Phlx Letter, dated March 10, 1995'').

[4] The PSE, the CBOE, the Phlx, and the NYSE submitted amendments in order to codify the extended duration of the pilot program from six to twelve months. *See* Letters from Timothy Thompson, Attorney, CBOE, dated March 27, 1995 (''CBOE Letter, dated March 27, 1995''), Michael Pierson, Senior Attorney, PSE, dated March 24, 1995 (''PSE Letter, dated March 24, 1995''), to John Ayanian, Attorney, OMS, Market Regulation, Commission, and Letters from Gerald O'Connell, First Vice President, Phlx, dated March 29, 1995 (''Phlx Letter, dated March 29, 1995''), and Daniel Parker Odell, Assistant Secretary, NYSE, dated March 29, 1995 (''NYSE Letter, dated March 29, 1995''), to Michael Walinskas, Branch Chief, OMS, Market Regulation, Commission.

The Amex also submitted a clarifying amendment to extend the pilot program from six to twelve months, but did not codify the duration of the pilot program in its rules. *See* Letter from Claire McGrath, Special Counsel, Amex, to Michael Walinskas, Branch Chief, OMS, Market Regulation, Commission, dated April 3, 1995 (''Amex Letter, dated April 3, 1995'').

The NYSE also submitted Amendment No. 1 to amend the text of proposed Supplementary Material .30(f) and .30(f)(i) to NYSE Rule 703 to list 2½ strike prices for 14 options, instead of 11 options as originally stated.

[5] The Phlx, PSE, CBOE, and Amex propose to amend their filings to conform with NYSE's proposal, in that the Exchanges would not require the listing of 2½ point strikes for all expiration months in selected option classes. *See* Letters from Gerald O'Connell, First Vice President, Market Regulation and Trading Floor Operations, Phlx, dated June 14, 1995 (''Phlx Letter, dated June 14, 1995''), David Semak, Vice President, Regulation, PSE, dated June 14, 1995 (''PSE Letter, dated June 14, 1995''), and Claire McGrath, Special Counsel, Amex, dated July 6, 1995 (''Amex Letter, dated July 6, 1995'') to Michael Walinskas, Branch Chief, OMS, Market Regulation, Commission. *See also* Letter from Timothy Thompson, Attorney, CBOE, to John Ayanian, Attorney, OMS, Market Regulation, Commission, dated June 30, 1995 (''CBOE Letter, dated June 30, 1995'').

[6] *See* Securities Exchange Act Release No. 35680 (May 5, 1995), 60 FR 25752 (May 12, 1995).

[7] Before the proposals were published for comment, the Committee on Options Proposals (''COOP'') indicated that it favors the Exchanges' proposed 2½ point strike pilot program. *See* Letter from Michael Schwartz, Chairman, COOP, to Jonathan Katz, Secretary, Commission, dated April 5, 1995.

[8] *See* Securities Exchange Act Release No. 21985 (April 25, 1985), 50 FR 18595 (May 1, 1985) (Approving File Nos. SR–Phlx–85–9 and SR–PSE–85–9, amending both exchanges' policies regarding strike price intervals to conform to those of the other options exchanges); *see also* Securities Exchange Act Release No. 21929 (April 10, 1985), 50 FR 15258 (April 17, 1985) (File Nos. SR–CBOE–85–1 and SR–Amex–85–6).

[9] Proposed NYSE Rule 703, Supplementary Material .30(f) states that selected options may be listed at 2½ point strike price intervals ''if the strike price for that series is greater than $25.00, but is less than or equal to $50.00.'' While the NYSE has proposed slightly different language to make the proposed rule consistent with other NYSE rules, the NYSE proposal allows for the listing of 2½ point strike prices at 27½, 32½, 37½, 42½ and 47½ in accordance with the terms of the pilot program. Telephone conversation between Gary Katz, Managing Director, Options and Index Products, NYSE, and John Ayanian, Attorney, OMS, Market Regulation, Commission, on May 2, 1995.

The Phlx and Amex submitted clarifying amendments to their proposals to indicate that the pilot program does not apply to options classes where the *underlying stock* is trading between $25 and $50, rather it includes equity options trading at a *strike price* between $25 and $50. *See* Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, to Michael Walinskas, Branch Chief, OMS, Market Regulation, Commission, dated June 14, 1995 (''Phlx Letter, dated June 14, 1995''). *See also* Amex Letter, dated July 6, 1995, *supra* note 6.

[10] The applicable strike price codes will be Y 27½; Z 32½; U 37½; V 42½; and W 47½. The CBOE, Amex, and NYSE submitted clarifying amendments to their proposals to indicate, among other things, that each exchange intends to use these strike price codes for the additional strike price intervals. *See* Letter from Timothy Thompson, Attorney, CBOE, to John Ayanian, Attorney, OMS, Market Regulation, Commission, dated May 4, 1995 (''CBOE Letter, dated May 4, 1995''). *See also* Letters from Claire McGrath, Special Counsel, Amex, dated June 6, 1995 (''Amex Letter, dated June 6, 1995''), and James E. Buck, Senior Vice President, NYSE, dated June 15, 1995 (''NYSE Letter, dated June 15, 1995''), to Michael Walinskas, Branch Chief, OMS, Market Regulation, Commission.

point intervals. The Exchanges would generally list 2½ point strike prices in selected options for all expiration months on all participating exchanges, but not for long-term options (LEAPS).[11] Pursuant to the pilot program, the Exchanges would be permitted to use such 2½ point strike price intervals for a joint total of up to 100 option issues. Each exchange may select 10 options plus a percentage of the remaining 50 options equal to that exchange's pro rata share of the total number of equity options listed by the Exchanges.[12] If an exchange chooses a multiply-traded option for its allotment, any other exchange trading that option would be allowed to subsequently list 2½ point strike prices wihtout having such listing count toward that other exchange's allotted amount.

When more than one exchange selects a multiply-traded option for its allotment, the Options Clearing Corporation (''OCC'') will determine which exchange will be deemed to have selected the option according to the following procedures. The Exchanges have agreed that an exchange (''Selecting Exchange'') intending to list 2½ point strikes on an option will inform OCC of its selection by submitting a notice (''Selection Notice'') to OCC between the hours of 8:30 a.m. and 12:00 Noon (Central Time). In the event that more than one exchange submits a Selection Notice to the OCC for the same multiply-traded option, the exchange which first submits a Section Notice to the OCC will be deemed to be the Selecting Exchange for that option. Such option will count toward the allotment of the Selecting Exchange, but not toward the allotment of any other exchange submitting a Selection Notice under the terms of the pilot program.[13]

In implementing the proposals, the Exchanges note that the pilot program effectively adds five additional strike prices to each of the applicable classes of equity options, thereby creating a significant number of new strikes, including both puts and calls for all four listed expiration months.[14] The Exchanges believe that limiting the pilot program to 100 selected equity options is a reasonable alternative to adding 2½ point strike price intervals for all equity options trading at a strike price greater than $25 but less than $50. Further, the Exchanges believe that the allocated number of options limits the number of new strike prices while providing important investment opportunities for selected options.[15] Additionally, both the Exchanges [16] and the Options Price Reporting Authority (''OPRA''),[17] represent that each will have adequate computer processing capacity to accommodate the additional strike prices.

Further, the Exchanges believe that the addition of 2½ point strike price intervals will stimulate customer interest by creating greater trading opportunity and flexibility. The Exchanges believe that 2½ point strikes will provide customers the ability to more closely tailor investment strategies to the precise movement of the underlying security. The Exchanges also believe that an increase in customer interest will, in turn, enhance the depth and liquidity of the markets in the selected equity options.

III. Commission Finding and Conclusions

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[18] Specifically, the Commission believes that the proposed listing of 2½ point strike price intervals in selected equity options on a pilot basis will provide investors with more flexibility in the trading of equity options with a strike price greater than $25 but less than $50, thereby furthering the public interest by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. The Commission also believes that the Exchanges' proposal strikes a reasonable balance between the Exchanges' desire to accommodate market participants by offering a wide array of investment opportunities and the need to avoid excessive proliferation of options series. The Commission expects the Exchanges to monitor the applicable equity options activity closely to detect any proliferation of illiquid options series resulting from the narrower strike price intervals and to act promptly to remedy this situation should it occur.

In addition, based on the representations from OPRA, the Commission believes that adequate computer processing capacity to accommodate the additional strike prices is currently available.[19] The Exchanges also represent that their current systems capacities are sufficient to meet the expected demands of the additional strike prices.[20] Nevertheless, the Commission requests that the Exchanges monitor the trading volume

[11] The Exchanges do not propose to require the listing of 2½ point strikes for all expiration months in selected option classes. *See* NYSE Letter, dated June 15, 1995, *supra* note 10. *See also* Phlx Letter, dated June 14, 1995; PSE Letter, dated June 14, 1995; CBOE Letter, dated June 30, 1995; and Amex Letter, dated July 6, 1995, *supra* note 6.

[12] The actual allotment of option issues for each exchange is: CBOE (28), Amex (22), Phlx (18), PSE (18), and NYSE (14). The Amex submitted a clarifying amendment to indicate that its allotment of option issues pursuant to the pilot program is 22. *See* Amex Letter, dated June 6, 1995, *supra* note 10. *See also* NYSE Letter, dated March 29, 1995, *supra* note 4.

[13] *See* Letter from James C. Yong, First Vice President and General Counsel, Options Clearing Corporation (''OCC''), to Michael Walinskas, Branch Chief, OMS, Market Regulation, Commission, dated July 6, 1995 (''OCC Letter, dated July 6, 1995'').

[14] The Exchanges submitted clarifying amendments to their proposals to indicate that the maximum number of allotted new strikes created as a result of this pilot program for each exchange is: CBOE (1,120); Amex (880); Phx (720); PSE (720); and NYSE (560). *See* Letter from Michael Pierson, Senior Attorney, Market Regulation, PSE, to John Ayanian, Attorney, OMS, Market Regulation, Commission, dated May 11, 1995, and Letter from Gerald O'Connell, First Vice President, Market Regulation and Trading Operations, Phlx, to Michael Walinskas, Branch Chief, OMS, Market Regulation, Commission, dated May 16, 1995. *See also* CBOE Letter, dated May 4, 1995; Amex Letter, dated June 6, 1995; and NYSE Letter, dated June 15, 1995, *supra* note 10. These figures do not include LEAPs or new strikes created from multiply-traded options simultaneously selected by more than one exchange in accordance with the terms of the pilot program.

[15] The Amex notes in its proposal that certain low volatility stocks of highly capitalized companies usually trade in fairly narrow price ranges. Amex further notes that options on such stocks generally have limited trading activity since in-the-money options sell for little more than intrinsic value and out-of-the-money options yield little premium income to attract uncovered or covered writers. (*See* File No. SR–Amex–95–12).

The NYSE notes in its proposal that it anticipates selecting its allotment from among those options that overlie less volatile stocks. The NYSE believes that the market for options that overlie low volatility stocks will benefit from the pilot program because options series with strike prices that are closer to the price of the underlying stock will be available. Consequently, expanded options strategies will be available to investors. (*See* File No. SR–NYSE–95–12).

[16] *See* Letters from Michael Pierson, Senior Attorney, Market Regulation, PSE, dated June 6, 1995 (''PSE Capacity Statement''), and Edward Provost, Senior Vice President, CBOE, dated June 5, 1995 (''CBOE Capacity Statement''), to John Ayanian, Attorney, OMS, Market Regulation, Commission. *See also* Memorandum from Donna Gervasi, Phlx, to Gerald O'Connell, First Vice President, Market Regulation and Trading Floor Operations, Phlx, dated June 8, 1995, which is enclosed in letter from Gerald O'Connell, dated June 8, 1995 (''Phlx Capacity Statement''), and Letter from Wendy Hoffman, Amex, dated June 23 (''Amex Capacity Statement''), to Michael Walinskas, Branch Chief, OMS, Market Regulation, Commission. *See also* NYSE Letter, dated June 15, 1995, *supra* note 10.

[17] *See* Letter from Joseph P. Corrigan, Executive Director, OPRA, to Michael Walinskas, Branch Chief, OMS, Market Regulation, Commission, dated June 27, 1995 (''OPRA Capacity Statement'').

[18] 15 U.S.C. 78f(b)(5).

[19] *See* OPRA Capacity Statement, *supra* note 17.

[20] *See* PSE Capacity Statement, Phlx Capacity Statement, Amex Capacity Statement, and CBOE Capacity Statement, *supra* note 16. *See also* NYSE Letter, dated June 15, 1995, *supra* note 10.

associated with the additional options series listed as a result of the pilot program and the effect of these additional series on the capacity of the Exchanges', OPRA's, and vendors' automated systems.

The Commission notes that the Exchanges intend to commence this pilot program on July 24, 1995.[21] In the event an exchange desires to extend the pilot program beyond the twelve month period, it should submit a report to the Commission before May 31, 1996. The report should cover the ten month period from July 24, 1995 to May 20, 1996, and should include data and written analysis on the open interest and trading volume in affected series, and delisted options series (for all strike price intervals) on the selected pilot program option classes. The exchange should also discuss any capacity problems that may have arisen during the pilot program and provide any other data it believes is relevant to the analysis of the pilot program.

In sum, the Commission finds the Exchanges' proposal to implement a twelve month pilot program to list 2½ point strike price intervals in selected equity options with strike prices between $25 and $50 should provide investors with more flexibility to establish equity options positions that may be better tailored to meet their investment objectives.

The Commission finds good cause for approving Amendment Nos. 3, 2, 2, and 1, respectively, to the Phlx's, the CBOE's, the PSE's, and Amex's proposals, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, the amendments conform other exchanges' proposals with the NYSE's proposal, in that the Exchanges will not be required to list 2½ point strikes for all expiration months in selected option classes. The Commission notes that the NYSE proposal was subject to a full notice and comment period, and no comments were received.

Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment Nos. 3, 2, 2, and 1, respectively, to the Phlx, PSE, CBOE, and Amex proposals on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 3, 2, 2, and 1, respectively, to the Phlx, PSE, CBOE, and Amex proposals. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal offices of the Exchanges. All submissions should refer to File Nos. SR–Phlx–95–08, SR–PSE–95–07, SR–CBOE–95–19, and SR–Amex–95–12 and should be submitted by [insert date 21 days after the date of this publication].

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule changes (SR–Phlx–95–08, SR–Amex–95–12, SR–PSE–95–07, SR–CBOE–95–19, and SR–NYSE–95–12), as amended, are approved through July 15, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18219 Filed 7–24–95; 8:45 am]

BILLING CODE 8010–01–M

[21] *See* OCC Letter, dated July 6, 1995, *supra* note 13.

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Xerographic Laser Images Corporation, Common Stock, $.01 Par Value, Preferred Stock, $.01 Par Value) File No. 1–11236

July 19, 1995.

Xerographic Laser Images Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the Boston Stock Exchange, Inc. (''BSE'').

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, it wishes to withdraw its Securities from listing and registration on the BSE. The Company does not meet the minimum maintenance requirements of the BSE and, therefore, in accordance with the rules of the BSE, the Company has filed an application for voluntary delisting with the BSE. The Securities will trade on the Nasdaq Bulletin Board following delisting.

Any interested person may, on or before August 10, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–18176 Filed 7–24–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2782; Amdt. #2]

Illinois; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective June 30, 1995, to include Fulton County in the State of Illinois as a disaster area due to damages caused by severe storms and flooding beginning on May 15, 1995 and continuing through June 15, 1995.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Knox, Peoria, and Warren may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is July 29, 1995, and for loans for economic injury the deadline is March 1, 1996.

The economic injury number for Illinois is 853300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 19, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–18213 Filed 7–24–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Qualification and Approval of Flight Training Devices, Advisory Circular (AC) 120–45

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date, time, and location of a public meeting to address issues related to the qualification and approval of certain equipment utilized in pilot flight training. This equipment has been defined by the FAA as Flight Training Devices (FTD) in AC 120–45, as amended. The meeting will specifically include discussion and consideration of: (1) The criteria for qualification and approval of FTD not capable of meeting the standards for, or not submitted for, a specified level of qualification under the current AC; (2) the criteria for qualification and approval of devices commonly called Personal Computer-based Flight Training Devices (PCFTD); and (3) additional definitions and clarification that may be necessary regarding specific issues relative to FTD Levels 2–7; i.e., data, objective testing, etc. The purpose of this meeting is to provide the public with the opportunity to provide comments on these and other relevant matters pertaining to AC 120–45, as amended.

DATES: The meeting will be held on August 29, 30, and 31, 1995. The meeting will begin at 9 a.m. on the first day, and 8 a.m. the second and third days.

ADDRESSES: The meeting will be held in the first floor auditorium of the FAA Southern Region Headquarters, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons unable to attend the meeting may mail their comments in triplicate to: Federal Aviation Administration, National Simulator Program Manager (NSPM), P.O. Box 20636, Atlanta, Georgia 30320. Written comments are invited and must be received on or before September 8, 1995.

FOR FURTHER INFORMATION CONTACT: Questions regarding the logistics of the meeting should be directed to Joan Hollingsworth, FAA, NSPM Office, AFS–205, at the address shown in the preceding paragraph; telephone (404) 305–6100; facsimile (404) 305–6118.

Questions concerning the subject matter of the meeting should be directed to Ed Cook, National Simulator Program, telephone (404) 305–6101; or Larry Basham, Flight Standards Service, Certification Branch, telephone (202) 267–3837.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1987, the FAA issued AC 120–45, ''Advanced Training Devices (Airplane Only) Evaluation and Qualification,'' applicable to that part of the aviation community regulated under Part 135 of Title 14, Code of Federal Regulations (14 CFR). On February 5, 1992, this AC was modified substantially with the issuance of AC 120–45A, ''Airplane Flight Training Device Qualification,'' which established the technical standards for devices for flight training, qualification, or certification of all airmen under 14 CFR. Since its publication, questions have been asked about the specific technical standards described in this revised document and the application of those standards for various levels of FTD, including the necessity for, and the source of, supporting and validation data used to evaluate and qualify FTD's. Other questions centered around the type and level of detail required for certain objective tests for some levels of FTD. Additional questions arose concerning devices currently in operation and authorized by the FAA, but not capable of meeting the stated technical criteria; ways which some of the specific technical standards may be met; and whether some of the personal computer-based training systems/aids may be qualified under this AC.

AC 102–45A published specific technical criteria for FTD annotated as Levels 2 through 7. Level 1 was reserved for future use. Questions arose regarding the use of Level 1 as a broad-based ''parking place'' for unqualified FTDs currently in operation and for at least some of the personal computer-based training systems/aids. Many unanswered questions still remain about use of Level 1 for either or both of these two types of FTD and what technical standards should be required of them.

Meeting Procedures

(1) Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested from the NSPM at least 10 calendar days before the meeting.

(2) Representatives of the FAA will preside over the meeting. FAA personnel involved in this issue will be present.

(3) Meeting participants will be provided an opportunity to raise issues, ask questions, or make comments from the floor in relation to the topic under discussion. Comments received from persons not able to attend (but who mailed or faxed comments received on or prior to August 22, 1995) will be read or summarized and read to those in attendance.

(4) No formal meeting notes will be taken and no summary of proceedings will be made available.

Issued in Washington, DC, on July 14, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

[FR Doc. 95–18272 Filed 7–24–95; 8:45 am]

BILLING CODE 4910–13–M

Proposed Advisory Circular 25.1187–1, Minimization of Flammable Fluid Fire Hazards (Flammable Fluid Fire Protection)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Availability of Proposed Advisory Circular (AC) 25.1187–1 and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which provides a method of compliance with the requirements of § 25.1187 of the Federal Aviation Regulations (FAR). Section 25.1187 contains the certification requirements for drainage and ventilation of fire zones for transport category airplanes. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before November 22, 1995.

ADDRESSES: Send all comments on proposed AC to: Federal Aviation Administration, Attention: Mike Dostert, Airframe and Propulsion Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, WA 98055–4056. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Transport Standards Staff, at the address above, telephone (206) 227–2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**. Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25.1187–1 and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Discussion

A common cause of airplane fires has been the ignition of leaked flammable fluids. The primary means of preventing these fires is to safely drain the fluid away from the airplane, both in flight and on the ground, and to provide ventilation that results in a lean fuel to air mixture. The purpose of this AC is to provide guidance in what factors should be considered in the design of flammable fluid drainage systems and ventilation systems, and to describe a means of showing compliance with the sections of the FAR that require these systems. This AC provides information and guidance concerning a means, but not the only means, of compliance with the portions of part 25 of the FAR pertaining to certification requirements for compartments in transport category airplanes that contain flammable fluid leakage sources.

Issued in Renton, Washington, on July 14, 1995.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–18271 Filed 7–24–95; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Salinas, CA; Notice of Closure

Notice is hereby given that on July 20, 1995, the Flight Service Station (FSS) at Salinas, California, closed. Services to the general public of Salinas, California, formerly provided by this facility, are provided by the Automated Flight Service Station (AFSS) in Oakland, California. This information will be reflected in the next issue of the FAA Organization Statement.

(Sec. 313(a), 72 Stat. 752, 49 U.S.C. 1354)

Issued in Lawndale, California, on July 14, 1995.

Lynore C. Brekke,

Acting Regional Administrator, Western-Pacific Region.

[FR Doc. 95–18273 Filed 7–24–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Tri-Cities Airport, Submitted by the Port of Pasco Port Commission, Pasco, Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Tri-Cities Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before August 24, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue, SW., Suite 250; Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James Morasch, Director of Airports, at the following address: Port of Pasco, 3601 North 20th Avenue, Pasco, WA 99301.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Tri-Cities Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Johnson, (206) 227–2655; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue, SW., Suite 250; Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Tri-Cities Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 17, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Port of Pasco Port Commission was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 28, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Actual charge effective date: September 1, 1997.

Proposed charge expiration date: April 31, 1998.

Total estimated PFC revenues: $260,000.00.

Brief description of proposed project: Airport master plan update.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue, SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Tri-Cities Airport.

Issued in Renton, Washington on July 17, 1995.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 95–18274 Filed 7–24–95; 8:45 am]

BILLING CODE 4910–13–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 142

Tuesday, July 25, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Amendment to Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on July 17, 1995 (60 FR 36461) of the special meeting of the Farm Credit Administration Board (Board) scheduled for July 19, 1995. This notice is to amend the agenda by adding a closed session to that meeting.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883-4025, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board were open to the public (limited space available), and parts of this meeting were closed to the public. The agenda for July 19, 1995, is amended as follows:

Closed Session*

1. Other

—Comments on Farmer Mac

Dated: July 19, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

[FR Doc. 95–18322 Filed 7–21–95; 10:49 am]

BILLING CODE 6705–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 24, 31, August 7, and 14, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of July 24

Wednesday, July 26

10:00 a.m.
Briefing on Status of Maintenance Rule (Public Meeting)
(Contact: Richard Correia, 301–415–1009)
11:30 a.m.
Affirmation Session (Public Meeting)
a. Georgia Institute of Technology Appeal of LBP–95–6 (Tentative)
(Contact: Andres Bates, 301–415–1963)
2:00 p.m.
Briefing on Reactor Inspection Program (Public Meeting)
(Contact: Frank Gillespie, 301–415–1275)

Thursday, July 27

2:00 p.m.
Meeting with Nuclear Safety Research Review Committee (NSRRC) (Public Meeting)
(Contact: George Sege, 301–415–6593)

Week of July 31—Tentative

There are no meetings scheduled for the Week of July 31.

Week of August 7—Tentative

There are no meetings scheduled for the Week of August 7.

Week of August 14—Tentative

There are no meetings scheduled for the Week of August 14.

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley A. Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)–(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: July 21, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–18398 Filed 7–21–95; 3:12 pm]

BILLING CODE 7590–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, August 1, 1995.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: The first two items are open to the public. The last item is close to the public under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

6588 Aviation Accident Report: Phoenix Air Learjet 35A, Crash During Emergency Landing, Fresno, California, December 14, 1994.

6585 Briefs of Aviation Accidents: Briefs of 11 Accidents. The Board will only discuss the four listed below:

File No. 1439
File No. 1522
File No. 1560
File No. 1706

6578 Opinion and Order: Neel v. Administrator, Docket SE–13573; disposition of applicant's appeal.

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: July 21, 1995.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 95–18345 Filed 7–21–95; 3:12 pm]

BILLING CODE 7533–01–P

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 24, 1995.

An open meeting will be held on Thursday, July 27, 1995, at 10:00 a.m. A closed meeting will be held on Thursday, July 27, 1995, following the 10 a.m. open meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matters of the open meeting scheduled for Thursday, July 27, 1995, at 10 a.m., will be:

1. Consideration of whether to propose for public comment amendments to rule 17f–5 under the Investment Company Act of 1940, the rule that governs the custody of investment company assets outside the United States. The amendments would revise the findings that currently must be made in establishing foreign custody arrangements to focus exclusively on the safekeeping of investment company assets, permit a company's board of directors to delegate its responsibilities under the rule to evaluate these arrangements, and expand the class of foreign banks and securities depositories that could serve as investment company custodians.

2. Consideration of whether to publish for public comment revised proposed rule 3a–4 and proposed Form N–3a4, both under the Investment Company Act of 1940. Revised proposed rule 3a–4 would provide a nonexclusive safe harbor from the definition of investment company for certain programs under which investment advisory services are provided to clients (''investment advisory programs''). Proposed Form N–3a4 would be filed with the Commission by sponsors of investment advisory programs intending to rely on rule 3a–4. Additionally, the Commission is considering requesting comment regarding the application of certain provisions of the Investment Advisers Act of 1940 to investment advisers participating in investment advisory programs.

The subject matter of the closed meeting scheduled for Thursday, July 27, 1995, after the 10:00 open meeting, will be:

Institution of injunctive actions.

Settlement of injunctive action.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Formal orders of investigation.

Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: July 21, 1995.

[FR Doc. 95–18336 Filed 7–21–95; 3:12 pm]

BILLING CODE 8010–01–M

federal register

Tuesday
July 25, 1995

Part II

Department of the Treasury
12 CFR Part 3

Federal Reserve System
12 CFR Part 208 et al.

Federal Deposit Insurance Corporation
12 CFR Part 325

Market Risk-Based Capital Standards and Capital Requirements for Market Risk; Proposed Rules

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 95–19]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–0884]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB64

Risk-Based Capital Standards: Market Risk

AGENCIES: Office of the Comptroller of the Currency (OCC), Department of the Treasury; Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (the Agencies) are proposing to amend their risk-based capital requirements to incorporate a measure for market risk in foreign exchange and commodity activities and in the trading of debt and equity instruments. Under the proposal, banks and bank holding companies (institutions) regulated by the OCC, the Board, and the FDIC with relatively large trading activities would calculate their capital charges for market risk using either their own internal value-at-risk model(s) or, alternatively, risk measurement techniques that were developed by supervisors. The effect of the proposed market risk measure would be that, in addition to existing capital requirements for credit risk, certain institutions would be required to hold capital based on the measure of their market risk exposure.

DATES: Comments must be received on or before September 18, 1995.

ADDRESSES: Comments should be directed to:

OCC: Comments may be submitted to Docket Number 95–19, Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, DC 20219. Comments will be available for inspection and photocopying at that address.

Board: Comments directed to the Board should refer to Docket No.R–0884 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments may also be delivered to Room B–2222 of the Eccles Building between 8:45 and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FDIC: Written comments should be sent to Jerry L. Langley, Executive Secretary, Attention: Room F–402, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. Comments may be hand-delivered to Room, F–402, 1776 F Street N.W., Washington, D.C. 20429, on business days between 8:30 a.m. and 5 p.m. (Fax number (202)898–3838; Internet address: comments@fdic.gov). Comments will be available for inspection and photocopying in Room 7118, 550 17th Street, N.W., Washington, D.C. 20429, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: Roger Tufts, Senior Economic Advisor (202/874–5070), or Christina Benson, Capital Markets Specialist, (202/874–5070) Office of the Chief National Bank Examiner. For legal issues, Ronald Shimabukuro, Senior Attorney, Legislative and Regulatory Activities Division (202/874–5090), Office of the Comptroller of the Currency, 250 E Street S.W., Washington, D.C. 20219.

Board: Roger Cole, Deputy Associate Director (202/452–2618), James Houpt, Assistant Director (202/452–3358), Barbara Bouchard, Supervisory Financial Analyst (202/452–3072), Division of Banking Supervision and Regulation; or Stephanie Martin, Senior Attorney (202/452–3198), Legal Division. For the hearing impaired *only*, Telecommunication Device for the Deaf, Dorothea Thompson (202/452–3544).

FDIC: William A. Stark, Assistant Director, (202/898–6972), Kenton Fox, Senior Capital Markets Specialist, (202/898–7119), Division of Supervision; Jamey Basham, Counsel, (202/898–7265), Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: The Agencies are proposing amendments to their risk-based capital requirements to incorporate a measure for market risk. The proposed amendments would generally apply only to institutions that have (1) total assets exceeding $5 billion and either on-balance-sheet trading activities representing at least 3.0 percent of total assets or a volume of off-balance-sheet trading activities with notional amounts exceeding $5 billion, or (2) total assets of $5 billion or less and a volume of trading activities representing at least 10.0 percent of total assets.

I. Background

The Agencies' risk-based capital standards are based upon the principles contained in the agreement on International Convergence of Capital Measurement and Capital Standards of July, 1988 (the Accord) that was agreed to by the Basle Committee on Banking Supervision (the Committee) and endorsed by the central bank governors of the Group of Ten (G–10) countries.[1] That Accord sets forth a framework for measuring capital adequacy under which weighted risk assets are calculated by weighting an institution's assets and off-balance-sheet items on the basis of their perceived credit risk using a relatively small number of risk categories.

By focusing on credit risk, the risk that a loss will be incurred due to an obligor or counterparty default on a transaction, the Accord generally excludes coverage of risks arising from adverse movements in market interest rates, foreign exchange rates, or commodity or equity prices. The potential for loss from such movements is referred to as market risk. In April 1993, the Committee, recognizing the need to incorporate market risk into the risk-based capital standard, requested comments on an initial measurement framework. The Agencies' current proposal reflects substantial revisions to that 1993 paper and is based upon revisions to the Accord that were proposed by the Committee on April 12, 1995.[2]

The 1993 paper proposed standardized measurement procedures for assessing risks in traded debt, equity,

[1] The Basle Supervisors' Committee is comprised of representatives of the central banks and supervisory authorities from the G–10 countries (Belgium, Canada, France, Germany, Italy, Japan, The Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) plus Luxembourg.

[2] The Committee's document is entitled ''Proposal to Issue a Supplement to the Basle Capital Accord to Cover Market Risks'' and is available through the Board's and the OCC's Freedom of Information Office and the FDIC's Reading Room.

and foreign exchange activities and provided only a limited role for a bank's internal model(s) in measuring market risk exposure for regulatory capital purposes. These procedures were strongly criticized by commenters to the consultative document, especially by institutions in the United States. These institutions generally believed that the measurement framework was unduly cumbersome and potentially inaccurate, especially for institutions with significant and diversified trading activities.

In lieu of the standardized framework, these institutions urged the Committee to allow greater use of an institution's internal market risk models. They noted that large trading banks have materially expanded the sophistication and coverage of their market risk trading models. These models are typically described as ''value-at-risk'' (VAR) models, which estimate the maximum amount by which an institution's portfolio could decline in market value, given a certain level of statistical confidence and an assumed holding period. The commenters believed that these models would provide a more accurate risk measure and would be better able to incorporate new products and activities than would the standardized framework. They also believed that imposing a rigid supervisory measurement system on institutions would result in unnecessary costs and could encourage improper risk management practices if institutions sought to minimize the capital requirements resulting from the proposed risk measure. Many large European banks also urged the use of internal models for measuring market risks for regulatory capital purposes, but were generally less critical, in part because the European Union had adopted into European law a regime similar to the one outlined in the 1993 paper.[3]

In response to these and other comments and concerns, the Committee issued a new proposal on April 12, 1995. In addition to expanding the earlier proposal by providing measures for risks in commodities and options, this latest proposal would allow institutions to use their internal market risk models to measure the level of their market risk exposure against which they would be required to hold capital. This approach is referred to as the ''internal models approach.'' An institution's use of this approach would be subject to the approval of its appropriate supervisor and would be contingent upon conformance with certain qualitative and quantitative standards regarding the measurement and management of market risks. An institution whose internal model failed to meet those standards or otherwise failed to gain regulatory approval would be required to use standardized risk measurement techniques as set forth in the Committee's April 1995 proposal. This latter approach is referred to as the ''standardized risk measure'' approach, as it applies standardized assumptions and risk factors to an institution's activities.

The Agencies are now proposing amendments to their risk-based capital standards that are similar to the proposal recently issued by the Committee.[4] The Agencies would encourage institutions that are affected by this proposal, and especially those with large trading accounts, to comply with the proposed requirements by using the proprietary internal models that they use to manage market risk.

The Agencies believe that such models should provide a more accurate measure of market risk than the standardized risk measure and would impose fewer costs and burdens on institutions. By using internal models not only for operating purposes, but also as a basis for determining capital requirements, institutions should be further encouraged to continue their efforts to refine the accuracy of their proprietary models, especially with regard to options risk. Given their preference for the use of internal models for measuring market risk, the Agencies request comments regarding whether institutions should be permitted a choice between the two measurement procedures, or only be permitted to use internal models.

II. Scope: Activities and Institutions Covered by the Proposal

This proposal would establish new capital requirements for general market risk and specific risk as they pertain to the trading activities of a banking organization and to the organization's other foreign exchange and commodities activities. As such, the proposed standard, by creating a risk-based capital ratio adjusted for market risk through the addition of a market risk-equivalent assets measure, is an integrated supplement to existing standards that address credit risk through the current weighted-risk assets measure.

For purposes of this proposal, general market risk refers to changes in the market value of the covered transactions that arise from broad market movements, such as changing levels of market interest rates, broad equity indices, or currency exchange rates. Specific risk includes the credit risk of an issuer of a traded security, as well as other factors that affect the market value of specific instruments, but that do not materially alter broad market conditions. Consequently, instruments other than over-the-counter (OTC) derivatives that are covered by this proposal would, in effect, be removed from and no longer subject to the credit risk standard previously established. OTC derivatives would remain subject to the counterparty credit risk requirements set forth in the existing risk-based capital standard.

This proposal defines trading activities as the sum of all trading assets and liabilities as reported in the quarterly Consolidated Reports of Condition and Income (call report) and would apply on a fully consolidated basis to all national banks, state member banks, and bank holding companies that meet the following criteria:

(1) The institution has total assets exceeding $5 billion, and (a) the gross sum of trading assets and liabilities on a daily average basis for the quarter account for 3.0 percent or more of total assets, or (b) the sum of the notional amount of interest rate, foreign exchange, equity and commodity off-balance-sheet derivative contracts relating to trading activities exceeds $5 billion, or

(2) The institution has total assets of $5 billion or less and trading assets and liabilities exceed 10 percent of total assets.

The Agencies may also apply the standard to other institutions for safety and soundness purposes in limited circumstances and on a case-by-case basis.

III. Definition of Capital and the Capital Requirement

The Agencies are also proposing to expand the definition and types of qualifying capital that an institution could use to meet its market risk capital requirements. This modification and others require that the procedures for calculating an institution's overall risk-based capital ratio be changed.

Definition of capital. The Accord permits institutions to meet regulatory capital requirements with a combination of ''core'' (Tier 1) and ''supplementary''

[3] The European Union's Second Directive sets forth a capital regime for market risk that applies to banking and securities firms that operate in EU member countries. These capital requirements become effective at the beginning of 1996.

[4] As set forth in the regulatory text, the Agencies propose to adopt the market risk requirements as new appendices to their capital adequacy standards. The OCC may be required to make additional conforming amendments to its risk-based capital guidelines.

(Tier 2) capital. Tier 1 includes equity, noncumulative perpetual preferred stock, and minority interest in consolidated subsidiaries, less goodwill, while Tier 2 includes the allowance for loan and lease losses, other preferred stock, and subordinated debt that has an original weighted average maturity of at least five years.[5]

This proposal would permit institutions to use a third tier of capital (Tier 3), consisting of short-term subordinated debt. However, this capital could be used only to meet capital requirements pertaining to *market risk* and only if that debt meets certain qualifying conditions: It must have an original maturity of at least two years, be unsecured and fully paid up, and subject to a lock-in provision that prevents the issuer from repaying the debt even at maturity if the issuer's capital ratios are, or with repayment would become, less than the minimum 8.0 percent risk-based capital requirement.

The agencies are proposing to allow the use of Tier 3 capital in recognition that such short-term subordinated debt can help to protect depositors and the Bank Insurance Fund against loss. Indeed, because the underwriting activities of securities firms often create volatile capital requirements, securities regulators in many countries permit their institutions to treat such debt as capital, with similar qualifications. The Agencies, however, believe that Tier 1 instruments should remain a substantial proportion of an institution's total capital and, therefore, propose the following constraints:

(1) Tier 3 capital may not exceed 250 percent of the amount of Tier 1 capital allocated for market risk, and

(2) Tier 1 capital must represent at least 50 percent of an institution's total eligible capital—the sum of Tier 1, qualifying Tier 2, and Tier 3 to the extent it is permitted in item (1), above.

Note that any element of Tier 2 capital must continue to conform with the requirements of the original Accord; that is, Tier 2 may not exceed total Tier 1 capital, and long-term subordinated debt may not exceed 50 percent of Tier 1.

Calculation of the capital ratio. An institution subject to this proposal would remain subject to the Agencies' risk-based capital standards based on credit risk, but would also be required to supplement its risk-based capital ratio to adjust it for market risk. Under the proposal, an institution would accomplish this by multiplying its capital requirement for market risk (as calculated by the internal model or standardized approach) by 12.5 (the reciprocal of the minimum capital ratio of 8.0 percent) and adding the resulting market risk equivalent figure to its weighted risk assets, as calculated by the credit risk standard. The institution's Tier 1 and total risk-based capital ratios would be calculated as the sum of the eligible capital as a percent of the sum of market risk-equivalent assets and weighted risk assets. This approach avoids the distortions that could result from allocating the necessary capital to either market or credit risk and then calculating an institution's capital ratio on the basis of the remaining capital. It also incorporates the risk-based capital ratio adjusted for market risk into the capital category definitions under the Agencies' prompt corrective action regulations.

Due to the 250 percent constraint on Tier 3 capital, an institution that wishes to use Tier 3 capital must first calculate its minimum credit risk requirement to determine the amount of Tier 1 capital that is available to support market risk. This amount sets an upper limit on the amount of Tier 3 capital that the institution may have. In calculating its aggregate capital ratio, however, only that portion of Tier 3 that is actually needed to meet its market risk requirement may be included as eligible capital. Tier 3 capital in excess of this amount will not be considered as eligible capital as it is not permitted to meet credit risk. Eligible capital would be the sum of the whole of the institution's Tier 1 capital, plus all of its Tier 2 capital under the limits imposed in the credit risk Accord, and Tier 3 capital subject to the above restrictions. The quoted ratio will thus represent capital that is available to meet both credit risk and market risk.[6]

IV. Partial Models

With supervisory approval, institutions whose internal models do not cover all elements of their trading activities may use components of the alternative standardized approach to measure market risks for risk-based capital purposes. Such combinations, however, should be limited to situations in which the institution is in the process of developing and implementing the internal models approach for all of its trading activities and would be permitted only on a temporary basis. In addition, the combination of approaches used should be consistent with the method the institution uses in managing its risks. For example, if an institution has a comprehensive value-at-risk model for its interest rate exposures in its trading portfolio but not for its equities exposures, the agencies would expect the institution to use the standardized measure for equities and the internal model for interest rate exposures. These conditions are designed to prevent institutions from selecting the lower of alternative risk measures and are also intended to encourage institutions to develop and improve their risk measurement and management practices.

When combinations of the two risk measurement techniques are used, the institution should measure a complete risk category using a single approach and not mix techniques within a given category of risk. For this purpose, the risk categories are defined as interest rates, foreign exchange, equity prices, and commodity prices. Moreover, once an institution adopts a comprehensive value-at-risk model that is acceptable, it may not revert to the standardized risk measure, except in unusual circumstances and only with supervisory consent. The proposal provides some flexibility for *de minimis* positions, activities in remote locations, in minor currencies, or in activities that present negligible risk to the institution.

V. Internal Models Approach

The Agencies believe that an institution's market risk can be most accurately measured using detailed information available only to the institution and processed by its own proprietary risk measurement model(s). Accordingly, the Agencies would encourage all institutions—especially those with significant trading activities—to pursue this approach. To be most reliable, however, the modelling process must be fully integrated into the institution's broader procedures for managing risk and must be actively supported by senior management. It must also conform with other specific qualitative and quantitative standards that the Agencies believe are necessary in order to achieve an adequate level of rigor and consistency in a capital standard. Under this proposal, institutions that plan to use internal models in calculating their capital requirements for market risk

[5] Bank holding companies may include cumulative perpetual preferred stock in Tier 1 capital, subject to the conditions that are specified in the Board's capital guidelines.

[6] For example, if an institution had $120 of Tier 1 capital, of which $100 was needed to meet its minimum 8.0 percent risk-based capital standard for credit risk, only $20 would be available for market risk. That $20, in turn, would ''support'' as much as $50 of Tier 3 capital ($20 X 250%) for purposes of meeting the capital requirement for market risk. If the market risk capital requirement were $50, the institution could count only $30 of Tier 3 capital as eligible capital in calculating its regulatory capital requirements.

would need to contact their appropriate supervisor and make arrangements for having their models validated for regulatory capital purposes.

Modelling Market Risk

In order to measure exposures when evaluating trading risks, many institutions calculate the ''value-at-risk'' (VAR), representing the maximum amount by which the market value of their trading portfolios could decline during a specific period of time and with a certain degree of statistical confidence. For example, at the close of business on day one a bank might calculate its VAR to be $10 million, indicating that it has only some small chance of losing more than that amount on its existing holdings, if they were held through the end of day two. Most institutions use this measure as a management tool for evaluating their trading positions, limits, and strategies. By measuring the risk daily, management can quickly revise its positions, limits and strategies as market conditions change.

A value-at-risk model requires a variety of inputs: (1) Accurate and timely information about the institution's trading positions, (2) information about past movements of relevant market prices and rates, and (3) several key measurement parameters, such as the length of the historical period for which market changes are observed (observation period), management's required level of confidence, and the assumed holding period for which the value of current trading positions may change. When evaluating their current positions and estimating future market volatility, institutions typically use a series of ''market risk factors'' that they have determined affect the value of their positions and the risks to which they are exposed. These factors, in turn, can be grouped into four categories, depending on the nature of the underlying risk: interest rates, exchange rates, and equity and commodity prices, with related options volatilities included in each risk factor category.

Having determined which risk factors to use, an institution estimates the potential future volatility of the factors. Most often this calculation is based on the past movements of these factors over some specified time horizon, with some institutions using long historical time periods and others focusing on more recent market behavior. However derived, the estimates of potential market movements are combined with current position data to calculate an estimate of the potential loss that may arise from those positions for a specified holding period. Just as institutions use different historical time periods when computing possible changes in market risk factors, they also use different confidence levels to estimate potential losses. Some institutions use a 90 or 95 percent confidence level (one-tail), while others use a higher level of statistical confidence.

Institutions also use different modelling procedures in calculating their market risk exposures. The most common models are based upon variance/covariance methodologies, historical simulations, or Monte Carlo simulation techniques. In the case of the variance/covariance approach, the change in value of the portfolio is calculated by combining the risk factor sensitivities of the individual positions—derived from valuation models—with a variance/covariance matrix based on risk factor volatilities and correlations. An institution would calculate the volatilities and correlations of the risk factors on the basis of the holding period and the observation period. Value-at-risk is determined according to the desired level of statistical confidence.

Using historical simulations, an institution would calculate the hypothetical change in value of the current portfolio in the light of actual historical movements in risk factors. This calculation is done for each of the defined holding periods over a given historical measurement horizon to arrive at a range of simulated profits and losses, and the confidence level, again, determines the value-at-risk.

Monte Carlo techniques also consider historical movements, but only to determine the probability of particular price and rate changes. Using these probabilities, the institution would then construct a large number of theoretical movements to evaluate the range of its portfolio's potential market values and identify the maximum loss consistent with the necessary confidence level.

Proposed Modelling Constraints

The Agencies recognize that institutions have adopted different assumptions and measurement techniques in their internal market risk models and that such differences often reflect distinct business strategies and approaches to risk management. In developing a framework for the use of internal models for regulatory capital purposes, the Agencies believe that some constraints should be placed on model parameters and assumptions. Such restrictions would help to ensure that prudential capital levels are maintained and that institutions with similar risk exposures have similar capital requirements.

Since institutions use VAR to guide them in setting trading limits, rather than for evaluating capital adequacy, they set their model parameters to address normal conditions. Indeed, the models are designed to ensure that actual trading results often exceed the projected levels so that management is better able to evaluate the model's predictive accuracy and to respond to events that generate unexpectedly large gains or losses. During a given year, for example, a model based on a 90 percent confidence level (one tail) could be expected to underestimate actual trading losses more than 20 times.

Moreover, knowing that a day's trading results could be expected to exceed the VAR ten percent, five percent, or even only one percent of the time, says nothing about the *magnitude* by which the VAR might be exceeded. The probabilities of VAR models cannot be extended to estimate the size of a highly unlikely event because most models assume that market movements are distributed normally. While that assumption may be adequate for a model's intended purpose, it permits the model to greatly understate the likelihood of a large loss. For example, assuming a normal distribution, the likelihood of experiencing a four standard deviation event is approximately 3 in 100,000—in trading terms, about once in 130 years. In practice, however, such unusual market movements are seen in most major markets on average almost every year.[7]

These conditions require that regulators impose some constraints or other adjustments to the VAR figure that each institution derives in order to provide the rigor and consistency that a capital requirement demands. At the same time, the Agencies want to minimize the costs and dislocations to an internal modelling system that external constraints could create and have sought to balance these conflicting objectives through a combination of qualitative and quantitative constraints.

Qualitative Standards

The qualitative standards are designed to ensure that institutions using internal models have market risk management systems that are conceptually sound and implemented

[7] Daily rate or price movements of a half-dozen major currencies and U.S. Treasury maturities and of several U.S. equity indices each moved by at least four standard deviations on average about once a year during the period 1977–1994. The drop in the value of the S&P 500 index on October 19, 1987 represented a 20 standard deviation event in terms of daily price movements.

with integrity.[8] The internal risk measurement model should be closely integrated in the daily risk management process and serve as a basis for reporting of risk exposures to senior officers. Institutions should have, for example, highly trained personnel who can evaluate the adequacy of the risk models and who are organizationally independent of personnel responsible for executing trades. These individuals should compare actual daily trading gains and losses with VAR figures generated by the model as part of their on-going evaluations of the modelling process. At least annually, internal auditors should assess the institution's overall process for managing and measuring trading risks.

Notwithstanding the use of VAR as a basis for a regulatory capital charge, institutions should also routinely evaluate their exposures to highly stressful events, selected to identify the circumstances to which their particular trading portfolios are most vulnerable. Such a program of stress testing supplements the capital standard and illustrates management's commitment to evaluating trading risks fully.

The stress testing process, along with other relevant internal policies, controls, and procedures, should be well documented and available for examiners to review. Examiners will need this information, as well as comparisons of VAR measures with actual daily trading results, to judge the acceptability of the institution's model on an initial and periodic basis. Under the proposal, if key management procedures are missing or weak, or if the integrity of a model is questionable, the appropriate supervisor may either disallow the model for regulatory capital purposes or require capital above the minimum specified in the proposal. The latter may be done by increasing the size of the multiplier that would be applied to an institution's VAR (discussed below under ''Capital Requirement''). Typically, the Agencies would expect to see any management or modelling shortcomings addressed and the risk measure improved, rather than seek to resolve the matter by applying a larger multiplier to a marginally satisfactory or questionable modelling or management approach.

Quantitative Standards

Whereas the qualitative standards focus on the integrity of the modelling process and incorporate standards of sound practice, the quantitative standards are designed to develop a prudential capital requirement by addressing the level of rigor in an institution's models and the consistency of model parameters among institutions. The Agencies have sought to minimize the quantitative constraints and to make those that were deemed necessary as compatible as practicable with existing procedures of institutions. The Agencies recognize, however, that some of these standards may require an institution to make certain modifications to its internal model when using it for computing regulatory capital requirements. The Agencies propose that an institution that elects to use the internal model approach be subject to the following standards for its internal model:

(1) *Value-at-risk* should be computed each business day and should be based on a 99 percent (one-tailed) *confidence level* of estimated maximum loss.

(2) The assumed *holding period* used for the VAR measure must be 10 business days, although for positions that display linear price characteristics (not options, which display nonlinear characteristics) the institution may use results based on one-day periods, increased to ten days by multiplying by the square root of time.[9]

(3) The model must measure *all material risks* incurred by the institution, although no specific type of model is prescribed.

(4) The model may utilize historical *correlations* within broad categories of risk factors (interest rates, exchange rates, and equity and commodity prices), but not among these categories. That is, the consolidated value-at-risk is the sum of the individual VARs measured for each broad category.

(5) The *non-linear price characteristics* of options must be adequately addressed, both by ensuring that the model incorporates potential non-linear price behavior and by evaluating actual minimum 10 day holding periods, rather than multiplying the results based on one-day periods by the square root of time. The volatility of the rates and prices (vega) underlying the options must also be included among the risk factors.

(6) The *historical observation period* used to estimate future price and rate changes must have a minimum length of one year. The Agencies request specific comment on whether they should also require institutions to calculate their exposures using a shorter observation period (e.g. less than 6 months), with the capital requirement based on the higher result.

(7) Data must be *updated* no less frequently than once every three months and more frequently if market conditions warrant.

(8) Each yield curve in a major currency must be modeled using at *least six risk factors,* selected to reflect the characteristics of the interest rate sensitive instruments that the institution trades. The model must also take account of spread risk.

Several of these constraints warrant a discussion of their underlying rationale:

Minimum holding period (and issues regarding options). Typically, longer holding periods lead to larger expected price changes and, consequently, to larger measures of risk. When estimating risk in trading activities for management purposes, most institutions assume only a one-day holding period, since trading decisions are made constantly, and some instruments are held for only minutes or hours. This approach may be fully satisfactory for day-to-day management purposes but seems less appropriate when designing a prudent capital standard.

In periods of market turmoil, when an institution's capital is most needed, many financial instruments could become unexpectedly illiquid, as market participants become less willing to accept market risk. One method of increasing the rigor of the risk measure and addressing an unexpectedly large price change that could result from a decline in market liquidity would be to assume a longer holding period. The proposed requirement that institutions use a 10-day holding period does not imply that the Agencies would expect them to plan for that eventuality. Indeed, some positions, such as those involving spot foreign exchange contracts, will mature and settle within that time frame and could not be held for 10 days, in any event. Therefore, in this context, the 10-day period should be viewed simply as a way of producing a more stressful market shock by assuming an *instantaneous* price movement of a size that one would normally expect to witness only over the longer period of time.

However, in order to minimize modelling costs and recognize the linear nature of price movements of many financial instruments, the Agencies would permit institutions to estimate a 10-day price or rate movement—for instruments other than options—using the risk factor changes calculated on the basis of one-day holding periods. This adjustment could be accomplished using the ''square root of time'' method

[8] With respect to the qualitative standards, the OCC is planning to provide additional guidance through supplementary banking issuances.

[9] For example, one can estimate the ten day price volatility of an instrument by multiplying the volatility calculated on one-day changes by the square root of ten.

by multiplying the one-day results by 3.16 (the square root of ten trading days).

The prices of options, however, do not change proportionately with the price of the underlying instrument, and their potential price volatility cannot be so easily estimated. Therefore, institutions would be required to take steps to identify the non-linear behavior of option prices with respect to changes in underlying rates or prices. In addition, institutions would not, for example, be allowed to scale the price volatility of an option that was based on one-day sensitivities using the square root of ten. However, since the price or rate volatility of the instrument on which the option is based is considered to increase proportionately with the square root of time, institutions would be permitted to use the square root of time technique to expand the one-day volatility of the option's underlying instrument when calculating the price volatility of the option itself. Alternatively, institutions could estimate the changes in the value of options on the basis of actual movements in underlying factors measured during a full 10-day period.

Institutions should also evaluate the effect of changes in the volatility of rate or price movements of instruments underlying their option positions (*vega*) on option values. This can be done by modelling volatilities as additional risk factors and including them in the overall set of risk factors affecting the value of the institution's trading positions. Institutions with relatively large or complex options portfolios should also measure volatilities across different points along the maturity yield curve.

Aggregating Exposures

When evaluating the potential change in a portfolio's market value, one must consider the likelihood that prices of certain instruments in the portfolio may move together (or in opposite directions). However, observed correlations among the prices of some instruments are themselves volatile and may be especially likely to change during periods of market stress. Therefore, which assumptions are prudent and which ones are not cannot be determined in advance. Moreover, one correlation assumption is not always more conservative than another, since the outcome depends on whether an institution's position in a given instrument is long or short. In practice, most models calculate the correlations within risk factor categories, but differ in their recognition of historical correlations across broad categories of risk factors (interest rates, foreign exchange, etc.).

The Agencies do not want to specify correlations or to set standards for what levels of correlations could be recognized by a model. Given the importance—but also the uncertainty—of historical correlations, the Agencies propose to permit institutions to use correlations within categories of risk factors, but not among categories, where the interrelationships of market factors may be more tenuous, especially during periods of market stress.[10] Thus, total VAR would be the simple sum of the calculated VAR for individual categories. The Agencies recognize that this approach is conservative and believe that it is appropriate for a capital charge against market price moves during periods of stress, when historic correlations have been observed to breakdown. The Agencies also note that it is consistent with the risk measurement practices of many large trading banks.

Minimum Observation Period

In managing market risk, institutions draw from a broad range of historical periods to calculate historical volatilities and correlations for the purpose of estimating future price and rate movements. Some institutions use periods as short as 30–60 days, while others use periods extending as long as several years. Although the choice of historical periods may have little effect on a trading portfolio's level of expected VAR over an extended period of time, it can have a significant effect on the measure of exposure at any specific time. VARs based on short historical periods will be more volatile and responsive to changing market conditions than measures based on longer periods, producing relatively large VARs during periods of high market volatility and low VARs when the markets are calm. Conversely, VARs based on longer periods will exhibit more stability, reflecting a wider range of market conditions and the smaller effect of recent observations.

Since VARs based on short periods may, at times, produce small estimates of risk and could also produce a wide range of risk measures among institutions having similar portfolios, the Agencies are proposing a minimum historical observation period of one year. That constraint should reduce the dispersion and help ensure that institutions have adequate capital requirements at all times. While the Agencies believe such a one-year constraint may be sufficient, they are also requesting comment on whether institutions should be required to calculate their exposures using two observation periods—one as constrained above and the other representing a shorter period, such as six months or less. Under this dual observation approach, the capital requirement would be based on the period that indicated the greater risk.

Minimum Number of Risk Factors

The risk factors contained in an institution's market risk measurement system should be sufficiently comprehensive to capture all of the material risks inherent in the portfolio of its on- and off-balance sheet trading positions, including interest and exchange rates, equity and commodity prices, and the volatilities related to option positions. Although institutions will have substantial flexibility in specifying the risk factors that are most relevant to their portfolios, the Agencies expect the number and composition of factors to be commensurate with the nature and scope of each institution's risks.

In order to adequately measure exposures to interest rates and to bring about greater conformity of results among institutions, the Agencies are proposing a minimum of six maturity bands (each representing a separate risk factor) to be used for material positions in the major currencies and markets. All institutions would be expected to measure spread risk (e.g., the difference between rates on corporate and U.S. government instruments) adequately, with the required level of sophistication being a function of the nature and scope of the institution's activities and exposures.

Capital Requirement

Experience has shown that financial markets can have brief periods of high volatility preceded or followed by extended periods of calm. Under some modelling procedures, the large number of small daily market changes can substantially offset the infrequent periods of high volatility. Even when constrained and calculated as proposed, there are several reasons why an institution's need for capital might sometimes exceed this figure:

(1) The past is not always a good guide to the future;

(2) The assumptions about statistical ''normality'' built into some models may not be justified because of the relatively high frequency of large market movements;

[10] Use of correlations is permitted provided the supervisor is satisfied that the calculation of correlations within a category is performed with integrity.

(3) The correlations assumed in the model may prove to be incorrect;

(4) Market liquidity may become inadequate to close out positions; and

(5) The institution may face multiple stressful events over short periods of time.

Consequently, the Agencies believe that in order for an institution's VAR figure to serve as an adequate basis for a capital requirement, it should be multiplied by an appropriate prudential factor. The Agencies are proposing a minimum multiple of three, which could be increased if the results of ''back-testing'' are not sufficiently satisfactory.[11]

The Agencies also recognize that institutions may change their trading positions rapidly and may substantially increase their exposures for brief periods in order to respond to perceived opportunities or market conditions. At such times, an institution's exposure to market risk may be larger than its average VAR times three. In order to address such circumstances, the Agencies are proposing that institutions maintain capital on a daily basis to support the larger of either (1) the average VAR figure for the last 60 business days, calculated under the proposed criteria and increased by the assigned multiple, or (2) the previous day's VAR, similarly calculated but without the multiple. By considering not only an average VAR but also a single day's measure, the Agencies expect institutions to hold capital sufficient to cover peak levels of market volatility and to manage their activities accordingly.

Many VAR models focus principally on measuring general market risks and incorporate only partial elements of specific risk. Therefore, institutions would remain subject to separate capital requirements to cover specific risk on equities and traded debt, to the extent it is not addressed by their VAR models. This separate charge would be added after the VAR figure is increased by the multiplier and would, in no case, be less than one-half the specific risk charge calculated using the standardized approach. The Agencies specifically request comments on which features to consider when reviewing models in order to evaluate their coverage of specific risk.

[11] Back-testing refers to the process of comparing calculated daily VARs with actual daily trading results to determine how effectively the risk measure identified the boundaries of gains or losses consistent with the predetermined level of statistical confidence.

VI. Standardized Risk Measure

The standardized risk measure calculates separate capital requirements for specific and general market risks and uses different techniques to measure an institution's risk exposure, depending upon its source: debt instruments, equities, foreign currencies, and commodities, including their respective options.[12]

Debt instruments held in trading portfolios

The market risk capital requirement for debt instruments in a trading account consists of separate charges for general market and specific risks.

a. *General market risk.* The general market risk capital requirement for debt instruments (including off-balance-sheet derivatives) that are part of trading activities is designed to capture the potential loss that may arise from movements in market interest rates. An institution may determine this component of its capital requirement either by using standardized risk weights that approximate the price sensitivity of various instruments or by calculating, itself, the precise duration of each instrument, weighted by a specified change in interest rates.

Both methods use a maturity-ladder approach that employs a series of time bands and zones, designed to take into account differences in price sensitivities and interest rate volatilities across various maturities. Under either method, the institution's capital charge for general market risk would be the sum of a base charge that results from fully netting various risk-weighted positions (i.e., longs versus shorts) and a series of additional charges (add-ons) that effectively disallow part of the previous full netting in order to address basis and yield curve risk. The capital charges would be separately computed for each currency in which an institution has significant positions. No netting of positions or charges would be allowed across different currencies.

When using the first approach, referred to as the ''maturity'' method, an institution would first distribute its on- and off-balance-sheet positions in each currency among a range of time-bands based on the maturity or nearest interest rate reset date of the instrument. Long positions would be treated as positive amounts and short positions would be treated as negative amounts. The institution would then calculate its net long or short position for each time-band and would multiply that net position by the risk weight provided by the supervisor for that time-band. The resulting risk-weighted position represents the amount by which the market value of that debt position is expected to change for a specified movement in interest rates. The risk weights and associated interest rate changes are shown in each Agency's proposed regulatory language (OCC—Table 2, Board—Table I, and FDIC—Table 1).[13] Adding the sum of all risk-weighted positions (long or short) across all time-bands results in a final net risk-weighted position. This amount would be the base capital charge for general market risk.[14]

The base charge is calculated differently under the second, or alternative ''duration'' method. In this case, an institution would calculate the estimated price movement for a specific instrument by multiplying the instrument's modified duration by a specified interest rate shock that is based on the instrument's duration as shown in the proposed regulatory language.[15] That product, representing the amount of expected price change of the instrument, is then distributed into the array of time-bands on the basis of the instrument's duration (see proposed Table 4—OCC, Table III—Board, Table 3—FDIC). For example, an instrument with a maturity of 4 years and 3 months might have a modified duration of 3.5 years. Based on its duration, it would be ''shocked'' by 75 basis points, resulting in an expected price change of 2.625 percent (3.5×0.75 percent). That estimated 2.625 percent change, multiplied by the current value of the instrument, would be placed into the 3.3 to 4.0 year time-band for

[12] Several techniques are offered for measuring the price risk in options (see ''Options'', discussed below or in the proposed regulatory language for each agency). Under one approach, called the ''delta-plus'' approach, an institution would include the delta-equivalent value of the underlying instrument when evaluating the market risk of each category of instruments (debt, equity, etc.). Under the two other approaches, the underlying instrument of an option may be ''carved-out'', not subject to the prescribed risk measure for the underlying, and evaluated together with its option according to the procedures described for options.

[13] In the case of securities backed by fixed rate mortgages, an institution would slot the instruments into time bands on the basis of their current expected weighted average lives (reflecting the effect of expected prepayments at current market interest rates), rather than by their contractual maturities.

[14] Since the price sensitivity of zero coupon and low coupon instruments can be materially greater than that of instruments with higher coupons, institutions would be required to assign higher risk weights to low coupon instruments as shown in the proposed Tables.

[15] The duration of an instrument indicates its approximate percentage change in price for a small parallel shift in the yield curve assuming that its cash flow does not change when the yield curve shifts.

determining the charge for general market risk.

As in the maturity method, the base capital charge for general market risk is the sum of the estimated price changes across all time bands. If that sum is negative, the base charge would be its absolute value. Different time-bands are used for the two methods because an instrument's duration can be substantially different from its maturity.

In addition to the base capital charge for general market risk, as reflected by the institution's net risk-weighted position, an institution would be subject to a series of capital ''add-ons'' that are designed to take into account imperfect and uncertain correlations among instrument types and maturities. These add-ons recognize that long and short positions might not, in practice, offset each other by the full amount that their risk-weightings would suggest, and therefore, some portion of the hedged or offsetting position should be disallowed.

The first disallowance (referred to as the vertical disallowance) is intended to address the basis risk that exists between instruments with the same or similar maturities and also the possibly different price movements that may be experienced by different instruments within the same time-band due to the range of maturities (or repricing periods) that may exist within a time-band. To capture this risk, a vertical disallowance is applied to the smaller of the offsetting (long or short) positions within a time-band.[16] This disallowance is 10 percent under the maturity method, and 5 percent under the duration method. For example, under the maturity method, if the sum of weighted long positions within a time-band equals $100 million and the sum of weighted short positions equals $90 million, the vertical disallowance for the time-band would be 10 percent of $90 million, or $9 million. This amount would be added to the institution's base capital charge. The use of two different vertical disallowances recognizes that because the duration method takes into account an instrument's specific characteristics (maturity and coupon), there is less opportunity for measurement error.[17]

The second disallowance (or horizontal disallowance) addresses the risk that interest rates along the yield curve are not perfectly correlated and that risk-weighted positions that might have been expected to offset will not fully offset, in practice. The horizontal disallowance applies to the smaller of the offsetting positions across different time-bands. The amount of this disallowance varies in size by zone (that is, a grouping of contiguous time bands), with greater netting allowed for positions in different time bands but within the same zone than is allowed for positions that are in different zones (Table 3—OCC, Table II—Board, Table 2—FDIC in the proposed regulatory language). The horizontal disallowances range from 30 percent to 100 percent of the smaller figure in a pair of offsetting transactions.[18]

In calculating these disallowances, an institution would first determine its offsetting positions within a zone and the associated ''within zone'' disallowance amounts. Once the institution has netted its positions within a zone, it would determine the amount of offsetting and associated disallowances across zones. An institution's general market risk requirement for debt instruments within a given currency would be the sum of (1) the value of its net risk-weighted position (base charge) and (2) all of its vertical and horizontal disallowances.

b. *Specific risk.* Under the proposal, generally every traded security, whether long or short, would be assessed a capital charge for specific market risk. In the debt portfolio this charge is based on the identity of the obligor and, in the case of corporate securities, on the credit rating and maturity of the instrument. Consistent with the original Accord, debt instruments of national governments of OECD countries are assigned zero specific risk. Other securities are assigned risk weights ranging from 0.25 percent to 1.6 percent if they are issued by *qualifying* borrowers. Securities of nonqualifying issuers are charged a specific risk of 8.0 percent. To be considered as qualifying, the security must be rated as investment grade by at least two nationally recognized credit rating firms or, if the issuer has securities listed on a recognized stock exchange, it must be deemed to be of comparable investment quality by the reporting institution.

This latter condition is provided to accommodate the fact that in some countries credit ratings and the coverage of credit rating firms are not as extensive as in the United States. Consequently, the securities of many large and well-established foreign companies may not be rated. In such cases, a company's listing on an organized exchange may be an acceptable substitute for credit ratings if such listings are limited to financially strong and well-established firms. In these cases, and in the absence of independent credit ratings, the securities of a listed company may qualify for a lower capital charge if the trading institution and its appropriate supervisor believe the securities are equivalent to investment grade. However, the Agencies are proposing that, given the presence and wide coverage in the United States of credit rating firms, institutions would not be allowed to qualify the securities of a U.S. firm on the basis of a listing on an organized exchange.

During the examination process, the Agencies would also consider the extent to which an institution trades non-investment grade instruments (sometimes called high yield debt) that do not qualify for risk weights less than 8.0 percent because of the lack of investment grade ratings. If these holdings are not well diversified or if they otherwise represent material exposures to the institution, the Agencies may prevent an institution from netting the exposures arising from these instruments with otherwise offsetting exposures resulting from positions in qualifying instruments.

Equities Held in Trading Portfolios

The standardized measure of market risk in traded equities also consists of separate charges for specific and general market risk. These charges would apply not only to direct holdings of equity securities, but also to equity derivatives and off-balance-sheet positions whose market values are directly affected by equity prices.

a. *General market risk.* An institution's general market risk capital charge would be 8.0 percent of its net

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[16] If the offsetting amounts (long and short) are equal, the disallowance can be applied to either figure.

[17] In the case of cash positions and transactions conducted on an exchange (e.g. futures) an institution has the opportunity to adjust its market risk either by acquiring a new position or selling an existing one. However, that is not typically the case with interest rate swaps, for which an institution almost always adjusts its position by entering into a new or offsetting swap, rather than by selling or unwinding one that it already holds. This procedure, required partly because of the lack of standardization in the terms and credit risk characteristics of swaps, can produce large swap portfolios and potentially large disallowances under the standardized approach.

Consequently, the Agencies' proposal would allow institutions with large swap books to use alternative procedures for calculating the amounts that would be distributed into the maturity or duration time bands. One approach would be to convert the payments required by a swap into their present values using zero coupon yields and then to place those amounts into their appropriate time bands using the procedures that apply to zero (or low) coupon bonds. The net amounts for each time band would then be weighted and subject to the disallowances of the general market risk framework as if they were bonds. The Agencies would also consider other procedures.

[18] Since the disallowance is applied to only one side of an offsetting transaction, a 100 percent disallowance effectively treats the hedge as being 50 percent effective.

equity position—the difference between the sum of its long and the sum of its short positions. The net long or short position against which a general market risk charge would be assessed must be calculated on a market-by-market basis, i.e., a separate calculation must be computed for each national market in which the institution holds equities. Institutions would not, for example, be able to net a long position in U.S. companies traded on the New York Stock Exchange against a short position in Japanese companies traded on the Tokyo Stock Exchange.

b. *Specific risk.* The capital charge for specific risk is based on the reporting institution's gross equity positions (i.e., the absolute sum of all long equity positions and of all short equity positions, with netting allowed only when the institution has long and short positions in exactly the same instrument). This charge would also be 8.0 percent, unless the portfolio is both liquid and well-diversified or the position relates to an index comprising a diversified portfolio of equities.

Examiners will verify that any portfolio designated as ''liquid and well-diversified'' by an institution is characterized by a limited sensitivity to price changes of any single equity issue or closely related group of equity issues held in the portfolio. In particular, the volatility of the value of the portfolio should not be dominated by the volatility of any individual equity issue or by equity issues from any single industry or economic sector. In general, such portfolios should be characterized by a large number of individual equity positions, with no single position representing a large portion of the portfolio's total market value. In addition, it would generally be the case that a sizeable proportion of the portfolio would be comprised of issues traded on organized exchanges.

For such liquid and well-diversified portfolios, the specific risk charge would be 4.0 percent. A specific risk charge of 2.0 percent would apply to the net long or short position in a broad-based, diversified equity index and is viewed as necessary to provide for the risk that the performance of the index will differ from those of other market measures and also for potential difficulties that could arise in executing transactions at expected prices.

Foreign Exchange

This capital requirement covers the risk of holding or taking positions in foreign currencies, including gold, and is based on an institution's net positions in individual currencies, whether or not those positions are booked in the trading account. Net positions, in turn, include an institution's net spot and forward positions; any guarantees that are certain to be called and likely to be irrecoverable; net future income and expenses that are not yet accrued, but that are already fully hedged; and any other items representing a profit or loss in foreign currencies. Forward and future positions would be converted into the reporting currency at spot market rates.

Institutions may, subject to supervisory approval, exclude from this calculation any structural positions in foreign currencies. For this purpose, such structural positions are limited to transactions designed to hedge an institution's capital ratios against the effect of adverse exchange rate movements on (1) subordinated debt, equity, or minority interests in consolidated subsidiaries and dotation capital assigned to foreign branches that are denominated in foreign currencies, and (2) any positions related to unconsolidated subsidiaries and to other items that are deducted from an institution's capital when calculating its capital base. In any event, such structural foreign currency positions should reflect long-term policies of the institution and not relate to trading positions.

The standardized approach assumes the same volatility for all currencies and requires an institution to hold capital equal to 8.0 percent of the sum of (a) its net position in gold and (b) the sum of the net short positions or the sum of the net long positions in each foreign currency, whichever is greater. With supervisory approval, an institution may be exempt from this capital requirement if the sum of its gross long and short positions does not exceed 100 percent of its eligible capital and its overall net foreign exchange position does not exceed 2.0 percent of this capital, as defined above in Section II.

Commodities

The capital requirement for commodities risk applies to holdings or positions taken in commodities, including precious metals, but excluding gold (which is treated as a foreign currency because of its market liquidity). As with foreign currencies, the coverage extends to all commodities positions of the institution, not only to those booked in trading accounts. For this purpose, a commodity is defined as a physical product which is or can be traded on a secondary market, e.g., agricultural products, minerals, and precious metals. The standardized approach for measuring general market risk in commodities provides only a rough indication of the risk exposure and is appropriate only for institutions with relatively small amounts of commodities activity.

Within the standardized approach, two alternative measures are available, referred to as the ''simple'' and the ''maturity'' methods. Both measures address directional risk, which is the risk that a commodity's spot price will increase or decrease, as well as basis risk, interest rate risk, and forward gap risk, which are also important risks, especially for institutions that engage in forward or derivative contracts. These institutions can face significant losses in their positions as a result of adverse changes in the relationship between prices of similar commodities, increases in the cost of financing forward positions, or changes in forward prices produced by any number of economic or market conditions.

Both the simple and maturity approaches require an institution to calculate its net position in each commodity on the basis of spot rates. Long and short positions in the same commodity may be netted, but positions in different commodities would generally not be allowed to offset, except where different sub-categories of commodities are deliverable against each other.

Under the simple approach, an institution's capital charge for directional risk would equal 15 percent of its net position, long or short, in each commodity. A supplemental charge of 3.0 percent of the gross position in each commodity would be added to cover basis, interest rate and forward gap risk.

The capital charge using the maturity method reflects not only the net and gross positions in each commodity, but also the maturity of each commodity contract. For each commodity, positions would first be distributed among seven time bands. Physical holdings of commodities would be allocated to the first band. The matched long position plus the matched short position within each time-band would then be multiplied by a ''spread rate,'' (proposed at a uniform 1.5 percent rate) to capture forward gap and interest rate risk. Net positions from one time-band must be used to offset opposite positions in another time-band and would incur a ''surcharge'' equal to 0.6 percent of the net position for every time-band it is carried forward in recognition that such offsetting may not be perfect. This process ultimately produces an overall net position for each commodity. A 15 percent capital charge would be applied to that net position. The total capital charge for any given commodity would be the sum of (a) the initial 1.5 percent charge for the matched positions in each time band, (b) any surcharge, and (c) the charge on the overall net position.

Options

The Agencies recognize the diversity of activities in options and the difficulties in measuring an option's price risk. Accordingly, the proposal provides three alternative risk measures for institutions that do not adopt the internal models approach. These alternatives are: (a) a ''simplified'' method, which is available to institutions that only purchase traded options, (b) a ''scenario analysis'' method that evaluates option values under a range of market scenarios, and (c) a ''delta-plus'' method that provides specific measures of individual components of an option's risk. The method used should be commensurate with and appropriate for the nature and scope of the institution's options activities. Institutions that have extensive dealings in options must have appropriately accurate measures of risk.

Several variables determine an option's price:

(1) The current price of the underlying asset;

(2) The strike price of the option, which is the price of the underlying security at which the option has value;

(3) The volatility of the price of the underlying security;

(4) The time remaining before the option expires; and

(5) The prevailing ''risk free'' interest rate.

The effect of these variables on an option's value are represented by a series of Greek letters: *delta* (the price sensitivity of an option relative to price changes in the underlying security, rate, or index—the ''underlying''), *gamma* (the change in delta for a given change in the underlying), *vega* (the effect of changes in the volatility of the underlying), *theta* (the effect given the passage of time), and *rho* (how the option price changes for a given change in risk free interest rates). Delta is a frequently used indicator of an option's risk, but others—particularly gamma—should be specifically addressed by institutions that trade options to any material extent. Such institutions should not rely merely on linear approximations of price movements, but should undertake to capture the non-linear relation between changes in the option's price and changes in the underlying rate or price.

Simplified Approach

The simplified approach for options may only be used by institutions whose options activities are confined to a small volume of purchased options. This approach permits an institution either to ''carve out'' both the option and a corresponding underlying position from other elements of the standardized approach or to view the option as ''naked''—that is, without a matching cash position. In order to avoid potentially penalizing an institution for purchasing an option, institutions could avoid linking (and subsequently carving-out) a purchased option and a corresponding cash position if doing so would create an exposure within the underlying position and produce a capital requirement that exceeded the value of the purchased option. Consequently, there are two possibilities:

(1) If a carve-out is made, the capital charge is equal to the specific and general market risk charge on the underlying position, less the amount the option is in the money, bounded at zero.

(2) If the purchased option is viewed by itself, the charge for the option is the smaller of (a) its market value or (b) the sum of the specific and general market risk charge that would apply to its underlying instrument. Any existing related (but not linked) cash position would continue to receive the full specific and general market risk charge produced by other elements of the standardized approach.

In both cases, the method is relatively conservative, creating an incentive for institutions to use a more accurate measure of risk. Institutions that want a more accurate measure of option risk or whose trading activities include the writing (selling) of options must use either the scenario or the delta-plus methods offered under the standardized approach, or the previously described internal models approach.

Scenario Analysis

Using scenario analysis, institutions would evaluate the market values of their options and related hedging positions by changing the underlying rate or price over a specified range and by also assuming different levels of volatility for that rate or price. Each combination of assumed volatilities and rate or price changes would represent a scenario.

The range of rate or price movements would be based on the nature of the option. For options based on debt instruments or interest rates, the range would be consistent with the maximum rate movement indicated in the proposal dealing with traded debt: 100 basis points for underlying instruments in zone 1, 90 basis points for those in zone 2, and 75 basis points for those in zone 3. Similarly, the ranges used for other options would be consistent with the assumed price or rate change applied to their underlying cash positions: 8 percent for foreign exchange, 12 percent for individual equities, 8 percent for equity indices, and 15 percent for commodities. In all cases, the range would cover both an increase and decrease from current values of the underlying security (or rate) by these percentages and would be divided into at least 10 equally spaced intervals centered by the current rate or price.

Given the near-linear relationship between volatility and option values for many options, the Agencies believe it would be sufficient in most cases to evaluate the option portfolio assuming a 25 percent increase and decrease in the level of volatility from that implied by current market prices. If warranted, however, the Agencies may require a different change in volatility and the consideration of intermediate points.

An institution would determine the market value of each option and any related hedging position or group of options and related hedging positions for each scenario.[19] Such options and positions based on debt instruments in the same zone, or on the same equity, equity index, exchange rate, or commodity may be grouped together and evaluated on a portfolio basis when evaluating the effect of a given scenario. The market risk capital charge for a portfolio would be the largest loss estimated for that portfolio from among the evaluated scenarios. The charge for all option portfolios would be the sum of the charges on the individual portfolios. The Agencies recognize that this approach is conservative, since it assumes that the largest loss will occur within each segment of the option portfolio simultaneously.

The delta-plus method

Institutions that write options would be allowed to include delta-weighted options positions within the standardized methodology. Such options should be reported as a position equal to the market value of the underlying instrument multiplied by the delta. However, since an option's delta does not sufficiently address other risks associated with the option's market value, institutions would also be required to measure the option's gamma and vega in order to calculate the total capital charge for the option. These sensitivities would be calculated by an approved exchange model or by the

[19] For this purpose, a single option and any related hedging position and a group of options and any related hedging positions are all referred to as an ''options portfolio.''

institution's proprietary options pricing model, subject to oversight by the appropriate supervisor.

Delta-weighted positions of options based on debt securities or interest rates would be slotted into the debt securities time-bands, as set out above for debt instruments, under the following procedure. A two-legged approach would be used as for other derivatives, requiring one entry at the time the underlying contract takes effect and a second at the time the underlying contract matures. For instance, a bought call option on a June three-month interest-rate future will in April be considered, on the basis of its ''delta'' equivalent value, to be a long position with a maturity of five months and a short position with a maturity of two months. The written option would be similarly slotted as a long position with a maturity of two months and a short position with a maturity of five months. Floating rate instruments with caps or floors would be treated as a combination of floating rate securities and a series of European-style options. For example, the holder of a three-year floating rate bond indexed to six month LIBOR with a cap of 15 percent would treat the instrument as: (1) A debt security that reprices in six months; and (2) a series of five written call options on a floating rate asset (FRA) with a basis of 15 percent, each with a negative sign at the time the underlying FRA takes effect and a positive sign at the time the underlying FRA matures.

In addition to the above capital charges arising from delta risk, the proposal requires capital for gamma and vega risks. Institutions using this method would be required to calculate the gamma and vega for each option position. The results would be slotted into separate maturity ladders by currency. For options such as caps and floors whose underlying instrument is an interest rate, the delta and gamma would be expressed in terms of a hypothetical underlying security. Subsequently:

(1) For gamma risk, for each time-band, net gammas which are negative would be multiplied by the risk weights set out in the proposed regulatory language (OCC—Table 5, Board—Table IV, FDIC—Table 4) and by the square of the market value of the underlyings (net gammas which are positive would be disregarded);

(2) For volatility risk, institutions would be required to calculate the capital charges for vegas in each time-band assuming a proportional shift in volatility of 25 percent;

(3) The capital charge would be the absolute value of the sum of the individual capital charges for net negative gammas plus the absolute value of the sum of the individual capital charges for vega risk for each time-band.

The capital charge for options on equities would also be based on the delta weighted positions of the options by incorporating those weighted positions into the market risk measure for equities described above. For purposes of this calculation individual equity issues and indices are to be treated as separate underlyings. In addition to the capital charge for delta risk, institutions would apply a further capital charge for gamma and vega risk:

(1) For gamma risk, the net negative gammas for each underlying instrument would be multiplied by 0.72 percent when that instrument is an individual equity and by 0.32 percent when it is an index.[20] That product would then be multiplied by the square of the market value of the underlying;

(2) For volatility risk, institutions would be required to calculate the capital charges for vegas for each underlying instrument assuming a proportional shift in volatility of plus or minus 25 percent;

(3) The capital charge would be the absolute value of the sum of the individual capital charges for net negative gammas plus the absolute value of the sum of the individual capital charges for vega risk.

The capital charge for options on foreign exchange and gold positions would be based on the shorthand method set out earlier. For delta risk, the net delta (or delta-based) equivalent of the total book of foreign currency and gold options would be incorporated into the measurement of the exposure in a single currency position. The gamma and vega risks would be measured as follows:

(1) For gamma risk, for each underlying exchange rate net gammas which are negative would be multiplied by 0.32 percent and by the square of the market value of the position;[21]

(2) For volatility risk, institutions would be required to calculate the capital charges for vegas for each currency pair and gold assuming a proportional shift in volatility of plus or minus 25 percent;

(3) The capital charge would be the absolute value of the sum of the individual capital charges for net negative gammas plus the absolute value of the sum of the individual capital charges for vega risk.

The capital charge for options on commodities would be based on the same approach set out above for commodities. The delta weighted positions would be incorporated into one of the two measures described in that section. In addition to the capital charge for delta risk, institutions would incur a further capital charge for gamma and vega risk:

(1) For gamma risk, net negative gammas for each underlying would be multiplied by 1.125 percent and by the square of the market value of the commodity;[22]

(2) For volatility risk, institutions would be required to calculate the capital charges for vegas for each commodity as defined above in the section dealing with commodities, assuming a proportional shift in volatility of plus or minus 25 percent;

(3) The capital charge would be the absolute value of the sum of the individual capital charges for net negative gammas plus the absolute value of the sum of the individual capital charges for vega risk.

A worked example of the delta-plus method for commodities is set out in Attachment IV of the Board's and the FDIC's proposed regulatory language. In the case of options based on debt securities or interest rates and with the approval of the appropriate supervisor, institutions that are significant traders in options could be allowed to net positive and negative gammas and vegas across time-bands to a limited extent. However, such netting would be permitted only if it is based on prudent and conservative assumptions and the institution materially satisfies the qualitative standards outlined under the internal models approach.

In addition, instead of applying a uniform relative change in volatility to measure vega risk, institutions may base the calculation on a volatility ladder in which the implied change in volatility varies with the maturity of the option. When using such a volatility ladder the assumed proportional shift in volatility should be at least 25 percent at the short end of the maturity spectrum. The proportional shift in volatility for longer maturities should be at least as stringent in statistical terms as the 25 percent shift at the short end. Use of this alternative would be subject to validation by the supervisor, and to the qualitative standards listed in the internal models section that are relevant to this aspect of the institution's

[20] Using the Taylor expansion, the risk weights are calculated as follows: Risk weight for gamma $=0.5\times$ (assumed price change of underlying)^2 For an individual equity, $0.5\times0.12^2= 0.72\%$. In the case of an index as the underlying, the assumed price change of the underlying equals 8.0 percent.

[21] The assumed price change is 8.0 percent.

[22] The assumed price change is 15 percent.

business. In the long term, institutions using this alternative would be expected to move to fully articulated value-at-risk models, subject to the full qualitative and quantitative standards for models.

Besides the options risks mentioned above, the Agencies recognize that there are other risks associated with options, e.g., rho and theta. While they are not proposing a measurement system for those risks at present, institutions undertaking significant options business would still be expected to monitor such risks closely.

VII. Questions on Which the Agencies Specifically Request Comment

General Topics

1. The Agencies propose to apply these standards to a relatively small number of institutions that have material trading activities. As the criteria are proposed, about 25 ''large'' institutions and a few other smaller institutions with relatively more significant trading activities would meet the requirements and be subject to the new capital standards. Is the exemption of smaller institutions appropriate, given their risk profile and the implied regulatory burden, or does it provide them with an undue competitive advantage? On the other hand, would the amendment affect too many institutions, given the nature of their trading activities and market risk profiles?

2. Consistent with their procedures for existing capital standards, the Agencies would apply the proposed standard to any national bank, state member bank and bank holding company that meets the criteria on a consolidated basis. What are the burden implications of applying the standard to both banks and bank holding companies?

3. The Board currently evaluates the capital adequacy of bank holding companies that have Section 20 subsidiaries on a fully consolidated basis and also without the assets and capital of the Section 20 subsidiaries. Should it continue this practice regarding market risk, or should it focus on only the consolidated holding company?

4. Should the Agencies permit institutions the choice of the standardized or internal model approaches, or should it permit only the internal model approach on the basis that the institution's trading activities are sufficient to warrant the more accurate measure of risk?

5. The Agencies are interested in comments on whether the internal model quantitative standards, together with the scaling factor, could result in capital requirements that on average are significantly different (for example, higher) than those required under the standardized approach.

6. The Agencies propose to allow institutions to use the standardized method for measuring some categories of risk (e.g., debt, equities, etc.), and internal models for other categories. Should institutions be given this flexibility, or should they be required to use one approach throughout?

7. The Agencies propose a reduced capital charge for specific risk in equities if an institution's equities portfolio is ''liquid and well-diversified,'' a concept that is defined in qualitative terms in the proposal. Should this concept be described more specifically and, if so, what criteria should be applied?

Questions on the Standardized Method

1. Under the proposal, institutions would be allowed to net offsetting positions in different commodities only if the commodities were deliverable against each other. To what extent, if any, should the Agencies allow netting on the basis of the historical correlations of price movements of different commodities within the standardized approach? If netting is allowed on the basis of past correlations, what specific criteria should be required?

2. One of the alternative ways of measuring the market risk of options in the standardized approach is to calculate separate charges for an option's delta, gamma, and vega risk (see the delta-plus method). This approach permits an institution to measure the risk of its options positions while measuring the risk of its other positions and, thereby, to evaluate them more fully on a portfolio basis. It also permits an institution to avoid incurring the worst-case charge for the option under the scenario method. The delta-plus calculations, however, are complex and potentially inaccurate since they do not permit full use of a revaluation model. Is the method sufficiently useful to warrant its complexity, and does it provide a sufficiently conservative measure of risk for institutions that write options but do not have options pricing models integrated into their risk measurement systems?

Questions on the Internal Model Method

1. The Agencies are considering whether to require institutions to calculate their VARs using two observation periods (one long, one short) and basing the capital requirement on the larger figure. What are the costs and burden implications of requiring such a dual calculation?

2. All institutions affected by the proposal would be required to have capital covering both general market and specific risks. Institutions using the internal model approach would be required to apply the specific risk charge (or a portion thereof) calculated using the standardized approach, if their models do not adequately capture specific risk. What modelling techniques should the Agencies consider when evaluating an institution's model and determining the extent to which the model includes specific risk in its VAR measure?

3. As part of an on-going process of evaluating the accuracy of an institution's internal model, actual daily trading profits and losses would be compared with the measured VAR (so-called ''back-testing''). The Agencies would expect this back-testing normally to rely upon the VARs actually used by the institution for nonregulatory purposes, which in most cases would reflect a confidence level less than the 99 percent level on which the capital requirement would be based. Would this approach be less burdensome to the institution than requiring a separate calculation for the 99 percent confidence level, and would it provide a more statistically reliable basis for evaluating the results? Please comment on these procedures and any other considerations the Federal Reserve should take into account in reviewing back-tests.

4. The Agencies recognize that daily VAR is used by institutions for setting daily trading limits, rather than for evaluating capital adequacy. The regulatory use of VAR as a basis for a capital requirement is predicated on the specification of several constraints on modelling parameters, as well as the use of a multiplication factor. Do these constraints provide sufficient capital for the underlying activities?

5. To qualify for the use of the internal models approach, an institution must have a rigorous stress testing program which would be subject to supervisory review. What stress tests for market risk should institutions be expected to perform as part of their internal management process?

VIII. Regulatory Flexibility Act Analysis

OCC Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this proposal would not have a significant impact on a substantial number of small business entities in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required. The impact of this proposed rule on banks regardless of size is expected to be minimal. Further, this proposed rule generally would apply to larger banks with significant trading account activities and would cover only trading activities and foreign exchange and commodity positions throughout the bank.

Board Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board does not believe this proposal would have a significant impact on a substantial number of small business entities in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required. In addition, because the risk-based capital standards generally do not apply to bank holding companies with consolidated assets of less than $150 million, this proposal would not affect such companies.

FDIC Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that the proposed rule would not have a significant impact on a substantial number of small entities.

IX. Paperwork Reduction Act and Regulatory Burden

OCC Regulatory Burden

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160 (September 23, 1994), provides that the federal banking agencies must consider the administrative burdens and benefits of any new regulations that impose additional requirements on insured depository institutions. As discussed, this proposed rule would affect only a small number of banks and generally would cover only trading account activities and foreign exchange and commodity positions throughout the bank. Additionally, any burden imposed would be lessened to the extent that a bank may use its own qualifying internal market risk model. The OCC believes that any additional burden placed on a bank is outweighed by the advantages of greater accuracy in risk management and capital allocation, which contribute to increased safety and soundness in the banking system.

Board Paperwork Reduction Act and Regulatory Burden

The Board has determined that this proposal would not increase the regulatory paperwork burden of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat 2160) provides that the federal banking agencies must consider the administrative burdens and benefits of any new regulations that impose additional requirements on insured depository institutions. As noted above, the proposed market risk measure would affect only a small number of institutions. The Board believes that any additional burden placed on these institutions is outweighed by the advantages of greater accuracy in risk measurement and capital allocation, which contribute to increased safety and soundness in the banking system.

FDIC Paperwork Reduction Act

The FDIC has determined that his proposed rulemaking does not contain any collections of information as defined by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

X. OCC Executive Order 12866 Determination

The Comptroller of the Currency has determined that this notice of proposed rulemaking is not a significant regulatory action under Executive Order 12866.

XI. OCC Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), Pub. L. 104–4, 109 Stat. 48 (March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Because the OCC has determined that this notice of proposed rulemaking will not result in expenditures by state, local and tribal governments, or by the private sector, of more than $100 million in any one year, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. As discussed in the preamble, this proposed rule may require additional capital for market risks. However, the application of this proposed rule would be generally limited to banks with significant trading account activities and would cover only foreign exchange and commodity positions throughout the bank. Currently, the OCC estimates that less than 25 national banks will be subject to the requirements of this proposed rule. In addition, any burden imposed on this small group of national banks would be lessened to the extent that a bank may use its own qualifying internal market risk model.

List of Subjects

12 CFR Part 3

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

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

Authority and Issuance

OFFICE OF THE COMPTROLLER OF THE CURRENCY

12 CFR Chapter I

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

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. New appendix B is added to part 3 to read as follows:

Appendix B to Part 3—Market Risk

Section 1. Purpose, Applicability, Effective Date, and Definitions

(a) *Purpose.* The purpose of this appendix B is to ensure that banks maintain adequate capital for market risk. Market risk is generally the risk of loss arising from movements in market prices. The market risk requirements of this appendix B are limited to the market risk associated with the trading account of the bank and to the overall foreign exchange risk and the commodities risk throughout the bank, including related options and other derivative contracts. Under this appendix B a bank may measure its market risk exposure with either its own qualifying internal market risk model or the alternative standardized market risk model provided. However, the OCC generally expects that banks with significant trading activities will calculate their market risk using a qualifying internal market risk model.

(b) *Applicability.* The market risk requirement of this appendix B applies to the following banks:

(1) Any bank with total assets in excess of $5 billion and either total on-balance sheet trading account activities of 3 percent or more of the total assets of the bank, or total notional off-balance sheet trading account activities in excess of $5 billion; and

(2) Any bank with total assets of $5 billion or less and total trading account activities in excess of 10 percent of the total assets of the bank; and

(3) Any bank with a significant exposure to market risk and the OCC deems necessary to protect the safety and soundness of the bank.

(c) *Effective date.* The market risk requirements of this appendix B are effective December 31, 1997.

(d) *Definitions.* For the purposes of this appendix B, the following definitions apply:

(1) *Covered market risk assets* means all trading account assets plus all other on- and off-balance sheet assets which have foreign exchange risk, equity price risk, and commodity risk throughout the bank including related options and other derivative contracts.

(2) *Derivative contract* means generally a financial contract whose value is derived from the values of one or more underlying asset, reference rate or index of asset values. Derivative contracts include both standardized contracts that are traded on exchanges and customized, privately negotiated contracts known as over-the-counter (OTC) derivative contracts.

(3) *Lock-in clause* means a provision in a subordinated debt agreement that precludes payment by the bank of either interest or principal (even upon maturity) of the subordinated debt if such payment would cause the issuing bank to fall or remain below the minimum risk-based capital requirement as provided in appendix A of this part 3 as adjusted for market risk.

(4) *Market risk* means the risk of loss resulting from movements in market prices. Market risks consist of both general and specific market risks. General market risk is the change in market value of a particular asset that results from broad market movements such as a change in market interest rates, foreign exchange rates, equity prices, and commodity prices. Specific market risks are those risks that affect the market value of a specific instrument, such as the credit risk of the issuer of that particular instrument, but do not materially alter broad market conditions.

(5) *Tier 3 capital* means capital that may be used by a bank to satisfy the market risk capital requirements under this appendix B as determined in accordance with section 3 of this appendix B.

(6) *Total assets* means the quarter-end total assets figure required to be computed for and stated in a bank's most recent quarterly Consolidated Report of Condition and Income (Call Report).

(7) *Trading account activities* means the sum of trading account assets and trading account liabilities.

(8) *Trading account assets* means all positions in financial instruments acquired with the intent to resell in order to profit from short-term price movements. Trading account assets include, but are not limited to:

(i) Assets acquired with the intent to resell to customers;

(ii) Positions in financial instruments arising from matched principal brokering or market making; or

(iii) Positions in financial instruments taken in order to hedge positions in other financial instruments of the trading account.[1]

(9) *Value-at-risk* means the statistical estimate representing the maximum amount by which the market value of covered market risk assets could decline during a specific period for a stated level of statistical confidence.

Section 2. Market Risk Capital Requirement

(a) *Capital requirement.* All banks subject to this appendix B shall maintain a minimum market risk capital ratio of 8 percent. The market risk capital ratio is the ratio of eligible market risk capital to adjusted market risk assets. Eligible market risk capital consists of Tier 1, Tier 2, and Tier 3 capital as determined in accordance with section 3 of this appendix B. Adjusted market risk assets is the sum of the risk weighted assets as determined in accordance with appendix A of this part 3 (risk-based capital guidelines) plus the market risk equivalent assets. The market rate equivalent assets equal 12.5 times the market risk exposure as determined in accordance with section 4 of this appendix B.

(b) *Relationship to risk-based capital requirement.* The amount of capital required for market risk is in addition to the amount of capital required for counterparty credit risk under the risk-based capital guidelines as determined in accordance with appendix A of this part 3.

[1] When non-trading account instruments are hedged with trading account instruments, whether on- or off-balance-sheet, the bank may include the non-trading account instruments in the measure for general market risk. However, such non-trading account instruments remain subject to the credit risk capital charges of appendix A of this part.

Section 3. Eligible Market Risk Capital

(a) *Types of eligible market risk capital.* A bank may use Tier 1 and Tier 2 capital, as determined in accordance with § 3.2 of this part 3, to satisfy the market risk requirement. A bank also may use Tier 3 capital to satisfy its market risk requirement as determined in accordance with section 3(b) and subject to the limitations of section 3(c) of this appendix B.

(b) *Tier 3 capital.* For the purposes of this appendix B, Tier 3 capital consists of short-term subordinated debt subject to a lock-in clause. In addition, the subordinated debt must have an original maturity of at least two years, be unsecured and subordinated to the claims of depositors must be fully paid-in, and may not be subject to any covenants, terms, or restrictions inconsistent with safe and sound banking practices.

(c) *Limitations.* Tier 3 capital only may be used to satisfy the market risk capital requirements under this appendix B and may not be used to satisfy the capital risk-based capital requirements for counterparty risk under appendix A of this part 3, including counterpart credit risk associated with derivative transactions in either the trading or nontrading accounts. In addition, the use of Tier 3 capital is subject to the following quantitative limitations:

(1) Tier 3 capital may not exceed 250 percent of a bank's Tier 1 capital allocated for market risk.

(2) The total of Tier 2 capital and Tier 3 capital is limited to 100 percent of Tier 1 capital.

(3) Tier 2 capital may be substituted for Tier 3 capital up subject to the same 250 percent limitation on Tier 3 capital and all other limitations on Tier 2 capital under the risk-based capital guidelines, as determined by appendix A of this part 3.

Section 4. Market Risk Exposure

Market risk exposure represents the total dollar amount at risk arising from movements in market prices. A bank may determine its market risk exposure either through a qualifying internal market risk model as provided in accordance with section 5 of this appendix B, or through the standardized market risk model as provided in accordance with section 6 of this appendix B.

(a) *Qualifying internal market risk model.* For a bank permitted or required by the OCC to use a qualifying internal market risk model, the market risk exposure of covered market risk assets is equal to the greater of:

(1) The aggregate value-at-risk amount for the previous day; or

(2) The average of the daily value-at-risk amounts for each of the preceding 60 business days times a multiplication factor of three.

(b) *Standardized market risk model.* For banks using the standardized market risk model, the market risk exposure equals the measured value-at-risk amount for covered market risk assets as determined in section 6 of this appendix B.

Section 5. Qualifying Internal Market Risk Model

As provided in this section, a bank may use a qualifying internal market risk model to determine its market risk exposure. The qualifying internal market risk model may use any generally accepted measurement technique including, but not limited to, variance-covariance models, historical simulations, or monte carlo simulations; however, the qualifying internal market risk model must capture all material market risk.

(a) *Value-at-risk measurement.* A qualifying internal market risk model must incorporate a value-at-risk measurement that adequately evaluates the market risk associated with all covered market risk assets.

(b) *Risk factor categories.* The value-at-risk measurement must include risk factors sufficient to capture the market risk inherent in all covered market risk assets. In addition, the risk factors must cover the risk categories of interest rates, exchange rates, equity prices, commodity prices, and the volatility of related market factors.

(c) *Prior approval.* Prior OCC approval is required before a bank may use an internal market risk model for the purposes of the market risk requirement of this appendix B. A qualifying internal market risk model must satisfy the following criteria:

(1) *Qualitative factors.* (i) The level of sophistication and accuracy of the internal market risk model must be commensurate with the nature and volume of bank's trading account activities.

(ii) The market risk management systems must adequately monitor compliance with internal procedures and controls which generally would include independent risk management, annual internal audits, back testing, and stress testing.

(2) *Quantitative factors.* (i) The value-at-risk measurement must be calculated with sufficient frequency to allow the bank enough time to react to changing market conditions.

(ii) The value-at-risk measurement must be based on a 99th percentile, one-tailed confidence interval [2] with an assumed holding period of ten trading days.

(iii) For positions that display linear price relationships, a bank may use value-at-risk measurement using shorter holding periods which are scaled up to ten days by the square root of time.[3]

(iv) The value-at-risk measurement must be calculated using an observation period of at least one year to measure historical changes in rates and prices.

(v) A bank must update its historical rates and prices at least once every three months and must reassess them whenever market conditions change materially.

(vi) A bank may incorporate into its value-at-risk measurement empirical correlations within each risk category. However, empirical correlations across risk categories may not be incorporated. The value-at-risk measurement for each risk category must be added together on a simple sum basis to determine the aggregate value-at-risk exposure.

(vii) The value-at-risk measurement must capture the unique risks associated with options within each of the risk categories subject to the following criteria:

(A) The value-at-risk measurement must capture the non-linear price characteristics of option positions using an options pricing technique.

(B) The bank must apply a minimum ten-day holding period to option positions or positions that display option-like characteristics. Options may not be scale-up the daily value-at-risk exposure by the square root of time.

(C) The value-at-risk measurement must capture the volatilities of the rates and prices underlying option positions.

(viii) The accuracy of a bank's qualifying internal market risk model must be validated by auditors.

Section 6. Standardized Market Risk Model

As provided in this section, a bank may use the standardized market risk model to determine its market risk exposure.

(a) *Debt Instruments.* (1) *Specific Risk.* (i) The market risk requirement for specific risk is based on the identity of the obligor and, in the case of corporate securities, on the credit rating and maturity of the instrument. The specific risk is calculated by weighting the current market value of each individual position, whether long or short, by the appropriate specific risk factor and summing the weighted values. In measuring specific risk, the bank may offset and exclude from its calculations any matched positions in the identical issue (including positions in derivative contracts). Even if the issuer is the same, offsetting is not permitted between different issues. The specific risk factors are set forth in Table 1—Specific Risk Factors for Debt Instruments, as follows:

TABLE 1.—SPECIFIC RISK FACTORS FOR DEBT INSTRUMENTS

Category	Remaining contractual maturity	Factor (In percent)
Government ..	N/A	0.00
Qualifying	6 months or less.	0.25
	Over 6 to 12 months.	1.00
	Over 12 months.	1.60
Other	N/A	8.00

(ii) The government category includes all forms of debt instruments of central governments of the OECD-based group of countries including bonds, Treasury bills and other short-term instruments, as well as local currency instruments of non-OECD central governments to the extent that the bank has liabilities booked in that currency.

(iii) The qualifying category includes securities of U.S. government-sponsored agencies, general obligation securities issued by states and other political subdivisions of the OECD-based group of countries, multilateral development banks, and debt instruments issued by U.S. depository institutions or OECD-banks that do not qualify as capital of the issuing institution. It also includes other securities, including revenue securities issued by states and other political subdivisions of the OECD-based group of countries, that are rated investment-grade by at least two nationally recognized credit rating services, or rated investment-grade by one nationally recognized credit rating agency and not less than investment-grade by any other credit rating agency, or, with the exception of securities issued by U.S. firms and subject to review by the OCC, unrated but deemed to be of comparable investment quality by the reporting bank *and* the issuer has securities listed on a recognized stock exchange.

(iv) The other category includes debt securities not qualifying as government or qualifying securities. This would include non-OECD central government securities that do not meet the criteria for the government or qualifying categories. This category also includes instruments that qualify as capital issued by other banking organizations.

(v) The OCC will consider the extent of a bank's position in non-investment grade instruments (sometimes referred to as ''high yield debt'') that do not have investment-grade ratings. If those holdings are not well-diversified or otherwise represent a material position to the institution, the OCC may prohibit a bank from offsetting positions in these instruments with other positions in qualifying instruments that may be offset when calculating its general market risk requirement. In addition, the OCC may impose a specific risk capital requirement as high as 16.0 percent.

(2) *General Market Risk.* (i) A bank may measure its exposure to general market risk using, on a continuous basis, either the maturity method (which uses standardized risk weights that approximate the price sensitivity of various instruments) or the duration method (where the institution calculates the precise duration of each instrument, weighted by a specified change in interest rates).

(ii) Both methods use a maturity-ladder that incorporates a series of ''time bands'' and ''zones'' to group together securities of similar maturities and that are designed to take into account differences in price sensitivities and interest rate volatilities across different maturities. Under either method, the capital requirement for general market risk is the sum of a base charge that results from fully netting various risk-weighted positions and a series of additional charges (add-ons), which effectively ''disallow'' part of the previous full netting to address basis and yield curve risk.

(iii) For each currency in which a bank has significant positions, a separate capital requirement must be calculated. No netting of positions is permitted across different currencies. Offsetting positions of the same amount in the same issues, whether actual or

[2] A one-tailed confidence interval of 99 percent means that there is a 1 percent probability based on historical experience that the combination of positions in a bank's portfolio would result in a loss higher than the measured value-at-risk.

[3] This transformation entails multiplying a bank's value-at-risk by the square root of the ratio of the required holding period (ten days) to the holding period embodied in the value-at-risk exposure. For example, the value-at-risk calculated according to a one-day holding period would be scaled-up by the ''square root of time'' by multiplying the value-at-risk by 3.16 (the square root of the ratio of a ten-day holding period to a one-day holding period).

notional, may be excluded from the calculation, as well as closely matched swaps, forwards, futures, and forward rate agreements (FRAs) that meet the conditions set out in section 6(a)(3) of this appendix B.

(iv) In the maturity method, the bank distributes each long or short position (at current market value) of a debt instrument into the time bands of the maturity ladder. Fixed-rate instruments are allocated according to the remaining term to maturity and floating-rate instruments according to the next repricing date. A callable bond trading above par is slotted according to its first call date, while a callable bond priced below par is slotted according to remaining maturity. Fixed-rate mortgage-backed securities, including collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs), are slotted according to their expected weighted average lives.

(v) Once all long and short positions are slotted into the appropriate time band, the long positions in each time-band are summed and the short positions in each time-band are summed. The summed long and/or short positions are multiplied by the appropriate risk-weight factor (reflecting the price sensitivity of the positions to changes in interest rates) to determine the risk-weighted long and/or short position for each time-band. The risk weights for each time-band are set out in Table 2—Maturity Method: Time-Band and Weights, as follows:

TABLE 2.—MATURITY METHOD: TIME-BANDS AND WEIGHTS

Zone	Coupon 3% or more	Coupon less than 3% and zero coupon bonds	Risk weights
1	Up to 1 month	Up to 1 month	0.00
	1 up to 3 months	1 up to 3 months	0.20
	3 up to 6 months	3 up to 6 months	0.40
	6 up to 12 months	6 up to 12 months	0.70
2	1 up to 2 years	1 up to 1.9 years	1.25
	2 up to 3 years	1.9 up to 2.8 years	1.75
	3 up to 4 years	2.8 up to 3.6 years	2.25
3	4 up to 5 years	3.6 up to 4.3 years	2.75
	5 up to 7 years	4.3 up to 5.7 years	3.25
	7 up to 10 years	5.7 up to 7.3 years	3.75
	10 up to 15 years	7.3 up to 9.3 years	4.50
	15 up to 20 years	9.3 up to 10.6 years	5.25
	Over 20 years	10.6 up to 12 years	6.00
		12 up to 20 years	8.00
		Over 20 years	12.50

(vi) Within each time-band for which there are risk-weighted long and short positions, the risk-weighted long and short positions are then netted, resulting in a single net risk-weighted long or short position for each time-band. Because different instruments and different maturities may be included and netted within each time-band, a capital requirement, referred to as the vertical disallowance, is assessed for basis risk. The vertical disallowance capital requirement is 10.0 percent of the position eliminated by the intra-time-band netting, that is, 10.0 percent of the smaller of the net risk-weighted long or net risk-weighted short position, or if the positions are equal, 10.0 percent of either position.[4] The vertical disallowances for each time-band are absolute values, that is, neither long nor short. The vertical disallowances for all time-bands in the maturity ladder are summed and included as an element of the general market risk capital requirement.

(vii) Within each zone for which there are risk-weighted long and short positions in different time-bands, the weighted long and short positions in all of the time-bands within the zone are then netted, resulting in a single net long or short position for each zone. Because different instruments and different maturities may be included and netted within each zone, a capital requirement, referred to as the horizontal disallowance, is assessed to allow for the imperfect correlation of interest rates along the yield curve. The horizontal disallowance capital requirement is calculated as a percentage of the position eliminated by the intra-zone netting, that is, a percentage of the smaller of the net risk-weighted long or net risk-weighted short position, or if the positions are equal, a percentage of either position.[5] The percent disallowance factors for intra-zone netting are set out in Table 3—Horizontal Disallowances in section 6(a)(2)(H). The horizontal disallowances, like the vertical disallowances, are absolute values that are summed and included as an element of the general market risk capital requirement.

(viii) Risk-weighted long and short positions in different zones are then netted between the zones. Zone 1 and zone 2 are netted if possible, reducing or eliminating the net long or short position in zone 1 or zone 2 as appropriate. Zone 2 and zone 3 are then netted if possible, reducing or eliminating the net long or short position in zone 2 or zone 3 as appropriate. Zone 3 and zone 1 are then netted if possible, reducing or eliminating the long or short position in zone 3 and zone 1 as appropriate. A horizontal disallowance capital requirement is then assessed, calculated as a percentage of the position eliminated by the inter-zone netting. The horizontal disallowance capital requirements for each zone are then summed as absolute values and included in the general market risk capital charge. The percent disallowance factors for inter-zone netting are set out in Table 3—Horizontal Disallowances, as follows:

TABLE 3.—HORIZONTAL DISALLOWANCES

Zone	Time-band	Within the zone (percent)	Between adjacent zones (percent)	Between zones 1 and 3 (percent)
1	0 up to 1 month	40	40	100
	1 up to 3 months.			
	3 up to 6 months.			

[4] For example, if the sum of the weighted longs in a time-band is $100 million and the sum of the weighted shorts is $90 million, the vertical disallowance for the time-band is 10.0 percent of $90 million, or $9 million.

[5] For example, if the sum of the weighted longs in the 1- to 3-month time-band in Zone 1 is $8 million and the sum of the weighted shorts in the 3- to 6-month time-band is $10 million, the horizontal disallowance for the zone is 40 percent of $8 million, or $3.2 million.

TABLE 3.—HORIZONTAL DISALLOWANCES—Continued

Zone	Time-band	Within the zone (percent)	Between adjacent zones (percent)	Between zones 1 and 3 (percent)
	6 up to 12 months.			
2	1 up to 2 years	30	40	100
	2 up to 3 years			
	3 up to 4 years			
3	1 up to 5 years	30	40	100
	5 up to 7 years			
	7 up to 10 years			
	10 up to 15 years			
	15 up to 20 years			
	Over 20 years			

(ix) Finally, the net risk-weighted long or net risk-weighted short positions remaining in the zones are summed to reach a single net risk-weighted long or net risk-weighted short position for the bank's portfolio. The sum of the absolute value of this position and the vertical and horizontal disallowances is the capital requirement for general market risk.

(x) In the duration method, the bank, after calculating each instrument's modified duration,[6] multiplies that modified duration by the interest rate shock specified for an instrument of that duration in Table 4—Duration Method: Time-Band and Assumed Changes in Yield in section 6(a)(2)(K). The resulting product (representing the expected percentage change in the price of the instrument for the given interest rate shock) is then multiplied by the current market value of the instrument. The resulting amount is then slotted as a long or short position into a time-band in the maturity ladder in Table 4—Duration Method: Time-Band and Assumed Changes in Yield on the basis of the instrument's modified duration.[7]

(xi) Once all of the bank's traded debt instruments have been slotted into the maturity ladder, the bank conducts the same rounds of netting and disallowances described in sections 6(a)(2)(F) through (H) of the maturity method in this appendix B, with the exception that the vertical disallowance requirement for the duration method is 5.0 percent (horizontal disallowances continue to be those set out in Table 3—Horizontal Disallowances). As with the maturity method, the sum of the absolute value of the final net position and the vertical and horizontal disallowances is the general market risk capital requirement.

(xii) The duration method maturity ladder is set out in Table 4—Duration Method: Time Bands and Assumed Changes in Yield, as follows:

TABLE 4.—DURATION METHOD: TIME-BANDS AND ASSUMED CHANGES IN YIELD

Zone	Time-band	Assumed change in yield
1	Up to 1 month	1.00
	1 up to 3 months	1.00
	3 up to 6 months	1.00
	6 up to 12 months	1.00
2	1.0 up to 1.8 years	0.90
	1.8 up to 2.6 years	0.80
	2.6 up to 3.3 years	0.75
3	3.3 up to 4.0 years	0.75
	4.0 up to 5.2 years	0.70
	5.2 up to 6.8 years	0.65
	6.8 up to 8.6 years	0.60
	8.6 up to 9.9 years	0.60
	9.9 up to 11.3 years	0.60
	11.3 up to 16.6 years	0.60
	Over 16.6 years	0.60

(3) *Interest rate derivative contracts.* (i) Derivative contracts and other off-balance sheet positions that are affected by changes in interest rates are included in the measurement system under section 6(a) of this appendix B (except for options and the associated underlyings, which are included in the measurement system under the treatment discussed in section 6(e) of this appendix B).

(ii) Derivatives are converted into positions in the relevant underlying instrument and are included in the calculation of specific and general market risk capital charges as described above. The amount to be included is the market value of the principal amount of the underlying or of the notional underlying.

(iii) Futures and forward contracts (including FRAs) are broken down into a combination of a long position and short position in the notional security. The maturity of a future or a FRA is the period until delivery or exercise of the contract, plus the life of the underlying instrument.[8] Where a range of instruments may be delivered to fulfill the contract, the bank may chose which deliverable instrument goes into the maturity or duration ladder as the notional underlying. In the case of a future on a corporate bond index, positions are included at the market value of the notional underlying portfolio of securities.

(iv) Swaps are treated as two notional positions in the relevant instruments with appropriate maturities. The receiving side is treated as the long position and the paying side is treated as the short position.[9] The separate sides of cross-currency swaps or forward foreign exchange transactions are slotted in the relevant maturity ladders for the currencies concerned. For swaps that pay or receive a fixed or floating interest rate against some other reference price, for example, an equity index, the interest rate component is slotted into the appropriate repricing maturity category, with the long or short position attributable to the equity component being included in the equity framework set out in section 6(b) of this appendix B.[10]

[6] The duration of an instrument is its approximate percentage change in price for a 100 basis point parallel shift in the yield curve assuming that its cash flows do not change when the yield curve shifts. Modified duration is duration divided by a factor of 1 plus the interest rate.

[7] Example, an instrument held by a bank with a maturity of 4 years and 3 months and a current market value of $1,000 might have a modified duration of 3.5 years. Based on its modified duration, it would be subjected to the 75-basis point interest rate shock, resulting in an expected price change of 2.625 percent (3.5×0.75). The corresponding expected change in price of $26.25, calculated as 2.625 percent of $1,000, would be slotted as a long position in the 3.3 to 4.0 year time-band of the maturity ladder.

[8] For example, a long position in a June three-month interest rate future (taken in April) is reported as a long position in a government security with a maturity of five months and a short position in a government security with a maturity of two months.

[9] For example, an interest rate swap in which a bank is receiving floating-rate interest and paying fixed is treated as a long position in a floating rate instrument with a maturity equivalent to the period until the next interest rate reset date and a short position in a fixed-rate instrument with a maturity equivalent to the remaining life of the swap.

[10] A bank with a large swap book may, with prior approval of the OCC, use alternative formulae to calculate the positions to be included in the maturity or duration ladder. For example, a bank could first convert the payments required by the swap into present values. For that purpose, each payment would be discounted using zero coupon yields, and the payment's present value entered into the appropriate time-band using procedures that apply to zero (or low) coupon bonds. The net amounts would then be treated as bonds, and slotted into the general market risk framework. Such alternative treatments will, however, only be allowed if: (i) the OCC is satisfied with the accuracy of the system being used, (ii) the calculated positions fully reflect the sensitivity of the cash flows to interest rate changes; and (iii) the positions are denominated in the same currency.

(v) A bank may offset long and short positions (both actual and notional) in identical derivative instruments with exactly the same issuer, coupon, currency, and maturity before slotting these positions into time-bands. A matched position in a future and its corresponding underlying may also be fully offset and, thus, excluded from the calculation, except when the future comprises a range of deliverable instruments. However, in cases where, among the range of deliverable instruments, there is a readily identifiable underlying instrument that is most profitable for the trader with a short position to deliver, positions in the futures contract and the instrument may be offset. No offsetting is allowed between positions in different currencies.

(vi) Offsetting positions in the same category of instruments can in certain circumstances be regarded as matched and treated by the bank as a single net position which should be entered into the appropriate time-band. To qualify for this treatment the positions must be based on the same underlying instrument, be of the same nominal value, and be denominated in the same currency. The separate sides of different swaps may also be ''matched'' subject to the same conditions. In addition:

(A) For futures, offsetting positions in the notional or underlying instruments to which the futures contract relates must be for identical instruments and the instruments must mature within seven days of each other;

(B) For swaps and FRAs, the reference rate (for floating rate positions) must be identical and the coupon closely matched; and

(C) For swaps, FRAs and forwards, the next interest reset date, or for fixed coupon positions or forwards the remaining maturity, must correspond within the following limits: If the reset (remaining maturity) dates occur within one month, then the reset (remaining maturity) dates must be on the same day; if the reset (remaining maturity) dates occur between one month and one year later, then the reset (remaining maturity) dates must occur within seven days of each other, or if the reset (remaining maturity) dates occur over one year later, then the reset (remaining maturity) dates must occur within thirty days of each other.

(vii) Interest rate and currency swaps, FRAs, forward foreign exchange contracts and interest rate futures are not subject to a specific risk charge. This exemption also applies to futures on a short-term (e.g., LIBOR) interest rate index. However, in the case of futures contracts where the underlying is a debt security, or an index representing a basket of debt securities, a specific risk charge will apply according to the category of the issuer as set out in section 6(a)(2) of this appendix B.

(b) *Equities.* (1) *Specific risk.* The measure of specific risk is calculated on the basis of the bank's gross equity positions, that is, the absolute sum of the current market value of all long equity positions and of all short equity positions.[11] The specific risk capital requirement is 8.0 percent of that sum, unless the portfolio is both liquid and well-diversified, in which case the specific risk capital requirement is 4.0 percent of the gross equity position. A specific risk charge of 2.0 percent applies to the net long or short position in a broad, diversified equity index.

(2) *General market risk.* The measure of general market risk is based on the difference between the sum of the long positions and the sum of the short positions (i.e., the overall net position in an equity market) at current market value. An overall net position must be separately calculated for each national market in which the bank holds equities. The capital requirement for general market risk is 8.0 percent of the net position in each equity market.

(3) *Equity derivatives.* (i) Equity derivatives and other off-balance-sheet positions that are affected by changes in equity prices are included in the measurement system under section 6(b) of this appendix B (except for equity options, equity index options, and the associated underlying, which are included in the measurement system under the treatment discussed in section 6(e) of this appendix B).[12] This includes futures and swaps on both individual equities and on equity indices. Equity derivatives should be converted into notional equity positions in the relevant underlying.

(ii) Futures and forward contracts relating to individual equities should be reported as current market prices of the underlying. Futures relating to equity indices should be reported as the marked-to-market value of the notional underlying equity portfolio. Equity swaps are treated as two notional positions, with the receiving side as the long position and the paying side as the short position.[13] If one of the legs involves receiving/paying a fixed or floating interest rate, the exposure should be slotted into the appropriate repricing maturity band for debt securities. The stock index is covered by the equity treatment.

(iii) In the case of futures-related arbitrage strategies, the 2.0 percent specific risk charge applicable to broad diversified equity indices may be applied to only one index. The opposite position is exempt from a specific risk charge. The strategies qualifying for this treatment are:

(A) When the bank takes an opposite position in exactly the same index at different dates; and

(B) When the bank has an opposite position in different but similar indices at the same date, subject to supervisory oversight.

(iv) If a bank engages in a deliberate arbitrage strategy, in which a futures contract on a broad diversified equity index matches a basket of securities, it may exclude both positions from the standardized approach on the condition that the trade has been deliberately entered into and separately controlled and the composition of the basket of stocks represents at least 90 percent of the market value of the index. In such a case, the minimum capital requirement is 4.0 percent (that is, 2.0 percent of the gross value of the positions on each side). This applies even if all of the securities comprising the index are held in identical proportions. Any excess value of the securities comprising the basket over the value of the futures contract or excess value of the futures contract over the value of the basket is treated as an open long or short position.

(v) If a bank takes a position in depository receipts[14] against an opposite position in the underlying equity, it may offset the position.

(c) *Foreign Exchange Risk.* (1) The capital requirement for foreign exchange risk covers the risk of holding or taking positions in foreign currencies, including gold, and is based on a bank's net open long positions or net open short positions in each currency, whether or not those positions are in the trading portfolio, plus the net open position in gold, regardless of sign.[15]

(2) A bank's net open position in each currency (and gold) is calculated by summing:

(i) The net spot position (i.e., all asset items less all liability items, including accrued interest earned but not yet received and accrued expenses, denominated in the currency in question);

(ii) All foreign exchange derivative instruments and other off-balance-sheet positions that are affected by changes in exchange rates are included in the measurement system under section 6(c) of this appendix B (except for options and their associated underlyings, which are included in the measurement system under the treatment discussed in section 6(e) of this appendix B). Forward currency positions should be valued at current spot market exchange rates. For a bank in which the basis of its normal management accounting is to use net present values, forward positions may be discounted to net present values as an acceptable way of measuring currency positions for regulatory capital purposes;

(iii) Guarantees (and similar instruments) that are certain to be called and are likely to be irrevocable;

(iv) Net future income/expenses not yet accrued but already fully hedged (at the discretion of the bank). A bank that includes future income and expenses must do so on a consistent basis without selecting expected future flows in order to reduce the bank's position; and

(v) Any other item representing a profit or loss in foreign currencies.

[11] Matched positions in each identical equity in each national market may be treated as offsetting and excluded from the capital calculation, with any remaining position included in the calculations for specific and general market risk. For example, a future in a given equity may be offset against an opposite cash position in the same equity.

[12] Where equities are part of a forward contract (both equities to be received or to be delivered), any interest rate or foreign currency exposure from the other side of the contract should be appropriately included in sections 6(a) and (c) of this appendix B.

[13] For example, an equity swap in which a bank is receiving an amount based on the change in value of one particular equity or equity index and paying a different index will be treated as a long position in the former and a short position in the latter.

[14] Depository receipts are instruments issued by a trust company or other depository institution evidencing the deposit of foreign securities and facilitating trading in such instruments on U.S. stock exchanges.

[15] Where a bank has future and forward contracts to deliver and receive gold, a maturity ladder should be constructed in accordance with section 6(a) of this appendix B treating gold as a zero coupon instrument.

(3) For measuring a bank's open positions, positions in composite currencies, such as the ECU, may be either treated as a currency in their own right or split into their component parts on a consistent basis. Positions in gold are measured in the same manner as described in section 6(d) of this appendix B.[16]

(4) The capital requirement is determined by converting the nominal amount (or net present value) of the net open position in each foreign currency (and gold) at spot rates into the reporting currency. The capital requirement is 8.0 percent of the sum of:

(i) The greater of the sum of the net short open positions or, the sum of the net long open positions; and

(ii) The net open position in gold, regardless of sign.[17]

(5) A bank doing negligible business in foreign currency and that does not take foreign exchange positions for its own account may be exempted from the capital requirement for foreign exchange risk provided that:

(i) Its foreign currency business, defined as the greater of the sum of its gross long positions and the sum of its gross short positions in all foreign currencies, does not exceed 100 percent of eligible capital as defined in section 3 of this appendix B; and

(ii) Its overall net open foreign exchange position as determined in section 6(c)(2) does not exceed 2.0 percent of its eligible capital.

(6) Where a bank is assessing its foreign exchange risk on a consolidated basis, it may be impractical in the case of some marginal operations to include the currency positions of a foreign branch or subsidiary of the bank. In such cases, the internal limit in each currency may be used as a proxy for the positions, provided there is adequate ex post monitoring of actual positions complying with such limits. In these circumstances, the limits should be added, regardless of sign, to the net open position in each currency.

(d) *Commodities risk.* (1) *Measurement methods.* This section provides a minimum capital requirement to cover the risk of holding or taking positions in commodities. There are two methods under the standardized approach for measuring commodity market risk—the simplified method and the maturity method. These methods are only appropriate for banks that conduct a limited amount of commodities business. All other banks must adopt an internal measurement system conforming to the criteria in section 5 of this appendix B.

(2) *Base capital requirement.* Under both the simplified and maturity methods, each long and short commodity position (spot and forward) is expressed in terms of the standard unit of measurement (such as barrels, kilos, or grams). The open positions in each category of commodities are then converted at current spot rates into U.S. currency, with long and short positions offset to arrive at the net open position in each commodity. Positions in different categories of commodities may not, generally, be offset.[18] Under either method, the base capital requirement is 15.0 percent of the net open position, long or short, in each commodity.[19]

(3) *Simplified method.* To protect a bank against basis risk, interest rate risk, and forward gap risk, each category of commodity is also subject to a 3.0 percent capital requirement on the bank's gross positions, long plus short, in the particular commodity. In valuing gross positions in commodity derivatives for this purpose, a bank should use the current spot price. The total capital requirement for commodities risk is the sum of the 15.0 percent base charges for each net commodity position and the 3.0 percent requirements on the gross commodity positions.

(4) *Maturity method.* (i) Under this method, a bank must slot each long and short commodity position (converted into U.S. currency at current spot rates) into a maturity ladder. The time-bands for the maturity ladder are; from zero to one month, one up to three months, three up to six months, six up to twelve months, one up to two years, two up to three years, and over three years. A separate maturity ladder is used for each category of commodity. Physical commodities are allocated to the first time-band.

(ii) In order to capture forward gap and interest rate risk within a time-band (together sometimes referred to as curvature/spread risk), offsetting long and short positions in each time-band are subject to an additional capital requirement. Beginning with the shortest-term time-band and continuing with subsequent time-bands, the amount of the matched short positions plus the amount of the matched long position is multiplied by a spread rate of 1.5 percent.

(iii) The unmatched net position from a shorter-term time-band must be carried forward to offset exposures in longer-term time-bands. A capital requirement of 0.6 percent of the net position carried forward is added for each time-band that the net position is carried forward.[20] The total capital requirement for commodities risk is the sum of the 15.0 percent base capital requirement for each net commodity position and the additional requirements for matched positions and for unmatched positions carried forward.

(5) Commodity derivatives and other off-balance-sheet positions that are affected by changes in commodity prices are included in the measurement system under section 6(d) of this appendix B (except for options and the associated underlying, which are included in the measurement system under the treatment discussed in section 6(e) of this appendix B). Commodity derivatives are converted into notional commodity positions. Under the maturity method, the positions are slotted into maturity time-bands as follows:

(i) Futures and forward contracts relating to individual commodities are incorporated in the measurement system as notional amounts (of, for example, barrels or kilos) that are converted to U.S. dollars at current spot rates and are assigned a maturity according to expiration date;

(ii) Commodity swaps where one side of the contract is a fixed price and the other side is the current market price are incorporated as a series of positions equal to the notional amount of the contract at current spot rates, with one position corresponding to each payment on the swap and slotted in the maturity ladder accordingly. The positions are long positions if the bank is paying a fixed price and receiving a floating price, and short positions if the bank is receiving a fixed price and paying a floating price;[21] and

(iii) Commodity swaps where the sides of the transaction are in different commodities are included in the relevant reporting ladder. No offsetting is allowed unless the commodities are in the same sub-category.

(e) *Options.* (1) Several alternatives are available for a bank to use in measuring its market risk for options activities. A bank that only has purchased options may use the simplified method set forth in section 6(e)(2) of this appendix B. A bank that also writes options may use the scenario method described in section 6(e)(3) of this appendix B, or the delta-plus method set forth in section 6(e)(4) of this appendix B.[22] These methods may only be used by banks which, in relative terms, have limited options activities. Banks with more significant options business are expected to adopt an internal measurement system conforming to the criteria in section 5 of this appendix B. Regardless of the method used, specific risk related to the issuer of an instrument still applies to options positions for equities, equity indices and corporate debt securities as set forth in sections 6(a) and (b) of this appendix B. There remains a separate capital

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[16] Where gold is part of a forward contract (quantity of gold to be received or to be delivered), any interest rate or foreign currency exposure from the other side of the contract should be reported as set out in section 6(a) and (c) of this appendix B.

[17] For example, a bank has the following net currency positions: Yen = +50, DM = +100, GB = +150, FFR = −20, US$= −180, and gold = −35. The bank would sum its long positions (total = +300) and sum its short positions (total = −200). The bank's capital requirement for foreign exchange market risk would be: (300 (the larger of the summed long and short positions) + 35 (gold)) × 8.0% = $26.80.

[18] However, netting is permitted between different sub-categories of the same commodity in cases where the sub-categories are deliverable against each other.

[19] When the funding of a commodity position opens a bank to interest rate or foreign exchange exposure the relevant positions should be included in the measures of interest rate and foreign exchange risk described in sections 6(a) and (c) of this appendix B. When a commodity is part of a forward contract, any interest or foreign currency exposure from the other side of the contract should be appropriately included in sections 6(a) and 6(c) of this appendix B.

[20] For example, if $200 short is carried forward from the 3–6 month time-band to the 1–2 year time-band, the capital charge would be $200 × .006 × 2 = $2.40.

[21] If one of the sides of the transaction involves receiving/paying a fixed or floating interest rate, that exposure should be slotted into the appropriate repricing maturity band in section 6(a) of this appendix B.

[22] Unless all their written option positions are hedged by perfectly matched long positions in exactly the same options, in which case there is no capital requirement for market risk.

requirement for counterparty credit risk as set forth in appendix A to this part 3.

(2) Under the simplified and scenario methods, the positions for the options and the associated underlying, cash or forward, are not included in the measurement framework for debt securities, equities, foreign exchange or commodities risk as set forth in sections 6(a) through (d) of this appendix B. Rather, they are subject to capital requirements as calculated in this section. The capital requirements calculated under this section should then be added to the capital requirements for debt securities, equities, foreign exchange and commodities risk as appropriate. Under the delta-plus method, the delta equivalent position [23] for each option is included in the measurement frameworks set forth in sections 6(a) through (d) of this appendix B.

(3) A bank that has only a limited amount and range of purchased options may use the following simplified approach to measure its market risk exposure: [24]

(i) For a bank with a long cash position and a long put or with a short cash position and a long call, the capital requirement is the market value of the underlying instrument multiplied by the sum of the specific and general market risk requirements for the underlying (that is, the specific and general market risk requirements that would have applied to the underlying directly under sections 6(a) through (d) of this appendix B), less the amount the option is in the money (if any) bounded at zero.[25]

(ii) For a bank with a long call or a long put, the capital charge is the lesser of:

(A) The market value of the underlying security multiplied by the sum of specific and general market risk requirements for the underlying (that is, the specific and general market risk requirements that would have applied to the underlying directly under sections 6(a) through (d) of this appendix B); or

(B) The market value of the option.

(iii) Under this measure, the capital requirement for currency options is 8.0 percent of the market value of the underlying and for commodity options is 15.0 percent of the market value of the underlying.

(4) Under the scenario approach, a bank revalues its options and related hedging positions by changing the underlying rate or price over a specified range and by assuming different levels of volatility for that rate or price.

(i) For each of its option portfolios, a bank constructs a grid based on a fixed range of changes in the portfolio's risk factors and calculates changes in the value of the option portfolio at each point within the grid. For this purpose, an option portfolio consists of an option and any related hedging positions or multiple options and related hedging positions that are grouped together according to their remaining maturity or the type of underlying.

(ii) Options based on interest rates and debt instruments are grouped into portfolios according to the maturity zones that are set forth in section 6(a) of this appendix B. (Zone 1 instruments have a remaining maturity of up to 1 year, zone 2 instruments have a remaining maturity from 1 year up to 4 years, and zone 3 instruments have a remaining maturity of 4 years or more.)

(iii) These options and the associated hedging positions should be evaluated under the assumption that the relevant interest rates move simultaneously. For options based on equities, separate grids are constructed for each individual equity issue and index. For options based on exchange rates, separate grids are constructed for individual exchange rates. For options based on commodities, separate grids are constructed for each category of commodity (as defined in sections 6(a) and (d) of this appendix B).

(iv) For option portfolios with options based on equities, exchange rates, and commodities, the first dimension of the grid consists of rate or price changes within a specified range above and below the current market value of the underlying; for equities, the range is +/− 12.0 percent (or in the case of an index +/− 8.0 percent), for exchange rates the range is +/− 8.0 percent, and for commodities the range is +/− 15.0 percent. For option portfolios with options based on interest rates, the range for the first dimension of the grid depends on the remaining maturity zone. The range for zone 1 is +/− 100 basis points, the range for zone 2 is +/− 90 basis points, and the range for zone 3 is +/− 75 basis points. For all option portfolios, the range is divided into at least ten equally spaced intervals. The second dimension of each grid is a shift in the volatility of the underlying rate or price equal to +/− 25.0 percent of the current volatility.[26]

(v) For each assumed volatility and rate or price change (a scenario), the bank revalues each option portfolio. The market risk capital requirement for the portfolio is the largest loss in value from among the scenario revaluations. The total market risk capital requirement for all option portfolios is the sum of the individual option portfolio capital requirements.

(vi) The OCC will review the application of the scenario approach, particularly regarding the precise way the analysis is constructed. A bank using the scenario approach should meet the appropriate qualitative criteria set forth in section 5 of this appendix B.

(5) Under the delta-plus method, a bank that writes options may include delta-weighted options positions within each measurement framework as set forth in sections 6(a) through 6(d) of this appendix B.

(i) Options positions should be measured as a position equal to the market value of the underlying instrument multiplied by the delta. In addition, a bank must measure the sensitivities of the option's gamma (the change of the delta for a given change in the price of the underlying) and vega (the sensitivity of the option price with respect to a change in volatility) to calculate the total capital requirement. These sensitivities may be calculated according to an exchange model approved by the OCC or to the bank's own options pricing model, subject to oversight by the OCC.

(ii) For options with debt instruments or interest rates as the underlying instrument, delta-weighted options positions should be slotted into the debt instrument time-bands in section 6(a) of this appendix B using a two-legged approach (as is used for other derivatives), requiring one entry at the time the underlying contract takes effect and one at the time the underlying contract matures.[27] Floating rate instruments with caps or floors should be treated as a combination of floating rate securities and a series of European-style options.[28] A bank must also calculate the gamma and vega for each such option position (including hedge positions). The results should be slotted into separate maturity ladders by currency. For options such as caps and floors whose underlying instrument is an interest rate, the delta and gamma should be expressed in terms of a hypothetical underlying security. Subsequently:

(A) For gamma risk, for each time-band, net gammas that are negative are multiplied by the risk weights set out in Table 5 and by the square of the market value of the underlying instrument (net positive gammas may be disregarded);

(B) For volatility risk, a bank calculates the capital requirements for vega in each time-band assuming a proportional shift in volatility of ±25.0 percent;

(C) The capital requirement is the absolute value of the sum of the individual capital requirements for net negative gammas plus the absolute value of the sum of the

[23] The delta equivalent of an option is the option's delta value multiplied by its principal or notional value. The delta value of an option represents the expected change in the option's price as a proportion of a small change in the price of the underlying instrument. For example, an option whose price changes $1 for every $2 dollar change in the price of the underlying instrument has a delta of 0.50.

[24] For example, if a holder of 100 shares currently valued at $10 each has an equivalent put option with a strike price of $11, the capital charge would be: $1,000 × 16.0 percent (e.g., 8.0 percent specific plus 8.0 percent general market risk) = $160, less the amount the option is in the money ($11 − $10) × 100 = $100, i.e., the capital charge would be $60. A similar methodology applies for options whose underlying is a foreign currency, a debt security or a commodity.

[25] Some options (e.g., where the underlying is an interest rate, a currency, or a commodity) bear no specific risk but specific risk will be present in the case of options on corporate debt securities and for options on equities and equity indices.

[26] For example, if the underlying in an equity instrument with a current market value of $100 and a volatility of 20 percent, the first dimension of the grid would range from $88 to $112, divided into ten intervals of $2.40 and the second dimension would assume volatilities of 15 percent, 20 percent, and 25 percent.

[27] For example, in April a purchased call option on a June three-month interest-rate future would be considered on the basis of its delta-equivalent value to be a long position with a maturity of five months and a short position with a maturity of two months. The written option would be slotted as a long position with a maturity of two months and a short position with a maturity of five months.

[28] For example, the holder of a three-year floating rate bond indexed to six-month LIBOR with a cap of 15 percent would treat the bond as a debt security that reprices in six months, and a series of five written call options on a FRA with a strike rate of 15 percent, each slotted as a short position at the expiration date of the option and as a long position at the time the FRA matures.

individual capital requirements for vega risk for each time-band; and

(D) The delta plus method risk weights are:

TABLE 5.—DELTA PLUS METHOD RISK WEIGHTS

Time-band	Modified duration (average assumed for time-band)	Assumed interest rate change (%)	Risk-weight for gamma[1]
Under 1 month	0.00	1.00	0.00000
1 up to 3 months	0.20	1.00	0.00020
3 up to 6 months	0.40	1.00	0.00080
6 up to 12 months	0.70	1.00	0.00245
1 up to 2 years	1.40	0.90	0.00794
2 up to 3 years	2.20	0.80	0.01549
3 up to 4 years	3.00	0.75	0.02531
4 up to 5 years	3.65	0.75	0.03747
5 up to 7 years	4.65	0.70	0.05298
7 up to 10 years	5.80	0.65	0.07106
10 up to 15 years	7.50	0.60	0.10125
15 up to 20 years	8.75	0.60	0.13781
Over 20 years	10.00	0.60	0.18000

[1] According to the Taylor expansion, the risk weights are calculated as ½ (modified duration x assumed interest rate change) ^{2}/100.

(iii) For options with equities as the underlying, delta-weighted option positions should be incorporated in the measure of market risk set forth in section 6(b) of this appendix B. Individual equity issues and indices should be treated as separate underlyings. In addition to the capital requirement for delta risk, a bank should apply a further capital charge for gamma and vega risk:

(A) For gamma risk, the net gammas that are negative for each underlying are multiplied by 0.72 percent (in the case of an individual equity) or 0.32 percent (in the case of an index as the underlying) and by the square of the market value of the underlying;

(B) For volatility risk, a bank calculates the capital requirement for vega for each underlying, assuming a proportional shift in volatility of ±25.0 percent; and

(C) The capital requirement is the absolute value of the sum of the individual capital requirements for net negative gammas plus the absolute value of the individual capital requirements for vega risk.

(iv) For options on foreign exchange and gold, the net delta (or delta-based) equivalent of the total book of foreign currency and gold options is incorporated into the measurement of the exposure in a single currency position as set forth in section 6(c) of this appendix B. The gamma and vega risks should be measured as follows:

(A) For gamma risk, for each underlying exchange rate, net gammas that are negative are multiplied by 0.32 percent and by the square of the market value of the positions;

(B) For volatility risk, a bank calculates the capital requirements for vega for each currency pair and gold assuming a proportional shift in volatility of ±25.0 percent; and

(C) The capital requirement is the absolute value of the sum of the individual capital requirements for net negative gammas plus the absolute value of the sum of the individual capital requirements for vega risk.

(v) For options on commodities, the delta-weighted positions are incorporated in one of the measures described in section 6(d) of this appendix B. In addition, a bank must apply a capital requirement for gamma and vega risk:

(A) For gamma risk, net gammas that are negative for each underlying are multiplied by 1.125 percent and by the square of the market value of the commodity;

(B) For volatility risk, a bank calculates the capital requirements for vega for each commodity assuming a proportional shift in volatility of ±25.0 percent; and

(C) The capital requirement is the absolute value of the sum of the individual capital requirements for net negative gammas plus the absolute value of the sum of the individual capital requirements for vega risk.

(vi) Under certain conditions and to a limited extent, the OCC may permit banks that are significant traders in options with debt securities or interest rates as the underlying to net positive and negative gammas and vegas across time-bands. Such netting must be based on prudent and conservative assumptions and the bank must materially meet the qualitative standards set forth in section 5 of this appendix B.

(vii) A bank may base the calculation of vega risk on a volatility ladder in which the implied change in volatility varies with the maturity of the option. The assumed proportional shift in volatility must be at least ±25.0 percent at the short end of the maturity spectrum. The proportional shift for longer maturities must be at least as stringent in statistical terms as the 25.0 percent shift at the short end.

(viii) A bank should also monitor the risks of rho (the rate of change of the value of the option with respect to the interest rate) and theta (the rate of change of the value of the option with respect to time).

Section 7. Reservation of authority

(a) *Partial models.* The OCC reserves the authority to require a bank subject to the market risk requirements of this appendix B to develop or use an internal market risk model, the supervisory market risk model, or any combination thereof, for the purposes of compliance with the capital requirements of this appendix B.[29]

(b) *De minimis exposures.* The OCC also may permit a bank with negligible exposures to certain types of market risk (activities in remote locations and minor currencies) to adopt alternative measurements for those exposures if the alternative measurements are able to adequately measure the risk.

(c) *Multiplication factor for qualifying internal market risk model.* The OCC may increase or decrease the multiplication factor applicable to the capital requirement under a qualifying internal market risk model based on an assessment of the quality and historic accuracy of the bank's risk management system.

Office of the Comptroller of the Currency.

Dated: July 10, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

FEDERAL RESERVE BOARD

12 CFR Chapter II

For the reasons set out in the preamble, parts 208 and 225 of title 12 of the Code of Federal Regulations are proposed to be amended as set forth below.

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3905–3909; 15 U.S.C.

[29] The OCC generally expect banks with significant trading positions to use internal market risk models for the purposes of this appendix B.

78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1 and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In Part 208, § 208.13 is revised to read as follows:

§ 208.13 Capital adequacy.

The standards and guidelines by which the capital adequacy of state member banks will be evaluated by the Board are set forth in appendix A and appendix E to part 208 for risk-based capital purposes, and, with respect to the ratios relating capital to total assets, in appendix B to part 208 and in appendix B to the Board's Regulation Y, 12 CFR part 225.

3. In Part 208, § 208.31 is amended by revising paragraphs (e), (h), and (j) to read as follows:

§ 208.31 Definitions.

* * * * *

(e) *Risk-weighted assets* means total weighted risk assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (appendix A to this part 208) and adjusted for market risk in accordance with the Board's Capital Adequacy Guidelines for State Member banks: Market Risk Measure (appendix E to this part 208).

* * * * *

(h) *Tier 1 risk-based capital ratio* means the ratio of Tier 1 capital to weighted risk assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (appendix A to this part 208) and adjusted for market risk in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Market Risk Measure (appendix E to this part 208).

* * * * *

(j) *Total risk-based capital ratio* means the ratio of qualifying total capital to weighted risk assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (appendix A to this part 208) and adjusted for market risk in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Market Risk Measure (appendix E to this part 208).

4. In part 208, Appendix A is amended by revising the first and second paragraphs of section I. to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

I. Overview

The Board of Governors of the Federal Reserve System has adopted a risk-based capital measure to assist in the assessment of the capital adequacy of state member banks.[1] The principal objectives of this measure are to (i) make regulatory capital requirements more sensitive to differences in risk profiles among banks; (ii) factor off-balance-sheet exposures into the assessment of capital adequacy; (iii) minimize disincentives to holding liquid, low-risk assets; and (iv) achieve greater consistency in the evaluation of the capital adequacy of major banks throughout the world.

The risk-based capital guidelines include both a definition of capital and a framework for calculating weighted risk assets by assigning assets and off-balance-sheet items to broad risk categories.[2] A bank's risk-based capital ratio is calculated by dividing its qualifying capital (the numerator of the ratio) by its weighted risk assets (the denominator).[3] The definition of qualifying capital is outlined below in section II. of this appendix A, and the procedures for calculating weighted risk assets are discussed in section III. of this appendix A. Attachment I to this appendix A illustrates a sample calculation of weighted risk assets and the risk-based capital ratio.

* * * * *

5. In Part 208, a new Appendix E is added to read as follows:

Appendix E to Part 208—Capital Adequacy Guidelines for State Member Banks: Market Risk Measure

I. Introduction

A. Overview

1. The Board of Governors of the Federal Reserve System has adopted a framework for determining capital requirements for the market risk exposure of state member banks.[1] For this purpose, market risk is defined as the risk of losses in a bank's on- and off-balance-sheet positions arising from movements in market prices. The market risks subject to these capital requirements are those associated with debt and equity instruments held in the bank's trading account, as well as foreign exchange risk and commodities risk throughout the bank, including options and other derivative contracts in each risk category.

2. Effective December 31, 1997, the market risk measure will be applied to all state member banks that, on a consolidated basis:

a. Have total assets in excess of $5 billion; and either have a total volume of trading activities (measured as the sum of the bank's trading assets and liabilities[2] on a daily average basis for the quarter) that is 3.0 percent or more of the total assets of the bank, or have interest rate, foreign exchange, equity, and commodity off-balance-sheet derivative contracts relating to trading activities whose total notional amounts exceed $5 billion; or

b. Have total assets of $5 billion or less; *and* have trading activities exceeding 10.0 percent of the total assets of the bank.

3. Such banks are still subject to the risk-based capital measure set forth in appendix A of this part, subject to the exclusion of certain assets specified in this appendix E. However, these banks must calculate their market risk-equivalent assets and determine risk-based capital ratios adjusted for market risk in accordance with this appendix E.[3]

4. The market risk measure provides two ways for a bank to determine its exposure to market risk. A bank may use its internal risk measurement model, subject to the conditions and criteria set forth in section III. of this appendix E (referred to as the internal models approach), or when appropriate, a bank may use all or portions of the alternative measurement system described in section IV. of this appendix E (referred to as the standardized approach).

a. With prior approval from the Federal Reserve, for regulatory capital purposes, a bank may use its internal risk measurement model to measure its value-at-risk[4] for each of the following risk factor categories; interest rates, exchange rates, equity prices, and commodity prices. The value-at-risk amount for each risk factor category should include volatilities of related options. The value-at-risk amount for each risk factor category is

[1] Some banks are also subject to capital requirements for market risk as set forth in appendix E of this part. Banks that are subject to the market risk measure are required to follow the guidelines set forth in appendix E of this part for determining qualifying and eligible capital, calculating market risk-equivalent assets and adding them into weighted-risk assets, and calculating risk-based capital ratios adjusted for market risk. Supervisory ratios that relate capital to total assets for state member banks are outlined in appendix B of this part and in appendix B to part 225 of the Board's Regulation Y, 12 CFR part 225.

[2] The risk-based capital measure is based upon a framework developed jointly by supervisory authorities from the countries represented on the Basle Committee on Banking Regulations and Supervisory Practices (Basle Supervisors' Committee) and endorsed by the Group of Ten Central Bank Governors. The framework is described in a paper prepared by the Basle Supervisors' Committee entitled ''International Convergence of Capital Measurement,'' July 1988.

[3] Banks generally are expected to utilize period-end amounts in calculating their risk-based capital ratios. When necessary and appropriate, ratios based on average balances may also be calculated on a case-by-case basis. Moreover, to the extent banks have data on average balances that can be used to calculate risk-based ratios, the Federal Reserve will take such data into account.

[1] The market risk measure is based on a framework developed jointly by supervisory authorities from the countries represented on the Basle Committee on Banking Supervision (Basle Supervisors Committee) and endorsed by the Group of Ten Central Bank Governors. The framework is described in a paper prepared by the Basle Supervisors Committee entitled ''[Proposal to issue a] Supplement to the Basle Capital Accord to Cover Market Risks.'' [April] 1995.

[2] As reflected in the bank's quarterly Consolidated Reports of Condition and Income (call report).

[3] The Federal Reserve may apply all or portions of this Appendix E to other banks when deemed necessary for safety and soundness purposes.

[4] A bank evaluates its current positions and estimates future market volatility through a value-at-risk measure, which is an estimate representing, with a certain degree of statistical confidence, the maximum amount by which the market value of trading positions could decline during a specific period of time. The value-at-risk is generated through an internal model that employs a series of market risk factors (for example, market rates and prices that affect the value of trading positions).

summed to determine the aggregate value-at-risk for the bank.

b. The standardized approach uses a set of standardized calculations and assumptions to measure market risk exposure depending on its source; debt instruments, equities, foreign currencies, and commodities, including volatilities of related options.

5. The Board generally expects any bank that is subject to the market risk measure, especially those with large trading accounts, to comply with the measure by using internal risk-measurement models. A bank may not change its measurement approach for the purpose of minimizing capital requirements. In limited instances, on a case-by-case basis, the Federal Reserve may permit a bank that has internal models to incorporate risk measures of negligible exposures, for example, *de minimis* positions, activities in remote locations, minor exposures in a currency, or activities that present negligible risk to the bank, in an alternative manner, so long as it adequately captures the risk.

6. The risk-based capital ratios adjusted for market risk determined in accordance with this appendix E are *minimum* supervisory ratios. Banks generally are expected to operate with capital positions well above the minimum ratios. In all cases, banks should hold capital commensurate with the level and nature of the risks to which they are exposed.

7. The Federal Reserve will monitor the implementation and effect of these guidelines in relation to domestic and international developments in the banking industry. When necessary and appropriate, the Board will consider the need to modify this appendix E in light of any significant changes in the economy, financial markets, banking practices, or other relevant factors.

B. Market Risks Subject to a Capital Requirement

1. *General Market Risk and Specific Risk.* A bank must hold capital against exposure to general market risk and specific risk arising from its trading and other foreign exchange and commodity activities. For this purpose, general market risk refers to changes in the market value of covered transactions resulting from market movements, such as changing levels of market interest rates, broad equity indices, or currency exchange rates. Specific risk refers to credit risk, that is, the risk that the issuer of a debt or equity instrument might default, as well as to other factors that affect the market value of specific instruments but that do not materially alter market conditions.[5]

2. *Trading Activities.* a. The general market risk and specific risk capital requirements for trading activities are based on on- and off-balance-sheet positions in a bank's trading account. For this purpose, trading account means positions in financial instruments acquired with the intent to resell in order to profit from short-term price movements (or other price or interest-rate variations), including, but not limited to:

i. Assets acquired with the intent to resell to customers;

ii. Positions in financial instruments arising from matched principal brokering and market making; or

iii. Positions taken in order to hedge other elements of the trading account (that is, reduce risk by offsetting other positions that have exposure to changes in market rates or prices).[6] Trading activities may include positions in debt instruments, equities, foreign currencies, and commodity instruments, or related derivative[7] or other off-balance-sheet contracts.

b. Debt instruments in the trading account are all fixed-rate and floating-rate debt securities and instruments that behave like debt, including non-convertible preferred stock. Convertible bonds, i.e., preferred stock or debt issues that are convertible, at a stated price, into common shares of the issuer, should be treated as debt instruments if they trade like debt instruments and as equities if they trade like equities. Also included are derivative contracts of debt instruments and other off-balance-sheet instruments in the trading account that react to changes in interest rates. A security that has been sold subject to a repurchase agreement or lent subject to a securities lending agreement is treated as if it were still owned by the lender of the security. Such transactions remain subject to capital requirements for credit risk for the off-balance-sheet portion of the transaction as set forth in section III.D. of appendix A of this part.

c. Equities in the trading account are equity instruments that behave like equities. The instruments covered include common stocks (whether voting or non-voting), convertible securities that behave like equities, and commitments to buy or sell equity securities. Also included are derivative contracts of equity instruments and other off-balance-sheet instruments in the trading account that are affected by changes in equity prices. However, non-convertible preferred stock is included in debt instruments.

3. *Foreign Exchange and Commodities Risk.* Foreign exchange or commodities positions, whether or not included in a bank's trading account, are subject to a capital requirement for the market risk of those positions.

a. The capital requirement for foreign exchange risk applies to a bank's total currency and gold positions. This includes spot positions (that is, asset items and liability items, including accrued interest and expenses, denominated in each currency); forward positions (that is, forward foreign exchange transactions, including currency futures and the principal on currency swaps not included in the spot position); and certain guarantees. It includes future income and expenses from foreign currency transactions not yet accrued but already fully hedged (at the discretion of the reporting bank), foreign exchange derivative and other off-balance-sheet positions that are affected by changes in exchange rates, and any other item representing a profit or loss in foreign currencies.

b. A bank may, subject to approval by the Federal Reserve, exclude from its foreign exchange positions any structural positions in foreign currencies. For this purpose, such structural positions are limited to transactions designed to hedge a bank's capital ratios against the effect of adverse exchange rate movements on subordinated debt, equity, or minority interests in consolidated subsidiaries and dotation capital assigned to foreign branches that are denominated in foreign currencies. Also included are any positions related to unconsolidated subsidiaries and to other items that are deducted from a bank's capital when calculating its capital base. In any event, such structural foreign currency positions must reflect long-term policies of the institution and not relate to trading positions.

c. A bank doing negligible business in foreign currency and that does not take foreign exchange positions for its own account may be exempted from the capital requirement for foreign exchange risk provided that:

i. Its foreign currency business, defined as the greater of the sum of its gross long positions and the sum of its gross short positions in all foreign currencies, does not exceed 100 percent of eligible capital as defined in section II. of this appendix E; and

ii. Its overall net open foreign exchange position as determined in section IV.C.2. of this appendix E does not exceed 2.0 percent of its eligible capital.

d. The capital requirement for commodities risk applies to a bank's total commodities positions, including commodity futures, commodity swaps, and all other commodity derivatives or other off-balance-sheet positions that are affected by changes in commodity prices. A commodity is defined as a physical product that is or can be traded on a secondary market (such as agricultural products, minerals (including oil), and precious metals), but excluding gold (which is treated as foreign exchange).

C. Capital Requirements

1. *Capital Requirements.* The minimum capital requirement for a state member bank subject to the market risk measure is the sum of:

a. The capital requirement for credit risk as determined in accordance with appendix A of this part, *excluding* debt and equity instruments in the trading book and positions in commodities, but *including* the counterparty credit risk requirements on all over-the-counter derivative activities whether in the bank's trading account or not; and

b. The capital requirement for market risk as determined by the internal models approach, the standardized approach, or a

[5] This appendix E does not impose specific risk capital requirements for foreign exchange risk and commodities positions because they do not have the type of issuer-specific risk associated with debt and equity instruments in the trading account.

[6] At a bank's option, when non-trading account instruments are hedged with instruments in the trading account, on- or off-balance-sheet, the non-trading account instruments may be included in the measure for general market risk. Such non-trading account instruments remain subject to the credit risk capital requirements of appendix A of this part.

[7] In general terms, a derivative is a financial contract whose value is derived from the values of one or more underlying assets or reference rates or indexes of asset values (referred to as ''the underlying''). Derivatives include standardized contracts that are traded on exchanges and customized, privately negotiated contracts known as over-the-counter (OTC) derivatives.

combination of the two approaches deemed to be appropriate by the Federal Reserve.

2. *Internal Models.* a. For a bank approved to use the internal models approach, the capital requirement for market risk is the higher of:

i. The bank's previous day's aggregate value-at-risk amount calculated subject to certain supervisory requirements set forth in section III. of this appendix E; or

ii. An average of the daily aggregate value-at-risk amounts, calculated subject to the same restrictions, measured on each of the preceding sixty (60) business days, multiplied by a minimum ''multiplication factor'' of three (3).[8]

b. A bank approved to use the internal models approach may also be subject to a separate capital requirement for specific market risk of traded debt and equity instruments to the extent that the specific market risk associated with these instruments is not captured by the bank's models. However, for all banks using internal models, the total specific risk charge should in no case be less than one-half the specific risk charges calculated according to the standardized approach.

3. *Standardized approach.* A bank whose model has not been approved by the Federal Reserve must use the standardized approach for measuring its market risk. For a bank using this approach, the capital requirement for market risk is the sum of the market risk capital requirement for debt and equity instruments in the trading account, foreign exchange and commodities risk throughout the bank, and options and other derivative positions in each risk category as set forth in sections IV.A. to IV.E. of this appendix E.[9]

4. *Partial models.* a. With approval from the Federal Reserve, a bank whose internal model does not cover all risk factor categories may use the standardized approach to measure market risk exposure arising from the risk factor categories that are not covered. The Federal Reserve will approve combining the two approaches only on a temporary basis in situations where the bank is developing, but has not fully implemented, a comprehensive value-at-risk measurement system. When a bank uses both approaches, each risk factor category (that is, interest rates, exchange rates, equity prices, and commodity prices) must be measured using one or the other approach. The methods may not be combined within a risk factor category. Once a bank adopts an acceptable value-at-risk model for a particular risk factor category, it may not revert to the standardized approach except in unusual circumstances and with prior approval of the Federal Reserve.

b. For a bank using a combination of approaches, the capital requirement for market risk is the sum of (i) the appropriate value-at-risk amount (as determined under section I.C.2.a. of this appendix E), and (ii) the capital requirement for each risk category that is calculated using the standardized approach.

5. *Application.* The capital requirements for market risk apply to state member banks on a worldwide consolidated basis. The Federal Reserve may, however, evaluate market risk on an unconsolidated basis when necessary. For example, when there are obstacles to the repatriation of profits from a foreign subsidiary or where management structure does not allow timely management of risk on a consolidated basis.

6. *Other considerations.* All transactions, including forward sales and purchases, should be included in the calculation of market risk capital requirements from the date on which they were entered into. The Federal Reserve expects a bank to meet its capital requirements for market risk on a continuous basis (that is, at a minimum, at the close of each business day).

II. Qualifying Capital and the Market Risk-Adjusted Capital Ratio

A. Qualifying and Eligible Capital

1. The principal forms of qualifying capital for market risk are Tier 1 capital and Tier 2 capital as defined in section II. of appendix A of this part and subject to the conditions and limitations of appendix A of this part. A bank may use Tier 3 capital for the sole purpose of meeting a portion of the capital requirements for market risk.[10]

2. Tier 3 capital consists of short-term subordinated debt that is subject to a lock-in clause providing that neither interest nor principal payment is due (even at maturity) if such payment would cause the issuing bank to fall or remain below the minimum 8.0 percent risk-based capital requirement as set forth in appendix A and adjusted for market risk.

3. In order to qualify as Tier 3 capital, the short-term debt must be unsecured, subordinated, and fully paid up; it must have an original maturity of at least two years; and it may not be redeemed before maturity without prior approval by the Federal Reserve. In addition, it may not contain or be covered by any covenants, terms, or restrictions that are inconsistent with safe and sound banking practices.

4. Eligible Tier 3 capital may not exceed 250 percent of a bank's Tier 1 capital allocated for market risk and the maximum eligible amount of Tier 2 and Tier 3 capital together is limited to 100 percent of Tier 1 capital. (Examples of how to calculate these limits are set forth in Attachment I to this appendix E.) Tier 2 elements may be substituted for Tier 3 up to the same limit of 250 percent, so long as the overall limits for Tier 2 capital set forth in appendix A of this part are not exceeded, that is, Tier 2 capital may not exceed total Tier 1 capital, and long-term subordinated debt may not exceed 50 percent of Tier 1 capital.

B. Calculation of Eligible Capital and the Capital Ratio

1. In order to calculate eligible capital, a bank must first calculate its minimum capital requirement for credit risk in accordance with appendix A of this part and then its capital requirement for market risk. Eligible capital is the sum of the bank's qualifying Tier 1 capital, its qualifying Tier 2 capital subject to the limits stated above, and its eligible Tier 3 capital subject to the conditions set out under section II. of this appendix E.

2. A bank that is subject to the market risk measure must calculate its risk-based capital ratios as follows:

a. Determine total weighted-risk assets using the procedures and criteria set forth in appendix A of this part, excluding debt and equity instruments in the trading book and positions in commodities, but including all over-the-counter derivative activities whether in the bank's trading account or not.

b. Calculate the measure for market risk using the internal models approach, the standardized approach, or an approved combination of these two approaches.

c. Multiply the measure for market risk by 12.5 (i.e., the reciprocal of the 8.0 percent minimum risk-based capital ratio). The resulting product is referred to as ''market risk-equivalent assets.''

d. Add market risk-equivalent assets to the weighted-risk assets compiled for credit risk purposes (section II.B.2.a. of this appendix E). The sum of these two amounts is the denominator of risk-based capital ratios adjusted for market risk. The numerator of the total risk-based capital ratio is eligible capital and the numerator of the Tier 1 risk-based capital ratio is Tier 1 capital.

III. The Internal Models Approach

A. Use of Models

1. With prior approval of the Federal Reserve, a bank may use its internal risk measurement model(s) for purposes of measuring value-at-risk and determining the associated regulatory capital requirements for market risk exposure.

a. Requests for approval under section III.A.1. of this appendix E should include, at a minimum, a complete description of the bank's internal modeling and risk management systems and how these systems conform to the criteria set forth in this section III., an explanation of the policies and procedures established by the bank to ensure continued compliance with such criteria, a discussion of internal and external validation procedures, and a description of other relevant policies and procedures consistent with sound practices.

b. The Federal Reserve will approve an internal model for regulatory capital

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[8] The Federal Reserve may adjust the multiplication factor for a bank to increase its capital requirement based on an assessment of the quality and historic accuracy of the bank's risk management system.

[9] Section IV.E. of this appendix E provides several alternatives for measuring the market risk of options. Under two of the alternatives, the simplified and scenario methods, the underlying position of an option is ''carved-out,'' and is not included in the prescribed risk measure for the underlying. Instead it is evaluated together with the related option according to the procedures described for options to determine the capital requirement. Under the third alternative, the ''delta-plus'' approach, the delta-equivalent value of each position is included in the measurement framework for the appropriate risk category (that is, debt or equity instruments in the trading account, foreign exchange or commodities risk).

[10] A bank may not use Tier 3 capital to satisfy any capital requirements for counterparty credit risk under appendix A of this part, including counterparty credit risk associated with derivative transactions in either trading or non-trading accounts.

purposes only after determining that the bank's internal model and risk management systems meet the criteria in section III. of this appendix E. Such a determination may require on-site examinations of the systems. The Federal Reserve may require modification to an internal model as deemed necessary to ensure compliance, on a continuing basis, with the provisions of this appendix E. A bank's internal model will be subject to continuing review, both on- and off-site, by the Federal Reserve.[11]

2. A bank should ensure that the level of sophistication of its internal model is commensurate with the nature and volume of the bank's trading activity in the risk factor categories covered by this appendix E and measures market risk as accurately as possible. In addition, the model should be adjusted to reflect changing portfolio composition and changing market conditions.

B. Qualitative Criteria

1. A bank using the internal models approach should have market risk management systems that are conceptually sound and implemented with integrity. Internal risk measurement models must be closely integrated into the day-to-day risk management process of the bank. For example, the risk measurement model must be used in conjunction with internal trading and exposure limits.

2. A bank must meet the following minimum qualitative criteria before using its internal model to measure its exposure to market risk.[12]

a. A bank must have a risk control unit that is independent from business trading units and reports directly to senior management of the bank. The unit must be responsible for designing and implementing the bank's risk management system and analyzing daily reports on the output of the bank's risk measurement model in the context of trading limits. The unit must conduct regular back-testing.[13]

b. Senior management must be actively involved in the risk control process. The daily reports produced by the risk management unit must be reviewed by a level of management with sufficient authority to enforce both reductions in positions taken by individual traders, as well as in the bank's overall risk exposure.

c. The bank must have a routine and rigorous program of stress-testing [14] to identify the effect of low-probability events on the bank's trading portfolio. Senior management must routinely review the results of stress-testing in the context of the potential effect of the events on bank capital and the appropriate procedures the bank should take to minimize losses. The policies of the bank set by management and the board of directors should identify appropriate stress-tests and the procedures to follow in response to the test results.

d. The bank must have established procedures for ensuring compliance with a documented set of internal policies and controls, as well as for monitoring the overall operation of the risk measurement system.

e. Not less than once a year, the bank must conduct, as part of its regular internal audit process, an independent review of the risk measurement system. This review must include both the activities of the business trading units and of the independent risk control unit of the bank.

f. Not less than once a year, the bank must conduct a review of its overall risk management process. The review must consider:

i. The adequacy of the documentation of the risk management system and process and the organization of the risk control unit;

ii. The integration of market risk measures into daily risk management and the integrity of the management information system;

iii. The process the bank employs for approving risk pricing models and valuation systems that are used by front- and back-office personnel;

iv. The scope of market risks captured by the risk measurement model and the validation of any significant changes in the risk measurement process;

v. The accuracy and completeness of position data, the accuracy and appropriateness of volatility and correlation assumptions, and the accuracy of valuation and risk sensitivity calculations;

vi. The verification process the bank employs to evaluate the consistency, timeliness, and reliability of data sources used to run internal models, including the independence of such data sources; and

vii. The verification process the bank uses to evaluate back-testing that is conducted to assess the model's accuracy.

C. Market Risk Factors

1. *Overview.* For regulatory capital purposes, a bank's internal risk measurement system(s) must use sufficient risk factors to capture the risks inherent in the bank's portfolio of on- and off-balance-sheet trading positions and must, subject to the following guidelines, cover interest rates, equity prices, exchange rates, commodity prices, and volatilities related to options positions in each risk factor category. The level of sophistication of the bank's risk factors must be commensurate with the nature and scope of the risks taken by the bank.

2. *Interest Rates.* a. A bank must use a set of market risk factors corresponding to interest rates in each currency in which it has material interest rate-sensitive on- or off-balance- sheet positions. The risk measurement system must model the yield curve [15] using one of a number of generally accepted approaches, for example, by estimating forward rates of zero coupon yields. The yield curve must be divided into various maturity segments in order to capture variation in the volatility of rates along the yield curve; there will typically be one risk factor corresponding to each maturity segment.

b. For material exposures to interest rate movements in the major currencies and markets, a bank must model the yield curve using a minimum of six risk factors. However, the number of risk factors used should ultimately be driven by the nature of the bank's trading strategies.[16] The risk measurement system must incorporate separate risk factors to capture spread risk.[17]

3. *Exchange rates.* A bank must use market risk factors corresponding to the exchange rate between the domestic currency and each foreign currency in which the bank has a significant exposure. The risk measurement system must incorporate market risk factors corresponding to the individual foreign currencies in which the bank's positions are denominated.

4. *Equity prices.* A bank must use market risk factors corresponding to each of the equity markets in which it holds significant positions. The sophistication and nature of the modeling technique for a given market must correspond to the bank's exposure to the overall market as well as to the bank's concentration in individual equity issues in that market. At a minimum, there must be a risk factor designed to capture market-wide movements in equity prices (such as a market index), but additional risk factors could track various sectors or individual issues.

5. *Commodity prices.* A bank must use market risk factors corresponding to each of the commodity markets in which it holds significant positions. The internal model must encompass directional risk, forward gap and interest rate risk, and basis risk.[18] The

[11] Banks that need to modify their existing modeling procedures to accommodate the requirements of this appendix E should, nonetheless, continue to use the internal models they consider most appropriate in evaluating risks for other purposes.

[12] If the Federal Reserve is not satisfied with the extent to which a bank meets these criteria, the Federal Reserve may adjust the multiplication factor used to calculate market risk capital requirements or otherwise increase capital requirements.

[13] Back-testing includes *ex post* comparisons of the risk measures generated by the model against the actual daily changes in portfolio value.

[14] Bank stress-testing should cover a range of factors that can create extraordinary losses or gains in trading portfolios or make the control of risk in those portfolios difficult. These factors include low-probability events of all types, including the various components of market, credit, and operational risks.

[15] Generally, a yield curve is a graph showing the term structure of interest rates by plotting the yields of all instruments of the same quality by maturities ranging from the shortest to the longest available. The resulting curve shows whether short-term interest rates are higher or lower than long-term interest rates.

[16] For example, a bank that has a portfolio of various types of securities across many points of the yield curve and that engages in complex arbitrage strategies would require a greater number of risk factors to capture interest rate risk accurately.

[17] Spread risk refers to the potential changes in value of an instrument or portfolio arising from differences in the behavior of baseline yield curves, such as those for U.S. Treasury securities, and yield curves reflecting sector, quality, or instrument specific factors. A variety of approaches may be used to capture the spread risk arising from less than perfectly correlated movements between government and other interest rates, such as specifying a completely separate yield curve for non-government instruments (for example, swaps or municipal securities) or estimating the spread over government rates at various points along the yield curve.

[18] Directional risk is the risk that a spot price will increase or decrease. Forward gap risk refers to the effects of owning a physical commodity versus owning a forward position in a commodity. Interest

model should also take into account the market characteristics, for example, delivery dates and the scope provided to traders to close out positions.

D. Quantitative Standards

1. A bank may use one of a number of generally accepted measurement techniques including, for example, an internal model based on variance-covariance matrices, historical simulations, or Monte Carlo simulations so long as the model employed captures all the material market risks.[19] The following minimum standards apply for purposes of using an internal model for calculating market risk capital requirements:

a. Value-at-risk must be calculated on a daily basis using a 99th percentile, one-tailed confidence interval[20] and the holding period must be ten trading days. For positions that display linear price characteristics, a bank may use value-at-risk numbers calculated according to shorter holding periods scaled up to ten days by the square root of time.[21]

b. Value-at-risk must be calculated using an observation period of at least one year to measure historical changes in rates and prices.

c. A bank must update its historical rates and prices at least once every three months and must reassess them whenever market conditions change materially.

2. A bank may use discretion in recognizing empirical correlations within each market risk factor category.[22] However, empirical correlations among risk categories are not recognized. The value-at-risk measure for each risk category must be added together on a simple sum basis to determine the aggregate value-at-risk amount.

3. A bank's models must accurately capture the unique risks associated with options within each of the market risk factor categories. The following minimum criteria apply to the measurement of options risk:

a. A bank's internal model must capture the non-linear price characteristics of option positions using an options pricing technique. The bank must apply a minimum ten-day holding period to option positions or positions that display option-like characteristics. Banks may not scale-up the daily value-at-risk numbers by the square root of time.

b. A bank's internal model must capture the volatilities of the rates and prices (that is, the vega) underlying option positions and a bank should measure the volatilities of the underlying instruments broken down by different option maturities.

4. The accuracy of a bank's internal model will be reviewed periodically by the Federal Reserve. Such review, during which, when appropriate, the Federal Reserve may take into consideration reports and opinions generated by external auditors or qualified consultants, will include, at a minimum:

a. Verification that the internal validation processes described in section III.B.2. of this Appendix E are operating in a satisfactory manner;

b. Affirmation that the formulae used in the calculation process and for the pricing of options and other complex instruments, are validated by a qualified unit of the bank, which in all cases must be independent from the trading areas;

c. Confirmation that the structure of the internal model is adequate with respect to the bank's activities and geographical coverage;

d. Confirmation that the results of the bank's back-testing of its internal measurement system (that is, comparing value-at-risk estimates with actual profits and losses) are being used effectively to monitor reliability of the model's estimates over time; and

e. Affirmation that, for regulatory capital purposes, the model processes all relevant data and that the modeling procedures conform with the parameters and specifications set forth in this appendix E.

IV. The Standardized Approach

A. Debt Instruments

1. *Specific Risk.* a. The capital requirement for specific risk is based on the identity of the obligor and, in the case of corporate securities, on the credit rating and maturity of the instrument. The specific risk capital requirement is calculated by weighting the current market value of each individual position, whether long or short, by the appropriate category factor as set forth below and summing the weighted values. In measuring specific risk, the bank may offset and exclude from its calculations any matched positions in the *identical* issue (including positions in derivatives). Even if the issuer is the same, no offsetting is permitted between different issues since differences in coupon rates, liquidity, call features, etc., mean that prices may diverge in the short run. The categories and factors are:

Category	Remaining maturity (contractual)	Factor (In percent)
Government	N/A	0.00
Qualifying	6 months or less	0.25
	6 to 12 months	1.00
	Over 12 months	1.60
Other	N/A	8.00

b. The *government* category includes all forms of debt instruments of central governments of the OECD-based group of countries[23] including bonds, Treasury bills and other short-term instruments, as well as local currency instruments of non-OECD central governments to the extent that the bank has liabilities booked in that currency.

c. The *qualifying* category includes securities of U.S. government-sponsored agencies, general obligation securities issued by states and other political subdivisions of the OECD-based group of countries, multilateral development banks, and debt instruments issued by U.S. depository institutions or OECD-banks that do not qualify as capital of the issuing institution.[24] It also includes other securities, including revenue securities issued by states and other political subdivisions of the OECD-based group of countries, that are rated investment-grade by at least two nationally recognized credit rating services, or rated investment-grade by one nationally recognized credit rating agency and not less than investment-grade by any other credit rating agency, or, with the exception of securities issued by U.S. firms and subject to review by the Federal Reserve, unrated but deemed to be of comparable investment quality by the reporting bank *and* the issuer has securities listed on a recognized stock exchange.

d. The *other* category includes debt securities not qualifying as government or qualifying securities. This would include non-OECD central government securities that do not meet the criteria for the government or qualifying categories. This category also includes instruments that qualify as capital issued by other banking organizations.

e. The Federal Reserve will consider the extent of a bank's position in non-investment grade instruments (sometimes referred to as high yield debt). If those holdings are not well-diversified or otherwise represent a material position to the institution, the Federal Reserve may prevent a bank from offsetting positions in these instruments with other positions in qualifying instruments that may be offset when calculating its general market risk requirement. In addition, the Board may impose a specific risk capital requirement as high as 16.0 percent.

2. *General Market Risk.* a. A bank may measure its exposure to general market risk using, on a continuous basis, either the

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rate risk is the risk of a change in the cost of carrying forward positions and options. Basis risk is the risk that the relationship between the prices of similar commodities changes over time.

[19] In a variance/covariance approach, the change in value of the portfolio is calculated by combining the risk factor sensitivities of the individual positions—derived from valuation models—with a variance/covariance matrix based on risk factor volatilities and correlations. A bank using this approach would calculate the volatilities and correlations of the risk factors on the basis of the holding period and the observation period. A bank using a historical simulation would calculate the hypothetical change in value of the current portfolio in the light of historical movements in risk factors. This calculation would be done for each of the defined holding periods over a given historical measurement horizon to arrive at a range of simulated profits and losses. A bank using a Monte Carlo technique would consider historical movements to determine the probability of particular price and rate changes.

[20] A one-tailed confidence interval of 99 percent means that there is a 1 percent probability based on historical experience that the combination of positions in a bank's portfolio would result in a loss higher than the measured value-at-risk.

[21] This transformation entails multiplying a bank's value-at-risk by the square root of the ratio of the required holding period (ten days) to the holding period embodied in the value-at-risk figure. For example, the value-at-risk calculated according to a one-day holding period would be scaled-up by the "square root of time" by multiplying the value-at-risk by 3.16 (the square root of the ratio of a ten-day holding period to a one-day holding period).

[22] While a bank has flexibility to use correlations, the Federal Reserve must be satisfied that there is integrity in the bank's process for calculating correlations.

[23] The OECD-based group of countries is defined in section III.B.1. of appendix A of this part.

[24] U.S. government-sponsored agencies, multilateral development banks, and OECD banks are defined in section III.C.2. of appendix A of this part.

maturity method (which uses standardized risk weights that approximate the price sensitivity of various instruments) or the duration method (where the institution calculates the precise duration of each instrument, weighted by a specified change in interest rates).

b. Both methods use a maturity-ladder that incorporates a series of ''time-bands'' and ''zones'' to group together securities of similar maturities and that are designed to take into account differences in price sensitivities and interest rate volatilities across different maturities. Under either method, the capital requirement for general market risk is the sum of a base charge that results from fully netting various risk-weighted positions and a series of additional charges (add-ons), which effectively ''disallow'' part of the previous full netting to address basis and yield curve risk.

c. For each currency in which a bank has significant positions, a separate capital requirement must be calculated. No netting of positions is permitted across different currencies. Offsetting positions of the same amount in the same issues, whether actual or notional, may be excluded from the calculation, as well as closely matched swaps, forwards, futures, and forward rate agreements (FRAs) that meet the conditions set out in section IV.A.3. of this Appendix E.

d. In the *maturity method*, the bank distributes each long or short position (at current market value) of a debt instrument into the time-bands of the maturity ladder. Fixed-rate instruments are allocated according to the remaining term to maturity and floating-rate instruments according to the next repricing date. A callable bond trading above par is slotted according to its first call date, while a callable bond priced below par is slotted according to remaining maturity. Fixed-rate mortgage-backed securities, including collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs), are slotted according to their expected weighted average lives.

e. Once all long and short positions are slotted into the appropriate time-band, the long positions in each time-band are summed and the short positions in each time-band are summed. The summed long and/or short positions are multiplied by the appropriate risk-weight factor (reflecting the price sensitivity of the positions to changes in interest rates) to determine the risk-weighted long and/or short position for each time-band. The risk weights for each time-band are set out in Table I below:

TABLE I.—MATURITY METHOD: TIME-BANDS AND WEIGHTS

Zone	Coupon 3% or more	Coupon less than 3% and zero coupon bonds	Risk weights [percent]
1	up to 1 month	up to 1 month	0.00
	1 up to 3 months	1 up to 3 months	0.20
	3 up to 6 months	3 up to 6 months	0.40
	6 up to 12 months	6 up to 12 months	0.70
2	1 up to 2 years	1 up to 1.9 years	1.25
	2 up to 3 years	1.9 up to 2.8 yrs	1.75
	3 up to 4 years	2.8 up to 3.6 yrs	2.25
3	4 up to 5 years	3.6 up to 4.3 yrs	2.75
	5 up to 7 years	4.3 up to 5.7 yrs	3.25
	7 up to 10 years	5.7 up to 7.3 yrs	3.75
	10 up to 15 years	7.3 up to 9.3 yrs	4.50
	15 up to 20 years	9.3 up to 10.6 yrs	5.25
	Over 20 years	10.6 up to 12 yrs	6.00
		12 up to 20 yrs	8.00
		Over 20 years	12.50

f. Within each time-band for which there are risk-weighted long and short positions, the risk-weighted long and short positions are then netted, resulting in a single net risk-weighted long or short position for each time-band. Since different instruments and different maturities may be included and netted within each time-band, a capital requirement, referred to as the vertical disallowance, is assessed to allow for basis risk. The vertical disallowance capital requirement is 10.0 percent of the position eliminated by the intra-time-band netting, that is, 10.0 percent of the smaller of the net risk-weighted long or net risk-weighted short position, or if the positions are equal, 10.0 percent of either position.[25] The vertical disallowances for each time-band are absolute values, that is, neither long nor short. The vertical disallowances for all time-bands in the maturity ladder are summed and included as an element of the general market risk capital requirement.

g. Within each zone for which there are risk-weighted long and short positions in different time-bands, the weighted long and short positions in all of the time-bands within the zone are then netted, resulting in a single net long or short position for each zone. Since different instruments and different maturities may be included and netted within each zone, a capital requirement, referred to as the horizontal disallowance, is assessed to allow for the imperfect correlation of interest rates along the yield curve. The horizontal disallowance capital requirement is calculated as a percentage of the position eliminated by the intra-zone netting, that is, a percentage of the smaller of the net risk-weighted long or net risk-weighted short position, or if the positions are equal, a percentage of either position.[26] The percent disallowance factors for intra-zone netting are set out in Table II in section IV.A.2.h. of this Appendix E. The horizontal disallowances, like the vertical disallowances, are absolute values that are summed and included as an element of the general market risk capital requirement.

h. Risk-weighted long and short positions in different zones are then netted between the zones. Zone 1 and zone 2 are netted if possible, reducing or eliminating the net long or short position in zone 1 or zone 2 as appropriate. Zone 2 and zone 3 are then netted if possible, reducing or eliminating the net long or short position in zone 2 or zone 3 as appropriate. Zone 3 and zone 1 are then netted if possible, reducing or eliminating the long or short position in zone 3 and zone 1 as appropriate. A horizontal disallowance capital requirement is then assessed, calculated as a percentage of the position eliminated by the inter-zone netting. The horizontal disallowance capital requirements for each zone are then summed as absolute values and included in the general market risk capital charge. The percent disallowance factors for inter-zone netting are set out in Table II below:

[25] For example, if the sum of the weighted longs in a time-band is $100 million and the sum of the weighted shorts is $90 million, the vertical disallowance for the time-band is 10.0 percent of $90 million, or $9 million.

[26] For example, if the sum of the weighted longs in the 1–3 month time-band in Zone 1 is $8 million and the sum of the weighted shorts in the 3–6 month time-band is $10 million, the horizontal disallowance for the zone if forty percent of $8 million, or $3.2 million.

TABLE II.—HORIZONTAL DISALLOWANCES

Zone	Time-band	Within the zone (percent)	Between adjacent zones (percent)	Between zones 1–3 (percent)
1	0–1 month	40	40	100
	1–3 months			
	3–6 months			
	6–12 months			
2	1–2 years	30	40	100
	2–3 years			
	3–4 years			
3	1–5 years	30	40	100
	5–7 years			
	7–10 years			
	0–15 years			
	5–20 years			
	over 20 years			

i. Finally, the net risk-weighted long or net risk-weighted short positions remaining in the zones are summed to reach a single net risk-weighted long or net risk-weighted short position for the bank's portfolio. The sum of the absolute value of this position and the vertical and horizontal disallowances is the capital requirement for general market risk. An example of the calculation of general market risk under the maturity method is in Attachment II to this appendix E.

j. In the *duration method*, the bank, after calculating each instrument's modified duration [27] using a formula that is subject to supervisory review, multiplies that modified duration by the interest rate shock specified for an instrument of that duration in Table III in section IV.A.2.k. of this appendix E. The resulting product (representing the expected percentage change in the price of the instrument for the given interest rate shock) is then multiplied by the current market value of the instrument. The resulting amount is then slotted as a long or short position into a time-band in the maturity ladder in Table III on the basis of the instrument's modified duration.[28]

k. Once all of the bank's traded debt instruments have been slotted into the maturity ladder, the bank conducts the same rounds of netting and disallowances described in sections IV.A.2.f. through IV.A.2.h. of this appendix E for the maturity method, with the exception that the vertical disallowance requirement for the duration method is 5.0 percent (horizontal disallowances continue to be those set out in Table II).[29] As with the maturity method, the sum of the absolute value of the final net position and the vertical and horizontal disallowances is the general market risk capital requirement:

TABLE III.—DURATION METHOD: TIME-BANDS AND ASSUMED CHANGES IN YIELD

Zone	Time-band	Assumed change in yield
1	Up to 1 month	1.00
	1 up to 3 months	1.00
	3 up to 6 months	1.00
	6 up to 12 months	1.00
2	1.0 up to 1.8 years	0.90
	1.8 up to 2.6 years	0.80
	2.6 up to 3.3 years	0.75
3	3.3 up to 4.0 years	0.75
	4.0 up to 5.2 years	0.70
	5.2 up to 6.8 years	0.65
	6.8 up to 8.6 years	0.60
	8.6 up to 9.9 years	0.60
	9.9 up to 11.3 years	0.60
	11.3 up to 16.6 years	0.60
	Over 16.6 years	0.60

3. *Interest rate derivatives*. a. Debt derivatives and other off-balance-sheet positions that are affected by changes in interest rates are included in the measurement system under section IV.A. of this Appendix E (except for options and the associated underlyings, which are included in the measurement system under the treatment discussed in section IV.E. of this Appendix E). A summary of the treatment for debt derivatives is set out in Attachment III to this Appendix E.

b. Derivatives are converted into positions in the relevant underlying instrument and are included in the calculation of specific and general market risk capital charges as described above. The amount to be included is the market value of the principal amount of the underlying or of the notional underlying. For instruments where the apparent notional amount differs from the effective notional amount, a bank must use the effective notional amount.

c. Futures and forward contracts (including FRAs) are broken down into a combination of a long position and short position in the notional security. The maturity of a future or a FRA is the period until delivery or exercise of the contract, plus the life of the underlying instrument.[30] Where a range of instruments may be delivered to fulfill the contract, the bank may chose which deliverable instrument goes into the maturity or duration ladder as the notional underlying. In the case of a future on a corporate bond index, positions are included at the market value of the notional underlying portfolio of securities.

d. Swaps are treated as two notional positions in the relevant instruments with appropriate maturities. The receiving side is treated as the long position and the paying side is treated as the short position.[31] The separate sides of cross-currency swaps or forward foreign exchange transactions are slotted in the relevant maturity ladders for the currencies concerned. For swaps that pay or receive a fixed or floating interest rate against some other reference price, for example, an equity index, the interest rate component is slotted into the appropriate repricing maturity category, with the long or short position attributable to the equity component being included in the equity framework set out in section IV.B. of this Appendix E.[32]

[27] The duration of an instrument is its approximate percentage change in price for a 100 basis point parallel shift in the yield curve assuming that its cash flow does not change the yield curve shifts. Modified duration is duration divided by a factor of 1 plus the interest rate.

[28] For example, an instrument held by a bank with a maturity of 4 years and 3 months and a current market value of $1,000 might have a modified duration of 3.5 years. Based on its modified duration, it would be subjected to the 75-basis point interest rate shock, resulting in an expected price change of 2.625 percent (3.5×0.75). The corresponding expected change in price of $26.25, calculated as 2.625 percent of $1,000, would be slotted as a long position in the 3.3 to 4.0 year time-band of the maturity ladder.

[29] Two different vertical disallowances are used since the duration method takes into account an instrument's specific characteristics (maturity and coupon) and there is less opportunity for measurement error.

[30] For example, a long position in a June three-month interest rate future (taken in April) is reported as a long position in a government security with a maturity of five months an a short position in a government security with a maturity to two months.

[31] For example, an interest rate swap under which a bank is receiving floating-rate interest and paying fixed is treated as a long position in a floating rate instrument with a maturity equivalent to the period until the next interest reset date and a short position in a fixed-rate instrument with a maturity equivalent to the remaining life of the swap.

[32] A bank with a large swap book may, with prior approval of the Federal Reserve, use alternative

Continued

e. A bank may offset long and short positions (both actual and notional) in identical derivative instruments with exactly the same issuer, coupon, currency, and maturity before slotting these positions into time-bands. A matched position in a future and its corresponding underlying may also be fully offset and, thus, excluded from the calculation, except when the future comprises a range of deliverable instruments. However, in cases where, among the range of deliverable instruments, there is a readily identifiable underlying instrument that is most profitable for the trader with a short position to deliver, positions in the futures contract and the instrument may be offset. No offsetting is allowed between positions in different currencies.

f. Offsetting positions in the same category of instruments can in certain circumstances be regarded as matched and treated by the bank as a single net position which should be entered into the appropriate time-band. To qualify for this treatment the positions must be based on the same underlying instrument, be of the same nominal value, and be denominated in the same currency. The separate sides of different swaps may also be ''matched'' subject to the same conditions. In addition:

i. For futures, offsetting positions in the notional or underlying instruments to which the futures contract relates must be for identical instruments and the instruments must mature within seven days of each other;

ii. For swaps and FRAs, the reference rate (for floating rate positions) must be identical and the coupon closely matched (i.e., within 15 basis points); and

iii. For swaps, FRAs and forwards, the next interest reset date, or for fixed coupon positions or forwards the remaining maturity, must correspond within the following limits: If the reset (remaining maturity) dates occur within one month, then the reset dates must be on the same day; if the reset dates occur between one month and one year later, then the reset dates must occur within seven days of each other, or if the reset dates occur over one year later, then the reset dates must occur within thirty days of each other.

g. Interest rate and currency swaps, FRAs, forward foreign exchange contracts and interest rate futures are not subject to a specific risk charge. This exemption also applies to futures on a short-term (e.g., LIBOR) interest rate index. However, in the case of futures contracts where the underlying is a debt security, or an index representing a basket of debt securities, a specific risk charge will apply according to the category of the issuer as set out in section IV.A.1. of this Appendix E.

formulae to calculate the positions to be included in the maturity or duration ladder. For example, a bank could first convert the payments required by the swap into present values. For that purpose, each payment would be discounted using zero coupon yields, and the payment's present value entered into the apprioriate time-band using procedures that apply to zero (or low) coupon bonds. The net amounts would then be treated as bonds, and slotted into the general market risk framework. Such alternative treatments will, however, only be allowed if: (i) the Federal Reserve is fully satisified with the accuracy of the system being used, (ii) the positions calculated fully reflect the sensitivity of the cash flows to interest rate changes; and (iii) the positions are denominated in the same currency.

B. Equities

1. *Specific risk*. The measure of specific risk is calculated on the basis of the bank's gross equity positions, that is, the absolute sum of all long equity positions and of all short equity positions at current market value.[33] The specific risk capital requirement is 8.0 percent of that sum, unless the portfolio is both liquid and well-diversified, in which case the specific risk capital requirement is 4.0 percent of the gross equity position. A specific risk charge of 2.0 percent applies to the net long or short position in a broad, diversified equity index and is viewed as necessary to provide for risks associated with contract execution.[34]

2. *General Market risk*. The measure of general market risk is based on the difference between the sum of the long positions and the sum of the short positions (i.e., the overall net position in an equity market) at current market value. An overall net position must be separately calculated for each national market in which the bank holds equities. The capital requirement for general market risk is 8.0 percent of the net position in each equity market.

3. *Equity derivatives*. a. Equity derivatives and other off-balance-sheet positions that are affected by changes in equity prices are included in the measurement system under section IV.B. of this Appendix E (except for equity options, equity index options, and the associated underlying, which are included in the measurement system under the treatment discussed in section IV.E. of this Appendix E).[35] This includes futures and swaps on both individual equities and on equity indices. Equity derivatives should be converted into notional equity positions in the relevant underlying. A summary of the rules for equity derivatives is set out in Attachment III to this Appendix E.

b. Futures and forward contracts relating to individual equities should be reported at current market prices of the underlying. Futures relating to equity indices should be reported as the marked-to-market value of the notional underlying equity portfolio. Equity swaps are treated as two notional positions, with the receiving side as the long position and the paying side as the short position.[36] If one of the legs involves receiving/paying a fixed or floating interest rate, the exposure should be slotted into the appropriate repricing maturity band for debt securities. The stock index is covered by the equity treatment.

c. In the case of futures-related arbitrage strategies, the 2.0 percent specific risk charge applicable to broad diversified equity indices may be applied to only one index. The opposite position is exempt from a specific risk charge. The strategies qualifying for this treatment are:

i. When the bank takes an opposite position in exactly the same index at different dates; and

ii. When the bank has an opposite position in different but similar indices at the same date, subject to supervisory oversight.

d. If a bank engages in a deliberate arbitrage strategy, in which a futures contract on a broad diversified equity index matches a basket of securities, it may exclude both positions from the standardized approach on condition that the trade has been deliberately entered into and separately controlled and the composition of the basket of stocks represents at least 90 percent of the market value of the index. In such a case, the minimum capital requirement is 4.0 percent (that is, 2.0 percent of the gross value of the positions on each side) to reflect risk associated with executing the transaction. This applies even if all of the securities comprising the index are held in identical proportions. Any excess value of the securities comprising the basket over the value of the futures contract or excess value of the futures contract over the value of the basket is treated as an open long or short position.

e. If a bank takes a position in depository receipts [37] against an opposite position in the underlying equity, it may offset the position.

C. Foreign Exchange Risk

1. The capital requirement for foreign exchange risk covers the risk of holding or taking positions in foreign currencies, including gold, and is based on a bank's net open long positions or net open short positions in each currency, whether or not those positions are in the trading portfolio, plus the net open position in gold, regardless of sign.[38]

[33] Matched positions in each additional equity in each national market may be treated as offsetting and excluded from the capital calculation, with any remaining position included in the calculations for specific and general market risk. For example, a future in a given equity may be offset against an opposite cash position in the same equity.

[34] A portfolio that is liquid and well-diversified is characterized by a limited sensitivity to price changes of any single equity issue or closely related group of equity issues held in the portfolio. The volatility of the portfolio's value should not be dominated by the volatility of any individual equity issue or by equity issues from any single industry or economic sector. In general, such portfolios should be characterized by a large number of individual equity positions, with no single position representing a large portion of the portfolio's total market value. In addition, it would generally be the case that a sizeable proportion of the portfolio would be comprised of issues traded on organized exchanges or in well-established over-the-counter markets.

[35] Where equities are part of a forward contract (both equities to be received or to be delivered), any interest rate or foreign currency exposure from the other side of the contract should be appropriately included in the measurement systems in sections IV.A. and IV.C. of this Appendix E.

[36] For example, an equity swap in which a bank is receiving an amount based on the change in value of one particular equity or equity index and paying a different index will be trated as a long position in the former and a short position in the latter.

[37] Depository receipts are instruments issued by a trust company or other depository institution evidencing the deposit of foreign securities and facilitating trading in such instruments on U.S. stock exchanges.

[38] Gold is treated as a foreign exchange position rather than a commodity because its volatility is more in line with foreign currencies and banks manage it in a manner similar to foreign currencies.

2. A bank's net open position in each currency (and gold) is calculated by summing:

a. The net spot position (i.e., all asset items less all liability items, including accrued interest earned but not yet received and accrued expenses, denominated in the currency in question);

b. All foreign exchange derivative instruments and other off-balance-sheet positions that are affected by changes in exchange rates are included in the measurement system under section IV.C. of this Appendix E (except for options and their associated underlyings, which are included in the measurement system under the treatment discussed in section IV.E. of this Appendix E). Forward currency positions should be valued at current spot market exchange rates. For a bank in which the basis of its normal management accounting is to use net present values, forward positions may be discounted to net present values as an acceptable way of measuring currency positions for regulatory capital purposes;

c. Guarantees (and similar instruments) that are certain to be called and are likely to be irrevocable;

d. Net future income/expenses not yet accrued but already fully hedged (at the discretion of the bank). A bank that includes future income and expenses must do so on a consistent basis without selecting expected future flows in order to reduce the bank's position; and

e. Any other item representing a profit or loss in foreign currencies.

3. For measuring a bank's open positions, positions in composite currencies, such as the ECU, may be either treated as a currency in their own right or split into their component parts on a consistent basis. Positions in gold are measured in the same manner as described in section IV.D. of this Appendix E.[39]

4. The capital requirement is determined by converting the nominal amount (or net present value) of the net open position in each foreign currency (and gold) at spot rates into the reporting currency. The capital requirement is 8.0 percent of the sum of:

a. The greater of the sum of the net short open positions or the sum of the net long open positions (absolute values); and

b. The net open position in gold, regardless of sign.[40]

5. Where a bank is assessing its foreign exchange risk on a consolidated basis, it may be technically impractical in the case of some marginal operations to include the currency positions of a foreign branch or subsidiary of the bank. In such cases, the internal limit in each currency may be used as a proxy for the positions, provided there is adequate ex post monitoring of actual positions complying with such limits. In these circumstances, the limits should be added, regardless of sign, to the net open position in each currency.

D. Commodities Risk

1. *Measurement methods.* This section provides a minimum capital requirement to cover the risk of holding or taking positions in commodities. There are two methods under the standardized approach for measuring commodity market risk—the simplified method and the maturity method. These methods are only appropriate for banks that conduct a limited amount of commodities business. All other banks must adopt an internal measurement system conforming to the criteria in section III. of this Appendix E.

2. *Base capital requirement.* Under both the simplified and maturity methods, each long and short commodity position (spot and forward) is expressed in terms of the standard unit of measurement (such as barrels, kilos, or grams). The open positions in each category of commodities are then converted at current spot rates into U.S. currency, with long and short positions offset to arrive at the net open position in each commodity. Positions in different categories of commodities may not, generally, be offset.[41] Under either method, the base capital requirement is 15.0 percent of the net open position, long or short, in each commodity.[42]

3. *Simplified method.* To protect a bank against basis risk, interest rate risk, and forward gap risk, each category of commodity is also subject to a 3.0 percent capital requirement on the bank's gross positions, long plus short, in the particular commodity. In valuing gross positions in commodity derivatives for this purpose, a bank should use the current spot price. The total capital requirement for commodities risk is the sum of the 15.0 percent base charges for each net commodity position and the 3.0 percent requirements on the gross commodity positions.

4. *Maturity method.* a. Under this method, a bank must slot each long and short commodity position (converted into U.S. currency at current spot rates) into a maturity ladder. The time-bands for the maturity ladder are; from zero to one month, one up to three months, three up to six months, six up to twelve months, one up to two years, two up to three years, and over three years. A separate maturity ladder is used for each category of commodity. Physical commodities are allocated to the first time-band.

b. In order to capture forward gap and interest rate risk within a time-band (together sometimes referred to as curvature/spread risk), offsetting long and short positions in each time-band are subject to an additional capital requirement. Beginning with the shortest-term time-band and continuing with subsequent time-bands, the amount of the matched short position plus the amount of the matched long position is multiplied by a spread rate of 1.5 percent.

c. The unmatched net position from shorter-term time-bands must be carried forward to offset exposures in longer-term time-bands. A capital requirement of 0.6 percent of the net position carried forward is added for each time-band that the net position is carried forward.[43] The total capital requirement for commodities risk is the sum of the 15.0 percent base capital requirement for each net commodity position and the additional requirements for matched positions and for unmatched positions carried forward. An example of this calculation is in Attachment IV to this Appendix E.

5. *Commodity derivatives.* Commodity derivatives and other off-balance-sheet positions that are affected by changes in commodity prices are included in the measurement system under section IV.D. of this Appendix E (except for options and the associated underlying, which are included in the measurement system under the treatment discussed in section IV.E. of this Appendix E). Commodity derivatives are converted into notional commodity positions. Under the maturity method, the positions are slotted into maturity time-bands as follows:

a. Futures and forward contracts relating to individual commodities are incorporated in the measurement system as notional amounts (of, for example, barrels or kilos) that are converted to U.S. dollars at current spot rates and are assigned a maturity according to expiration date;

b. Commodity swaps where one side of the contract is a fixed price and the other side is the current market price are incorporated as a series of positions equal to the notional amount of the contract at current spot rates, with one position corresponding to each payment on the swap and slotted in the maturity ladder accordingly. The positions are long positions if the bank is paying a fixed price and receiving a floating price, and short positions if the bank is receiving a fixed price and paying a floating price;[44] and

c. Commodity swaps where the sides of the transaction are in different commodities are included in the relevant reporting ladder. No offsetting is allowed unless the commodities are in the same sub-category.

[39] Where gold is part of a forward contract (quantity of gold to be received or to be delivered), any interest rate or foreign currency exposure from the other side of the contract should be included in measurement system in section IV.A. (as a zero coupon instrument) and IV.C. of this Appendix E.

[40] For example, a bank has the following net currency positions: Yen=+50, DM=+100, GB=+150, FFR=−20, US$=−180, and gold=−35. The bank would sum its long positions (total=+300) and sum its short positions (total=−200). The bank's capital requirement for foreign exchange market risk would be: (300 (the larger of the summed long and short positions) +35 (gold)) ×8.0%=$26.80.

[41] However, offsetting is permitted between different sub-categories of the same commodity in cases where the sub-categories are deliverable against each other.

[42] When the funding of a commodity position opens a bank to interest rate or foreign exchange exposure the relevant positions should be included in the measures of interest rate and foreign exchange risk described in sections IV.A. and IV.C. of this Appendix E. When a commodity is part of a forward contract, any interest or foreign currency exposure from the other side of the contract should be appropriately included in the measurement systems in sections IV.A. and IV.C. of this Appendix E.

[43] For example, if $200 short is carried forward from the 3–6 month time-band to the 1–2 year time-band, the capital charge would be $200×.006×2=$2.40.

[44] If one of the sides of the transaction involves receiving/paying a fixed or floating interest rate, that exposure should be slotted into the appropriate repricing maturity band in section IV.A. of this Appendix E.

E. Options

1. Three alternatives are available for a bank to use in measuring its market risk for options activities. A bank that only has purchased options may use the simplified method set forth in section IV.E.2. of this Appendix E. A bank that also writes options may use the scenario method described in section IV.E.3. of this Appendix E or the delta-plus method set forth in section IV.E.4. of this Appendix E.[45] These methods may only be used by banks which, in relative terms, have limited options activities. Banks with more significant options business are expected to adopt an internal measurement system conforming to the criteria in section III. of this Appendix E. Regardless of the method used, specific risk related to the issuer of an instrument still applies to options positions for equities, equity indices and corporate debt securities as set forth in sections IV.A. and IV.B. of this Appendix E. There remains a separate capital requirement for counterparty credit risk as set forth in appendix A to this part.

2. Under the simplified and scenario methods, the positions for the options and the associated underlying, cash or forward, are not included in the measurement framework for debt securities, equities, foreign exchange or commodities risk as set forth in sections IV.A. through IV.D. of this Appendix E. Rather, they are subject to capital requirements as calculated in this section IV.E. The capital requirements calculated under this section IV.E. should then be added to the capital requirements for debt securities, equities, foreign exchange, and commodities risk as appropriate. Under the delta-plus method, the delta equivalent position [46] for each option is included in the measurement frameworks set forth in sections IV.A. through IV.D. of this Appendix E.

3. A bank that has only a limited amount and range of purchased options may use the following simplified approach to measure its market risk exposure.

a. For a bank with a long cash position and a long put or with a short cash position and a long call, the capital requirement is the market value of the underlying instrument multiplied by the sum of the specific and general market risk requirements for the underlying (that is, the specific and general market risk requirements that would have applied to the underlying directly under sections IV.A. through IV.D. of this Appendix E [47]), less the amount the option is in the money (if any) bounded at zero.[48]

b. For a bank with a long call or a long put, the capital charge is the lesser of:

i. The market value of the underlying security multiplied by the sum of specific and general market risk requirements for the underlying (that is, the specific and general market risk requirements that would have applied to the underlying directly under sections IV.A. through IV.D. of this Appendix E [49]); or

ii. The market value of the option.

c. Under this measure, the capital requirement for currency options is 8.0 percent of the market value of the underlying and for commodity options is 15.0 percent of the market value of the underlying.

4. Under the scenario approach, a bank revalues its options and related hedging positions by changing the underlying rate or price over a specified range and by assuming different levels of volatility for that rate or price.

a. For each of its option portfolios, a bank constructs a grid based on a fixed range of changes in the portfolio's risk factors and calculates changes in the value of the option portfolio at each point within the grid. For this purpose, an option portfolio consists of an option and any related hedging positions or multiple options and related hedging positions that are grouped together according to their remaining maturity or the type of underlying.

b. Options based on interest rates and debt instruments are grouped into portfolios according to the maturity zones that are set forth in section IV.A. of this Appendix E. (Zone 1 instruments have a remaining maturity of up to 1 year, zone 2 instruments have a remaining maturity from 1 year up to 4 years, and zone 3 instruments have a remaining maturity of 4 years or more.) These options and the associated hedging positions should be evaluated under the assumption that the relevant interest rates move simultaneously. For options based on equities, separate grids are constructed for each individual equity issue and index. For options based on exchange rates, separate grids are constructed for individual exchange rates. For options based on commodities, separate grids are constructed for each category of commodity (as defined in sections I.B.3. and IV.D. of this Appendix E).

c. For option portfolios with options based on equities, exchange rates, and commodities, the first dimension of the grid consists of rate or price changes within a specified range above and below the current market value of the underlying; for equities, the range is ±12.0 percent (or in the case of an index ±8.0 percent), for exchange rates the range is ±8.0 percent, and for commodities the range is ±15.0 percent. For option portfolios with options based on interest rates, the range for the first dimension of the grid depends on the remaining maturity zone. The range for zone 1 is ±100 basis points, the range for zone 2 is ±90 basis points, and the range for zone 3 is ±75 basis points. For all option portfolios, the range is divided into at least ten equally spaced intervals. The second dimension of each grid is a shift in the volatility of the underlying rate or price equal to ±25.0 percent of the current volatility.[50]

d. For each assumed volatility and rate or price change (a scenario), the bank revalues each option portfolio. The market risk capital requirement for the portfolio is the largest loss in value from among the scenario revaluations. The total market risk capital requirement for all option portfolios is the sum of the individual option portfolio capital requirements.

e. The Federal Reserve will review the application of the scenario approach, particularly regarding the precise way the analysis is constructed. A bank using the scenario approach should meet the appropriate qualitative criteria set forth in section III.B. of this Appendix E.

5. Under the delta-plus method, a bank that writes options may include delta-weighted options positions within each measurement framework as set forth in sections IV.A. through IV.D. of this Appendix E.

a. Options positions should be measured as a position equal to the market value of the underlying instrument multiplied by the delta. In addition, a bank must measure the sensitivities of the option's gamma (the change of the delta for a given change in the price of the underlying) and vega (the sensitivity of the option price with respect to a change in volatility) to calculate the total capital requirement. These sensitivities may be calculated according to an exchange model approved by the Federal Reserve or to the bank's own options pricing model, subject to review by the Federal Reserve.

b. For options with debt instruments or interest rates as the underlying instrument, delta-weighted options positions should be slotted into the debt instrument time-bands in section IV.A. of this Appendix E using a two-legged approach (as is used for other derivatives), requiring one entry at the time the underlying contract takes effect and one at the time the underlying contract matures.[51] Floating rate instruments with

[45] Unless all their written option positions are hedged by perfectly matched long positions in exactly the same options, in which case there is no capital requirement for market risk.

[46] The delta equivalent of an option is the option's delta value multiplied by its principal or notional value. The delta value of an option represents the expected change in the option's price as a proportion of a small change in the price of the underlying instrument. For example, an option whose price changes $1 for every $2 dollar change in the price of the underlying instrument has a delta of 0.50.

[47] Some options (e.g., where the underlying is an interest rate, a currency, or a commodity) bear no specific risk but specific risk will be present in the case of options on corporate debt securities and for options on equities and equity indices.

[48] For example, if a holder of 100 shares currently valued at $10 each has an equivalent put option with a strike price of $11, the capital charge would be: $1,000×16.0 percent (e.g., 8.0 percent specific plus 8.0 percent general market risk)=$160, less the amount the option is in the money ($11−$10)×100=$100, i.e., the capital charge would be $60. A similar methodology applies for options whose underlying is a foreign currency, a debt security or a commodity.

[49] See footnote 47 in section IV.E.3.a. of this appendix E.

[50] For example, if the underlying of an equity instrument has a current market value of $100 and a volatility of 20 percent, the first dimension of the grid would range from $88 to $112, divided into ten intervals of $2.40 and the second dimension would assume volatilities of 15 percent, 20 percent, and 25 percent.

[51] For example, in April, a purchased call option on a June three-month interest-rate future would be considered on the basis of its delta-equivalent value to be a long position with a maturity of five months and a short position with a maturity of two months. The written option would be slotted as a long

caps or floors should be treated as a combination of floating rate securities and a series of European-style options.[52] A bank must also calculate the gamma and vega for each such option position (including hedge positions). The results should be slotted into separate maturity ladders by currency. For options such as caps and floors whose underlying instrument is an interest rate, the delta and gamma should be expressed in terms of a hypothetical underlying security. Subsequently:

i. For gamma risk, for each time-band, net gammas that are negative are multiplied by the risk weights set out in Table IV in section IV.E.5.b.iv. of this Appendix E and by the square of the market value of the underlying instrument (net positive gammas may be disregarded);

ii. For volatility risk, a bank calculates the capital requirements for vega in each time-band assuming a proportional shift in volatility of ±25.0 percent;

iii. The capital requirement is the absolute value of the sum of the individual capital requirements for net negative gammas plus the absolute value of the sum of the individual capital requirements for vega risk for each time-band; and

iv. The delta plus method risk weights are:

TABLE IV.—DELTA PLUS METHOD RISK WEIGHTS

Time-band	Modified duration (average assumed for time band)	Assumed interest rate change (%)	Risk-weight for gamma[1]
Under 1 month	0.00	1.00	0.00000
1 up to 3 months	0.20	1.00	0.00020
3 up to 6 months	0.40	1.00	0.00080
6 up to 12 months	0.70	1.00	0.00245
1 up to 2 years	1.40	0.90	0.00794
2 up to 3 years	2.20	0.80	0.01549
3 up to 4 years	3.00	0.75	0.02531
4 up to 5 years	3.65	0.75	0.03747
5 up to 7 years	4.65	0.70	0.05298
7 up to 10 years	5.80	0.65	0.07106
10 up to 15 years	7.50	0.60	0.10125
15 up to 20 years	8.75	0.60	0.13781
Over 20 years	10.00	0.60	0.18000

[1] According to the Taylor expansion, the risk weights are calculated as ½ (modified duration x assumed interest rate change) ^{2}/100.

c. For options with equities as the underlying, delta-weighted option positions should be incorporated in the measure of market risk set forth in section IV.B. of this Appendix E. Individual equity issues and indices should be treated as separate underlyings. In addition to the capital requirement for delta risk, a bank must apply a further capital charge for gamma and vega risk:

i. For gamma risk, the net gammas that are negative for each underlying are multiplied by 0.72 percent (in the case of an individual equity) or 0.32 percent (in the case of an index as the underlying) and by the square of the market value of the underlying;

ii. For volatility risk, a bank calculates the capital requirement for vega for each underlying, assuming a proportional shift in volatility of ±25.0 percent; and

iii. The capital requirement is the absolute value of the sum of the individual capital requirements for net negative gammas plus the absolute value of the individual capital requirements for vega risk.

d. For options of foreign exchange and gold positions, the net delta (or delta-based) equivalent of the total book of foreign currency and gold options is incorporated into the measurement of the exposure in a single currency position as set forth in section IV.C. of this Appendix E. The gamma and vega risks are measured as follows:

i. For gamma risk, for each underlying exchange rate, net gammas that are negative are multiplied by 0.32 percent and by the square of the market value of the positions;

ii. For volatility risk, a bank calculates the capital requirements for vega for each currency pair and gold assuming a proportional shift in volatility of ±25.0 percent; and

iii. The capital requirement is the absolute value of the sum of the individual capital requirements for net negative gammas plus the absolute value of the sum of the individual capital requirements for vega risk.

e. For options on commodities, the delta-weighted positions are incorporated in one of the measures described in section IV.D. of this Appendix E. In addition, a bank must apply a capital requirement for gamma and vega risk:

i. For gamma risk, net gammas that are negative for each underlying are multiplied by 1.125 percent and by the square of the market value of the commodity;

ii. For volatility risk, a bank calculates the capital requirements for vega for each commodity assuming a proportional shift in volatility of ±25.0 percent; and

iii. The capital requirement is the absolute value of the sum of the individual capital requirements for net negative gammas plus the absolute value of the sum of the individual capital requirements for vega risk.

f. Under certain conditions and to a limited extent, the Federal Reserve may permit banks that are significant traders in options with debt securities or interest rates as the underlying to net positive and negative gammas and vegas across time-bands. Such netting must be based on prudent and conservative assumptions and the bank must materially meet the qualitative standards set forth in section III.B. of this Appendix E.

g. A bank may base the calculation of vega risk on a volatility ladder in which the implied change in volatility varies with the maturity of the option. The assumed proportional shift in volatility must be at least ±25.0 percent at the short end of the maturity spectrum. The proportional shift for longer maturities must be at least as stringent in statistical terms as the 25.0 percent shift at the short end.

h. A bank should also monitor the risks of rho (the rate of change of the value of the option with respect to the interest rate) and theta (the rate of change of the value of the option with respect to time).

Attachments to Appendix E

Attachment I—Sample Calculation of Eligible Tier 1, Tier 2, and Tier 3 Capital for the Risk-Based Capital Ratio Adjusted for Market Risk

a. In each example the weighted-risk assets are $8000 and the market risk-adjusted assets are $625 (capital requirement for market risk=$50 $50×12.5=$625):

Example 1: A bank has the following qualifying capital:

Tier 1=$600 Tier 2=$100 Tier 3=$1000

position with a maturity of two months and short position with a maturity of five months.

[52] For example, the holder of a three-year floating rate bond indexed to six-month LIBOR with a cap of 15 percent would treat the bond as a debt security that reprices in six months, and a series of five written call options a FRA with a strike rate of 15 percent, each slotted as a short position at the expiration date of the option and as a long position at the time the FRA matures.

(1) The minimum capital requirement for credit risk is $640 ($8000×8.0%). This requirement could be satisfied with $540 of Tier 1 capital and $100 of Tier 2 capital.

(2) The remaining capital available for market risk would be:

Tier 1=$60, Tier 2=0, and Tier 3=$1000. The minimum capital requirement for market risk is $50 ($625×8.0%). Eligible Tier 3 capital would be limited to $125 ($50×2.5).

(3) The Tier 1 capital required to support market risk could be satisfied by allocating $14 ($50×.285), with eligible Tier 3 capital used for market risk being $36 ($50−$14).

(4) Total qualifying and eligible capital would be:

$540 (Tier 1)+$100 (Tier 2)+$60 (Tier 1, comprising $14 allocated for market risk and $46 unallocated)+$36 (Tier 3)=$736. The bank's ratio of qualifying and eligible capital to weighted-risk assets adjusted for market risk would be: $736/$8,625)=8.5%.

Example 2: A bank has the following qualifying capital:

Tier 1=$500 Tier 2=$140 Tier 3=$600

(1) The minimum capital requirement for credit risk is $640 ($8000×8.0%). This requirement could be satisfied with $500 of Tier 1 capital and $140 of Tier 2 capital.

(2) The remaining capital available for market risk would be: Tier 1=0, Tier 2=$0, and Tier 3=$600. Eligible Tier 3 capital would be limited to $0 (0×2.5). Because there is no Tier 1 capital required to support market risk, no eligible Tier 3 capital may be used for market risk.

(3) Total qualifying and eligible capital would be: $500 (Tier 1)+$140 (Tier 2)=$640. The bank's ratio of qualifying and eligible capital to weighted-risk assets adjusted for market risk would be: $640/$8,625)=7.4%.

b. In both of the examples described in paragraph a. of this attachment the total of Tier 2 and Tier 3 capital for credit and market risk is not greater than 100 percent of Tier 1 capital for credit and market risk and the total of Tier 2 capital for credit risk is not greater than 100 percent of Tier 1 capital for credit risk.

Attachment II—Sample Calculation of General Market Risk for Debt Instruments Using the Maturity Method

a. A bank with the following positions would slot them into a maturity ladder as shown below:

i. Qualifying bond, $13.33mn market value, remaining maturity 8 years, coupon 8%;

ii. Government bond, $75mn market value, remaining maturity 2 months, coupon 7%;

iii. Interest rate swap, $150 mn, bank receives floating rate interest and pays fixed, next interest reset after 12 months, remaining life of swap is 8 years (assumes the current interest rate is identical to the one the swap is based on); and

iv. Long position in interest rate future, $50mn, delivery date after 6 months, life of underlying government security is 3.5 years (assumes the current interest rate is identical to the one the swap is based on).

Zone	Time-band and position	Risk wght [%]	Risk-weighted position	Net time-band positions	Net zone positions
1	0–1 mth	0.00			
	1–3 mth Long 75 Gov. bond	0.20	Long 0.15	Long 0.15	Long 1.00.
	3–6 mth	0.40	Short 0.20	Short 0.20	
	Short 50 Future				
	6–12 mths	0.70	Long 1.05	Long 1.05	
	Long 150 Swap				
2	1–2 yrs	1.25			
	2–3 yrs	1.75			
	3–4 yrs	2.25	Long 1.125	Long 1.125	Long 1.125
	Long 50 Future				
3	4–5 yrs	2.75			
	5–7 yrs	3.25			
	7–10 yrs	3.75	Short 5.625	Short 5.125	Short 5.125
	Short 150 Swap				
	Long 13.33 Qual Bond		Long 0.50		
	10–15 yrs	4.50			
	15–20 yrs	5.25			
	Over 2 yrs	6.00			

b. A vertical disallowance would be calculated for time-band 7–10 years. It would be 10 percent of the matched positions in the time-band—10.0×0.5=0.05 ($50,000).

c. A horizontal disallowance would be calculated for zone 1. It would be 40 percent of the matched positions in the zone—40.0×0.20=0.80 ($80,000). The remaining net position in Zone 1 would be +1.00.

d. A horizontal disallowance would be calculated for adjacent zones 2 and 3. It would be 40 percent of the matched positions between the zones—40.0×1.125=0.45 (450,000). The remaining position in zone 3 would be −4.00.

e. A horizontal disallowance would be calculated between zones 1 and 3. It would be 100 percent of the matched positions between the zones—100×1.00=1.00 (1,000,000).

f. The remaining net open position for the bank would be 3.00 ($3,000,000). The total capital requirement for general market risk for this portfolio would be:

The vertical disallowance	$50,000
Horizontal disallowance in zone 1	80,000
Horizontal disallowance—zones 2 and 3	450,000
Horizontal disallowance—zones 1 and 3	1,000,000
Overall net open position	3,000,000
Total requirement for general market risk	4,580,000

Attachment III—Summary of Treatment for Interest Rate and Equity Derivatives

Summary of Treatment for Interest Rate Derivatives

Instrument	Specific risk charge	General market risk charge
Exchange-Traded Future		
Government security	No	Yes, as two positions.
Corporate debt security	Yes	Yes, as two positions.
Index on short-term interest rates (e.g. LIBOR)	No	Yes, as two positions.
OTC Forward		
Government security	No	Yes, as two positions.

Summary of Treatment for Interest Rate Derivatives—Continued

Instrument	Specific risk charge	General market risk charge
Corporate debt security	Yes	Yes, as two positions.
Index on short-term interest rates	No	Yes, as two positions.
FRAs, Swaps	No	Yes, as two positions.
Forward foreign exchange	No	Yes, as one position in each currency.
Options:		For each type of transaction, either:
Government security	No	(a) Carve out together with the associated hedging positions —simplified method —scenario analysis —internal models, or
Corporate debt security	Yes	(b) General market risk charge according to the Delta-plus method (gamma and vega receive separate capital charges)
Index on short-term interest rates	No	

Note: Specific risk charges relate to the issuer of the instrument. There remains a separate capital requirement for counterparty credit risk.

Summary of Treatment for Equity Derivatives

Instrument	Specific risk charge	General market risk charge
Exchange-Traded or OTC Future:		
Individual equity	Yes	Yes, as underlying.
Index	2.0%	Yes, as underlying.
Options:		For each type of transactions either:
Individual equity	yes	(a) Carve out together with the associated hedging positions —simplified method —scenario approach —internal models, or
Index	2.0%	(b) General market risk requirement according to the Delta-plus method (gamma and vega receive separate capital charges).

Note: Specific risk charges relate to the issuer of the instrument. There remains a separate capital requirement for counterparty credit risk.

Attachment IV—Sample Calculation of Standardized Approach for Commodities Risk

Time-band	Position	Spread rate	Capital calculation	Capital charge
0 up to 1 month	None			
1 up to 3 months	None			
3 up to 6 months	Long 800	1.5%	800 long+800 short (matched)×1.5%=	24
	Short 1000		200 short carried forward to 1–2 yrs, capital charge: 200×2×0.6%=.	2.4
6 up to 12 months	None			
1 up to 2 yrs	Long 600		200 long+200 short (matched)×1.5%=	6
			400 long carried forward to over 3 yrs capital charge: 400×2×0.6%=.	4.8
2 up to 3 yrs	None			
Over 3 years	Short 600		400 long+400 short (matched)×1.5%=	12
			Net position: 200 capital charge: 200×15.0%=	30

NOTE: Assume all positions are in the same commodity and converted at current spot rates into U.S. dollars. The total capital requirement would be $79.2.

Attachment V—Sample Calculation for Delta-Plus Method for Options

a. Assume a bank has a European short call option on a commodity with an exercise price of 490 and a market value of the underlying 12 months from the expiration of the option at 500; a risk-free interest rate at 8% per annum, and the volatility at 20 percent. The current delta for this position is according to the Black-Scholes formula -0.721 (that is, the price of the option changes by -0.721 if the price of the underlying moves by 1). The gamma is -0.0034 (that is, the delta changes by -0.0034 from -0.721 to -0.7244 if the price of the underlying moves by 1). The current value of the option is 65.48.

b. The first step under the delta-plus method is to multiply the market value of the commodity by the absolute value of the delta. 500 x 0.721 = 360.5. The delta-weighted position is then incorporated into the measure described in section IV.D. of this Appendix E. If the bank uses the maturity approach and no other positions exist, the delta-weighted position is multiplied by 0.15 to calculate the capital requirement for delta. 360.5 x 0.15 = 54.075.

c. The capital requirement for gamma is calculated according to the Taylor expansion by multiplying the absolute value of the assumed gamma of -0.0034 by 1.125% and by the square of the market value of the underlying. $-0.0034 \times 0.0125 \times 500^2 = 10.625$.

d. The capital requirement for vega is calculated next. The assumed current (implied) volatility is 20%. Since only an increase in volatility carries a risk of loss for a short call option, the volatility has to be increased by a relative shift of 25%. This means that the vega capital requirement has to be calculated on the basis of a change in volatility of 5 percentage points from 20% to 25% in this example. According to the Black-Scholes formula used here, the vega equals 168. Thus, a 1% or 0.01 increase in volatility increases the value of the option by 1.68. Accordingly, a change in volatility of 5 percentage points increases the value of 5 x 1.68 = 8.4. This is the capital requirement for vega risk. The total capital requirement would be $73.10 (54.075 + 10.625 + 8.4).

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p-1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In part 225, appendix A to part 225 is amended by revising the first and second paragraphs of section I. to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

I. Overview

The Board of Governors of the Federal Reserve System has adopted a risk-based capital measure to assist in the assessment of the capital adequacy of bank holding companies (banking organizations).[1] The principal objectives of this measure are to (i) make regulatory capital requirements more sensitive to differences in risk profiles among banking organizations; (ii) factor off-balance-sheet exposures into the assessment of capital adequacy; (iii) minimize disincentives to holding liquid, low-risk assets; and (iv) achieve greater consistency in the evaluation of the capital adequacy of major banking organizations throughout the world.

The risk-based capital guidelines include both a definition of capital and a framework for calculating weighted risk assets by assigning assets and off-balance-sheet items to broad risk categories.[2] An institution's risk-based capital ratio is calculated by dividing its qualifying capital (the numerator of the ratio) by its weighted risk assets (the denominator).[3] The definition of qualifying capital is outlined below in section II. of this appendix A, and the procedures for calculating weighted risk assets are discussed in section III. of this appendix A. Attachment I to this appendix A illustrates a sample calculation of weighted risk assets and the risk-based capital ratio.

* * * * *

3. In Part 225 a new appendix E is added to read as follows:

[1] Some banking organizations are also subject to capital requirements for market risk as set forth in appendix E of this part. Banking organizations that are subject to the market risk measure are required to follow the guidelines set forth in appendix E of this part for determining qualifying and eligible capital, calculating market risk-equivalent assets and adding them into weighted-risk assets, and calculating risk-based capital ratios adjusted for market risk. Supervisory ratios that relate capital to total assets for bank holding companies are outlined in appendices B and D of this part.

[2] The risk-based capital measure is based upon a framework developed jointly by supervisory authorities from the countries represented on the Basle Committee on Banking Regulations and Supervisory Practices (Basle Supervisors' Committee) and endorsed by the Group of Ten Central Bank Governors. The framework is described in a paper prepared by the Basle Supervisors' Committee entitled ''International Convergence of Capital Measurement,'' July 1988.

[3] Banking organizations generally are expected to utilize period-end amounts in calculating their risk-based capital ratios. When necessary and appropriate, ratios based on average balances may also be calculated on a case-by-case basis. Moreover, to the extent banking organizations have data on average balances that can be used to calculate risk-based ratios, the Federal Reserve will take such data into account.

Appendix E to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Market Risk Measure

I. Introduction

A. Overview

1. The Board of Governors of the Federal Reserve System has adopted a framework for determining capital requirements for the market risk exposure of bank holding companies (banking organizations).[1] For this purpose, market risk is defined as the risk of losses in a banking organization's on- and off-balance-sheet positions arising from movements in market prices. The market risks subject to these capital requirements are those associated with debt and equity instruments held in the banking organization's trading account, as well as foreign exchange risk and commodities risk throughout the organization, including options and other derivative contracts in each risk category.

2. Effective December 31, 1997, the market risk measure will be applied to all bank holding companies that, on a consolidated basis:

a. Have total assets in excess of $5 billion; *and* have a total volume of trading activities (measured as the sum of the banking organization's trading assets and liabilities [2] on a daily average basis for the quarter) that is 3.0 percent or more of the total assets of the banking organization, or have interest rate, foreign exchange, equity, and commodity off-balance-sheet derivative contracts relating to trading activities whose total notional amounts exceed $5 billion; or

b. Have total assets of $5 billion or less; *and* have trading activities exceeding 10.0 percent of the total assets of the banking organization.

3. Such banking organizations are still subject to the risk-based capital measure set forth in appendix A of this part, subject to the exclusion of certain assets specified in this appendix E. However, these banking organizations must calculate their market risk-equivalent assets and determine risk-based capital ratios adjusted for market risk in accordance with this appendix E.[3]

4. The market risk measure provides two ways for a banking organization to determine its exposure to market risk. A banking organization may use its internal risk measurement model, subject to the conditions and criteria set forth in section III. of this appendix E (referred to as the internal models approach), or when appropriate, a

[1] The market risk measure is based on a framework developed jointly by supervisory authorities from the countries represented on the Basle Committee on Banking Supervision (Basle Supervisors Committee) and endorsed by the Group of Ten Central Bank Governors. The framework is described in a paper prepared by the Basle Supervisors Committee entitled ''[Proposal to issue a] Supplement to the Basle Capital Accord to Cover Market Risks.'' [April] 1995.

[2] As reflected in the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C Report).

[3] The Federal Reserve may apply all or portions of this appendix E to other banking organizations when deemed necessary for safety and soundness purposes.

banking organization may use all or portions of the alternative measurement system described in section IV. of this appendix E (referred to as the standardized approach).

a. With prior approval from the Federal Reserve, for regulatory capital purposes, a banking organization may use its internal risk measurement model to measure its value-at-risk [4] for each of the following risk factor categories; interest rates, exchange rates, equity prices, and commodity prices. The value-at-risk amount for each risk factor category should include volatilities of related options. The value-at-risk amount for each risk factor category is summed to determine the aggregate value-at-risk for the banking organization.

b. The standardized approach uses a set of standardized calculations and assumptions to measure market risk exposure depending on its source; debt instruments, equities, foreign currencies, and commodities, including volatilities of related options.

5. The Board generally expects any banking organization that is subject to the market risk measure, especially those with large trading accounts, to comply with the measure by using internal risk-measurement models. A banking organization may not change its measurement approach for the purpose of minimizing capital requirements. In limited instances, on a case-by-case basis, the Federal Reserve may permit a banking organization that has internal models to incorporate risk measures of negligible exposures, for example, *de minimis* positions, activities in remote locations, minor exposures in a currency, or activities that present negligible risk to the banking organization, in an alternative manner, so long as it adequately captures the risk.

6. The risk-based capital ratios adjusted for market risk determined in accordance with this appendix E are *minimum* supervisory ratios. Banking organizations generally are expected to operate with capital positions well above the minimum ratios. In all cases, banking organizations should hold capital commensurate with the level and nature of the risks to which they are exposed.

7. The Federal Reserve will monitor the implementation and effect of these guidelines in relation to domestic and international developments in the banking industry. When necessary and appropriate, the Board will consider the need to modify this appendix E in light of any significant changes in the economy, financial markets, banking practices, or other relevant factors.

B. Market Risks Subject to a Capital Requirement.

1. *General Market Risk and Specific Risk.* A banking organization must hold capital against exposure to general market risk and specific risk arising from its trading and other foreign exchange and commodity activities. For this purpose, general market risk refers to changes in the market value of covered transactions resulting from market movements, such as changing levels of market interest rates, broad equity indices, or currency exchange rates. Specific risk refers to credit risk, that is, the risk that the issuer of a debt or equity instrument might default, as well as to other factors that affect the market value of specific instruments but that do not materially alter market conditions.[5]

2. *Trading Activities.* a. The general market risk and specific risk capital requirements for trading activities are based on on- and off-balance-sheet positions in a banking organization's trading account. For this purpose, trading account means positions in financial instruments acquired with the intent to resell in order to profit from short-term price movements (or other price or interest-rate variations), including, but not limited to:

i. Assets acquired with the intent to resell to customers;

ii. Positions in financial instruments arising from matched principal brokering and market making; or

iii. Positions taken in order to hedge other elements of the trading account (that is, reduce risk by offsetting other positions that have exposure to changes in market rates or prices).[6] Trading activities may include positions in debt instruments, equities, foreign currencies, and commodity instruments, or related derivative [7] or other off-balance-sheet contracts.

b. Debt instruments in the trading account are all fixed-rate and floating-rate debt securities and instruments that behave like debt, including non-convertible preferred stock. Convertible bonds, i.e., preferred stock or debt issues that are convertible, at a stated price, into common shares of the issuer, should be treated as debt instruments if they trade like debt instruments and as equities if they trade like equities. Also included are derivative contracts of debt instruments and other off-balance-sheet instruments in the trading account that react to changes in interest rates. A security that has been sold subject to a repurchase agreement or lent subject to a securities lending agreement is treated as if it were still owned by the lender of the security. Such transactions remain subject to the capital requirements for credit risk for the off- balance-sheet portion of the transaction as set forth in section III.D. of appendix A of this part.

c. Equities in the trading account are equity instruments that behave like equities. The instruments covered include common stocks (whether voting or non-voting), convertible securities that behave like equities, and commitments to buy or sell equity securities. Also included are derivative contracts of equity instruments and other off-balance-sheet instruments in the trading account that are affected by changes in equity prices. However, non-convertible preferred stock is included in debt instruments.

3. *Foreign Exchange and Commodities Risk.* Foreign exchange or commodities positions, whether or not included in a banking organization's trading account, are subject to a capital requirement for the market risk of those positions.

a. The capital requirement for foreign exchange risk applies to a banking organization's total currency and gold positions. This includes spot positions (that is, asset items and liability items, including accrued interest and expenses, denominated in each currency); forward positions (that is, forward foreign exchange transactions, including currency futures and the principal on currency swaps not included in the spot position); and certain guarantees. It includes future income and expenses from foreign currency transactions not yet accrued but already fully hedged (at the discretion of the reporting bank), foreign exchange derivative and other off-balance-sheet positions that are affected by changes in exchange rates, and any other item representing a profit or loss in foreign currencies.

b. A banking organization may, subject to approval by the Federal Reserve, exclude from its foreign exchange positions any structural positions in foreign currencies. For this purpose, such structural positions are limited to transactions designed to hedge a banking organization's capital ratios against the effect of adverse exchange rate movements on subordinated debt, equity, or minority interests in consolidated subsidiaries and dotation capital assigned to foreign branches that are denominated in foreign currencies. Also included are any positions related to unconsolidated subsidiaries and to other items that are deducted from a banking organization's capital when calculating its capital base. In any event, such structural foreign currency positions must reflect long-term policies of the institution and not relate to trading positions.

c. A banking organization doing negligible business in foreign currency and that does not take foreign exchange positions for its own account may be exempted from the capital requirement for foreign exchange risk provided that:

i. Its foreign currency business, defined as the greater of the sum of its gross long positions and the sum of its gross short positions in all foreign currencies, does not exceed 100 percent of eligible capital as defined in section II. of this appendix E; and

ii. Its overall net open foreign exchange position as determined in section IV.C.2. of this appendix E does not exceed 2.0 percent of its eligible capital.

[4] A banking organization evaluates its current positions and estimates future market volatility through a value-at-risk measure, which is an estimate representing, with a certain degree of statistical confidence, the maximum amount by which the market value of trading positions could decline during a specific period of time. The value-at-risk is generated through an internal model that employs a series of market risk factors (for example, market rates and princes that affect the value of trading positions).

[5] This Appendix E does not impose specific risk capital requirements for foreign exchange risk and commodities positions because they do not have the type of issuer-specific risk associated with debt and equity instruments in the trade account.

[6] At a banking organization's option, when non-trading account instruments are hedged with instruments in the trading account, on- or off-balance-sheet, the non-trading account instruments may be included in the measure for general market risk. Such non-trading account instruments remain subject to the credit risk capital charges of appendix A of this part.

[7] In general terms, a derivative is a financial contract whose value is derived from the values of one or more underlying assets or reference rates or indexes of asset values (referred to as ''the underlying''). Derivatives include standardized contracts that are traded on exchanges and customized, privately negotiated contracts known as over-the-counter (OTC) derivatives.

d. The capital requirement for commodities risk applies to a banking organization's total commodities positions, including commodity futures, commodity swaps, and all other commodity derivatives or other off-balance-sheet positions that are affected by changes in commodity prices. A commodity is defined as a physical product that is or can be traded on a secondary market (such as agricultural products, minerals (including oil), and precious metals), but excluding gold (which is treated as foreign exchange).

C. Capital Requirements

1. *Capital Requirements.* The minimum capital requirement for a bank holding company subject to the market risk measure is the sum of:

a. The capital requirement for credit risk as determined in accordance with appendix A of this part, *excluding* debt and equity instruments in the trading book and positions in commodities, but *including* the counterparty credit risk requirements on all over-the-counter derivative activities whether in the banking organization's trading account or not; and

b. The capital requirement for market risk as determined by the internal models approach, the standardized approach, or a combination of the two approaches deemed to be appropriate by the Federal Reserve.

2. *Internal Models.* a. For a banking organization approved to use the internal models approach, the capital requirement for market risk is the higher of:

i. The banking organization's previous day's aggregate value-at-risk amount calculated subject to certain supervisory requirements set forth in section III. of this appendix E; or

ii. An average of the daily aggregate value-at-risk amounts, calculated subject to the same restrictions, measured on each of the preceding sixty (60) business days, multiplied by a minimum ''multiplication factor'' of three (3).[8]

b. A banking organization approved to use the internal models approach may also be subject to a separate capital requirement for specific market risk of traded debt and equity instruments to the extent that the specific market risk associated with these instruments is not captured by the banking organization's models. However, for all banking organizations using internal models, the total specific risk charge should in no case be less than one-half the specific risk charges calculated according to the standardized approach.

3. *Standardized approach.* A banking organization whose model has not been approved by the Federal Reserve must use the standardized approach for measuring its market risk. For a banking organization using this approach, the capital requirement for market risk is the sum of the market risk capital requirement for debt and equity instruments in the trading account, foreign exchange and commodities risk throughout the banking organization, and options and other derivative positions in each risk category as set forth in sections IV.A to IV.E. of this appendix E.[9]

4. *Partial models.* a. With approval from the Federal Reserve, a banking organization whose internal model does not cover all risk factor categories may use the standardized approach to measure market risk exposure arising from the risk factor categories that are not covered. The Federal Reserve will approve combining the two approaches only on a temporary basis in situations where the banking organization is developing, but has not fully implemented, a comprehensive value-at-risk measurement system. When a banking organization uses both approaches, each risk factor category (that is, interest rates, exchange rates, equity prices, and commodity prices) must be measured using one or the other approach. The methods may not be combined within a risk factor category. Once a banking organization adopts an acceptable value-at-risk model for a particular risk factor category, it may not revert to the standardized approach except in unusual circumstances and with prior approval of the Federal Reserve.

b. For a banking organization using a combination of approaches, the capital requirement for market risk is the sum of (i) the appropriate value-at-risk amount (as determined under section I.C.2.a. of this appendix E, aggregating the value-at-risk amount for each risk factor category included in the internal model), and (ii) the capital requirement for each risk category that is calculated using the standardized approach.

5. *Application.* The capital requirements for market risk apply to bank holding companies on a worldwide consolidated basis. The Federal Reserve may, however, evaluate market risk on an unconsolidated basis when necessary. For example, when there are obstacles to the repatriation of profits from a foreign subsidiary or where management structure does not allow timely management of risk on a consolidated basis.

6. *Other Considerations.* All transactions, including forward sales and purchases, should be included in the calculation of market risk capital requirements from the date on which they were entered into. The Federal Reserve expects banking organizations to meet their capital requirements for market risk on a continuous basis (that is, at a minimum, at the close of each business day).

II. Qualifying Capital and the Market Risk-Adjusted Capital Ratio

A. Qualifying and Eligible Capital

1. The principal forms of qualifying capital for market risk are Tier 1 capital and Tier 2 capital as defined in section II. of appendix A of this part and subject to the conditions and limitations of appendix A of this part. A banking organization may use Tier 3 capital for the sole purpose of meeting a portion of the capital requirements for market risk.[10]

2. Tier 3 capital consists of short-term subordinated debt that is subject to a lock-in clause providing that neither interest nor principal payment is due (even at maturity) if such payment would cause the issuing banking organization to fall or remain below the minimum 8.0 percent risk-based capital requirement as set forth in appendix A of this part and adjusted for market risk.

3. In order to qualify as Tier 3 capital, the short-term debt must be unsecured, subordinated, and fully paid up; it must have an original maturity of at least two years; and it may not be redeemed before maturity without prior approval by the Federal Reserve. In addition, it may not contain or be covered by any covenants, terms, or restrictions that are inconsistent with safe and sound banking practices.

4. Eligible Tier 3 capital may not exceed 250 percent of a banking organization's Tier 1 capital allocated for market risk and the maximum eligible amount of Tier 2 and Tier 3 capital together is limited to 100 percent of Tier 1 capital. (Examples of how to calculate these limits are set forth in Attachment I to this appendix E.) Tier 2 elements may be substituted for Tier 3 up to the same limit of 250 percent, so long as the overall limits for Tier 2 capital set forth in appendix A of this part are not exceeded, that is, Tier 2 capital may not exceed total Tier 1 capital, and long-term subordinated debt may not exceed 50 percent of Tier 1 capital.

B. Calculation of Eligible Capital and the Capital Ratio

1. In order to calculate eligible capital, a banking organization must first calculate its minimum capital requirement for credit risk in accordance with appendix A of this part and then its capital requirement for market risk. Eligible capital is the sum of the banking organization's qualifying Tier 1 capital, its qualifying Tier 2 capital subject to the limits stated above, and its eligible Tier 3 capital subject to the conditions set out under section II. of this appendix E.

2. A banking organization that is subject to the market risk measure must calculate its risk-based capital ratios as follows:

a. Determine total weighted-risk assets using the procedures and criteria set forth in appendix A of this part, excluding debt and equity instruments in the trading book and positions in commodities, but including all over-the-counter derivative activities whether in the banking organization's trading account or not.

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[8] The Federal Reserve may adjust the multiplication factor for a banking organization to increase its capital requirement based on an assessment of the quality and historic accuracy of the banking organization's risk management system.

[9] Section IV.E. provides several alternatives for measuring the market risk of options. Under two of the alternatives, the simplified and scenario methods, the underlying position of an option is ''carved-out,'' and is not included in the prescribed risk measure for the underlying. Instead it is evaluated together with the related option according to the procedures described for options to determine the capital requirement. Under the third alternative, the ''delta-plus'' approach, the delta-equivalent value of each position is included in the measurement framework for the appropriate risk category (that is, debt or equity instruments in the trading account, foreign exchange or commodities risk).

[10] A banking organization may not use Tier 3 capital to satisfy any capital requirements for counterparty credit risk under appendix A of this part, including counterparty credit risk associated with derivative transactions in either the trading or non-trading accounts.

b. Calculate the measure for market risk using the internal models approach, the standardized approach, or an approved combination of these two approaches.

c. Multiply the measure for market risk by 12.5 (i.e., the reciprocal of the 8.0 percent minimum risk-based capital ratio). The resulting product is referred to as ''market risk-equivalent assets.''

d. Add market risk-equivalent assets to the weighted-risk assets compiled for credit risk purposes (section II.B.2.a. of this appendix E). The sum of these two amounts is the denominator of the risk-based capital ratios adjusted for market risk. The numerator of the total risk-based capital ratio is eligible capital and the numerator of the Tier 1 risk-based capital ratio is Tier 1 capital.

III. The Internal Models Approach

A. Use of Models

1. With prior approval of the Federal Reserve, a banking organization may use its internal risk measurement model(s) for purposes of measuring value-at-risk and determining the associated regulatory capital requirements for market risk exposure.

a. Requests for approval under section III.A.1. of this appendix E should include, at a minimum, a complete description of the banking organization's internal modeling and risk management systems and how these systems conform to the criteria set forth in this section III., an explanation of the policies and procedures established by the banking organization to ensure continued compliance with such criteria, a discussion of internal and external validation procedures, and a description of other relevant policies and procedures consistent with sound practices.

b. The Federal Reserve will approve an internal model for regulatory capital purposes only after determining that the banking organization's internal model and risk management systems meet the criteria in section III. of this appendix E. Such a determination may require on-site examinations of the systems. The Federal Reserve may require modification to an internal model as deemed necessary to ensure compliance, on a continuing basis, with the provisions of this appendix E. A banking organization's internal model will be subject to continuing review, both on-and off-site, by the Federal Reserve.[11]

2. A banking organization should ensure that the level of sophistication of its internal model is commensurate with the nature and volume of the banking organization's trading activity in the risk factor categories covered by this appendix E and measures market risk as accurately as possible. In addition, the model should be adjusted to reflect changing portfolio composition and changing market conditions.

B. Qualitative Criteria

1. A banking organization using the internal models approach should have market risk management systems that are conceptually sound and implemented with integrity. Internal risk measurement models must be closely integrated into the day-to-day risk management process of the banking organization. For example, the risk measurement model must be used in conjunction with internal trading and exposure limits.

2. A banking organization must meet the following minimum qualitative criteria before using its internal model to measure its exposure to market risk.[12]

a. A banking organization must have a risk control unit that is independent from business trading units and reports directly to senior management of the banking organization. The unit must be responsible for designing and implementing the banking organization's risk management system and analyzing daily reports on the output of the banking organization's risk measurement model in the context of trading limits. The unit must conduct regular back-testing.[13]

b. Senior management must be actively involved in the risk control process. The daily reports produced by the risk management unit must be reviewed by a level of management with sufficient authority to enforce both reductions in positions taken by individual traders, as well as in the banking organization's overall risk exposure.

c. The banking organization must have a routine and rigorous program of stress-testing[14] to identify the effect of low-probability events on the banking organization's trading portfolio. Senior management must routinely review the results of stress-testing in the context of the potential effect of the events on bank capital and the appropriate procedures the banking organization should take to minimize losses. The policies of the banking organization set by management and the board of directors should identify appropriate stress-tests and the procedures to follow in response to the test results.

d. The banking organization must have established procedures for ensuring compliance with a documented set of internal policies and controls, as well as for monitoring the overall operation of the risk measurement system.

e. Not less than once a year, the banking organization must conduct, as part of its regular internal audit process, an independent review of the risk measurement system. This review must include both the activities of the business trading units and of the independent risk control unit of the banking organization.

f. Not less than once a year, the banking organization must conduct a review of its overall risk management process. The review must consider:

i. The adequacy of the documentation of the risk management system and process and the organization of the risk control unit;

ii. The integration of market risk measures into daily risk management and the integrity of the management information system;

iii. The process the banking organization employs for approving risk pricing models and valuation systems that are used by front- and back-office personnel;

iv. The scope of market risks captured by the risk measurement model and the validation of any significant changes in the risk measurement process;

v. The accuracy and completeness of position data, the accuracy and appropriateness of volatility and correlation assumptions, and the accuracy of valuation and risk sensitivity calculations;

vi. The verification process the banking organization employs to evaluate the consistency, timeliness, and reliability of data sources used to run internal models, including the independence of such data sources; and

vii. The verification process the banking organization uses to evaluate back-testing that is conducted to assess the model's accuracy.

C. Market Risk Factors

1. *Overview.* For regulatory capital purposes, a banking organization's internal risk measurement system(s) must use sufficient risk factors to capture the risks inherent in the banking organization's portfolio of on- and off-balance-sheet trading positions and must, subject to the following guidelines, cover interest rates, equity prices, exchange rates, commodity prices, and volatilities related to options positions in each risk factor category. The level of sophistication of the banking organization's risk factors must be commensurate with the nature and scope of the risks taken by the banking organization.

2. *Interest Rates.* a. A banking organization must use a set of market risk factors corresponding to interest rates in each currency in which it has material interest rate-sensitive on- or off-balance-sheet positions. The risk measurement system must model the yield curve[15] using one of a number of generally accepted approaches, for example, by estimating forward rates of zero coupon yields. The yield curve must be divided into various maturity segments in order to capture variation in the volatility of rates along the yield curve; there will typically be one risk factor corresponding to each maturity segment.

b. For material exposures to interest rate movements in the major currencies and markets, a banking organization must model the yield curve using a minimum of six risk factors. However, the number of risk factors used should ultimately be driven by the

[11] Banking organizations that need to modify their existing modeling procedures to accommodate the requirements of this appendix E should, nonetheless, continue to use the internal models they consider most appropriate in evaluating risks for other purposes.

[12] If the Federal Reserve is not satisfied with the extent to which a banking organization meets these criteria, the Federal Reserve may adjust the multiplication factor used to calculate market risk capital requirements or otherwise increase capital requirements.

[13] Back-testing includes *ex post* comparisons of the risk measures generated by the model against the actual daily changes in portfolio value.

[14] Stress-testing should cover a range of factors that can create extraordinary losses or gains in trading portfolios or make the control of risk in those portfolios difficult. These factors include low-probability events of all types, including the various components of market, credit, and operational risks.

[15] Generally, a yield curve is a graph showing the term structure of interest rates by plotting the yields of all instruments of the same quality by maturities ranging from the shortest to the longest available. The resulting curve shows whether short-term interest rates are higher or lower than long-term interest rates.

nature of the banking organization's trading strategies.[16] The risk measurement system must incorporate separate risk factors to capture spread risk.[17]

3. *Exchange rates.* A banking organization must use market risk factors corresponding to the exchange rate between the domestic currency and each foreign currency in which the banking organization has a significant exposure. The risk measurement system must incorporate market risk factors corresponding to the individual foreign currencies in which the banking organization's positions are denominated.

4. *Equity prices.* A banking organization must use risk factors corresponding to each of the equity markets in which it holds significant positions. The sophistication and nature of the modeling technique for a given market must correspond to the banking organization's exposure to the overall market as well as to the banking organization's concentration in individual equity issues in that market. At a minimum, there must be a risk factor designed to capture market-wide movements in equity prices (such as a market index), but additional risk factors could track various sectors or individual issues.

5. *Commodity prices.* A banking organization must use market risk factors corresponding to each of the commodity markets in which it holds significant positions. The internal model must encompass directional risk, forward gap and interest rate risk, and basis risk.[18] The model should also take into account the market characteristics, for example, delivery dates and the scope provided to traders to close out positions.

D. Quantitative Standards

1. A banking organization may use one of a number of generally accepted measurement techniques including, for example, an internal model based on variance-covariance matrices, historical simulations, or Monte Carlo simulations so long as the model employed captures all the material market risks.[19] The following minimum standards apply for purposes of using an internal model for calculating market risk capital requirements:

a. Value-at-risk must be calculated on a daily basis using a 99th percentile, one-tailed confidence interval[20] and the holding period must be ten trading days. For positions that display linear price characteristics, a banking organization may use value-at-risk numbers calculated according to shorter holding periods scaled up to ten days by the square root of time.[21]

b. Value-at-risk must be calculated using an observation period of at least one year to measure historical changes in rates and prices.

c. A banking organization must update its historical rates and prices at least once every three months and must reassess them whenever market conditions change materially.

2. A banking organization may use discretion in recognizing empirical correlations within each market risk factor category.[22] However, empirical correlations among risk categories are not recognized. The value-at-risk measure for each risk category must be added together on a simple sum basis to determine the aggregate value-at-risk amount.

3. A banking organization's models must accurately capture the unique risks associated with options within each of the market risk factor categories. The following minimum criteria apply to the measurement of options risk:

a. A banking organization's internal model must capture the non-linear price characteristics of option positions using an options pricing technique. The banking organization must apply a minimum ten-day holding period to option positions or positions that display option-like characteristics. Banking organizations may not scale-up the daily value-at-risk numbers by the square root of time.

b. A banking organization's internal model must capture the volatilities of the rates and prices (that is, the vega) underlying option positions and a banking organization should measure the volatilities of the underlying instruments broken down by different option maturities.

4. The accuracy of a banking organization's internal model will be reviewed periodically by the Federal Reserve. Such review, during which, when appropriate, the Federal Reserve may take into consideration reports and opinions generated by external auditors or qualified consultants, will include, at a minimum:

a. Verification that the internal validation processes described in section III.B.2. of this appendix E are operating in a satisfactory manner;

b. Affirmation that the formulae used in the calculation process and for the pricing of options and other complex instruments, are validated by a qualified unit of the banking organization, which in all cases must be independent from the trading areas;

c. Confirmation that the structure of the internal model is adequate with respect to the banking organization's activities and geographical coverage;

d. Confirmation that the results of the banking organization's back-testing of its internal measurement system (that is, comparing value-at-risk estimates with actual profits and losses) are being used effectively to monitor reliability of the model's estimates over time; and

e. Affirmation that, for regulatory capital purposes, the model processes all relevant data and that the modeling procedures conform with the parameters and specifications set forth in this appendix E.

IV. The Standardized Approach

A. Debt Instruments

1. *Specific Risk.* a. The capital requirement for specific risk is based on the identity of the obligor and, in the case of corporate securities, on the credit rating and maturity of the instrument. The specific risk capital requirement is calculated by weighting the current market value of each individual position, whether long or short, by the appropriate category factor as set forth below and summing the weighted values. In measuring specific risk, the banking organization may offset and exclude from its calculations any matched positions in the *identical* issue (including positions in derivatives). Even if the issuer is the same, no offsetting is permitted between different issues since differences in coupon rates, liquidity, call features, etc., mean that prices may diverge in the short run. The categories and factors are:

Category	Remaining maturity [contractual]	Factor [In percent]
Government	N/A	0.00
Qualifying	6 months or less.	0.25

[16] For example, a banking organization that has a portfolio of various types of securities across many points of the yield curve and that engages in complex arbitrage strategies would require a greater number of risk factors to accurately capture interest rate risk.

[17] Spread risk refers to the potential changes in value of an instrument or portfolio arising from differences in the behavior of baseline yield curves, such as those for U.S. Treasury securities, and yield curves reflecting sector, quality, or instrument specific factors. A variety of approaches may be used to capture the spread risk arising from less than perfectly correlated movements between government and other interest rates, such as specifying a completely separate yield curve for non-government instruments (for example, swaps or municipal securities) or estimating the spread over government rates at various points along the yield curve.

[18] Directional risk is the risk that a spot price will increase or decrease. Forward gap risk refers to the effects of owning a physical commodity versus owning a forward position in a commodity. Interest rate risk is the risk of a change in the cost of carrying forward positions and options. Basis risk is the risk that the relationship between the prices of similar commodities changes over time.

[19] In a variance/covariance approach, the change in value of the portfolio is calculated by combining the risk factor sensitivities of the individual positions—derived from valuation models—with a variance/covariance matrix based on risk factor volatilities and correlations. A banking organization using this approach would calculate the volatilities and correlations of the risk factors on the basis of the holding period and the observation period. A banking organization using a historical simulation would calculate the hypothetical change in value of the current portfolio in the light of historical movements in risk factors. This calculation would be done for each of the defined holding periods over a given historical measurement horizon to arrive at a range of simulated profits and losses. A banking organization using a Monte Carlo technique would consider historical movements to determine the probability of particular price and rate changes.

[20] A one-tailed confidence interval of 99 percent means that there is a 1 percent probability based on historical experience that the combination of positions in a banking organization's portfolio would result in a loss higher than the measured value-at-risk.

[21] This transformation entails multiplying a banking organization's value-at-risk by the square root of the ratio of the required holding period (ten days) to the holding period embodied in the value-at-risk figure. For example, the value-at-risk calculated according to a one-day holding period would be scaled-up by the ''square root of time'' by multiplying the value-at-risk by 3.16 (the square root of the ratio of a ten-day holding period to a one-day holding period).

[22] While a banking organization has flexibility to use correlations, the Federal Reserve must be satisfied that there is integrity in the banking organization's process for calculating correlations.

Category	Remaining maturity [contractual]	Factor [In percent]
	6 to 12 months	1.00
	over 12 months	1.60
Other	N/A	8.00

b. The *government* category includes all forms of debt instruments of central governments of the OECD-based group of countries [23] including bonds, Treasury bills and other short-term instruments, as well as local currency instruments of non-OECD central governments to the extent that the subsidiary depository institutions have liabilities booked in that currency.

c. The *qualifying* category includes securities of U.S. government-sponsored agencies, general obligation securities issued by states and other political subdivisions of the OECD-based group of countries, multilateral development banks, and debt instruments issued by U.S. depository institutions or OECD-banks that do not qualify as capital of the issuing institution.[24] It also includes other securities, including revenue securities issued by states and other political subdivisions of the OECD-based group of countries, that are rated investment-grade by at least two nationally recognized credit rating services, or rated investment-grade by one nationally recognized credit rating agency and not less than investment-grade by any other credit rating agency, or, with the exception of securities issued by U.S. firms and subject to review by the Federal Reserve, unrated but deemed to be of comparable investment quality by the reporting banking organization *and* the issuer has securities listed on a recognized stock exchange.

d. The *other* category includes debt securities not qualifying as government or qualifying securities. This would include non-OECD central government securities that do not meet the criteria for the government or qualifying categories. This category also includes instruments that qualify as capital issued by other banking organizations.

e. The Federal Reserve will consider the extent of a banking organization's position in non-investment grade instruments (sometimes referred to as high yield debt). If those holdings are not well-diversified or otherwise represent a material position to the institution, the Federal Reserve may prevent a banking organization from offsetting positions in these instruments with other positions in qualifying instruments that may be offset when calculating its general market risk requirement. In addition, the Board may impose a specific risk capital requirement as high as 16.0 percent.

2. *General Market Risk*. a. A banking organization may measure its exposure to general market risk using, on a continuous basis, either the maturity method (which uses standardized risk weights that approximate the price sensitivity of various instruments) or the duration method (where the institution calculates the precise duration of each instrument, weighted by a specified change in interest rates).

b. Both methods use a maturity-ladder that incorporates a series of ''time-bands'' and ''zones'' to group together securities of similar maturities and that are designed to take into account differences in price sensitivities and interest rate volatilities across different maturities. Under either method, the capital requirement for general market risk is the sum of a base charge that results from fully netting various risk-weighted positions and a series of additional charges (add-ons), which effectively ''disallow'' part of the previous full netting to address basis and yield curve risk.

c. For each currency in which a banking organization has significant positions, a separate capital requirement must be calculated. No netting of positions is permitted across different currencies. Offsetting positions of the same amount in the same issues, whether actual or notional, may be excluded from the calculation, as well as closely matched swaps, forwards, futures, and forward rate agreements (FRAs) that meet the conditions set out in section IV.A.3. of this appendix E.

d. In the *maturity method*, the banking organization distributes each long or short position (at current market value) of a debt instrument into the time bands of the maturity ladder. Fixed-rate instruments are allocated according to the remaining term to maturity and floating-rate instruments according to the next repricing date. A callable bond trading above par is slotted according to its first call date, while a callable bond priced below par is slotted according to remaining maturity. Fixed-rate mortgage-backed securities, including collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs), are slotted according to their expected weighted average lives.

e. Once all long and short positions are slotted into the appropriate time band, the long positions in each time-band are summed and the short positions in each time-band are summed. The summed long and/or short positions are multiplied by the appropriate risk-weight factor (reflecting the price sensitivity of the positions to changes in interest rates) to determine the risk-weighted long and/or short position for each time-band. The risk weights for each time-band are set out in Table I below:

TABLE I.—MATURITY METHOD: TIME-BANDS AND WEIGHTS

Zone	Coupon 3% or more	Coupon less than 3% and zero coupon bonds	Risk weights [percent]
1	Up to 1 month	Up to 1 month	0.00
	1 up to 3 months	1 up to 3 months	0.20
	3 up to 6 months	3 up to 6 months	0.40
	6 up to 12 months	6 up to 12 months	0.70
2	1 up to 2 years	1 up to 1.9 years	1.25
	2 up to 3 years	1.9 up to 2.8 years	1.75
	3 up to 4 years	2.8 up to 3.6 years	2.25
3	4 up to 5 years	3.6 up to 4.3 years	2.75
	5 up to 7 years	4.3 up to 5.7 years	3.25
	7 up to 10 years	5.7 up to 7.3 years	3.75
	10 up to 15 years	7.3 up to 9.3 years	4.50
	15 up to 20 years	9.3 up to 10.6 years	5.25
	Over 20 years	10.6 up to 12 years	6.00
		12 up to 20 years	8.00
		Over 20 years	12.50

f. Within each time-band for which there are risk-weighted long and short positions, the risk-weighted long and short positions are then netted, resulting in a single net risk-weighted long or short position for each time-band. Since different instruments and different maturities may be included and netted within each time, a capital requirement, referred to as the vertical

[23] The OECD-based group of countries is defined in section III.B.1 of appendix A of this part.

[24] U.S. government-sponsored agencies, multilateral development banks, and OECD banks are defined in section III.C.2. of appendix A of this part.

disallowance, is assessed to allow for basis risk. The vertical disallowance capital requirement is 10.0 percent of the position eliminated by the intra-time-band netting, that is, 10.0 percent of the smaller of the net risk-weighted long or net risk-weighted short position, or if the positions are equal, 10.0 percent of either position.[25] The vertical disallowances for each time-band are absolute values, that is, neither long nor short. The vertical disallowances for all time-bands in the maturity ladder are summed and included as an element of the general market risk capital requirement.

g. Within each zone for which there are risk-weighted long and short positions in different time-bands, the weighted long and short positions in all of the time-bands within the zone are then netted, resulting in a single net long or short position for each zone. Since different instruments and different maturities may be included and netted within each zone, a capital requirement, referred to as the horizontal disallowance, is assessed to allow for the imperfect correlation of interest rates along the yield curve. The horizontal disallowance capital requirement is calculated as a percentage of the position eliminated by the intra-zone netting, that is, a percentage of the smaller of the net risk-weighted long or net risk-weighted short position, or if the positions are equal, a percentage of either position.[26] The percent disallowance factors for intra-zone netting are set out in Table II in section IV.A.2.h. of this appendix E. The horizontal disallowances, like the vertical disallowances, are absolute values that are summed and included as an element of the general market risk capital requirement.

h. Risk-weighted long and short positions in different zones are then netted between the zones. Zone 1 and zone 2 are netted if possible, reducing or eliminating the net long or short position in zone 1 or zone 2 as appropriate. Zone 2 and zone 3 are then netted if possible, reducing or eliminating the net long or short position in zone 2 or zone 3 as appropriate. Zone 3 and zone 1 are then netted if possible, reducing or eliminating the long or short position in zone 3 and zone 1 as appropriate. A horizontal disallowance capital requirement is then assessed, calculated as a percentage of the position eliminated by the inter-zone netting. The horizontal disallowance capital requirements for each zone are then summed as absolute values and included in the general market risk capital charge. The percent disallowance factors for inter-zone netting are set out in Table II below:

TABLE II.—HORIZONTAL DISALLOWANCES

Zone	Time-band	Within the zone	Between adjacent zones	Between zones 1–3
1	0–1 month	40 percent.	40 percent.	100 percent.
	1–3 months.			
	3–6 months.			
	6–12 months.			
2	1–2 years	30 percent	40 percent	100 percent
	2–3 years.			
	3–4 years.			
3	1–5 years.	30 percent	40 percent	100 percent
	5–7 years.			
	7–10 years.			
	10–15 years.			
	15–20 years.			
	Over 20 years.			

i. Finally, the net risk-weighted long or net risk-weighted short positions remaining in the zones are summed to reach a single net risk-weighted long or net risk-weighted short position for the banking organization's portfolio. The sum of the absolute value of this position and the vertical and horizontal disallowances is the capital requirement for general market risk. An example of the calculation of general market risk under the maturity method is in Attachment II to this appendix E.

j. In the *duration method*, the banking organization, after calculating each instrument's modified duration[27] using a formula that is subject to supervisory review, multiplies that modified duration by the interest rate shock specified for an instrument of that duration in Table III in section IV.A.2.k. of this appendix E. The resulting product (representing the expected percentage change in the price of the instrument for the given interest rate shock) is then multiplied by the current market value of the instrument. The resulting amount is then slotted as a long or short position into a time-band in the maturity ladder in Table III on the basis of the instrument's modified duration.[28]

k. Once all of the banking organization's traded debt instruments have been slotted into the maturity ladder, the banking organization conducts the same rounds of netting and disallowances described in sections IV.A.2.f. through IV.A.2.h. of this appendix E for the maturity method, with the exception that the vertical disallowance requirement for the duration method is 5.0 percent (horizontal disallowances continue to be those set out in Table II).[29] As with the maturity method, the sum of the absolute value of the final net position and the vertical and horizontal disallowances is the general market risk capital requirement:

TABLE III—DURATION METHOD: TIME-BANDS AND ASSUMED CHANGES IN YIELD

Zone	Time-band	Assumed change in yield
1	Up to 1 month	1.00
	1 up to 3 months	1.00
	3 up to 6 months	1.00
	6 up to 12 months	1.00
2	1.0 up to 1.8 years	0.90
	1.8 up to 2.6 years	0.80
	2.6 up to 3.3 years	0.75
3	3.3 up to 4.0 years	0.75
	4.0 up to 5.2 years	0.70
	5.2 up to 6.8 years	0.65
	6.8 up to 8.6 years	0.60
	8.6 up to 9.9 years	0.60
	9.9 up to 11.3 yrs	0.60

[25] For example, if the sum of the weighted longs in a time-band is $100 million and the sum of the weighted shorts is $90 million, the vertical disallowance for the time-band is 10.0 percent of $90 million, or $9 million.

[26] For example, if the sum of the weighted longs in the 1–3 month time-band in Zone 1 is $8 million and the sum of the weighted shorts in the 3–6 month time-band is $10 million, the horizontal disallowance for the zone is forty percent of $8 million, or $3.2 million.

[27] The duration of an instrument is its approximate percentage change in price for a 100 basis point parallel shift in the yield curve assuming that its cash flow does not change when the yield curve shifts. Modified duration is duration divided by a factor of 1 plus the interest rate.

[28] For example, an instrument held by a banking organization with a maturity of 4 years and 3 months and a current market value of $1,000 might have a modified duration of 3.5 years. Based on its modified duration, it would be subjected to the 75-basis point interest rate shock, resulting in an expected price change of 2.625 percent (3.5×0.75). the corresponding expected change in price of $26.25, calculated as 2.625 percent of $1,000, would be slotted as a long position in the 3.3 to 4.0 year time-band of the maturity ladder.

[29] Two different vertical disallowances are used since the duration method takes into account an instrument's specific characteristics (maturity and coupon) and there is less opportunity for measurement error.

TABLE III—DURATION METHOD: TIME-BANDS AND ASSUMED CHANGES IN YIELD—Continued

Zone	Time-band	Assumed change in yield
	11.3 up to 16.6 yrs	0.60
	Over 16.6 years	0.60

3. *Interest rate derivatives.* a. Debt derivatives and other off-balance-sheet positions that are affected by changes in interest rates are included in the measurement system under section IV.A. of this appendix E (except for options and the associated underlyings, which are included in the measurement system under the treatment discussed in section IV.E. of this appendix E). A summary of the treatment for debt derivatives is set out in Attachment III to this appendix E.

b. Derivatives are converted into positions in the relevant underlying instrument and are included in the calculation of specific and general market risk capital charges as described above. The amount to be included is the market value of the principal amount of the underlying or of the notional underlying. For instruments where the apparent notional amount differs from the effective notional amount, a banking organization must use the effective notional amount.

c. Futures and forward contracts (including FRAs) are broken down into a combination of a long position and short position in the notional security. The maturity of a future or a FRA is the period until delivery or exercise of the contract, plus the life of the underlying instrument.[30] Where a range of instruments may be delivered to fulfill the contract, the banking organization may chose which deliverable instrument goes into the maturity or duration ladder as the notional underlying. In the case of a future on a corporate bond index, positions are included at the market value of the notional underlying portfolio of securities.

d. Swaps are treated as two notional positions in the relevant instruments with appropriate maturities. The receiving side is treated as the long position and the paying side is treated as the short position.[31] The separate sides of cross-currency swaps or forward foreign exchange transactions are slotted in the relevant maturity ladders for the currencies concerned. For swaps that pay or receive a fixed or floating interest rate against some other reference price, for example, an equity index, the interest rate component is slotted into the appropriate repricing maturity category, with the long or short position attributable to the equity component being included in the equity framework set out in section IV.B. of this appendix E.[32]

e. A banking organization may offset long and short positions (both actual and notional) in identical derivative instruments with exactly the same issuer, coupon, currency, and maturity before slotting these positions into time-bands. A matched position in a future and its corresponding underlying may also be fully offset and, thus, excluded from the calculation, except when the future comprises a range of deliverable instruments. However, in cases where, among the range of deliverable instruments, there is a readily identifiable underlying instrument that is most profitable for the trader with a short position to deliver, positions in the futures contract and the instrument may be offset. No offsetting is allowed between positions in different currencies.

f. Offsetting positions in the same category of instruments can in certain circumstances be regarded as matched and treated by the banking organization as a single net position which should be entered into the appropriate time-band. To qualify for this treatment the positions must be based on the same underlying instrument, be of the same nominal value, and be denominated in the same currency. The separate sides of different swaps may also be ''matched'' subject to the same conditions. In addition:

i. For futures, offsetting positions in the notional or underlying instruments to which the futures contract relates must be for identical instruments and the instruments must mature within seven days of each other;

ii. For swaps and FRAs, the reference rate (for floating rate positions) must be identical and the coupon closely matched (i.e., within 15 basis points); and

iii. For swaps, FRAs and forwards, the next interest reset date, or for fixed coupon positions or forwards the remaining maturity, must correspond within the following limits: If the reset (remaining maturity) dates occur within one month, then the reset dates must be on the same day; if the reset dates occur between one month and one year later, then the reset dates must occur within seven days of each other, or if the reset dates occur over one year later, then the reset dates must occur within thirty days of each other.

g. Interest rate and currency swaps, FRAs, forward foreign exchange contracts and interest rate futures are not subject to a specific risk charge. This exemption also applies to futures on a short-term (e.g., LIBOR) interest rate index. However, in the case of futures contracts where the underlying is a debt security, or an index representing a basket of debt securities, a specific risk charge will apply according to the category of the issuer as set out in section IV.A.2. of this appendix E.

B. Equities

1. *Specific risk.* The measure of specific risk is calculated on the basis of the banking organization's gross equity positions, that is, the absolute sum of all long equity positions and of all short equity positions at current market value.[33] The specific risk capital requirement is 8.0 percent of that sum, unless the portfolio is both liquid and well-diversified, in which case the specific risk capital requirement is 4.0 percent of the gross equity position. A specific risk charge of 2.0 percent applies to the net long or short position in a broad, diversified equity index and is viewed as necessary to provide for risks associated with contract execution.[34]

2. *General Market risk.* The measure of general market risk is based on the difference between the sum of the long positions and the sum of the short positions (i.e., the overall net position in an equity market) at current market value. An overall net position must be separately calculated for each national market in which the banking organization holds equities. The capital requirement for general market risk is 8.0 percent of the net position in each equity market.

3. *Equity derivatives.* a. Equity derivatives and other off-balance-sheet positions that are affected by changes in equity prices are included in the measurement system under section IV.B. of this appendix E (except for equity options, equity index options, and the associated underlying, which are included in the measurement system under the treatment discussed in section IV.E. of this appendix E).[35] This includes futures and swaps on both

[30] For example, a long position in a June three-month interest rate future (taken in April) is reported as a long position in a government security with a maturity of five months and a short position in a government security with a maturity of two months.

[31] For example, an interest rate swap under which a banking organization is receiving floating-rate interest and paying fixed is treated as a long position in a floating rate instrument with a maturity equivalent to the period until the next interest reset date and a short position in a fixed-rate instrument with a maturity equivalent to the remaining life of the swap.

[32] A banking organization with a large swap book may, with prior approval of the Federal Reserve, use alternative formulae to calculate the positions to be included in the maturity or duration ladder. For example, a banking organization could first convert the payments required by the swap into present values. For that purpose, each payment would be discounted using zero coupon yields, and the payment's present value entered into the appropriate time-band using procedures that apply to zero (or low) coupon bonds. The net amounts would then be treated as bonds, and slotted into the general market risk framework. Such alternative treatments will, however, only be allowed if: (i) the Federal Reserve is fully satisfied with the accuracy of the system being used, (ii) the positions calculated fully reflect the sensitivity of the cash flows to interest rate changes; and (iii) the positions are denominated in the same currency.

[33] Matched positions in each identical equity in each national market may be treated as offsetting and excluded from the capital calculation, with any remaining position included in the calculations for specific and general market risk. For example, a future in a given equity may be offset against an opposite cash position in the same equity.

[34] A portfolio that is liquid and well-diversified is characterized by a limited sensitivity to price changes of any single equity issue or closely related group of equity issues held in the portfolio. The volatility of the portfolio's value should not be dominated by the volatility of any individual equity issue or by equity issues from any single industry or economic sector. In general, such portfolios should be characterized by a large number of individual equity positions, with no single position representing a large portion of the portfolio's total market value. In addition, it would generally be the case that a sizable proportion of the portfolio would be comprised of issues traded on organized exchanges or in well-established over-the-counter markets.

[35] Where equities are part of a forward contract (both equities to be received or to be delivered), any interest rate or foreign currency exposure from the other side of the contract should be appropriately included in the measurement system in sections IV.A. and IV.C. of this appendix E.

individual equities and on equity indices. Equity derivatives should be converted into notional equity positions in the relevant underlying. A summary of the rules for equity derivatives is set out in Attachment III to this appendix E.

b. Futures and forward contracts relating to individual equities should be reported at current market prices of the underlying. Futures relating to equity indices should be reported as the marked-to-market value of the notional underlying equity portfolio. Equity swaps are treated as two notional positions, with the receiving side as the long position and the paying side as the short position.[36] If one of the legs involves receiving/paying a fixed or floating interest rate, the exposure should be slotted into the appropriate repricing maturity band for debt securities. The stock index is covered by the equity treatment.

c. In the case of futures-related arbitrage strategies, the 2.0 percent specific risk charge applicable to broad diversified equity indices may be applied to only one index. The opposite position is exempt from a specific risk charge. The strategies qualifying for this treatment are:

i. When the banking organization takes an opposite position in exactly the same index at different dates; and

ii. When the banking organization has an opposite position in different but similar indices at the same date, subject to supervisory oversight.

d. If a banking organization engages in a deliberate arbitrage strategy, in which a futures contract on a broad diversified equity index matches a basket of securities, it may exclude both positions from the standardized approach on condition that the trade has been deliberately entered into and separately controlled and the composition of the basket of stocks represents at least 90 percent of the market value of the index. In such a case, the minimum capital requirement is 4.0 percent (that is, 2.0 percent of the gross value of the positions on each side) to reflect risk associated with executing the transaction. This applies even if all of the securities comprising the index are held in identical proportions. Any excess value of the securities comprising the basket over the value of the futures contract or excess value of the futures contract over the value of the basket is treated as an open long or short position.

e. If a banking organization takes a position in depository receipts [37] against an opposite position in the underlying equity, it may offset the position.

C. Foreign Exchange Risk

1. The capital requirement for foreign exchange risk covers the risk of holding or taking positions in foreign currencies, including gold, and is based on a banking organization's net open long positions or net open short positions in each currency, whether or not those positions are in the trading portfolio, plus the net open position in gold, regardless of sign.[38]

2. A banking organization's net open position in each currency (and gold) is calculated by summing:

a. The net spot position (i.e., all asset items less all liability items, including accrued interest earned but not yet received and accrued expenses, denominated in the currency in question);

b. All foreign exchange derivative instruments and other off-balance-sheet positions that are affected by changes in exchange rates are included in the measurement system under section IV.C. of this appendix E (except for options and their associated underlyings, which are included in the measurement system under the treatment discussed in section IV.E. of this appendix E). Forward currency positions should be valued at current spot market exchange rates. For a banking organization in which the basis of its normal management accounting is to use net present values, forward positions may be discounted to net present values as an acceptable way of measuring currency positions for regulatory capital purposes;

c. Guarantees (and similar instruments) that are certain to be called and are likely to be irrevocable;

d. Net future income/expenses not yet accrued but already fully hedged (at the discretion of the banking organization). A banking organization that includes future income and expenses must do so on a consistent basis without selecting expected future flows in order to reduce the banking organization's position; and

e. Any other item representing a profit or loss in foreign currencies.

3. For measuring a banking organization's open positions, positions in composite currencies, such as the ECU, may be either treated as a currency in their own right or split into their component parts on a consistent basis. Positions in gold are measured in the same manner as described in section IV.D. of this appendix E.[39]

4. The capital requirement is determined by converting the nominal amount (or net present value) of the net open position in each foreign currency (and gold) at spot rates into the reporting currency. The capital requirement is 8.0 percent of the sum of:

a. The greater of the sum of the net short open positions or, the sum of the net long open positions; and

b. The net open position in gold, regardless of sign.[40]

5. Where a banking organization is assessing its foreign exchange risk on a consolidated basis, it may be technically impractical in the case of some marginal operations to include the currency positions of a foreign branch or subsidiary of the banking organization. In such cases, the internal limit in each currency may be used as a proxy for the positions, provided there is adequate ex post monitoring of actual positions complying with such limits. In these circumstances, the limits should be added, regardless of sign, to the net open position in each currency.

D. Commodities Risk.

1. *Measurement methods.* This section provides a minimum capital requirement to cover the risk of holding or taking positions in commodities. There are two methods under the standardized approach for measuring commodity market risk—the simplified method and the maturity method. These methods are only appropriate for banking organizations that conduct a limited amount of commodities business. All other banking organizations must adopt an internal measurement system conforming to the criteria in section III. of this appendix E.

2. *Base capital requirement.* Under both the simplified and maturity methods, each long and short commodity position (spot and forward) is expressed in terms of the standard unit of measurement (such as barrels, kilos, or grams). The open positions in each category of commodities are then converted at current spot rates into U.S. currency, with long and short positions offset to arrive at the net open position in each commodity. Positions in different categories of commodities may not, generally, be offset.[41] Under either method, the base capital requirement is 15.0 percent of the net open position, long or short, in each commodity.[42]

3. *Simplified method.* To protect a banking organization against basis risk, interest rate risk, and forward gap risk, each category of commodity is also subject to a 3.0 percent capital requirement on the banking organization's gross positions, long plus short, in the particular commodity. In

[36] For example, an equity swap in which a banking organization is receiving an amount based on the change in value of one particular equity or equity index and paying a different index will be treated as a long position in the former and a short position in the latter.

[37] Depository receipts are instruments issued by a trust company or other depository institution evidencing the deposit of foreign securities and facilitating trading in such instruments on U.S. stock exchanges.

[38] Gold is treated as a foreign exchange position rather than a commodity because its volatility is more in line with foreign currencies and banking organizations manage it in a manner similar to foreign currencies.

[39] Where gold is part of a forward contract (quantity of gold to be received or to be delivered), any interest rate or foreign currency exposure from the other side of the contract should be included in the measurement system in section IV.A. (as a zero coupon instrument) and IV.C. of this appendix E.

[40] For examples, a banking organizations has the following net currency positions: Yen=+50, DM=+100, GB=+150, FFR=−20, US$=−180, and gold=−35. The banking organization would sum its long positions (total=+300) and sum its short positions (total=−200). The banking organization's capital requirement for foreign exchange market risk would be: (300 (the larger of the summed long and short positions) + 35 (gold))×8.0%=26.80.

[41] However, offsetting is permitted between different sub-categories of the same commodity in cases where the sub-categories are deliverable against each other.

[42] When the funding of a commodity position opens a banking organization to interest rate or foreign exchange exposure the relevant positions should be included in the measures of interest rate and foreign exchange risk described in section IV.A. and IV.C of this appendix E. When a commodity is part of a forward contract, any interest or foreign currency exposure from the other side of the contract should be appropriately included in the measurement systems in sections IV.A. and IV.C. of this appendix E.

valuing gross positions in commodity derivatives for this purpose, a banking organization should use the current spot price. The total capital requirement for commodities risk is the sum of the 15.0 percent base charges for each net commodity position and the 3.0 percent requirements on the gross commodity positions.

4. *Maturity method.* a. Under this method, a banking organization must slot each long and short commodity position (converted into U.S. currency at current spot rates) into a maturity ladder. The time-bands for the maturity ladder are; from zero to one month, one up to three months, three up to six months, six up to twelve months, one up to two years, two up to three years, and over three years. A separate maturity ladder is used for each category of commodity. Physical commodities are allocated to the first time-band.

b. In order to capture forward gap and interest rate risk within a time-band (together sometimes referred to as curvature/spread risk), offsetting long and short positions in each time-band are subject to an additional capital requirement. Beginning with the shortest-term time-band and continuing with subsequent time-bands, the amount of the matched short positions plus the amount of the matched long position is multiplied by a spread rate of 1.5 percent.

c. The unmatched net position from shorter-term time-bands must be carried forward to offset exposures in longer-term time-bands. A capital requirement of 0.6 percent of the net position carried forward is added for each time-band that the net position is carried forward.[43] The total capital requirement for commodities risk is the sum of the 15.0 percent base capital requirement for each net commodity position and the additional requirements for matched positions and for unmatched positions carried forward. An example of this calculation is in Attachment IV to this appendix E.

5. *Commodity derivatives.* Commodity derivatives and other off-balance-sheet positions that are affected by changes in commodity prices are included in the measurement system under section IV.D. of this appendix E (except for options and the associated underlying, which are included in the measurement system under the treatment discussed in section IV.E. of this appendix E). Commodity derivatives are converted into notional commodity positions. Under the maturity method, the positions are slotted into maturity time-bands as follows:

a. Futures and forward contracts relating to individual commodities are incorporated in the measurement system as notional amounts (of, for example, barrels or kilos) that are converted to U.S. dollars at current spot rates and are assigned a maturity according to expiration date;

b. Commodity swaps where one side of the contract is a fixed price and the other side is the current market price are incorporated as a series of positions equal to the notional amount of the contract at current spot rates, with one position corresponding to each payment on the swap and slotted in the maturity ladder accordingly. The positions are long positions if the banking organization is paying a fixed price and receiving a floating price, and short positions if the banking organization is receiving a fixed price and paying a floating price;[44] and

c. Commodity swaps where the sides of the transaction are in different commodities are included in the relevant reporting ladder. No offsetting is allowed unless the commodities are in the same sub-category.

E. Options

1. Three alternatives are available for a banking organization to use in measuring its market risk for options activities. A banking organization that only has purchased options may use the simplified method set forth in section IV.E.2. of this appendix E. A banking organization that also writes options may use the scenario method described in section IV.E.3. of this appendix E or the delta-plus method set forth in section IV.E.4. of this appendix E.[45] These methods may only be used by banking organizations which, in relative terms, have limited options activities. Banking organizations with more significant options business are expected to adopt an internal measurement system conforming to the criteria in section III. of this appendix E. Regardless of the method used, specific risk related to the issuer of an instrument still applies to options positions for equities, equity indices and corporate debt securities as set forth in sections IV.A. and IV.B. of this appendix E. There remains a separate capital requirement for counterparty credit risk as set forth in appendix A to this part.

2. Under the simplified and scenario methods, the positions for the options and the associated underlying, cash or forward, are not included in the measurement framework for debt securities, equities, foreign exchange or commodities risk as set forth in sections IV.A. through IV.D. of this appendix E. Rather, they are subject to capital requirements as calculated in this section. The capital requirements calculated under this section IV.E. should then be added to the capital requirements for debt securities, equities, foreign exchange and commodities risk as appropriate. Under the delta-plus method, the delta equivalent position[46] for each option is included in the measurement frameworks set forth in sections IV.A. through IV.D. of this appendix E.

3. A banking organization that has only a limited amount and range of purchased options may use the following simplified approach to measure its market risk exposure.

a. For a banking organization with a long cash position and a long put or with a short cash position and a long call, the capital requirement is the market value of the underlying instrument multiplied by the sum of the specific and general market risk requirements for the underlying (that is, the specific and general market risk requirements that would have applied to the underlying directly under sections IV.A. through IV.D. of this appendix E.[47]), less the amount the option is in the money (if any) bounded at zero.[48]

b. For a banking organization with a long call or a long put, the capital charge is the lesser of:

i. The market value of the underlying security multiplied by the sum of specific and general market risk requirements for the underlying (that is, the specific and general market risk requirements that would have applied to the underlying directly under sections IV.A. through IV.D. of this appendix E[49]); or

ii. The market value of the option.

c. Under this measure, the capital requirement for currency options is 8.0 percent of the market value of the underlying and for commodity options is 15.0 percent of the market value of the underlying.

4. Under the scenario approach, a banking organization revalues its options and related hedging positions by changing the underlying rate or price over a specified range and by assuming different levels of volatility for that rate or price.

a. For each of its option portfolios, a banking organization constructs a grid based on a fixed range of changes in the portfolio's risk factors and calculates changes in the value of the option portfolio at each point within the grid. For this purpose, an option portfolio consists of an option and any related hedging positions or multiple options and related hedging positions that are grouped together according to their remaining maturity or the type of underlying.

b. Options based on interest rates and debt instruments are grouped into portfolios according to the maturity zones that are set forth in section IV.A. of this appendix E. (Zone 1 instruments have a remaining maturity of up to 1 year, zone 2 instruments

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[43] For example, if $200 short is carried forward from the 3–6 month time-band to the 1–2 year time-band, the capital charge would be $\$200 \times .006 \times 2 = \$2.40$.

[44] If one of the sides of the transaction involves receiving/paying a fixed or floating interest rate, that exposure should be slotted into the appropriate repricing maturity band in section IV.A. of this appendix E.

[45] Unless all their written option positions are hedged by perfectly matched long positions in exactly the same options, in which case there is no capital requirement for market risk.

[46] The delta equivalent of an option is the option's delta value multiplied by its principal or notional value. The delta value of an option represents the expected change in the option's price as a proportion of a small change in the price of the underlying instrument. For example, an option whose price changes $1 for every $2 dollar change in the price of the underlying instrument has a delta of 0.50.

[47] Some options (e.g., where the underlying is an interest rate, a currency, or a commodity) bear no specific risk but specific risk will be present in the case of options on corporate debt securities and for options on equities and equity indices.

[48] For example, if a holder of 100 shares currently valued at $10 each has an equivalent put option with a strike price of $11, the capital charge would be: $\$1{,}000 \times 16.0$ percent (e.g., 8.0 percent specific plus 8.0 percent general market risk) = $160, less the amount the option is in the money $(\$11 - \$10) \times 100 = \$100$, i.e., the capital charge would be $60. A similar methodology applies for options whose underlying is a foreign currency, a debt security or a commodity.

[49] See footnote 47 in section IV.E.3.a of this appendix E.

have a remaining maturity from 1 year up to 4 years, and zone 3 instruments have a remaining maturity of 4 years or more.) These options and the associated hedging positions should be evaluated under the assumption that the relevant interest rates move simultaneously. For options based on equities, separate grids are constructed for each individual equity issue and index. For options based on exchange rates, separate grids are constructed for individual exchange rates. For options based on commodities, separate grids are constructed for each category of commodity (as defined in sections I.B.3. and IV.D. of this appendix E).

c. For option portfolios with options based on equities, exchange rates, and commodities, the first dimension of the grid consists of rate or price changes within a specified range above and below the current market value of the underlying; for equities, the range is ± 12.0 percent (or in the case of an index ± 8.0 percent), for exchange rates the range is ± 8.0 percent, and for commodities the range is ± 15.0 percent. For option portfolios with options based on interest rates, the range for the first dimension of the grid depends on the remaining maturity zone. The range for zone 1 is ± 100 basis points, the range for zone 2 is ± 90 basis points, and the range for zone 3 is ± 75 basis points. For all option portfolios, the range is divided into at least ten equally spaced intervals. The second dimension of each grid is a shift in the volatility of the underlying rate or price equal to ± 25.0 percent of the current volatility.[50]

d. For each assumed volatility and rate or price change (a scenario), the banking organization revalues each option portfolio. The market risk capital requirement for the portfolio is the largest loss in value from among the scenario revaluations. The total market risk capital requirement for all option portfolios is the sum of the individual option portfolio capital requirements.

e. The Federal Reserve will review the application of the scenario approach, particularly regarding the precise way the analysis is constructed. A banking organization using the scenario approach should meet the appropriate qualitative criteria set forth in section III.B. of this appendix E.

5. Under the delta-plus method, a banking organization that writes options may include delta-weighted options positions within each measurement framework as set forth in sections IV.A. through IV.D. of this appendix E.

a. Options positions should be measured as a position equal to the market value of the underlying instrument multiplied by the delta. In addition, a banking organization must measure the sensitivities of the option's gamma (the change of the delta for a given change in the price of the underlying) and vega (the sensitivity of the option price with respect to a change in volatility) to calculate the total capital requirement. These sensitivities may be calculated according to an exchange model approved by the Federal Reserve or to the banking organization's own options pricing model, subject to review by the Federal Reserve.

b. For options with debt instruments or interest rates as the underlying instrument, delta-weighted options positions should be slotted into the debt instrument time-bands in section IV.A. of this appendix E using a two-legged approach (as is used for other derivatives), requiring one entry at the time the underlying contract takes effect and one at the time the underlying contract matures.[51] Floating rate instruments with caps or floors should be treated as a combination of floating rate securities and a series of European-style options.[52] A banking organization must also calculate the gamma and vega for each such option position (including hedge positions). The results should be slotted into separate maturity ladders by currency. For options such as caps and floors whose underlying instrument is an interest rate, the delta and gamma should be expressed in terms of a hypothetical underlying security. Subsequently:

i. For gamma risk, for each time-band, net gammas that are negative are multiplied by the risk weights set out in Table IV in section IV.E.5.b.iv. of this appendix E and by the square of the market value of the underlying instrument (net positive gammas may be disregarded);

ii. For volatility risk, a banking organization calculates the capital requirements for vega in each time-band assuming a proportional shift in volatility of ± 25.0 percent;

iii. The capital requirement is the absolute value of the sum of the individual capital requirements for net negative gammas plus the absolute value of the sum of the individual capital requirements for vega risk for each time-band; and

iv. The delta plus method risk weights are:

TABLE IV.—DELTA PLUS METHOD RISK WEIGHTS

Time-band	Modified duration (average assumed for time band)	Assumed interest rate change (%)	Risk-weight for gamma[1]
Under 1 month	0.00	1.00	0.00000
1 up to 3 months	0.20	1.00	0.00020
3 up to 6 months	0.40	1.00	0.00080
6 up to 12 months	0.70	1.00	0.00245
1 up to 2 years	1.40	0.90	0.00794
2 up to 3 years	2.20	0.80	0.01549
3 up to 4 years	3.00	0.75	0.02531
4 up to 5 years	3.65	0.75	0.03747
5 up to 7 years	4.65	0.70	0.05298
7 up to 10 years	5.80	0.65	0.07106
10 up to 15 years	7.50	0.60	0.10125
15 up to 20 years	8.75	0.60	0.13781
Over 20 years	10.00	0.60	0.18000

[1] According to the Taylor expansion, the risk weights are calculated as ½ (modified duration × assumed interest rate change)^2 100.

c. For options with equities as the underlying, delta-weighted option positions should be incorporated in the measure of market risk set forth in section IV.B. of this appendix E. Individual equity issues and indices should be treated as separate underlyings. In addition to the capital requirement for delta risk, a banking

[50] For example, if the underlying in an equity instrument with a current market value of $100 and a volatility of 20 percent, the first dimension of the grid would range from $88 to $112, divided into ten intervals of $2.40 and the second dimension would assume volatilities of 15 percent, 20 percent, and 25 percent.

[51] For example, in April, a purchased call option on a June three-month interest-rate future would be considered on the basis of its delta-equivalent value to be a long position with a maturity of five months and a short position with a maturity of two months. The written option would be slotted as a long position with a maturity of two months and a short position with a maturity of five months.

[52] For example, the holder of a three-year floating rate bond indexed to six-month LIBOR with a cap of 15 percent would treat the bond as a debt security that reprices in six months, and a series of five written call options on a FRA with a strike rate of 15 percent, each slotted as a short position at the expiration date of the option and as a long position at the time the FRA matures.

organization should apply a further capital charge for gamma and vega risk:

i. For gamma risk, the net gammas that are negative for each underlying are multiplied by 0.72 percent (in the case of an individual equity) or 0.32 percent (in the case of an index as the underlying) and by the square of the market value of the underlying;

ii. For volatility risk, a banking organization calculates the capital requirement for vega for each underlying, assuming a proportional shift in volatility of ±25.0 percent; and

iii. The capital requirement is the absolute value of the sum of the individual capital requirements for net negative gammas plus the absolute value of the individual capital requirements for vega risk.

d. For options of foreign exchange and gold positions, the net delta (or delta-based) equivalent of the total book of foreign currency and gold options is incorporated into the measurement of the exposure in a single currency position as set forth in section IV.C. of this appendix E. The gamma and vega risks should be measured as follows:

i. For gamma risk, for each underlying exchange rate, net gammas that are negative are multiplied by 0.32 percent and by the square of the market value of the positions;

ii. For volatility risk, a banking organization calculates the capital requirements for vega for each currency pair and gold assuming a proportional shift in volatility of ± 25.0 percent; and

iii. The capital requirement is the absolute value of the sum of the individual capital requirements for net negative gammas plus the absolute value of the sum of the individual capital requirements for vega risk.

e. For options on commodities, the delta-weighted positions are incorporated in one of the measures described in section IV.D. of this appendix E. In addition, a banking organization must apply a capital requirement for gamma and vega risk:

i. For gamma risk, net gammas that are negative for each underlying are multiplied by 1.125 percent and by the square of the market value of the commodity;

ii. For volatility risk, a banking organization calculates the capital requirements for vega for each commodity assuming a proportional shift in volatility of +/− 25.0 percent; and

iii. The capital requirement is the absolute value of the sum of the individual capital requirements for net negative gammas plus the absolute value of the sum of the individual capital requirements for vega risk.

f. Under certain conditions and to a limited extent, the Federal Reserve may permit banking organizations that are significant traders in options with debt securities or interest rates as the underlying to net positive and negative gammas and vegas across time-bands. Such netting must be based on prudent and conservative assumptions and the banking organization must materially meet the qualitative standards set forth in section III.B. of this appendix E.

g. A banking organization may base the calculation of vega risk on a volatility ladder in which the implied change in volatility varies with the maturity of the option. The assumed proportional shift in volatility must be at least +/- 25.0 percent at the short end of the maturity spectrum. The proportional shift for longer maturities must be at least as stringent instatistical terms as the 25.0 percent shift at the short end.

h. A banking organization should also monitor the risks of rho (the rate of change of the value of the option with respect to the interest rate) and theta (the rate of change of the value of the option with respect to time).

Attachments to Appendix E

Attachment I—Sample Calculation of Eligible Tier 1, Tier 2, and Tier 3 Capital for the Risk-Based Capital Ratio Adjusted for Market Risk

a. In each example the weighted-risk assets are $8000 and the market risk-adjusted assets are $625 (capital requirement for market risk = $50, $50 x 12.5 = $625):

Example 1: A banking organization has the following qualifying capital: Tier 1 = $600, Tier 2 = $100, Tier 3 = $1000.

(1) The minimum capital requirement for credit risk is $640 ($8000 x 8.0%). This requirement could be satisfied with $540 of Tier 1 capital and $100 of Tier 2 capital.

(2) The remaining capital available for market risk would be: Tier 1 = $60, Tier 2 = 0, and Tier 3 = $1000. The minimum capital requirement for market risk is $50 ($625 x 8.0%). Eligible Tier 3 capital would be limited to $125 ($50 x 2.5).

(3) The Tier 1 capital required to support market risk could be satisfied by allocating $14 ($50 x .285), with eligible Tier 3 capital used for market risk being $36 ($50 − $14).

(4) Total qualifying and eligible capital would be: $540 (Tier 1) + $100 (Tier 2) + $60 (Tier 1, comprising $14 allocated for market risk and $46 unallocated) + $36 (Tier 3) = $736. The banking organization's ratio of qualifying and eligible capital to weighted-risk assets adjusted for market risk would be: $736/$8,625) = 8.5%.

Example 2: A banking organization has the following qualifying capital: Tier 1 = $500, Tier 2 = $140, Tier 3 = $600.

(1) The minimum capital requirement for credit risk is $640 ($8000 x 8.0%). This requirement could be satisfied with $500 of Tier 1 capital and $140 of Tier 2 capital.

(2) The remaining capital available for market risk would be: Tier 1 = 0, Tier 2 = $0, and Tier 3 = $600. Eligible Tier 3 capital would be limited to $0 (0 x 2.5). Because there is no Tier 1 capital required to support market risk, no eligible Tier 3 capital may be used for market risk.

(3) Total qualifying and eligible capital would be: $500 (Tier 1) + $140 (Tier 2) = $640. The banking organization's ratio of qualifying and eligible capital to weighted-risk assets adjusted for market risk would be: $640/$8,625) = 7.4%.

b. In both of the examples described in paragraph a. of this attachment the total of Tier 2 and Tier 3 capital for credit and market risk is not greater than 100 percent of Tier 1 capital for credit and market risk and the total of Tier 2 capital for credit risk is not greater than 100 percent of Tier 1 capital for credit risk.

Attachment II—Sample Calculation of General Market Risk for Debt Instruments Using the Maturity Method

a. A banking organization with the following positions would slot them into a maturity ladder as shown below:

i. Qualifying bond, $13.33mn market value, remaining maturity 8 years, coupon 8%;

ii. Government bond, $75mn market value, remaining maturity 2 months, coupon 7%;

iii. Interest rate swap, $150mn, banking organization receives floating rate interest and pays fixed, next interest reset after 12 months, remaining life of swap is 8 years (assumes the current interest rate is identical to the one the swap is based on); and

iv. Long position in interest rate future, $50mn, delivery date after 6 months, life of underlying government security is 3.5 years (assumes the current interest rate is identical to the one the swap is based on).

Zone	Time-band and position	Risk wght (%)	Risk-weighted position	Net time-band positions	Net zone positions
1	10–1 mth	0.00			
	1–3 mth Long 75 Gov.bond	0.20	Long 0.15	Long 0.15	Long 1.00
	3–6 mt Short 50 Future	0.40	Short 0.20	Short 0.20	
	6–12 mths Long 150 Swap	0.70	Long 1.05	Long 1.05.	
2	1–2 yrs	1.25			
	2–3 yrs	1.75			
	3–4 yrs Long 50 Future	2.25	Long 1.125	Long 1.125	Long 1.125
3	4–5 yrs	2.75			
	5–7 yrs	3.25			
	7–10 yrs Short 150 Swap Long 13.13 Qual Bond	3.75	Short 5.625 Long 0.50	Short 5.125	Short 5.125
	10–15 yrs	4.50			

Zone	Time-band and position	Risk wght (%)	Risk-weighted position	Net time-band positions	Net zone positions
	15–20 yrs	5.25			
	over 20 yrs	6.00			

b. A vertical disallowance would be calculated for time-band 7–10 years. It would be 10 percent of the matched positions in the time-band—10.0x0.5=0.05 ($50,000).

c. A horizontal disallowance would be calculated for zone 1. It would be 40 percent of the matched positions in the zone—40.0x0.20=0.80 ($80,000). The remaining net position in Zone 1 would be +1.00 .

d. A horizontal disallowance would be calculated for adjacent zones 2 and 3. It would be 40 percent of the matched positions between the zones—40.0x1.125=0.45 (450,000). The remaining position in zone 3 would be −4.00.

e. A horizontal disallowance would be calculated between zones 1 and 3. It would be 100 percent of the matched positions between the zones—100x1.00=1.00 (1,000,000).

f. The remaining net open position for the banking organization would be 3.00 ($3,000,000).

The total capital requirement for general market risk for this portfolio would be:

The vertical disallowance	$50,000
Horizontal disallowance in zone 1	80,000
Horizontal disallowance between zones 2 and 3	450,000
Horizontal disallowance between zones 1 and 3	1,000,000
The overall net open position	3,000,000
Total requirement for general market risk	4,580,000

Attachment III—Summary of Treatment for Interest Rate and Equity Derivatives

SUMMARY OF TREATMENT FOR INTEREST RATE DERIVATIVES

Instrument	Specific risk charge	General market risk charge
Exchange-Traded Future:		
Government security	No	Yes, as two positions.
Corporate debt security	Yes	Yes, as two positions.
Index on short-term interest rates (e.g. LIBOR)	No	Yes, as two positions.
OTC Forward:		
Government security	No	Yes, as two positions.
Corporate debt security	Yes	Yes, as two positions.
Index on short-term interest rates	No	Yes, as two positions.
FRAs, Swaps	No	Yes, as two positions.
Forward foreign exchange	No	Yes, as one position in each currency.
Options:		
Government security	No	For each type of transaction, either:
Corporate debt security	Yes	(a) Carve out together with the associated hedging positions —simplified method—scenario analysis—internal models, or
Index on short-term interest rates	No	(b) General market risk charge according to the Delta-plus method (gamma and vega receive separate capital charges)

NOTE: Specific risk charges relate to the issuer of the instrument. There remains a separate capital requirement for counterparty credit risk.

SUMMARY OF TREATMENT FOR EQUITY DERIVATIVES

Instrument	Specific risk charge	General market risk charge
Exchange-Traded or OTC Future:		
Individual equity	Yes	Yes, as underlying.
Index	2.0%	Yes, as underlying.
Options:		
Individual equity	yes	For each type of transactions either:
Index	2.0%	(a) Carve out together with the associated hedging positions —simplified method—scenario approach—internal models, or (b) General market risk requirement according to the Delta-plus method (gamma and vega receive separate capital charges).

NOTE: Specific risk charges relate to the issuer of the instrument. There remains a separate capital requirement for counterparty credit risk.

Attachment IV—Sample Calculation of Standardized Approach for Commodities Risk

Time band	Position	Spread rate	Capital calculation	Capital charge
0 up to 1 month	None			
1 up to 3 months	None			
3 up to 6 months	Long 800	1.5%	800 long+800 short (matched)×1.5%=	24
	Short 1000		200 Short carried forward to 1–2 yrs, capital charge: 200×2×0.6%=.	24
6 up to 12 months	None.			
1 up to 2 yrs	Long 600		200 long+200 short (matched)×1.5%=	6

Time band	Position	Spread rate	Capital calculation	Capital charge
			400 long carried forward to over 3 yrs capital charge: 400×2×0.6%=.	4.8
2 up to 3 yrs	None			
over 3 years	Short 600		400 long+400 short (matched)+1.5%=	12
			Net position: 200 capital charge: 200×15.0%=	30

NOTE: Assume all positions are in the same commodity and converted at current spot rates into U.S. dollars. The total capital requirement would be $79.2.

Attachment V—Sample Calculation for Delta-Plus Method for Options

a. Assume a banking organization has a European short call option on a commodity with an exercise price of 490 and a market value of the underlying 12 months from the expiration of the option at 500; a risk-free interest rate at 8% per annum, and the volatility at 20 percent. The current delta for this position is according to the Black-Scholes formula −0.721 (that is, the price of the option changes by −0.721 if the price of the underlying moves by 1). The gamma is −0.0034 (that is, the delta changes by −0.0034 from −0.721 to −0.7244 if the price of the underlying moves by 1). The current value of the option is 65.48.

b. The first step under the delta-plus method is to multiply the market value of the commodity by the absolute value of the delta. 500×0.721=360.5. The delta-weighted position is then incorporated into the measure described in section IV.D. of this Appendix E. If the banking organization uses the maturity approach and no other positions exist, the delta-weighted position is multiplied by 0.15 to calculate the capital requirement for delta. 360.5×0.15=54.075.

c. The capital requirement for gamma is calculated according to the Taylor expansion by multiplying the absolute value of the assumed gamma of −0.0034 by 1.125% and by the square of the market value of the underlying. $0.0034 \times 0.0125 \times 500^2 = 10.625$

d. The capital requirement for vega is calculated next. The assumed current (implied) volatility is 20%. Since only an increase in volatility carries a risk of loss for a short call option, the volatility has to be increased by a relative shift of 25%. This means that the vega capital requirement has to be calculated on the basis of a change in volatility of 5 percentage points from 20% to 25% in this example. According to the Black-Scholes formula used here, the vega equals 168. Thus, a 1% or 0.01 increase in volatility increases the value of the option by 1.68. Accordingly, a change in volatility of 5 percentage points increases the value of 5×1.68=8.4. This is the capital requirement for vega risk. The total capital requirement would be $73.10 (54.075+10.625+8.4).

By Order of the Board of Governors of the Federal Reserve System, July 12, 1995.

William W. Wiles,

Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

For the reasons indicated in the preamble, the FDIC Board of Directors hereby proposes to amend part 325 of chapter III of Title 12 of the Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

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

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. Appendix A to part 325 is amended in the introductory text, by adding a new paragraph after the third undesignated paragraph to read as follows:

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

* * * * *

In addition, when certain banks that engage in trading activities calculate their risk-based capital ratio under this appendix A, they must also refer to appendix C of this part, which incorporates capital charges for certain market risks into the risk-based capital ratio. When calculating their risk-based capital ratio under this appendix A, such banks are required to refer to appendix C of this part for supplemental rules to determine qualifying and eligible capital, calculate risk-weighted assets, calculate market-risk equivalent assets and add them to risk- weighted assets, and calculate risk-based capital ratios adjusted for market risk.

* * * * *

3. A new appendix C is added to part 325 to read as follows:

Appendix C to Part 325—Risk-Based Capital for State Non-Member Banks: Market Risk

(i) The Federal Deposit Insurance Corporation (FDIC) has adopted a framework to supplement the risk-based capital requirements set out in appendix A of this part with capital requirements for the market risk exposure of state non-member banks.[1] For this purpose, market risk refers to the risk of losses in a bank's on- and off-balance-sheet positions arising from movements in market prices. The market risks subject to these capital requirements are those associated with debt and equity instruments held in the bank's trading account, as well as foreign exchange risk and commodities risk throughout the bank, including options and other derivative contracts in each risk category. As is further detailed in section II of this appendix C, debt and equity instruments and commodities positions subject to the measure for market risk under this appendix C are generally excluded from the calculation of risk-weighted assets under appendix A of this part.

(ii) This appendix C provides two ways for a bank to determine its exposure to market risk. A bank may use its internal risk measurement model, subject to the conditions and criteria set forth in section III of this appendix C (referred to as the internal models approach), or when appropriate, a bank may use all or portions of the alternative measurement system described in section IV of this appendix C (referred to as the standardized approach).

(iii) With prior approval from the FDIC, for regulatory capital purposes, a bank may use its internal risk measurement model to measure its value-at-risk[2] for each of the following risk factor categories: interest rates, exchange rates, equity prices, and commodity prices. The value-at-risk amount for each risk factor category should include volatilities of related options. The value-at-risk amount for each risk factor category is summed to determine the aggregate value-at- risk for the bank.

(iv) The standardized approach uses a set of standardized calculations and assumptions to measure market risk exposure depending on its source: debt instruments, equities, foreign currencies, and commodities, including volatilities of related options.[3]

[1] The market risk measure is based on a framework developed jointly by supervisory authorities from the countries represented on the Basle Committee on Banking Supervision (Basle Supervisors Committee) and endorsed by the Group of Ten Central Bank Governors. The framework is described in a paper prepared by the Basle Supervisors Committee entitled ''Proposal to issue a Supplement to the Basle Capital Accord to Cover Market Risks''. April 1995.

[2] A bank evaluates its current positions and estimates future market volatility through a value-at-risk measure, which is an estimate representing, with a certain degree of statistical confidence, the maximum amount by which the market value of trading positions could decline during a specific period of time. The value-at-risk is generated through an internal model that employs a series of market risk factors (for example, market rates and prices that affect the value of trading positions).

[3] There are three alternatives for measuring the market risk of options under the standardized approach. Under two of the alternatives, the

Continued

(v) The FDIC generally expects any bank that is subject to this appendix C, especially those with large trading accounts, to compute the measure for market risk by using internal risk-measurement models. A bank may not change its measurement approach for the purpose of minimizing capital requirements. In limited instances, on a case-by-case basis, the FDIC may permit a bank that has internal models to incorporate alternative measures for market risk of negligible exposures (for example, *de minimis* positions, activities in remote locations, minor exposures in a currency, or activities that present negligible risk to the bank), so long as it adequately captures the risk.

(vi) The FDIC will monitor the implementation and effect of these guidelines in relation to domestic and international developments in the banking industry. When necessary and appropriate, the FDIC will consider the need to modify this appendix C in light of any significant changes in the economy, financial markets, banking practices, or other relevant factors.

I. Scope of the Market Risk Capital Requirement

A. Banks Subject to This Appendix C

1. Effective December 31, 1997, this appendix C will be applied to any FDIC-insured state-chartered bank that is not a member of the Federal Reserve System (excluding insured branches of foreign banks) and that, on a consolidated basis, either:

a. Has total assets in excess of $5 billion, and:

i. Has a total volume of trading activities (measured as the sum of the bank's trading assets and liabilities [4] on a daily average basis for the quarter) that is 3.0 percent or more of the total assets of the bank; or

ii. Has interest rate, foreign exchange, equity, and commodity off-balance-sheet derivative contracts relating to trading activities whose total notional amounts exceed $5 billion; or

b. Has total assets of $5 billion or less and has a total volume of trading activities exceeding 10.0 percent of the total assets of the bank.

2. Such banks identified in paragraph 1 (hereinafter referred to as ''banks''), when calculating their risk-based capital ratio under appendix A of this part, are required to refer to this appendix C for supplemental rules to determine their qualifying and eligible capital, calculate risk-weighted assets, calculate market-risk equivalent assets and add them to risk-weighted assets, and calculate risk-based capital ratios adjusted for market risk.[5]

B. Market Risks Subject to a Capital Requirement

1. *General Market Risk and Specific Risk*. A bank must hold capital against exposure to general market risk and specific risk arising from its trading and other foreign exchange and commodity activities. For this purpose, general market risk refers to changes in the market value of covered transactions resulting from market movements, such as changing levels of market interest rates, broad equity indices, or currency exchange rates. Specific risk refers to credit risk, that is, the risk that the issuer of a debt or equity instrument might default, as well as to other factors that affect the market value of specific instruments but that do not materially alter market conditions.[6]

2. *Trading Activities*. a. The measure for market risk in trading activities is based on on- and off-balance-sheet positions in a bank's trading account. For this purpose, the trading account consists of positions in financial instruments acquired with the intent to resell in order to profit from short-term price movements (or other price or interest-rate variations), including, but not limited to:

i. Assets acquired with the intent to resell to customers;

ii. Positions in financial instruments arising from matched principal brokering and market making; or

iii. Positions taken in order to hedge other elements of the trading account (that is, reduce risk by offsetting other positions that have exposure to changes in market rates or prices).[7]

b. Trading account activities may include positions in debt instruments, equities, foreign currencies, and commodity instruments, or related derivative [8] or other off-balance-sheet contracts.

c. The debt instruments in the trading account category consists of all fixed-rate and floating-rate debt securities and instruments that behave like debt, including non-convertible preferred stock. Convertible bonds, i.e., preferred stock or debt issues that are convertible, at a stated price, into common shares of the issuer, should be treated as debt instruments if they trade like debt instruments and as equities if they trade like equities. Also included are derivative contracts of debt instruments and other off-balance-sheet instruments in the trading account that react to changes in interest rates (for example, forward rate agreements (FRAs), bond futures, interest rate and cross-currency swaps and forward foreign exchange positions). A security that has been sold subject to a repurchase agreement or lent subject to a securities lending agreement is treated as if it were still owned by the lender of the security, but the off-balance-sheet portion of the transaction remains an element of risk-weighted assets as set forth in section II. of appendix A of this part.

d. The equities in the trading account category consist of equity instruments that behave like equities. The instruments covered include common stocks (whether voting or non-voting), convertible securities that behave like equities, and commitments to buy or sell equity securities. Also included are derivative contracts of equity instruments and other off-balance-sheet instruments in the trading account that are affected by changes in equity prices. However, non-convertible preferred stock is included in debt instruments.

3. *Foreign Exchange and Commodities Risk*. Foreign exchange or commodities positions, whether or not included in a bank's trading account, are subject to a measure for market risk of those positions.

a. The measure for market risk of foreign exchange applies to a bank's total currency and gold positions. This includes spot positions (that is, asset items and liability items, including accrued interest and expenses, denominated in each currency); forward positions (that is, forward foreign exchange transactions, including currency futures and the principal on currency swaps not included in the spot position); and certain guarantees. It also includes future income and expenses from foreign currency transactions not yet accrued but already fully hedged (at the discretion of the reporting bank), foreign exchange derivative and other off-balance-sheet positions that are affected by changes in exchange rates, and any other item representing a profit or loss in foreign currencies.

b. A bank doing negligible business in foreign currency and that does not take foreign exchange positions for its own account may be exempted from the market risk measure for foreign exchange risk provided that:

i. Its foreign currency business, defined as the greater of the sum of its gross long positions and the sum of its gross short positions in all foreign currencies as determined under section IV.C.2 of this appendix C, does not exceed 100 percent of eligible capital as defined in section II. of this appendix C; and

ii. Its overall net open foreign exchange position as determined under section IV.C.3. of this appendix C does not exceed 2.0 percent of eligible capital.

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simplified and scenario methods, the underlying position of an option is ''carved-out,'' and is not included in the prescribed risk measure for the underlying debt, equity, foreign exchange or commodity. Instead it is evaluated together with the related option according to the procedures described for options to determine the capital requirement. Under the third alternative, the ''delta-plus'' approach, the delta-equivalent value of each position is included in the measurement framework for the prescribed risk measure for the underlying.

[4] As reflected in the bank's quarterly Consolidated Reports of Condition and Income (call report.)

[5] The FDIC may apply all or portions of this appendix C to other state non-members banks when deemed necessary for safety and soundness purposes.

[6] This appendix C does not impose specific risk capital requirements for foreign exchange risk and commodities positions because they do no have the type of issuer-specific risk associated with debt and equity instruments in the trading account.

[7] Subject to FDIC review, when on- or off-balance-sheet non-trading account instruments are deliberately used to hedge trading account instruments, the non-trading account instruments may be included in the measure for general market risk, but if so included, are not included in the measure for specific risk and instead remain an element of risk-weighted assets under section II of appendix A of this part. Instruments such as swaps used to hedge non-trading account activities should be excluded from the measure for market risk if they are not part of the trading account.

[8] In general terms, a derivative is a financial contract whose value is derived from the values of one or more underlying assets or reference rates or indexes of asset values (referred to as ''the underlying''). Derivatives include standardized contracts that are traded on exchanges and customized, privately negotiated contracts known as over-the-counter (OTC) derivatives.

c. A bank may, subject to approval by the FDIC, exclude from its foreign exchange positions any structural positions in foreign currencies. For this purpose, such structural positions are limited to transactions designed to hedge a bank's capital ratios against the effect of adverse exchange rate movements on subordinated debt, equity, or minority interests in consolidated subsidiaries and dotation capital assigned to foreign branches that are denominated in foreign currencies. Also included are any positions related to unconsolidated subsidiaries and to other items that are deducted from a bank's capital when calculating its capital base. In any event, such structural foreign currency positions must reflect long-term policies of the institution and not relate to trading positions.

d. The measure for market risk of commodities applies to a bank's total commodities positions, including commodity futures, commodity swaps, and all other commodity derivatives or other off-balance-sheet positions that are affected by changes in commodity prices. A commodity is defined as a physical product that is or can be traded on a secondary market (such as agricultural products, minerals (including oil), and precious metals), but excluding gold (which is treated as foreign exchange).

II. Qualifying Capital and the Market Risk-Adjusted Capital Ratio

A. Qualifying and Eligible Capital

1. The principal forms of qualifying capital for market risk are Tier 1 capital and Tier 2 capital as defined in, and subject to the conditions and limitations of, section I of appendix A of this part. A bank may use Tier 3 capital for the sole purpose of meeting a portion of the capital requirements for market risk. Tier 3 capital may be allocated only to support market-risk equivalent assets, and may in no event be allocated to support capital requirements associated with risk-weighted assets under appendix A of this part.

2. Tier 3 capital consists of short-term subordinated debt that is subject to a lock-in clause providing that neither interest nor principal payment is due (even at maturity) if such payment would cause the issuing bank to fall or remain below the minimum 8.0 percent risk-based capital requirement as set forth in appendix A of this part and adjusted for market risk.

3. In order to qualify as Tier 3 capital, the short-term debt must be unsecured, subordinated, and fully paid up; it must have an original maturity of at least two years; and it may not be redeemed before maturity without prior approval by the FDIC. In addition, it may not contain or be covered by any covenants, terms, or restrictions that are inconsistent with safe and sound banking practices.

B. Calculation of Eligible Capital and the Capital Ratio

A bank that is subject to the market risk measure must calculate its risk-based capital ratio and eligible capital as follows:

1. Determine total risk-weighted assets under appendix A of this part, excluding from risk-weighted assets:

a. All debt and equity instruments in the trading account required to be included under the measure for market risk, with the exception of over-the-counter derivatives or non-trading account instruments used to hedge trading account instruments and included in the measure for general market risk at the bank's option; and

b. All positions in commodities required to be included under the measure for market risk.

2. Calculate the total measure for market risk using the internal models approach, the standardized approach, or an approved combination of these two approaches:

a. *Internal Models.* i. For a bank approved to use the internal models approach under section III of this appendix C, the total measure for market risk is the higher of:

A. The bank's previous day's aggregate value-at-risk amount; or

B. An average of the daily aggregate value-at-risk amounts measured on each of the preceding 60 business days multiplied by a minimum ''multiplication factor'' of 3. The FDIC may adjust the multiplication factor for a bank to increase its capital requirement based on an assessment of the quality and historic accuracy of the bank's risk management system.

ii. Additionally, if a bank's internal model does not capture the specific risk of debt and equity instruments in the trading account,[9] the specific risk measure as calculated under the standardized approach may be added to the bank's measure for market risk.

b. *Standardized Approach.* A bank that has not obtained the FDIC's approval to use an internal model must use the standardized approach for measuring its market risk. For a bank using this approach, the total measure for market risk is the sum of the market risk measures for debt and equity instruments in the trading account, foreign exchange and commodities risk throughout the bank, and options and other derivative positions in each risk category as set forth in sections IV.A through IV.E. of this appendix C.

c. *Partial Models.* With approval from the FDIC, a bank whose internal model does not cover all risk factor categories may use the standardized approach for measuring market risk arising from the risk factor categories that are not covered. The FDIC will approve combining the two approaches only on a temporary basis in situations in which the institution is developing but has not fully implemented a comprehensive internal model. When a bank uses both approaches, each risk factor category (i.e., interest rates, equity prices, exchange rates, and commodity prices) must be measured using one or the other approach. The methods may not be combined within a single risk factor category. Once a bank adopts an acceptable internal model for a particular risk factor category, it may not revert to the standardized approach except in unusual circumstances and with the prior approval of the FDIC.[10] For a bank using a combination of approaches, the total measure for market risk is the sum of:

i. The appropriate value-at-risk measure (as determined in paragraph B.2.a. of this section, aggregating the value-at-risk measure for each risk factor category included in the internal model); and

ii. The measure for market risk for each risk factor category that is calculated using the standardized approach.

3. Calculate the market-risk equivalent assets by multiplying the total measure for market risk by 12.5 (i.e., the reciprocal of the 8.0 percent minimum risk-based capital ratio).

4. Add the market-risk equivalent assets to total risk-weighted assets (as determined in paragraph B.1. of this section). The sum of these two amounts is the denominator of the total risk-based capital ratio, adjusted for market risk.

5.a. In order to calculate eligible capital to be included in the numerator of the ratio, a bank must first allocate the qualifying Tier 1 and Tier 2 capital necessary to support total risk-weighted assets (as determined in paragraph B.1. of this section) in accordance with the terms and restrictions of section I of appendix A of this part, achieving at least the minimum supervisory ratio in section III. of appendix A of this part. Remaining Tier 1, eligible Tier 2, and eligible Tier 3 capital should then be allocated to support market-risk equivalent assets (as determined in paragraph B.3. of this section), achieving at least a minimum supervisory ratio of 8.0 percent, subject to the following restrictions:

i. Eligible Tier 3 capital may not exceed 250 percent of a bank's Tier 1 capital allocated for market risk;

ii. Tier 2 elements may be substituted for Tier 3 up to the same 250 percent limit, so long as the overall limits for Tier 2 capital set out in section I of appendix A of this part are not exceeded (i.e., Tier 2 capital may not exceed total Tier 1 capital, and long-term subordinated debt may not exceed 50 percent of Tier 1 capital); and

iii. The maximum eligible amount of Tier 2 and Tier 3 capital, summed together, may not exceed 100 percent of Tier 1 capital.

b. Eligible capital for the total risk-based capital ratio is then the sum of the bank's qualifying Tier 1 capital, its qualifying Tier 2 capital subject to the limits stated in this paragraph and eligible Tier 3 capital subject to the limits stated in this paragraph B.5.[11]

C. Consolidation and Reporting

1. The capital requirements for market risk apply to banks on a worldwide consolidated basis. The FDIC may, however, evaluate market risk on an unconsolidated basis when necessary (for example, when there are

[9] If a bank uses an internal model that measures specific risk of debt and equity instruments in the trading account, the measure should in no case be less than one-half the specific risk measure as calculated under the standardized approach (taking into account the effect of the multiplier under paragraph B.2.a.ii. of this section).

[10] Banks that have modeling capabilities are expected to use their internal models for measuring market risk for regulatory capital purposes. However, the FDIC may permit a bank to use another measurement technique for *de minimis* positions, activities in remote locations, minor exposures in a currency, or in activities that present negligible risk to the bank.

[11] Examples of the method used to calculate eligible capital are set forth in attachment I to this appendix C.

obstacles to the repatriation of profits from a foreign subsidiary or where management structure does not allow timely management of risk on a consolidated basis).

2. All transactions, including forward sales and purchases, should be included in the calculation of market risk capital requirements from the date on which they were entered into. Although banks subject to the capital requirements for market risk will continue to report their capital on a quarterly basis, the FDIC expects banks to meet their capital requirements for market risk on a continuous basis (that is, at a minimum, at the close of each business day).

3. The risk-based capital ratios adjusted for market risk are minimum supervisory ratios. The FDIC expects banks to operate with capital positions well above the minimum ratios. In all cases, banks should hold capital commensurate with the level and nature of the risks to which they are exposed.

III. The Internal Models Approach

A. Use of Models

1. With prior approval of the FDIC, a bank may use its internal risk measurement model(s) for measuring value-at-risk to be used as the measure for market risk.

a. Requests for approval should include, at a minimum, a complete description of the bank's internal modeling and risk management systems and how these systems conform to the criteria set forth in this section III, an explanation of the policies and procedures established by the bank to ensure continued compliance with such criteria, a discussion of internal and external validation procedures, and a description of other relevant policies and procedures consistent with sound practices.

b. The FDIC will approve an internal model for regulatory capital purposes only after determining that the bank's internal model and risk management systems meet the criteria in this section III. Such a determination may require on-site examinations of the systems. The FDIC may require modification to an internal model as deemed necessary to ensure compliance, on a continuing basis, with the provisions of this appendix C. A bank's internal model will be subject to continuing review, both on- and off-site, by the FDIC.[12]

2. A bank should ensure that the level of sophistication of its internal model is commensurate with the nature and volume of the bank's trading activity in the risk factor categories covered by this appendix C and measures market risk as accurately as possible. In addition, the model should be adjusted to reflect changing portfolio composition and changing market conditions.

B. Qualitative Criteria

1. A bank using the internal models approach should have market risk management systems that are conceptually sound and implemented with integrity. Internal risk measurement models must be closely integrated into the day-to-day risk management process of the bank. For example, the risk measurement model must be used in conjunction with internal trading and exposure limits.

2. A bank must meet the following minimum qualitative criteria before using its internal model as the measure for market risk:[13]

a. A bank must have a risk control unit that is independent from business trading units and reports directly to senior management of the bank. The unit must be responsible for designing and implementing the bank's risk management system and analyzing daily reports on the output of the bank's risk measurement model in the context of trading limits. The unit must conduct regular back-testing.[14]

b. Senior management must be actively involved in the risk control process. The daily reports produced by the risk management unit must be reviewed by a level of management with sufficient authority to enforce both reductions in positions taken by individual traders, as well as in the bank's overall risk exposure.

c. The bank must have a routine and rigorous program of stress-testing to identify the effect of low-probability events on the bank's trading portfolio. Bank stress-testing should cover a range of factors that can create extraordinary losses or gains in trading portfolios or make the control of risk in those portfolios difficult. These factors include low-probability events of all types, including the various components of market, credit, and operational risks. Senior management must routinely review the results of stress-testing in the context of the potential effect of the events on bank capital and the appropriate procedures the bank should take to minimize losses. The policies of the bank set by management and the bank's board of directors should identify appropriate stress-tests and the procedures to follow in response to the test results.

d. The bank must have established procedures for ensuring compliance with a documented set of internal policies and controls, as well as for monitoring the overall operation of the risk measurement system.

e. Not less than once a year, the bank must conduct, as part of its regular internal audit process, an independent review of the risk measurement system. This review must include both the activities of the business trading units and of the independent risk control unit of the bank.

f. Not less than once a year, the bank must conduct a review of its overall risk management process. The review must consider:

i. The adequacy of the documentation of the risk management system and process, and the organization of the risk control unit;

ii. The integration of market risk measures into daily risk management and the integrity of the management information system;

iii. The process the bank employs for approving risk pricing models and valuation systems that are used by front- and back-office personnel;

iv. The scope of market risks captured by the risk measurement model and the validation of any significant changes in the risk measurement process;

v. The accuracy and completeness of position data, the accuracy and appropriateness of volatility and correlation assumptions, and the accuracy of valuation and risk sensitivity calculations;

vi. The verification process the bank employs to evaluate the consistency, timeliness, and reliability of data sources used to run internal models, including the independence of such data sources; and

vii. The verification process the bank uses to evaluate back-testing that is conducted to assess the model's accuracy.

C. Market Risk Factors

1. *Generally*. For regulatory capital purposes, a bank's internal risk measurement system must use sufficient risk factors to capture the risks inherent in the bank's portfolio of on- and off-balance-sheet trading positions and must, subject to the following guidelines, cover interest rates, equity prices, exchange rates, commodity prices, and volatilities related to options positions in each risk factor category. The level of sophistication of the bank's risk factors must be commensurate with the nature and scope of the risks taken by the bank.

2. *Interest Rates*. a. A bank must use a set of market risk factors corresponding to interest rates in each currency in which it has material interest rate-sensitive on- or off-balance-sheet positions. The risk measurement system must model the yield curve [15] using one of a number of generally accepted approaches, for example, by estimating forward rates of zero coupon yields. The yield curve must be divided into various maturity segments in order to capture variation in the volatility of rates along the yield curve; there will typically be one risk factor corresponding to each maturity segment.

b. For significant exposures to interest rate movements in the major currencies and markets, a bank must model the yield curve using a minimum of six risk factors. However, the number of risk factors used should ultimately be driven by the nature of the bank's trading strategies.[16] The risk measurement system must incorporate separate risk factors to capture spread risk.[17]

[12] Banks that need to modify their existing modeling procedures to accommodate the requirements of this appendix C should, nonetheless, continue to use the internal models they consider most appropriate in evaluating risks for other purposes.

[13] If the FDIC is not satisfied with the extent to which a bank meets these criteria, the FDIC may adjust the multiplication factor used in section II.B.2.a.ii. of this appendix C to determine the total measure for market risk or otherwise increase capital requirements.

[14] Back-testing includes *ex post* comparisions of the risk measures generated by the model against the actual daily changes in portfolio value.

[15] Generally, a yield curve is a graph showing the term structure of interest rates by plotting the yields of all instruments of the same quality by maturities ranging from the shortest to the longest available. The resulting curve shows whether short-term interest rates are higher or lower than long-term interest rates.

[16] For example, a bank that has a portfolio of various types of securities across many points of the yield curve and that engages in complex arbitrage strategies would require a greater number of risk factors to accurately capture interest rate risk.

[17] For these purposes, spread risk refers to the potential changes in value of an instrument or

3. *Exchange Rates*. A bank must use market risk factors corresponding to the exchange rate between the domestic currency and each foreign currency in which the bank has a significant exposure. The risk measurement system must incorporate market risk factors corresponding to the individual foreign currencies in which the bank's positions are denominated.

4. *Equity Prices*. A bank must use risk factors corresponding to each of the equity markets in which it holds significant positions. The sophistication and nature of the modeling technique for a given market must correspond to the bank's exposure to the overall market as well as to the bank's concentration in individual equity issues in that market. At a minimum, there must be a risk factor designed to capture market-wide movements in equity prices (such as a market index), but additional risk factors could track various sectors or individual issues.

5. *Commodity Prices*. A bank must use market risk factors corresponding to each of the commodity markets in which it holds significant positions. The internal model must encompass directional risk, forward gap and interest rate risk, and basis risk.[18] The model should also take into account the market characteristics, for example, delivery dates and the scope provided to traders to close out positions.

D. Quantitative Standards

1. A bank may use one of a number of generally accepted measurement techniques including, for example, an internal model based on variance-covariance matrices, historical simulations, or Monte Carlo simulations, so long as the model employed captures all significant market risks.[19] The following minimum standards apply for purposes of using an internal model for calculating market risk capital requirements:

a. Value-at-risk must be calculated on a daily basis using a 99th percentile, one-tailed confidence interval[20] and the holding period must be ten trading days. For positions that display linear price characteristics, a bank may use value-at-risk numbers calculated according to shorter holding periods scaled up to ten days by the square root of time.[21]

b. Value-at-risk must be calculated using an observation period of at least one year to measure historical changes in rates and prices.

c. A bank must update its historical rates and prices at least once every three months and must reassess them whenever there is a change in market conditions of any significance.

2. A bank may use its discretion in recognizing empirical correlations within each market risk factor category, provided that the FDIC is satisfied that there is integrity in the bank's process for calculating correlations. However, empirical correlations among risk categories are not recognized. The value-at-risk measure for each risk category must be added together on a simple sum basis to determine the aggregate value-at-risk amount.

3. A bank's model must accurately capture the unique risks associated with options within each of the market risk factor categories. The following minimum criteria apply to the measurement of options risk:

a. A bank's internal model must capture the non-linear price characteristics of option positions using an options pricing technique. The bank must apply a minimum ten-day holding period to option positions or positions that display option-like characteristics. Banks may not scale-up the daily value-at-risk numbers by the square root of time.

b. A bank's internal model must, for example, capture the sensitivity of the value of the options positions to changes in the volatility of the options' underlying rates or prices (that is, the vega) and must measure the volatilities of options positions broken down by different maturities.

4. The accuracy of a bank's internal model will be reviewed periodically by the FDIC. Such review—during which, when appropriate, the FDIC may take into consideration reports and opinions generated by external auditors or qualified consultants—will include at a minimum:

a. Verification that the internal validation processes described in paragraph B.2. of this section are operating in a satisfactory manner;

b. Assurance that the formulae used in the calculation process and for the pricing of options and other complex instruments, are validated by a qualified unit of the bank, which in all cases must be independent from the trading areas;

c. Confirmation that the structure of the internal model is adequate with respect to the bank's activities and geographical coverage;

d. Confirmation that the results of the bank's back-testing of its internal measurement system (that is, comparing value-at-risk estimates with actual profits and losses) are being used effectively to monitor reliability of the model's estimates over time; and

e. Assurance that, for regulatory capital purposes, the model processes all relevant data and that the modeling procedures conform with the parameters and specifications set forth in this appendix C.

IV. The Standardized Approach

A. Debt Instruments

1. *Specific Risk*. a. The specific risk element of the measure for market risk is based on the identity of the obligor and, in the case of corporate securities, on the credit rating and maturity of the instrument. The specific risk element is calculated by weighting the current market value of each individual position, whether long or short, by the appropriate factor as set forth below and summing the weighted values. In determining specific risk, the bank may offset and exclude from its calculations any matched positions in the *identical* issue (including positions in derivatives). Even if the issuer is the same, no offsetting is permitted between different issues since differences in coupon rates, liquidity, call features, etc., mean that prices may diverge in the short run. The categories and factors are:

Category	Remaining maturity (contractual)	Factor (in percent)
Government	N/A	0.00
Qualifying	6 months or less.	0.25
	6 to 12 months.	1.00
	over 12 months.	1.60
Other	N/A	8.00

b. The *government* category consists of all forms of debt instruments of central governments of the OECD-based group of countries[22] including bonds, Treasury bills and other short-term instruments, as well as local currency instruments of non-OECD central governments to the extent that the bank has liabilities booked in that currency.

c. The *qualifying* category consists of securities of U.S. government-sponsored

portfolio arising from differences in the behavior of baseline yield curves, such as those for U.S. Treasury securities, and yield curves reflecting sector, quality, or instrument specific factors. A variety of approaches may be used to capture the spread risk arising from less than perfectly correlated movements between government and other interest rates, such as specifying a completely separate yield curve for non-government instruments (for example, swaps or municipal securities) or estimating the spread over government rates at various points along the yield curve.

[18] For these purposes, directional risk refers to the risk that a spot price will increase or decrease. Forward gap risk refers to the effects of owning a physical commodity versus owning a forward position in a commodity. Interest rate risk refers to the risk of a change in the cost of carrying forward positions and options. Basis risk refers to the risk that the relationship between the prices of similar commodities changes over time.

[19] For these purposes, a variance/covariance approach refers to an approach in which the change in value of the portfolio is calculated by combining the risk factor sensitivities of the individual positions—derived from valuation models—with a variance/covariance matrix based on risk factor volatilities and correlations. A bank using this approach would calculate the volatilities and correlations of the risk factors on the basis of the holding period and the observation period. The historical simulation approach refers to an approach in which a bank would calculate the hypothetical change in value of the current portfolio in light of historical movements in risk factors. This calculation would be done for each of the defined holding periods over a given historical measurement horizon to arrive at a range of simulated profits and losses. The Monte Carlo approach refers to an approach in which a bank would consider historical movements to determine the probability of particular price and rate changes.

[20] A one-tailed confidence interval of 99 percent means that there is a 1 percent probability based on historical experience that the combination of positions in a bank's portfolio would result in a loss higher than the measured value-at-risk.

[21] This transformation entails multiplying a bank's value-at-risk by the square root of the ratio of the required holding period (ten days) to the holding period embodied in the value-at-risk figure. For example, the value-at-risk calculated according to a one-day holding period would be scaled-up by the ''square root of time'' by multiplying the value-at-risk by 3.16 (the square root of the ratio of a ten-day holding period to a one-day holding period).

[22] As defined in section III.B. and III.C. of appendix A of this part.

agencies, general obligation securities issued by states and other political subdivisions of the OECD-based group of countries, multilateral development banks, and debt instruments issued by U.S. depository institutions or OECD-banks that do not qualify as capital of the issuing institution.[23] It also includes other securities, including revenue securities issued by states and other political subdivisions of the OECD-based group of countries, that are:

i. Rated investment-grade by at least two nationally recognized credit rating services, or rated investment-grade by one nationally recognized credit rating agency and not less than investment-grade by any other credit rating agency; or

ii. With the exception of securities issued by U.S. firms and subject to review by the FDIC, unrated but deemed to be of comparable investment quality by the reporting bank and issued by an entity which has securities listed on a recognized stock exchange.

d. The *other* category consists of debt securities not meeting the criteria for government or qualifying securities. This would include non-OECD central government securities that do not meet the criteria for the government or qualifying categories. This category also includes instruments that qualify as capital issued by other banking organizations.

e. The FDIC will consider the extent of a bank's position in non-investment grade instruments (sometimes referred to as ''high yield debt''). If those holdings are not well-diversified or otherwise represent a significant position to the institution, the FDIC may prevent a bank from offsetting positions in these instruments with other positions in qualifying instruments that may be offset when calculating its general market risk element. In addition, the FDIC may impose a specific risk factor as high as 16.0 percent.

2. *General Market Risk*. a. A bank may determine the general market risk element of the measure for market risk by using, on a continuous basis, either the maturity method (which uses standardized risk weights that approximate the price sensitivity of various instruments) or, subject to the FDIC's review, the duration method (in which the institution calculates the precise duration of each instrument, weighted by a specified change in interest rates).

b. Both methods use a maturity-ladder that incorporates a series of ''time bands'' and ''zones'' to group together securities of similar maturities and that are designed to take into account differences in price sensitivities and interest rate volatilities across different maturities. Under either method, the general market risk element is the sum of a base charge that results from fully netting various risk-weighted positions and a series of additional charges (add-ons), which effectively ''disallow'' part of the previous full netting to address basis and yield curve risk.

c. For each currency in which a bank has significant positions, a separate maturity ladder must be constructed. No netting of positions is permitted across different currencies. Offsetting positions of the same amount in the same issues, whether actual or notional, may be excluded from the calculation, as well as closely matched swaps, forwards, futures, and forward rate agreements (FRAs) that meet the conditions set out in paragraph A.3. of this section.

d. In the *maturity method*, the bank distributes each long or short position (at current market value) of a debt instrument into the time bands of the maturity ladder. Fixed-rate instruments are allocated according to the remaining term to maturity and floating-rate instruments according to the next repricing date. A callable bond trading above par is allocated according to its first call date, while a callable bond priced below par is allocated according to remaining maturity. Fixed-rate mortgage-backed securities, including collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs), are allocated according to their expected weighted average lives.

e. Once all long and short positions are allocated into the appropriate time band, the long positions in each time band are summed and the short positions in each time band are summed. The summed long and/or short positions are multiplied by the appropriate risk-weight factor (reflecting the price sensitivity of the positions to changes in interest rates) to determine the risk-weighted long and/or short position for each time band. The risk weights for each time band are set out in Table 1:

TABLE 1.—MATURITY METHOD: TIME BANDS AND WEIGHTS

Zone	Coupon 3% or more	Coupon less than 3 % and zero-coupon bonds	Risk weights
1	Up to 1 month	Up to 1 month	0.00
	1 up to 3 months	1 up to 3 months	0.20
	3 up to 6 months	3 up to 6 months	0.40
	6 up to 12 months	6 up to 12 months	0.70
2	1 up to 2 years	1 up to 1.9 years	1.25
	2 up to 3 years	1.9 up to 2.8 years	1.75
	3 up to 4 years	2.8 up to 3.6 years	2.25
3	4 up to 5 years	3.6 up to 4.3 years	2.75
	5 up to 7 years	4.3 up to 5.7 years	3.25
	7 up to 10 years	5.7 up to 7.3 years	3.75
	10 up to 15 years	7.3 up to 9.3 years	4.50
	15 up to 20 years	9.3 up to 10.6 years	5.25
	Over 20 years	10.6 up to 12 years	6.00
		12 up to 20 years	8.00
		Over 20 years	12.50

f. Next, within each time band for which there are risk-weighted long and short positions, the risk-weighted long and short positions are then netted, resulting in a single net risk-weighted long or short position for each time band. Since different instruments and different maturities may be included and netted within each time band, an addition to the risk measure, referred to as the vertical disallowance, is assessed to allow for basis risk. The vertical disallowance is 10.0 percent of the position eliminated by the intra-time band netting, that is, 10.0 percent of the smaller of the net risk-weighted long or net risk-weighted short position, or if the positions are equal, 10.0 percent of either position.[24] The vertical disallowances for each time band are absolute values, that is, neither long nor short. The vertical disallowances for all time bands in the maturity ladder are summed and included as an element of the general market risk element.

g. Next, within each zone for which there are risk-weighted long and short positions in different time bands, the weighted long and short positions in all of the time bands

[23] U.S. government-sponsored agencies, multilateral development banks, and OECD banks are defined in section III.C. of appendix A of this part.

[24] For example, if the sum of the weighted longs in a time band is $100 million and the sum of the weighted shorts is $90 million, the vertical disallowance for the time band is 10.0 percent of $90 million, or $9 million.

within the zone are then netted, resulting in a single net long or short position for each zone. Since different instruments and different maturities may be included and netted within each zone, an addition to the risk measure, referred to as the horizontal disallowance, is assessed to allow for the imperfect correlation of interest rates along the yield curve. The horizontal disallowance is calculated as a percentage of the position eliminated by the intra-zone netting, that is, a percentage of the smaller of the net risk-weighted long or net risk-weighted short position, or if the positions are equal, a percentage of either position.[25] The percent disallowance factors for intra-zone netting are set out in table 2. The horizontal disallowances, like the vertical disallowances, are absolute values that are summed and included as an element of the general market risk element.

h. Next, risk-weighted long and short positions in different zones are then netted between the zones. Zone 1 and zone 2 are netted if possible, reducing or eliminating the net long or short position in zone 1 or zone 2 as appropriate. Zone 2 and zone 3 are then netted if possible, reducing or eliminating the net long or short position in zone 2 or zone 3 as appropriate. Zone 3 and zone 1 are then netted if possible, reducing or eliminating the long or short position in zone 3 and zone 1 as appropriate. A horizontal disallowance is then assessed, calculated as a percentage of the position eliminated by the inter-zone netting. The horizontal disallowances for each zone are then summed as absolute values and included in the general market risk element. The percent disallowance factors for inter-zone netting are set out in Table 2:

TABLE 2.—HORIZONTAL DISALLOWANCES

Zone	Time band	Within the zone (percent)	Between adjacent zones (percent)	Between zones 1 & 3 (percent)
1	0–1 month	40	40	100
	1–3 months.			
	3–6 months.			
	6–12 months.			
2	1–2 years	30	40	100
	2–3 years.			
	3–4 years.			
3	1–5 years	30	40	100
	5–7 years.			
	7–10 years.			
	10–15 years.			
	15–20 years.			
	over 20 years.			

i. Finally, the net risk-weighted long or net risk-weighted short positions remaining in the zones are summed to reach a single net risk-weighted long or net risk-weighted short position for the bank's portfolio. The sum of the absolute value of this position and the vertical and horizontal disallowances is the general market risk element of the measure of market risk. An example of this calculation is in attachment II to this appendix.

j. In the *duration method,* the bank, after calculating each instrument's modified duration [26] using a formula that is subject to FDIC review, multiplies that modified duration by the interest rate shock specified for an instrument of that duration in table 3. The resulting product (representing the expected percentage change in the price of the instrument for the given interest rate shock) is then multiplied by the current market value of the instrument. The resulting amount is then allocated as a long or short position into a time band in the maturity ladder in table 3 on the basis of the instrument's modified duration.[27]

k. Once all of the bank's traded debt instruments have been allocated into the maturity ladder, the bank conducts the same rounds of netting and disallowances described in paragraphs A.2.f. through h. of the maturity method in this section, with the exception that the vertical disallowance requirement for the duration method is 5.0 percent. Horizontal disallowances continue to be those set out in table 2. As with the maturity method, the sum of the absolute value of the final net position and the vertical and horizontal disallowances is the general market risk element of the measure for market risk:

TABLE 3.—DURATION METHOD: TIME BANDS AND ASSUMED CHANGES IN YIELD

Zone	Time band	Assumed change in yield
1	Up to 1 month	1.00
	1 up to 3 months	1.00
	3 up to 6 months	1.00
	6 up to 12 months	1.00
2	1.0 up to 1.8 years	0.90
	1.8 up to 2.6 years	0.80
	2.6 up to 3.3 years	0.75
3	3.3 up to 4.0 years	0.75
	4.0 up to 5.2 years	0.70
	5.2 up to 6.8 years	0.65
	6.8 up to 8.6 years	0.60
	8.6 up to 9.9 years	0.60
	9.9 up to 11.3 years	0.60
	11.3 up to 16.6 years	0.60
	Over 16.6 years 0.75	0.60

3. *Interest Rate Derivatives.* a. Debt derivatives and other off-balance-sheet positions that are affected by changes in interest rates are included in the measurement system under this section IV.A. (except for options and the associated underlyings, which are included in the measurement system under the treatment discussed in section IV.E. of this appendix C). A summary of the treatment for debt derivatives is set out in Attachment III to this appendix C.

b. Derivatives are converted into positions in the relevant underlying instrument and are included in the calculation of the specific and general market risk elements. The amount to be included is the market value of the principal amount of the underlying or of

[25] For example, if the sum of the weighted longs in the 1–3 month time band in Zone 1 is $8 million and the sum of the weighted shorts in the 3–6 month time band is $10 million, the horizontal disallowance for the zone is forty percent of $8 million, or $3.2 million.

[26] The duration of an instrument is its approximate percentage change in price for a 100 basis point parallel shift in the yield curve assuming that its cash flow does not change when the yield curve shifts. Modified duration is duration divided by a factor of 1 plus the interest rate.

[27] For example, an instrument held by a bank with a maturity of 4 years and 3 months and a current market value of $1,000 might have a modified duration of 3.5 years. Based on its modified duration, it would be subjected to the 75-basis point interest rate shock, resulting in an expected price change of 2.625 percent (3.5×0.75). The corresponding expected change in price of $26.25, calculated as 2.625 percent of $1,000, would be slotted as a long position in the 3.3 to 4.0 year time band of the maturity ladder.

the notional underlying. If the apparent notional amount of an instrument differs from the effective notional amount, a bank must use the effective notional amount.

c. Futures and forward contracts (including FRAs) are broken down into a combination of a long position and short position in the notional security. The maturity of a future or a FRA is the period until delivery or exercise of the contract, plus the life of the underlying instrument.[28] If a range of instruments may be delivered to fulfill the contract, the bank may choose which deliverable instrument goes into the maturity or duration ladder as the notional underlying. In the case of a future on a corporate bond index, positions are included at the market value of the notional underlying portfolio of securities.

d. i. Swaps are treated as two notional positions in the relevant instruments with appropriate maturities. The receiving side is treated as the long position and the paying side is treated as the short position.[29] The separate sides of cross-currency swaps or forward foreign exchange transactions are allocated in the relevant maturity ladders for the currencies concerned. For swaps that pay or receive a fixed or floating interest rate against some other reference price, for example, an equity index, the long or short position attributable to the interest rate component is allocated into the appropriate repricing maturity category, with the long or short position attributable to the equity component being included in the equity framework set out in section IV.B. of this appendix C.

ii. A bank with a large swap book may, with prior approval of the FDIC, use alternative formulae to calculate the positions to be included in the maturity or duration ladder. For example, a bank could first convert the payments required by the swap into present values. For that purpose, each payment would be discounted using zero coupon yields, and the payment's present value entered into the appropriate time band using procedures that apply to zero (or low) coupon bonds. The net amounts would then be treated as bonds, and allocated into the general market risk framework. Such alternative treatments will, however, only be allowed if the FDIC is fully satisfied with the accuracy of the system being used; the positions calculated fully reflect the sensitivity of the cash flows to interest rate changes; and the positions are denominated in the same currency.

e. A bank may offset long and short positions (both actual and notional) in identical derivative instruments with exactly the same issuer, coupon, currency, and maturity before allocating these positions into time bands. A matched position in a future and its corresponding underlying may also be fully offset and, thus, excluded from the calculation, except when the future comprises a range of deliverable instruments. However, if, among the range of deliverable instruments, there is a readily identifiable underlying instrument that is most profitable for the trader with a short position to deliver, positions in the futures contract and the instrument may be offset. Positions in different currencies are not subject to offset.

f. Offsetting positions in the same category of instruments can in certain circumstances be regarded as matched and treated by the bank as a single net position which should be entered into the appropriate time band. To qualify for this treatment the positions must be based on the same underlying instrument, be of the same nominal value, and be denominated in the same currency. The separate sides of different swaps may also be ''matched'' subject to the same conditions. In addition:

i. For futures, offsetting positions in the notional or underlying instruments to which the futures contract relates must be for identical instruments and the instruments must mature within seven days of each other;

ii. For swaps and FRAs, the reference rate (for floating rate positions) must be identical and the coupon closely matched (i.e., within 15 basis points); and

iii. For swaps, FRAs and forwards, the next interest reset date, or for fixed coupon positions or forwards the remaining maturity, must correspond within the following limits: If the reset (remaining maturity) dates occur within one month, then the reset dates must be on the same day; if the reset dates occur between one month and one year later, then the reset dates must occur within seven days of each other, or if the reset dates occur over one year later, then the reset dates must occur within thirty days of each other.

g. Interest rate and currency swaps, FRAs, forward foreign exchange contracts and interest rate futures are not subject to a specific risk charge. This exemption also applies to futures on a short-term (e.g., LIBOR) interest rate index. However, in the case of futures contracts in which the underlying is a debt security, or an index representing a basket of debt securities, a specific risk charge will apply according to the category of the issuer as set out in paragraph A.2. of this section.

B. Equities

1. *Specific Risk.* The specific risk element of the measure for market risk is calculated on the basis of the bank's gross equity positions, that is, the absolute sum of all long equity positions and of all short equity positions at current market value. The risk measure is 8.0 percent of that sum, unless the portfolio is both liquid and well-diversified, in which case the specific risk measure is 4.0 percent of the gross equity position. A specific risk measure of 2.0 percent applies to the net long or short position in a broad, diversified equity index and is viewed as necessary to provide for risks associated with contract execution. A portfolio that is liquid and well-diversified is characterized by a limited sensitivity to price changes of any single equity issue or closely related group of equity issues held in the portfolio. The volatility of the portfolio's value should not be dominated by the volatility of any individual equity issue or by equity issues from any single industry or economic sector. In general, such portfolios should be characterized by a large number of individual equity positions, with no single position representing a large portion of the portfolio's total market value. In addition, it would generally be the case that a sizeable proportion of the portfolio would be comprised of issues traded on organized exchanges or in well-established over-the-counter markets.

2. *General Market Risk.* The general market risk element of the measure for market risk is calculated on the difference between the sum of the long positions and the sum of the short positions (i.e., the overall net position in an equity market) at current market value. An overall net position must be separately calculated for each national market in which the bank holds equities. The general market risk element is 8.0 percent of the net position in each equity market.

3. *Matched Positions.* Matched positions in each identical equity in each national market may be treated as offsetting and excluded from the capital calculation, with any remaining position included in the calculations for specific and general market risk. For example, a future in a given equity may be offset against an opposite cash position in the same equity.

4. *Equity Derivatives.* a. Equity derivatives and other off-balance-sheet positions that are affected by changes in equity prices are included in the measurement system under this section IV.B. (except for equity options, equity index options, and the associated underlying, which are included in the measurement system under the treatment discussed in section IV.E. of this appendix C).[30] This includes futures and swaps on both individual equities and on equity indices. Equity derivatives should be converted into notional equity positions in the relevant underlying. A summary of the rules for equity derivatives is set out in attachment III to this appendix C.

b. Futures and forward contracts relating to individual equities should be reported at current market prices of the underlying. Futures relating to equity indices should be reported as the marked-to-market value of the notional underlying equity portfolio. Equity swaps are treated as two notional positions, with the receiving side as the long position and the paying side as the short position.[31] If one of the legs involves receiving/paying a fixed or floating interest rate, the exposure should be allocated into the appropriate repricing maturity band for debt securities.

[28] For example, a long position in a June three-month interest rate future (taken in April) is reported as a long position in a government security with a maturity of five months and a short position in a government security with a maturity of two months.

[29] For example, an interest rate swap under which a bank is receiving floating-rate interest and paying fixed is treated as a long position in a floating rate instrument with a maturity equivalent to the period until the next interest reset date and a short position in a fixed-rate instrument with a maturity equivalent to the remaining life of the swap.

[30] If equities are part of a forward contract (either equities to be received or to be delivered), any interest rate or foreign currency exposure from the other side of the contract should be appropriately included in sections IV.A. and IV.C. of this appendix C.

[31] For example, an equity swap in which a bank is receiving an amount based on the change in value of one particular equity or equity index and paying a different index will be treated as a long position in the former and a short position in the latter.

The stock index is covered by the equity treatment.

c. In the case of futures-related arbitrage strategies, the 2.0 percent specific risk charge applicable to broad diversified equity indices may be applied to only one index. The opposite position is exempt from a specific risk charge. The strategies qualifying for this treatment are:

i. When the bank takes an opposite position in exactly the same index at different dates; or

ii. When the bank has an opposite position in different but similar indices at the same date, subject to FDIC review.

d. If a bank engages in a deliberate arbitrage strategy, in which a futures contract on a broad diversified equity index matches a basket of securities, it may exclude both positions from the standardized approach on condition that the trade has been deliberately entered into and separately controlled and the composition of the basket of stocks represents at least 90 percent of the market value of the index. In such a case, the minimum measure for market risk is 4.0 percent (that is, 2.0 percent of the gross value of the positions on each side) to reflect risk associated with executing the transaction. This applies even if all of the securities comprising the index are held in identical proportions. Any excess value of the securities comprising the basket over the value of the futures contract or excess value of the futures contract over the value of the basket is treated as an open long or short position.

e. If a bank takes a position in depository receipts [32] against an opposite position in the underlying equity, it may offset the position.

C. Foreign Exchange Risk

1. The measure for market risk in foreign exchange covers the risk of holding or taking positions in foreign currencies, including gold, whether or not those positions are in the trading portfolio.[33] The measure is calculated as 8.0 percent of the sum of the greater of a bank's total net open long positions or net open short positions in each currency and the net open position in gold.

2. When calculating a bank's net open position in each currency and gold, positions in composite currencies, such as the ECU, may be either treated as a currency in their own right or split into their component parts on a consistent basis. Positions in gold (including futures and forwards) should be converted to U.S. currency at current spot rates. The bank's net open position in each currency is the sum of:

a. The net spot position (i.e., all asset items less all liability items, including accrued interest earned but not yet received and accrued expenses, denominated in the currency in question);

b. The net forward position.[34] All foreign exchange derivative instruments and other off-balance-sheet positions that are affected by changes in exchange rates are included in the measurement system under this section IV.C. (except for options and their associated underlyings, which are included in the measurement system under the treatment discussed in section IV.E. of this appendix C). Forward currency positions should be valued at current spot market exchange rates, but for a bank in which the basis of its normal management accounting is to use net present values, forward positions may be discounted to net present values as an acceptable way of measuring currency positions for regulatory capital purposes;

c. Guarantees (and similar instruments) that are certain to be called and are likely to be irrecoverable;

d. At the discretion of the bank, net future income/expenses not yet accrued but already fully hedged. A bank that includes future income and expenses must do so on a consistent basis without selecting expected future flows in order to reduce the bank's position; and

e. Any other item representing a profit or loss in foreign currencies.

3. The measure for market risk of foreign exchange is determined by converting the net open position in each foreign currency at spot rates into U.S. currency. The risk measure is 8.0 percent of the overall net open foreign exchange position, which is determined by summing:

a. The greater of the sum of the net long open positions or, the sum of the net short open positions; and

b. The absolute value (that is, regardless of whether it is long or short) of the net open position in gold.[35]

4. If a bank is assessing its foreign exchange risk on a consolidated basis, it may be technically impractical in the case of some marginal operations to include the currency positions of a foreign branch or subsidiary of the bank. In such cases, the branch or subsidiary's internal limit in each currency may be used as a proxy for the positions, provided there is adequate *ex post* monitoring of actual positions complying with such limits. In these circumstances, the absolute value of the limits should be added to the net open position in each currency.

D. Commodities Risk

1. *Measurement Methods.* The measure for market risk in commodities is calculated by either the simplified method or the maturity method. These methods are only appropriate for banks that conduct a limited amount of commodities business. All other banks must adopt an internal model measurement system conforming to the criteria in section III. of this appendix C.

2. *Base Measure.* Under both the simplified and maturity methods, each long and short commodity position (spot or forward) is expressed in terms of the standard unit of measurement (such as barrels, kilos, or ounces). The positions are then converted at current spot rates into U.S. currency, with long and short positions in each category of commodities offset to arrive at the net open position in each commodity. Positions in different categories of commodities may not, generally, be offset. However, offsetting is permitted between different sub-categories of the same commodity if the sub-categories are deliverable against each other. Under the simplified or maturity method, the base measure for market risk is 15.0 percent of the absolute value (i.e., neither long nor short) of the net open position in each commodity.[36]

3. *Simplified Method.* To protect a bank against basis risk, interest rate risk, and forward gap risk, the measure of market risk under the simplified method includes an additional 3.0 percent of the bank's gross positions, long plus short, in each commodity. In valuing gross positions in commodity derivatives for this purpose, a bank should use the current spot price. The total measure for commodities risk is thus the sum of the 15.0 percent base charges for each net commodity position and the 3.0 percent requirements on the gross commodity positions.

4. *Maturity Method.* a. Under this method, a bank must allocate each long and short commodity position (converted into U.S. currency at current spot rates) into a maturity ladder with time bands as set out in table 4. A separate maturity ladder is used for each category of commodity. Physical commodities are allocated to the first time band:

TABLE 4.—COMMODITY TIME BANDS

Time Bands
0–1 month
1–3 months
3–6 months
6–12 months
1–2 years
2–3 years
Over 3 years

b. In order to capture forward gap and interest rate risk within a time band (together sometimes referred to as curvature/spread risk), offsetting long and short positions in each time band are subject to an additional charge. Beginning with the shortest-term time band and continuing with subsequent time bands, the amount of the matched short

[32] Generally, depository receipts are instruments issued by a trust company or other depository institution evidencing the deposit of foreign securities and facilitating trading in such instruments on U.S. stock exchanges.

[33] Gold is treated as a foreign exchange position rather than a commodity because its volatility is more in line with foreign currencies and banks manage it in a manner similar to foreign currencies.

[34] Where gold is part of a forward contract (quantity of gold to be received or to be delivered), any interest rate or foreign currency exposure from the other side of the contract should be reported as set out in section IV.A. (treating gold as a zero-coupon instrument) and this section.

[35] For example, a bank has the following net currency positions: Yen=+50, DM=+100, GB=+150, FFR=+−20, US$=−180, and gold=−35. The bank would sum its long positions (total=+300) and sum its short positions (total=−200). The bank's capital requirement for foreign exchange market risk would be: (300 (the larger of the summed long and short positions)+35 (gold))×8.0%=$26.80.

[36] When the funding of a commodity position opens a bank to interest rate or foreign exchange exposure the relevant positions should be included in the measures of interest rate and foreign exchange risk described in sections IV.A. and IV.C. of this appendix C. When a commodity is part of a forward contract, any interest or foreign currency exposure from the other side of the contract should be appropriately included in sections IV.A. and IV.C. of this appendix C.

positions plus the amount of the matched long position is multiplied by a spread rate of 1.5 percent.

c. The unmatched net position from shorter-term time bands must be carried forward to offset exposures in longer-term time bands. A charge of 0.6 percent of the net position carried forward is added for each time band that the net position is carried forward.[37] The total measure for commodities risk is the sum of the 15.0 percent base measurement for each net commodity position and the additional charges for matched positions and for unmatched positions carried forward. An example of this calculation is in attachment IV to this appendix C.

5. Commodity derivatives and other off-balance-sheet positions that are affected by changes in commodity prices are included in the measurement system under this section IV.D. (except for options and the associated underlying, which are included in the measurement system under the treatment discussed in section IV.E. of this appendix C). Commodity derivatives are converted into notional commodity positions. Under the maturity method, the positions are allocated in maturity time bands as follows:

a. Futures and forward contracts relating to individual commodities are incorporated in the measurement system as notional amounts (of, for example, barrels or kilos) that are converted to U.S. currency at current spot rates and are assigned a maturity according to expiration date;

b. Commodity swaps in which one side of the contract is a fixed price and the other side is the current market price are incorporated as a series of positions equal to the notional amount of the contract at current spot rates, with one position corresponding to each payment on the swap and allocated in the maturity ladder accordingly. The positions are long positions if the bank is paying a fixed price and receiving a floating price, and short positions if the bank is receiving a fixed price and paying a floating price;[38] and

c. Commodity swaps in which the sides of the transaction are in different commodities are included in the relevant reporting ladder. No offsetting is allowed unless the commodities are in the same sub-category.

E. Options

1. Three alternatives are available for a bank to use in measuring its market risk for options activities under the standardized approach. A bank that only has purchased options may use the simplified method set forth in paragraph E.2 of this section. A bank that also writes options may use the scenario method described in section IV.E.3., or the delta-plus method set forth in paragraph E.4. of this section.[39] These methods may only be used by banks which, in relative terms, have limited options activities. Banks with more significant options business are expected to adopt an internal measurement system conforming to the criteria in section III of this appendix C. Regardless of the method used, specific risk related to the issuer of an instrument still applies to options positions for equities, equity indices and corporate debt securities as set forth in sections IV.A. and IV.B. of this appendix C. Options remain an element of risk-weighted assets under section II of appendix A of this part.

2. Under the simplified and scenario methods, the positions for the options and the associated underlying, cash or forward, are not included in the measurement framework for debt securities, equities, foreign exchange or commodities risk as set forth in sections IV.A. through IV.D. of this appendix C. Rather, they are subject to the measure of market risk as calculated in this section. The risk measures calculated under this section should then be added to the risk measures for debt securities, equities, foreign exchange and commodities risk as appropriate. Under the delta-plus method, the delta equivalent position [40] for each option is included in the measurement frameworks set forth in sections IV.A. through IV.D. of this appendix C.

3. A bank that has only a limited amount and range of purchased options may use the following simplified approach to measure its market risk exposure.

a. For a bank with a long cash position and a long put or with a short cash position and a long call, the measure for market risk is the market value of the underlying instrument multiplied by the sum of the specific and general market risk requirements for the underlying (that is, the specific and general market risk requirements that would have applied to the underlying directly under sections IV.A. through IV.D. of this appendix C [41]), less the amount the option is in the money (if any) bounded at zero.[42]

b. For a bank with a long call or a long put, the measure for market risk is the lesser of:

i. The market value of the underlying security multiplied by the sum of specific and general market risk requirements for the underlying (that is, the specific and general market risk requirements that would have applied to the underlying directly under sections IV.A. through IV.D. of this appendix C) [43]; or

ii. The market value of the option.

4. Under the scenario approach, a bank revalues its options and related hedging positions by changing the underlying rate or price over a specified range and by assuming different levels of volatility for that rate or price.

a. For each of its option portfolios, a bank constructs a grid based on a fixed range of changes in the portfolio's risk factors and calculates changes in the value of the option portfolio at each point within the grid. For this purpose, an option portfolio consists of an option and any related hedging positions or multiple options and related hedging positions that are grouped together according to their remaining maturity or the type of underlying.

b. Options based on interest rates and debt instruments are grouped into portfolios according to the maturity zones that are set forth in section IV.A. of this appendix C. (Zone 1 instruments have a remaining maturity of up to 1 year, zone 2 instruments have a remaining maturity from 1 year up to 4 years, and zone 3 instruments have a remaining maturity of 4 years or more.) These options and the associated hedging positions should be evaluated under the assumption that the relevant interest rates move simultaneously. For options based on equities, separate grids are constructed for each individual equity issue and index. For options based on exchange rates, separate grids are constructed for individual exchange rates. For options based on commodities, separate grids are constructed for each category of commodity (as defined in section IV.D. of this appendix C).

c. For option portfolios with options based on equities, exchange rates, and commodities, the first dimension of the grid consists of rate or price changes within a specified range above and below the current market value of the underlying. For equities, the range is ±12.0 percent (or in the case of an index ±8.0 percent); for exchange rates the range is ±8.0 percent; and for commodities the range is ±15.0 percent. For option portfolios with options based on interest rates, the range for the first dimension of the grid depends on the remaining maturity zone. The range for zone 1 is ±100 basis points, the range for zone 2 is ±90 basis points; and the range for zone 3 is ±75 basis points. For all option portfolios, the range is divided into at least ten equally spaced intervals. The second dimension of each grid is a shift in the volatility of the underlying rate or price equal to ±25.0 percent of the current volatility.[44]

d. For each assumed volatility and rate or price change (a scenario), the bank revalues

[37] For example, if $200 short is carried forward from the 3–6 month time band to the 1–2 year time band, the capital charge would be $200×.006×2=$2.40.

[38] If one of the sides of the transaction involves receiving/paying a fixed or floating interest rate, that exposure should be allocated into the appropriate repricing maturity band in section IV.A. of this appendix C.

[39] Unless all their written option positions are hedged by perfectly matched long positions in exactly the same options, in which case there is no measure for market risk.

[40] The delta equivalent of an option is the option's delta value multiplied by its principal or notional value. The delta value of an option represents the expected change in the option's price as a proportion of a small change in the price of the underlying instrument. For example, an option whose price changes $1 for every $2 dollar change in the price of the underlying instrument has a delta of 0.50.

[41] Because some underlying instruments are not subject to a specific risk charge under sections IV.A through IV.D of this appendix C, such instruments will only be multiplied by the general market risk charge in making this calculation.

[42] For example, if a holder of 100 shares currently valued at $10 each has an equivalent put option with a strike price of $11, the risk measure would be: $1,000×16.0 percent (e.g., 8.0 percent specific plus 8.0 percent general market risk)=$160, less the amount the option is in the money ($11–$10)×100=$100, i.e., the measure for market risk would be $60. A similar methodology applies for options for which the underlying is a foreign currency, a debt security or a commodity.

[43] See footnote 41 in section IV.E.3.a. of this appendix C.

[44] For example, if the underlying in an equity instrument with a current market value of $100 and a volatility of 20 percent, the first dimension of the grid would range from $88 to $112, divided into ten intervals of $2.40 and the second dimension would assume volatilities of 15 percent, 20 percent, and 25 percent.

each option portfolio. The measure for market risk for the portfolio is the largest loss in value from among the scenario revaluations. The total measure for market risk for all option portfolios is the sum of the individual option portfolio measures.

e. The FDIC will review the application of the scenario approach, particularly regarding the precise way the analysis is constructed. A bank using the scenario approach should meet the appropriate qualitative criteria set forth in section III.B. of this appendix C.

5. Under the delta-plus method, a bank that writes options may include delta-weighted options positions within each measurement framework as set forth in sections IV.A. through IV.D. of this appendix C.

a. Options positions should be measured as a position equal to the market value of the underlying instrument multiplied by the delta. In addition, a bank must measure the sensitivities of the option's gamma (the change of the delta for a given change in the price of the underlying) and vega (the sensitivity of the option price with respect to a change in volatility) to calculate the measure for market risk. These sensitivities may be calculated according to an exchange model approved by the FDIC or to the bank's own options pricing model, subject to review by the FDIC.

b. For options with debt instruments or interest rates as the underlying instrument, delta-weighted options positions should be allocated into the debt instrument time bands in section IV.A. of this appendix C using a two-legged approach (as is used for other derivatives), requiring one entry at the time the underlying contract takes effect and one at the time the underlying contract matures.[45] Floating rate instruments with caps or floors should be treated as a combination of floating rate securities and a series of European-style options.[46] A bank must also calculate the gamma and vega for each such option position (including hedge positions). The results should be allocated into separate maturity ladders by currency. For interest rate options such as caps and floors, the delta and gamma should be expressed in terms of a hypothetical underlying security. Subsequently:

i. For gamma risk, for each time band, net gammas on short positions are multiplied by the risk weights set out in table 5 and by the square of the market value of the underlying instrument (net gammas on long positions may be disregarded);

ii. For volatility risk, a bank calculates the risk measure for vega in each time band assuming a proportional shift in volatility of ±25.0 percent;

iii. The measure for market risk is the absolute value of the sum of the individual measures for net gammas on short positions plus the absolute value of the sum of the individual measures for vega risk for each time band; and

iv. The delta plus method risk weights are:

TABLE 5.—DELTA PLUS METHOD RISK WEIGHTS

Time-band	Modified duration (average assumed for time band)	Assumed interest rate change (%)	Risk-weight for gamma[1]
Under 1 month	0.00	1.00	0.00000
1 up to 3 months	0.20	1.00	0.00020
3 up to 6 months	0.40	1.00	0.00080
6 up to 12 months	0.70	1.00	0.00245
1 up to 2 years	1.40	0.90	0.00794
2 up to 3 years	2.20	0.80	0.01549
3 up to 4 years	3.00	0.75	0.02531
4 up to 5 years	3.65	0.75	0.03747
5 up to 7 years	4.65	0.70	0.05298
7 up to 10 years	5.80	0.65	0.07106
10 up to 15 years	7.50	0.60	0.10125
15 up to 20 years	8.75	0.60	0.13781
Over 20 years	10.00	0.60	0.18000

[1] According to the Taylor expansion, the risk weights are calculated as ½ (modified duration x assumed interest rate change) ^{2}100.

c. For options with equities as the underlying, delta-weighted option positions should be incorporated in the measure of market risk set forth in section IV.B. of this appendix C. Individual equity issues and indices should be treated as separate underlyings. In addition to the measure for delta risk, a bank should apply a further charge for gamma and vega risk:

i. For gamma risk, the net gammas on short positions for each underlying are multiplied by 0.72 percent (in the case of an individual equity) or 0.32 percent (in the case of an index as the underlying) and by the square of the market value of the underlying;

ii. For volatility risk, a bank calculates the risk measure for vega for each underlying, assuming a proportional shift in volatility of ±25.0 percent; and

iii. The measure for market risk is the absolute value of the sum of the individual measures for net gammas on short positions plus the absolute value of the individual measures for vega risk.

d. For options on foreign exchange and gold positions, the net delta (or delta-based) equivalent of the total book of foreign currency and gold options is incorporated into the measurement of the exposure in a net open position in each currency as set forth in section IV.C. of this appendix C. The gamma and vega risks should be measured as follows:

i. For gamma risk, for each underlying exchange rate, net gammas on short positions are multiplied by 0.32 percent and by the square of the market value of the positions;

ii. For volatility risk, a bank calculates the risk measure for vega for each currency pair and gold assuming a proportional shift in volatility of ±25.0 percent; and

iii. The measure for market risk is the absolute value of the sum of the individual measures for net gammas on short positions plus the absolute value of the sum of the individual measures for vega risk.

e. For options on commodities, the delta-weighted positions are incorporated in one of the measures described in section IV.D. of this appendix C. In addition, a bank must apply a capital requirement for gamma and vega risk:

i. For gamma risk, net gammas on short positions for each underlying are multiplied by 1.125 percent and by the square of the market value of the commodity;

ii. For volatility risk, a bank calculates the risk measures for vega for each commodity assuming a proportional shift in volatility of ±25.0 percent; and

iii. The measure for market risk is the absolute value of the sum of the individual

[45] For example, in April a purchased call option on a June three-month interest-rate future would be considered on the basis of its delta-equivalent value to a long position with a maturity of five months and a short position with a maturity of two months. The written option would be allocated as a long position with a maturity of two months and a short position with a maturity of five months.

[46] For example, the holder of a three-year floating rate bond indexed to six-month LIBOR with a cap of 15 percent would treat the bond as a debt security that reprices in six months, and a series of five written call options on a FRA with a strike rate of 15 percent, each allocated as a short position at the expiration date of the option and as a long position at the time the FRA matures.

measures for net gammas on short positions plus the absolute value of the sum of the individual measures for vega risk.

f. Under certain conditions and to a limited extent, the FDIC may permit banks that are significant traders in options with debt securities or interest rates as the underlying to net gammas on long and short positions and vegas across time bands. Such netting must be based on prudent and conservative assumptions and the bank must materially meet the qualitative standards set forth in section III.B. of this appendix C.

g. A bank may base the calculation of vega risk on a volatility ladder in which the implied change in volatility varies with the maturity of the option. The assumed proportional shift in volatility must be at least ±25.0 percent at the short end of the maturity spectrum. The proportional shift for longer maturities must be at least as stringent in statistical terms as the 25.0 percent shift at the short end.

h. A bank should also monitor the risks of rho (the rate of change of the value of the option with respect to the interest rate) and theta (the rate of change of the value of the option with respect to time).

Attachments to Appendix C

Attachment I—Sample Calculation of Eligible Tier 1, Tier 2, and Tier 3 Capital for the Risk-Based Capital Ratio Adjusted for Market Risk

a. In each example the weighted-risk assets are $8000 and the market risk-adjusted assets are $625 (capital requirement for market risk=$50 $50×12.5=$625):

Example 1: A bank has the following qualifying capital: Tier 1=$600, Tier 2=$100, Tier 3=$1000.

(1) The minimum capital requirement for credit risk is $640 ($8000×8.0%). This requirement could be satisfied with $540 of Tier 1 capital and $100 of Tier 2 capital.

(2) The remaining capital available for market risk would be: Tier 1=$60, Tier 2=0, and Tier 3=$1000. The minimum capital requirement for market risk is $50 ($625×8.0%). Eligible Tier 3 capital would be limited to $125 ($50×2.5).

(3) The Tier 1 capital required to support market risk could be satisfied by allocating $14 ($50×.285), with eligible Tier 3 capital used for market risk being $36 ($50×$14).

(4) Total qualifying and eligible capital would be: $540 (Tier 1)+$100 (Tier 2)+$60 (Tier 1, comprising $14 allocated for market risk and $46 unallocated)+$36 (Tier 3)=$736. The bank's ratio of qualifying and eligible capital to weighted-risk assets adjusted for market risk would be: $736/$8,625)=8.5%.

Example 2: A bank has the following qualifying capital: Tier 1=$500, Tier 2=$140, Tier 3=$600.

(1) The minimum capital requirement for credit risk is $640 ($8000×8.0%). This requirement could be satisfied with $500 of Tier 1 capital and $140 of Tier 2 capital.

(2) The remaining capital available for market risk would be: Tier 1=0, Tier 2=$0, and Tier 3=$600. Eligible Tier 3 capital would be limited to $0 (0×2.5). Because there is no Tier 1 capital required to support market risk, no eligible Tier 3 capital may be used for market risk.

(3) Total qualifying and eligible capital would be: $500 (Tier 1)+$140 (Tier 2)=$640. The bank's ratio of qualifying and eligible capital to weighted-risk assets adjusted for market risk would be: $640/$8,625)=7.4%

b. In both of the examples described in paragraph a. of this attachment the total of Tier 2 and Tier 3 capital for credit and market risk is not greater than 100 percent of Tier 1 capital for credit and market risk and the total of Tier 2 capital for credit risk is not greater than 100 percent of Tier 1 capital for credit risk.

Attachment II—Sample Calculation of General Market Risk for Debt Instruments Using the Maturity Method

a. A bank with the following positions would allocate them into a maturity ladder as shown below:

i. Qualifying bond, $13.33mn market value, remaining maturity 8 years, coupon 8%;

ii. Government bond, $75mn market value, remaining maturity 2 months, coupon 7%;

iii. Interest rate swap, $150mn, bank receives floating rate interest and pays fixed, next interest reset after 12 months, remaining life of swap is 8 years (assumes the current interest rate is identical to the one the swap is based on); and

iv. Long position in interest rate future, $50mn, delivery date after 6 months, life of underlying government security is 3.5 years (assumes the current interest rate is identical to the one the swap is based on).

Zone	Time band and position	Risk weight [%]	Risk-weighted position	Net time-band positions	Net zone positions
1	0–1 Month	0.00			
	1–3 Months	0.20	Long 0.15	Long 0.15	Long 1.00
	Long 75 Gov. Bond.				
	3–6 Months	0.40	Short 0.20	Short 0.20.	
	Short 50 Future.				
	6–12 Months	0.70	Long 1.05	Long 1.05.	
	Long 150 Swap.				
2	1–2 yrs	1.25			
	2–3 yrs	1.75			
	3–4 yrs	2.25	Long 1.125	Long 1.125	Long 1.125
	Long 50 Future.				
3	4–5 yrs	2.75			
	5–7 yrs	3.25			
	7–10 yrs	3.75	Short 5.625	Short 5.125	Short 5.125
	Short 150 Swap.				
	Long 13.33		Long 0.50.		
	Qual. Bond.				
	10–15 yrs	4.50			
	15–20 yrs	5.25			
	Over 20 yrs	6.00			

b. A vertical disallowance would be calculated for time band 7–10 years. It would be 10 percent of the positions eliminated by netting in the time band—10.0 x 0.5 = 0.05 ($50,000).

c. A horizontal disallowance would be calculated for zone 1. It would be 40 percent of the positions eliminated by netting in the zone—40.0 x 0.20 = 0.80 ($80,000). The remaining net position in zone 1 would be long 1.00.

d. A horizontal disallowance would be calculated for adjacent zones 2 and 3. It would be 40 percent of the positions eliminated by netting between the zones—40.0 x 1.125 = 0.45 ($450,000). The remaining position in zone 3 would be short 4.00.

e. A horizontal disallowance would be calculated between zones 1 and 3. It would be 100 percent of the positions eliminated by netting between the zones—100 x 1.00 = 1.00 ($1,000,000).

f. The remaining net open position for the bank would be 3.00 ($3,000,000). The total capital requirement for general market risk for this portfolio would be:

The vertical disallowance	$50,000
Horizontal disallowance in zone 1	80,000

The horizontal disallowance between zones 2 and 3	450,000
The horizontal disallowance between zones 1 and 3	1,000,000
The overall net open position	3,000,000
Total requirement for general market risk	$4,580,000

Attachment III—Summary of Treatment for Interest Rate and Equity Derivatives

SUMMARY OF TREATMENT FOR INTEREST RATE DERIVATIVES

Instrument	Specific risk charge	General market risk charge
Exchange-Traded Future:		
Government security	No	Yes, as two positions.
Corporate debt security	Yes	Yes, as two positions.
Index on short-term interest rates (e.g. LIBOR)	No	Yes, as two positions.
OTC Forward:		
Government security	No	Yes, as two positions.
Corporate debt security	Yes	Yes, as two positions.
Index on short-term interest rates	No	Yes, as two positions.
FRAs, Swaps	No	Yes, as two positions.
Forward foreign exchange	No	Yes, as one position in each currency.
Options:		
Government security	No	For each type of transaction, either:
Corporate debt security	Yes	(a) Carve out together with the associated hedging positions
Index on short-term interest rates	No	—simplified method
		—scenario analysis
		—internal models, or
		(b) General market risk charge according to the Delta-plus method (gamma and vega receive separate capital charges).

NOTE: Specific risk charges relate to the issuer of the instrument. There remains a separate capital requirement for counterparty credit risk.

SUMMARY OF TREATMENT FOR EQUITY DERIVATIVES

Instrument	Specific risk charge	General market risk charge
Exchange-Traded or OTC Future:		
Individual equity	Yes	Yes, as underlying.
Index	2.0%	Yes, as underlying.
Options:		
Individual equity	Yes	For each type of transactions either:
Index	2.0%	(a) Carve out together with the associated hedging positions
		—simplified method
		—scenario approach
		—internal models, or
		(b) General market risk requirement according to the Delta-plus method (gamma and vega receive separate capital charges).

NOTE: Specific risk charges relate to the issuer of the instrument. There remains a separate capital requirement for counterparty credit risk.

Attachment IV—Sample Calculation of Standardized Approach for Commodities Risk

Time-band	Position	Spread rate	Capital calculation	Capital charge
0 up to 1 month	None			
1 up to 3 months	None			
3 up to 6 months	Long 800	1.5%	800 long + 800 short (matched) × 1.5%=	24
	Short 1000		200 short carried forward to 1–2 yrs, capital charge: 200×2×0.6%=.	2.4
6 up to 12 months	None			
1 up to 2 yrs	Long 600		200 long + 200 short (matched) × 1.5%=	6
			400 long carried forward to over 3 yrs capital charge: 400×2×0.6%=.	4.8
2 up to 3 yrs	None			
Over 3 years	Short 600		400 long + 400 short (matched) × 1.5%=	12
			Net position: 200 capital charge: 200×15.0%=	30

NOTE: Assume all positions are in the same commodity and converted at current spot rates into U.S. dollars. The total capital requirement would be $79.2.

Attachment V—Sample Calculation for Delta-Plus Method for Options

a. Assume a bank has a European short call option on a commodity with an exercise price of 490 and a market value of the underlying 12 months from the expiration of the option at 500; a risk-free interest rate at 8% per annum, and the volatility at 20 percent. The current delta for this position is according to the Black-Scholes formula −0.721 (that is, the price of the option changes by −0.721 if the price of the underlying moves by 1). The gamma is −0.0034 (that is, the delta changes by

-0.0034 from -0.721 to -0.7244 if the price of the underlying moves by 1). The current value of the option is 65.48.

b. The first step under the delta-plus method is to multiply the market value of the commodity by the absolute value of the delta. $500\times0.721=360.5$. The delta-weighted position is then incorporated into the measure described in section IV.D. of this appendix C E. If the bank uses the maturity approach and no other positions exist, the delta-weighted position is multiplied by 0.15 to calculate the capital requirement for delta. $360.5\times0.15=54.075$.

c. The capital requirement for gamma is calculated according to the Taylor expansion by multiplying the absolute value of the assumed gamma of -0.0034 by 1.125% and by the square of the market value of the underlying. $0.0034\times0.0125\times500^2=10.625$.

d. The capital requirement for vega is calculated next. The assumed current (implied) volatility is 20%. Since only an increase in volatility carries a risk of loss for a short call option, the volatility has to be increased by a relative shift of 25%. This means that the vega capital requirement has to be calculated on the basis of a change in volatility of 5 percentage points from 20% to 25% in this example. According to the Black-Scholes formula used here, the vega equals 168. Thus, a 1% or 0.01 increase in volatility increases the value of the option by 1.68. Accordingly, a change in volatility of 5 percentage points increases the value of $5\times1.68=8.4$. This is the capital requirement for vega risk. The total capital requirement would be \$73.10 (54.075+10.625+8.4).

By Order of the Board of Directors.

Dated at Washington, DC, this 11th day of July 1995.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–17542 Filed 7–24–95; 8:45 am]

BILLING CODES 4810–33–P; 6210–01–P; 6714–01–P

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

[Docket No. R–0886]

Capital Requirements for Market Risk

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comments.

SUMMARY: The Board is requesting comment on a possible approach to setting capital requirements for market risk, which, if feasible, might form the basis for future enhancements to supervisory procedures. The approach would require a bank to specify the amount of capital it chose to allocate to support market risks. If cumulative losses over some subsequent trading interval exceeded the commitment, the bank would be subject to regulatory penalties, such as fines, higher capital requirements, or restrictions on trading activities. In theory, the penalties could be calibrated to ensure that capital allocations were consistent with supervisory objectives.

DATES: Comments must be submitted on or before November 1, 1995.

ADDRESSES: Comments should refer to Docket No. R–0886, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, D.C. 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street NW. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Patrick Parkinson, Associate Director (202–452–3526), or Paul Kupiec, Senior Economist (202–452–3723), or James O'Brien, Senior Economist (202–452–2384), Division of Research and Statistics; for users of the Telecommunications Device for the Deaf (TDD) only, Dorothea Thompson (202–452–3544); Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Board is requesting comment on a proposed rulemaking that would amend its risk-based capital requirements to incorporate measures of market risk that have been developed by the Basle Committee on Banking Supervision. This proposed rule is published elsewhere in today's **Federal Register**, under Docket No. R–0884. The Board's publication of this proposed rulemaking reflects its judgment that the Basle proposal, especially the internal models option, constitutes a very significant improvement in supervisory methods for assessing capital adequacy.

Nonetheless, the Board believes that further evolution of supervisory approaches to assessing capital adequacy will be necessary over time. Techniques for measuring and managing market risk have been progressing rapidly in recent years, and further advances can be expected in the future. It is important that capital requirements provide incentives for such advances and that these requirements remain compatible with best practices as they evolve.

Recognizing the need for further evolution in supervisory approaches to capital adequacy, the Board is requesting comment on a novel approach, which has been termed the ''pre-commitment'' approach. While in theory this approach might offer significant advantages over existing alternatives, many of the practical details have not yet been worked out. The Board believes that public comments would be of great assistance in evaluating the overall feasibility of the approach and in identifying the most practical and effective means of implementing it. Public comments would also be of value in assessing whether future implementation of the proposal might have unintended consequences on banks or on financial markets.

I. Description of the Pre-Commitment Approach

The pre-commitment approach draws its inspiration from the economic literature on ''incentive-compatible'' regulatory schemes.[1] As in the internal models approach to market risk capital requirements that the Board has proposed, the regulatory objective is to require a bank to maintain sufficient capital to cover potential losses in its trading activities from all but the most extreme price movements.[2] The internal models approach seeks to ensure compliance with this objective by standardizing the parameters under which a bank would calculate the value at risk (VaR) of its trading portfolio and then applying a multiplication factor to each bank's calculated VaR, in part to cover potential losses over longer horizons. By contrast, the pre-commitment approach would seek to induce banks to meet the regulatory objective by providing them with a common set of economic incentives.

Specifically, in the pre-commitment approach a bank would specify its desired amount of capital for supporting market risks and would commit to manage its trading portfolio so as to limit any cumulative trading losses over some subsequent interval to an amount less than that capital allocation. The length of the interval would be established by the bank's regulator, based on the regulator's ability to

[1] The theory underlying the pre-commitment approach is presented in Paul H. Kupiec and James M. O'Brien, ''A Pre-Commitment Approach to Capital Requirements for Market Risk.'' Board of Governors of the Federal Reserve System, Division of Research and Statistics, staff memorandum, June 1995. This paper can be obtained from the Board's Freedom of Information Office.

[2] The scope of activities and banks that would be covered under a pre-commitment approach presumably would be the same as the scope of the proposed rulemaking on market risk that was referenced above.

monitor losses from the bank's trading activities and, if necessary, to force reductions in the size of the bank's open positions. The interval might be three or six months, but a shorter interval would be possible if the regulator can effectively monitor trading activity at that frequency and if the relevant markets are sufficiently liquid that the trading positions could, if necessary, be closed out promptly without substantial market impact. At the end of the interval, the bank could either increase or decrease its capital commitment.

To ensure that the bank committed an amount of capital commensurate with the risks in its trading portfolio and its capacity to manage those risks, the regulator would need to provide appropriate incentives in the form of economic costs or ''penalties'' for failing to limit losses to less than the capital commitment. The magnitude of the penalties would depend on the regulatory objective. A bank that is managed as a going concern would be expected to choose a capital commitment that entailed a marginal cost of regulatory capital equal to the expected cost of the penalty for a violation. The more conservative the capitalization that the regulator desired, the larger would be the specified penalty.

Given these costs, the bank's choice of a capital commitment would be based on a self-assessment of its capabilities to measure and control the risks of its trading activities. The adequacy and reliability of its internal models for measuring risk would play an important role in the bank's determination. But, as recognized in the qualitative standards for risk management that are part of the internal models approach, there is more to risk management than risk measurement. In addition to internal models for risk measurement, sound risk management requires a detailed structure of limits on risk and a strong management information system for controlling, monitoring, and reporting risks.

The measurement of market risk is fraught with uncertainty.

The magnitude of the low probability events about which regulators are concerned (for example, the lower limit of a 99 percent confidence interval for trading gains and losses) simply cannot be estimated with much precision.[3] A corollary of this result is that ''back-tests'' of a null hypothesis that a bank's internal model is accurately estimating a 99 percent confidence limit have little statistical power against alternatives that would involve substantial underestimation of potential losses.

A further implication is that declines in the market values of portfolios beyond those anticipated by the models are inevitable. In such circumstances, what is critical—and what cannot be captured in standard risk measures—is the potential for losses to be contained through active portfolio management, and, conversely, the potential for catastrophic losses if such active management is not forthcoming. In choosing its capital commitment, a bank's management would incorporate its judgments about the combined effectiveness of all critical elements of the bank's risk management system—not only its internal models, but also its structure of risk limits and the management information systems and audit programs it has in place to ensure compliance with those limits. Furthermore, management would have a strong incentive to strengthen over time all elements of its risk management system to economize on capital while avoiding the penalties.

The bank's choice of a capital commitment for market risk could be subject to review by supervisory authorities. Bank management could be expected to explain how cumulative losses would be contained within the amount of the commitment. This necessarily would require documentation of how internal models are used to measure risks, how limits are applied to the measured risks, how compliance with limits is ensured, and how management would respond to unanticipated losses. Furthermore, supervisors could condition use of the pre-commitment alternative on the bank's meeting the same qualitative standards for market risk management systems that would be required for use of the internal models approach, or perhaps on even more stringent standards.

It would be important to emphasize, however, that any supervisory review of the commitment would in no way diminish the bank management's responsibility for setting aside adequate capital to cover its market risks. An attractive feature of the pre-commitment approach is that it would underscore the responsibility of bank management for maintaining adequate capital, even if the amount needed exceeds what otherwise might be regulatory minimum requirements.

The key to the feasibility and effectiveness of the pre-commitment approach is the specification of the penalties that would result from a failure to limit trading losses to an amount less than the commitment. Analysis suggests that the cost of the penalties should increase with the size of the gap between the losses incurred and the pre-commitment. These penalties could take various forms. Fines (monetary penalties) would be especially effective in creating appropriate incentives because of their transparency. (U.S. insured banks might be required to pay any fines into the Bank Insurance Fund.) As an alternative to fines, supervisors could impose punitive capital charges. The severity of fines or capital penalties could be reduced if they were accompanied by supervisory sanctions, such as restrictions on future trading activity. The costs of these restrictions would be measured by the loss of profitable trading activities in future periods. Such costs could be considerable; a bank that is unable to pursue profitable trading opportunities for an extended period would have difficulty covering overhead costs in its trading businesses and, over time, likely would suffer defections by its best traders to other firms.

For the pre-commitment approach to be credible, banks would need to be reasonably certain that supervisory authorities would impose the specified penalties when losses exceed the commitment. The certainty of the penalty would strengthen the incentive for the bank to make the initial capital commitment commensurate with the supervisor's desired coverage of potential losses. Nonetheless, supervisors would need to reserve the right to suspend the penalties in the event of extreme price movements that reflect macroeconomic instability. This would help ensure that banks could continue to provide liquidity to markets following such stressful episodes. But suspensions should not include situations in which a penalty would simply be very costly to an individual bank but without systemic consequences.

Market forces might also be utilized to provide banks with incentives to allocate adequate capital. If the capital commitment were publicly disclosed, the reporting of losses in excess of the commitment not only would imply that supervisory sanctions had been imposed on the bank, but could also cast doubts on the effectiveness of the bank's risk management capabilities. Together, these factors could adversely affect its share price and its funding costs. For this reason, some banks might actually be tempted to commit more capital than is necessary to meet regulatory

[3] This point is developed further in Paul H. Kupiec, ''Techniques for Verifying the Accuracy of Risk Measurement Models.'' Board of Governors of the Federal Reserve System, Division of Research and Statistics, staff memorandum, April 1995. This paper can be obtained from the Board's Freedom of Information Office.

objectives. However, this tendency toward conservatism would be tempered by fears that an excessive capital commitment would cause the public (including stock analysts and rating agencies) to overestimate the riskiness of the bank's trading activities. Thus, market forces could be harnessed to induce banks to make appropriate capital commitments.

II. Issues and Questions for Public Comment

The basic issue is whether the pre-commitment approach is feasible and, if so, whether it might form the basis for future enhancements to supervisory approaches to assessing capital adequacy.

Q1. Should the Board explore use of the pre-commitment approach during the time that will elapse before the scheduled implementation of the proposed market risk capital requirements?

Q2. What are the advantages of the pre-commitment approach compared to other approaches under consideration by supervisors? Would it, in fact, produce capital allocations that more accurately reflect banks' assessments of trading risks? Would it be more compatible with banks' risk measurement systems? Would it provide stronger incentives for the improvement of risk management systems?

Q3. What are the potential drawbacks to the pre-commitment approach? Could penalties be destabilizing to banks? To the financial system? What other unintended consequences might result from implementation of the approach?

Before the pre-commitment approach could be implemented,the penalties associated with failure to limit trading losses to an amount less than the capital commitment would need to be specified more precisely.

Q4. What form should the penalties take? Fines? Higher future capital requirements? Other restrictions on future trading opportunities?

Q5. Should regulators reserve the right to waive the penalties under certain circumstances? If so, under what circumstances? To avoid adverse effects on market liquidity? To avoid impairing a bank's capital so significantly that its viability is threatened? Is there a danger that the prospect of a waiver could undermine the incentive effects of the penalties? How could such adverse incentive effects of waivers be minimized?

Q6. Should capital commitments, trading results, and penalties be publicly disclosed? What effects would public disclosure have on capital allocations? On trading behavior? How would stockholders and creditors react to news that a capital commitment had been violated? Could the reactions be destabilizing? On the other hand, if commitments and results are not publicly disclosed, would the approach lack credibility?

Another set of issues that would need to be addressed is the restrictions and limitations that would be placed on use of a pre-commitment approach.

Q7. Are qualitative standards for market risk management necessary to implement the pre-commitment approach? What qualitative standards for market risk management should be met by banks seeking to use the pre-commitment approach? Are the qualitative standards set out by the Basle Supervisors for use of the internal models approach sufficient? Or should more stringent standards be imposed? If so, in what ways should the standards be more stringent?

Q8. Should a bank's choice of a capital commitment be subject to review by supervisory authorities? Or would such a review be unnecessary or undesirable?

Q9. The incentive effects of the pre-commitment approach can be relied upon to induce banks to make realistic capital commitments only if the bank is being managed as a going concern. (A bank would not necessarily be concerned about penalties that would be imposed only in the event of its insolvency.) Could this potential problem be addressed adequately by limiting use of the pre-commitment approach to adequately capitalized banks (or even to well-capitalized banks)?

Q10. Even for well-capitalized banks, is the approach viable if market risk is the predominant element in the institution's overall risk profile? Or must its use be restricted to banks for which market risk associated with the trading account is a relatively small element in their overall risk profile? As practical matter, do banks typically allocate more than a small fraction of their total capital to cover market risk?

A final issue that would benefit from public comment relates to how trading gains and losses should be measured for purposes of determining whether the capital commitment has been violated.

Q11. Should spreads on customer or market-making businesses be included in trading gains and losses or should they be excluded? Why or why not? Can revenues from customer accommodation and market making be separated reliably from revenues from position taking?

Q12. Should gains or losses from changes in the credit quality of assets held in trading accounts be included or excluded? If included, would there be any need for separate capital requirements for specific risk (as opposed to general market risk)?

Q13. In general, are profits and losses on trading accounts sufficiently transparent that supervisors could reliably determine whether a capital commitment has been violated? Could concerns on this score be addressed through qualitative standards for valuation (e.g., standards for documentation of policies regarding valuation adjustments and adherence to those policies)?

By order of the Board of Governors of the Federal Reserve System, July 12, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–17541 Filed 7–24–95; 8:45 am]

BILLING CODE 6210–01–P

federal register

Tuesday
July 25, 1995

Part III

Commodity Futures Trading Commission

17 CFR Parts 1, 4, 30, and 150

Amendments to Commodity Pool Operator and Commodity Trading; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 4, 30, 150

Amendments to Commodity Pool Operator and Commodity Trading Advisor Disclosure Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is announcing the adoption of substantial revisions to the disclosure framework applicable to commodity pool operators (''CPOs'') and commodity trading advisors (''CTAs''). These amendments are intended to achieve greater simplicity, focus and clarity in performance history; to streamline other required disclosures; to improve the presentation and understandability of disclosures to investors; and to create a more concise and readable format for Disclosure Documents.

EFFECTIVE DATE: August 24, 1995.

FOR FURTHER INFORMATION CONTACT: Susan C. Ervin, Deputy Director/Chief Counsel, Barbara Stern Gold, Assistant Chief Counsel, or Christopher W. Cummings, Attorney/Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Development of Proposed Part 4 Revisions

On May 5, 1994, the Commission proposed comprehensive revisions to the disclosure framework for CPOs and CTAs (''Proposing Release'').[1] This proposal followed more than fifteen years of experience in administering the part 4 disclosure framework and reflected a comprehensive review of the disclosure requirements for CPOs and CTAs designed to identify aspects of the regulatory structure that could be streamlined or simplified, while enhancing appropriate customer protection. The first phase of this review resulted in the adoption of Rules 4.7 and 4.8 in 1992.[2] The adoption of the rules set forth herein is part of the second phase of the Commission's review of part 4.[3] As the Commission

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[1] 59 FR 25351 (May 16, 1994). The initial sixty-day period for public comment on the Proposing Release expired on July 15, 1994 but was extended to August 17, 1994. The proposed amendments included conforming changes to other rules, *e.g.*, to Rule 30.6, which pertains to disclosures required of CPOs and CTAs offering pools or accounts, respectively, to trade in foreign futures contracts as defined in Rule 30.1. 59 FR 37189 (July 21, 1994).

The Commission's rules governing the operations of CPOs and CTAs are set forth in part 4 of the Commission's regulations, 17 CFR part 4 (1994). All other Commission rules referred to herein are found at 17 CFR Ch. I (1994).

[2] Rule 4.7 provides relief from certain disclosure, reporting and recordkeeping requirements applicable to CPOs for pools offered and sold only to ''qualified eligible participants'' and CTAs providing commodity interest trading advice to ''qualified eligible clients,'' as defined therein, and who satisfy other specified criteria for relief. Rule 4.8 provides relief from the twenty-one day Disclosure Document pre-filing requirement (now contained in new Rule 4.26(d)(1)) for CPOs of certain privately-offered pools.

[3] This second phase will also consider, in consultation with the Securities and Exchange

stated in the Proposing Release, the purposes of these revisions are: (1) Simplification of past performance disclosures; (2) reduction of required disclosures concerning matters of secondary relevance; and (3) clarification and modernization of various requirements.[4]

In announcing the adoption of part 4 in 1979, the Commission stated that the Disclosure Document requirement for CPOs was intended ''to protect pool participants—particularly those who are unsophisticated in financial matters—by ensuring that they are informed about the material facts regarding the pool before they commit their funds.'' [5] Similarly, the Disclosure Document requirement for CTAs was premised, in part, upon the view that ''a prospective (CTA) client or subscriber should be aware of the advisor's commodity and general business experience if he is to make an informed decision as to whether or not to avail himself of the advisor's services.'' [6]

In the Proposing Release, the Commission noted that since the original adoption of the part 4 rules, the number of registered CPOs had more than doubled and the number of CTAs had increased nearly threefold; [7] assets under the management of CPOs had grown dramatically; [8] and the range of available futures and option contracts had increased substantially.[9] In addition, during the past decade, trading structures and investment portfolios have become increasingly diverse and complex. A single commodity pool may engage multiple CTAs and invest in multiple commodity pools (''investee pools'') [10] or securities funds in order to access the services of particular traders or advisors, employ multiple trading strategies or programs, or diversify its portfolio.[11] Further, commodity pools frequently retain ''trading managers'' to recommend or select CTAs to manage, or funds in which to invest, the pool's assets [12] and may employ dynamic asset allocation strategies entailing periodic replacement of, or reallocation of assets among, CTAs for the pool.

In implementing its statutory mandate to regulate the activities of CPOs and CTAs, the Commission has endeavored to refine its rules as appropriate to respond to changing market conditions in a manner consistent with customer protection.[13] The Commission's Division of Trading and Markets (''Division'') has issued relief on a case-by-case basis to facilitate application of the disclosure requirements to new market conditions not contemplated by the existing regulatory framework, such as multi-advisor and fund-of-funds structures. The objective in such cases is to apply the rules so as to foster clear and succinct disclosure of material information, especially concerning fees and other aspects of fund operations affected by such structures, taking into account the particular characteristics of the offered investment vehicle.[14] In many cases, strict application of existing disclosure requirements to pools whose CPOs have voluminous performance histories or which invest through multiple CTAs or investee funds could result in undue emphasis upon performance record disclosure and reduced focus upon more germane data. These effects have been mitigated in appropriate circumstances through grants of exemptive or no-action relief.[15]

Thus, the proposal to revise the part 4 rules reflected the Commission's experience in addressing a wide range of CPO and CTA disclosure issues under the prior rules, the evolution of the marketplace, the development of new trading structures and the views of the public and of market participants.

B. National Futures Association Proposals

As detailed in the Proposing Release,[16] on March 15, 1994, the National Futures Association (''NFA'') submitted to the Commission proposed amendments to, and interpretations of, NFA's Compliance Rules based upon the recommendations of NFA's Special Committee for the Review of CPO/CTA Disclosure Issues (''NFA's Submission''). NFA's Submission consisted of several parts, including: Proposals concerning presentation of past performance data, including proposed capsule formats for CPO and CTA performance; proposed requirements for calculation and disclosure of break-even analyses by CPOs; proposed rules for the use of hypothetical trading results by NFA members in promotional material; and proposals dealing with the use of ''nominal'' or ''notionally funded'' accounts. The proposals requiring, and providing instructions for, break-even analyses were published for public comment and subsequently approved by the Commission on April 26, 1995, substantially as proposed.[17] Rule 4.10(j)

Commission and the states, the appropriateness of a two-part format for pool Disclousre documents. *See* 59 FR 25351.

[4] 59 FR 25351. These revisions do not, however, affect the basic organizational structure of part 4. Thus, the subparts thereunder continue to apply as follows: subpart A, to definitions and exemptions (Rule 4.1 *et seq.*); subpart B, to the operations and activities of CPOs (Rule 4.20 *et seq.*); subpart C, to the operations and activities of CTAs (Rule 4.30 *et seq.*); and subpart D, to advertising (Rule 4.40 *et seq.*).

[5] 44 FR 1918, 1920 (January 8, 1979).

[6] 42 FR 9278, 9279 (February 15, 1977).

[7] 59 FR 25351, 25352 and n.7.

[8] 59 FR 25351, 25352 and n.8.

[9] 59 FR 25351, 25352 and n.9.

[10] Rule 4.10(d)(4) defines the term ''investee pool,'' discussed more fully below.

[11] 59 FR 25351, 25353 and n.11.

[12] 59 FR 25351, 25353. Rule 4.10(h) defines the term ''trading manager,'' as discussed more fully below.

[13] *See, e.g.,* Rules 4.5, 4.12(b) and 4.7, adopted in 1985, 1987 and 1992, respectively, and the discussion of those rules at 59 FR 25351, 25353.

[14] 59 FR 25351, 25353–25354. In reviewing Disclosure Documents for fund-of-funds structures, Division comment letters previously have stated that although pool documents should provide all information required by (former) Rule 4.21 for each investee pool, ''generally at the same level of detail as though the investee pool were providing its own separate disclosure document,'' nevertheless reduced disclosures are appropriate where less than twenty-five percent of the assets of the offered pool would be invested in an investee pool. The Division has also provided guidance through interpretative statements and advisories with respect to past performance presentations in Disclosure Documents. *See, e.g.,* CFTC Advisory 87–2, (1986–1987 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 23, 624 (June 2, 1987), defining the term ''beginning net asset value'' for rate of return calculations; CFTC Advisory (unnumbered, dated February 27, 1991), (1990–1992 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 25,005, permitting CPOs and CTAs to use alternative rate of return computation methods to more accurately reflect the return on funds available for trading during the period; and CFTC Advisory 93–13, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,554 (February 12, 1993), permitting the use of an alternative method for computing CTAs' rates of return.

As noted below (*see* n.15), the staff addresses specific requests for relief on a case-by-case basis.

[15] *See, e.g.,* CFTC Interpretative Letter No. 94–12, (Current Transfer Binder), Comm. Fut. L. Rep. (CCH) ¶ 25,993 (December 27, 1993) (capsule performance disclosure permitted for CPO's other pools; CFTC Interpretative Letter No. 94–10, (Current Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 25,991 (December 16, 1993) (capsule performance disclosure permitted); CFTC Interpretative Letter No. 93–107, (Current Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 25,899 (October 26, 1993) (CPO permitted to omit disclosures concerning its single advisor pools in Disclosure Document for a multi-advisor pool under certain conditions); CFTC Interpretative Letter No. 92–12, (1990–1992 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 25,343 (July 28, 1992) (CPO permitted to omit required disclosures concerning CTAs and investee pools allocated less than 10% of pool's assets under certain conditions); and CFTC Interpretative Letter No. 92–9, (1990–1992 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 25,300 (June 1, 1992) (CPO permitted to use two-part Disclosure Document with past performance of CTAs in second part delivered contemporaneously with first part) and Advisory 27–92 (June 3, 1992) (Commission has no objection to use of two-part Disclosure Document subject to conditions set forth in Interpretative Letter 92–9), issued in connection therewith. The foregoing generally are discussed at 59 FR 25351, 25353–54.

[16] *See* 59 FR 25351, 25354.

[17] NFA Compliance Rule 2–13(b) and Interpretive Notice to Compliance Rule 2–13(b). The ''break-

Continued

incorporates by reference NFA's instructions for calculating the ''break-even'' point. The portion of NFA's Submission concerning hypothetical trading results [18] was modified by NFA in response to Commission and public comments and remains under consideration.[19] Rule 4.41, revised as discussed herein, permits persons to follow either the Commission or rules adopted by NFA.

NFA's Submission included proposed rules with respect to past performance presentations, which were considered by the Commission in preparing the recommendations set forth in the Proposing Release. As noted in the Proposing Release, the portion of NFA's Submission addressing the use of ''nominal'' or ''notionally funded'' accounts was remitted to the NFA for further explanation and documentation. The Commission is not addressing the issue of ''nominal'' or ''notional'' account size in this release.

C. April 25, 1995 Roundtable Discussion

On April 25, 1995, the Commission convened a roundtable discussion led by Chairman Mary L. Schapiro, entitled ''Rethinking Past Performance Disclosure,'' to elicit input from industry, academic, end-user, regulatory and other sources with respect to public policy issues relevant to past performance disclosure, as well as technical and pragmatic aspects of past performance presentations. A number of the speakers expressed the view that past performance data alone are not directly predictive of future trading results but that past performance data provide information that is important in evaluating a contemplated pool offering or trading program. For example, patterns of volatility and other trading patterns in various market conditions may be evident.

Participants also noted the tendency for past performance data to have a potent persuasive effect, which some viewed as significantly exceeding the usefulness of such information as a basis for an investment decision. Speakers discussed the effect of such factors as the volume of performance data and the format in which performance information is provided, the utility of monthly as opposed to annual rates of return, and the extent to which meaningful benchmarks or standards are available to measure performance.[20]

D. Review of Public Comments

The Commission received thirty comment letters in response to the Proposing Release: three from persons registered as CTAs; five from persons registered as both a CPO and a CTA; two from persons registered as both a CTA and an introducing broker (''IB''); two from persons registered as futures commission merchants (''FCMs''); two from self-regulatory organizations; two from a futures industry trade organization; two from certified public accountants; nine from law firms; two from bar associations; and one from an academician.

The commenters strongly supported the rulemaking in general. Many commenters, however, advocated changes in various aspects of the proposed rules. The Commission has carefully considered the comments received and, based upon its review of the comments and its own reconsideration of the proposed amendments, has determined to adopt the revisions contained in the Proposing Release, with certain modifications, as discussed below. Comments received on the proposed amendments are discussed below in the context of the particular provisions to which they relate.

The Commission believes that the revised rules, as adopted, not only respond to the concerns of the commenters but, also, meet the regulatory objectives of this rulemaking. Notwithstanding the adoption of the rule amendments discussed herein, the Commission intends that the staff will continue to respond to requests for relief from the Part 4 rules on a case-by-case basis consistent with the objectives and principles of this rulemaking. The Commission also is exploring possible mechanisms for addressing additional CPO and CTA disclosure issues with the benefit of industry and other external input, including input from other federal and state regulators, on an ongoing basis.

II. Transitional Provisions

The revisions being announced today will become effective thirty days from the date hereof, but Disclosure Documents may be prepared, filed and used in accordance with the revised rules prior to the effective date. To facilitate the transition to compliance with the revised rules adopted herein, the Commission has determined that, for a period of six months after the effective date, it will not take enforcement action against any person solely on the basis of such person's use of a Disclosure Document prepared pursuant to the former rules rather than the revised rules. For pools that are continuously offered, amendment of the Disclosure Document is not required solely due to the rule revisions announced herein, and operators of such pools may make conforming changes as part of their next regular update.

Persons to whom the Division previously has granted exemptive or no-action relief permitting them to prepare Disclosure Documents in accordance with certain provisions of the proposed rules set forth in the Proposing Release are reminded that such relief is superseded by the revisions adopted herein, and any Disclosure Document used by any such person subsequent to the effective date of these revisions must comply with the revised rules.

III. Summary of Rule Changes

The following summary is intended to provide interested persons with information concerning significant changes to the Commission's disclosure framework and the manner in which those changes vary, if at all, from the Commission's proposals. These and all other changes to part 4 and other Commission rules are discussed below in the section-by-section analysis. For purposes of this release, the rules as in effect prior to the amendments discussed herein are referred to as the ''former'' rules.

A. Definitions [21]

Many of the proposed amendments set forth in the Proposing Release introduced new concepts into the rules. As a consequence, the Proposing Release contained several new definitions designed to modernize the rules in light of marketplace developments and to aid in implementation of the revised rules. Several of these new definitions have been adopted with modifications: ''multi-advisor pool'' (Rule 4.10(d)(2)); ''principal-protected pool,'' which was proposed as ''limited risk pool'' (Rule 4.10(d)(3)); ''trading manager'' (Rule 4.10(h)); ''major commodity trading advisor'' (Rule 4.10(i)); ''major investee pool'' (Rule 4.10(d)(5)); ''trading principal'' (Rule 4.10(e)(2)); and ''break-even point'' (Rule 4.10(j)). Two of the proposed definitions have been

even'' analysis is a computation of the trading profit that a pool must realize in the first year of an investor's participation for the investor to recoup his or her initial investment.

[18] Proposed NFA Compliance Rule 2–29(c).

[19] Separately, the Commission contemplates further review of the subject of hypothetical performance presentations to assure adequate safeguards against the misuse of such disclosure.

[20] A summary of the roundtable discussion is on file with the Commission's Office of the Secretariat.

[21] The section-by-section analysis of revised and new definitions is set forth in Section IV below.

eliminated,[22] and three additional definitions which were not included in the Proposing Release have been added: ''investee pool'' (Rule 4.10(d)(4)), ''draw-down'' (Rule 4.10(k)), and ''worst peak-to-valley draw-down'' (Rule 4.10(*l*)). As adopted, the new definitions are included in Rule 4.10, and where appropriate, related definitions have been made part of the same paragraph.[23]

B. Required Performance Disclosures [24]

1. CPO Disclosure Documents

Rule 4.25 of the amended rules creates a simplified structure for the presentation of required past performance by CPOs. In each case, the presentation must cover the five most recent calendar years and year-to-date, or the entire life of the subject pool, account or trading program, whichever is shorter. (Rule 4.25(a)(5)).

a. All required past performance presentations for pools are reduced to a summary, capsule format containing specified core information. (Rule 4.25(a)(1)). In a change from the proposal, CPOs may present monthly rates of return required for the offered pool for five calendar years and year-to-date either in tabular form or in a bar graph. (Rules 4.25(a)(1) and (a)(2)).

b. For an offered pool which meets the following criteria, the past performance record of only the offered pool itself is required to be presented in the Disclosure Document: (1) The pool has at least a three-year history of trading commodity interests; and (2) during that minimum three-year period at least seventy-five percent of the pool's assets were contributed by persons not affiliated with the CPO, trading manager, CTA or FCM for the pool, or their respective principals. (Rule 4.25(b)).

c. For offered pools which do not meet the three-year operating history criteria of Rule 4.25(b), past performance data for the offered pool, for other pools operated by (or accounts traded by) the CPO and trading manager, and for each ''major'' CTA or ''major'' investee pool is required.[25] If the CPO or trading manager has less than a three-year history in trading pools for which at least seventy-five percent of pool contributions were made by persons not affiliated with the CPO, trading manager, or CTA for the pool or their respective principals, the past performance of the CPO's (and trading manager's) trading principals [26] is required to be presented unless that performance does not differ materially from the performance of the offered pool and the CPO of the offered pool. (Rule 4.25(c)(2)).

d. The requirement in proposed Rule 4.25(c)(3)(iii) to disclose certain information under the designation ''adverse performance'' has not been adopted. However, the terms ''major commodity trading advisor'' and ''major investee pool'' have been redefined to include CTAs and investee pools with ten percent, rather than twenty-five percent, allocations of pool assets and a narrative discussion of the performance history of non-major CTAs and investee pools is required. (Rule 4.25(c)(5)).

2. CTA Disclosure Documents

Under proposed Rule 4.34(a)(1), CTAs would have been required to continue to present the performance of the offered trading program in the full multi-column tabular format previously required under Rule 4.31(a)(3). Performance of all other trading programs directed by the CTA would have been presented in the new capsule format used in CPO Disclosure Documents. As adopted, Rule 4.35(a)(1) permits CTAs to use a capsule format (similar to the capsule format adopted for CPOs) for all programs. The offered trading program's capsule must include monthly rates of return and the numbers of profitable and losing accounts in the trading program. The required monthly rates of return may be presented either in tabular form or as a bar graph, as is the case for the offered pool in a CPO Disclosure Document. As with CPO Documents, all required performance is to be presented for the five most recent calendar years and year-to-date or for the life of the trading program, whichever is shorter. (Rule 4.35(a)(5)).

C. Required Non-Performance Disclosures [27]

Required non-performance disclosures are revised as follows.

1. *Break-Even Point.* CPOs are required to disclose the pool's break-even point, indicating the trading profit the pool must realize in order for a participant to recover his entire initial investment if he redeems his interest after one year. (Rules 4.10(j), 4.24(d)(5) and 4.24(i)(6) for CPOs). The break-even point is required to be calculated in accordance with rules promulgated by a registered futures association pursuant to section 17(j) of the Commodity Exchange Act (the ''Act'').[28]

2. *Material Litigation.* Actions adjudicated on the merits in favor of persons whose litigation history is required need not be disclosed. Required disclosures concerning actions against FCMs and IBs are significantly reduced. (Rules 4.24(*l*) for CPOs and 4.34(k) for CTAs).

3. *Principal Risk Factors.* CPOs and CTAs must discuss the principal risk factors of the pool or trading program, including but not limited to volatility, leverage, liquidity and counter-party creditworthiness. (Rules 4.24(g) for CPOs and 4.34(g) for CTAs).

4. *Business Background.* Disclosure of the business backgrounds of principals is limited to principals (including officers and directors) who participate in making trading or operational decisions for the pool or CTA (or who supervise persons so engaged). Disclosure of CTA and investee pool operator business backgrounds in CPO Disclosure Documents is limited to major CTAs and major investee pools. (Rules 4.24(f) for CPOs and 4.34(f) for CTAs).

5. *Conflicts of Interest.* Rule 4.24(j) calls for a full description of actual and potential conflicts involving the CPO, the trading manager, major CTA or major pool operator and any principal thereof, as well as any person providing services to the pool or soliciting participants for the pool. The rule also calls for the disclosure of any other material conflict of interest involving the pool. Disclosure with respect to payment for order flow, soft dollar arrangements and similar arrangements is specifically called for. Rule 4.34(j) for CTAs also specifically references payment for order flow and soft dollar arrangements.

6. *Fees and Expenses.* Rule 4.24(i) requires the CPO to describe the expenses incurred in the previous year and to be incurred in the current year and to disclose fees and commissions in connection with pool solicitations. The rule also specifies significant expense categories not previously enumerated in Rule 4.21 and requires an explanation of

[22] The definition of ''adverse performance,'' which was included in proposed Rule 4.25(a)(8), and the definition of ''trading program,'' which was included in proposed Rule 4.34(a)(5), have not been adopted.

[23] Pool-related definitions are now sub-paragraphs of Rule 4.10(d) and the definition of ''trading principal'' has been included as a sub-paragraph of Rule 4.10(e).

[24] The section-by-section analysis of required performance disclosure revisions is set forth in Section V below.

[25] Rules 4.10(i) and 4.10(d)(5) define the terms ''major commodity trading advisor'' and ''major investee pool,'' respectively.

[26] The term ''trading principal'' is defined in Rule 4.10(e)(2).

[27] A section-by-section analysis of required non-performance disclosure revisions is set forth in Section VI below.

[28] 7 U.S.C. 1 *et seq.* (1994). As noted above, NFA rules governing calculations of the break-even point are included in an Interpretive Notice accompanying NFA Compliance Rule 2–13(b), which Rule and Notice the Commission approved on April 26, 1995.

the calculation of the pool's break-even point. If a fee is determined by reference to a base amount, the manner in which the base amount is calculated must be disclosed.[29] (Rules 4.10(j), 4.24(d)(5) and 4.24(i) for CPOs, and 4.34(i) for CTAs).

D. Non-Required Disclosures[30]

1. *Proprietary Trading Results.* As proposed and as adopted, the rules provide that proprietary trading results presented in either a CPO or CTA Disclosure Document must be labelled as such and placed at the end of the document. (Rules 4.24(v) and 4.25(a)(8) for CPOs, and 4.34(n) and 4.35(a)(7) for CTAs).

2. *Supplemental Information.* Proposed Rules 4.24(v) and 4.33(n) generally would have required that information not specifically called for by Commission rules or federal or state securities laws or regulations could only appear following the related required disclosure. The new rules, as adopted, require that any supplementally provided performance information be presented after the entire required performance presentation. Supplemental non-performance information relating to required disclosures may be included with the respective related required disclosures. Other supplemental information is required to follow the last required disclosure, and any proprietary, hypothetical, simulated or pro forma[31] trading results must be placed at the end of the Disclosure Document. Supplemental information must not mislead or obscure or diminish in prominence any required disclosure. (Rules 4.24(v) for CPOs and 4.34(n) for CTAs).

E. Format Improvements to Enhance Readability[32]

A number of revisions to the rules are intended to enhance the accessibility and prominence of relevant disclosures. Disclosure Documents are now required to contain a table of contents. Further, the number and content of various previously required bold-face "boilerplate" risk and cautionary statements has been reduced. Certain core information, including the break-even point, is required to be set forth in the forepart of the document. (Rules 4.24(a) through (d) for CPOs and 4.34(a) through (d) for CTAs).

A significant change from the Proposing Release is the renumbering of the CTA disclosure rules to correspond to the numbering of the CPO disclosure rules. To accomplish this, proposed Rules 4.32, 4.33, 4.34 and 4.35 have been adopted as Rules 4.33, 4.34, 4.35 and 4.36, respectively, and Rule 4.32 has been reserved.

Subject	CPO rule	CTA rule
Required delivery of Disclosure Document	4.21	4.31
Report to pool participants	4.22	....
Recordkeeping	4.23	4.33
General disclosures required	4.24	4.34
Performance disclosures	4.25	4.35
Use, amendment and filing of Disclosure Document	4.26	4.36

F. Other Revisions[33]

The rule amendments also are designed to facilitate pool offerings, particularly with respect to areas of overlap or potential inconsistency with the rules of the Securities and Exchange Commission ("SEC"). Thus, CPOs and CTAs may now update Disclosure Documents every nine months, rather than every six months as formerly required. (Rules 4.26(a) for CPOs and 4.36(a) for CTAs.) In addition, CPOs may provide accredited investors with a notice of intended offering and statement of the terms of the proposed offering, prior to delivery of a Disclosure Document. (Revised Rule 4.21(a) for CPOs.)

G. Distribution Table

In light of the extensive substantive and organizational revisions to the content of Disclosure Documents, and therefore to the part 4 rules, the Commission is setting forth below a distribution table to assist interested persons in complying with the new disclosure framework for CPOs and CTAs.

DISTRIBUTION TABLE

Old section	New section
4.10(d)	1.55(a)(1)(iii) 4.10(d)(1) 4.10(d)(2)–(d)(5)
4.10(e)	4.10(e)(1)
	4.10(e)(2)
	4.10(h)–(*1*)
4.21(a)	4.21(a)
	4.24(c)
	4.24(d)
4.21(a)(1)(i)–(1)(vii)	4.24(d)(1)–(d)(2), 4.24(e)
4.21(a)(1)(viii)	4.24(h)
	4.24(d)(3), 4.24(d)(5)
4.21(a)(2)	4.24(f)
	4.24(g)
4.21(a)(3)	4.24(j)
4.21(a)(4)	4.24(n), 4.25
4.21(a)(5)	4.24(n), 4.25
4.21(a)(6)	4.24(t)
4.21(a)(7)	4.24(i)(i)–(i)(4)
4.21(a)(8)	4.24(s)
4.21(a)(9)	4.24(h)(4)
	4.24(*o*)
4.21(a)(10)	4.24(p)
4.21(a)(11)	4.24(q)
4.21(a)(12)	4.24(r)
	4.24(k)
4.21(a)(13)	4.24(*l*)
4.21(a)(14)	4.24(i)(5)
4.21(a)(15)	4.24(m)
4.21(a)(16)	4.24(u)
	4.24(v)
4.21(a)(17)	4.24(b)
4.21(a)(18)	4.24(a)
4.21(b)	4.26(c)
4.21(c)	4.24(d)(4)
4.21(d)	4.21(b)
4.21(e)	4.26(a)
4.21(f)	4.26(b)
4.21(g)	4.26(d)
4.21(h)	4.24(w)
4.31(a)	4.31(a)
	4.34(c)
	4.34(d)
4.31(a)(1)(i)	4.34(d)(1)
4.31(a)(1)(ii), 4.31(a)(iv).	4.34(e)
4.31(a)(1)(iii)	4.34(h)
4.31(a)(2)	4.34(f)
	4.34(g)
4.31(a)(3)	4.34(m), 4.35
4.31(a)(4)	4.34(i)
4.31(a)(5)	4.34(j)
4.31(a)(6)	4.34(*l*)
4.31(a)(7)	4.34(k)
	4.34(n)
4.31(a)(8)	4.34(b)
4.31(a)(9)	4.34(a)
4.31(b)	4.36(c)
4.31(c)	4.34(d)(2)
4.31(d)	4.31(b)
4.31(e)	4.36(a)
4.31(f)	4.36(d)
4.31(g)	4.34(*o*)
4.32	4.33
4.41(b)(1)	4.41(b)(1)(A)–(b)(1)(B)

IV. Definitions

A. Major Commodity Trading Advisor: Rule 4.10(i)

In proposed Rule 4.10(k), the term "major commodity trading advisor"

[29] Except for this provision, Rule 4.34(i) for CTAs is unchanged from the former rule.

[30] A detailed discussion of non-required disclosures is included in Sections V and VI below.

[31] However, pro forma adjustments to performance data are required for certain purposes and such adjustments are not affected by the restrictions upon placement of supplemental information. *See* Section V.C.3., *infra.*

[32] The section-by-section analysis of format improvement revisions is set forth in paragraph B.6. of Section V and in Section VI below.

[33] The section-by-section analysis of other revisions (including: Deletion of certain requirements to state that a disclosable situation does not exist; changes to the Disclosure Document amendment, filing and use requirements; and technical conforming changes) is set forth in Section VII below.

would have been defined as a CTA allocated or intended to be allocated at least twenty-five percent of the pool's aggregate initial margin and premiums for futures and commodity option contracts. The Commission requested comment concerning this proposed definition, specifically as to the use of a percentage of the pool's aggregate initial margin and premiums for futures and commodity option contracts as compared to a percentage of the pool's total assets, which was proposed in Rule 4.10(*l*) as the basis for determining whether an investee pool would be a major investee pool. The Commission asked whether the proposed distinction between the definition of major CTA and major investee pool would appropriately reflect the relative risks of direct futures trading as compared to trading through vehicles which limit the risk of loss to the initial investment.

The majority of the commenters on the major CTA definition recommended that the definition be based on the percentage of the pool's net asset value allocated to the CTA, rather than on the percentage of the pool's aggregate initial margin and option premiums. Commenters stated that it would be difficult to determine how much of the assets allocated to a CTA would be used for margin and premiums, noted that pool operators do not base allocations to CTAs on margins and premiums, and urged that the amount of assets allocated to a CTA better indicates the CTA's potential impact on the pool's performance. Several commenters suggested substitute benchmarks, including standards based on the CTA's ''trading level,'' *i.e.*, the portion of the pool's ''market exposure'' allocated to the CTA and the portion of the pool's assets committed to trading that had been allocated to the CTA. The Commission was also urged to provide expressly that pool assets allocated to a CTA include notional equity, since otherwise the standard may fail to reflect the actual portion of the pool's assets at risk with the CTA, and to use the percentage of pool assets allocated to an advisor specified in the written agreement between the advisor and the pool operator to measure the allocation amount, regardless of how such allocations are drawn upon by advisors from time to time for margin and premiums. A number of commenters expressed agreement with the proposed twenty-five percent threshold amount (while urging that it be based on pool assets).

The Commission agrees with the concept advanced or implicit in several of the comment letters that a key objective of defining major CTAs is to gauge the ability of the various CTAs for the pool to place the assets of the pool at risk. To further this objective, the Commission has adopted a revised definition of major CTA in Rule 4.10(i). Under the revised definition, the determination as to whether a CTA is a major CTA is based upon the percentage allocation to the CTA of the pool's aggregate net assets or the aggregate value of the net assets allocated to the pool's trading advisors, whichever is smaller, as determined by the agreement between the CPO and the CTA. These alternate measures are designed to assure that the major CTA definition identifies CTAs which have the ability to expose the pool's assets to significant risk because the amount of funds over which they have trading authority represents a significant proportion either of the pool's net asset value or of the aggregate value of the assets allocated to the pool's trading advisors, whichever is less.[34] As discussed more fully below, the Commission has determined to use a lower percentage threshold of ten percent in lieu of the proposed twenty-five percent threshold as part of a restructuring of the CTA and investee pool performance disclosure requirements of Rule 4.25 to eliminate the proposed category of ''adverse performance,'' which would have applied to CTAs with allocations of ten percent to twenty-five percent of the pool's futures margins and commodity option premiums.

Thus, under the alternate test being adopted in Rule 4.10(i), if, for example, the total dollar value allocated to advisors for commodity interest trading represented fifty percent of the net asset value of the pool, a trading advisor allocated ten percent of the total dollar value allocated to advisors, even though that amount would represent less than ten percent of the pool's assets, would be a major CTA.[35] This result is appropriate because the major CTA definition is designed to include CTAs who hold authority over a substantial portion of the pool's commodity interest trading, even if the absolute dollar value of the funds allocated to the CTA is relatively small compared to the total assets of the pool. Conversely, in the unlikely scenario of a CTA having an allocation that, although insignificant compared to the aggregate allocations to CTAs, is significant relative to the assets of the pool, that CTA should also be considered major. This scenario could occur if CTAs collectively are allocated more than the net asset value of the pool;[36] in such a case, a CTA might, in effect, be trading more than ten percent of the pool's assets even though his allocation represented less than ten percent of total CTA allocations. In such a case, the CTA should be considered a major CTA, thus potentially resulting in a pool having more than ten major CTAs, based upon the level of exposure of pool assets.

Because the major CTA definition is intended to identify advisors whose trading is significant to the pool in terms of overall risk, any percentage allocation figure based upon a single benchmark such as funds allocated by written or other agreement is likely to provide only a rough comparative measure. This is so because trading advisors' programs may lead to different degrees of futures or other risk exposure and different volatility patterns despite the same quantitative allocation of funds. Consequently, in determining whether a trading advisor's performance should be disclosed as material information, even if the trading advisor would not constitute a major CTA under the definition set forth in Rule 4.10(i), the pool operator should assess the likelihood that the CTA's trading, given the leverage used, may expose significantly more of the fund's net asset value in a worst case scenario than his percentage allocation level would indicate. Such a case may warrant inclusion of capsule performance information for the CTA even if his allocation does not exceed the ten percent threshold. In most cases, however, a textual discussion will suffice, and the Commission has emphasized the requirement for this type of supplementary disclosure as to non-major CTAs generally by adopting Rule 4.25(c)(5), discussed *infra*. Further, a CTA's performance may be marketed in such a manner as to render more comprehensive disclosure of his performance material, *e.g.*, the CTA may be accorded ''major'' importance by

[34] Adoption of this standard for determining a major CTA is not intended to address or relate to the use of so-called ''notional'' or ''nominal'' account sizes for purposes of calculation of rates of return.

[35] The standards discussed herein do not affect the scope of the existing exemption available under Rule 4.12(b), which provides an exemption from, *inter alia*, past performance disclosure, for pools that commit no more than ten percent of the fair market value of their assets to establish commodity interest positions and trade such commodity interests in a manner solely incidental to their securities trading.

[36] The Commission does not encourage such allocations and notes that the leverage inherent in such vehicles creates corresponding risks, which must be appropriately disclosed. The Commission notes the recent heightened recognition in the domestic and foreign regulatory communities of the risks inherent in leveraged instruments and trading vehicles.

virtue of prominent references to such CTA in promotional material.

The comments indicated, and the Commission would generally expect, that allocations to CTAs would generally be evidenced by written agreement, between the CPO (or the trading manager, if any) on behalf of the pool and the CTA, assigning a particular dollar amount of the pool's assets to be traded by the CTA. This dollar amount would be converted into a percentage using the alternate standards in Rule 4.10(i). CPOs should be prepared to document their determinations as to the status of CTAs as major or non-major for audit purposes but, in most cases, the written agreement should be sufficient.

Proposed Rules 4.10(k) and 4.10(*l*) would have required that ''major'' CTA and investee pool status be determined at the time the Disclosure Document is prepared [37] and on an ongoing basis.[38] As the Commission explained in the Proposing Release, the ''major commodity trading advisor'' and ''major investee pool'' definitions are intended to include CTAs or investee pools to whom the CPO of a pool that has not commenced trading intends to make allocations at or above the specified thresholds.[39] Similarly, any CTA or investee pool to whom the CPO of an operating pool intends to reallocate assets such that the allocations to such CTA or investee pool will total ten percent or more also would be included. One commenter recommended that the asset allocations which determine major CTA or major investee pool status only be required to be accurate as of a date not more than ninety days prior to the date of the Disclosure Document. In response, the Commission notes that, pursuant to Rule 4.26(c), the CPO must notify existing participants of changes in major CTAs and investee pools, to the extent they represent material changes, within twenty-one days and must so notify previously solicited prospective participants prior to accepting or receiving funds from such prospective participants. This can be accomplished by formally amending the Disclosure Document, ''stickering'' the document, including information in an Account Statement, or other similar means. Whether a given major CTA or investee pool change is material would depend upon a variety of factors such as the overall distribution of pool assets to CTAs and investee pools, the historical frequency of such changes and the pool's overall trading program. Substitutions of, and reallocations to, CTAs or investee pools are more likely to be material changes for a pool with one or two trading advisors, than for a pool that accesses a variety of advisors and investee pools and that redirects its assets frequently in response to changes in market conditions.

B. Major Investee Pool: Rule 4.10(d)(5)

Proposed Rule 4.10(*l*) would have defined ''major investee pool'' as an investee pool allocated or intended to be allocated at least twenty-five percent of the assets of a pool. As noted above, in contrast to the proposed definition of major CTA, which would have relied upon a percentage of the pool's initial futures margin and commodity option premiums, the major investee pool definition was based upon the percentage of the assets of the investor pool allocated to the investee pool. This distinction in the basis for determining allocations to pools was based upon the fact that investments in other pools generally expose the investor pool only to loss of the initial investment and that the full amount of the investment is required to be paid at the inception of the investment. The relative importance of investee pools to prospective pool participants is thus appropriately determined by reference to the proportion of the pool's total assets actually invested in the investee pool, and the major investee pool definition did not appear to present the same issues concerning quantification of relative risk exposure as the major CTA definition.

Commenters who addressed the major investee pool definition pointed out that ''investee pool'' was not defined in the Proposing Release or in existing Commission rules. The Commission is adopting in Rule 4.10(d)(4) a definition of ''investee pool'' as ''any pool in which another pool participates or invests, *e.g.*, as a limited partner thereof.'' The Commission is adopting as Rule 4.10(d)(5) a definition of ''major investee pool'' that differs from the proposal in that it specifies that the allocation threshold is ten percent of the *net asset value* of the pool, instead of twenty-five percent of the assets of the pool. This modification was made in order to make the allocation measure consistent with the capsule performance format, which calls for net asset value. As in the case of the major CTA definition, the proposed twenty-five percent threshold has been reduced to ten percent in light of the elimination of the proposed ''adverse performance'' disclosure requirement for CTAs and investee pools with allocations ranging from ten to twenty-five percent. One commenter noted that in determining the percentage of a pool's assets allocated to an investee pool, as with CTA allocations, notional equity should be included in order to capture the risk exposure created by the investee pool's trading. This approach was advocated because the percentage of the offered pool's assets used to purchase the participation in an investee pool may not reflect the additional risk created where the assets of the investee pool are traded at a leverage factor that results in trading exposure of, for example, twice the actual assets of the investee pool. Although the Commission does not believe that this consideration warrants express treatment in the major investee pool definition, it recognizes that there may be applications of the major investee pool definition, as in the case of CTA allocations, where the basic benchmarks used in the rule do not capture all of the investee pools that may be of major impact on the offered pool. In such cases, i.e., where the investee pool is traded on a highly leveraged basis, the pool operator should be mindful of the obligation to disclose all material information and should take into consideration the nature of the investee pool's trading in determining whether it should be treated as a major investee pool for disclosure purposes.

The time at which major investee pool status is determined is discussed in paragraph A, above.

C. Multi-Advisor Pool: Rule 4.10(d)(2)

Proposed Rule 4.10(h), the multi-advisor pool definition, would have employed a twenty-five percent *or greater* allocation standard based on the pool's aggregate initial margin and premiums for futures and commodity option contracts. Thus, as proposed, the ''multi-advisor pool'' definition effectively would not have applied if a pool had one major CTA or major investee pool, and the minimum number of CTAs in a multi-advisor pool would have been five. Two commenters asserted that any pool with two or more CTAs should be considered a multi-advisor pool, although one commenter acknowledged that a pool that allocated ninety percent of its assets to one CTA should not qualify as a multi-advisor pool. As adopted, the definition of ''multi-advisor pool'' in Rule 4.10(d)(2) is a pool in which no CTA is allocated or intended to be allocated more than twenty-five percent of the pool's funds available for commodity interest trading

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[37] The definitions adopted in Rules 4.10(i) and 4.10(d)(5) include CTAs and investee pools ''allocated or intended to be allocated * * *''

[38] Rule 4.26(c) requires distribution of corrections of any material inaccuracies to all participants within twenty-one days of the date on which the CPO knows or has reason to know of the inaccuracy.

[39] 59 FR 25351, 25357.

and in which no investee pool is allocated or intended to be allocated more than twenty-five percent of the pool's net assets. (Rule 4.10(d)(2)). In determining whether a CTA has been allocated more than twenty-five percent of the pool's funds available for commodity interest trading, the alternate standard in the major CTA definition should be used, *i.e.*, the percentage allocation is the amount of funds allocated to the trading advisor by agreement with the CPO, expressed as a percentage of the lesser of the aggregate value of the assets allocated to the pool's trading advisors or the net assets of the pool at the time of allocation.

D. Principal-Protected Pool: Rule 4.10(d)(3)

The term ''limited risk pool'' was defined in proposed Rule 4.10(i) as a pool (commonly referred to as a ''guaranteed pool'') that is designed to limit the loss of the initial investment of its participants. Commenters pointed out that most pools are formed as limited partnerships, thus limiting at least some of the participant's risk. Other commenters offered alternative terms [40] or suggested that the definition specify that loss would be limited by guaranty, letter of credit or other third-party undertaking. As adopted in Rule 4.10(d)(3), the term has been redesignated ''principal-protected pool,'' but the definition is unchanged from that set forth in the Proposing Release.

E. Trading Manager: Rule 4.10(h)

As proposed in Rule 4.10(j), and as adopted in Rule 4.10(h), the ''trading manager'' of a pool is defined as any person other than the pool's CPO with authority to allocate pool assets to CTAs or investee pools. Rule 4.10(h) further makes clear that sole or partial authority will bring a person within the trading manager definition.

No comments addressing the trading manager definition were received. Commission rules have not previously expressly taken account of pool structures in which a trading manager, rather than the pool's CPO, allocates pool assets. The Commission emphasizes that trading managers are CTAs and are required to be registered as such. Thus, although trading managers do not function as direct traders for the pool, they have the ability to influence the pool's trading to a very significant degree. Due to the importance of the role of trading manager, in a number of contexts the proposed rules would have made disclosure of the trading manager's performance a substitute for that of the CPO. However, as noted below, the Commission has revised the proposed rules to require disclosure both as to a pool's CPO and the trading manager, if any, in a number of contexts, *e.g.*, conflicts of interest, on the ground that in the vast majority of cases, even if the CPO has delegated substantial responsibility to the trading manager to hire and monitor CTAs, the CPO retains ultimate responsibility for operation of the pool. However, with respect to past performance disclosure, if the CPO has completely delegated trading authority to a trading manager and the past performance of the trading manager does not differ materially from that of the commodity pool operator, only the trading manager's past performance is required to be disclosed.

F. Trading Principal: Rule 4.10(e)(2)

A ''trading principal'' would have been defined in proposed Rule 4.10(m) as a principal of a CPO or CTA who participates in making commodity interest trading decisions for a pool or client or who supervises, or has authority to allocate pool assets to, persons so engaged. The sole commenter who addressed this definition urged that it be limited to principals who make trading decisions, excluding principals who supervise or hire traders. The Commission notes, however, that persons who select or supervise traders effectively determine how a pool's or client's assets will be traded. Accordingly, where disclosure of information concerning traders is appropriate, the same information should be required of those who supervise or hire them. As adopted in Rule 4.10(e)(2) only grammatical changes were made to the definition of ''trading principal'' in proposed Rule 4.10(m).

G. Break-Even Point: Rule 4.10(j)

In order to make the impact of costs and fees on an investment more understandable to the prospective investor, the Commission proposed that the narrative discussion of fees and expenses be supplemented by presentation of the ''break-even point'' for an offered pool and a clear explanation of how that break-even point is calculated. Proposed Rule 4.10(n) would have defined ''break-even point'' as the trading profit that a pool or trading program must realize in its first year to equal all fees and expenses such that a participant or client will recoup its initial investment, as calculated pursuant to rules promulgated by a registered futures association.[41]

Many commenters supported the proposal to require disclosure of a pool's break-even point.[42] However, comments on the break-even point (and the requirement to disclose the relevant calculations) indicated some confusion regarding whether the break-even point is based on the pool's first year of operation or an investor's first year of participation in the pool. For ongoing pool offerings, commenters suggested that the break-even point be optional after the first year of a pool's operation, that it be based on a prior year's actual results, or that a range of break-even points be permitted keyed to various total offering sizes.

As adopted, Rule 4.10(j) defines the term ''break-even point'' as the trading profit that a pool must realize in the first year of a participant's investment to equal all fees and expenses such that the participant will recoup its initial investment. The break-even point is required to be calculated pursuant to rules promulgated by a registered futures association and it must be expressed both as a dollar amount and as a percentage of the minimum unit of initial investment. The proposed definition referred to the trading profit that a pool or trading program must realize in the pool or trading program's first year, and the break-even point was not expressly required to be presented as a dollar amount.[43]

The Commission is clarifying that the break-even point must present the trading profit that the pool must realize in the first year of an investor's participation in order for the investor to recoup his initial investment, and Rule 4.10(j) as adopted so states. As noted above, Rule 4.10(j) provides that the break-even point must be calculated pursuant to rules promulgated by a registered futures association. NFA's Interpretive Notice accompanying its Compliance Rule 2–13(b) sets forth the manner in which the break-even point must be calculated and includes a sample break-even presentation. The amount of trading profit required for the

[40] Suggested options included ''capital protected pools'' and ''principal return guaranteed pools.''

[41] Proposed Rule 4.10(n) would also have required that the break-even point be expressed as a percentage of the minimum unit of initial investment based upon assumed redemption of the initial investment at the end of the first year of investment.

[42] Comments addressing the manner of calculating the break-even point are discussed below with Rule 4.24(i) (''Fees and Expenses'') in paragraph B.5. of Section VI.

[43] Rule 4.10(j) omits the reference in the proposed rule to ''trading program'' and ''client.'' A break-even point is not required for CTA Disclosure Documents, as CTA clients generally are subject to a much simpler fee and expense structure than are pool participants.

net asset value per unit of participation after one year to equal the initial selling price per unit is expressed both as a dollar amount and as a percentage of the initial selling price per unit. The Commission based its approval of NFA's amendment to Compliance Rule 2–13 and accompanying Interpretive Notice on, among other things, the understanding that NFA would amend the Interpretive Notice to clarify that the CPO of a continuously-offered pool must include an updated break-even analysis in the pool's Disclosure Document throughout the pool's existence, such that each new participant would be informed of a break-even point that was accurate as of the date of the Disclosure Document.[44] Revision of the break-even point is thus required for ongoing pool offerings whenever the actual break-even point becomes materially different from that which appears in the Disclosure Document.

H. Draw-Down and Worst Peak-to-Valley Draw-Down: Rules 4.10 (k) and (l)

Commenters noted that although the capsule performance presentation format in proposed Rules 4.25 and 4.34 required registrants to disclose the largest monthly draw-down and the worst continuous peak-to-valley draw-down for the pool or account, the term ''draw-down'' was not defined. To address this concern, the Commission is adopting as Rule 4.10(k) a definition of ''draw-down'' as ''losses experienced by a pool or account over a specified period.'' Similarly, the Commission has adopted Rule 4.10(l), which defines the ''worst peak-to-valley draw-down,'' [45] as the greatest cumulative percentage decline in month-end net asset value due to losses sustained by a pool, account or trading program during a period in which the initial month-end net asset value is not equaled or exceeded by a subsequent month-end net asset value. The worst peak-to-valley draw-down must be expressed as a percentage of the initial month-end net asset value, together with an indication of the months and year(s) of such decline from the initial month-end net asset value to the lowest month-end net asset value of the draw-down. For purposes of Rules 4.25 and 4.35, a peak-to-valley draw-down which began prior to the beginning of the most recent five calendar years is deemed to have occurred during such five-calendar-year period.

V. Performance Disclosures: Section-by-Section Analysis [46]

A. Introduction

As noted above, the Commission is revising and reorganizing the CPO/CTA disclosure rules with a view towards simplification of presentation. Rules 4.21 and 4.31 continue to require CPOs and CTAs, respectively, to deliver a Disclosure Document.[47] Rules 4.24 with respect to CPOs, and 4.34 with respect to CTAs, set forth requirements concerning disclosure of all matters other than past performance, and Rules 4.25 for CPOs and 4.35 for CTAs set forth past performance disclosure requirements.[48]

As proposed and as adopted, past performance disclosure requirements are being substantially condensed with the objective of eliminating required disclosure of performance that is of secondary relevance to the offered pool or trading program. Thus, the revised rules provide a new ''capsule'' format for performance record presentations that is intended to provide a simple, balanced and succinct overview of performance. Use of the capsule format should substantially reduce the volume of performance data presented without sacrificing material content.

With respect to past performance in CPO Disclosure Documents, the revised rules focus primarily upon the historical performance of the offered pool. Where the offered pool has a three-year trading history and meets certain contribution criteria as specified in Rule 4.25(b), its past performance generally is the only required performance presentation. (Rule 4.25(b)).

Where the offered pool does not have the requisite operating history, the CPO must present performance data for the offered pool, for the CPO (and trading manager, as applicable), and the pool's major CTAs and investee pools. (Rules 4.25 (c)(2) through (c)(4)). A textual discussion of relevant performance factors for non-major CTAs and investee pools also is required. (Rule 4.25(c)(5)). Some performance data may be presented on a composite basis. (Rule 4.25(a)(3)). All performance data may be presented in a capsule format.

With respect to CTA Disclosure Documents, the performance of the offered trading program is the primary focus. (Rules 4.35 (a)(1) and (a)(2)). The performance of accounts traded pursuant to other trading programs of the CTA may be presented in single composite, provided the rates of return are not materially different, material differences among the accounts included in the composite are disclosed, and the composite presentation is not misleading. (Rule 4.35(a)(3)).

As the volume of required performance disclosures for both CPOs and CTAs is being considerably reduced, the time period for these disclosures is being increased from three years to five years in order to provide investors with a better chronological perspective of the performance records presented in the Disclo- sure Document. (Rule 4.25(a)(5) for CPOs and Rule 4.35(a)(5) for CTAs). This approach accords with the views of the NFA Special Committee for Review of CPO/CTA Disclosure Issues.[49]

B. Required Performance Disclosures [50]

1. Required Performance Disclosures in CPO Disclosure Documents: Rule 4.25

The new summary format for presentation of past performance history is intended to capture the most significant information concerning a pool's performance in a reader-friendly, largely nontabular form. This format will generally permit multiple track records to be provided on a single page. The new format is set forth in Rule 4.25(a)(1) for pool documents and Rule 4.35(a)(1) for CTA documents.[51]

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[44] The Commission also reminded NFA that in explaining and enforcing member compliance with NFA break-even analysis requirements the fee and expense categories in the Interpretive Notice to Compliance Rule 2–13(b) should not be considered exhaustive or exclusive, and that NFA should ensure that CPOs do not use that listing to avoid including a cost in the pool's break-even analysis. With respect to interest income, the Commission stated its understanding that NFA would require inclusion in the break-even analysis of a projection of a pool's expected interest income at an assumed interest rate reflecting then current cash market conditions, and it stated that to the extent that a person other than a pool participant receives any portion of the pool's interest income, such payment should be disclosed as a fee or expense in the pool's break-even analysis.

[45] As discussed in paragraph B.1. of Section V below, the word ''continuous'' has been omitted from the capsule item ''worst continuous peak-to-valley draw-down'' in proposed Rule 4.25(a)(1)(i)(G) and from the item ''worst ever continuous peak-to-valley draw-down'' in proposed Rule 4.25(a)(1)(ii)(F).

[46] Tables summarizing past performance disclosure requirements under the revised rules and demonstrating the use of the new capsule format are set forth below at paragraph B.7. of this Section V.

[47] Requirements with respect to the use, amendment and filing of the Disclosure Document are now contained in new Rules 4.26 for CPOs and 4.36 for CTAs, discussed more fully below at Section VII.

[48] Captions have been added to the subparagraphs of Rules 4.25 (a), (b) and (c) and Rules 4.35 (a) and (b) to increase ease of reference.

[49] NFA's Submission at 7.

[50] To facilitate understanding of the new performance requirements, paragraph B.7., *infra*, provides: (1) A table summarizing the past performance requirements of Rules 4.25 and 4.35; and (2) examples of capsule performance presentation under the rules.

[51] As discussed more fully below, the Commission has determined to permit CTA

a. Capsule Performance Presentation: Rule 4.25(a)(1) [52]

CPOs

As proposed in Rule 4.25(a)(1)(i), the capsule for pool performance in CPO Disclosure Documents would have been required to contain the following information: The name of the pool; a statement as to whether the pool is privately offered pursuant to the Securities Act of 1933, as amended (the ''Securities Act''),[53] a multi-advisor pool or a principal-protected pool; the date when the pool commenced trading; the aggregate gross capital subscriptions to the pool; the pool's current net asset value; the ''largest monthly draw-down''; the ''worst continuous peak-to-valley draw-down''; and annual and year-to-date rates of return, computed on a monthly compounded basis,[54] for the preceding five calendar years and year-to-date (or for the life of the pool if shorter). In the case of the offered pool's capsule, monthly rates of return would have been required for the entire performance period.

Similar data would have been required in capsule presentations of the performance of accounts in CPO Disclosure Documents. Proposed Rule 4.25(a)(1)(ii) would have called for inclusion in the capsule format of: The name of the CTA or other person trading the account and the name of the trading program; the date when the CTA began trading client funds and the date of inception of trading for the trading program being disclosed; the number of accounts in the program as of the Disclosure Document date; the total assets under the management of the CTA and in the trading program; the ''largest monthly draw-down'' for the program; the ''worst ever continuous peak-to-valley draw-down'' for the trading program; and annual and year-to-date rates of return for the offered trading program (again, computed on a monthly compounded basis).

CTAs

As proposed, Rule 4.34(a)(2) would have required all performance presented in CTA Disclosure Documents, with the exception of the performance of the offered trading program, to follow the capsule format as specified in Rule 4.25(a)(1)(ii) (C) through (G).

Comments. Commenters expressed uniformly strong support for the proposed new capsule format for past performance disclosure. One commenter, however, recommended that the revised rules expressly permit a CPO to continue to present performance in the multi-column tabular format required by former Rule 4.21(a)(4). Many commenters requested that the Commission define the term ''draw-down,'' as used in the proposed capsule format. Commenters also noted that use of the word ''continuous'' in the capsule item ''worst continuous peak-to-valley draw-down'' could be read to mean that any intermediate upward movement terminates the draw-down, thus permitting a small ''uptick'' to disguise the true magnitude of a long draw-down, since the uptick would break the continuity but not the decline in asset value. Suggested alternatives were ''worst absolute peak-to-valley draw-down'' and ''worst peak-to-valley period.'' One commenter sought confirmation that the proposed rule would require disclosure of the number of successive months during which net asset value failed to exceed the pool's prior high water mark and the total percentage decline over that period.

Numerous commenters criticized the proposed requirement that monthly rates of return be presented for the offered pool over the entire five-year performance period (or for the life of the offered pool if less than five years), claiming that such data would detract from the simplicity and clarity of the capsule format. One commenter contended that monthly rates of return are not relevant to a medium to long-term investment such as managed futures. Various alternative indicators of volatility were proposed in lieu of monthly rates of return, including the pool's standard deviation over its life, the best and worst monthly and annual returns, and the number of profitable and losing months. One commenter recommended that the capsule also include such information as largest monthly increase and greatest valley-to-peak increase in order to provide a balanced presentation. A number of commenters urged the Commission to resolve the issue of the use of notional funds and nominal account sizes in performance presentations.[55]

The Commission requested comment as to whether past performance presentations would provide more meaningful information if they were required to include rates of return on a risk-adjusted basis, that is, reduced by the relevant Treasury Bill rate or comparable interest figure, or to break out trading results from passive interest income. The only commenter specifically addressing this request expressed the view that risk-adjusted rates of return would not make performance presentations more meaningful and contended that indexing performance based upon another form of investment implied that participation in a commodity pool was somehow comparable to such other investment.

Technical Changes to Capsule

The Commission is adopting the capsule format for performance presentations in pool Disclosure Documents, with certain technical modifications as noted below. In adopting the capsule performance format, the Commission stresses that this summary format is designed for purposes of presentation in Disclosure Documents only. CPOs and CTAs must continue to compute performance on the same basis as under the former rules [56] and to maintain records substantiating such computations in accordance with Rule 1.31.[57] The Commission is not adopting at this time a requirement that registrants present past performance on a risk-adjusted basis.

Draw-Down Information

The required draw-down information, which is based upon activity occurring for the most recent five calendar years and year-to-date, is intended to inform prospective participants of the nature of the volatility actually experienced by the pool by demonstrating the significant one-month and sustained declines to which the commodity pool

documents to present the past performance of the offered trading program in the new capsule format.

[52] Rule 4.10(k), which defines the term ''draw-down,'' and Rule 4.25(a)(7), relating to substantiating past performance calculations, are also discussed in this section.

[53] For this purpose private offerings may be pursuant to section 4(2) of the Securities Act of 1933, as amended, 15 U.S.C. 77d(2), or Regulation D thereunder, 17 CFR 230.501–230.508 (1994).

[54] *See* Rule 4.25(a)(1)(i)(H). Annual rates of return computed on a monthly compounded basis assume reinvestment of accrued profits and therefore the investment base on which rates of return are calculated is effectively adjusted by these amounts.

[55] As noted above, the Commission is reviewing the subject of ''notional funds'' performance data with the benefit of industry, end-user, regulatory and academic input provided at the Commission's April 25, 1995, roundtable discussion and other available data.

[56] Although only the amounts specified in Rules 4.25(a) (1) and (2), and Rules 4.35(a) (1) and (2) need be set forth in the Disclosure Document, the same performance calculations as previsouly required must be made, as specified in Rule 4.25(a)(7) for CPOs and Rule 4.35(a)(6) for CTAs, as such rules may be interpreted by the Commission. The corresponding former rules are former Rule 4.21(a)(4)(ii) and former Rule 4.31(a)(3)(ii), respectively.

[57] Among other things, Rule 1.31 requires all books and records to be maintained for a period of five years and to be available for inspection by any representatives of the Commission or the U.S. Department of Justice. CTAs also are subject to those requirements.

has actually been subject. To ensure that the worst long-term draw-down is properly represented, Rules 4.25(a) and 4.35(a), as adopted, require the capsule to include the ''worst peak-to-valley draw-down,'' eliminating the qualification ''continuous.''[58]

The Commission also is adopting definitions of the terms ''draw-down'' and ''worst peak-to-valley draw-down.'' Rule 4.10(k) provides that ''draw-down'' means losses experienced by a pool or account over a specified time period. Thus, a draw-down is a decline in net asset value due to reasons other than redemptions or withdrawals. To assist readers who may not be familiar with industry terminology, the Commission has also added a requirement that the capsule format include, in a footnote or otherwise, a definition of the term ''draw-down'' that is consistent with the definition set forth in Rule 4.10(k). Rule 4.10(*l*) defines ''worst peak-to-valley draw-down'' as the greatest cumulative percentage decline in month-end net asset value due to losses sustained by a pool, account or trading program during any period in which the initial month-end net asset value is not equaled or exceeded by a subsequent month-end net asset value. The rule specifies that the worst peak-to-valley draw-down must be expressed as a percentage of the initial month-end net asset value, together with an indication of the months and year(s) of such decline from the initial month-end net asset value to the lowest month-end net asset value of such decline. For purposes of the revised rules, a peak-to-valley draw-down which began prior to the beginning of the most recent five calendar years is deemed to have occurred during such five-calendar-year period.

Both monthly and peak-to-valley draw-down amounts are to be expressed as a percentage of the net asset value at the beginning of the specified period. The largest monthly draw-down indicates the largest net asset loss experienced by the pool in any calendar month, and the month and year in which that loss occurred. The worst peak-to-valley draw-down indicates the largest calendar month-to-calendar month net asset loss experienced by the pool during any period and the months and year in which it occurred. Dating the monthly and peak-to-valley draw-downs permits participants to assess whether the losses were connected to market conditions by comparing the draw-downs of several pools. As explained in the Proposing Release,[59] a peak-to-valley draw-down of 4 to 8–91/25% would indicate that the peak-to-valley lasted from April to August of 1991 and resulted in a twenty-five percent draw-down of the pool's net asset value.

Monthly Rates of Return

The Commission has determined to modify the proposal with respect to monthly rates of return for the offered pool to permit flexibility as to the form of presentation. As adopted, Rule 4.25(a)(2) provides that the capsule for the offered pool must contain monthly rates of return for the five most recent calendar years and year-to-date (or the pool's life, if shorter) presented either in tabular form or in a bar graph. If a bar chart is used, the bar chart must clearly indicate monthly rates of return and must also prominently indicate annual rates of return. Rule 4.25(a)(2)(iv) requires that the CPO make available upon request to prospective and existing participants the supporting data necessary to calculate monthly rates of return for the offered pool as specified in Rule 4.25(a)(1).

The Commission notes that registrants may present performance information in the multi-column format specified by former Rule 4.21(a)(4) *in addition to* the capsule format specified by Rule 4.25(a)(1), provided that any performance presented in the superseded format is treated as supplemental information and is placed following all of the required performance disclosures in the Disclosure Document.[60]

Registrants who offer notional programs may disclose monthly rates of return in the capsule disclosure for CTA programs using the fully-funded subset described in Advisory 93–13.[61] Commission staff will provide guidance concerning supplemental data to accompany the capsule disclosure to reflect the range of levels of partial funding and the generic disclosures discussed in Advisory 93–13.

b. Pools With Three or More Years Operating History That Meet Contribution Criteria: Rule 4.25(b)[62]

As proposed, Rule 4.25(b) would have limited required performance disclosures in pool Disclosure Documents to the offered pool's performance if: (1) The pool had traded commodity interests for three years or more, (2) no fewer than fifteen pool participants were unaffiliated with the CPO, and (3) no more than ten percent of the pool's assets were contributed by the CPO. As stated in the Proposing Release, the Commission believes that, generally, ''where a pool has an extensive operational history, presentation of the pool's own past performance record should fulfill the objectives of past performance disclosure.''[63] If, however, the pool's past performance record was accrued under conditions that differed materially from those which will obtain prospectively, the pool's historical performance record alone may not be sufficient. For example, if the pool's past performance record encompasses periods when the pool was essentially a proprietary trading vehicle investing a relatively small amount of funds contributed by third party sources, the performance record generated may have little or no relevance to a publicly offered pool.[64] Accordingly, to assure that the three-year performance history would not represent the performance of a significantly dissimilar trading vehicle, the Commission proposed to limit past performance disclosure to the past performance of only the offered pool where, and only where, the pool

[58] The word ''continuous'' is eliminated from Rules 4.25(a)(1) (i)(G) and (ii)(F), and the extraneous word ''ever'' is eliminated from Rule 4.25(a)(1)(ii)(F).

[59] 59 FR 25351, 25356.

[60] This statement also applies to CTAs. *See* Rule 4.24(v) for CPOs and Rule 4.34(n) for CTAs, concerning supplemental disclosures, discussed in paragraph C.1. of this Section V.

[61] CFTC Advisory 93–13, (Current Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 25,554 (February 12, 1993). Advisory 93–13 requires that CTAs who manage or offer to manage partially-funded (''notionally'' funded) accounts present both actual and nominal funds under management and give certain disclosures in connection with partially-funded accounts. The Advisory also provides a method for presenting rates of return for a trading program in a single table on the basis of a ''fully funded subset'' of accounts within that trading program.

[62] Former Rule 4.21(a)(4) required disclosure of the performance record of the offered pool. If the offered pool had less than a twelve-month performance history, the performance of the CPO and of each of its principals was also required to be disclosed. Former Rule 4.21(a)(5) also required disclosure of the past performance of all other accounts directed by the pool's CTA and each of its principals, regardless of the duration of the pool's operating history.

[63] 59 FR 25351, 25356.

[64] *See* Elton, Gruber and Rentzler, *New Public Offerings. Information and Investor Rationality: The Case of Publicly Offered Funds,* 62 J. Bus. 1 (1988); and Edwards and Ma, *Commodity Pool Performance: Is the Information Contained in Pool Prospectuses Useful?*, Working Paper Series No. 16, Center for the Study of Futures Markets, Col. Bus. Sch. (January 1988). *See also, Statement of the Commodity Futures Trading Commission Regarding Disclosure by Commodity Pool Operators of Past Performance Records and Pool Expenses and Request for Comments,* 54 FR 5597, (February 6, 1989); and companion release of the Securities and Exchange Commission, *Statement of the Commission Regarding Disclosure by Issuers of Interest in Publicly Offered Commodity Pools,* 54 FR 5600 (February 6, 1989).

had a three-year trading history with at least fifteen unaffiliated participants and no more than ten percent participation by the CPO.

The Commission requested comment as to whether, where the offered pool has a three-year operating history, that performance record is generally sufficient without supplementary performance data concerning the pool's CTAs or other pools operated by the CPO. Three of the nine commenters who responded to the Commission's request agreed with the proposal, stating that if a pool has a three-year history, only its own past performance should be required. Six of the nine recommended that the twelve-month standard of former Rule 4.21(a)(4), which related to the presentation of other pools operated by the CPO, should be used to identify pools for which only the performance of the offered pool is required.

The Commission also sought comment as to whether the offered pool's operating history should be considered for purposes of the three-year minimum if such history was acquired when the pool differed in some material respect from the pool as offered, for example, in cases in which the pool's CTA, types of interests traded or the trading program had been significantly modified or the pool was initially privately offered but subsequently was offered to the public. All but one of the persons who responded to this request stated that material differences should be disclosed but should not disqualify a pool from meeting the three-year criteria of the rule.

Several commenters suggested elimination or modification of the requirement that the requisite three-year operating history be obtained when the pool had at least fifteen unaffiliated participants. Commenters warned that pools with high minimum investments (and few participants) would be unjustly penalized by this restriction. Several commenters recommended that the requirement that the CPO have contributed no more than ten percent of the pool's assets be modified to increase the permissible level of CPO participation, *e.g.*, to fifty percent, and two commenters noted that this would harmonize with the fifty percent standard in proposed Rule 4.25(a)(9) for determining whether past performance results must be treated as proprietary trading results for the purpose of separating such results from other past performance information.[65] Several commenters contended that Rule 4.25 as proposed would have the undesirable effect of discouraging CPOs from investing in the pools they operate. Three commenters proposed adopting either the CPO investment test or the unaffiliated participant test.

The Commission has adopted Rule 4.25(b) with several modifications to afford greater flexibility in its application. The requirement that the pool have had no fewer than fifteen participants unaffiliated with the pool operator has been eliminated and the maximum level of contribution of assets by the CPO has been increased. As adopted, Rule 4.25(b) provides for past performance disclosure to be limited to that of the offered pool if both of the following criteria are met: (1) The pool has traded commodity interests for at least three years; and (2) during the three-year (or greater) period, at least seventy-five percent of the pool's assets were contributed by persons unaffiliated with the CPO, the trading manager (if applicable), the pool's CTAs, or any of their principals.

The performance of an offered pool which has the requisite three-year operating history is required to be disclosed for five full calendar years and year-to-date or, if the pool has less than a five-year history, for the pool's entire operating history,[66] in the specified capsule format.[67] The CPO is free to include additional performance information, subject to the provisions relating to supplemental disclosures.[68]

The Commission notes that the twelve-month standard in former Rule 4.21(a)(4) related only to disclosure of the performance of other pools operated by the CPO and did not affect former Rule 4.21(a)(5)'s requirement to disclose the performance of the CTAs for the pool. Under Rule 4.25(b), if the offered pool has the requisite three-year operating history, neither the performance of the CPO's other pools *nor* the performance of the pool's CTA(s) must be presented. In view of the elimination of all other performance data, including CTA performance under the new disclosure framework, the Commission believes that a three-year rather than a one-year history is the appropriate minimum.

The Commission agrees that material differences in the operation or structure of the pool during the three years, given appropriate disclosure, generally should not disqualify the pool from satisfying the three-year criteria. However, registrants should exercise caution in cases in which such differences exist, taking into account that the requirement to disclose all material information includes past performance disclosure and thus that where significant changes in the offered pool might cause presentation of the offered pool's past performance by itself to be misleading, additional performance disclosure may be required.

The Commission believes that the different purposes of Rule 4.25(a)(8), which defines proprietary trading results and requires appropriate placement and labelling of such results, and of Rule 4.25(b), which identifies pools for which no performance history other than that of the offered pool is required, warrant different standards as to the relevant amount of proprietary participation. A more stringent limitation upon qualifying pools is appropriate for use in Rule 4.25(b), which eliminates the necessity for certain otherwise required disclosures, as compared to that of proposed Rule 4.25(a)(8). Unlike Rule 4.25(b), which identifies pools for which no additional performance data other than that of the offered pool is required, Rule 4.25(a)(8) determines the percentage at which proprietary participation essentially renders a trading vehicle a proprietary vehicle, the trading results for which were obtained under conditions that render the performance data presumptively inappropriate for inclusion with and, indeed, potentially misleading if included with, the performance of the offered pool.

c. Pools With Less Than A Three-Year Operating History: Rule 4.25(c) [69]

Disclosure Documents for offered pools that do not satisfy the criteria of proposed Rule 4.25(b) would have been required under proposed Rule 4.25(c) to include the performance records of the offered pool, each other pool operated or account traded by the CPO (or trading manager), the CPO's (or trading manager's) trading principals if the CPO (or trading manager) had less than a three-year history, and the performance of each ''major'' CTA and ''major''

[65] Proposed Rule 4.25(a)(9), adopted as Rule 4.25(a)(8), is discussed at paragraph C.2. of this Section V.

[66] Rule 4.25(a)(5).

[67] Rule 4.25(b). As adopted, the text of Rules 4.25(b) and 4.25(c) is being amended to clarify that where the offered pool meets the criteria of Rule 4.25(b), the CPO is required to present only the offered pool's performance. Where the offered pool does not meet the Rule 4.25(b) criteria, the CPO must provide additional performance disclosure as detailed in Rule 4.25(c).

[68] *See* Rule 4.24(v).

[69] Rule 4.25(c) employs certain key terms, ''trading manager,'' ''major commodity trading advisor,'' ''major investee pool,'' and ''trading principal,'' which are defined in Rules 4.10(h), 4.10(i), 4.10(d)(5) and 4.10(e)(2), respectively. These definitions are discussions in detail in Section IV, *supra*.

investee pool.[70] Disclosure of ''adverse performance'' results would have been required to be indicated (or in the alternative, capsule performance could have been presented) for non-major CTAs allocated at least ten percent of the pool's initial margins and commodity option premiums and for investee pools allocated at least ten percent of the pool's assets.[71]

Adverse performance was defined in proposed Rule 4.25(a)(8) as ''any annual return of one hundred basis points less than the ninety day Treasury Bill rate on December 31 of the calendar year in which the performance occurred or any termination of a pool pursuant to a loss termination provision.''

The Commission received comments on various components of Rule 4.25(c). A number of commenters urged the Commission to eliminate the proposed intermediate category for CTAs and investee pools [72] for whom adverse performance disclosure would have been required and to adopt a two-tier system in which full performance disclosure would be made for CTAs (and investee pools) above the threshold, and none for CTAs (and investee pools) below the threshold. Several commenters suggested that where a CPO makes (and is authorized to make) frequent changes in the pool's CTAs and the size of the allocations to those CTAs, required disclosures with respect to CTAs should be eliminated or substantially reduced. The emphasis in such cases, according to these commenters, should be on the CPO/trading manager's performance operating multi-advisor pools. The Commission notes, however, that the distinction between ''active allocation'' CPOs (or trading managers) and other CPOs (or trading managers) does not appear to be susceptible to a bright line test, as most if not all CPOs and trading managers assume some responsibility for ongoing management and evaluation of CTAs. Consequently, the relative significance of the CPO's or trading manager's asset allocation expertise, as compared to the CTAs' trading program and skills, varies significantly and may not provide an objective basis for distinguishing among pools for past performance disclosure purposes. Accordingly, given the lack of precise standards on which to base a regulatory distinction between dynamically managed multi-advisor pools and other types of pools, the Commission has elected not to employ such a distinction in constructing the past performance disclosure requirements.

As adopted, Rule 4.25(c) reflects several modifications from the proposed rules, principally the elimination of the category of CTAs and investee funds for which disclosure of adverse performance would have been required. Upon consideration of the comments received, the Commission has determined to simplify the disclosure requirements such that all CTAs and investee funds will be either major and capsule format presentations of their past performance required (Rule 4.25 (c)(3) and (c)(4)), or non-major and a narrative discussion of matters relevant to their past performance required. (Rule 4.25(c)(5)). As noted above, the definitions of ''major commodity trading advisor'' (Rule 4.10(i)) and ''major investee pool'' (Rule 4.10(d)(5)) have been revised accordingly, such that a ten percent, rather than a twenty-five percent allocation is the operative threshold.

With respect to pools that do not have the requisite three-year operating history with at least seventy-five percent of the pool's assets contributed by persons unaffiliated with the CPO, trading manager, CTAs, or their respective principals, Rule 4.25(c) requires presentation of the past performance records of the offered pool, each other pool operated or account traded by the CPO (and trading manager, if applicable), the CPO's (and trading manager's) trading principals if the CPO (or trading manager) has less than a three-year history, and the performance of each major CTA and major investee pool.[73] If a CTA or investee pool is not ''major,'' a summary description of the performance history of such advisor or pool is required in lieu of capsule performance data. To the extent that performance of principals is required, the revised rules require disclosure of the past performance of ''trading principals'' only.[74]

(i) *Performance of Major Commodity Trading Advisors: Rule 4.25(c)(3)*

For pools that do not have the three-year operating history specified in Rule 4.25(b), the revised rules require capsule format disclosure of CTA past performance only for ''major'' CTAs.

As discussed above,[75] the term ''major commodity trading advisor'' is defined in Rule 4.10(i) as a CTA allocated or intended to be allocated ten percent or more of the smaller of (i) the pool's aggregate net assets, or (ii) the aggregate value of the assets allocated to the pool's trading advisors, as determined based upon the agreement between the CPO and the CTA.

(ii) *Performance of Major Investee Pools: Rule 4.25(c)(4)*

The revised rules also require disclosure of past performance of investee pools constituting ''major investee pools,'' if the offered pool does not meet the standard of Rule 4.25(b). As discussed above,[76] Rule 4.10(d)(5) defines ''major investee pool'' as an investee pool allocated or intended to be allocated at least ten percent of the net asset value of a pool.[77] A commenter noted that the term ''investee pool'' was not defined in the former rules or in the proposed revisions. As noted above,[78] the Commission has adopted a definition of ''investee pool,'' set forth in Rule 4.10(d)(4), as ''any pool in which another pool or account participates or invests, *e.g.*, as a limited partner thereof.''

(iii) *CTAs and Investee Pools That Are Not ''Major'': Proposed Rules 4.25(a)(8) and 4.25(c)(3)(iii)*

The Commission had proposed in Rule 4.25(c)(3)(iii) to require that the CPO of an offered pool that does not satisfy the criteria of Rule 4.25(b) indicate any ''adverse performance'' (or, alternatively, provide a complete past performance capsule) with respect to those CTAs and investee pools allocated at least ten but less than twenty-five percent of the pool's assets (initial margins and premiums in the case of CTAs). Under proposed Rule 4.25(a)(8), ''adverse performance'' would have included: (i) Any annual rate of return that was at least one hundred basis points less than the ninety-day Treasury Bill rate on December 31 of the same

[70] If the pool or such persons did not have a prior trading history, indication of the lack thereof would have been required, using legends set forth in Rule 4.25(c).

[71] Proposed Rule 4.25(c)(3)(iii) would also have required that adverse performance be indicated for any account directed, or pool operated, by the CPO, and any trading principal of the CPO or trading manager (if any), unless such person's performance was otherwise required to be disclosed.

[72] The middle tier of the proposed three-tier disclosure scheme consisted of CTAs allocated at least ten, but less than twenty-five, percent of initial futures margin and option premiums, and investee pools allocated at least ten, but less than twenty-five, percent of pool assets.

[73] If the pool or such specified persons do not have a prior trading history, the lack thereof must be indicated by legends set forth in Rule 4.25(c), and discussed below in paragraph B.6. of this Section V.

[74] *See* Rule 4.25(c)(2), and Rule 4.10(e)(2) which defines the term ''trading principal,'' discussed above in Section IV. Former disclosure requirements mandated disclosures concerning *all* principals.

[75] *See* paragraph A. of Section IV.

[76] *See* paragraph B. of Section IV.

[77] The term ''pool'' continues to be defined in Rule 4.10(d)(1) as ''any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.''

[78] *See* paragraph B. of Section IV.

year; or (ii) the termination of a pool pursuant to a loss termination provision. Adverse performance would have been indicated by giving the year of occurrence, the rate of return, the identity of the CPO or CTA responsible, and that person's relationship to the offered pool.[79] The Commission sought comment with respect to the proposed definition of adverse performance, and in particular, as to whether any additional benchmarks would be appropriate for identifying what past performance was sufficiently ''adverse'' to warrant disclosure.

Numerous commenters strongly criticized both the adverse performance characterization and the concept of requiring specific disclosure of performance below a selected risk-free rate. In particular, several commenters objected to the adjective ''adverse'' as unnecessarily pejorative. Several commenters criticized the Treasury Bill benchmark as an inappropriate standard for a managed futures investment, and some commenters proposed alternative triggering events, such as a losing year, or a specified monthly or quarterly draw-down. Commenters asserted that CPOs would generally opt for including the full performance capsule rather than highlight negative results and, thus, that performance presentations would not in fact be streamlined by use of the adverse performance concept. Several commenters suggested a simplified, two-tier allocation standard for CTA and investee pool performance disclosure, with full disclosure for those above a specified percentage (between ten and twenty-five percent) and no performance disclosure for those with lesser allocations.

The Commission agrees with the proposition that material CTA or investee pool performance should be fully disclosed, and it believes that multiple standards can be confusing. Accordingly, the Commission is adopting a two-tier disclosure standard for an offered pool's CTAs and investee pools, rather than the three-level approach set forth in the Proposing Release. Under the adopted standard, full performance disclosure, *i.e.*, capsule performance data, is required with respect to CTAs and investee pools with allocations in excess of the designated benchmark, *i.e.*, ''major'' CTAs and investee pools. As adopted, the revised rules omit the proposed requirement to indicate adverse performance for CTAs and investee pools with allocations of at least ten percent, but less than twenty five percent.[80] Because this type of individual performance disclosure is being eliminated for non-major CTAs and investee pools, the Commission has determined to reduce the percentage allocation standard for major CTAs and investee pools from twenty-five to ten percent. As discussed more fully below, a narrative summary description is required for CTAs and investee pools with lesser allocations.

(iv) *Past Performance of CTAs and Investee Pools That Are Not Major: Rule 4.25(c)(5)*

As noted above, the Commission has adopted a simplified approach to the disclosure of past performance under which capsule performance data would be required for CTAs and investee pools with ten percent or greater allocations and no intermediate category of CTAs and investee funds would exist for which ''adverse performance'' would be disclosable. The Commission recognizes, however, that any simple quantitative standard such as the ten percent allocation standard can provide only a convenient point of reference to assure a minimum level of performance disclosure, but that pools may be structured, or their assets traded in such a manner, that use of the ten percent allocation standard will not be sufficient to identify all potentially relevant past performance data. Consequently, to supplement the required performance data for major CTAs and investee pools, the Commission is requiring in Rule 4.25(c)(5) a summary description of the performance history of non-major CTAs and investee pools, including monthly return parameters, *i.e.*, highest and lowest monthly rates of return, historical volatility information, an explanation of the degree of leverage used in the trading of such CTA or investee pool, and an identification of any material differences between the performance of such advisors and pools and that of the offered pool's major trading advisors and investee pools.

This requirement for summary performance disclosure of non-major CTAs and investee pools reflects the fact that the trading of pool assets may be distributed among multiple CTAs and investee funds, such that a substantial portion of the pool's assets, all of the pool's assets, or even a multiple of the pool's assets, may effectively be allocated to CTAs or investee pools which are not ''major'' and about whom performance data and other information may not generally be presented. Nonetheless, such advisors and investee pools collectively may determine the success or failure of the pool. It also reflects the fact that quantitative allocation figures alone may not be adequate to identify the extent of a particular advisor's or investee pool's impact upon the offered pool. For example, a CTA with a five percent allocation may have such an aggressive trading strategy that the impact of its trading results on the overall return of the pool may be greater than the impact of a trading advisor with an equivalent or larger allocation who follows a less aggressive trading strategy. Under Rule 4.25(c)(5), CPOs will be able to devise individualized approaches to conveying the historical volatility and other pertinent characteristics of the past performance of non-major CTAs and investee pools.

(v) *Updating Past Performance Information for Certain Persons: Proposed Rules 4.22(a)(4) and 4.26(c) for CPOs* [81]

The Commission proposed to add a new paragraph (a)(4) to Rule 4.22, which would have required the periodic Account Statement that a CPO must deliver to pool participants to include the names of all of the pool's CTAs and investee funds (including investee pools), together with the percentage of pool assets each is allocated, regardless of the amount of pool assets so allocated.[82] Rule 4.22(a)(4) would also have required that the Account Statement include past performance disclosure with respect to each new major CTA or major investee pool for whom past performance data was not previously provided in the Disclosure Document, *i.e.*, CTAs and investee funds previously allocated less than ten percent of the pool's futures margins or assets, respectively.

Commenters criticized the proposed inclusion of performance information in Account Statements as unreasonably expensive and burdensome. Some commenters contended that Account Statements are essentially financial statements subject to audit and should

[79] Unless their past performance was otherwise disclosed, Rule 4.25(c)(3)(iii) would also have required an indication of adverse performance with respect to accounts (including pools) traded by the CPO, the trading principals of the CPO (or trading manager), trading principals of major CTAs that had no prior trading history, and the trading principals of major investee pools that had no prior trading history.

[80] The requirement in proposed Rule 4.25(c)(3)(iii) to indicate adverse performance on the part of accounts (including pools) directed or operated by the offered pool's CPO, any trading principal of the CPO or any trading principal of the trading manager is also being eliminated.

[81] Because of the differences between CPOs and CTAs, CTAs have no corresponding requirements.

[82] Rule 4.22(b) states that the Account Statement must be distributed at least monthly in the case of pools with net assets of more than $500,000 at the beginning of the pool's fiscal year, and otherwise at least quarterly.

not include performance information. Still others argued that Account Statements should not be used to update or amend Disclosure Documents. Other commenters criticized the requirement to identify all CTAs and investee pools, while under proposed Rules 4.24 (e)(3) and (e)(4) only those allocated ten percent or more of pool assets would be required to be identified in the Disclosure Document.

The Commission notes that the proposed expansion of the data to be included in Account Statements was designed largely in response to concerns expressed by CPOs as to how to efficiently update Disclosure Documents to include new CTAs and in response to claims that disclosure of the names of investee funds was less onerous and more appropriate in communications with existing pool participants than in Disclosure Documents. Further, such CTA and investee pool information would not be required to be certified by the pool's accountants. Thus, as proposed, the rule would have provided a convenient mechanism for providing a complete, current picture of the pool's CTAs and investee pools.

Nonetheless, since the commenters appeared to find the proposed modifications of Rule 4.22 burdensome rather than helpful, the Commission has determined not to amend Rule 4.22. Instead, the existing updating requirements for Disclosure Documents will continue to apply, except as noted below with respect to the periodic update requirement. When a pool acquires a new major CTA or major investee pool, if such event is of material significance, the CPO will be required to notify pool participants and to provide the relevant information including performance records, as required by Rule 4.26(c),[83] within twenty-one calendar days after the CPO knows or should know of this occurrence. As was the case under the former rules, correction of Disclosure Documents may be accomplished by way of an amended Disclosure Document, Account Statement, a sticker on the Disclosure Document, or other similar means.

(vi) *Trading Managers: Rule 4.25(c)(2)*

The revised rules take into account arrangements in which a CPO delegates authority to a trading manager to select CTAs or investee pools to which the pool's assets will be allocated.[84] The term ''trading manager'' is defined in new Rule 4.10(h) as any person, other than the pool's CPO, with authority to allocate pool assets to CTAs or investee pools.[85] Rule 4.25(c)(2) requires trading manager performance in addition to CPO performance if the pool has a trading manager. In such cases, the trading manager is, in effect, a supervisory CTA and the performance of such manager is clearly material. As discussed *supra*, the requirement has been changed from an alternate one, *i.e.*, CPO or trading manager's performance, to include performance of both on the basis that even where a trading manager has been appointed, generally the CPO will continue to exercise ultimate control over the pool's operations. However, in cases where the trading manager has been given complete authority over the pool's trading and the performance of the trading manager does not differ materially from that of the pool operator, Rule 4.25(c)(2) provides that performance data for the pool operator may be omitted.

2. Required Past Performance Disclosure in CTA Disclosure Documents: Rule 4.35

Proposed Rule 4.34(a)(1) would have required CTAs to continue to present past performance of the offered trading program in the full multi-columnar format required by former Rule 4.31(a)(3). Most commenters strongly urged that CTAs be permitted to use the new capsule format. Some argued that if the offered trading program's performance must be presented in the multi-column format, the CTA will be forced to produce a separate Disclosure Document for each program he offers or to include all past performance in the multi-columnar format. One commenter suggested permitting use of the capsule format for the CTA's offered trading program but requiring monthly rates of return.

The Commission has determined to modify proposed Rule 4.34(a) to provide that the past performance of the CTA's offered trading program be presented in capsule format.[86] The capsule will include the names of the CTA and the trading program, the dates on which the CTA began trading client accounts and on which accounts were first traded pursuant to the trading program, the number of accounts traded pursuant to the trading program, and the total assets under management by the CTA and total assets traded pursuant to the trading program. The worst monthly and peak-to valley draw-downs experienced by the trading program are also required. Like the offered pool's performance in a CPO Disclosure Document, the capsule for a CTA's offered program is required to include monthly rates of return. The offered trading program's monthly rates of return may be presented either in a table or in a bar graph or chart. (Rule 4.35(a)(2) (ii) and (iii)). The offered program's capsule must also include the number of accounts closed with positive net performance during the most recent five calendar years and year-to-date, as well as the number of accounts closed with negative net performance during the same period. (Rule 4.35(a)(1)(viii)). CTAs will be required to provide prospective and existing clients, upon request, with the offered trading program's performance in the multi-column format previously required. (Rule 4.35(a)(2)(iv)).

The Commission believes that with the specified additional requirements for the offered trading program, this modification of the proposal will result in simplified CTA Disclosure Documents, while providing prospective clients with material information regarding trading program volatility.

3. Time Period for Which Required Past Performance Disclosures Must Be Made: Rules 4.25(a)(5) for CPOs and 4.35(a)(5) for CTAs[87]

Proposed Rules 4.25(a)(7) and 4.34(a)(4) would have extended the time period for which performance must be disclosed from three years to five years (or the life of the pool or account, if less than five years). As stated in the Proposing Release, the Commission believes that requiring performance to

[83] Rule 4.26(c), discussed below at paragraph B of Section VII, sets forth the requirements for amending pool Disclosure Documents to reflect a material change in the document. This requirement previously was found in former Rule 4.21(b).

[84] *See, e.g.*, Rule 4.25 (c)(2).

[85] As the Commission noted in the Proposing Release, the practice of retaining trading managers to select and monitor the performance of CTAs and investee pools to which pool assets will be committed has become commonplace. CPOs commonly seek to maximize pool returns by allocating pool assets based on analysis of the returns achieved by CTAs retained for the pool and investee pools in which the pool has invested in light of their aggregate results, market conditions, and the performance of other CTAs and investee pools. CPOs frequently rely on trading managers to continously review the performance of CTAs and investee pools and allocate and reallocate pool funds. Because of the importance of the trading manager and the fact that the trading manager is a CTA for the pool, when a pool has a trading manager, the trading manger's performance is generally required in addition to that of the CPO. 59 FR 25351, 25357.

[86] With respect to CTAs calculating rates of return on the basis permitted by Advisory 93–13, as discussed *supra*, the capsule must include rates of return for the fully-funded subset and Commission staff will provide guidance concerning supplemental data to accompany the capsule disclosure to reflect the range of levels of partial funding and the generic disclosures discussed in Advisory 93–13.

[87] Former Rules 4.21 (a)(4) and (a)(5) for CPOs and 4.31(a)(3) for CTAs generally required past performance to be presented for a three-year period.

be disclosed for a period longer than three years will make the timespan covered by performance disclosures more uniform and will better portray the evolution of performance over time, including positive and negative fluctuations in returns.[88] Two commenters supported the proposed five-year timeframe, noting that if all registrants may use the capsule format, investors will be provided with material information without increasing the volume of performance disclosure. One commenter, however, claimed that extending performance from three to five years would work against streamlining and reducing the volume of disclosure and would not enhance investor understanding.

The Commission is adopting Rules 4.25(a)(7) and 4.34(a)(4) as proposed (proposed Rule 4.34(a)(4) has been re-numbered Rule 4.35(a)(5), however). As noted in the Proposing Release, under the new summary format for performance disclosure, performance presentations are substantially condensed and multiple tables in the new summary format can be included on a single page. Consequently, adoption of a five-year disclosure period should not entail any significant increase in the volume of performance disclosures. The Commission believes that the benefits of this additional disclosure outweigh any minor resulting increase in the quantity of data disclosed.[89]

4. Composite Performance Presentations: Rules 4.25(a)(3) and (a)(4) for CPOs and Rule 4.35(a)(3) for CTAs [90]

As noted in the Proposing Release, the Commission has carefully considered the benefits and disadvantages that may accrue from the use of composites.[91] Thus, as proposed and as adopted, the new rules employ an approach designed to realize the benefits of reducing the volume of performance data created by the use of composites while minimizing the potential for misleading past performance presentations.

a. CPO Disclosure Documents

Proposed Rule 4.25(a)(3) would have required that past performance data for the offered pool and for pools similar to the offered pool be separately disclosed, on a pool-by-pool basis. (Rule 4.25(a)(3)(i)). Pools of a different type from the offered pool could be presented in composites with other pools of the same class, provided that such presentations were not misleading, that the manner in which the composite was developed was disclosed, and that the CPO was able to justify the inclusion of pools in a composite. (Rule 4.25(a)(3)(ii)). As proposed, Rule 4.25(a)(3)(iii) listed a non-exclusive set of five specific class distinctions requiring separate rather than composite presentation but recognized that additional factors might warrant creation of additional composite categories.[92] In addition, Rule 4.25(a)(3)(iv) would have required that material differences among the pools for which past performance is presented must be disclosed.

Numerous comments were received on proposed Rule 4.25(a)(3), several of which urged the adoption of three categories for composite performance presentation: guaranteed pools, non-guaranteed multi-advisor pools and non-guaranteed single-advisor pools.[93] Several commenters asserted that the distinction between public and privately offered pools can be eliminated by pro forma adjustments for cost differences. One commenter remarked that since virtually all pools use different trading programs, composite presentations might be precluded altogether under the proposed rule. Other commenters contended that some of the listed pool categories were too broadly worded. Still other commenters criticized use of the concept of specified pool classes for purposes of determining what pools may be combined in a single composite or the particular categories proposed by the Commission, suggesting either a general materiality standard for determining whether differences among pools require separate composites or inclusion in a single composite of all pools operated by the CPO and structured similarly to the offered pool. Some commenters contended that even pools similar to the offered pool should be included in one composite, instead of separately presented.[94] One commenter urged that CPOs not be under an obligation to be prepared to justify the inclusion of pools in a composite but, rather, that the CPO be permitted to exercise reasonable discretion in this matter.

The Commission specifically requested comment as to the costs and benefits of a general requirement of separate rather than composite presentations of pool performance in lieu of a qualified approach of the nature proposed. Commenters stated that greater use of composite presentations should be permitted, *e.g.*, composite presentation of performance for pools of the *same* class as the offered pool or inclusion of all of a CPO's prior pools in one composite.

Rule 4.25(a)(3) has been adopted as proposed with certain modifications. Pools with materially different rates of return may not be included in the same composite, regardless of class. (Rule 4.25(a)(3)(ii)(B)). The Commission believes that separate presentation of the performance of other pools of the same class as the offered pool provides useful information to the reader since such pools should provide the most comparable performance content and has thus retained this requirement. However, the Commission has simplified the criteria for determining what types of pools may be included in a composite capsule. The Commission has determined to delete two of the distinctions specified in proposed Rule 4.25(a)(3)(iii) (''pools using different leverages'' and ''pools using different trading programs''), on the ground that

[88] 59 FR 25351, 25358.

[89] As noted above, the NFA Special Committee for the Review of CPO/CTA Disclosure Issues suggested that the capsule include at least five years of performance history.

[90] Former Rule 4.21(a)(4)(iv) permitted the performance of pools operated by each person for whom performance was required to be disclosed to be presented on a composite basis, provided that the performance of the offered pool was separately disclosed, the CPO described how each composite was developed, and the composite was not misleading. Former Rule 4.31(a)(3)(iii) also permitted composite presentation of the performance of accounts directed by the CTA and each of its principals, provided that material differences among the accounts and the manner in which the composite was developed were described.

[91] 59 FR 25351, 25359. Specifically, the Commission noted that:

Composite presentations have the obvious advantage of reducing the volume of past performance data presented. However, composite presentations raise a number of regulatory concerns precisely because they supplant individualized presentations of potentially quite different types of pools and trading programs and may smooth or camouflage actual rates of return. Composite results not only fail to reflect differences among the pools and accounts whose results are presented but also merge potentially disparate trading results into average trading results and thus fail to reflect the actual dispersion of returns as well as the volatility of individual pools and accounts. *Id.*

[92] The distinctions set forth in proposed Rule 4.25(a)(3)(iii) are: Pools privately offered pursuant to Regulation D under the Securities Act of 1933 and publicly offered pools; pools using materially different leverages; pools using different trading programs; pools with a guarantee feature and pools without such a feature; and multi-advisor pools and non-multi-advisor pools. The CPO would have discretion to use additional criteria and would be required to do so where use of a composite would be misleading. *See* Rule 4.24(w), which requires disclosure of all material information.

[93] NFA's Submission had proposed the same three categories.

[94] One commenter suggested that performance of all pools other than the pool being offered should be presented in the second part of a two-part Disclosure Document. The Commission will take this comment into consideration in the course of its review of other issues raised by the bifurcated disclosure format.

they may be difficult to apply and thus may preclude the use of composites in most or all cases, and otherwise to adopt Rule 4.25(a)(3) essentially as proposed.[95] Two pools that use different trading programs or different degrees of leverage could therefore be included in the same composite, provided that material differences among the pools are disclosed and provided that such pools' rates of return are not materially different.

The Commission is retaining two of the remaining pool categories specified in proposed Rule 4.25(a)(3), *i.e.*, pools privately offered pursuant to the Securities Act[96] and public offerings; and principal-protected and non-principal-protected pools. With respect to the proposed differentiation between multi-advisor pools as defined in Rule 4.10(d)(2) and non-multi-advisor pools, the Commission is adopting a more flexible approach pursuant to which multi-advisor pools will be presumed to have rates of return that are materially different from those of non-multi-advisor pools and thus may not be included in the same composite, absent clear evidence to the contrary. The Commission believes that this qualified approach is warranted because multi-advisor pools will tend to have different fee structures and risk/reward profiles than non-multi-advisor pools, yet, in part due to the definitional complexity of the multi-advisor pool concept, this may not be true in all cases.

As adopted, Rule 4.25(a)(3) retains the proposed requirements regarding separate and composite performance presentations for the CPO's other pools. First, pools of the same class as the offered pool must be presented separately, following the offered pool's performance. Second, performance of any remaining pools must be presented less prominently, and may be presented in composites. Third, only pools belonging to the same class, and that do not differ materially from each other in their rates of return, may be included in the same composite. Finally, material differences among pools for which performance is presented must be disclosed. The Commission reiterates that the categories specified in Rule 4.25(a)(3)(iii) are illustrative and not exclusive.

In deciding not to permit general compositizing of the CPO's other pools that differ from the offered pool, the Commission notes that while composites condense voluminous material into digestible units, overly inclusive composites tend to flatten performance fluctuations and thus may obscure variations in rates of return and volatility among pools. Registrants therefore must use care in constructing composites, and material differences between and among pools (including the distinctions set forth in Rule 4.25(a)(3)(iii)) are ordinarily indications against composite presentation.[97]

As the Commission noted in the Proposing Release, there may be instances in which even composites of pools of the same class may be misleading, such as where differences between or among the trading results of the pools are so great that a composite would materially distort their results.[98] The express restriction against inclusion of pools with materially different rates of return in the same composite addresses this concern to some extent, but other types of differences, *e.g.*, different volatility levels, could be material. The proviso in Rule 4.25(a)(3)(ii) that results may be presented in composite form ''unless such presentation would be misleading'' is intended to ensure that composites are carefully reviewed to protect against any material distortion that may result from use of this format.

To present capsule performance of pools in a composite, the CPO must name all pools included in the composite, set forth the classes of these pools (which, as discussed above, would be the same for each pool in the composite), including at a minimum and, as applicable, the classes specified in Rule 4.25(a)(3)(iii) and specify the date on which each pool commenced trading. For composite capsule performance purposes, the aggregate gross capital subscriptions are the total subscriptions for all pools in the composite, the draw-down figures are the worst experienced by any one of the pools included in the composite and the rate of return is the weighted average rate of return for all pools included.

Proposed Rule 4.25(a)(4) would have required that the past performance of accounts be presented in capsule format on a program-by-program basis. As adopted, Rule 4.25(a)(4) permits program-by-program presentation unless such a presentation would be misleading. In addition, accounts with materially different rates of return may not be included in the same composite, and the CPO must discuss all material differences among accounts included in a composite.

b. CTA Disclosure Documents

Proposed Rule 4.34(a)(5) would have provided that the performance of accounts traded pursuant to the same trading program could be presented in the same composite, unless to do so would be misleading, provided that the CTA describes how the composite performance information was calculated. Under proposed Rule 4.34(a)(5), ''trading program'' would have been defined as a trading strategy differentiated from other trading strategies by commodity trading methodology, degree of risk or degree of leverage. Commenters stated that ''trading program'' was already defined in existing Rule 4.10(g)[99] and argued that the Commission's proposal would have conflicted with the existing rule.

In adopting Rule 4.34(a)(5), renumbered as Rule 4.35(a)(3), the Commission has revised the text to eliminate the proposed definition of trading program as a trading strategy differentiated from other such strategies by trading methodology, degree of risk or degree of leverage. Instead, Rule 4.35(a)(3), like the parallel provision for CPO Disclosure Documents, provides that unless such a presentation would be misleading, past performance of accounts may be presented in a composite form on a program-by-program basis and that accounts that differ materially with respect to rates of return may not be presented in the same composite. In determining which accounts may be included in a single composite, the factors set forth in the proposed rule, trading methodology, degree of risk and degree of leverage, are ones that should be taken into consideration. Like Rule 4.25(a)(4) for CPOs, Rule 4.35(a)(3) for CTAs contains a proviso that results may be presented in composite form ''unless such presentation would be misleading.'' Further, CTAs are cautioned that other material differences among accounts may make presentation in the same composite misleading. As with

[95] The text of Rule 4.25(a)(3)(iii) is affected by the change of the term ''limited risk pool'' to ''principal protected pool'' in Rule 4.10(d)93) and the changed definition of ''multi-advisor pool'' in Rule 4.10(d)(2).

[96] *See* Section 4(2) of the Securities Act and Regulation D thereunder, 17 CFR 230.501–230.508 (1994).

[97] Material differences among the pools for which past performance is disclosed must be described. (Rule 4.25(a)(3)(iv)).

[98] 59 FR 25351, 25359. For example, two multi-advisor pools with no guarantee feature using the same CTAs could show widely disparate results unless each CTA were allocated substantially the same portion of each pool's assets. Also, two single-advisor pools with different CTAs may achieve very different results.

[99] The term ''trading program'' continues to be defined in existing Rule 4.10(g) as ''the program pursuant to which a (CTA) (1) directs a client's commodity interest account, or (2) guides the client's commodity interest trading by means of a sytematic program that recommends specific transactions.''

composite presentations of pool performance, the draw-down figures in a composite in a CTA Disclosure Documents are the worst experienced by any one of the accounts included in the composite.

c. Substantiating Composite Presentations

Rules 4.25(a)(7) and 4.35(a)(6) require that records be maintained substantiating the performance data set forth in CPO and CTA Disclosure Documents, respectively, and documenting the underlying calculations, in accordance with Rule 1.31. Naturally, this requirement also applies with respect to composite presentations. Although not specified in Rule 4.25(a)(3)(ii), as adopted, a CPO must be prepared to justify the inclusion of a given pool's past performance results in a composite.

5. Order of Required Performance Disclosures: Rules 4.25(a)(2), (a)(3)(i) and (a)(3)(ii) for CPOs and 4.35(a)(1) and (a)(2) for CTAs [100]

Proposed Rule 4.25(a)(2) for CPO Disclosure Documents would have required that the performance of the offered pool be identified as such, presented separately, and included before any other performance information.[101] Thus, if presentation of past performance in addition to that of the offered pool was required because the offered pool did not have the requisite three-year operating history under Rule 4.25(b), the offered pool's performance must be presented separately from, and prior to, any such other required performance data.[102] Under proposed Rule 4.25(a)(3), performance data for pools of the same class as the offered pool would be presented on a pool-by-pool, non-composite basis, after the performance history of the offered pool. The performance histories of pools of a different class from the offered pool would be presented after, and less prominently than, the performance records of pools of the same class as the offered pool. Proposed Rule 4.25(a)(1)(i)(H) specified that required performance disclosure for pools other than the offered pool must provide annual and year-to-date rates of return.[103] Similarly, for CTAs, proposed Rules 4.34(a)(1) and (a)(2) would have required that the performance of the offered trading program be displayed first and the performance of all other programs after that presentation.

The Commission is adopting the required order of performance presentation specified in proposed Rules 4.25(a)(2), (a)(3)(i) and (a)(3)(ii) for CPOs and in proposed Rules 4.34(a)(1) and (a)(2) for CTAs. Registrants are reminded that disclosure of performance information not required by Commission rules, federal or state laws or regulations, self-regulatory agency rules or laws of non-United States jurisdictions is subject to the rules on supplemental information, *i.e.*, it may not be misleading and it must follow the entire presentation of required performance information (except that proprietary, hypothetical, extracted, pro forma [104] or simulated trading results must be placed at the end of the Disclosure Document).[105]

6. Required Performance Legends

a. Legends Relating to Lack of Trading Experience: Rules 4.25(c) for CPOs and 4.35(b) for CTAs [106]

The proposed rules would have continued to require the inclusion of prescribed legends in specific circumstances, alerting prospective pool participants and discretionary account clients to the lack of performance history on the part of specified persons. In the case of pool Disclosure Documents, the proposed rules would have required legends with respect to the absence of performance history, where applicable, on the part of the pool, the CPO (or trading manager) and its trading principals, major CTAs and major investee pools. In CTA Documents, such legends would be required, if applicable, on the part of the CTA and its trading principals. In the interest of simplification and readability, the Commission proposed substantial revisions of the legends required by the former rules, generally to shorten them and to sharpen their focus upon the matters most pertinent to investors.[107]

The Commission received several comments favoring the proposed shortening of the required legends. The revised legends in proposed Rules 4.25(c) and 4.34(b) are being adopted as proposed (with Rule 4.34(b) being renumbered as Rule 4.35(b)) to provide and highlight important information in a more concise and comprehensible manner.[108] Prescribed legends in pool Disclosure Documents apply only where the offered pool does not meet the trading history criteria of Rule 4.25(b).[109] The prescribed legends have been shortened by eliminating introductory language stating that disclosure of the referenced information is required by the Commission. This focuses attention upon the primary point to be conveyed, *e.g.*, the fact that the CPO and its principals have not previously operated any commodity pools. Thus, the legend relating to the lack of trading history of a pool now reads: ''THIS POOL HAS NOT COMMENCED TRADING AND DOES NOT HAVE ANY PERFORMANCE HISTORY.'' (Rule 4.25(c)(1)(ii)).[110] Similarly, the legend relating to the lack of experience of the CPO or trading manager and its trading principals now reads: ''NEITHER THIS POOL OPERATOR (TRADING MANAGER, if applicable) NOR ANY OF ITS TRADING PRINCIPALS HAS PREVIOUSLY OPERATED ANY OTHER POOLS OR TRADED ANY OTHER ACCOUNTS.'' (Rule 4.25(c)(2)(ii)). Similar legends are required, where applicable, with respect to major CTAs and investee pools.

[100] The Commission's disclosure rules previously did not specifically address the order of required performance disclosures.

[101] Proposed Rule 4.25(a)(2) also required that the offered pool's rate of return be stated in monthly increments.

[102] As discussed above, Rule 4.25(b) provides that if the offered pool has traded commodity interests for at least three years, during which time at least 75% of its assets were contributed by persons unaffiliated with its CPO, trading manager, CTAs or any of their principals, only the offered pool's past performance must be disclosed.

[103] As discussed above, Rules 4.25(a)(3) and (a)(4) provide guidance for determining whether pools or accounts may be included in the same composite.

[104] As discussed in Section V.C.3. *infra*, pro forma adjustments to performance data are required for certain purposes and such adjustments are not affected by the restrictions upon placement of supplemental information.

[105] Rules 4.24(v) for CPOs and 4.34(n) for CTAs (both captioned ''Supplemental information''), are discussed more fully below in Section VI.

[106] Former Rules 4.21(a)(4) and (a)(5) for CPOs and 4.31(a)(3) for CTAs required lengthier legends. For example, former Rule 4.21(4)(i)(B) specified a statement that the Commission requires disclosure of the performance of the offered pool and of other pools operated by the CPO and its principals and that neither the CPO nor its principals have any prior performance history. *See* 59 FR 25351, 25361 for a more complete discussion of the former requirements.

[107] 59 FR 25351, 25361.

[108] The Commission is retaining in Rules 4.25(c) and 4.35(b) the explanation that if any of the persons for whom a prescribed legend must be displayed is a sole proprietorship, reference to its trading principals need not be included.

[109] Those criteria, as adopted, are: (1) The pool has traded commodity interests for at least three years; and (2) during the three-year (or greater) period, at least seventy-five percent of the pool's assets were contributed by persons unaffiliated with the CPO, the trading manager (if applicable), the CTA or any of their principals.

[110] The legend required by former Rule 4.21(a)(4)(c) read as follows:

THE COMMODITY FUTURES TRADING COMMISSION REQUIRES A COMMODITY POOL OPERATOR TO DISCLOSE TO PROSPECTIVE POOL PARTICIPANTS THE ACTUAL PERFORMANCE RECORD OF THE POOL FOR WHICH THE OPERATOR IS SOLICITING PARTICIPANTS. YOU SHOULD NOTE THAT THIS POOL HAS NOT BEGUN TRADING AND DOES NOT HAVE ANY PERFORMANCE HISTORY.

(Rules 4.25(c)(3)(ii) and (c)(4)(ii), respectively). The revised rules similarly require a CTA Disclosure Document to disclose, if applicable, the lack of experience of the CTA and its principals. If the CTA has no prior experience, the following legend is to be included: ''THIS TRADING ADVISOR PREVIOUSLY HAS NOT DIRECTED ANY ACCOUNTS.'' (Rule 4.35(b)(1)). The following legend is to be used for trading principals: ''NONE OF THE TRADING PRINCIPALS OF THIS TRADING ADVISOR HAS PREVIOUSLY DIRECTED ANY ACCOUNTS.'' (Rule 4.35(b)(2)). If neither the CTA nor any of its principals has prior trading experience, rather than displaying two separate cautionary legends concerning the CTA and the CTA's principals, the following single sentence is to be included: ''NEITHER THIS TRADING ADVISOR NOR ITS TRADING PRINCIPALS HAVE PREVIOUSLY DIRECTED ANY ACCOUNTS.'' (Rule 4.35(b)(3)).

b. Legends Relating to Predictive Value of Past Performance: Rules 4.25(a)(9) for CPOs and 4.35(a)(8) for CTAs [111]

To indicate the general lack of predictive value of past performance information, proposed Rules 4.25(a)(10) for CPOs and 4.34(a)(7) for CTAs would have required that any past performance information, whether required or voluntarily provided, be preceded by the statement that ''PAST PERFORMANCE IS NOT PREDICTIVE OF FUTURE PERFORMANCE,'' prominently displayed.[112] Thus, if a registrant presents both required and voluntarily provided performance information in its Disclosure Document, the specified disclaimer must precede each such performance presentation.

One commenter strongly opposed the proposal as a ''potentially misleading'' departure from the language of NFA Compliance Rule 2–29, which prohibits reference to past trading profits without mentioning that past results ''are not necessarily indicative of future results.'' [113] Other commenters stated, similarly, that ''not necessarily indicative'' is more accurate and balanced than ''not predictive.''

Although the Commission does not agree that the proposed legend was either potentially misleading or less accurate than NFA's existing performance disclaimer, it has determined to revise the proposed text of this legend in the interest of establishing a single, uniform standard. Consequently, the Commission has revised the text of the proposed legend to conform it to the language of NFA Compliance Rule 2–29, that is, ''Past performance is not necessarily indicative of future results.'' [114] However, the Commission may revisit this issue in the context of its further consideration of past performance and risk disclosure issues. The Commission believes that pools are likely to be sold based on past performance claims and therefore, a formatted disclosure requirement assures consistency and auditability. The Commission remains convinced that past performance is not generally predictive of future rates of return.

7. Summary Tables

a. Performance Disclosure Requirements

The following table summarizes the past performance requirements set forth in Rules 4.25 and 4.35.

SUMMARY OF REQUIRED PERFORMANCE DISCLOSURES—CPO DISCLOSURE DOCUMENTS

Category	Requirement
Offered pools with 3 years history & 75% or more of assets from non-affiliates of CPO, trading mgr., CTAs or principals.	—Performance of offered pool for five most recent calendar years and year-to-date (''YTD'') (or if shorter, for life of pool), with monthly rates of return (''RORs'') presented in bar graph or table. Rules 4.25(b); 4.25(a)(5); 4.25(a)(2).
Offered pools that do not meet three-year history and asset contribution standards.	—Performance of offered pool for life of pool first, with monthly RORs in table or bar chart. Prescribed statement if pool has no operating history. Rules 4.25(c)(1); 4.25(a)(2). —Performance of CPO's and trading manager's other pools and accounts for five most recent calendar years and YTD, with annual RORs. Performance for pools of the same class as the offered pool must be presented more prominently than that of other pools. Rule 4.25(c)(2)(i). —If CPO or trading manager has less than three-year history in trading pools with 75% outside contributions, performance of CPO's trading principals, with annual RORs. Prescribed statement if no prior trading history of CPO/trading manager or trading principals. Rules 4.25(c)(2)(i); 4.25(c)(2)(ii). —Performance of major CTAs and investee pools. Prescribed statement if no prior history. Rules 4.25(c)(3), 4.25(c)(4). —Narrative description of non-major CTAs' and/or investee pools' past performance, trading, investment activities, strategies, and experience. Rule 4.25(c)(5).
All	—Required performance is to be given for most recent five calendar years and YTD (or, if shorter, for life of account). Rule 4.35(a)(5). —Performance of offered trading program presented first, with monthly rates of return presented in bar graph or table. CTA must make performance available in multi-column format of former Rule 4.21(a)(5) upon request. Rule 4.35(a)(2). —Performance of each other account directed by CTA and by each of CTA's trading principals, with annual RORs. Rule 4.35(b). —Performance of accounts traded pursuant to same trading program may be presented in composite unless misleading. Rule 4.35(a)(3). —Prescribed statement if no prior trading history of CTA or trading principals. Rule 4.35(b).

[111] The Commission's former disclosure rules did not contain any such legends with respect to past performance generally. Rule 4.41(b) specifies a disclaimer required to precede the presentation of simulated or hypothetical performance results, and NFA Compliance Rule 2–29(b)(5) requires language similar to that in proposed Rules 4.25(a)(10) and 4.34(a)(7).

[112] As the Commission noted in its proposal, numerous studies have shown the general lack of predictive value of past performance. 59 FR 25351, 25361 at n.42.

[113] NFA Compliance Rule 2–29, which concerns communications with the public and use of promotional materials by NFA members, prohibits a member or associate from using promotional material which ''includes any reference to actual past trading profits without mentioning that past results are not necessarily indicative of future results.'' (NFA Compliance Rule 2–29(b)(5)).

[114] The Commission is adopting proposed Rules 4.25(a)(10) and 4.34(a)(7) as Rules 4.25(a)(9) and 4.35(a)(8), respectively.

b. Sample Capsule Performance Presentations

The following are examples of ''capsule'' performance presentation under Rules 4.25 and 4.35.

CAPSULE PERFORMANCE EXAMPLES UNDER RULE 4.25 CAPSULE PERFORMANCE OF THE OFFERED POOL

[XYZ Partners, L.P. is a privately offered, single-advisor pool that does not have a guarantee feature. Past performance is shown for the most recent five calendar years and year-to-date (monthly rates of return for the most recent calendar year and year-to-date). For purposes of this example, it is assumed that thirty percent of the assets were provided by X, the CPO, and that the performance of other pools operated by X is therefore required to be presented. Of the other pools operated by X, Pool A, which is of the same class as the offered pool is presented first (and separately). Pools B, C and D are of different classes than that of the offered pool, and since Pools B and C belong to the same class, the performance of B and C is presented in a composite.]

Percentage rate of return (computed on a compounded monthly basis)	Month					
	Year-to-date	1994	1993	1992	1991	1990
January	1.12	2.43	3.50	2.56	1.54	0.69
February	1.34	3.11	(2.30)	1.96	(0.89)	(0.82)
March	0.96	(0.23)	1.60	3.72	1.15	0.55
April	1.45	1.16	1.22	4.66	0.97	1.06
May	....	1.54	(3.62)	2.75	1.21	0.90
June	....	0.32	1.32	(16.87)	0.51	1.12
July	....	1.28	1.15	(9.87)	0.11	1.01
August	....	1.12	1.85	(7.03)	(0.14)	0.93
September	....	2.09	0.87	5.61	0.56	0.99
October	....	1.34	2.10	4.23	0.23	1.01
November	....	1.57	0.90	3.97	1.11	1.19
December	....	1.04	0.825	3.81	0.32	1.14
Year	6.32	18.66	8.48	(3.60)	7.80	12.11

Offered pool
Name of Pool: XYZ Partners, L.P.
Type of Pool: Privately offered
Inception of Trading: January 1, 1989
Aggregate Subscriptions: $1,673,000
Current Net Asset Value: $1,925,000
Worst Monthly Percentage Draw-down:* 7–92/16.54%
Worst Peak-to-Valley Draw-down: 6 to 9–92/30.52%
*''Draw-down'' means losses experienced by the pool over a specified period.

CAPSULE PERFORMANCE OF OTHER POOLS OPERATED BY THE OFFERED POOL'S CPO

Name of pool	Type of pool	Inception of trading	Aggregate subscription ($ × 1,000)	Current total NAV ($ × 1,000)	Worst monthly percent draw-down	Worst peak-to valley draw-down	Percentage rate of return (computed on a compounded monthly basis)					
							1990	1991	1992	1993	1994	Year-to-date
Other pools operated by X, different class from offered pool:												
A	2	8/86	617	730	(11.73) 7/93	(19.61%) 4–8/91	11.17	6.2	3.4	10.6	6.8	6.82
Other pools operated by X, same class as offered pool:												
B; C	2, 3	8/93; 10/89	9,101	20,701	(1.09) 12/93*	(1.09%) 10–12/93*	6.8	8.9	9.6	11.2	12.6	0.51
D	1, 2	1/90	931	379	(16.01) 6/92	(40.81%) 5–8/92	(2.3)	4.3	6.2	(8.2)	13.9	(17.26%)

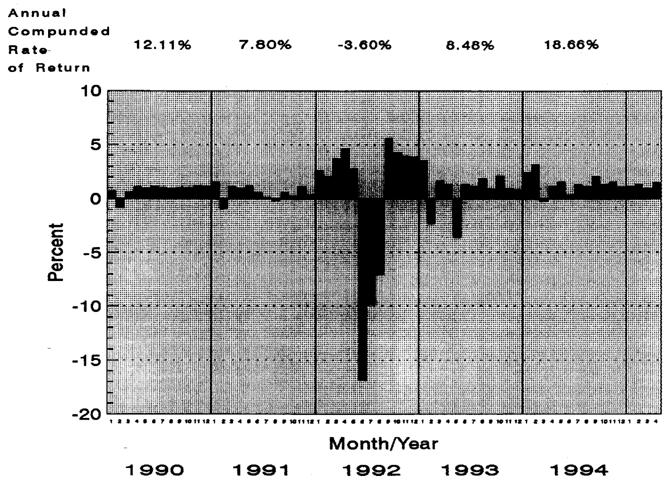
Key to type of pool
1—Principal-protected pool
1—Privately offered pool
3—Multi-advisor pool
*Worst draw-down for any of the pools included in the composite.
**In the case of composite presentation, combined rate of return figures are weighted on the basis of the net asset values of the pools included in the composite.

c. Sample Bar Chart/Graph of Monthly Rates of Return

The following is an example of monthly rates of return for a five-year period presented in the form of a bar chart.

BILLING CODE 6351–01–P

XYZ Partners, L.P. Past Performance



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C. Non-Required Performance Disclosures

1. Voluntary and Supplemental Performance Disclosures: Rules 4.24(v) for CPOs and 4.34(n) for CTAs [115]

Proposed Rules 4.24(v) and 4.33(n) would have required that information (including performance information) other than that required by Commission rules, the antifraud provisions of the Act,[116] or federal or state securities laws and regulations ''appear following the related required disclosures.'' In addition, the proposed rules provided that such information could not be misleading in content or presentation nor inconsistent with required disclosures. The purpose of these rules was to ensure that the principal focus of the Disclosure Document would remain upon the required information because of its generally high degree of materiality.

As emphasized in the Proposing Release, voluntary performance disclosures can readily be constructed to create misleading effects by, for example, focusing attention upon positive performance while omitting negative results. If the performance of two pools (other than the offered pool) operated by a CPO were voluntarily provided, it could be misleading to show the favorable performance of Pool 1 but not the negative performance of Pool 2 or to show the performance of Pool 1 in capsule format and that of Pool 2 in full format. It could also be misleading to show the performance of a pool in capsule format for year one and in full format for year two or to show the pool's performance for 1991 and not 1992. Clearly, care must be taken to assure that supplementally provided performance disclosures are not presented in a manner that creates the potential to mislead.[117]

Commenters claimed that in view of the requirement to disclose all material information,[118] the determination that information is not required by Commission rules, the Act or other laws necessarily involves a determination that the information is not material and that designating it as ''voluntary'' reinforces that determination. A number of commenters stressed the difficulty of determining in many cases what information is required to be disclosed and what is merely advisable, and believed that, in consequence, mandating that non-required information follow required disclosures could create confusion. Further, some commenters incorrectly read proposed Rules 4.24(v) and 4.33(n) to require placing all non-required information at the end of the document (instead of following the related required disclosures). One commenter suggested that placement of non-required information adjacent to the required information to which it relates may be clearer to the reader.

One commenter urged that CPOs and CTAs be permitted to present performance disclosure beyond the required five-year period, provided material changes are disclosed, while another commenter urged that CPOs and CTAs be required to present either five years' performance or the full trading history of the pool or trading program, in order to prevent ''cherry picking.''

As adopted, Rules 4.24(v) and 4.34(n) provide significantly more guidance regarding the placement of supplementally provided information. Rules 4.24(v) and 4.34(n), as adopted, also expand the category of required information to include information required by ''any applicable laws of non-United States jurisdictions.'' In addition, applicable federal and state requirements are no longer restricted to securities laws and regulations. The comments received and the Commission's action with respect to the application of proposed Rules 4.24(v) and 4.33(n) to supplementally provided non-performance information are discussed below in Section VI. With respect to supplemental past performance, however, the Commission believes that requiring such data to follow required past performance disclosure is appropriate.

The Commission will permit presentation of additional past performance information beyond the required five calendar years and year-to-date, provided that any such supplemental information is calculated in compliance with the requirements of

[115] Rules 4.24(v) and 4.34(n) regulate placement of *all* supplementally supplied information. Application of these rules to non-performance disclosures is discussed below at paragraph C of Section VI. The Commission's former disclosure rules did not specifically address the placement of voluntary performance disclosures.

[116] *See* Sections 4b and 4*o* of the Act, 7 U.S.C. 6b and 6*o* (1994). Section 4b of the Act prohibits fraud in connection with the making of any contract of sale of any commodity for future delivery. Section 4*o* of the Act prohibits CPOs, CTAs and their associated persons from employing any device, scheme, or artifice to defraud a pool participant, prospective pool participant or client and from engaging in any transaction, practice or course of business which operates as a fraud or deceit upon such participant or client. In addition, under section 4*o*(2) of the Act CPOs, CTAs and their associated persons are precluded from representing or implying that they have been sponsored, recommended or approved by the United States or by any agency or officer thereof.

[117] 59 FR 25351, 25361.

[118] Former Rules 4.21(h) and 4.31(g), renumbered as Rules 4.24(w) and 4.34(o).

Rules 4.25 or 4.35, as applicable, and is presented following all required performance disclosures. Such additional performance information must not be misleading. For example, if additional performance information beyond the required five years is presented but the entire history of the pool or program is not covered, the additional performance results shown must be representative of the results that would have been shown if the entire history were presented. Thus, ''cherry picking'' of performance data to highlight positive performance is a misleading practice precluded under existing antifraud standards. Generally, inclusion of voluntarily provided performance data should be made on a result-neutral basis that results in inclusion of all similar data.[119] The Commission also notes that the practice of advertising a pool by touting the excellent past performance record of a particular CTA to attract prospective participants and shortly thereafter reallocating pool assets to another CTA, a practice commonly referred to as ''bait-and-switch,'' is misleading and that use of performance data in this manner would violate relevant antifraud provisions.

Any proprietary performance must be presented in accordance with Rule 4.25(a)(8) for CPOs and Rule 4.35(a)(7) for CTAs, as discussed below. Hypothetical, extracted, simulated and pro forma [120] performance information is also now required by Rules 4.4(v) and 4.34(n) to be presented separately after all other information.[121]

2. Proprietary Trading Results: Rules 4.25(a)(8) for CPOs and 4.35(a)(7) for CTAs [122]

Proposed Rules 4.25(a)(9) and 4.34(a)(6) would have permitted CPOs and CTAs, respectively, to disclose proprietary trading results under appropriate restrictions. Proposed Rule 4.25(a)(9) would have provided that the performance of pools and accounts in which the CPO, trading manager, CTA or other person providing services to the pool owns or controls fifty percent or more of the beneficial interest may not be included in pool Disclosure Documents unless prominently labeled as proprietary and set forth separately following all required performance and non-performance disclosures. Proposed Rule 4.34(a)(6) set forth similar restrictions for CTA Disclosure Documents with respect to accounts in which the CTA or any of its principals or any person providing services to the account owns or controls fifty percent or more of the beneficial interests.

While a number of commenters agreed with the intent of the Commission's proposal, *i.e.*, to prevent disguising of proprietary trading by including an insignificant amount of money from ''outside'' participants, other commenters claimed that the proposal would have the undesirable effect of discouraging CPOs from investing in their own pools. One commenter stressed that proprietary trading is often the only way a pool can begin trading before raising outside capital. Commenters suggested raising the threshold for ownership or control by the pool operator, advisor, principals or other service providers from fifty to between sixty and eighty percent. Commenters also asked the Commission to clarify that the interests in the pool of the CPO, the CTA, their principals and other service providers are not required to be added together when applying the fifty percent test in proposed Rule 4.25(a)(9) unless such persons are affiliated. One commenter urged that the definition of proprietary performance should be broadened to include both accounts for which the CPO, trading manager, CTA or respective principals receive no direct fees, as well as pools in which an affiliate or family member of the CPO, trading manager or CTA owns or controls fifty percent or more of the beneficial interest. Several commenters suggested that if proprietary accounts are traded in a manner similar to pool and customer accounts, the rules should permit CPOs and CTAs to include the performance in a composite with customer accounts, provided *pro forma* adjustments are made for fees and other differences.

The Commission is adopting Rule 4.25(a)(9) (renumbered as Rule 4.25(a)(8)) and Rule 4.34(a)(6) (renumbered as Rule 4.35(a)(7)) substantially as proposed, permitting presentation of proprietary performance information, subject to restrictions intended to assure that the disclosure of such information is not misleading. Further, the Commission has determined to adopt the comment that accounts in which an affiliate or family member of the CPO, trading manager or CTA owns or controls fifty percent of more of the beneficial interest should be characterized as proprietary and has revised the rules accordingly. As adopted, the text of these rules has been reorganized for clarity and cross-references to the respective rule provisions governing placement of supplemental information have been included. The word ''required'' has been omitted to clarify the requirement that proprietary trading results (together with any hypothetical, extracted, pro forma [123] or simulated results) follow all of the other disclosures in a Disclosure Document.

Although proprietary performance results in CPO and CTA Disclosure Documents have a significant potential to mislead, given the often material differences in the conditions under which proprietary trading results as opposed to non-proprietary results are obtained, the Commission recognizes that proprietary trading results may be the only performance results available to some new traders to present to customers as evidence of trading experience.[124] The requirement that proprietary trading results be presented after all required and non-required disclosures, rather than just the required performance disclosures, reflects the relatively low utility of such data to prospective customers and the relatively high potential for confusion of proprietary and customer trading results. Given the significant potential

[119] Thus, for example, and as the Commission explained in the Proposing Release, in the case of a pool meeting the criteria of Rule 4.25(b), where only the past performance of the offered pool is required, the past performance of two CTAs each allocated an equal portion of the pool's assets generally should either be included for both CTAs or omitted entirely. Similarly, where only the past performance of the offered pool is required, generally the past performance of the CPO's other pools should be shown in total or omitted. *Id.*

[120] As discussed in section 3, *infra*, pro forma adjustments to performance data are required for certain purposes and such adjustments are not affected by the restrictions upon placement of supplemental information.

[121] If a Disclosure Document contains two or more of these types of performance information, the registrant may choose the order of presentation between or among them at the end of the document.

[122] The Commission's former disclosure rules did not specifically address the placement of proprietary trading results.

[123] *See* discussion in Section 3, *infra*, concerning required pro forma adjustments.

[124] As the Commission explained in its proposal,

Use of proprietary trading results in soliciting customer accounts is a practice which has long been of concern to the Commission. CPOs and CTAs may trade proprietary funds for a variety of purposes, including to test a new trading strategy before implementing it for customer funds or to establish a track record prior to trading customer funds. However, proprietary accounts may be traded in a different manner, for example, more aggressively, using higher leverage and assuming greater risk, than customer accounts. Also, proprietary accounts are usually not subject to the same fee schedule as customer accounts. Naturally, no management or incentive fee would apply where a CTA traded its own account, and clearing fees may be waived or reduced if the account is cleared by an affiliate. In addition, where proprietary and customer assets are combined for purposes of performance presentations, the total amount of assets under management is inflated and conceals the actual amount of customer funds being traded. For these reasons, proprietary trading results may, in many cases, be of little relevance to a prospective pool participant or CTA client and actually misleading in others. 59 FR 25351, 25360.

to mislead inherent in proprietary trading results, the Commission believes that if such data are permitted to be included in the Disclosure Document, they should be placed after all required information in order to minimize the likelihood that such results will be accorded undue weight.

The Commission noted in the Proposing Release that staff have previously advised registrants that any proprietary trading results presented in a Disclosure Document must be clearly labeled as such and presented in a separate table.[125] Staff have also required that if fees, expenses, commissions, margin-to-equity ratios, or any other item pertaining to the proprietary trading is materially different from that relevant to the pool or trading program offered to participants or clients the registrant must ''pro forma'' such items to correspond to those in the pool or program being offered.[126] The Commission will continue to require registrants to make such pro-forma adjustments to proprietary trading results.

With respect to whether the interests of the CPO, the CTA, their principals and other service providers would be required to be aggregated for purposes of applying the fifty-percent test, the Commission generally agrees that the interests of unaffiliated parties need not be aggregated. However, a CPO would be considered to be affiliated with the CPO's principal, affiliates or family members, for example, and a CTA with its principals, affiliates or family members for this purpose.

3. Pro Forma, Hypothetical and Extracted Performance Results [127]

In the Proposing Release, the Commission discussed the potential for inappropriate use of certain types of performance data, specifically, hypothetical, pro forma and extracted results.[128] Hypothetical results are based on hindsight and can be readily manipulated. Pro forma results can reflect the same type of hindsight selection as hypothetical results and are thus also subject to abuse. Similarly, although extracted results are taken from actual results, they are subject to manipulation through, for example, emphasis upon results of an isolated portion of an overall trading strategy. Under the proposed rules, hypothetical, pro forma and extracted results would be treated like other disclosures voluntarily provided (proposed Rules 4.24(v) and 4.33(n)) and would be subject to the Commission's general antifraud provisions and such restrictions as may be imposed under the rules of a registered futures association. Further, of course, Rule 4.41 requires that any presentation of simulated or hypothetical trading results must be accompanied by a prescribed cautionary statement describing the limited value of such results.[129] As discussed *infra,* the Commission is amending Rule 4.41 to provide that such presentations must be accompanied either by the statement set forth therein or a statement provided for this purpose by a registered futures association.

In some circumstances, the Commission requires registrants to make pro forma adjustments to disclosed information, *e.g.,* to adjust performance presentations to the same fee structure as that of the pool or program being offered. Such pro forma adjustments are not within the scope of the restrictions of Rules 4.24(v) and 4.34(n). As noted in the Proposing Release, NFA has recently adopted Compliance Rule 2–29(c) which, together with an accompanying interpretive notice, requires that promotional materials containing hypothetical results include a prominently displayed prescribed disclaimer, comparable actual performance results displayed at least as prominently as hypothetical results, and a description of the material assumptions used, and that no statement be made placing undue emphasis on the hypothetical results.[130] The restrictions in NFA Compliance Rule 2–29(c) do not apply to promotional materials directed exclusively to ''qualified eligible participants'' as defined in Commission Rule 4.7(a)(1)(ii). However, Rule 4.41 requires that such a statement be provided without regard to the status of the offeree and will thus require that either the statement specified in Rule 4.41 or the statement specified in NFA Compliance Rule 2–29(c), if approved by the Commission, be provided whenever simulated or hypothetical trading results are presented.

Commenters generally agreed that hypothetical, pro forma, extracted (and simulated) results should not be prohibited, but should be subject to strict regulatory oversight and controls. The Commission was also urged to delegate to NFA and industry groups any rulemaking regarding use of pro forma, hypothetical and simulated results.

Based upon its review of the comments received and of NFA Compliance Rule 2–29(c) and the accompanying interpretive release, the Commission has determined to retain the same general approach to pro forma, hypothetical and extracted results as indicated in the Proposing Release, pending further review of this area. Although such results would not be precluded from inclusion in the Disclosure Document, Rule 4.24(v)(2)(iii) requires that such results, if included, must appear as the last disclosure in the document following all required and non-required disclosures. Further, such disclosures would be required to be accompanied by the cautionary language of Rule 4.41 or of NFA Compliance Rule 2–29(c), if approved by the Commission, with respect to the limited usefulness of hypothetical results, where applicable. To avoid duplication of cautionary statements as to the limitations of pro forma, hypothetical and extracted results, the Commission is adopting an amendment to Rule 4.41 to permit use of an NFA disclaimer in lieu of the disclaimer in Rule 4.41.

Like other supplemental disclosures, disclosure of pro forma, hypothetical and extracted results must comply with Rule 4.24(v) for CPOs and Rule 4.34(n) for CTAs. Moreover, such disclosures

[125] 59 FR 25351, 25360.

[126] *Id. See* discussion in Section 3, *infra,* concerning required pro forma adjustments.

[127] Hypothetical results are results calculated based upon the application of a given program to historical market prices and purport to present results that could have been obtained in trading a particular program during the specified historical period. Pro forma results present trading results with adjustments to reflect certain factors, such as a particular fee schedule or degree of leverage, to permit easier comparison with other types of results. Extracted performance results isolate a single component of a trading strategy for presentation to customers. The Commission's former disclosure rules did not specifically address the placement of such performance results.

[128] 59 FR 25351, 25360.

[129] The statement required by Rule 4.41(b)(1) reads as follows:

''Hypothetical or simulated performance results have certain inherent limitations. Unlike an actual performance record, simulated results do not represent actual trading. Also, since the trades have not actually been executed, the results may have under-or-over compensated for the impact, if any, of certain market factors, such as lack of liquidity. Simulated trading programs in general are also subject to the fact that they are designed with the benefit of hindsight. No representation is being made that any account will or is likely to achieve profits or losses similar to those shown.''

[130] 59 FR 25351, 25360. The draft Interpretive Notice accompanying NFA's proposed amendments to Compliance Rule 2–29 would permit pro forma performance histories solely for the purpose of adjusting performance presentations to the same fee structure as that of the pool or program offered. No pro forma results which reflect a hindsight analysis, such as to show results a multi-advisor pool could have achieved using a different allocation of assets among CTAs, would be permitted. Extracted results would only be permitted to be presented based on the percentage of net asset value actually committed to the particular component extracted.

must comply with applicable NFA restrictions and they are subject to the antifraud provisions of the Act and Commission rules.

VI. Non-Performance Disclosures: Section-by-Section Analysis

A. Introduction

As proposed and as adopted, non-performance disclosure requirements are now set forth in Rules 4.24 for CPOs and 4.34 for CTAs.[131]

Preliminarily, the Commission notes that it did not receive any comments on certain of its proposed non-performance disclosure requirements and is adopting those requirements as proposed. Specifically, these are the CPO requirements found in the following paragraphs of Rule 4.24: (n) (specified performance); (p) (transferability and redemption); (q) (liability of pool participants); (r) (distribution of profits and taxation); (t) (ownership in pool);[132] (u) (reporting to participants); and (w) (material information). For CTAs, corresponding requirements are found in the following paragraphs of Rule 4.34: (h) (description of trading program); (i) (fees); (m) (specified performance disclosures); and (*o*) (material information).

1. Disclosures Concerning a Pool's CTAs

As proposed, several provisions of Rule 4.24 would have based the level of required non-performance disclosures with respect to a pool's CTAs (and their principals) on such CTAs' respective percentage allocations of the pool's aggregate initial futures margin and premiums for commodity option contracts.[133] Several commenters recommended that these disclosure requirements (as well as the major CTA and multi-advisor pool definitions) be based upon the percentage of the pool's assets allocated to each CTA. As discussed above, the definition of major commodity trading advisor, as adopted in Rule 4.10(i), no longer is based upon the percentage of initial margin and premiums but, instead, considers the CTA's allocated portion of the pool's funds available for futures and option transactions pursuant to agreement between the pool's CPO or trading manager, on behalf of the pool, and the CTA. Wherever Rule 4.24, as proposed, keyed disclosure requirements regarding a pool's CTAs to allocation size, the rule as adopted uses the major CTA definition adopted in Rule 4.10(i).

2. Disclosures Concerning Investee Pools[134]

Unlike the former rules, the new disclosure framework (as proposed and as adopted) specifically addresses disclosures concerning investee pools. As with performance disclosure requirements, non-performance disclosure requirements relating to investee pools are also being tailored to take into account the relative importance of the investee pool to the offered pool, as measured by the amount of assets allocated or intended to be allocated to the investee pool. Thus, no disclosures would have been required for investee pools allocated or intended to be allocated less than ten percent of the assets of the offered pool. With respect to each investee pool allocated at least ten percent of the assets of the offered pool, the CPO would have been required to disclose the name of the operator and the operator's principals[135] and any conflicts of interest on the part of the investee pool's operator in respect of the offered pool.[136]

With respect to investee pools allocated twenty-five percent or more of the assets of the offered pool,[137] the CPO would have been required to disclose the business background of, material litigation against, and any ownership in the offered pool on the part of the investee pool's operator and the operator's principals. (Rules 4.24 (f), (*l*) and (t)). In addition, the proposed rules requiring disclosure of the use of proceeds (Rule 4.24(h)), risk factors (Rule 4.24(g)), fees and expenses (Rule 4.24(i)), and redemption restrictions (Rule 4.24(p)) would have required information relative to the offered pool's investments, including participation in investee pools. As the Commission explained in the Proposing Release, these provisions are appropriate because investments in investee pools may entail both the risks inherent in the investee pool's own investments and liquidity risks due to restrictions upon redemption of the investment in the investee pool; fees and expenses may accrue at each level of a multi-tier structure; and investments in investee pools with redemption periods different from those of the pool offered or with minimum ''lock-in'' provisions[138] may affect the ability of the top tier pool promptly to honor redemption requests from its participants.[139]

The Commission sought comment concerning the proposed treatment of investee pools. In particular, commenters were invited to address any special public policy or disclosure considerations presented by tiered investment structures by means of which a commodity pool can, in effect, appropriate the value of a second fund's management by investing all or a portion of its funds in the second fund. No commenter specifically addressed this issue. The Commission also requested comment concerning whether any additional protections, other than disclosure of applicable fees, are appropriate in light of the ''layering'' of fees that typically occurs at each level of a fund of funds structure. No comments specifically responded to this request.[140]

The Commission has determined to key non-performance disclosures with respect to a pool's investee pools to the new definition of major investee pool adopted as Rule 4.10(d)(5). Thus, for purposes of Rules 4.24 (f), (*l*) and (t) as adopted, disclosure is required with respect to investee pools allocated ten

[131] As proposed, Rule 4.34 was numbered 4.33.

[132] Because proposed Rule 4.24(t) required disclosure with respect to major CTAs, it was indirectly addressed by the commenters who suggested changes to the major CTA definition.

[133] These were proposed Rules 4.24 (e)(3) (names), (f) (business backgrounds), (j) (conflicts of interest), (*l*) (litigation) and (t) (ownership in pool).

[134] As discussed above in Section IV, ''investee pool'' is now defined in Rule 4.10(d)(4). Former Rule 4.21 did not specifically address disclosures relative to these trading vehicles.

[135] *See* proposed Rule 4.24(e).

[136] *See* proposed Rule 4.24(j).

[137] As proposed in Rule 4.10(*l*), such investee pools would be ''major'' investee pools. Rule 4.10(d)(5) contains the definition, as adopted, of the term major investee pool, discussed above at paragraph B. of Section IV.

[138] Certain pools lock in initial investments for a specified period before allowing any redemptions. Because there are no Commission rules requiring that an opportunity for redemption of pool interests be afforded in very short timeframes as for investment companies, disclosure of volatility risks as required by new Rule 4.24(g) has added importance.

[139] 59 FR 25351, 25363.

[140] A number of commenters, however, claimed that the proposed revisions failed to adequately address the compliance problems faced by funds-of-funds. Some stated that obtaining required information from investee funds on a timely basis is often difficult or impossible for a variety of reasons, *e.g.*, because securities investee fund managers may consider the names of investee funds and managers to be proprietary; Rule 4.12(b) investee funds and securities trading partnerships report on a quarterly basis; partnerships that predominantly trade securities do not provide the same level of expense reporting as do pools; and if an investee pool is not soliciting participants when the investor pool prepares its Disclosure Document, the information from the investee pool may be unavailable or stale. Other commenters suggested that specific information regarding investee pools is unhelpful and may be misleading where the CPO frequently drops and adds investee pools. As a general matter, the Commission does not believe that fund-of-funds structures should be permitted to impair or diminish the duty of pool operators to provide timely material information to prospective and current pool participants. Consequently, the pool operator should ascertain the availability of such information prior to using pool funds for such investments. However, the Commission intends that the staff will continue to grant relief from reporting timeframes in fund-of-funds contexts as warranted by the circumstances presented.

percent or more of the offered pool's net assets, rather than the proposed twenty-five percent standard of the proposed major investee pool definition. Rule 4.24(j) (conflicts of interest involving the pool) effectively retains the ten percent threshold of the proposal.

B. Required Non-Performance Disclosures

1. Prescribed Non-Performance Statements, Table of Contents and Forepart Information: Rules 4.24 (a) through (d) for CPOs and 4.34 (a) through (d) for CTAs

Proposed Rules 4.24 (a) through (d) for CPOs and 4.33 (a) through (d) for CTAs would have specified the content and order of certain core information required to be placed at the front of Disclosure Documents. In particular, proposed Rules 4.24 (a) and (b) would have required a cautionary statement to be placed on the cover page of a pool Disclosure Document, followed by a risk disclosure statement. Rule 4.24(c) would have required a table of contents to follow the risk disclosure statement, and Rule 4.24(d) would have required specified descriptive information regarding the offered pool and the CPO to follow the table of contents in the forepart of the Disclosure Document. Proposed Rules 4.33 (a), (b) and (c) would have required the cautionary statement, risk disclosure statement and table of contents to be sequenced in the same manner in CTA Disclosure Documents as in pool documents. Proposed Rule 4.33(d) would have required inclusion of descriptive information regarding the CTA in the forepart.[141]

Two commenters favored standardizing the order of disclosures, asserting that it would promote consistency, clarity and comparability within the industry, both for potential investors and for regulators. Of the five commenters who opposed regulation of the placement of information, two suggested that the Commission's review process is capable of effectuating more prominent disclosure of underemphasized or ''buried'' information and one claimed that a summary cross-reference to the body of the document should provide sufficient clarity.

The Commission believes that investors are well served by requiring that certain items of particular significance be placed at the front of the Disclosure Document. With minor exceptions as noted below, it is adopting Rules 4.24(a) through (d) for CPO documents and Rules 4.33(a) through (d) for CTA documents (Rule 4.33 is renumbered 4.34) as proposed. The Commission notes that federal and state securities laws may also address the order and format of certain disclosures. These rules are not intended to supersede such requirements.

Placement of all required disclosures other than those specified in Rules 4.24(a) through (d) and 4.34(a) through (d) is left to the discretion of the registrant. Placement of information other than required disclosures is addressed by Rules 4.24(v) and 4.34(n), which are intended to maintain the prominence of required disclosures while giving discretion to the registrant with respect to placement of other matters, *e.g.*, supplementally provided performance information.[142] Thus, registrants will retain substantial discretion in arranging information in the Document. However, the required table of contents should facilitate review notwithstanding differences in placement of some items.

a. Cautionary Statement

Rules 4.24(a) and 4.34(a), which contain the requirements of former Rules 4.21(a)(18) and 4.31(a)(9), respectively, specify that a Cautionary Statement, *i.e.*, a statement that the Commission has not passed upon the merits of the investment or the adequacy of the Disclosure Document, appear on the cover page of the Document. Apart from comments generally urging that specific required statements and legends be minimized, no comments were received on the text of the proposed Cautionary Statement. The Commission is adopting Rules 4.24(a) and 4.33(a) as proposed (except that Rule 4.33(a) is renumbered 4.34(a)).[143]

b. Risk Disclosure Statement

The Risk Disclosure Statement specified in Rules 4.24(b) and 4.34(b) is required to be ''prominently displayed'' immediately following any disclosures required to appear on the cover page of the Disclosure Document as provided by the Commission or any applicable federal or state securities laws and regulations or by any applicable laws of non-United States jurisdictions.[144] As proposed, the revised Risk Disclosure Statement included page references to textual descriptions of fees and expenses, principal risk factors and the break-even point. Inadvertently omitted from the Proposing Release was the requirement for a legend (if applicable) to warn of potential liability in excess of the amount of a pool participant's investment. As explained in the Proposing Release, the proposed revisions to the prescribed Risk Disclosure Statements were also intended to address the potential for duplicative disclosure created by prior revisions of Rules 1.55 [145] and 30.6(a) [146] by eliminating the need to provide two prescribed Risk Disclosure Statements, one for domestic futures trading and one for foreign futures trading.[147] Thus, the proposed revised statements addressed the risks of foreign as well as domestic transactions and revision of Rule 30.6(b) was proposed to cross-reference the Part 4 Risk Disclosure Statements. In addition, the proposal would have replaced the terms ''domestic'' and ''foreign,'' previously used to refer to contract markets or exchanges in foreign jurisdictions, with the terms ''United States'' and ''non-United States,'' in order to avoid confusion in the context of offerings in non-United States jurisdictions to non-United States participants for whom the term ''foreign'' does not mean ''non-United States.''

Some commenters encouraged minimizing required verbatim cautionary statements and legends. Two commenters suggested that the Commission prescribe one risk statement for inclusion in both CPO and CTA documents, incorporating all of the issues the Commission believes are necessary for investor protection, in order to increase the effectiveness of such disclosure. Another commenter asked whether the Risk Disclosure Statement would be more effective if set forth in the text of the Disclosure Document.

[141] In connection with developing its proposed revisions to the disclosure rules, the Commission also considered whether a particular order for *all* required information should be mandated in order to ''standardize'' the entire format of Disclosure Documents. However, the Commission determined to propose, and now to adopt, only the limited sequence requirements contained in Rules 4.24 (a) through (d) and 4.34 (a) through (d).

[142] Rules 4.24(v) and 4.34(n) are discussed in detail in Section C of this Section VI.

[143] The requirement in Rules 4.24(a) and 4.34(a) that the Cautionary Statement be ''prominently'' displayed means that, as with the former rules, capital letters and boldface type are required. *See* Rule 4.1(b).

[144] The Risk Disclosure Statement must be printed in capital letters and in boldface type. Rule 4.1(b).

[145] 59 FR 25351, 25363. Rule 1.55 sets forth the basic risk disclosure requirement applicable to FCMs and IBs opening accounts for domestic futures and option contracts.

[146] Part 30 generally governs transactions in foreign futures and option contracts. Rule 30.6(a) requires an FCM or IB to deliver a risk disclosure statement (pursuant to Rule 1.55(b)) prior to the opening of a foreign futures or options account.

[147] 59 FR 25351, 25363.

The Commission is adopting Rules 4.24(b) and 4.34(b) [148] as proposed with the following exceptions. As adopted, Rules 4.24(b)(1) and 4.34(b)(1) recognize that foreign jurisdictions may require specific information on the cover page by adding the language ''or by any applicable laws of non-United States jurisdictions.'' As adopted, Rule 4.24(b) incorporates the requirement of former Rule 4.21(a)(17)(ii) to include in the Risk Disclosure Statement additional language if the pool participant's liability can exceed the purchase price of his interest in the pool. Further, Rule 4.34(b) as adopted omits reference to a break-even point. In addition, Rule 1.55 is being amended, as proposed, to provide that pools need not be treated as customers for purposes of delivery of the Risk Disclosure Statement required thereunder.

The Commission believes that the different risks and characteristics of pools as compared to direct trading through a managed account, perhaps most notably the difference between participating in a limited liability trading vehicle as opposed to an individually-managed account, warrant different risk disclosure statements. Accordingly, the Commission is not prescribing a single, common statement for both CPO and CTA Disclosure Documents. Further, the Commission believes that the information contained in the Risk Disclosure Statement is critical in order to inform potential investors as to many of the generic risks inherent in commodity interest trading, and that the importance of this information is appropriately highlighted by placing the Risk Disclosure Statement at the beginning of the document.

c. Table of Contents [149]

Rules 4.24(c) and 4.34(c) specify that the Disclosure Document must include a table of contents immediately following the Risk Disclosure Statement. The table of contents must show, by subject matter, the location of disclosures in the Disclosure Document. One commenter stated that a table of contents should be optional for smaller documents. Several commenters favored requiring a table of contents but requested latitude in its placement, *e.g.*, to permit it to appear on the back cover page. The Commission believes that placement of the table of contents at the beginning, rather than the end of (or elsewhere in) the Disclosure Document will be most helpful to investors, given the format of most pool documents, and that the benefits of a table of contents outweigh any burdens attendant to its preparation. The Commission thus is adopting as proposed the requirement that a table of contents be included in all Disclosure Documents immediately following the Risk Disclosure Statement.

d. Information To Be Included in Forepart [150]

Proposed Rules 4.24(d) and 4.33(d) would have required that specified basic information appear immediately following the table of contents, in the forepart of the Disclosure Document. With respect to CPO documents, this information would have included the following: The name, business address, business phone number and form of organization of the offered pool and of the CPO (and if the pool's address is a post office box or is outside the United States, the location of the books and records); a statement whether the offered pool is privately offered under the Securities Act, a multi-advisor pool or a limited risk pool;[151] the closing date of the pool offering (or a statement that the offering is continuous); the date the Disclosure Document will first be used; and the break-even point of the pool.[152] The forepart of a CTA document would have been required to contain the business address, business phone number and form of organization of the CTA (and if the address is a post office box or is outside the United States, the location of the books and records) as well as the date the Disclosure Document will first be used.

The Commission is adopting Rules 4.24(d) and 4.33(d) as proposed, with the following exceptions. Instead of requiring a ''statement whether the pool is'' privately offered, a multi-advisor pool or a limited risk (principal-protected) pool, Rule 4.24(d)(3) requires disclosure only in the event that one or more of such descriptions applies to the offered pool. In addition, instead of the date the Disclosure Document will actually be used, the forepart must indicate the date the CPO or CTA first intends to use it.[153] Cross-references have been conformed and corrected. Finally, proposed Rule 4.33(d) is adopted as 4.34(d).

e. Persons To Be Identified

Proposed Rule 4.24(e) would have required disclosure of names of the CPO's principals, the trading manager (if any) and its principals, each investee pool allocated at least ten percent of the assets of the offered pool, each CTA allocated at least ten percent of the pools initial margin and option premiums, the person who will make trading decisions for the offered pool, and, if known, the FCM to be used by the offered pool. Proposed Rule 4.33(e) would have required a CTA to name each of its principals, as well as any FCM or IB the CTA's client will be required to use.

Rule 4.24(e), as adopted, eliminates the initial margin and premiums standard for CTA disclosure and requires instead that only CTAs (and investee pools) that are ''major'' must be named. Rule 4.24(e) also requires identification of any IB the offered pool will use, and otherwise is adopted as proposed. Rule 4.33(e) is adopted as proposed except that it is renumbered 4.34(e).

2. Business Background: Rules 4.24(f) for CPOs and 4.34(f) for CTAs

As proposed, Rule 4.24(f) would have required disclosure in a pool document of the business backgrounds of the CPO, any trading manager of the pool, major CTAs, and the operators of major investee pools. The only principals of the foregoing for whom disclosure of business backgrounds would have been required are those ''who participate in making trading or operational decisions * * * or who supervise those so engaged.'' Proposed Rule 4.33(f) would have required a CTA document to provide the business background of the CTA and the principals thereof participating in making trading or operational decisions.

Former Rule 4.21(a)(2) required business backgrounds for the CPO, the CTA and *all* of their respective principals, and, similarly, former Rule 4.31(a)(2) called for the backgrounds of the CTA and all of its principals. The

[148] Rule 4.34(b) was proposed as Rule 4.33(b).

[149] Neither former Rule 4.21 for CPOs nor former Rule 4.31 for CTAs required a table of contents. However, most Disclosure Documents reviewed by the Division contain such a table. Further, Form S–1, the form most frequently used to register pool offerings with the SEC, requires ''a reasonably detailed table of contents showing the subject matter of the various sections or subdivisions of the prospectus and the page number on which each section or subdivision begins.'' *See* Item 502(g) of Regulation S–K, 17 CFR 229.502(g) (1994), incorporated by reference into Item 2 of Form S–1, 17 CFR 239.11 (1994). The Commission believes that a table of contents should contribute to making the disclosure document ''reader-friendly'' and readily reviewable.

[150] Neither former Rule 4.21 nor 4.31 required specified information to be placed in the forepart of the Disclosure Document.

[151] As discussed at Section IV above, new Rule 4.10(d)(3) replaces the proposed term ''limited risk pool'' with the term ''principal-protected pool'' (while continuing to define it, as proposed, as pool designed to limit the loss of the initial investment of its participants).

[152] The term ''break-even point'' is discussed in Section IV above.

[153] Proposed Rules 4.24(d)(4) and 4.33(d)(2) had required ''[t]he date when the Disclosure Document will first be used.''

proposed revisions were designed to reduce the number of principals subject to business background disclosure and, in the context of trading advisors and operators of investee pools, restricted business background disclosure to major CTAs and the operators of major investee pools.

Commenters generally supported the proposed reduction of business background disclosure. Six suggested further limiting disclosure with respect to principals by deleting the words ''or operational'' and effectively employing the definition of ''trading principal'' in Rule 4.10(e)(2).[154]

The Commission is adopting Rules 4.24(f) and 4.33(f) as proposed, except that the provision with respect to principals who participate in making trading or operational decisions for the pool or supervise persons so engaged is revised to make clear that officers and directors are included among the principals whose business background is required, as only shareholders and other passive investors who would constitute principals were intended to be excluded. Proposed Rule 4.33(f) is adopted as Rule 4.34(f). The requirement to disclose business backgrounds for principals who participate in making operational decisions for a pool operator or advisor is retained because such persons can have as significant an effect on the performance of the pool operator or advisor as those who make its trading decisions. For example, the persons who supervise sales solicitations, manage the pool's back office and perform compliance functions may be wholly uninvolved in the pool's trading yet integral to the pool's success or failure. Accordingly, the Commission believes that the business backgrounds of such persons should be disclosed to prospective participants or clients.[155] As noted above, the Commission intends that the principals who participate in making trading or operational decisions for the pool or who supervise persons so engaged would include all principals other than purely passive investors or owners.

3. Principal Risk Factors: Rules 4.24(g) for CPOs and 4.34(g) for CTAs[156]

As noted above, Rules 4.24(b) and 4.34(b) require the inclusion, at the beginning of the Disclosure Document, of a standardized Risk Disclosure Statement that generically describes the risks of the investment. Proposed Rules 4.24(g) and 4.33(g) would have required that the prescribed generic risk disclosures be supplemented by a particularized discussion of the ''principal risk factors'' specific to the pool or trading program being offered, including, without limitation, risks due to volatility, leverage and counterparty creditworthiness. As the Commission explained in the Proposing Release, this requirement was designed to elicit a ''plain English'' discussion of the risks of the offered investment, with particular attention to the risks created by over-the-counter transactions.[157] For example, as noted in the Proposing Release, the discussion of principal risk factors should address the volatility of an offered pool investment as compared to investments in other types of trading vehicles and other risks relevant to the trading program to be followed, such as risks resulting from concentration of investments in particular commodities or from trading foreign contracts that are subject to currency rate fluctuations. Other risks cited included risks inherent in transactions in off-exchange instruments and risks arising from the lack of relevant experience of the CPO or CTA.[158] The Commission noted that in establishing an express requirement for disclosure of principal risk factors, it was essentially codifying disclosure requirements previously required under the obligation to disclose all material information or under other provisions of the former rules. This provision also accords with existing SEC requirements for publicly offered funds.[159]

The Commission requested comment as to whether additional guidance should be given in the rules as to the types of risk factors that should be discussed and as to any specific factors that should be identified in this context. The commenters did not suggest any additional specific risk factors. One commenter supported the proposed requirement for a particularized discussion of the risks beyond the standardized required risk disclosure. Another urged that the rules not list specific required risk factors, since risks vary by pool or program, and such a requirement would mean that risks that are important in certain contexts but not in others would be required to be disclosed in the same manner in all contexts. Another commenter stated that discussion of counterparty creditworthiness is not warranted for a pool that restricts its trading to exchange-traded instruments. One commenter proposed that the level of risk factor disclosure with respect to an investee pool be determined by the percentage of assets allocated to such investee pool.

The Commission is adopting Rules 4.24(g) and 4.33(g) as proposed (renumbering proposed Rule 4.33(g) as 4.34(g)) with certain modifications designed to provide more specific guidance as to the types of disclosures called for in the discussion of principal risks. The principal risk factor discussion must now include, without limitation, risks relating to volatility, leverage, liquidity and counterparty creditworthiness, as applicable to the types of trading programs to be followed, trading structures to be employed and investment activity expected to be engaged in by the offered pool. Similarly, under Rule 4.34(g), the focus is on the trading program and the types of transactions and investment activity expected to be engaged in pursuant to the trading program. As noted, the specific types of risks cited in the rules (volatility, leverage, liquidity and counterparty creditworthiness) are illustrative, not exclusive, are likely to be significant across a wide range of trading programs and investments and thus are logical starting points for a discussion of principal risk factors. The final rule includes specific reference to

[154] Under the rule amendments as proposed and as adopted, the ''trading principal'' concept is not used in connection with non-performance disclosure requirements. *See* Rule 4.25(c) for CPOs and Rule 4.35(b) for CTAs.

[155] The Commission emphasizes that while disclosure of business backgrounds of principals is being limited to officers, directors and other operational or trading principals, the names of all principals of the CPO, trading manager, major CTAs, and operators of major investee pools continue to be required to be disclosed in the Disclosure Document. *See* Rules 4.24(e) for CPOs and 4.34(e) for CTAs.

[156] Former Rules 4.21 and 4.31 did not contain any specific requirements applicable to the particular risks of the pool or trading program.

[157] 59 FR 25351, 25364. These risks may differ materially from those entailed in exchange-traded futures and option transactions, which generally are backed by clearing organization guarantees, daily marking-to-market and settlement, and segregation and minimum capital requirements applicable to intermediaries. Transactions entered directly between two counterparties generally do not benefit from such protections and expose the parties to the risk of counterparty default.

[158] 59 FR 25351, 25364.

[159] Public securities offerings are required by Item 503(c) of Regulation S–K (17 CFR 229.503(c) (1994)) to include immediately following the cover page of the prospectus (or following the summary, if one is included) ''a discussion of the principal factors that make the offering speculative or one of high risk.'' Possible risk factors included in Item 503(c) include absence of an operating history, absence of profitable operations in recent periods, financial position, nature of the registrant's business and absence of a previous market for the offered securities. SEC Release Number 33–6900, which provides guidance with respect to disclosure requirements for limited partnership offerings and roll-up transactions, requires that the cover page of a limited partnership prospectus indicate the most significant risk factors ''highlighted through the use of a concise list of bullet-type statements.'' (17 CFR 231.6900 (1994)).

''liquidity'' as a risk factor, in recognition that the risk of illiquidity is one that arises in a wide range of instruments and that liquidity issues may often be linked to the other identified risk factors.

Rule 4.24(g) as adopted provides three contexts in which such risks should be considered, the trading programs to be followed, the trading structures to be employed and the investment activity expected to be engaged in by the offered pool. Risk factors specific to each context should be discussed. For example, this discussion should indicate any material historical or expected volatility of the trading program and any other special characteristics of the trading program, such as concentration in a particular commodity, lack of trading history, or negative performance history associated with the trading program. The trading structures or vehicles to be employed may also present significant risks. For example, multi-CTA and multi-investee-fund structures generally involve more complex fee structures than other pools and their profit potential may be adversely affected as a result of the potential for the pool to maintain offsetting positions due to the separate trading of various CTAs and investee funds. The specific types of investment activity in which the pool is expected to engage must also be examined to identify principal risk factors. For example, highly leveraged off-exchange transactions such as some types of swaps, may present risks of rapid price movements, illiquidity, lack of transparency and the potential for counterparty default which may not be material in the context of domestic exchange-traded futures contracts. Given the wide range of potential pool investments, the CPO must determine on a case-by-case basis what risk factors must be addressed in light of the contemplated trading and investment activity of the pool.

A CPO must make a determination whether the risks affecting each investee pool (or investee fund), when considered in the context of the investor pool's participation in such investee pool (or fund), constitute principal risk factors of the investor pool. In determining whether counterparty creditworthiness is a principal risk factor in the context of a given pool offering or trading program, factors such as the use of instruments other than those that are traded on United States contract markets must be considered.[160]

4. Investment Program and Use of Proceeds: Rule 4.24(h) for CPOs [161]

Proposed Rule 4.24(h) would have consolidated under the caption ''Use of Proceeds'' the provisions of former Rule 4.21(a)(1)(viii), which required a description of the types of commodity interests the pool is expected to trade and any restrictions on such trading, with those of former Rule 4.21(a)(9), which required disclosure of the manner in which the pool would fulfill its margin requirements and the form in which non-margin funds would be held. As a result, taken together, former Rules 4.21(a)(1)(viii) and (a)(9) called for disclosure of both the commodity interest trading expected to be engaged in by the pool and all other types of trading, investments, custodial arrangements and other uses of the funds of the pool. Proposed Rule 4.24(h) thus would have unified previously separate related disclosures to create a single, cogent discussion of all of the contemplated uses of pool funds. In addition to integrating disclosures previously required under separate rule provisions, Proposed Rule 4.24(h) was designed to reflect the increasingly diverse nature of non-futures investments made by pools, for example, interests in other commodity pools, commercial paper and foreign securities.

Several commenters recommended that use of proceeds disclosure requirements minimize (or eliminate) information regarding ''normal'' investment uses and concentrate on (or be limited to) ''unusual'' uses of assets or uses that present special risks to the investor. Several commenters argued that expanded use of proceeds disclosures have unnecessarily lengthened Disclosure Documents, resulting in disproportionate emphasis on standard or mundane investments and obscuring the pool's primary business objectives. Some commenters urged that the use of pool assets in securities trading that is independent of rather than incidental to a pool's commodity interest trading should not require disclosure. With respect to participation in investee pools or funds, one commenter suggested that only a general statement that the pool would invest in investee pools or funds should be sufficient. Another commenter suggested that the requirement for use of proceeds disclosure should be based upon the percent of assets allocated to the investee pool and that if the investment involved less than ten percent of the offered pool's assets, disclosure should not be required. Two commenters criticized the requirement to disclose whether (and in what form) assets are held in segregation.

Based upon its review of the comments received and of the overall content of the proposed and final rules, the Commission has determined to modify proposed Rule 4.24(h) in order to provide greater clarity and specificity as to the disclosures called for. In essence, proposed Rule 4.24(h) was designed to elicit a description of the types of interests in which the proceeds of the offering would be invested and of the trading programs to be followed. To better reflect the overall intent and scope of this provision, it has been retitled ''Investment Program and Use of Proceeds'' and the text has been restructured and refined to provide more specific guidance as to the minimum disclosures called for. As revised, Rule 4.24(h) calls for four main types of information: Information about the types of commodity interests and other interests which the pool will trade; a description of the trading and investment programs and policies that will be followed by the offered pool; a summary description of the pool's commodity trading advisors and investee pools or funds; and information concerning the manner in which the pool will fulfill its margin requirements, the approximate percentage of the pool's assets that will be held in segregation and related matters. With respect to each topic, explanatory text has been added to clarify the types of information to be provided. For example, information concerning the ''types of commodity interests or other interests the commodity pool operator intends that the pool will hold or trade'' is to include the approximate percentage of the pool's assets that will be used to trade commodity interests, securities and other types of interests. The provision also calls for the different types of interests in which the pool will trade to be categorized so as to provide a meaningful explanation of the contemplated trading and investment portfolio. Thus, the rule provides for categorization by the type of commodity or market sector, type of security, whether traded or listed on a regulated exchange market, maturity ranges, and investment rating, as applicable. Further, the regulatory status of such

[160] As shown by the recent events involving the collapse of Barings, PLC, under certain circumstances exchange-traded instruments may be subject to some of the same risks as over-the-counter transactions.

[161] Because of the differences between CPOs and CTAs, the Commission did not propose nor is it now adopting any general ''use of proceeds'' disclosure requirement for CTAs. However, both new Rules 4.24(h)(2) for CPOs and Rule 4.34(h) for CTAs require a description of the trading progrm that will be used for the pool or managed account client.

interests, *i.e.*, the extent to which they are subject to state or federal regulation, foreign regulation or supervision by a self-regulatory organization, is called for.

Second, Rule 4.24(h)(2) requires a description of the trading and investment program and policies to be followed by the offered pool. This description must include an explanation of the methodologies and data used to select CTAs, investee pools and types of investment activity to which pool assets will be committed. The objective is to provide an explanation of the basic trading and investment approach to be followed by the pool, including, if applicable, an explanation of the systems used to select the pool's advisors and the types of investment activity in which the pool will engage.[162]

A new subparagraph, designated as Rule 4.24(h)(3), calls for a narrative description of the major commodity trading advisors and investee funds to which the pool will commit funds. This discussion is required to include percentage allocations of pool assets to major CTAs and investee pools and funds, a description of the trading programs to be followed by such advisors, and for each such advisor and investee fund, the types of interests traded and material information as to the advisor's historical experience trading such program, including material information as to volatility, leverage and rates of return and the length of time during which the advisor has traded such program. Similarly, for the pool's investee pools or funds, the description should extend to the nature and operation of such investee pools and funds, including for each investee pool or fund the types of interests traded, material information as to volatility, leverage and rates of return for such investee pool or fund and the period of its operation.

Finally, Rule 4.24(h)(4), like the proposed ''Use of proceeds'' section, calls for information as to the manner in which the pool will fulfill its margin requirements and the approximate percentage of the pool's assets that will be held in segregation pursuant to the Act and the Commission's regulations, the nature of anticipated non-cash margin deposits and to whom income generated by margin assets will be paid.

5. Fees and Expenses; ''Break-Even'' Analysis for CPOs: Rules 4.24(i) for CPOs and 4.34(i) for CTAs [163]

Proposed Rule 4.24(i) was intended to provide in a single location a complete discussion of costs incurred by a commodity pool for all purposes. The proposed rule combined the requirements of former Rule 4.21(a)(7), which called for a description of the expenses that the CPO knew or should have known had been incurred in the preceding year or would be incurred in the current year (*e.g.*, fees for management, trading advice, brokerage commissions, legal advice, accounting and organizational services), with those of former Rule 4.21(a)(14), which required disclosure of fees and commissions paid in connection with solicitations for the pool.[164] In addition, it called for a description of certain fees and expenses that were not specifically enumerated in the former rules but that nonetheless constitute material information about which a prospective investor should be informed. These include clearance fees and fees paid to national exchanges and self-regulatory organizations, incentive fees (including any disproportionate share of profits allocated to the CPO, *i.e.*, a right of the CPO to receive a greater than pro-rata share of the pool's profits), and fees and expenses incurred as a result of investments in investee pools and other investment vehicles or in connection with funding the guarantee of a principal-protected pool. The proposed rule also required an explanation of the calculation of the pool's ''break-even point.''

With respect to CTAs, proposed Rule 4.33(i) differed from former Rule 4.31(a)(4) only in requiring that if a fee is determined by reference to a base amount such as net assets or net profits, the manner in which such base amount will be calculated must be explained, where former Rule 4.31(a)(4) simply required that such base amount be defined.[165]

The Commission received numerous comments in response to its request for comment as to whether a description of fees and expenses should continue to be required or whether the break-even analysis is sufficient to accurately describe the costs of participation in a pool. These comments included the following: That a break-even analysis is sufficient unless in the CPO's judgment more information is required to make the break-even analysis more understandable; that investors benefit from receiving a separate, more comprehensive description of applicable fees than is contained in a break-even discussion; that for a pool in operation for more than one year the prior year's actual expenses should suffice with no requirement for estimated expenses; that estimated expenses be required to be disclosed in a manner similar to that required under SEC rules applicable to mutual funds; and that a description of fees and expenses that are paid by the CPO or the CTA out of their own assets on behalf of the pool should not be required. Some commenters asserted that calculation of a break-even point would be difficult or impossible for pools with no maximum amount of capital that can be raised, for pools invested in other collective investment vehicles, and for multi-advisor pools with high CTA turnover and reallocation. One commenter suggested a convention (such as 2% of average net asset value) for approximating the profit shares to be paid in a multi-advisor fund with non-netted incentive fees.

Several commenters argued that estimating incentive and other fees would be difficult or impossible for CPOs of existing pools as well as operators of new pools. One commenter, however, stated that since the CPO establishes and understands the fee structure (and is allowed to make and to state any necessary assumptions) it is incorrect to argue that a break-even analysis cannot be provided because fees cannot be estimated.

The Commission is adopting Rules 4.24(i) and 4.33(i) as proposed (renumbering proposed Rule 4.33(i) as 4.34(i)). For pool Disclosure Documents both the break-even analysis and the narrative fee and expense description are required because the Commission believes that each serves a valuable purpose. A description of each separate fee and expense may not convey a clear understanding of the actual portion of each pool participation absorbed by the aggregate fees and expenses of the pool. To foster a better understanding of the nature of those costs and their impact upon an investment in the pool, the revised rules require that the narrative description of fees and expenses, which is designed to explain the basis for each such expenditure, be accompanied by a

[162] The requirement in proposed Rule 4.24(h)(1) to disclose ''any restrictions or limitations on such interests or trading required by the pool's organizational documents or otherwise'' (originally part of former Rule 4.21(a)(1)(viii)) was revised to refer to ''any *material* restrictions or limitations * * *''

[163] The Commission's former disclosure rules did not require a break-even analysis.

[164] By way of clarification, as proposed and as adopted, Rule 4.24(i) also requires that disclosure of fees paid in connection with solicitations for the pool must include trailing commissions as well as any type of benefit that may accrue to persons engaged in such solicitations.

[165] The same change was also incorporated in proposed CPO Rule 4.24(i).

tabular presentation of fees and expenses from all sources, setting forth how the break-even point for the pool is calculated (''break-even analysis''). Where specific components of the break-even analysis are not available or are not subject to precise determination, good faith estimates should be made, based on reasonable assumptions properly disclosed. As noted above, the ''break-even point'' for the pool is required by Rule 4.24(d)(5) and 4.10(j) to be set forth as a separate item in the forepart of the Disclosure Document, immediately following the table of contents, and must be expressed both as a dollar amount and as a percentage of the minimum unit of initial investment. The break-even analysis provides an explanation, in tabular form, of how the break-even point is calculated, taking into account all fees, expenses and commissions applicable to the pool. Rule 4.10(j) requires that the break-even point be prepared in accordance with rules promulgated by a registered futures association pursuant to section 17(j) of the Act. As noted above, NFA has adopted (and the Commission has approved) an Interpretive Notice to accompany NFA Compliance Rule 2–13, setting forth how a break-even point must be calculated and the format in which such calculation must be disclosed.

The Commission is clarifying that the break-even point must represent the trading profit the pool must realize in the first year of an investor's participation in order for the investor to recoup his initial investment, and Rule 4.10(j) as adopted so states. Revision of the break-even point is required for ongoing pool offerings whenever the Disclosure Document is amended or updated. Of course, if the actual break-even point becomes materially different from that which appears in the Disclosure Document, amendment is required.

As proposed and as adopted, Rules 4.24(i) and 4.34(i) require disclosure of fees and expenses expected to be incurred in the current fiscal year, including estimated figures if actual amounts cannot be determined. The Commission believes that reliance solely upon the prior year's actual fees and expenses may be misleading, especially if the CPO has reason to anticipate changes in investment strategies or advisors or market conditions. With respect to fees and expenses borne entirely by the CPO or the CTA, disclosure should not be necessary unless the compensation paid by the pool or account to the CPO or CTA is increased as a result. Of course, disclosure is required if such fees and expenses are subsequently charged to the pool or account.

Where a fee or expense item is variable or otherwise difficult to determine (*e.g.*, in the case of a multi-advisor pool rapidly substituting and re-allocating among numerous advisors), the narrative discussion required by Rule 4.24(i) must indicate a range based upon the CPO's advisor selection criteria, investment objectives and other business practices. For purposes of the break-even analysis, however, a good faith estimate should be used, as discussed above, and the assumptions for such estimate disclosed. This situation illustrates the benefit of requiring both the break-even analysis and the narrative discussion.

The Commission believes that the revised fee and expense disclosure requirements better codify disclosures required under the former rules, that the break-even analysis makes such disclosures more understandable, and that the revised requirements will better assist readers of Disclosure Documents in understanding the nature and effect upon investment returns of costs incidental to the offering and operation of the pool or trading program.

6. Conflicts of Interest: Rules 4.24(j) for CPOs and 4.34(j) for CTAs; Related Party Transactions: Rule 4.24(k) for CPOs [166]

a. Conflicts of Interest—CPOs

Proposed Rule 4.24(j) called for a full description of any actual or potential conflicts on the part of: (a) The pool's CPO, trading manager (if any), CTAs allocated at least ten percent of the pool's initial margin and premiums, the operators of investee pools allocated at least ten percent of pool assets; (b) any principal of the foregoing; and (c) any person providing services to the pool or soliciting participants for the pool. Proposed Rule 4.24(j) specifically referred to arrangements whereby a person benefits from the pool's use of a particular FCM or IB (specifically including payment for order flow and soft dollar arrangements) [167] or from the investment of pool assets in investee pools or other investments. Former Rule 4.21(a)(3) required disclosure of conflicts involving the following persons or their principals: The CPO, the CTA, any FCM that will execute the pool's trades, and any IB through which the pool's trades will be introduced. The former rule specified that such description should include any arrangement whereby the CPO or the CTA might benefit directly or indirectly from maintenance of the pool's account with the FCM or introduction of the account by the IB. The proposed rule would have retained the requirement to disclose conflicts of interest on the part of the CPO and its principals but, subject to the requirement that all material information be disclosed, generally would have eliminated such disclosure with respect to CTAs allocated less than ten percent of the pool's futures margins and option premiums. Further, rather than limiting the disclosure of conflicts of interest to specified categories of registrants, such as FCMs and IBs, specifically identified in the former rule, the proposed rule would have encompassed conflicts of interest on the part of any person providing services to, or soliciting participants for, the pool. As noted in the Proposing Release, the purposes of conflict of interest disclosure are not confined to conflicts involving a Commission registrant.[168] Unregulated parties such as a CPO affiliate acting as counterparty to over-the-counter transactions with the pool may be equally relevant for such purposes. Finally, unlike former Rule 4.21(a)(3), proposed Rule 4.24(j) would have specifically referenced payment for order flow and soft-dollar arrangements as types of disclosable arrangements by which a person may benefit from maintenance of the pool's account with an FCM or the introduction of the pool's account by an IB. As with the former rule, disclosure of all material conflicts would continue to be required, whether

[166] Former Rules 4.21(a)(3) for CPOs and 4.31(a)(5) for CTAs addressed conflicts of interest. The Commission's former disclosure rules did not contain any specific requirements with respect to related party transactions.

[167] Payment for order flow is a practice whereby FCMs and IBs compensate CPOs (and CTAs) for directing customers to them. Soft dollar arrangements consist of arrangements whereby customer or pool funds are used to pay for research or other services that benefit the CPO (or CTA). Both practices have concerned regulators because, among other things, they are often inadequately disclosed. *See Market 2000, An Examination of Current Equity Market Developments: Study V, Best Execution* (Division of Market Regulation, SEC, January 1994). The SEC recently adopted Rule 11Ac1–3 and amendments to Rule 10b–10 (17 CFR 240.10b–10 (1994)) under the Securities Exchange Act of 1934 15 U.S.C. 78a *et seq.* to require enhanced disclosure on customer confirmations and account statements (and upon opening of new accounts) with respect to payment for order flow practices. Release No. 34–34902, 59 FR 55006 (November 2, 1994). At the same time, revisions to Rule 11Ac1–3 and further amendments to Rule 10b–10 were proposed. Release No. 34–34903, 59 FR 55014 (November 2, 1994). The effective date of Rule 11Ac1–3 and the amendments to Rule 10b–10 has been postponed to October 2, 1995 (Release No. 34–35473, 60 FR 14366, March 17, 1995).

[168] 59 FR 25351, 25365.

or not specifically called for under proposed Rule 4.24(j).[169]

Several commenters supported the expansion of the range of required conflicts disclosure to include persons not registered with the Commission. However, several commenters noted that conflict of interest disclosures have expanded beyond reasonable measure and recommended restricting disclosure to ''actual'' as opposed to ''potential'' conflicts. Others urged that only those conflicts that the CPO reasonably believes might be considered material should be required. One commenter suggested that only conflicts likely to have a direct material adverse effect on the pool, its performance or its relationships with its FCMs should be required.

The Commission is adopting Rule 4.24(j) generally as proposed. However, the Commission has added to the final rule new § 4.24(j)(2) which requires description of ''(a)ny other material conflict of interest involving the pool,'' to make clear that material conflicts involving non-major CTAs and the operators of non-major investee pools must be disclosed. Under the general materiality standard, disclosure of conflicts of interest on the part of CTAs and CPOs of investee pools below the ten percent thresholds is required if, in light of all relevant circumstances, including, for example, the nature and severity of the conflict, such disclosure would be material to prospective pool participants. Thus, the additional subparagraph will reinforce the dictates of the general materiality standard stated in Rule 4.24(w) in this area.

With respect to the comments concerning the desirability of limiting conflict of interest disclosures, for example, by requiring the disclosure only of ''actual'' as opposed to ''potential'' conflicts of interest or material conflicts, the Commission does not believe that a clear bright line distinction of this nature can meaningfully be drawn on a prospective basis. A situation that may ripen into a conflict of interest, although it has not done so as of the date of the Disclosure Document, nonetheless may be as material as an actual conflict that currently exists. However, the Commission does believe that conflict of interest disclosure should be guided by a rule of reason and that only those conflicts that are reasonably likely to be material must be disclosed. The Commission stresses, however, that materiality in this context should not necessarily be determined on a strictly quantitative basis, *e.g.*, in terms of the expected quantitative impact on a pool's rate of return, but rather, on the basis of what a prospective investor would consider to be material.

b. Conflicts of Interest—CTAs

Proposed Rule 4.33(j) differed from former Rule 4.31(a)(5) in that the proposed rule would have added the words ''(a) full description of'' any actual or potential conflict. Also, the following paragraph, which was proposed as part of the conflicts of interest provision for CPO Disclosure Documents in proposed Rule 4.24(j), was inadvertently omitted from Rule 4.33(j) in the Proposing Release, and it has been included in the rule as adopted:[170]

(2) Included in the description of such conflict shall be any arrangement whereby the trading advisor or any principal thereof may benefit, directly or indirectly, from the maintenance of the client's commodity interest account with a futures commission merchant or the introduction of that account through an introducing broker (such as payment for order flow or soft dollar arrangements).

No comments were received specifically addressing proposed Rule 4.33(j). The Commission is adopting Rule 4.33(j) as proposed (renumbering it as 4.34(j)), with the addition of the foregoing paragraph, including the reference to payment for order flow and soft dollar arrangements.

c. Related Party Transactions

Proposed Rule 4.24(k) would have required that the CPO describe and discuss the costs to the pool of any material transactions or arrangements between the pool and any person affiliated with a person providing services to the pool for which there is no publicly disseminated price. Although the rules previously contained no corresponding provision, the Commission believes that this type of disclosure is already mandated in many cases under the general requirement that material information be disclosed. However, given the increasing use of over-the-counter transactions in which pools contract with their CPO or an affiliate of the CPO as counterparty to the transaction, the Commission believes that an express requirement for such disclosure is warranted.

Two commenters claimed that computing costs of related party transactions is difficult. One asked the Commission to consider requiring disclosure of the benefit to the related entity and the potential detriment to the pool. Another commenter stated that it will be very difficult, if not impossible, for a sponsor to quantify the spreads charged on forward trades between its pools and counterparties affiliated with the sponsor and urged that no greater cost detail be required than ''cannot be quantified but will constitute a significant cost to the pool.'' One commenter urged that if Rule 4.24(k) applies to investee pools, no disclosure should be required with respect to pools allocated less than ten percent of pool assets; an intermediate level of disclosure should be required for pools allocated at least ten but less than twenty-five percent; and full disclosure should be required for pools allocated more than twenty-five percent.

The Commission is adopting Rule 4.24(k) as proposed (with a word order change for clarity).[171] In situations in which a transaction is undertaken with an affiliate for which there is no publicly disseminated price, the Commission recognizes that quantification of the ''cost'' thereof to the pool may be difficult. In such contexts, the Commission believes that, as suggested by a commenter, an explanation of the benefit to the related party and the potential detriment to the pool may be sufficient. In other cases, a good faith estimate or a qualitative description of the potential negative impact on the pool may be sufficient. The fact that such transactions are entered into on a noncompetitive basis should also be highlighted. With respect to investee pools, the Commission does not believe that the three-level disclosure suggested by one of the commenters is warranted because Rule 4.24(k) applies to transactions or arrangements that directly involve, and that are material to, the offered pool.[172] Thus, in applying Rule 4.24(k) to investee pool transactions, pool operators may consider the extent of the pool's allocation of funds to an investee pool in assessing the materiality of a related party transaction.

7. Litigation: Rules 4.24(l) for CPOs and 4.34(k) for CTAs

As proposed, Rule 4.24(l) would have required disclosure of any material administrative, civil or criminal action within the preceding five years against the pool's CPO, trading manager (if any), major CTAs and operators of major

[169] Former Rule 4.21(h) and new Rule 4.24(w).

[170] Except for the language in parentheses, the paragraph is identical to the last paragraph of former Rule 4.31(a)(5)(i). The parenthetical language conforms to proposed Rule 4.24(j) for CPOs.

[171] *See* 59 F.R. 25351, 25365 n.67 for a discussion of the litigation involving Stotler Funds, Inc., as an illustration of the purpose of this requirement.

[172] Moreover, as adopted, the revised rules do not retain the proposed three-level disclosure framework for past performance disclosures.

investee pools, any principal of the foregoing, and the pool's FCMs and IBs (if any). Disclosure of actions that were concluded by adjudication on the merits in favor of the listed persons would not have been required. Proposed Rule 4.33(k) would have required similar disclosure with respect to the CTA and with respect to the FCM and IB required to be used by the CTA's client.

Former Rule 4.21(a)(13) required disclosure of any action against a pool's CPO, CTA, FCM, IB or any of their principals within five years preceding the Document date without regard to the outcome. Former Rule 4.31(a)(7) required similar disclosure with respect to the CTA, any FCM or IB the client is required to use, and any principal of those persons. If there had been no actions against any of the listed persons, the former rules required a statement to that effect.

In addition to eliminating the requirement to disclose actions resolved on the merits in favor of one of the identified persons, the proposed rules would have substantially reduced required litigation disclosures concerning FCMs and IBs. First, the basic determinant of whether FCM or IB litigation would be material would be the extent of potential impact of the proceeding upon the FCM or IB, unless the proceeding were brought by the Commission or another regulatory or self-regulatory organization. The proceeding would be disclosable only if it would be required to be disclosed in the notes to the FCM's or IB's financial statements prepared pursuant to generally accepted accounting principles.[173] Disclosure of actions brought by the Commission and other regulatory agencies was also proposed to be streamlined. Commission actions would have been deemed material except for concluded actions which did not result in civil monetary penalties exceeding $50,000 and did not involve allegations of fraud or willful misconduct or which was adjudicated on the merits in favor of the specified person. Actions brought by other federal or state regulatory agencies or domestic or foreign self-regulatory organizations would have been required to be disclosed either if they were required to be disclosed in the notes to financial statements as discussed above or if they involved allegations of fraud or willful misconduct. Proposed Rule 4.24(*l*) also would expressly have required disclosure of litigation against a pool's trading manager, if any, and its principals, a requirement previously encompassed within the former requirement for disclosure of litigation against CTAs.

Proposed Rules 4.24(*l*) and 4.33(k) thus represented a reduction of required litigation disclosure, particularly with respect to FCMs and IBs. The scope of previously required litigation disclosures as to CTAs would have been limited under proposed Rule 4.24(*l*) to major, as opposed to all, CTAs for the pool, and only litigation against operators of major investee pools would be included.[174] Litigation involving FCM and IB principals was not included in the proposed rule.

Commenters generally supported the proposed changes but suggested certain further revisions. One commenter urged that *all* Commission and other regulatory matters concluded favorably with respect to the respondent (whether or not involving allegations of fraud or willful conduct) should be considered *not* material. Several commenters contended that litigation against FCMs is immaterial because such litigation generally does not jeopardize customer funds and virtually all FCMs have been subject to litigated customer claims. One commenter stated that only litigation required to be disclosed in the FCM's financial statements (and not the regulatory matters required by Rule 4.24(*l*)(2) (ii) and (iii)) is material and should be required in CPO and CTA Documents. Other commenters contended that CPOs and CTAs must rely upon the FCM to furnish its litigation history and are unable to verify independently the information that is provided. Consequently, commenters recommended, variously, that litigation disclosures be limited to those actions against an FCM that the FCM reasonably believes are likely to have a material adverse effect on the FCM's ability to provide brokerage services to the pool or managed account program or upon the investor's decision to place his funds with that FCM, or actions *actually* disclosed in an FCM's or IB's financial statements. Another commenter asserted that the impact of the litigation disclosure requirement upon funds-of-funds is unclear.

The Commission is adopting Rules 4.24(*l*) and 4.33(k) as proposed (renumbering proposed Rule 4.33(k) as 4.34(k)) with the exception that the rule is clarified to make explicit that actions involving an FCM or IB brought by a non-United States regulatory agency and involving allegations of fraud or willful misconduct will be considered material. The requirement to disclose actions that would be required to be disclosed in an FCM's or IB's financial statements is being retained. Since FCMs carry funds of the pool or managed account, their financial status and reliability are matters of material importance to prospective investors.

Except for events occurring subsequent to the issuance of the latest certified financial statements, litigation required to be disclosed would already have been disclosed in the FCM's or IB's latest certified financial statements. Generally, the CPO or CTA will be able to rely, under a reasonable diligence standard, upon these pre-existing disclosures as to matters covered by such statements. A CPO should exercise reasonable diligence in determining which subsequent actions are required to be so disclosed. Generally, absent facts placing the CPO or CTA on notice of special circumstances, the CPO or CTA should be able to rely upon representations by the FCM or IB as to what litigation is required to be disclosed in the firm's financial statements.

Actions brought by the Commission are treated differently from those brought by other regulatory agencies due to the presumptively greater relevance of such actions to the investment decision being made. All actions brought by the Commission are considered material other than concluded actions that did not result in civil monetary penalties exceeding $50,000 and did not involve allegations of fraud or other willful misconduct or which were adjudicated on the merits in favor of the specified person. Actions brought by any other federal or state agency, by a non-United States regulatory agency or by a self-regulatory organization, whether domestic or foreign, are material if they involve allegations of fraud or other willful misconduct. In all cases, subject to the general materiality standard, concluded actions resulting in an adjudication on the merits in favor of such persons would not be required to be disclosed.

As in the case of other provisions of the final rules, Rule 4.24(*l*) provides parallel treatment of litigation against CTAs for the pool and the operators of

[173] Proposed Rules 4.24(*l*)(2)(i) and 4.33(k)(2)(i). Under generally accepted accounting principles, certain information regarding litigation must be disclosed if the potential of a financial loss from the litigation is either probable (*i.e.*, likely to occur) or reasonably possible (more than remote but less than likely). *See* ACCOUNTING FOR CONTINGENCIES, Statement of Financial Accounting Standard No. 5, (Financial Accounting Standards Board, 1975) relating to disclosure of contingencies, including litigation.

[174] *See* Rules 4.10(i) and (d)(5), which define the terms ''major commodity trading advisor'' and ''major investee pool.'' Of course, as noted above with respect to conflicts of interest on the part of FCM and IB pricnipals, the requirement to disclose all material information may require disclosure of litigation involving persons not expressly designated in the rules.

investee pools. Subject to the general materiality standard of Rule 4.24(w),[175] disclosure of litigation against non-major CTAs and investee pool operators would not be required by Rule 4.24(*l*). Litigation against the FCM and IB for investee funds, absent special circumstances, would not be required to be disclosed.

8. Principal-Protected Pools: Rule 4.24(o) for CPOs[176]

Proposed Rule 4.24(*o*) would have set forth minimum disclosures relevant to so-called ''guaranteed pools,'' which the Proposing Release termed ''limited risk pools.'' Generally, Proposed Rule 4.24(*o*) would have codified Commission Advisory 86–1[177] by requiring the CPO of a ''limited risk pool'' to describe the nature of the limitation on risk intended to be provided, the manner in which the limitation would be achieved, including the cost of providing it, the conditions to be satisfied in order for participants to receive the benefits of the risk limitation and the circumstances in which the risk limitation would become operative.[178] Proposed Rule 4.24(*o*) would also have required the CPO to include in the break-even analysis required by Rule 4.24(i)(6) disclosure of the cost of establishing and maintaining the risk limitation, expressed as a percentage of the price of a unit of participation in the pool.

The Commission noted in the Proposing Release the proliferation of so-called ''guaranteed pools,'' which are designed to assure participants the return of their initial investment, generally by committing a substantial portion of the assets of the pool to interest-bearing instruments or comparable investments in order to fund the guarantee feature. As noted, such ''guarantee'' structures generally impose costs which limit the potential for return on futures transactions and other types of investment returns, are often subject to significant restrictions, for example, that the participant maintain his investment in the fund for a specified period of years in order to realize on the guarantee, and are subject to the risk of nonfulfillment due to various causes. Consequently, in the past, representations in pool Disclosure Documents concerning various types of guarantee structures have been carefully scrutinized and guidance has been provided by advisory concerning material disclosures that should be made to prospective investors in pools with ''guarantee'' structures.[179] Proposed Rule 4.24(*o*) was designed to codify these specific minimum disclosures concerning ''guarantee'' structures.

The principal comment offered on this provision of the proposed rules was that the term ''limited risk pool'' proposed to be used in Rule 4.24(*o*) was potentially confusing in that most commodity pools are limited partnerships in which the risk to investors is to some degree limited no matter what other measures are taken. A variety of substitute terms were proposed, including ''capital protected pools'' and ''principal return guaranteed pools.'' Other than the comments on the proposed ''limited risk pool'' term, the Commission did not receive any specific comments on proposed Rule 4.24(*o*).

The Commission has determined to substitute the term ''principal-protected pool'' for ''limited risk pool,'' and otherwise to adopt Rule 4.24(*o*) as proposed. As discussed above, ''principal-protected pool'' is defined in Rule 4.10(d)(3) to mean ''a pool (commonly referred to as a ''guaranteed pool'') that is designed to limit the loss of the initial investment of its participants.'' The Commission agrees that use of the ''limited risk'' terminology of the proposal could be confusing to investors and that ''principal-protected'' better distinguishes pools supported by a guarantee feature from those that are not.

As adopted, Rule 4.24(*o*) requires that the CPO describe the nature of the contemplated principal protection feature, disclosing the manner by which protection of principal will be achieved, sources of funding for the protection feature, conditions that must be satisfied for participants to receive the benefits of the protection feature, and when the protection feature becomes operative. The rule also specifies that the costs of purchasing and carrying assets necessary to fund the principal protection feature be included in the break-even analysis required by Rule 4.24(i)(6), expressed as a percentage of the price of a unit of participation. Rule 4.24(*o*) is intended to supersede the specific disclosures set forth in Advisory 86–1. However, Advisory 86–1 may continue to be helpful in constructing disclosures under 4.24(*o*), as well as providing insight into the purposes of this provision. Further, CPOs are reminded of the admonition in Advisory 86–1 that ''(a)ny statements that suggest that the risks of futures trading are decreased by reason of this structure have a high potential to mislead or deceive and could result in serious violations of the Commission's regulations and anti-fraud provisions.''

C. Supplemental and Voluntary Disclosures: Rules 4.24(v) for CPOs and 4.34(n) for CTAs [180]

A frequent complaint concerning commodity pool Disclosure Documents is that in many cases the disclosure process fails to achieve its intended purpose due to the high volume of information, much of which is beyond the scope of Commission requirements, included in the Disclosure Document. To address this concern, the Commission proposed a format for Disclosure Documents under which disclosures that are ''volunteered'' would be required to be placed after all relevant required disclosures. Specifically, proposed Rules 4.24(v) and 4.33(n) would have required all information, other than that required by the Commission,[181] the antifraud provisions of the Act, and any federal or state securities laws and regulations, to be placed ''following the related required disclosures, unless otherwise specified in this rule.'' Additionally, such information could not have been misleading in content or presentation or inconsistent with required disclosures, and it would be subject to the anti-fraud provisions of the Act[182] and the regulations thereunder, and to rules regarding the use of promotional material promulgated by a registered futures association pursuant to section 17(j) of the Act. Essentially, Proposed

[175] Former Rule 4.21(h).

[176] Former Rule 4.21 did not specifically address disclosures relative to principal-protected pools.

This section also discusses Rule 4.10(d)(3), which defines the term ''principal-protected pool.'' *See, also* Rule 4.24(i)(xi), which requires disclosures of costs arising from the guarantee of a principal-protected pool.

[177] (1986–1987 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶23,035 (April 25, 1986).

[178] Rule 4.24(p), which deals with transferability and redemption, requires a description of restrictions on redemption associated with the pool's investments. The Commission intends that this discussion include a description of any restrictions on transferability and redemption due to use of pool funds to support a guarantee or principal protection feature and of any restrictions upon vesting of such guarantee or principal protection feature.

[179] *See, e.g.*, Advisory 86–1 (1986–1987 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶23,035 (April 25, 1986), cited previously.

[180] The Commission's former disclosure rules did not specifically address supplemental and voluntary disclosures.

[181] Commission-required disclosures include information required by former Rules 4.21(h) (renumbered as Rule 4.24(w) for CPOs)) and 4.31(g) (renumbered as Rule 4.34(*o*) for CTAs)). As noted above, these rules require CPOs and CTAs to disclose all material information to existing and prospective pool participants and clients even if the information is not specifically required by Commission rules.

[182] *See* sections 4b and 4*o* of the Act.

Rules 4.24(v) and 4.33(n) were designed to assure that core disclosures required under Commission and other rules and statutes are given due prominence and that focus upon these matters is not displaced by the often voluminous material gratuitously included in the Disclosure Document.

The comments received by the Commission indicated significant confusion regarding the meaning and operation of proposed Rules 4.24(v) and 4.33(n). Commenters asserted that it was unclear where various types of voluntary information would be required (or permitted) to be placed. They noted the potential for scattering of related items in different portions of a Disclosure Document, when clarity would be fostered by placing non-required information adjacent to the required information to which it relates. Also, commenters claimed that, in essence, by designating information as ''voluntary,'' registrants would be declaring that such information was not material or important, when in fact such information may be necessary to explain or clarify required disclosures. Commenters also noted that it is often difficult to determine what information is mandated by law or regulation and what is merely advisable to include.

The Commission has adopted Rules 4.24(v) and 4.33(n) (renumbered as 4.34(n)) with the following modifications. The word ''voluntary'' has been replaced in the rule heading with ''supplemental,'' and the rules as adopted distinguish among supplemental performance disclosures (which must be placed after the last required performance disclosure), supplemental information with respect to required non-performance disclosures (which may be placed after or within the text of the corresponding required disclosures), and supplemental information which relates neither to the performance nor the non-performance disclosures required by Commission rules, federal or state laws and regulations, self-regulatory agency regulations or laws of non-United States jurisdictions (which must be placed after the last required disclosure).

As proposed, Rules 4.24(v) and 4.33(n) referred to disclosures required, *inter alia*, by federal or state securities laws or regulations. The modifier ''securities'' has been deleted from the final rules to take account of the potential applicability of other bodies of law. Further, as adopted, the required disclosures from which supplemental information is distinguished by Rules 4.24(v) and 4.34(n) include information required by applicable laws of a non-United States jurisdiction. Rules 4.24(v) and 4.34(n) as adopted, treat supplemental performance and non-performance information differently due to the extensive specific requirements of Commission rules with respect to performance data and the high susceptibility of performance data to use in a misleading manner. Thus, the entire required performance presentation must precede any supplemental performance data.[183] However, required volatility disclosure, for example, supplemental disclosure to indicate high monthly volatility for a CTA whose performance is otherwise required to be provided only on an annual basis, is expressly permitted to be included with the related performance disclosure. Supplemental non-performance information that relates to a disclosure required by Commission rules may be included in the text of or immediately following the related required disclosure, provided that the required disclosure is not thereby obscured or made less prominent. Other supplemental information must follow the last required disclosure, except that proprietary, hypothetical, extracted, pro forma (except as previously discussed)[184] or simulated trading results, because of their inherent lack of reliability and high potential to mislead, must be placed at the end of the Disclosure Document following all other information.[185]

VII. Other Changes

A. Deletion of Negative Disclosures

The Commission proposed to eliminate certain statements which the former rules had required registrants to include if there was no affirmative response to a particular disclosure requirement (*e.g.*, a statement that no material actions had been brought against the CPO in the preceding five years). Although many commenters generally approved of the Commission's efforts to eliminate excessive and burdensome required statements, none of the comments received specifically addressed these proposed changes.

As adopted, the revised disclosure rules thus no longer require CPOs or CTAs to make the following types of statements, as applicable: That there are no actual or potential conflicts of interest regarding any aspect of the pool or trading program on the part of certain persons;[186] that certain persons do not own any beneficial interest in the pool;[187] that there is no minimum or maximum amount of contributions or maximum amount of time pool funds will be held prior to trading;[188] that there are no restrictions on transfer or redemptions of participations;[189] that no material actions have been brought within the past five years against certain persons;[190] and that certain persons will not trade for their own accounts.[191] There remain requirements for affirmative, positive related disclosures on these subjects, as applicable.

B. Use, Amendment and Filing of Disclosure Documents: Rules 4.26 for CPOs and 4.36 for CTAs

As proposed, Rules 4.26 and 4.35, which govern the use, amendment and filing of Disclosure Documents, would have retained, substantially unchanged, the requirements of the former rules, with one exception.[192] The Commission proposed to extend the length of time that a Disclosure Document could have been used following the date thereof from six to nine months. As the Commission noted in the Proposing Release, this would conform the updating requirements of pool Disclosure Documents to those of section 10(a)(3) of the Securities Act for public securities offerings.[193] Thus,

[183] The Commission does not consider footnotes and explanatory text,if any, directly related to a required performance presentation to be supplemental performance disclosures and thus they should be included with the required performance.

[184] *See* discussion in Section V.C.3., *supra*, concerning required pro forma adjustments.

[185] *See* Rules 4.25(a)(8) for CPOs and 4.35(a)(7) for CTAs. The Commission is not specifying the order of presentation as among proprietary, hypothetical, extracted, pro forma or simulated trading results.

[186] *See* former Rules 4.21(a)(3)(iii) and 4.31(a)(5)(iii).

[187] *See* former Rule 4.21(a)(6)(ii).

[188] *See* former Rules 4.21(a)(8)(i)(B), 4.21(a)(8)(ii)(B) and 4.21(a)(8)(iii)(B).

[189] *See* former Rule 4.21(a)(10)(ii)(C)(*2*).

[190] *See* former Rules 4.21(a)(13)(ii) and 4.31(a)(7)(ii).

[191] *See* former Rules 4.21(a)(15)(iii) and 4.31(a)(6)(iii).

[192] Proposed Rule 4.26 would have combined the requirements of former Rules 4.21 (b), (e), (f) and (g), which, respectively, required correction of material inaccuracies or omissions in a Disclosure Document, specified how current the performance and non-performance information must be and how long a Disclosure Document could be used, required attachment of the current Account Statement and Annual Report, and specified the filing requirements for CPO Disclosure Documents. Proposed Rule 4.35 would have combined the requirements of former Rules 4.31 (b), (e) and (f), which, respectively, required correction of material inaccuracies or omissions in a Disclosure Document, specified how current the performance and non-performance information must be and how long a Disclosure Document could be used, and specified the filing requirements for CTA Disclosure Documents.

[193] 59 FR 25351, 25367. Section 10(a)(3) of the Securities Act (15 U.S.C. 77j(a)(3)) requires that when a securities prospectus is used more than nine months after the effective date of the registration statement, information contained therein may not be as of a date more than sixteen

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these rules would have continued to address the currentness of a Disclosure Document and the information therein, corrections, filing and, in the case of CPOs, attachment of the most recent Account Statement and Annual Report to pool Disclosure Documents.

Two commenters questioned whether it was appropriate to adopt a nine-month standard from Securities Act Section 10(a)(3), and recommended instead an annual updating schedule. One commenter objected to maintaining the former rules' requirement to deliver a current Account Statement with the Disclosure Document, contending that in a medium- to long-term investment, monthly account statements are not material and that the requirements to attach the most recent Account Statement to thousands of prospectuses distributed to various branch offices presents substantial compliance problems.[194]

Rules 4.26 and 4.35 are being adopted generally as proposed, with Rule 4.35 renumbered as 4.36. With respect to the comments favoring a one-year updating cycle for Disclosure Documents, the Commission notes that since performance information need only be current as of a date three months prior to the Disclosure Document date, extending the updating requirement to nine months means that the performance information in the Disclosure Document may be as much as a year old. The Commission believes that further extending the updating cycle to twelve months is unwarranted, and that the purpose of the proposed revisions to permit updating on a nine-month cycle, *i.e.*, harmonization with the SEC update cycle, is achieved by adoption of the update provisions as proposed.

The Commission notes that Disclosure Document amendments are not subject to the twenty-one day prefiling requirement, but may be used simultaneously with their filing with the Commission, *i.e.,* not more than twenty-one days after the date on which the CPO or CTA first knows or has reason to know that the Disclosure Document is materially inaccurate or incomplete. In response to a commenter's request for clarification, the Commission also is confirming that an offering memorandum distributed pursuant to Rule 4.12(b) must be updated in the same manner as a Disclosure Document.

In response to the comment concerning the difficulty of, and lack of benefit from, including the current Account Statement with the Disclosure Document, the Commission notes that the information contained in the Account Statement provides a prospective participant with relevant current information, particularly with respect to the pool's performance, that is not available in the Disclosure Document. The requirement to provide the most recent monthly Account Statement is a means of assuring that prospective investors receive recent data concerning the pool's performance. This requirement, coupled with the duty to provide material information to prospective investors, should assure that prospective investors receive timely information concerning the pool's performance as necessary to balance the potentially stale performance data in the Disclosure Document. If it would be misleading not to disclose performance information for the period subsequent to that reflected in the Disclosure Document but prior to the Account Statement, the CPO may be required to provide additional information. In light of the new nine-month update cycle, pool operators should exercise special caution in assuring that sufficient additional information is provided to investors concerning performance volatility occurring subsequent to the period covered in the Disclosure Document. The Commission does not agree with the view expressed by the commenter that monthly data are not material to prospective pool participants. The importance of such current data will in fact be heightened under these rules, given the extension of the update cycle to nine months rather than six months.

The Commission believes that the purpose of the requirement to attach the most recent Account Statement may, however, be accomplished by other methods and has provided in the final rules an alternative procedure to attachment of the Account Statement to the Disclosure Document. Under the alternative procedure, in lieu of attaching the most recent monthly Account Statement to the Disclosure Document, the pool operator would provide performance information for the pool (which may be, but is not required to be, set forth in the form of a monthly Account Statement) current as of a date not more than sixty days prior to the date on which the Disclosure Document is provided to the prospective participant and covering the period since the most recent performance data contained in the Disclosure Document. Of course, any material changes in the pool's performance would require supplementation of the Disclosure Document.

In response to another commenter's request for clarification, the Commission is confirming that a CPO need not (1) file the most current Account Statement for a pool unless it is being used as an amendment to the pool's Disclosure Document; (2) include the most current Account Statement and Annual Report with a Disclosure Document amendment prior to filing such amendment with the Commission; or (3) physically attach the most current Account Statement and Annual Report to a Disclosure Document amendment prior to distributing the amendment to investors—inclusion in the same package is sufficient. When an amendment is distributed to existing pool participants, the CPO need not include the latest Annual Report and Account Statement (provided the existing participants have been receiving such reports on a timely basis). If a Disclosure Document amendment is distributed to previously solicited *prospective* investors, however, the most recent Annual Report and Account Statement must be included.

C. Disclosure Document Delivery Requirements

As proposed, Rules 4.21 and 4.31 would have retained, respectively, only paragraphs (a) and (d) of former Rules 4.21 and 4.31. In each case, paragraph (a) was the requirement for delivery of a Disclosure Document at or before the time of solicitation, and paragraph (d) was the requirement that a signed acknowledgment of receipt of the Disclosure Document be obtained. The requirements specified in former Rules 4.21(a) and (d) and former Rules 4.31(a) and (d) were left intact in the proposed revisions, except that CPOs would have been permitted to use summary offering materials in certain circumstances.

1. Notice of Intended Offering and Term Sheet

Proposed Rule 4.21(a) would have permitted CPOs to provide prospective participants who are accredited

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months prior to such use if the information is known and can be furnished without unreasonable effort or expense.

[194] Another commenter sought guidance (or a safe harbor) with respect to the level of investee pool changes or reallocations which trigger the need to update performance information and/or the Disclosure Document for a fund-of-funds (suggesting a quarterly performance update). *But see* Rule 4.8, which provides specified relief from the pre-filing requirement for CPOs who operate pools of the nature specified therein. Further, as discussed above, whether a given investee pool allocation or reallocation is material depends upon the particular factual circumstances of the pool, including the overall frequency and significance of such changes. Thus, for example, in a dynamically allocated multi-advisor pool with multiple monthly CTA changes, the likelihood of a given CTA change being material is less than in a pool with fewer advisors and less frequent reallocations.

investors as defined in Rule 501 of Regulation D under the Securities Act[195] with a notice of intended offering and term sheet prior to delivery of the Disclosure Document, subject to rules promulgated by a registered futures association pursuant to Section 17(j) of the Act. This provision was intended to facilitate the offering of pools that qualify for relief from registration under the Securities Act as private offerings.

One commenter called the proposed change a worthwhile advance. Most commenters on the proposed provision urged that its coverage be expanded. Two commenters suggested that a CPO should be able to deliver a term sheet to a person who is not an accredited investor, so long as a Disclosure Document was delivered, ultimately or within a ''reasonable time.'' Several commenters urged that CTAs be permitted to use term sheets and notices of intended offerings to solicit accredited investors. Another commenter stated that the proposed amendment to Rule 4.21 would provide no additional relief beyond that already provided by Rule 4.8 and sought both clarification whether a Disclosure Document must still be provided to the recipient of a term sheet and inclusion in the rule itself of the requirement (if any) that the term sheet be filed.

The Commission has determined to adopt Rule 4.21 as proposed. The Commission believes that extending the use of term sheets to non-accredited investors is not appropriate at this time and that such investors should receive the full protection of the disclosure rules to make an informed decision about participating in a pool. The Commission is also declining to permit CTAs to employ a procedure comparable to the use of a notice of intended offering and term sheet. The purpose of allowing the use of this type of short-form solicitation in the case of a pool offering is to permit a simple statement of basic terms to be provided in lieu of an often lengthy pool Disclosure Document. The relative brevity and simplicity of CTA Disclosure Documents do not at this time appear to warrant establishment of a comparable procedure. The Commission confirms that a Disclosure Document must be provided to the recipient of a term sheet and that the term sheet is not required to be filed.

2. Acknowledgment of Disclosure Document

The Commission also sought comment on whether the requirement that CPOs and CTAs must receive from a prospective investor a signed and dated acknowledgment continues to be necessary. Three commenters proposed that, in the case of pools, the requirement be permitted to be satisfied if an acknowledgment is included in the subscription documents, with one such commenter suggesting that such an acknowledgment need not include the date of the Disclosure Document in order to permit use of the subscription documents throughout the offering, asserting that a blank left for the Disclosure Document date would likely be overlooked. The Commission confirms that an acknowledgment may be included in the subscription documents for a pool, provided that the text of the acknowledgment is prominently captioned and distinguished from the subscription agreement and that there is a separate line for the acknowledgment signature and date thereof. The Commission notes that the required provision of a date imposes a minimal burden, if any at all, protects the interests of both the CPO and the participant and is a critical component of the pool's audit trail.

D. Conforming Changes

The Proposing Release contained a number of changes to conform cross-references in the text of various Commission rules to the new section numbering within part 4, which changes are being adopted. The rules so affected are Rules 4.12, 4.21, 4.23, 4.32 (renumbered as 4.33), 30.6 and 150.3. One commenter pointed out that cross references in Rule 4.7 to former Rules 4.21 and 4.31 required amendment to conform with the reorganization and separate designation of certain provisions of former Rules 4.21 and 4.31. The Commission has revised Rule 4.7 accordingly, and has also revised Rule 4.8 to conform cross-references to the revised rule numbers.

VIII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments discussed herein will affect registered CPOs and CTAs. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[196] The Commission previously has determined that registered CPOs are not small entities for the purpose of the RFA.[197] With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule.[198]

The revised rules reduce rather than increase the requirements of former Rule 4.21 for CPOs and the requirements of former Rule 4.31 for CTAs. The revised rules significantly decrease the amount of past performance and other information required to be disclosed by CPOs and CTAs, and Disclosure Documents may be used for nine months rather than six months. The Commission has adopted in the final revised rules further reductions in disclosure requirements from the proposed revisions (*e.g.*, permitting CTAs to use the new capsule format for presenting the past performance of the offered pool).

In certifying pursuant to section 3(a) of the RFA that the proposed revisions to the part 4 CPO and CTA disclosure rules would not have a significant economic impact on a substantial number of small entities, the Commission invited comments from any CPO or CTA who believed that the proposed revisions, if adopted, would have a significant economic impact on their activities. No such comments were received on the proposed revisions.

Accordingly, pursuant to Rule 3(a) of the RFA (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certifies that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, (''PRA'') 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted these proposed rule amendments and the associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection, including these rules, is as follows:

Average burden hours per response.	124.65

[195] 17 CFR 230.501 (1994).

[196] 47 FR 18618–18621 (April 30, 1982).

[197] 47 FR 18619–18620.

[198] 47 FR 18618–18620.

Number of respondents	3,924
Frequency of response	On occasion

The burden associated with these specific rules, is as follows:

Average burden hours per response.	8.05
Number of respondents	1,162
Frequency of response	On occasion

Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance officer, 2033 K Street, NW, Washington, DC 20581, (202) 254–9735.

List of Subjects

17 CFR Part 1

Consumer protection, Risk disclosure statements.

17 CFR Part 4

Brokers, Commodity futures, Commodity pool operators and commodity trading advisors.

17 CFR Part 30

Commodity futures, Consumer protection, Foreign futures and foreign options transactions.

17 CFR Part 150

Commodity futures, Limits on positions.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 2(a)(1), 4b, 4c, 4l, 4m, 4n, 4o, and 8a, 7 U.S.C. 2, 6b, 6c, 6l, 6m, 6n, 6o, and 12a, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

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

2. Section 1.55 is amended by adding paragraph (a)(1)(iii) to read as follows:

§ 1.55 Distribution of ''Risk Disclosure Statement'' by futures commission merchants and introducing brokers.

(a)(1) * * *

(iii) Solely for purposes of this section, a pool operated by a commodity pool operator registered under the Commodity Exchange Act or exempt from such registration need not be treated as a customer.

* * * * *

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

Subpart A—General Provisions, Definitions and Exemptions

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

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a and 23.

§ 4.7 [Amended]

4. In § 4.7, paragraph (a)(2)(i)(A) is amended by removing the reference ''§ 4.21'' and by adding the reference ''§§ 4.21, 4.24, 4.25 and 4.26'' in its place.

§ 4.7 [Amended]

5. In § 4.7, paragraph (a)(4) is amended by removing the reference ''§§ 4.21, 4.22 or 4.23'' and by adding the reference ''§§ 4.21, 4.22, 4.23, 4.24, 4.25 or 4.26'' in its place.

§ 4.7 [Amended]

6. In § 4.7, paragraph (b)(2)(i)(A) is amended by removing the reference ''§ 4.31'' and by adding the reference ''§§ 4.31, 4.34, 4.35 and 4.36'' in its place.

§ 4.7 [Amended]

7. In § 4.7, paragraph (b)(4) is amended by removing the reference ''§§ 4.31 or 4.32'' and by adding the reference ''§§ 4.31, 4.33, 4.34, 4.35 or 4.36'' in its place.

§ 4.8 [Amended]

8. In § 4.8, the section heading is amended by removing the reference to ''rules 4.21'' and by adding the reference ''rule 4.26'' in its place.

§ 4.8 [Amended]

9. In § 4.8, paragraphs (a) and (b) are amended by removing the reference ''paragraph (g) of § 4.21'' and by adding the reference ''paragraph (d) of § 4.26'' in its place.

10. Section 4.10 is amended by designating paragraph (d) as paragraph (d)(1), by adding new paragraphs (d)(2), (d)(3), (d)(4), (d)(5), (h), (i), (j), (k) and (*l*), and by revising paragraph (e) to read as follows:

§ 4.10 Definitions.

* * * * *

(d)(1) *Pool* means any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.

(2) *Multi-advisor pool* means a pool in which:

(i) No commodity trading advisor is allocated or intended to be allocated more than twenty-five percent of the pool's funds available for commodity interest trading; and

(ii) No investee pool is allocated or intended to be allocated more than twenty-five percent of the pool's net asset value.

(3) *Principal-protected pool* means a pool (commonly referred to as a ''guaranteed pool'') that is designed to limit the loss of the initial investment of its participants.

(4) *Investee pool* means any pool in which another pool or account participates or invests, *e.g.*, as a limited partner thereof.

(5) *Major investee pool* means, with respect to a pool, any investee pool that is allocated or intended to be allocated at least ten percent of the net asset value of the pool.

(e)(1) *Principal,* when referring to a person that is a principal of a particular entity, means:

(i) Any person including, but not limited to, a sole proprietor, general partner, officer or director, or person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of the entity;

(ii) Any holder or any beneficial owner of ten percent or more of the outstanding shares of any class of stock of the entity; and

(iii) Any person who has contributed ten percent or more of the capital of the entity.

(2) ''Trading principal'' means:

(i) With respect to a commodity pool operator, a principal who participates in making trading decisions for a pool, or who supervises, or has authority to allocate pool assets to, persons so engaged; and

(ii) With respect to a commodity trading advisor, a principal who participates in making trading decisions for the account of a client or who supervises or selects persons so engaged.

* * * * *

(h) *Trading manager* means, with respect to a pool, any person, other than the commodity pool operator of the pool, having sole or partial authority to allocate pool assets to commodity trading advisors or investee pools.

(i) *Major commodity trading advisor* means, with respect to a pool, any commodity trading advisor that is allocated or is intended to be allocated at least ten percent of the pool's funds available for commodity interest trading. For this purpose, the percentage allocation shall be the amount of funds allocated to the trading advisor by agreement with the commodity pool operator (or trading manager) on behalf of the pool, expressed as a percentage of the lesser of the aggregate value of the assets allocated to the pool's trading advisors or the net assets of the pool at the time of allocation.

(j) *Break-even point:*

(1) Means the trading profit that a pool must realize in the first year of a participant's investment to equal all fees and expenses such that such participant will recoup its initial investment, as calculated pursuant to rules promulgated by a registered futures association pursuant to section 17(j) of the Act; and

(2) Must be expressed both as a dollar amount and as a percentage of the minimum unit of initial investment and assume redemption of the initial investment at the end of the first year of investment.

(k) *Draw-down* means losses experienced by a pool or account over a specified period.

(*l*) *Worst peak-to-valley draw-down* means the greatest cumulative percentage decline in month-end net asset value due to losses sustained by a pool, account or trading program during any period in which the initial month-end net asset value is not equaled or exceeded by a subsequent month-end net asset value. Such decline must be expressed as a percentage of the initial month-end net asset value, together with an indication of the months and year(s) of such decline from the initial month-end net asset value to the lowest month-end net asset value of such decline.[1] For purposes of §§ 4.25 and 4.35, a peak-to-valley draw-down which began prior to the beginning of the most recent five calendar years is deemed to have occurred during such five-calendar-year period.

11. Section 4.12 is amended by revising paragraphs (b)(2)(i) and (b)(5)(i) to read as follows:

§ 4.12 Exemption from provisions of part 4.

* * * * *

(b) * * *

(2) * * *

(i) In the case of § 4.21, that the Commission accept in lieu and in satisfaction of the Disclosure Document specified by that section an offering memorandum for the pool which does not contain the information required by §§ 4.24(a), 4.24(b), and 4.24(n); *Provided, however*, that the offering memorandum:

(A) Is prepared pursuant to the requirements of the Securities Act of 1933, as amended, or the exemption from said Act pursuant to which the pool is being offered and sold;

(B) Contains the information required by §§ 4.24(c) through (m) and (o) through (u); and

(C) Complies with the requirements of §§ 4.24(v) and (w).

* * * * *

(5)(i) If a claim of exemption has been made under § 4.12(b)(2)(i), the commodity pool operator must make a statement to that effect on the cover page of each offering memorandum, or amendment thereto, that it is required to file with the Commission pursuant to § 4.26.

* * * * *

Subpart B—Commodity Pool Operators

12. Section 4.21 is revised to read as follows:

§ 4.21 Required delivery of pool Disclosure Document.

(a) No commodity pool operator registered or required to be registered under the Act may, directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective participant in a pool that it operates or that it intends to operate unless, on or before the date it engages in that activity, the commodity pool operator delivers or causes to be delivered to the prospective participant a Disclosure Document for the pool containing the information set forth in § 4.24; *Provided, however*, that where the prospective participant is an accredited investor, as defined in 17 CFR 230.501(a), a notice of intended offering and statement of the terms of the intended offering may be provided prior to delivery of a Disclosure Document, subject to compliance with rules promulgated by a registered futures association pursuant to section 17(j) of the Act.

(b) The commodity pool operator may not accept or receive funds, securities or other property from a prospective participant unless the pool operator first receives from the prospective participant an acknowledgment signed and dated by the prospective participant stating that the prospective participant received a Disclosure Document for the pool.

13. Section 4.23 is amended by revising paragraph (a)(3) to read as follows:

§ 4.23 Recordkeeping.

* * * * *

(a) * * *

(3) The acknowledgement specified by § 4.21(b) for each participant in the pool.

* * * * *

14. Sections 4.24, 4.25 and 4.26 are added to read as follows:

§ 4.24 General disclosures required.

Except as otherwise provided herein, a Disclosure Document must include the following information.

(a) *Cautionary Statement.* The following Cautionary Statement must be prominently displayed on the cover page of the Disclosure Document.

THE COMMODITY FUTURES TRADING COMMISSION HAS NOT PASSED UPON THE MERITS OF PARTICIPATING IN THIS POOL NOR HAS THE COMMISSION PASSED ON THE ADEQUACY OR ACCURACY OF THIS DISCLOSURE DOCUMENT.

(b) *Risk Disclosure Statement.* (1) The following Risk Disclosure Statement must be prominently displayed immediately following any disclosures required to appear on the cover page of the Disclosure Document as provided by the Commission, by any applicable federal or state securities laws and regulations or by any applicable laws of non-United States jurisdictions.

RISK DISCLOSURE STATEMENT

YOU SHOULD CAREFULLY CONSIDER WHETHER YOUR FINANCIAL CONDITION PERMITS YOU TO PARTICIPATE IN A COMMODITY POOL. IN SO DOING, YOU SHOULD BE AWARE THAT FUTURES AND OPTIONS TRADING CAN QUICKLY LEAD TO LARGE LOSSES AS WELL AS GAINS. SUCH TRADING LOSSES CAN SHARPLY REDUCE THE NET ASSET VALUE OF THE POOL AND CONSEQUENTLY THE VALUE OF YOUR INTEREST IN THE POOL. IN ADDITION, RESTRICTIONS ON REDEMPTIONS MAY AFFECT YOUR ABILITY TO WITHDRAW YOUR PARTICIPATION IN THE POOL.

FURTHER, COMMODITY POOLS MAY BE SUBJECT TO SUBSTANTIAL CHARGES FOR MANAGEMENT, AND ADVISORY AND BROKERAGE FEES. IT MAY BE NECESSARY FOR THOSE POOLS THAT ARE SUBJECT TO THESE CHARGES TO MAKE SUBSTANTIAL TRADING PROFITS TO AVOID DEPLETION OR EXHAUSTION OF THEIR ASSETS. THIS DISCLOSURE DOCUMENT CONTAINS A COMPLETE DESCRIPTION OF EACH EXPENSE TO BE CHARGED THIS POOL AT PAGE (insert page number) AND A STATEMENT OF THE PERCENTAGE RETURN NECESSARY TO BREAK EVEN, THAT IS, TO RECOVER THE AMOUNT OF YOUR INITIAL INVESTMENT, AT PAGE (insert page number).

THIS BRIEF STATEMENT CANNOT DISCLOSE ALL THE RISKS AND OTHER FACTORS NECESSARY TO EVALUATE

[1] For example, a worst peak-to-valley draw-down of ''4 to 8–92/25%'' means that the peak-to-valley draw-down lasted from April to August of 1992 and resulted in a twenty-five percent cumulative draw-down.

YOUR PARTICIPATION IN THIS COMMODITY POOL. THEREFORE, BEFORE YOU DECIDE TO PARTICIPATE IN THIS COMMODITY POOL, YOU SHOULD CAREFULLY STUDY THIS DISCLOSURE DOCUMENT, INCLUDING A DESCRIPTION OF THE PRINCIPAL RISK FACTORS OF THIS INVESTMENT, AT PAGE (insert page number).

(2) If the pool may trade foreign futures or options contracts, the Risk Disclosure Statement must further state:

YOU SHOULD ALSO BE AWARE THAT THIS COMMODITY POOL MAY TRADE FOREIGN FUTURES OR OPTIONS CONTRACTS. TRANSACTIONS ON MARKETS LOCATED OUTSIDE THE UNITED STATES, INCLUDING MARKETS FORMALLY LINKED TO A UNITED STATES MARKET, MAY BE SUBJECT TO REGULATIONS WHICH OFFER DIFFERENT OR DIMINISHED PROTECTION TO THE POOL AND ITS PARTICIPANTS. FURTHER, UNITED STATES REGULATORY AUTHORITIES MAY BE UNABLE TO COMPEL THE ENFORCEMENT OF THE RULES OF REGULATORY AUTHORITIES OR MARKETS IN NON-UNITED STATES JURISDICTIONS WHERE TRANSACTIONS FOR THE POOL MAY BE EFFECTED.

(3) If the potential liability of a participant in the pool is greater than the amount of the participant's contribution for the purchase of an interest in the pool and the profits earned thereon, whether distributed or not, the commodity pool operator must make the following additional statement in the Risk Disclosure Statement, to be prominently disclosed as the last paragraph thereof:

ALSO, BEFORE YOU DECIDE TO PARTICIPATE IN THIS POOL, YOU SHOULD NOTE THAT YOUR POTENTIAL LIABILITY AS A PARTICIPANT IN THIS POOL FOR TRADING LOSSES AND OTHER EXPENSES OF THE POOL IS NOT LIMITED TO THE AMOUNT OF YOUR CONTRIBUTION FOR THE PURCHASE OF AN INTEREST IN THE POOL AND ANY PROFITS EARNED THEREON. A COMPLETE DESCRIPTION OF THE LIABILITY OF A PARTICIPANT IN THIS POOL IS EXPLAINED MORE FULLY IN THIS DISCLOSURE DOCUMENT.

(c) *Table of contents.* A table of contents showing, by subject matter, the location of the disclosures made in the Disclosure Document must appear immediately following the Risk Disclosure Statement.

(d) *Information required in the forepart of the Disclosure Document.* (1) The name, address of the main business office, main business telephone number and form of organization of the pool. If the mailing address of the main business office is a post office box number or is not within the United States, its territories or possessions, the pool operator must state where the pool's books and records will be kept and made available for inspection;

(2) The name, address of the main business office, main business telephone number and form of organization of the commodity pool operator. If the mailing address of the main business office is a post office box number or is not within the United States, its territories or possessions, the pool operator must state where its books and records will be kept and made available for inspection;

(3) As applicable, a statement that the pool is:

(i) Privately offered pursuant to section 4(2) of the Securities Act of 1933, as amended (15 U.S.C. 77d(2)), or pursuant to Regulation D thereunder (17 CFR 230.501 *et seq.*);

(ii) A multi-advisor pool as defined in § 4.10(d)(2);

(iii) A principal-protected pool as defined in § 4.10(d)(3); or

(iv) Continuously offered. If the pool is not continuously offered, the closing date of the offering must be disclosed.

(4) The date when the commodity pool operator first intends to use the Disclosure Document; and

(5) The break-even point per unit of initial investment, as specified in § 4.10(j).

(e) *Persons to be identified.* The names of the following persons:

(1) Each principal of the pool operator;

(2) The pool's trading manager, if any, and each principal thereof;

(3) Each major investee pool, the operator of such investee pool, and each principal of the operator thereof;

(4) Each major commodity trading advisor and each principal thereof;

(5) Which of the foregoing persons will make trading decisions for the pool; and

(6) If known, the futures commission merchant through which the pool will execute its trades, and, if applicable, the introducing broker through which the pool will introduce its trades to the futures commission merchant.

(f) *Business background.* (1) The business background, for the five years preceding the date of the Disclosure Document, of:

(i) The commodity pool operator;

(ii) The pool's trading manager, if any;

(iii) Each major commodity trading advisor;

(iv) The operator of each major investee pool; and

(v) Each principal of the foregoing persons who participates in making trading or operational decisions for the pool or who supervises persons so engaged, including, without limitation, the officers and directors of such persons.

(2) The pool operator must include in the description of the business background of each person identified in § 4.24(f)(1) the name and main business of that person's employers, business associations or business ventures and the nature of the duties performed by such person for such employers or in connection with such business associations or business ventures. The location in the Disclosure Document of any required past performance disclosure for such person must be indicated.

(g) *Principal risk factors.* A discussion of the principal risk factors of participation in the offered pool. This discussion must include, without limitation, risks relating to volatility, leverage, liquidity, and counterparty creditworthiness, as applicable to the types of trading programs to be followed, trading structures to be employed and investment activity expected to be engaged in by the offered pool.

(h) *Investment program and use of proceeds.* The pool operator must disclose the following:

(1) The types of commodity interests and other interests which the pool will trade, including:

(i) The approximate percentage of the pool's assets that will be used to trade commodity interests, securities and other types of interests, categorized by type of commodity or market sector, type of security (debt, equity, preferred equity), whether traded or listed on a regulated exchange market, maturity ranges and investment rating, as applicable;

(ii) The extent to which such interests are subject to state or federal regulation, regulation by a non-United States jurisdiction or rules of a self-regulatory organization; (iii)(A) The custodian or other entity (*e.g.*, bank or broker-dealer) which will hold such interests; and

(B) If such interests will be held or if pool assets will be invested in a non-United States jurisdiction, the jurisdiction in which such interests or assets will be held or invested.

(2) A description of the trading and investment programs and policies that will be followed by the offered pool, and any material restrictions or limitations on trading required by the pool's organizational documents or otherwise. This description must include, if applicable, an explanation of the systems used to select commodity trading advisors, investee pools and types of investment activity to which pool assets will be committed;

(3)(i) A summary description of the pool's major commodity trading advisors, including their respective percentage allocations of pool assets, a description of the nature and operation of the trading programs such advisors will follow, including the types of interests traded pursuant to such programs, and each advisor's historical experience trading such program including material information as to volatility, leverage and rates of return and the length of time during which the advisor has traded such program;

(ii) A summary description of the pool's major investee pools or funds, including their respective percentage allocations of pool assets and a description of the nature and operation of such investee pools and funds, including for each investee pool or fund the types of interests traded, material information as to volatility, leverage and rates of return for such investee pool or fund and the period of its operation; and

(4)(i) The manner in which the pool will fulfill its margin requirements and the approximate percentage of the pool's assets that will be held in segregation pursuant to the Act and the Commission's regulations thereunder;

(ii) If the pool will fulfill its margin requirements with other than cash deposits, the nature of such deposits; and

(iii) If assets deposited by the pool as margin generate income, to whom that income will be paid.

(i) *Fees and expenses.* (1) The Disclosure Document must include a complete description of each fee, commission and other expense which the commodity pool operator knows or should know has been incurred by the pool for its preceding fiscal year and is expected to be incurred by the pool in its current fiscal year, including fees or other expenses incurred in connection with the pool's participation in investee pools and funds.

(2) This description must include, without limitation:

(i) Management fees;

(ii) Brokerage fees and commissions, including interest income paid to futures commission merchants;

(iii) Fees and commissions paid in connection with trading advice provided to the pool;

(iv) Fees and expenses incurred within investments in investee pools, investee funds and other collective investment vehicles, which fees and expenses must be disclosed separately for each investment tier;

(v) Incentive fees;

(vi) Any allocation to the commodity pool operator, or any agreement or understanding which provides the commodity pool operator with the right to receive a distribution, where such allocation or distribution is greater than a pro rata share of the pool's profits based on the percentage of capital contributions made by the commodity pool operator;

(vii) Commissions or other benefits, including trailing commissions paid or that may be paid or accrue, directly or indirectly, to any person in connection with the solicitation of participations in the pool;

(viii) Professional and general administrative fees and expenses, including legal and accounting fees and office supplies expenses;

(ix) Organizational and offering expenses;

(x) Clearance fees and fees paid to national exchanges and self-regulatory organizations;

(xi) For principal-protected pools, any direct or indirect costs to the pool associated with providing the protection feature, as referred to in paragraph (o)(3) of this section; and

(xii) Any other direct or indirect cost.

(3) Where any fee, commission or other expense is determined by reference to a base amount including, but not limited to, ''net assets,'' ''allocation of assets,'' ''gross profits,'' ''net profits,'' or ''net gains,'' the pool operator must explain how such base amount will be calculated, in a manner consistent with calculation of the break-even point.

(4) Where any fee, commission or other expense is based on an increase in the value of the pool, the pool operator must specify how the increase is calculated, the period of time during which the increase is calculated, the fee, commission or other expense to be charged at the end of that period and the value of the pool at which payment of the fee, commission or other expense commences.

(5) Where any fee, commission or other expense of the pool has been paid or is to be paid by a person other than the pool, the pool operator must disclose the nature and amount thereof and the person who paid or who is expected to pay it.

(6) The pool operator must provide, in a tabular format, an analysis setting forth how the break-even point for the pool was calculated. The analysis must include all fees, commissions and other expenses of the pool, as set forth in § 4.24(i)(2).

(j) *Conflicts of interest.* (1) A full description of any actual or potential conflicts of interest regarding any aspect of the pool on the part of:

(i) The commodity pool operator;

(ii) The pool's trading manager, if any;

(iii) Any major commodity trading advisor;

(iv) The commodity pool operator of any major investee pool;

(v) Any principal of the persons described in paragraphs (k)(1) (i), (ii), (iii) and (iv) of this section; and

(vi) Any other person providing services to the pool or soliciting participants for the pool.

(2) Any other material conflict involving the pool.

(3) Included in the description of such conflicts must be any arrangement whereby a person may benefit, directly or indirectly, from the maintenance of the pool's account with the futures commission merchant or from the introduction of the pool's account to a futures commission merchant by an introducing broker (such as payment for order flow or soft dollar arrangements) or from an investment of pool assets in investee pools or funds or other investments.

(k) *Related party transactions.* A full description, including a discussion of the costs thereof to the pool, of any material transactions or arrangements for which there is no publicly disseminated price between the pool and any person affiliated with a person providing services to the pool.

(l) *Litigation.* (1) Subject to the provisions of § 4.24(l)(2), any material administrative, civil or criminal action, whether pending or concluded, within five years preceding the date of the Document, against any of the following persons; *Provided, however,* that a concluded action that resulted in an adjudication on the merits in favor of such person need not be disclosed:

(i) The commodity pool operator, the pool's trading manager, if any, the pool's major commodity trading advisors, and the operators of the pool's major investee pools;

(ii) Any principal of the foregoing; and

(iii) The pool's futures commission merchants and introducing brokers, if any.

(2) With respect to a futures commission merchant or an introducing broker, an action will be considered material if:

(i) The action would be required to be disclosed in the notes to the futures commission merchant's or introducing broker's financial statements prepared pursuant to generally accepted accounting principles;

(ii) The action was brought by the Commission; *Provided, however,* that a concluded action that did not result in civil monetary penalties exceeding $50,000 need not be disclosed unless it involved allegations of fraud or other willful misconduct; or

(iii) The action was brought by any other federal or state regulatory agency, a non-United States regulatory agency or a self-regulatory organization and involved allegations of fraud or other willful misconduct.

(m) *Trading for own account.* If the commodity pool operator, the pool's trading manager, any of the pool's commodity trading advisors or any principal thereof trades or intends to trade commodity interests for its own account, the pool operator must disclose whether participants will be permitted to inspect the records of such person's trades and any written policies related to such trading.

(n) *Performance disclosures.* Past performance must be disclosed as set forth in § 4.25.

(o) *Principal-protected pools.* If the pool is a principal-protected pool as defined in § 4.10(d)(3), the commodity pool operator must:

(1) Describe the nature of the principal protection feature intended to be provided, the manner by which such protection will be achieved, including sources of funding, and what conditions must be satisfied for participants to receive the benefits of such protection;

(2) Specify when the protection feature becomes operative; and

(3) Disclose, in the break-even analysis required by § 4.24(i)(6), the costs of purchasing and carrying the assets to fund the principal protection feature or other limitation on risk, expressed as a percentage of the price of a unit of participation.

(p) *Transferability and redemption.* (1) A complete description of any restrictions upon the transferability of a participant's interest in the pool; and

(2) A complete description of the frequency, timing and manner in which a participant may redeem interests in the pool. Such description must specify:

(i) How the redemption value of a participant's interest will be calculated;

(ii) The conditions under which a participant may redeem its interest, including the cost associated therewith, the terms of any notification required and the time between the request for redemption and payment;

(iii) Any restrictions on the redemption of a participant's interest, including any restrictions associated with the pool's investments; and

(iv) Any liquidity risks relative to the pool's redemption capabilities.

(q) *Liability of pool participants.* The extent to which a participant may be held liable for obligations of the pool in excess of the funds contributed by the participant for the purchase of an interest in the pool.

(r) *Distribution of profits and taxation.* (1) The pool's policies with respect to the payment of distributions from profits or capital and the frequency of such payments;

(2) The federal income tax effects of such payments for a participant, including a discussion of the federal income tax laws applicable to the form of organization of the pool and to such payments therefrom; and

(3) If a pool is specifically structured to accomplish certain federal income tax objectives, the commodity pool operator must explain those objectives, the manner in which they will be achieved and any risks relative thereto.

(s) *Inception of trading and other information.* (1) The minimum aggregate subscriptions that will be necessary for the pool to commence trading commodity interests;

(2) The minimum and maximum aggregate subscriptions that may be contributed to the pool;

(3) The maximum period of time the pool will hold funds prior to the commencement of trading commodity interests;

(4) The disposition of funds received if the pool does not receive the necessary amount to commence trading, including the period of time within which the disposition will be made; and

(5) Where the pool operator will deposit funds received prior to the commencement of trading by the pool, and a statement specifying to whom any income from such deposits will be paid.

(t) *Ownership in pool.* The extent of any ownership or beneficial interest in the pool held by the following:

(1) The commodity pool operator;

(2) The pool's trading manager, if any;

(3) The pool's major commodity trading advisors;

(4) The operators of the pool's major investee pools; and

(5) Any principal of the foregoing.

(u) *Reporting to pool participants.* A statement that the commodity pool operator is required to provide all participants with monthly or quarterly (whichever applies) statements of account and with an annual report containing financial statements certified by an independent public accountant.

(v) *Supplemental information.* If any information, other than that required by Commission rules, the antifraud provisions of the Act, other federal or state laws or regulations, rules of a self-regulatory agency or laws of a non-United States jurisdiction, is provided, such information:

(1) May not be misleading in content or presentation or inconsistent with required disclosures;

(2) Is subject to the antifraud provisions of the Act and Commission rules and to rules regarding the use of promotional material promulgated by a registered futures association pursuant to section 17(j) of the Act; and

(3) Must be placed as follows, unless otherwise specified by Commission rules:

(i) Supplemental performance information (not including proprietary trading results as defined in § 4.25(a)(8), or hypothetical, extracted, pro forma or simulated trading results) must be placed after all specifically required performance information; *Provided, however,* that required volatility disclosure may be included with the related required performance disclosure;

(ii) Supplemental non-performance information relating to a required disclosure may be included with the related required disclosure; and

(iii) Other supplemental information may be included after all required disclosures; *Provided, however,* that any proprietary trading results as defined in § 4.25(a)(8), and any hypothetical, extracted, pro forma or simulated trading results included in the Disclosure Document must appear as the last disclosure therein following all required and non-required disclosures.

(w) *Material information.* Nothing set forth in §§ 4.21, 4.24, 4.25 or § 4.26 shall relieve a commodity pool operator from any obligation under the Act or the regulations thereunder, including the obligation to disclose all material information to existing or prospective pool participants even if the information is not specifically required by such sections.

§ 4.25 Performance disclosures.

(a) *General principles*—(1) *Capsule performance information*—(i) *For pools.* Unless otherwise specified, disclosure of the past performance of a pool must include the following information. Amounts shown must be net of any fees, expenses or allocations to the commodity pool operator.

(A) The name of the pool;

(B) A statement as to whether the pool is:

(*1*) Privately offered pursuant to section 4(2) of the Securities Act of 1933, as amended (15 U.S.C. 77d(2)), or pursuant to Regulation D thereunder (17 CFR 230.501 et seq.);

(*2*) A multi-advisor pool as defined in § 4.10(d)(2); and

(*3*) A principal-protected pool as defined in § 4.10(d)(3);

(C) The date of inception of trading;

(D) The aggregate gross capital subscriptions to the pool;

(E) The pool's current net asset value;

(F) The largest monthly draw-down during the most recent five calendar years and year-to-date, expressed as a percentage of the pool's net asset value and indicating the month and year of the draw-down (the capsule must include a definition of ''draw-down'' that is consistent with § 4.10(k));

(G) The worst peak-to-valley draw-down during the most recent five calendar years and year-to-date, expressed as a percentage of the pool's net asset value and indicating the months and year of the draw-down; and

(H) Subject to § 4.25(a)(2) for the offered pool, the annual and year-to-date rate of return for the pool for the most recent five calendar years and year-to-date, computed on a compounded monthly basis;

(ii) *For accounts.* Disclosure of the past performance of an account required under this § 4.25 must include the following capsule performance information:

(A) The name of the commodity trading advisor or other person trading the account and the name of the trading program;

(B) The date on which the commodity trading advisor or other person trading the account began trading client accounts and the date when client funds began being traded pursuant to the trading program;

(C) The number of accounts directed by the commodity trading advisor or other person trading the account pursuant to the trading program specified, as of the date of the Disclosure Document;

(D)(*1*) The total assets under the management of the commodity trading advisor or other person trading the account, as of the date of the Disclosure Document; and

(*2*) The total assets traded pursuant to the trading program specified, as of the date of the Disclosure Document;

(E) The largest monthly draw-down for the trading program specified during the most recent five calendar years and year-to-date expressed as a percentage of client funds, and indicating the month and year of the draw-down;

(F) The worst peak-to-valley draw-down for the trading program specified during the most recent five calendar years and year-to-date, expressed as a percentage of net asset value and indicating the months and year of the draw-down; and

(G) The annual and year-to-date rate-of-return for the program specified, computed on a compounded monthly basis.

(2) *Additional requirements with respect to the offered pool.* (i) The performance of the offered pool must be identified as such and separately presented first;

(ii) The rate of return of the offered pool must be presented on a monthly basis for the period specified in § 4.25(a)(5), either in a numerical table or in a bar graph;

(iii) A bar graph used to present monthly rates of return for the offered pool:

(A) Must show percentage rate of return on the vertical axis and one-month increments on the horizontal axis;

(B) Must be scaled in such a way as to clearly show month-to-month differences in rates of return; and

(C) Must separately display numerical percentage annual rates of return for the period covered by the bar graph; and

(iv) The pool operator must make available upon request to prospective and existing participants all supporting data necessary to calculate monthly rates of return for the offered pool as specified in § 4.25(a)(7), for the period specified in § 4.25(a)(5).

(3) *Additional requirements with respect to pools other than the offered pool.* With respect to pools other than the offered pool for which past performance is required to be presented under this section:

(i) Performance data for pools of the same class as the offered pool must be presented following the performance of the offered pool, on a pool-by-pool basis.

(ii) Pools of a different class than the offered pool must be presented less prominently and, unless such presentation would be misleading, may be presented in composite form; *Provided, however,* that:

(A) The Disclosure Document must disclose how the composite was developed;

(B) Pools of different classes or pools with materially different rates of return may not be presented in the same composite.

(iii) For the purpose of § 4.25(a)(3)(ii), the following, without limitation, shall be considered pools of different classes: Pools privately offered pursuant to section 4(2) of the Securities Act of 1933, as amended (15 U.S.C. 77d(2)), or pursuant to Regulation D thereunder (17 CFR 230.501 *et seq.*), and public offerings; and principal-protected and non-principal-protected pools. Multi-advisor pools as defined in § 4.10(d)(2) will be presumed to have materially different rates of return from those of non-multi-advisor pools absent evidence sufficient to demonstrate otherwise.

(iv) Material differences among the pools for which past performance is disclosed, including, without limitation, differences in leverage and use of different trading programs, must be described.

(4) *Additional requirements with respect to accounts.* (i) Unless such presentation would be misleading, past performance of accounts required to be presented under this section may be presented in composite form on a program-by-program basis using the format set forth in § 4.25(a)(1)(ii).

(ii) Accounts that differ materially with respect to rates of return may not be presented in the same composite.

(iii) The commodity pool operator must disclose all material differences among accounts included in a composite.

(5) *Time period for required performance.* All required performance information must be presented for the most recent five calendar years and year-to-date or for the life of the pool, account or trading program, if less than five years.

(6) *Trading programs.* If the offered pool will use any of the trading programs for which past performance is required to be presented, the Disclosure Document must so indicate.

(7) *Calculation of, and recordkeeping concerning, performance information.* (i) All performance information presented in a Disclosure Document, including performance information contained in any capsule and performance information not specifically required by Commission rules, must be current as of a date not more than three months preceding the date of the Document, and must be supported by the following amounts, calculated on an accrual basis of accounting in accordance with generally accepted accounting principles, as specified below or by a method otherwise approved by the Commission.

(A) The beginning net asset value for the period, which shall be the same as the previous period's ending net asset value;

(B) All additions, whether voluntary or involuntary, during the period;

(C) All withdrawals and redemptions, whether voluntary or involuntary, during the period;

(D) The net performance for the period, which shall represent the change in the net asset value net of additions, withdrawals, and redemptions;

(E) The ending net asset value for the period, which shall represent the beginning net asset value plus or minus additions, withdrawals, redemptions and net performance;

(F) The rate of return for the period, which shall be calculated by dividing the net performance by the beginning net asset value or by a method otherwise approved by the Commission; and

(G) The number of units outstanding at the end of the period, if applicable.

(ii) All supporting documents necessary to substantiate the computation of such amounts must be maintained in accordance with § 1.31.

(8) *Proprietary trading results.* (i) Proprietary trading results may not be included in a Disclosure Document unless such performance is prominently labeled as proprietary and is set forth separately after all disclosures in accordance with § 4.24(v), together with a discussion of any differences between such performance and the performance of the offered pool, including, but not limited to, differences in costs, leverage and trading methodology.

(ii) For the purposes of § 4.24(v) and this § 4.25(a), proprietary trading results means the performance of any pool or account in which fifty percent or more of the beneficial interest is owned or controlled by:

(A) The commodity pool operator, trading manager (if any), commodity trading advisor or any principal thereof

(B) An affiliate or family member of the commodity pool operator, trading manager (if any) or commodity trading advisor; or

(C) Any person providing services to the pool.

(9) *Required legend.* Any past performance presentation, whether or not required by Commission rules, must be preceded by the following statement, prominently displayed:

PAST PERFORMANCE IS NOT NECESSARILY INDICATIVE OF FUTURE RESULTS.

(b) *Performance disclosure when the offered pool has at least a three-year operating history.* The commodity pool operator must disclose the performance of the offered pool, in accordance with paragraphs (a)(1)(i) (A) through (H) and (a)(2) of this § 4.25, where:

(1) The offered pool has traded commodity interests for three years or more; and

(2) For at least such three-year period, seventy-five percent or more of the contributions to the pool were made by persons unaffiliated with the commodity pool operator, the trading manager (if any), the pool's commodity trading advisors, or the principals of any of the foregoing.

(c) *Performance disclosure when the offered pool has less than a three-year operating history.*—(1) *Offered pool performance.* (i) The commodity pool operator must disclose the performance of the offered pool, in accordance with paragraphs (a)(1)(i)(A) through (H) and (a)(2) of this § 4.25; or

(ii) If the offered pool has no operating history, the pool operator must prominently display the following statement:

THIS POOL HAS NOT COMMENCED TRADING AND DOES NOT HAVE ANY PERFORMANCE HISTORY.

(2) *Other performance of commodity pool operator.* (i)(A) Except as provided in § 4.25(a)(8), the commodity pool operator must disclose, for the period specified by § 4.25(a)(5), the performance of each other pool operated by the pool operator (and by the trading manager if the offered pool has a trading manager) in accordance with paragraphs (a)(1)(i) (C) through (H) and (a)(3) of this § 4.25, and the performance of each other account traded by the pool operator (and by the trading manager if the offered pool has a trading manager) in accordance with paragraphs (a)(1)(ii) (C) through (G) of this § 4.25. If the trading manager has been delegated complete authority for the offered pool's trading, and the trading manager's performance is not materially different from that of the pool operator, the performance of the other pools operated by and accounts traded by the pool operator is not required to be disclosed.

(B) In addition, if the pool operator, or if applicable, the trading manager, has not operated for at least three years any commodity pool in which seventy-five percent or more of the contributions to the pool were made by persons unaffiliated with the commodity pool operator, the trading manager, the pool's commodity trading advisors or their respective principals, the pool operator must also disclose the performance of each other pool operated by and account traded by the trading principals of the pool operator (and of the trading manager, as applicable) unless such performance does not differ in any material respect from the performance of the offered pool and the pool operator (and trading manager, if any) disclosed in the Disclosure Document.

(ii) If neither the pool operator or trading manager (if any), nor any of its trading principals has operated any other pools or traded any other accounts, the pool operator must prominently display the following statement: NEITHER THIS POOL OPERATOR (TRADING MANAGER, IF APPLICABLE) NOR ANY OF ITS TRADING PRINCIPALS HAS PREVIOUSLY OPERATED ANY OTHER POOLS OR TRADED ANY OTHER ACCOUNTS. If the commodity pool operator or trading manager, if applicable, is a sole proprietorship, reference to its trading principals may be deleted from the prescribed statement.

(3) *Major commodity trading advisor performance.* (i) The commodity pool operator must disclose the performance of any accounts (including pools) directed by a major commodity trading advisor in accordance with paragraphs (a)(1)(ii) (C) through (G) of this § 4.25.

(ii) If a major commodity trading advisor has not previously traded accounts, the pool operator must prominently display the following statement:

(name of the major commodity trading advisor), A COMMODITY TRADING ADVISOR THAT HAS DISCRETIONARY TRADING AUTHORITY OVER (percentage of the pool's funds available for commodity interest trading allocated to that trading advisor) PERCENT OF THE POOL'S FUTURES AND COMMODITY OPTION TRADING HAS NOT PREVIOUSLY DIRECTED ANY ACCOUNTS.

(4) *Major investee pool performance.* (i) The commodity pool operator must disclose the performance of any major investee pool.

(ii) If a major investee pool has not commenced trading, the pool operator must prominently display the following statement:

(name of the major investee pool), AN INVESTEE POOL THAT IS ALLOCATED (percentage of the pool assets allocated to that investee pool) PERCENT OF THE POOL'S ASSETS HAS NOT COMMENCED TRADING.

(5) *Other commodity trading advisor and investee pool performance.* With respect to commodity trading advisors and investee pools for which performance is not required to be disclosed pursuant to this § 4.25(c) (3) and (4), the pool operator must provide a summary description of the performance history of each of such advisors and pools, including:

(i) Monthly return parameters (highs and lows);

(ii) Historical volatility and degree of leverage; and

(iii) Any material differences between the performance of such advisors and pools as compared to that of the offered pool's major trading advisors and major investee pools.

§ 4.26 Use, amendment and filing of Disclosure Document.

(a)(1) Subject to paragraph (c) of this section, all information contained in the Disclosure Document must be current as of the date of the Document; *Provided, however,* that performance information may be current as of a date not more than three months prior to the date of the Document.

(2) No commodity pool operator may use a Disclosure Document dated more

than nine months prior to the date of its use.

(b) The commodity pool operator must attach to the Disclosure Document the most current Account Statement and Annual Report for the pool required to be distributed in accordance with § 4.22; *Provided, however,* that in lieu of the most current Account Statement the commodity pool operator may provide performance information for the pool current as of a date not more than sixty days prior to the date on which the Disclosure Document is distributed and covering the period since the most recent performance information contained in the Disclosure Document.

(c) (1) If the commodity pool operator knows or should know that the Disclosure Document is materially inaccurate or incomplete in any respect, it must correct that defect and must distribute the correction to:

(i) All existing pool participants within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect; and

(ii) Each previously solicited prospective pool participant prior to accepting or receiving funds, securities or other property from any such prospective participant. The pool operator may furnish the correction by way of an amended Disclosure Document, a sticker on the Document, or other similar means.

(2) The pool operator may not use the Disclosure Document until such correction has been made.

(d) Except as provided by § 4.8:

(1) The commodity pool operator must file with the Commission two copies of the Disclosure Document for each pool that it operates or that it intends to operate not less than 21 calendar days prior to the date the pool operator first intends to deliver the Document to a prospective participant in the pool; and

(2) The commodity pool operator must file with the Commission two copies of all subsequent amendments to the Disclosure Document for each pool that it operates or that it intends to operate within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment.

Subpart C—Commodity Trading Advisors

15. Section 4.31 is revised to read as follows:

§ 4.31 Required delivery of Disclosure Document to prospective clients.

(a) No commodity trading advisor registered or required to be registered under the Act may solicit a prospective client, or enter into an agreement with a prospective client to direct the client's commodity interest account or to guide the client's commodity interest trading by means of a systematic program that recommends specific transactions, unless the commodity trading advisor, at or before the time it engages in the solicitation or enters into the agreement (whichever is earlier), delivers or causes to be delivered to the prospective client a Disclosure Document for the trading program pursuant to which the trading advisor seeks to direct the client's account or to guide the client's trading, containing the information set forth in §§ 4.34 and 4.35.

(b) The commodity trading advisor may not enter into an agreement with a prospective client to direct the client's commodity interest account or to guide the client's commodity interest trading unless the trading advisor first receives from the prospective client an acknowledgment signed and dated by the prospective client stating that the client received a Disclosure Document for the trading program pursuant to which the trading advisor will direct his account or will guide his trading.

16. Section 4.32 is redesignated Section 4.33, and amended by revising paragraph (a)(2) to read as follows:

§ 4.33 Recordkeeping.

* * * * *

(a) * * *

(2) The acknowledgement specified in § 4.31(b).

* * * * *

§ 4.32 [Reserved]

17. Section 4.32 is added and reserved.

18. Sections 4.34, 4.35 and 4.36 are added to read as follows:

§ 4.34 General disclosures required.

Except as otherwise provided herein, a Disclosure Document must include the following information.

(a) *Cautionary Statement.* The following Cautionary Statement must be prominently displayed on the cover page of the Disclosure Document:

THE COMMODITY FUTURES TRADING COMMISSION HAS NOT PASSED UPON THE MERITS OF PARTICIPATING IN THIS TRADING PROGRAM NOR HAS THE COMMISSION PASSED ON THE ADEQUACY OR ACCURACY OF THIS DISCLOSURE DOCUMENT.

(b) *Risk Disclosure Statement.* (1) The following Risk Disclosure Statement must be prominently displayed immediately following any disclosures required to appear on the cover page of the Disclosure Document as provided by the Commission, by any applicable federal or state securities laws and regulations or by any applicable laws of non-United States jurisdictions:

RISK DISCLOSURE STATEMENT

THE RISK OF LOSS IN TRADING COMMODITIES CAN BE SUBSTANTIAL. YOU SHOULD THEREFORE CAREFULLY CONSIDER WHETHER SUCH TRADING IS SUITABLE FOR YOU IN LIGHT OF YOUR FINANCIAL CONDITION. IN CONSIDERING WHETHER TO TRADE OR TO AUTHORIZE SOMEONE ELSE TO TRADE FOR YOU, YOU SHOULD BE AWARE OF THE FOLLOWING:

IF YOU PURCHASE A COMMODITY OPTION YOU MAY SUSTAIN A TOTAL LOSS OF THE PREMIUM AND OF ALL TRANSACTION COSTS.

IF YOU PURCHASE OR SELL A COMMODITY FUTURE OR SELL A COMMODITY OPTION YOU MAY SUSTAIN A TOTAL LOSS OF THE INITIAL MARGIN FUNDS AND ANY ADDITIONAL FUNDS THAT YOU DEPOSIT WITH YOUR BROKER TO ESTABLISH OR MAINTAIN YOUR POSITION. IF THE MARKET MOVES AGAINST YOUR POSITION, YOU MAY BE CALLED UPON BY YOUR BROKER TO DEPOSIT A SUBSTANTIAL AMOUNT OF ADDITIONAL MARGIN FUNDS, ON SHORT NOTICE, IN ORDER TO MAINTAIN YOUR POSITION. IF YOU DO NOT PROVIDE THE REQUESTED FUNDS WITHIN THE PRESCRIBED TIME, YOUR POSITION MAY BE LIQUIDATED AT A LOSS, AND YOU WILL BE LIABLE FOR ANY RESULTING DEFICIT IN YOUR ACCOUNT.

UNDER CERTAIN MARKET CONDITIONS, YOU MAY FIND IT DIFFICULT OR IMPOSSIBLE TO LIQUIDATE A POSITION. THIS CAN OCCUR, FOR EXAMPLE, WHEN THE MARKET MAKES A "LIMIT MOVE."

THE PLACEMENT OF CONTINGENT ORDERS BY YOU OR YOUR TRADING ADVISOR, SUCH AS A "STOP-LOSS" OR "STOP-LIMIT" ORDER, WILL NOT NECESSARILY LIMIT YOUR LOSSES TO THE INTENDED AMOUNTS, SINCE MARKET CONDITIONS MAY MAKE IT IMPOSSIBLE TO EXECUTE SUCH ORDERS.

A "SPREAD" POSITION MAY NOT BE LESS RISKY THAN A SIMPLE "LONG" OR "SHORT" POSITION.

THE HIGH DEGREE OF LEVERAGE THAT IS OFTEN OBTAINABLE IN COMMODITY TRADING CAN WORK AGAINST YOU AS WELL AS FOR YOU. THE USE OF LEVERAGE CAN LEAD TO LARGE LOSSES AS WELL AS GAINS.

IN SOME CASES, MANAGED COMMODITY ACCOUNTS ARE SUBJECT TO SUBSTANTIAL CHARGES FOR MANAGEMENT AND ADVISORY FEES. IT MAY BE NECESSARY FOR THOSE ACCOUNTS THAT ARE SUBJECT TO THESE CHARGES TO MAKE SUBSTANTIAL TRADING PROFITS TO AVOID DEPLETION OR EXHAUSTION OF THEIR ASSETS. THIS DISCLOSURE DOCUMENT CONTAINS, AT PAGE (insert page number), A COMPLETE DESCRIPTION OF EACH FEE TO BE CHARGED TO YOUR ACCOUNT BY THE COMMODITY TRADING ADVISOR.

THIS BRIEF STATEMENT CANNOT DISCLOSE ALL THE RISKS AND OTHER

SIGNIFICANT ASPECTS OF THE COMMODITY MARKETS. YOU SHOULD THEREFORE CAREFULLY STUDY THIS DISCLOSURE DOCUMENT AND COMMODITY TRADING BEFORE YOU TRADE, INCLUDING THE DESCRIPTION OF THE PRINCIPAL RISK FACTORS OF THIS INVESTMENT, AT PAGE (insert page number).

(2) If the commodity trading advisor may trade foreign futures or options contracts pursuant to the offered trading program, the Risk Disclosure Statement must further state the following:

YOU SHOULD ALSO BE AWARE THAT THIS COMMODITY TRADING ADVISOR MAY ENGAGE IN TRADING FOREIGN FUTURES OR OPTIONS CONTRACTS. TRANSACTIONS ON MARKETS LOCATED OUTSIDE THE UNITED STATES, INCLUDING MARKETS FORMALLY LINKED TO A UNITED STATES MARKET MAY BE SUBJECT TO REGULATIONS WHICH OFFER DIFFERENT OR DIMINISHED PROTECTION. FURTHER, UNITED STATES REGULATORY AUTHORITIES MAY BE UNABLE TO COMPEL THE ENFORCEMENT OF THE RULES OF REGULATORY AUTHORITIES OR MARKETS IN NON-UNITED STATES JURISDICTIONS WHERE YOUR TRANSACTIONS MAY BE EFFECTED. BEFORE YOU TRADE YOU SHOULD INQUIRE ABOUT ANY RULES RELEVANT TO YOUR PARTICULAR CONTEMPLATED TRANSACTIONS AND ASK THE FIRM WITH WHICH YOU INTEND TO TRADE FOR DETAILS ABOUT THE TYPES OF REDRESS AVAILABLE IN BOTH YOUR LOCAL AND OTHER RELEVANT JURISDICTIONS.

(3) If the commodity trading advisor is not also a registered futures commission merchant, the trading advisor must make the additional following statement in the Risk Disclosure Statement, to be included as the last paragraph thereof:

THIS COMMODITY TRADING ADVISOR IS PROHIBITED BY LAW FROM ACCEPTING FUNDS IN THE TRADING ADVISOR'S NAME FROM A CLIENT FOR TRADING COMMODITY INTERESTS. YOU MUST PLACE ALL FUNDS FOR TRADING IN THIS TRADING PROGRAM DIRECTLY WITH A FUTURES COMMISSION MERCHANT.

(c) *Table of contents.* A table of contents showing, by subject matter, the location of the disclosures made in the Disclosure Document, must appear immediately following the Risk Disclosure Statement.

(d) *Information required in the forepart of the Disclosure Document.* (1) The name, address of the main business office, main business telephone number and form of organization of the commodity trading advisor. If the mailing address of the main business office is a post office box number or is not within the United States, its territories or possessions, the trading advisor must state where its books and records will be kept and made available for inspection; and

(2) The date when the commodity trading advisor first intends to use the Disclosure Document.

(e) *Persons to be identified.* The names of the following persons:

(1) Each principal of the trading advisor;

(2) The futures commission merchant with which the commodity trading advisor will require the client to maintain its account or, if the client is free to choose the futures commission merchant with which it will maintain its account, the trading advisor must make a statement to that effect; and

(3) The introducing broker through which the commodity trading advisor will require the client to introduce its account or, if the client is free to choose the introducing broker through which it will introduce its account, the trading advisor must make a statement to that effect.

(f) *Business background.* (1) The business background, for the five years preceding the date of the Disclosure Document, of:

(i) The commodity trading advisor; and

(ii) Each principal of the trading advisor who participates in making trading or operational decisions for the trading advisor or supervises persons so engaged, including, without limitation, the trading advisor's officers and directors.

(2) The trading advisor must include in the description of the business background of each person identified in § 4.34(f)(1) the name and main business of that person's employers, business associations or business ventures and the nature of the duties performed by such person for such employers or in connection with such business associations or business ventures. The location in the Disclosure Document of any required past performance disclosure for such person must be indicated.

(g) *Principal risk factors.* A discussion of the principal risk factors of this trading program. This discussion must include, without limitation, risks due to volatility, leverage, liquidity, and counterparty creditworthiness, as applicable to the trading program and the types of transactions and investment activity expected to be engaged in pursuant to such program.

(h) *Trading program.* A description of the trading program, which must include the types of commodity interests and other interests the commodity trading advisor intends to trade, with a description of any restrictions or limitations on such trading established by the trading advisor or otherwise.

(i) *Fees.* A complete description of each fee which the commodity trading advisor will charge the client.

(1) Wherever possible, the trading advisor must specify the dollar amount of each such fee.

(2) Where any fee is determined by reference to a base amount including, but not limited to, ''net assets,'' ''gross profits,'' ''net profits'' or ''net gains,'' the trading advisor must explain how such base amount will be calculated.

(3) Where any fee is based on an increase in the value of the client's commodity interest account, the trading advisor must specify how that increase is calculated, the period of time during which the increase is calculated, the fee to be charged at the end of that period and the value of the account at which payment of the fee commences.

(j) *Conflicts of interest.* (1) A full description of any actual or potential conflicts of interest regarding any aspect of the trading program on the part of:

(i) The commodity trading advisor;

(ii) Any futures commission merchant with which the client will be required to maintain its commodity interest account;

(iii) Any introducing broker through which the client will be required to introduce its account to a futures commission merchant; and

(iv) Any principal of the foregoing.

(2) Any other material conflict involving any aspect of the offered trading program.

(3) Included in the description of any such conflict must be any arrangement whereby the trading advisor or any principal thereof may benefit, directly or indirectly, from the maintenance of the client's commodity interest account with a futures commission merchant or the introduction of such account through an introducing broker (such as payment for order flow or soft dollar arrangements).

(k) *Litigation.* (1) Subject to the provisions of § 4.34(k)(2), any material administrative, civil or criminal action, whether pending or concluded, within five years preceding the date of the Document, against any of the following persons; *Provided, however,* that a concluded action that resulted in an adjudication on the merits in favor of such person need not be disclosed:

(i) The commodity trading advisor and any principal thereof:

(ii) Any futures commission merchant with which the client will be required to maintain its commodity interest account; and

(iii) Any introducing broker through which the client will be required to introduce its account to the futures commission merchant.

(2) With respect to a futures commission merchant or an introducing broker, an action will be considered material if:

(i) The action would be required to be disclosed in the notes to the futures commission merchant's or introducing broker's financial statements prepared pursuant to generally accepted accounting principles;

(ii) The action was brought by the Commission; *Provided, however,* that a concluded action that did not result in civil monetary penalties exceeding $50,000 need not be disclosed unless it involved allegations of fraud or other willful misconduct; or

(iii) The action was brought by any other federal or state regulatory agency, a non-United States regulatory agency or a self-regulatory organization and involved allegations of fraud or other willful misconduct.

(*l*) *Trading for own account.* If the commodity trading advisor or any principal thereof trades or intends to trade commodity interests for its own account, the trading advisor must disclose whether clients will be permitted to inspect the records of such person's trading and any written policies related to such trading.

(m) *Performance disclosures.* Past performance must be disclosed as set forth in § 4.35.

(n) *Supplemental information.* If any information, other than that required by Commission rules, the antifraud provisions of the Act, other federal or state laws and regulations, any rules of a self-regulatory agency or laws of a non-United States jurisdiction, is provided, such information:

(1) May not be misleading in content or presentation or inconsistent with the required disclosures;

(2) Is subject to the antifraud provisions of the Act and Commission rules, and to rules regarding the use of promotional material promulgated by a registered futures association pursuant to section 17(j) of the Act; and

(3) Must be placed as follows, unless otherwise specified by Commission rules:

(i) Supplemental performance information (not including proprietary trading results as defined in § 4.35(a)(7), or hypothetical, extracted, pro forma or simulated trading results) must be placed after all required performance information;

(ii) Supplemental non-performance information relating to a required disclosure may be included with the related required disclosure; and

(iii) Other supplemental information may be included after all required disclosures; *Provided, however,* That any proprietary trading results as defined in § 4.35(a)(7), and any hypothetical, extracted, pro forma or simulated trading results included in the Disclosure Document must appear as the last disclosure therein following all required and non-required disclosures.

(*o*) *Material information.* Nothing set forth in §§ 4.31, 4.34, 4.35 or § 4.36 shall relieve a commodity trading advisor from any obligation under the Act or the regulations thereunder, including the obligation to disclose all material information to existing or prospective clients even if the information is not specifically required by such sections.

§ 4.35 Performance disclosures.

(a) *General principles.*—(1) *Capsule performance information.* Unless otherwise specified, disclosure of the past performance of an account or trading program required under this § 4.35 must include the following information:

(i) The name of the commodity trading advisor or other person trading the account and the name of the trading program;

(ii) The date on which the commodity trading advisor or other person trading the account began trading client accounts and the date when client funds began being traded pursuant to the trading program;

(iii) The number of accounts directed by the trading advisor or other person trading the account pursuant to the trading program specified, as of the date of the Disclosure Document;

(iv)(A) The total assets under the management of the trading advisor or other person trading the account, as of the date of the Disclosure Document; and

(B) The total assets traded pursuant to the trading program specified, as of the date of the Disclosure Document;

(v) The largest monthly draw-down for the account or trading program specified during the most recent five calendar year and year-to-date expressed as a percentage of client funds and indicating the month and year of the draw-down (the capsule must include a definition of ''draw-down'' that is consistent with § 4.10(k));

(vi) The worst peak-to-valley draw-down for the trading program specified during the most recent five calendar year and year-to-date, expressed as a percentage of net asset value and indicating the months and year of the draw-down;

(vii) Subject to § 4.35(a)(2) for the offered trading program, the annual and year-to-date rate-of-return for the program specified for the five most recent calendar years and year-to-date, computed on a compounded monthly basis; *Provided, however,* That performance of the offered trading program must include monthly rates of return for such period; and

(viii) In the case of the offered trading program:

(A) The number of accounts traded pursuant to the offered trading program that were closed during the period specified in § 4.35(a)(5) with positive net performance (profits) as of the date the account was closed; and

(B) The number of accounts traded pursuant to the offered trading program that were closed during the period specified in § 4.35(a)(5) with negative net performance (losses) as of the date the account was closed.

(2) *Additional requirements with respect to the offered trading program.* (i) The performance of the offered trading program must be identified as such and separately presented first;

(ii) The rate of return of the offered trading program must be presented on a monthly basis for the period specified in § 4.35(a)(5), either in a numerical table or in a bar graph;

(iii) A bar graph used to present monthly rates of return for the offered trading program:

(A) Must show percentage rate of return on the vertical axis and one-month increments on the horizontal axis;

(B) Must be scaled in such a way as to clearly show month-to-month differences in rates of return; and

(C) Must separately display numerical percentage annual rates of return for the period covered by the bar graph; and

(iv) The commodity trading advisor must make available to prospective and existing clients upon request a table showing at least quarterly the information required to be calculated pursuant to § 4.35(a)(6).

(3) *Composite presentation.* (i) Unless such presentation would be misleading, the performance of accounts traded pursuant to the same trading program may be presented in composite form on a program-by-program basis, using the format set forth in § 4.35(a)(1).

(ii) Accounts that differ materially with respect to rates of return may not be presented in the same composite.

(iii) The commodity trading advisor must discuss all material differences among the accounts included in a composite.

(4) *Current information.* All performance information presented in the Disclosure Document must be current as of a date not more than three months preceding the date of the Document.

(5) *Time period for required performance.* All required performance information must be presented for the most recent five calendar years and year-to-date or for the life of the trading program or account, if less than five years.

(6) *Calculation of, and recordkeeping concerning, performance information.* (i) All performance information presented in a Disclosure Document, including performance information contained in any capsule and performance information not specifically required by Commission rules, must be current as of a date not more than three months preceding the date of the Document, and must be supported by the following amounts, calculated on an accrual basis of accounting in accordance with generally accepted accounting principles, as specified below or by a method otherwise approved by the Commission.

(A) The beginning net asset value for the period, which shall represent the previous period's ending net asset value;

(B) All additions, whether voluntary or involuntary, during the period;

(C) All withdrawals and redemptions, whether voluntary or involuntary, during the period;

(D) The net performance for the period, which shall represent the change in the net asset value net of additions, withdrawals, redemptions, fees and expenses;

(E) The ending net asset value for the period, which shall represent the beginning net asset value plus or minus additions, withdrawals and redemptions, and net performance; and

(F) The rate of return for the period, computed on a compounded monthly basis, which shall be calculated by dividing the net performance by the beginning net asset value.

(ii) All supporting documents necessary to substantiate the computation of such amounts must be maintained in accordance with § 1.31.

(7) *Proprietary trading results.* (i) Proprietary trading results shall not be included in a Disclosure Document unless such performance is prominently labeled as proprietary and is set forth separately after all disclosures in accordance with § 4.34(n), together with a discussion of any differences between such performance and the performance of the offered trading program, including, but not limited to, differences in costs, leverage and trading.

(ii) For the purposes of § 4.34(n) and this § 4.35(a), proprietary trading results means the performance of any account in which fifty percent or more of the beneficial interest is owned or controlled by:

(A) The commodity trading advisor or any of its principals;

(B) An affiliate or family member of the commodity trading advisor; or

(C) Any person providing services to the account.

(8) *Required legend.* Any past performance presentation, whether or not required by Commission rules, must be preceded with the following statement, prominently displayed:

PAST PERFORMANCE IS NOT NECESSARILY INDICATIVE OF FUTURE RESULTS.

(b) *Performance to be disclosed.* Except as provided in § 4.35(a)(7), the commodity trading advisor must disclose the actual performance of all accounts directed by the commodity trading advisor and by each of its trading principals; *Provided, however,* that if the trading advisor or its trading principals previously have not directed any accounts, the trading advisor must prominently disclose this fact with one of the following statements, as applicable:

(1) THIS TRADING ADVISOR PREVIOUSLY HAS NOT DIRECTED ANY ACCOUNTS; or

(2) NONE OF THE TRADING PRINCIPALS OF THIS TRADING ADVISOR HAS PREVIOUSLY DIRECTED ANY ACCOUNTS; or

(3) NEITHER THIS TRADING ADVISOR NOR ANY OF ITS TRADING PRINCIPALS HAVE PREVIOUSLY DIRECTED ANY ACCOUNTS. If the commodity trading advisor is a sole proprietorship, reference to its trading principals need not be included in the prescribed statement.

§ 4.36 Use, amendment and filing of Disclosure Document.

(a) Subject to paragraph (c) of this section, all information contained in the Disclosure Document must be current as of the date of the Document; *Provided, however,* that performance information must be current as of a date not more than three months preceding the date of the Document.

(b) No commodity trading advisor may use a Disclosure Document dated more than nine months prior to the date of its use.

(c)(1) If the commodity trading advisor knows or should know that the Disclosure Document is materially inaccurate or incomplete in any respect, it must correct that defect and must distribute the correction to:

(i) All existing clients in the trading program within 21 calendar days of the date upon which the trading advisor first knows or has reason to know of the defect; and

(ii) Each previously solicited prospective client for the trading program prior to entering into an agreement to direct or to guide such prospective client's commodity interest account pursuant to the program. The trading advisor may furnish the correction by way of an amended Disclosure Document, a sticker on the Document, or other similar means.

(2) The trading advisor may not use the Disclosure Document until such correction is made.

(d) (1) The trading advisor must file with the Commission two copies of the Disclosure Document for each trading program that it offers or that it intends to offer not less than 21 calendar days prior to the date the trading advisor first intends to deliver the Document to a prospective client in the trading program.

(2) The commodity trading advisor must file with the Commission two copies of all subsequent amendments to the Disclosure Document for each trading program that it offers or that it intends to offer within 21 calendar days of the date upon which the trading advisor first knows or has reason to know of the defect requiring the amendment.

Subpart D—Advertising

19. Section 4.41 is amended by revising paragraph (b)(1) to read as follows:

§ 4.41 Advertising by commodity pool operators, commodity trading advisors, and the principals thereof.

* * * * *

(b) (1) No person may present the performance of any simulated or hypothetical commodity interest account, transaction in a commodity interest or series of transactions in a commodity interest of a commodity pool operator, commodity trading advisor, or any principal thereof, unless such performance is accompanied by one of the following:

(i) The following statement: ''Hypothetical or simulated performance results have certain inherent limitations. Unlike an actual performance record, simulated results do not represent actual trading. Also, since the trades have not actually been executed, the results may have under- or over-compensated for the impact, if any, of certain market factors, such as lack of liquidity. Simulated trading programs in general are also subject to the fact that they are designed with the benefit of hindsight. No representation is being made that any account will or is likely to achieve profits or losses similar to those shown;'' or

(ii) A statement prescribed pursuant to rules promulgated by a registered futures association pursuant to section 17(j) of the Act.

* * * * *

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

20. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c, and 12a.

21. Section 30.6 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 30.6 Disclosure.

* * * * *

(b) *Commodity pool operators and commodity trading advisors.* (1) No commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to § 30.5 of this part, may, directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective participant in a foreign pool that it operates or that it intends to operate or, in the case of a commodity trading advisor, no commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to § 30.5 of this part, may solicit or enter into an agreement with a prospective client to direct or to guide the client's foreign commodity interest trading by means of a systematic program that recommends specific transactions, unless the commodity pool operator or commodity trading advisor, at or before the time it engages in such activities, first provides each prospective participant or client with the Risk Disclosure Statement set forth in § 4.24(b) in the case of a commodity pool operator or § 4.34(b) in the case of a commodity trading advisor.

(2) The disclosure statement required to be provided in paragraph (b)(1) of this section may be given as a separate document or, if part of the Disclosure Document required to be furnished customers or potential customers pursuant to § 4.21 or § 4.31 of this chapter, must be prominently disclosed immediately following any disclosures required to appear on the cover page of the Disclosure Document as provided by the Commission or any applicable federal or state securities laws and regulations.

* * * * *

PART 150—LIMITS ON POSITIONS

22. The authority citation for part 150 continues to read as follows:

Authority: 7 U.S.C. 6a, 6c and 12a(5)(1988).

23. Section 150.3 is amended by revising paragraph (a)(4)(i)(D) to read as follows:

§ 150.3 Exemptions.

(a) * * *

(4) * * *

(i) * * *

(D) Solicit funds for such trading by separate Disclosure Documents that meet the standards of § 4.24 or § 4.34 of this chapter, as applicable, where such Disclosure Documents are required under part 4 of this chapter.

* * * * *

Issued in Washington, DC, on July 14, 1995, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–17871 Filed 7–24–95; 8:45 am]

BILLING CODE 6351–01–P

Tuesday
July 25, 1995

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 42 and 52

Federal Acquisition Regulation: Quick Contract Closeout Procedures; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 42 and 52

[FAR Case 95–9]

RIN 9000–AG57

Federal Acquisition Regulation; Quick Contract Closeout Procedures

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to ensure maximum use of the quick-closeout procedure.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before September 25, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4037, Washington, DC 20405.

Please cite FAR case 95–9 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 95–9.

SUPPLEMENTARY INFORMATION:

A. Background

In response to the recommendation of an Interagency Process Action Team sponsored by the Air Force, this proposed rule amends FAR 42.708, Quick-closeout procedure, the clause at 52.216–7, Allowable Cost and Payment, and the clause at 52.216–13, Allowable Cost and Payment—Facilities, to ease the restrictions and maximize the use of the quick-closeout procedure. The Councils propose to (1) revise FAR 42.708(a) by substituting the word ''shall'' for ''may''; (2) raise the threshold in FAR 42.708(a)(2)(i) for total unsettled indirect costs allocable to any one contract from $500,000 to $1 million; and (3) to revise FAR 42.708(a)(2)(ii) to permit the contracting officer to waive the 15 percent restriction based upon a risk assessment that considers contractor's accounting, estimating, and purchasing systems; other concerns of the cognizant contract auditors; and any other pertinent information. Paragraph (f) of the clause at 52.216–7 and paragraph (e) of the clause at 52.216–13 have also been revised to be consistent with the revisions to 42.708 as outlined above.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because nearly all contracts awarded to small business are awarded on the basis of a firm fixed price and settlement of indirect cost rates prior to contract closeout is therefore not an issue. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 95–9), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 42 and 52

Government procurement.

Dated: July 19, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 42 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 42 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 42—CONTRACT ADMINISTRATION

2. Section 42.708 is amended in the introductory text of paragraph (a) by removing ''may'' and inserting ''shall''; and by revising paragraph (a)(2) (i) and (ii) to read as follows:

42.708 Quick-closeout procedures.

(a) * * *

(2) * * *

(1) The total unsettled indirect cost to be allocated to any one contract does not exceed $1,000,000; and

(ii) Unless otherwise provided in agency procedures, the cumulative unsettled indirect costs to be allocated to one or more contracts in a single fiscal year do not exceed 15 percent of the estimated, total unsettled indirect costs allocable to cost-type contracts for that fiscal year. The contracting officer may waive the 15 percent restriction based upon risk assessment that considers contractor's accounting, estimating, and purchasing systems; other concerns of the cognizant contract auditors; and any other pertinent information; and

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.216–7 is amended by revising the date in the clause heading; by revising paragraph (f); and by removing ''(R 7–203.4(a) 1978 SEP)'' ''(R 7–203.4(b) 1979 MAR)'', ''(R 7–203.4(c)(4)(iv))'', ''(R 7–402.3 (a) and(c)(5)(iii)'', ''(R 7–605.5)'', ''(R 7–1909.4)'', ''(R 1–7.202–4)'', ''(R 1–7.203–9)'', ''(R 1–3.704–1 and –2)'', ''(R 1–7.402–3 (a) and (b) (1) and (3))'', and ''(R 1–7.403–9)'' following ''(End of clause)'' to read as follows:

52.216–7 Allowable Cost and Payment.

* * * * *

ALLOWABLE COST AND PAYMENT (DATE)

* * * * *

(f) *Quick-closeout procedures.* Quick closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

* * * * *

4. Section 52.216–13 is amended by revising the introductory paragraph, the date in the clause heading, and paragraph (e); and by removing ''(R 7–702.10 1978 AUG)'' following ''(End of clause)'' to read as follows:

52.216–13 Allowable Cost and Payment—Facilities.

As prescribed in 16.307(g), insert the following clause:

ALLOWABLE COST AND PAYMENT—FACILITIES (DATE)

* * * * *

(e) *Quick-closeout procedures.* Quick closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

* * * * *

[FR Doc. 95–18160 Filed 7–24–95; 8:45 am]

BILLING CODE 6820–EP–M

federal register

Tuesday
July 25, 1995

Part V

Department of Transportation

Office of the Secretary

49 CFR Part 40

Workplace Drug and Alcohol Testing Programs; Proposed Rule and Notice

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST 95–321; Notice 95–8]

RIN 2105–AC22

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation proposes to modify current procedures governing situations in which employees are unable to provide sufficient specimens for urine drug testing. The proposed changes would allow additional time to collect a sufficient sample. In addition, the Department proposes to clarify requirements concerning relationships between laboratories and medical review officers; provide procedures for situations in which employees do not have contact with medical review officers following a laboratory-confirmed positive test; and make explicit that MROs are to report split specimen test results to employers, regardless of who pays for the test.

DATES: Comments should be received by September 25, 1995. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Att: Docket No. OST–95–321, Department of Transportation, 400 7th Street, SW., Room PL401, Washington DC, 20590. For the convenience of persons wishing to review the docket, it is requested that comments be sent in triplicate. Persons wishing their comments to be acknowledged should enclose a stamped, self-addressed postcard with their comment. The docket clerk will date stamp the postcard and return it to the sender. Comments may be reviewed at the above address from 9 a.m. through 5:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Albert Alvarez, Director, Office of Drug Enforcement and Program Compliance, 400 7th Street, SW., Room 10317, 202–366–3784; or Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, 400 7th Street, SW., Room 10424, 202–366–9306.

SUPPLEMENTARY INFORMATION:

''Shy Bladder''

In the February 15, 1994, revision of 49 CFR Part 40 (59 FR 7340), the Department established new ''shy bladder'' procedures, for situations in which employees cannot provide a sufficient urine sample. These procedures were established in conjunction with a reduction in the required sample volume from 60 to 45 milliliters (mL) (for split samples) or 30 mL (single specimen collections). For employees who are unable to provide this reduced sample volume, the rule (§ 40.25(f)(10)(iv)) directs the collection site person to ''instruct the individual to drink not more than 24 ounces of fluid and, after a period of up to two hours, again attempt to provide a complete sample.'' If the individual cannot do so, the medical review officer (MRO) is directed to ''refer the individual for a medical evaluation to develop pertinent information concerning whether the individual's inability to provide a specimen is genuine or constitutes a refusal to test.'' (This referral is not mandated in the case of pre-employment testing where the employer does not want to hire the individual.)

There were several reasons for this action. First, the Department of Transportation and the Department of Health and Human Services had both received information indicating that forcing large quantities of fluids over a longer period of time could result in water intoxication (i.e., a condition resulting from rapid, copious water intake, that may result in dilution of the plasma and an influx of water into the brain), which if severe can result in harm to employees' health (e.g., lethargy, confusion, or seizures). Second, ingesting large quantities of fluids can help to dilute specimens, giving drug-using employees a mechanism for trying to ''beat the test.'' Third, the Department's Drug Enforcement and Program Compliance Office consulted with the medical community, learning that most adults, in most circumstances, could produce 45 mL of urine following the ingestion of 24 ounces of fluid over a two-hour period. Fourth, allowing up to eight hours for testing had resulted in employees remaining off the job for long periods of time, with consequent costs to employers, including some employees who appeared to intentionally and unnecessarily delay the provision of a specimen.

Since the adoption of this provision, employers, employees and MROs have expressed various concerns to the Department. Since, absent an adequate medical explanation, a ''shy bladder'' constitutes a refusal to test, and a refusal to test is equivalent to a positive test, program participants (especially in the railroad industry, where a refusal to test can carry a nine-month suspension) have become concerned about the operation of this provision. The principal concern expressed has been that two hours is too short a time to allow employees to generate sufficient urine, particularly if employees have become somewhat dehydrated on the job (e.g., railroad unions have said that their members are sometimes on the job for several hours without relief, with little fluid intake). Another concern is that the regulation does not provide sufficient guidance on the factors on which physicians should rely in determining whether the employee's inability to provide a sufficient specimen is medically ''genuine.''

The Department is willing to consider changing the ''shy bladder'' provision of the rule in response to these concerns. We will propose several changes for purposes of soliciting comment on them. These changes are intended to balance the considerations favoring the present rule (e.g., lower probability of water intoxication, less likelihood of producing a dilute specimen, fewer hours off the job) and those favoring a longer period of time (e.g., greater probability of producing a complete specimen). The amendment would provide up to four hours for an employee to drink up to 40 ounces of fluid before making the second attempt to provide a complete specimen. The employee would be directed to drink 8 ounces of fluid each 30 minutes during this period until the 40 ounce maximum is reached. Obviously, this process would be cut short if the employee provided a sufficient specimen. Refusal to drink the fluids or make another attempt to provide a new specimen would be treated as a refusal to test.

The quantity of water consumed under these provisions would be unlikely to result in water intoxication. A medical journal article addressing this issue that has recently come to our attention (''Acute Water Intoxication as a Complication of Urine Drug Testing in the Workplace,'' David Klonoff and Andrew Jurow, Journal of the American Medical Association, January 2, 1991, pp. 84–85) related that, in every reported case of water intoxication the authors found in their literature search, the patient consumed at least 1.35 liters of water. (In a particular case cited at length in the article, the patient, in the course of a drug test, consumed 3 liters of water in a 3-hour period.) They also noted that it was common medical practice to administer up to 1 liter of water over a period of 1 hour to distend the bladder for ultrasound examination. Forty fluid ounces is approximately equivalent to 1.2 liters, less than the

1.35 liters or more that the authors found in water intoxication cases reported in the medical literature. While greater than the 1 liter the authors found to be common medical practice, the fluids provided under these procedures would be administered in stages over a two-hour period, rather than in one hour. While avoiding water intoxication, this approach would provide 16 more ounces of fluids and 2 more hours than the current rules, allowing a greater probability of the individual being able to provide a sufficient specimen.

The Department seeks comment from the medical community, employers, employees, and other interested persons concerning the appropriateness of the proposed 4 hour/40 ounce rule. In particular, we are seeking comments, with rationales and information attached, about whether a longer or shorter time period or greater or lesser water intake would be desirable. In addition, we seek comment on whether an unsuccessful attempt to provide a sufficient specimen should be required in every instance before the four-hour clock begins to run. (This is the Department's interpretation of its current rule.) That is, if an individual comes to the collection site and reports that he or she cannot provide a sample immediately, should the collection site person have the discretion to skip the first collection attempt and proceed immediately to the shy bladder procedure?

To further clarify the rule, we would incorporate language from the parallel provision of the alcohol testing procedures concerning the task of the physician who evaluates the employee. Section 40.69(d) provides as follows:

(d) If the employee attempts and fails to provide an adequate amount of breath, the employer shall proceed as follows '

(1) [Reserved]

(2) The employer shall direct the employee to obtain, as soon as practical after the attempted provision of breath, an evaluation from a licensed physician who is acceptable to the employer concerning the employee's medical ability to provide an adequate amount of breath.

(i) If the physician determines, in his or her reasonable medical judgment, that a medical condition has, or with a high degree of probability, could have, precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test. The physician shall provide to the employer a written statement of the basis for his or her conclusion.

(ii) If the licensed physician, in his or her reasonable medical judgment, is unable to make the determination set forth in paragraph (d)(2)(i), the employee's failure to provide an adequate amount of breath shall be regarded as a refusal to take a test. The licensed physician shall provide a written statement of the basis for his or her conclusion to the employer.

The NPRM proposes similar language for ''shy bladder'' situations. By a ''medical condition,'' we mean an ascertainable physiological condition (e.g., a urinary system dysfunction), as distinct from assertions of ''situational anxiety'' or unsupported claims of dehydration.

The Department is not proposing to allow urine from different voids to be combined. That is, if an individual voids and provides 25 mL of urine, that specimen must be discarded. It could not be added to a subsequent 20 mL void to create a combined 45 mL specimen. Testing a specimen consisting of urine from two different voids at two separate times adds too much uncertainty to the testing process. Nor is the Department proposing to allow individuals who have failed to provide a sufficient specimen to provide a subsequent urine sample when they visit the physician for the assessment of whether a medical condition exists that prevents them providing a complete sample. Such a provision would allow employees time to take steps to avoid a positive test by drinking enough fluids to dilute the specimen or otherwise to ''beat the test.'' In addition, producing a specimen at the doctor's office a short time after failing to provide it at the testing site might well be viewed as evidence that there is, in fact, no medical condition preventing the individual from providing a sufficient sample.

Body Temperature

Currently, § 40.25(e)(i) refers to measurements of oral body temperature that are made as part of the process of determining whether the temperature of a urine specimen is consistent with the temperature of the employee. The reference to ''oral'' may unnecessarily restrict the means used to test body temperature, since other ways of taking body temperature (e.g., tympanic temperature) exist. We propose to delete the word ''oral,'' with the result that taking the individual's temperature by any medically-accepted means (including oral) would be permitted.

MRO/Laboratory Relationships

In its August 19, 1994, amendments to Part 40 (59 FR 42996), the Department added § 40.29(n)(6). Based on a Department of Health and Human Services regulatory provision, it provides that

The laboratory shall not enter into any relationship with an employer's MRO that may be construed as a potential conflict of interest or derive any financial benefit by having an employer use a specific MRO.

This language is the definitive, and most recent, statement by the Department of the rules governing relationships between MROs and laboratories. As such, it was intended to supersede the older language of § 40.33(b)(2), which provided that

The MRO shall not be an employee of the laboratory conducting the drug test unless the laboratory establishes a clear separation of functions to prevent any appearance of a conflict of interest, including assuring that the MRO has no responsibility for, and is not supervised by or the supervisor of, any persons who have responsibility for the drug testing or quality control operations of the laboratory.

In the August 19, 1994, amendments to part 40, the Department inadvertently failed to remove the latter provision. While the two provisions have a common purpose—ensuring that there is not even the appearance of a conflict of interest between the laboratory and the MRO—it has been pointed out to the Department that, considered together, they may cause confusion as to the Department's intent. To avoid the possibility of any such confusion, this NPRM would remove § 40.33(b)(2).

The Department is also seeking comment on a related issue, concerning the application of this conflict of interest provision. In response to an inquiry from a laboratory, the Department determined that a ''closed panel'' type of operation—in which a laboratory that packaged drug testing services to clients provided a list of MROs to the clients from which the clients had to choose—was inconsistent with this provision. The rationale of this determination was that since there is a financial advantage to MROs to be on such a list (i.e., it directs business to them), there could be an incentive for the MROs to be less than ideally independent in their reviews of test results from the laboratory establishing the list. This, in turn, can create at least the appearance of a conflict of interest. (Though the issue did not arise in the context of this determination, we note that the conflict of interest provision works both ways, and would apply to arrangements in which MROs select laboratories as well as to arrangements in which laboratories select MROs.)

The laboratory in question and other participants have responded that arrangements of this kind are common and accepted in the industry and provide for a higher level of quality control in the drug testing process, since laboratories have a market incentive to provide only the best-qualified MROs to their clients. Other parties have suggested that MRO/laboratory arrangements that are not arms-length, however configured, will compromise the independence of the parties in the process to an unacceptable degree. The Department wishes to maintain this independence, but also wishes to avoid interfering unreasonably with rational arrangements that may serve employers well. The Department seeks comment on whether there are some specific provisions that should be included in the regulation, or in guidance, that strike an appropriate balance.

Unresolved Confirmed Positive Tests

Section 40.33 establishes procedures for MROs and employers to follow when it is difficult for the MRO to contact an employee following a report from the laboratory of a confirmed positive drug test. If, after making all reasonable efforts to contact the employee, the MRO cannot do so, the MRO asks a designated management official to contact the employee. If the designated management official cannot do so, then the employer may place the employee on medical leave or similar status. The confirmed positive does not become a verified positive—the only result having consequences under the rule—in this situation. There can be a ''non-contact positive'' only if the employee declines an opportunity to discuss the test with the MRO or the employer has contacted the employee and the employee fails to contact the MRO within five days. In the latter circumstances, the MRO can reopen the verified positive test if there is a showing that illness, injury, or other circumstances beyond the control of the employee prevented a timely contact.

The Department has become aware of a situation these procedures do not cover. If neither the MRO nor employer ever succeeds in contacting the employee (e.g., the applicant never gets back in touch with the employer in a pre-employment test case, an employee quits or never shows up again following a random test), a confirmed laboratory positive test is left in limbo, with no way to verify it either as a positive or negative test. This creates problems for MROs, who have the unresolved tests on their books indefinitely.

This situation can also create problems for subsequent employers and the Department's program. For example, under the Federal Highway Administration's drug testing requirements (49 CFR part 382), the new employer is required to seek information on previous drug test results from other employers. In the unresolved test situation described above, however, a previous employer will not have a drug test result that it can report, because only a verified positive or negative test can be reported. The employee, in this case, may be able to obtain employment with another employer because the ''limbo'' positive was never reported.

To avoid this difficulty, the Department is proposing to add language to § 40.33. In any situation where neither the MRO nor the employer has been able to contact the employee within 30 days from the date the MRO receives the confirmed positive test result from the laboratory, the MRO will be instructed to verify the laboratory result positive and report it to the employer as such. The same provisions allowing the employee to reopen the verification will apply as in the case where the employer did contact the employee and the employee failed to contact the MRO within 5 days. The Department seeks comment on this approach and on the appropriate amount of time before a ''non-contact positive'' can be declared. We also seek comment on what, if any, documentation of the efforts to contact the employee should be maintained by the MRO and/or designated employer representative.

The Department also seeks comment on how this provision should apply in the case of opiate positives. Once an MRO has a confirmed positive laboratory test result for other drugs, the MRO verifies the test as positive unless he or she determines that there is a legitimate medical explanation for the presence of the drug. By contrast, the MRO cannot verify a confirmed opiate positive unless the MRO finds independent clinical evidence supporting the positive result. In the Department's experience, a high percentage of confirmed laboratory positives for opiates are verified negative. Given this background, should there be different procedures for ''non-contact positives'' involving laboratory results that are positive only for opiates? If so, how should the procedures differ?

We also seek comment on whether a similar provision should be extended to situations in which an employee has contacted the MRO and, in the course of the verification interview, asserted that there is documentation of a legitimate medical explanation for the presence of a drug or metabolite. If the individual, or the individual's physician, does not produce this documentation after 30 days or some other reasonable time period, should the rule explicitly authorize the MRO to verify the test positive at that time?

Reporting of Split Sample Results

Section 40.33 goes into some detail concerning the procedures the MRO must follow concerning reporting the split specimen test results to the employer and employee. The section is quite specific on the consequences of a test of the split specimen that does not reconfirm the positive result of the primary sample. However, the section does not explicitly specify what the MRO does in the case of a split specimen test that does reconfirm the positive result of the test of the primary specimen. The Department has encountered situations in which employees who have paid for the test of the split specimen have objected to the MRO reporting the positive result to the employer. To clarify that the Department intends that the result of the test of a split specimen be reported to both the employer and the employee—regardless of who pays for the test—we propose to add language to this effect.

Electronic Signatures

Various inquiries from drug and alcohol testing industry sources have raised the question of the place that technological developments, such as electronic signatures, should play in the Department's programs. In an electronic signature system, an individul using a pen-like stylus signs an electronic pad connected to a computer system. The signature is recorded electronically by the computer system and incorporated into a data base, without any technical need for a paper signature or printout.

The use of this technology raises a number of issues in the context of the Department's testing programs. Part 40 currently calls for signatures on a multiple-copy paper form, and does not, absent future modification, provide for the use of electronic signatures. Copies of the form are distributed to various parties (e.g., the employer, employee, laboratory, MRO). It is unclear how a ''paperless'' system would provide equivalent service. While one could presumably use an electronic signature device in something short of a literally paperless system, combining electronic signatures with a system using paper forms creates its own set of questions. For example, would there be both a paper and an electronic signature? Would an electronic signature somehow be transferred to the paper form? What efficiencies are gained if one has both an electronic and paper signature?

There are also important issues concerning the security and identification of electronic signatures. What kinds of technical requirements (e.g., electronic encryption for signatures, computer security software) and operational safeguards (e.g., access restrictions) should surround their use? Should such controls be part of DOT regulations? Are there industry consensus standards that have been or could be developed to address these issues, to which DOT rules could refer? What are the electronic equivalents of the physical security measures and controls the Department requires for paper records?

While the Department is not, at this time, making specific proposals in this area, we are interested in receiving thoughts and information from interested parties on how the Department can best respond to technological changes of this kind that can affect its program. We invite comment on these matters.

Regulatory Analyses and Notices

This is not a significant rule under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. It does not impose costs on regulated parties. It merely clarifies provisions of the regulations and addresses certain administrative problems that have arisen in the drug testing program. There are not sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 40

Drug testing, Alcohol testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

Issued this 11th Day of July, 1995, at Washington, D.C.

Federico Peña,

Secretary of Transportation.

For the reasons set forth in the preamble, 49 CFR Part 40 is proposed to be amended as follows:

PART 40—[AMENDED]

1. The authority citation for Part 40 would be revised to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, 45101–45106.

2. Section 40.25 is proposed to be amended by removing the word ''oral'' from paragraph (e)(2)(i)(A) and by removing the words ''Oral body'' from paragraph (e)(2)(i)(B) and adding ''Body'' in their place.

3. Section 40.25(f)(10)(iv) is proposed to be revised to read as follows:

§ 40.25 Specimen collection procedures.

* * * * *

(f) * * *

(10) * * *

(iv)(A)(*1*) In either collection methodology, upon receiving the specimen from the individual, the collection site person shall determine if it has at least 30 milliliters of urine for a single specimen collection or 45 milliliters of urine for a split specimen collection.

(*2*) If the individual has not provided the required quantity of urine, the specimen shall be discarded. The collection site person shall direct the individual to drink 8 ounces of fluid immediately. The individual shall be directed to drink an additional 8 ounces of fluid each 30 minutes thereafter up to a total of 40 ounces or until the individual has provided a new urine specimen, whichever occurs first. If the employee refuses to drink fluids as directed or to provide a new urine specimen, the collection site person shall terminate the collection and notify the employer that the employee has refused to submit to testing.

(*3*) If the individual has not, within four hours from the time the original insufficient urine specimen was presented to the collection site person, provided a sufficient specimen, the collection site person shall discontinue the collection and notify the employer.

(B) The employer shall direct any employee who does not provide a sufficient urine specimen (see paragraph (f)(10)(iv)(A)(*3*) of this section) to obtain, as soon as practical after the attempted provision of urine, an evaluation from a licensed physician who is acceptable to the employer concerning the employee's medical ability to provide an adequate amount of urine.

(*1*) If the physician determines, in his or her reasonable medical judgment, that a medical condition has, or with a high degree of probability, could have, precluded the employee from providing an adequate amount of urine, the employee's failure to provide an adequate amount of urine shall not be deemed a refusal to take a test. The physician shall provide to the employer a written statement of the basis for his or her conclusion.

(*2*) If the physician, in his or her reasonable medical judgment, is unable to make the determination set forth in paragraph (f)(10)(iv)(B)(*1*) of this section, the employee's failure to provide an adequate amount of urine shall be regarded as a refusal to take a test. The physician shall provide a written statement of the basis for his or her conclusion to the employer.

* * * * *

4. Section 40.33 is proposed to be amended by removing and reserving paragraph (b)(2), by revising paragraphs (c)(5) and (c)(6), by designating the existing text of paragraph (f) as paragraph (f)(1), and by adding paragraph (f)(2) to read as follows:

§ 40.33 Reporting and review of results.

* * * * *

(c) * * *

(5) The MRO may verify a test as positive without having communicated directly with the employee about the test in four circumstances:

(i) The employee expressly declines the opportunity to discuss the test;

(ii) Neither the MRO nor the designated employer representative, after making all reasonable efforts, has been able to contact the employee within 30 days of the date on which the MRO receives the confirmed positive test result from the laboratory;

(iii) The designated employer representative has successfully made and documented a contact with the employee and instructed the employee to contact the MRO (see paragraphs (c)(3) and (4) of this section), and more than five days have passed since the date the employee was successfully contacted by the designated employer representative; or

(iv) Other circumstances provided for in DOT agency drug testing regulations.

(6) If a test is verified positive under the circumstances specified in paragraph (c)(5) (ii) or (iii) of this section, the employee may present to the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented the employee from being contacted by the MRO or designated employer representative (paragraph (c)(5)(iii) of this section) or from contacting the MRO (paragraph (c)(5)(iii) of this section) within the times provided. The MRO, on the basis of such information, may reopen the verification, allowing the employee to present information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes that there is a legitimate explanation, the MRO declares the test to be negative.

* * * * *

(f)(1) * * *

(2) If the analysis of the split specimen is reconfirmed by the second laboratory for the presence of the drug(s) or drug metabolite(s), the MRO shall notify the employer and employee of the results of the test.

* * * * *

[FR Doc. 95–18041 Filed 7–24–95; 8:45 am]
BILLING CODE 4910–62–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Notice: Guidance on the Role of Consortia and Third-Party Administrators in DOT Drug and Alcohol Testing Programs.

SUMMARY: The Department of Transportation encourages the provision of drug and alcohol testing services through consortia and third-party administrators. The guidance in this notice responds to a number of questions that have arisen about the proper role of these organizations in assisting employers to meet the requirements of the Department's drug and alcohol testing regulations.

FOR FURTHER INFORMATION CONTACT: Albert Alvarez, Director, Office of Drug Enforcement and Program Compliance 400 7th Street SW., Room 9404A. 202–366–3784; or Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, 400 7th Street SW., Room 10424. 202–366–9306.

SUPPLEMENTARY INFORMATION: The Department of Transportation's drug and alcohol testing programs require employers to take a variety of actions to ensure a transportation workplace free of drug and alcohol misuse. Consortia and third-party administrators (C/TPAs) can play an important role in assisting employers to meet these requirements, and the Department's policy is to encourage their availability to employers. At the same time, the Department is committed to ensuring that the confidentiality of the testing process for employees is not compromised.

The following guidance spells out the Department's views and interpretations of the proper role of C/TPAs in DOT drug and alcohol testing programs. It responds to a number of questions that participants have raised about the place of these organizations. This is Department-wide guidance, applying to participants in the programs of all DOT operating administrations involved: the Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), Federal Highway Administration (FHWA), Federal Transit Administration (FTA), United States Coast Guard (USCG), and Research and Special Programs Administration (RSPA).

General Role and Functions of C/TPAs

• Employers are permitted to use C/TPAs to carry out certain aspects of their drug and alcohol testing programs.

• If an employer uses a C/TPA to implement its program, the employer must ensure that the C/TPA performs its services in accordance with the applicable rules.

• C/TPAs may operate random testing programs for employers and may facilitate the conduct of other functions (e.g., contracting with labs or collectors, conducting collections).

• C/TPAs may combine employees from more than one entity or one industry in a random pool. It should be noted that employees not covered by DOT rules may not be part of the same random pool with DOT employees, that adjustment to random testing rates in various industries may complicate the ability of C/TPAs to operate multi-industry pools, and that any C/TPA including aviation employees must be approved by the FAA.

• C/TPAs may assist medical review officers and substance abuse professionals (MROs/SAPs) in ensuring that follow-up testing is conducted in accordance with the schedule established by the MRO/SAP. Like an employer, a C/TPA may not *randomly* select employees from a ''follow-up pool'' for follow-up testing. (Follow-up testing, while unannounced, is not random: it follows individualized directions established by the MRO/SAP for the particular employee.)

• The C/TPA acts as an agent of the employer, and ''stands in the shoes'' of the employer, subject to certain limits. Within these limits, the duties the rule assigns to employers are to be carried out by the C/TPAs acting as their agents. Because the C/TPA acts as an agent of the employer, it is not required that the employee provide written consent to permit the employer to provide confidential information to the C/TPA (e.g., individual test results). In their role as agents of the employer, C/TPAs must follow the same confidentiality rules as the employer itself.

• Limits on use of C/TPAs as agents include the following:

* A C/TPA cannot make reasonable suspicion, post-accident, or refusal determinations. This is a non-delegable duty of the employer itself.

* The employer itself is responsible for making sure that an employee who has tested positive for alcohol or drugs, or otherwise violated the rules, is removed from performance of safety-sensitive positions.

* As noted above, an employer cannot delegate responsibility for compliance to C/TPA. The employer remains obligated to DOT for compliance, and the C/TPA's failure to implement any aspect of the program as required in Part 40 and applicable operating administration regulations makes the *employer* subject to enforcement action by the Department.

* A C/TPA cannot act as ''program manager'' in FAA and RSPA programs, which call for the employer itself to have an individual designated to manage the drug and alcohol testing program for the employer.

* The fact that a C/TPA stands in the employer's shoes does not obviate the C/TPA's obligation to transmit quarterly laboratory statistical summaries to each actual employer.

* The limitations on self-referrals by SAPs for treatment apply in situations in which SAPs are part of a C/TPA.

* It is not appropriate for laboratories to receive drug and alcohol forms for an individual packaged or attached (e.g., stapled) together, since this is inconsistent with the privacy and confidentiality of personally-identified test records. Consequently, C/TPAs (including those that are operated by or affiliated with laboratories) must ensure that laboratories receive only the drug chain of custody form. One useful way in which C/TPAs can implement this guidance is to establish separate addresses for the receipt of drug and alcohol forms, respectively. C/TPAs could also establish procedures to separate alcohol and drug forms that arrive together.

Confidentiality, Test Results, Recordkeeping

• C/TPAs may receive from employers or other parties and maintain all records concerning DOT alcohol and drug testing programs, including individual test results, both positive and negative. Record retention requirements (i.e., requirements that records be maintained for a certain amount of time) apply to records maintained by C/TPAs in the same way as the requirements apply to employers.

• Where operating administration rules or policies require employers to keep certain information in their own files (e.g., for purposes of review during inspections), employers must do so, even though the same information is maintained by a C/TPA for other purposes.

• Information needed for operating a drug/alcohol program (e.g., names of employees in random pool, random selection lists, copies of notices to employers of selected employees) may be maintained by C/TPAs. Consortia may make random selections from the pool and notifications of random tests. If the C/TPA does not maintain this information, the employer itself must do so.

• If the C/TPA is conducting or arranging for drug testing, the employer's copy of the COC form may pass through the C/TPA to provide notice to the C/TPA that the employee's specimen has been collected. The document must be forwarded to the actual employer, if required by applicable operating administration rules.

• C/TPAs must follow all confidentiality requirements applicable to employers.

* Like an employer, a C/TPA may not provide individual test results or other confidential information to another employer without a specific, written consent from the employee. For example, suppose a consortium has employers X and Y as members. Employee Jones works for X, and has a drug or alcohol test result kept for X by the consortium. Jones wants to change jobs and work for Y. The consortium may not inform Y of the test result without obtaining specific, written consent from Jones. Likewise, the consortium cannot provide this information to Z, who is not a consortium member, without Employee Jones' consent.

* Blanket consent forms authorizing the release of employee testing information by C/TPAs to a third party are not permitted.

* C/TPAs must establish adequate confidentiality and security measures to ensure that confidential employee records are not available to unauthorized persons. This includes protecting the physical security of records, limiting the number of persons with access to the records and other appropriate access controls, and computer security measures to safeguard confidential data in electronic data bases.

Medical Review Officer Issues

• Employers may obtain MRO services through C/TPAs. While the conflict-of-interest provisions of Part 40 concerning relationships between laboratories and MROs apply, they do not prevent independent C/TPAs (e.g., a C/TPA not operated by a laboratory) from employing or contracting with MROs or contracting for laboratory services.

• If an MRO is employed or contracted for by a C/TPA, the MRO must perform duties independently and confidentially. C/TPAs which have relationships with MROs must structure these relationships to ensure that this independence and confidentiality are not compromised. Specific means (including both physical and operational provisions, as appropriate) to separate MRO functions and other C/TPA functions are essential. The purpose of this mechanism is to ensure that the MRO is independently in charge of all MRO functions and that, with respect to performing MRO-related functions, C/TPA staff are subject to the direction and control only of the MRO.

• Only those C/TPA staff members who are actually under the day-to-day supervision and control of an MRO with respect to MRO functions may perform these functions. This does not mean that those staff may not perform other functions at other times. However, the designation of C/TPA staff as MRO purposes should be limited and not used as a subterfuge to circumvent confidentiality requirements in DOT rules and guidance. MRO staff must also operate under controls sufficient to ensure that the independence and confidentiality of the MRO process are not compromised (see previous paragraph).

• Confirmed test results must be sent *directly* from the laboratory to the MRO or MRO staff designated in accordance with this guidance. For example, a practice in which results are transmitted from a laboratory to a C/TPA computer system, and then assigned to an available MRO, is inconsistent with this guidance.

• MROs must personally conduct the final interviews with employees who have tested positive and must personally make the decision concerning whether to verify a test as positive or negative. MRO staff cannot perform these functions.

• MROs and BATs must send final individual test results directly to the actual employer as soon as the results are available, since it is employers who have the authority to remove employees from performing safety-sensitive functions. While results may be maintained afterwards by the C/TPA, and while there is no objection to the MRO or BAT transmitting results simultaneously both to the employer and to the C/TPA, it is not appropriate for the MRO or BAT to send the results only to the C/TPA, which subsequently retransmits them to the employer. This is true even where the MRO or BAT is employed by or under contract with the C/TPA. Operating administrations are authorized to make exceptions to this general rule in situations where it may be impracticable for the individual test results to be sent to individual employers before going to the C/TPA (e.g., where a C/TPA is the only party in a position to inform an owner-operator who has tested positive that he or she must cease performing safety-sensitive functions).

Enforcement

• Consistent with this guidance, employers may contract out their drug and alcohol testing functions to C/TPAs; employers may not contract away their responsibility to comply with DOT rules.

• DOT regulates employers, not C/TPAs (with the exception of FAA's approval process for C/TPAs in the aviation industry). It is the employer, not the C/TPA, who must answer to DOT for noncompliance with DOT requirements if the employer's C/TPA does not properly carry out the requirements of DOT rules.

Issued this 11th day of July, 1995 at Washington D.C.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95–18042 Filed 7–24–95; 8:45 am]

BILLING CODE 4910–62–U

federal register

Tuesday
July 25, 1995

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Funding Availability for Training and Technical Assistance for Public Housing Resident Patrols; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3920–N–01]

Notice of Funding Availability for Training and Technical Assistance for Public Housing Resident Patrols

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Training of Trainers and Technical Assistance for Public Housing Resident Patrols.

SUMMARY: This NOFA announces funding available up to $500,000 for the development and implementation of technical assistance and training for resident patrols in public and Indian housing. The U.S. Department of Housing and Urban Development is seeking proposals for one or more Grant(s) to be executed through Cooperative Agreement(s) to develop and implement training, technical assistance (TA) and TA instruments. The purpose of this assistance is to provide state-of-the-art resident patrol training and TA to housing authority staff, residents, Resident Councils (RC), Resident Management Corporations (RMC), housing authority security staff, and local law enforcement personnel.

DATES: Proposals must be received at HUD Headquarters at the address below on or before 3 pm, Eastern Daylight Time, August 24, 1995. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by any unanticipated or delivery-related problems. Applications received after the deadline will not be considered.

APPLICATION SUBMISSION: There is no application kit for this grant application submission. All applications should be submitted with the required tabs and Federal forms. Copies of the forms are available from the contact listed below.

An original and two copies of the application must be sent to the Crime Prevention and Security Division, Office of Community Relations and Involvement, Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, SW, Washington, DC 20410. Facsimile (''FAX'') applications are not acceptable.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Cocke, Crime Prevention and Security Division, Office of Community Relations and Involvement, Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577–0197.

I. Purpose and Substantive Description

(a) *Purpose.* The U.S. Department of Housing and Urban Development is seeking proposals for one or more Grant(s) to provide resident patrol training and technical assistance in public housing. The purpose of this training is to develop and provide state-of-the-art training and technical assistance to housing authority management and security staff, residents, Resident Councils (RC), Resident Management Corporations (RMC), and local law enforcement personnel in their development and implementation of volunteer resident patrols. Recipients of the TA and training should be better able to implement volunteer resident patrols in their authorities and developments.

(b) *Authority.* This Grant is authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625, and section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1995, (approved September 28, 1994, Pub. L. 103–327), (95 App. Act) appropriated $290 million for the Drug Elimination Program of which $10 million, a portion of which is made available through this NOFA, will be used for funding drug elimination technical assistance and training.

(c) *Award mounts.* This NOFA makes a total amount of $500,000 available for one or more cost reimbursable grants.

(d) *Objectives.* The Department's overall objectives in awarding this Grant are to build upon the initial TA and training grant awarded by the Department in 1994. Successful applicants for this grant award must design, develop and administer a variety of resident patrol TA and training instruments that will have functional use beyond the period of this grant, and that will assist public and Indian housing authority staff and residents, and local law enforcement officers. Specifically grantees must:

(1) Use and build on HUD's past successful Resident Patrol TA and training. A copy of the training curriculum for FY 1994 will be available for review at HUD's Community Relations and Involvement Clearinghouse, telephone 1–800–578–3472.

(2) Provide training and technical assistance using state-of-the-art techniques which can be easily transferable and replicable to assist housing authority staff and residents in understanding and implementing Resident Patrols. The media could include but is not limited to on-site visits, printed materials, ''fact sheets'', ''how-to'' technical material, training material and training meetings, videos, or other instruments.

(3) Design and develop a series of TA instruments for housing authority staff and residents on issues specific to Resident Patrol implementation. These include but are not limited to:

(i) Increasing the number of residents participating in volunteer resident patrols;

(ii) Increasing the number of successful patrols;

(iii) Improving the administration and active membership of existing patrols;

(iv) Improving coordinated administration by resident groups, housing authorities, and police departments, and

(v) Increasing the number of and quality of state-of-the-art TA and training instruments and media available to HA staff and residents interested in developing or improving their patrols.

(4) Design and develop an impact/process evaluation methodology for HA staff and residents to use in measuring their progress after implementing resident patrols.

(5) Successfully complete all tasks within a 24 month period and within budget.

(e) *Scope of work*.

(1) *General Requirements*.

(A) The grantee shall furnish all necessary personnel, materials, services, and equipment and shall otherwise do all things necessary for, or incidental to, the performance of the tasks set forth in this Statement of Work.

(B) The work to be performed under this Grant includes, but is not limited to: A brief report on the current status of the administration and effectiveness of current resident patrols in public housing, especially those formed and operating in the past twelve months; the development, dissemination and implementation of several tools for TA and training. In addition, the grantee shall attend one or more meetings at HUD Headquarters for the purpose of discussing HUD's comments pertaining to the grantee's services.

(2) *Specific Requirements*. The grantee shall perform the following tasks in accordance with the objectives and general scope of the Grant.

TASK 1—Orientation

Within the first week after the effective date of the Grant, the Project Director and other key personnel shall attend a meeting at HUD Headquarters in Washington, DC, for the purpose of establishing a common understanding and strategy with respect to the Grant objectives, the scope of work necessary to achieve the objectives, the time frame, methodology, and deliverables.

TASK 2—Management and Work Plan

The grantee shall develop a draft management and work plan that addresses all of the requirements contained in the approved Grant strategy and provide an updated and detailed work plan for the entire project. This draft plan shall be submitted to the HUD Government Technical Representative (GTR) for review and comment by the end of the second week of the Grant, setting forth the timing of all stages of the project, describing the training techniques, materials, and experiences of trainers for this project. The plan shall include a detailed allocation of Grant resources and a schedule for the accomplishment of the Grant work. HUD shall submit its comments and suggestions to the grantee within one week from receipt of the draft plan. A Final Management and Work Plan incorporating HUD's comments and suggestions shall be submitted by the end of the 5th week of the Grant.

TASK 3—Review of Resident Patrols and Other TA and Training Current in Public Housing

The grantee will review a variety of available documents, and work with previous grantees, HA staff, residents and law enforcement personnel to identify issues involving resident patrols and TA and training. The review should include housing authorities and resident councils with new resident patrols, Public Housing Drug Elimination Program (PHDEP) grantees with funds designated for training and implementing volunteer Resident Patrols, and former PHDEP grantees. The review should concentrate on learning from housing authority staff, residents and law enforcement personnel what they consider the most useful forms of resident patrol TA.

At a minimum the grantee should address the following issues:

(1) Outlining and understanding the role of the participants;

(2) Identifying available funding resources;

(3) Recruiting, screening and organizing patrol members;

(4) Curriculum and training of patrol members;

(5) Written policies, practices and procedures;

(6) The working relationships and necessary communications between patrols and local law enforcement agencies;

(7) Patrol techniques; insurance and legal issues;

(8) Deportment of patrol members;

(9) Clothing and equipment needs;

(10) Community relations;

(11) How to train new members;

(12) Group cohesion and group dynamics;

(13) Action planning;

(14) Team decision-making processes;

(15) Conflict management;

(16) Impact/process evaluation.

The grantee should also work with HAs and other interested parties to identify TA, training, and TA instruments from a variety of media, especially those which can continue to be of use after the end of the grant. The grantee will confer with several Clearinghouses which disseminate TA material, as well as other training organizations for public housing staff and residents, and law enforcement, to identify popular, useful and cost-effective media for TA and training. This could include on-site visits, printed materials, ''fact sheets'', ''how-to'' technical material, training material and training meetings, videos, or other instruments.

TASK 4—Revision of TA and Training Plan

HUD and the grantee will work to incorporate into the original plan any new issues, or TA and training techniques identified during the review and develop a revised action plan for the grant. The revised plan will be made available to the GTR for comment and approval, and will incorporate HUD's comments and suggestions. The grantee must submit any revised budget, plan and timetable by Week 12 of the Grant. The GTR will work with the grantee to approve a revised budget, plan and timetable no later than Week 14 of the Grant.

TASK 5—Choosing HAs for Targeting TA and Training

The grantee shall define the target audience, including any specific HAs, for all TA, training and related TA instruments. All TA, training and TA instruments must address issues in a comprehensive manner, including issues raised by HA staff, residents, local law enforcement and other parties involved in the training, development and implementation of Resident Patrols. Additionally, any HA participating in the TA or training must establish a team including three to five members representing housing authority staff, residents and law enforcement. HA teams participating in the TA and training should demonstrate their commitment and ability to use the TA or training at their own developments.

TASK 6—Develop and Administer Resident Patrol Training Workshops, TA, and TA Instruments

From the plan revised in Task 4, and approved by the GTR, the grantee will begin and complete the administration and implementation of the TA, training and TA instruments identified as most effective for the issues and problems identified. This will be provided to the HA teams specified in Task 5.

Training, TA and the use of TA instruments will be provided to the HA teams from selected housing authorities using the TA, training and TA instruments identified in the plan. For any training, the grantee will submit a list of proposed training sites, and HUD and the grantee will choose the final list of training sites. Attendees will be responsible for their own travel, lodging and per diem costs. The grantee will be responsible for all costs associated with facilities, training materials, and training staff costs of travel, lodging and per diem at non-governmental rates. All provision of TA and training must begin no later than week 22.

For any training, the grantee will provide printed materials, or if required, curriculum, instructor manual, participant manual, student materials, and state-of-the-art videos and other supporting student aids for each of the elements addressed above.

As part of each training or TA, the attendees shall have developed a specific plan of action for using the TA, training or TA instrument in their public housing community.

TASK 7—Analysis, Evaluation and Reporting

The grantee will develop an evaluation instrument for each of the TA and training instruments developed. This will be used to assess the effectiveness of each of the instruments. The draft evaluation form for each instrument shall be provided to the GTR for review and comments. The GTR's comments will be provided to the grantee and incorporated into the final product(s).

(f) *Eligibility*. Organizations that can demonstrate experience with successful implementation and continuation of resident patrols, working with public and Indian housing authorities and resident groups, and in resident training programs are eligible to apply.

(g) *Application submission requirements.* (1) Applicants must submit a completed Application for Federal Assistance (Standard Form 424). The SF–424 is the face sheet for the application. Applicants must also submit a Standard Form 424A (Budget Information), including a program narrative, a detailed budget with budget narrative with supporting cost analysis and legal and accounting services.

(2) Application format requirements. The application must be no longer than 25 pages, excluding attachments (e.g. resumes, certifications, etc.). All materials must be typewritten, single-spaced, with type no smaller than 10 cpi, on 8.5″ by 11″ paper, with at least 1″ margins on all sides and printed on one side only. Each application must include the items listed in the following format:

(a) Cover letter.

(b) Tab 1—Standard Form 424, Application for Federal Assistance.

(c) Tab 2—Standard Form 424A, Budget Information with attached program narrative. Applicants must provide a budget with detailed justification for all costs, including the basis for computation of these costs. The program budget must be complete, reasonable, and cost-effective in relation to the proposed program. This explanation must include the applicant's financial capability, i.e., the fiscal controls and accounting procedures which assure that Federal funds will be accounted for properly. Applicants must demonstrate that they have the financial capability to effectively implement a project of this size and scope.

(d) Tab 3—Organizational Qualifications. Applicants must fully describe their organizational structure and staff size, and demonstrate that they are sufficient to effectively implement a project of this size and scope. Applicants should outline a list of housing authorities where similar activities were conducted, the dates and numbers of persons involved, any current points of contact, and the results of any evaluations of the work.

(e) Tab 4—Staff Qualifications. Applicants must fully describe the capabilities and work experience of the proposed director, and all key staff. Applicants must fully describe their knowledge and experience with the proposed activities, preferably in public housing. Applicants should have successful experience in working with persons with disabilities and with persons from diverse ethnic and racial backgrounds. Applicants must include a staffing plan to fulfill the requirements of the statement of work, including staff titles, related work and educational background, experience, and skills of the director and the staff; and the time each will be required to contribute to the project. Applicants must provide a short list of names and current phone numbers of individuals or firms for which the proposed project director has previously accomplished work.

(f) Tab 5—Project Experience. Applicants must fully describe prior experience in designing and delivering TA, training and TA instruments. Applicants must demonstrate that their organization, staff size, and prior experience is sufficient to effectively implement a project of this size and scope. Applicants should outline a list of housing authorities or other sites where similar training was offered, the dates of the training, numbers of persons trained, any current points of contact, and the results of any evaluations of the training and TA.

(g) Tab 6—Implementation Plan. Applicants must submit a plan outlining the major activities of each task and describe how available resources will be allocated. The plan must include an annotated organizational chart depicting the roles and responsibilities of key organizational and functional components and a list of key personnel responsible for managing and implementing the major elements of the program. There must be a time-task plan which clearly identifies the major milestones and products, organizational responsibility, and schedule for the completion of activities and products. The plan must discuss how the proposed activities reflect a knowledge of the subject and the target populations (including persons from diverse ethnic/racial backgrounds and persons with disabilities), and how the applicant plans to take into account any minor or major changes in the timetable that might result from the review of the issues outlined in Task 3 above.

(h) Tab 7—Representations, certifications, and other statements of offerors or quoters.

(i) HUD Form 2880—Applicant Disclosure Report.

(ii) SF-LLL Disclosure of Lobbying Activities.

(iii) Certification Regarding Drug-Free Workplace Requirements.

(iv) Prior to award execution, a successful applicant must submit a certification that it will comply with:

(A) Section 3 of the Housing and Community Development Act of 1968, Economic Opportunities for Low and Very-Low Income Persons (12 U.S.C. 1701u), and with implementing regulations at 24 CFR part 135. Section 3 requires, that to the greatest extent feasible, opportunities for training and employment arising in connection with housing rehabilitation, construction or other public construction projects be given to lower income residents within the metropolitan area (or nonmetropolitan county) and for contracts for work to be performed in connection with the housing rehabilitation, construction or other public construction project be awarded to eligible businesses that provide economic opportunities for low and very-low income persons residing within the metropolitan area (or nonmetroplitan county) in which the assistance is expended;

(B) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1; and

(C) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against persons with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

(h) *Selection criteria.* The Department will review and rate proposals according to the extent to which they meet the following criteria, and will make an award to the applicant that best meets all of the below criteria and receives the highest score out of a possible 100 points divided according to the criteria listed below:

(1) Corporate/Organizational Management Qualifications (20 points).

(i) Organizational Structure (10 points). Applicants must concisely describe how their organizational structure, staff size, financial reporting capacity and internal controls will maximize successful implementation of the tasks described in this notice.

(ii) Administrative Experience (10 points). Applicants must demonstrate their experience in the successful administration of programs of a similar budget and staff size. (10 points)

(2) Staff Qualifications (20 points).

(i) Project Director (10 points). Applicants should provide a project director with the experience and capacity to manage the budget and staff of the proposed grant, showing evidence of the ability to successfully complete proposed activities on-time and within budget. The project director must also have demonstrated experience in working with the public housing and law enforcement communities.

(ii) Project Staff (10 points). Applicants should provide staff with the experience and capacity to quickly and efficiently organize and implement the TA and training. Staff must have demonstrable experience in working with public housing staff and residents (including persons from diverse ethnic/racial backgrounds and persons with disabilities), especially in the implementation of resident patrols. The applicant must demonstrate how such staff experience will result in the ability to understand and resolve any issues (including those issues identified through the completion of Task 3) arising from the implementation of tenant patrols in public housing.

(3) Project Experience (20 points).

(i) Applicants must be able to demonstrate maximum knowledge and experience in developing and implementing needs assessments with public housing staff and residents, and law enforcement, showing previous success in matching identified needs to the type of TA and training provided (10 points).

(ii) Applicants must demonstrate experience with and understanding of the target population and of resident patrols. (10 points).

(4) Quality of the Plan (40 points).

(i) Applicants must propose tasks, timetable and staff assignments for the proposed activities that reflect an understanding of the current needs of public housing communities in the development of resident patrols, and that will minimize revisions to the budget, plan and timetable outlined in Task 2. The activities proposed by the grantee must evidence an understanding of the diversity of public housing staff and residents. (20 points).

(ii) Applicants must propose TA, training and TA instruments that demonstrate maximum understanding of the current needs of public housing communities in the development of resident patrols, and which are cost-effective and state-of-the-art (20 points).

(i) *Review process.* Applications submitted in response to this competitive announcement will be reviewed by a panel of HUD representatives, which will make recommendations to the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development. The panel will assign numerical values based on the weighted selection criteria. In the case of a numerical tie, preference will be given to the applicant with the highest numerical score for the Quality of the Plan. The final award will be made by the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development. Letters will be sent to all applicants notifying them that their proposal has been selected or the reason(s) it was not selected. HUD will then negotiate specific terms of the award with the selected applicant.

(j) *Administrative requirements.*

(1) *Award Period.* The Grant(s) will be cost-reimbursable and awarded for a 12 to 24 month base period. HUD has the option to extend the Agreement for an additional year(s), subject to the grantee's performance, and the availability of funding.

(2) *Cooperative Agreement.* After the application has been approved and the grant awarded, HUD and the applicant shall enter into a Cooperative Agreement (Form HUD–1044) setting forth the amount of the Cooperative Agreement and its applicable terms, conditions, financial controls, payment mechanism/schedule, and special conditions.

(k) *Other matters.*

Environmental Impact. A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). Since the FY 1995 NOFA is substantially identical to the FY 1994 NOFA, the FY 1994 FONSI is appropriately applicable to the FY 1995 NOFA. This FONSI is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Federalism Impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government and, therefore, the provisions of this rule do not have ''federalism implications'' within the meaning of the Order. The NOFA makes funds available to help housing authorities organize and train tenant patrols. As such, it would help housing authorities combat serious drug-related crime problems in their developments, thereby strengthening their role as instrumentalities of the States.

Family Impact. The General Counsel, as the Designated Official for Executive Order 12606, *The Family,* has determined that the provisions of this NOFA have the potential for a positive, although indirect, impact on family formation, maintenance and general well-being within the meaning of the Order. As such, this NOFA is intended to improve the quality of life of public and Indian housing development residents, including families, by reducing the incidence of drug-related crime.

Section 102 HUD Reform Act—Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Documentation and public access. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR

1942), for further information on these requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942).

Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well.

Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Prohibition Against Lobbying Activities

The use of funds awarded under this Cooperative Agreement is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The ''Byrd Amendment'') and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying.

Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Authority: Sec. 5127, Public Housing Drug Elimination Act of 1988 (42 U.S.C. 11901 et. seq.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 7, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–18125 Filed 7–24–95; 8:45 am]

BILLING CODE 4210–33–P

federal register

Tuesday
July 25, 1995

Part VII

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Funding Availability for Technical Assistance and Training for Public and Indian Housing (PIH) Crime Prevention Through Environmental Design (CPTED); Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3921–N–01]

Notice of Funding Availability for Technical Assistance and Training for Public and Indian Housing (PIH) Crime Prevention Through Environmental Design (CPTED)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Training and Technical Assistance for Public and Indian Housing CPTED.

SUMMARY: This NOFA announces the availability of $500,000 for one or more grant(s) to provide technical assistance and training to public and Indian housing authorities (HAs) in the development and training of HA staff and residents in the subject of crime prevention through environmental design (CPTED). The U.S. Department of Housing and Urban Development (HUD) is seeking proposals for one or more grant(s) to be executed through a Cooperative Agreement to provide technical assistance and training for Public and Indian Housing CPTED. For purposes of this announcement, CPTED is defined as the redesign, renovation, or rehabilitation of existing environmental conditions to improve the safety of staff and residents and eliminate conditions which may contribute to instances of crime. The purpose of these grants is to provide state-of-the-art CPTED training and technical assistance to HA staff, residents, Resident Councils (RC), Resident Management Corporations (RMC), housing authority security directors, local law enforcement officials, local government officials, architects, and other community leaders.

DATES: Proposals must be received at HUD Headquarters on or before 3 p.m. Eastern Daylight Time, August 24, 1995. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by any unanticipated or delivery-related problems. Applications received after the deadline will not be considered. Applications received by facsimile machine will not be considered.

APPLICATION SUBMISSION: There is no application kit for this grant application submission. All applications should be submitted with the required tabs and Federal forms. Copies of the forms are available from the contact listed below.

An original and two copies of the application must be sent to the Crime Prevention and Security Division, Office of Community Relations and Involvement, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, SW., Washington, DC 20410. Facsimile (''FAX'') applications are not acceptable.

FOR FURTHER INFORMATION, CONTACT: Elizabeth A. Cocke, Crime Prevention and Security Division, Office of Community Relations and Involvement, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2577–0197.

I. Purpose and Substantive Description

(a) *Purpose.* The U.S. Department of Housing and Urban Development is seeking proposals for one or more grant(s) to provide state-of-the-art technical assistance (TA) and training to public and Indian housing authorities (HAs) for crime prevention through environmental design (CPTED). For the purposes of this announcement, CPTED is defined as the redesign, renovation, or rehabilitation of existing environmental elements to improve the safety of residents and to eliminate conditions which may contribute to instances of crime. The purpose of this grant is to build upon the Department's past successful TA and training and continue to develop and provide state-of-the-art CPTED training and technical assistance to housing authority staff, residents, Resident Councils (RC), Resident Management Corporations (RMC), and where appropriate, architects, engineers, local law enforcement officials, local government officials, and other community leaders.

(b) *Authority.* These grants are authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), as amended by section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625, and Section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1995, (approved September 28, 1994, Pub. L. 103–327), (95 App. Act) appropriated $290 million for the Drug Elimination Program of which $10 million will be used for funding drug elimination technical assistance and training.

(c) *Award amounts.* This NOFA makes up to $500,000 available for one or more cost-reimbursable grants.

(d) *Objectives.* The overall objectives of this grant are to:

(1) Build upon the Department's past successful CPTED TA and training. A copy of the training curriculum for FY 1994 will be available for review at HUD's Community Relations and Involvement Clearinghouse, telephone 1–800–578–3472.

(2) Provide the TA and training in a comprehensive context that acknowledges the role of other safety elements in public and Indian housing, including police and security services, lease enforcement, etc.

(3) Provide training and TA using state-of-the-art techniques which are easily transferable and replicable to assist housing authority staff and residents in understanding and implementing the contributing factors of CPTED and to develop and implement CPTED elements and plans for their developments. The media could include, but is not limited to, on-site visits, printed materials, ''fact sheets'', ''how-to'' technical material, training material and training meetings, videos, or other instruments.

(4) Design and develop a series of TA instruments based on the needs of housing authority staff and residents, and other staff who work on CPTED design and implementation in public and Indian housing. In determining the needs of staff and residents, grantees should take into account possible ethnic/racial sensitivities and the needs of persons with disabilities.

(5) Design and develop an impact/process evaluation methodology for HA staff and residents to use in measuring

their progress after implementing CPTED elements.

(6) Successfully complete all tasks within a 24 month period within budget.

(e) *Scope of work.*

(1) General Requirements.

(i) The grantee shall furnish all necessary personnel, materials, services, and equipment and shall otherwise do all things necessary for, or incidental to the performance of the tasks set forth in this Statement of Work.

(ii) The work to be performed under this grant includes, but is not limited to: taking the issues and needs identified by public and Indian housing participants during the 1994 PIH/CPTED grant and developing TA, training, TA instruments and materials to address them; preparation of CPTED TA and training instruments which address issues and strategies peculiar to public housing; delivery of CPTED TA and training instruments to housing authority staff, residents, Resident Councils, Resident Management Corporations, housing authority security directors, local law enforcement officials, local government officials, architects, and other community leaders, and provision of TA to HA staff and residents. In addition, the grantee shall attend one or more meetings at HUD Headquarters for the purpose of discussing HUD's comments pertaining to the grantee's products.

(2) Specific Requirements. The grantee shall perform the following tasks in accordance with the objectives and general scope of the grant.

TASK 1—Orientation

Within the first week after the effective date of the grant Agreement, the Project Director and other key personnel shall attend a meeting at HUD Headquarters in Washington, DC, for the purpose of establishing a common understanding and strategy with respect to the grant objectives, and the scope of work necessary to achieve the objectives, the time frame, methodology, and deliverables.

TASK 2—Management and Work Plan

The grantee shall develop a draft management and work plan that addresses all of the requirements contained in the approved grant strategy and provide an updated and detailed work plan for the entire project. This draft plan shall be submitted to the HUD Government Technical Representative (GTR) for review and comment by the end of the second week of the grant, setting forth the timing of all stages of the project. The plan shall include a detailed allocation of grant resources and a schedule for the accomplishment of the grant work. HUD shall submit its comments and suggestions to the grantee within one week from receipt of the draft plan. A Final Management and Work Plan incorporating HUD's comments and suggestions shall be submitted by the end of the 5th week of the grant.

TASK 3—Review of CPTED Elements Currently Used by or Under Consideration by Housing Authorities

The grantee shall use the bibliography and resources developed under HUD's CPTED TA and training grant in 1994, and update them. This includes but is not limited to:

(1) The evaluations of the 1994 TA and training.

(2) Published and unpublished pieces on CPTED activities and programs, especially in multi-family, high-density, urban, low-income environments.

(3) A bibliography of printed resources on the development and implementation of a CPTED program.

(4) Conversations with HA staff and residents, law enforcement officers, architects, engineers, membership organizations and other parties interested in the issue.

The grantee shall work with these organizations, including resident councils, resident organizations, Resident Management Corporations, and city government to identify key and current issues that the HAs, resident groups and member organizations consider essential for implementing elements of CPTED in public and Indian housing. The grantee shall develop a short written report summarizing the needs assessment and provide the assessment in writing to the GTR for review.

In the past, HUD has found the following elements to be of interest to HA staff and residents:

(1) Innovative TA and training which moves beyond commonly known and accepted practices of design and construction.

(2) Information on how to develop, fund, and implement CPTED in public housing, addressing issues peculiar to public and Indian housing.

(3) TA instruments to assist participants in identifying certain types of public housing designs and environments which support criminal activity, and those which can stem criminal activity. These instruments should span the spectrum from general, inexpensive, and easily replicable to those of a more complex, technical and specific nature.

(4) Information on successful CPTED initiatives in public and Indian housing, the benefits housing authorities and residents have gained as a result of implementation of CPTED elements.

(5) Information on and case studies illustrating the successful combination of CPTED elements and other crime-prevention activities in low-income neighborhoods such as resident patrols, community policing, etc.

(6) Opportunities for TA recipients to meet one-on-one with expert advisors to review and discuss specific plans and to obtain technical assistance on specific design and implementation plans.

(7) Impact/process evaluation instruments to assist housing authorities in tracking outcome measures for their CPTED strategies.

TASK 4—Revision of TA and Training Plan

After review of the results of Task 3, the grantee and GTR will confer before the grantee develops a revised plan for producing technical assistance and TA instruments based on the results of Task 3. The proposed TA and training plan must include any elements proposed by the GTR, and the plan must be submitted to the GTR for review and approval before it can be implemented. The revision could require revision of the budget and timetable. The grantee must submit any revised budget, plan and timetable by Week 12 of the Grant. The GTR will work with the grantee to approve a revised budget, plan and timetable no later than Week 14 of the Grant.

TASK 5—Choosing HAs for Targeted TA and Training

The grantee will be responsible for identifying and contacting HAs and resident groups which have substantial funds set aside for or plans for implementing elements of CPTED in their developments. This includes HAs with substantial plans and funding from the Comprehensive Grant program, HOPE VI program, Public Housing Drug Elimination Program and others. From that list, the grantee will confer with the GTR regarding developing a targeted TA and training strategy for some of the identified HAs. Before providing TA, the grantee will submit the final list of HAs for targeted TA and training to the GTR for review and approval.

TASK 6—Develop and Administer CPTED Workshops, TA and Training Instruments

The grantee will begin and complete implementation of the plan as revised in Task 4 of this plan.

For any off-site training, the grantee, in consultation with HUD, will be responsible for making all arrangements for the training, including classroom space and sleeping rooms for participants. Conference attendees will be responsible for their own travel, lodging and per diem costs. The grantee will be responsible for all costs associated with facilities, materials and training staff costs of travel, lodging and per diem at non-governmental rates.

TASK 7—Evaluation

The grantee will develop mechanisms for evaluating the effectiveness of each of the TA and training instruments. The draft instruments shall be provided to the GTR for review and approval before the grantee uses them for any purpose.

(f) *Eligibility*. Organizations that can demonstrate experience with conference planning and implementation, working with public and Indian housing authorities and resident groups, and in crime prevention programs in public and Indian housing are eligible to apply.

(g) *Application submission requirements.*

(1) Applicants must submit a completed Application for Federal Assistance (Standard Form 424). The application must be no longer than 25 pages, excluding attachments (e.g. resumes, certifications, etc.). All materials must be typewritten, single-spaced, with type no smaller than 10 cpi, on 8.5'' by 11'' paper, with at least 1'' margins on all sides and printed on one side only. The SF–424 is the face sheet for the application. Applicants must also submit a Standard Form 424A (Budget Information), including a program narrative, a detailed budget with budget narrative with supporting cost analysis and legal and accounting services.

(2) Application format requirements. Each application must include the items listed in the following format:

(i) Cover letter

(ii) Tab 1—Standard Form 424, Application for Federal Assistance.

(iii) Tab 2—Standard Form 424A, Budget Information with attached program narrative.

Applicants must provide a budget with detailed justification for all costs, including the basis for computation of these costs. The program budget must be complete, reasonable, and cost-effective in relation to the proposed program. This explanation must include the applicant's financial capability, i.e., the fiscal controls and accounting procedures which assure that Federal funds will be accounted for properly. Applicant must demonstrate that they have the financial capability to effectively implement a project of this size and scope.

(iv) Tab 3—Organizational Qualifications:

Applicants must fully describe their organizational structure and staff size, and demonstrate that they are sufficient to implement effectively a project of this size and scope. Applicants should outline a list of housing authorities where similar activities were conducted, the dates and numbers of persons involved, any current points of contact, and the results of any evaluations of the work.

(v) Tab 4—Staff Qualifications:

Applicants must fully describe the capabilities and work experience of the proposed director, and all key staff. Applicants must fully describe their knowledge and experience with the proposed activities, preferably in public housing. Applicants must include a staffing plan to fulfill the requirements of the statement of work, including staff titles, related educational background, experience, and skills of the director and the staff; and the time each will be required to contribute to the project.

(vi) Tab 5—Project Experience.

Applicants must fully describe prior experience in designing and delivering conference training programs. Applicants must demonstrate that their organization, staff size, and prior experience is sufficient to effectively implement a project of this size and scope. Applicants should have successful experience in working with persons with disabilities and with persons from diverse ethnic and racial backgrounds. Applicants should also outline a list of housing authorities or other sites where similar training was offered, the dates of the training, numbers of persons trained, any current points of contact, and the results of any evaluations of the training and TA.

(vii) Tab 6—Implementation Plan.

Applicants must submit a plan outlining the major activities of implementation and describe how available resources will be allocated. The plan must include an annotated organizational chart depicting the roles and responsibilities of key organizational and functional components and a list of key personnel responsible for managing and implementing the major elements of the program. There must be a time-task plan which clearly identifies the major milestones and products, organizational responsibility, and schedule for the completion of activities and products. The plan must discuss how the proposed activities reflect a knowledge of the subject and the target populations (including persons from diverse ethnic/racial backgrounds and persons with disabilities), and how the applicant plans to take into account any minor or major changes in the timetable that might result from the review in Task 3.

(viii) Tab 7—Representations, certifications, and other statements of offerors or quoters.

(A) HUD Form 2880—Applicant Disclosure Report

(B) SF–LLL Disclosure of Lobbying Activities.

(C) Certification Regarding Drug-Free Workplace Requirements.

(h) *Selection criteria.* The Department will review and rate proposals according to the extent to which they meet the following criteria, and will make an award to the applicants that best meet all of the below criteria and receive the highest score, out of a possible 100 points, according to the criteria listed below:

(1) Corporate/Organizational Management Qualifications (20 points).

(i) Organizational Structure (10 points). Applicants must concisely describe how their organizational structure, staff size, financial reporting capacity and internal controls will maximize the successful implementation of the tasks described in this notice.

(ii) Administrative Experience (10 points). Applicants must demonstrate their experience in the successful administration of programs of a similar budget and staff size, and how that will contribute to successful completion of all tasks on-time and within budget.

(2) Staff Qualifications (20 points).

(i) Project Director (10 points). Applicants should provide a project director with the experience and capacity to manage the budget and staff of the proposed grant. The project director should have experience in working with the public housing officials, architects, engineers, and law enforcement personnel and should also have experience in successfully completing proposed activities on-time and within budget.

(ii) Project Staff (10 points). Applicants should provide staff with the experience and capacity to quickly and efficiently organize and implement the TA and training. Staff should have sufficient experience working with public housing staff and residents (including persons from diverse ethnic/racial backgrounds and persons with disabilities), especially on the issue of CPTED, and be able to demonstrate how that experience will maximize understanding of the issues specific to public housing CPTED and minimize any issues specific to implementing activities in public housing. This includes those issues listed in Task 3.

(3) Project Experience (20 points).

Applicants should be able to demonstrate knowledge and experience in developing and implementing needs assessments with public housing staff and residents, architects, engineers and law enforcement; showing previous success in matching identified needs to the type of TA and training provided, and to carrying out those plans. (10 points).

(ii) Applicants must demonstrate maximum experience working on a similar scale with a similar variety of proposed tasks, especially in the proposed subjects and methods of TA and training; the applicant should show experience with similar teams of public housing staff, architects, engineers, residents and law enforcement, and successful completion of the projects on-time and within budget (10 points).

(4) Quality of the Plan (40 points).

Applicants should demonstrate that the proposed plan will accomplish the goals outlined above with the following elements:

(i) Applicants must propose tasks, timetable and staff assignments for the proposed activities that demonstrate an understanding of the current needs of public housing communities regarding CPTED, that will maximize the benefits to be gained by HA communities, and that will minimize revisions to the budget, plan and timetable outlined in Task 4, and that will minimize any other difficulties. The activities proposed by the grantee should evidence an understanding of the diversity of public housing staff and residents. (20 points).

(ii) Applicants must propose TA, training and TA instruments that demonstrate maximum understanding of the current needs and capacity of public housing communities in the design and implementation of CPTED elements, that will provide a broad range of types of TA and training, that are cost-effective and state-of-the-art (20 points).

(i) *Review process.* Applications submitted in response to this competitive announcement will be reviewed by a panel of HUD representatives, which will make recommendations to the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development. The panel will assign numerical values based on the weighted selection criteria. In the case of a numerical tie, preference will be given to the applicant with the highest numerical score for the Quality of the Plan. The final award decision will be made by the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development. Letters will be sent to all applicants notifying them that their proposal has been selected or the reason(s) it was not selected. HUD will then negotiate specific terms of the award with the selected applicant.

(j) *Administrative requirements.*

(1) Award Period. The grant(s) will be cost reimbursable, and awarded for a 12 to 24 month base period. HUD has the option to extend the Agreement for an additional year(s), subject to the Grantee's performance, and the availability of funding.

(2) Cooperative Agreement. After the grant has been awarded, HUD and the applicant shall enter into a grant (Form HUD–1044) setting forth the amount of the grant and its applicable terms, conditions, financial controls, payment mechanism/schedule, and special conditions.

(3) Prior to award execution, a successful applicant must submit a certification that it will comply with:

(i) Section 3 of the Housing and Community Development Act of 1968, Economic Opportunities for Low and Very-Low Income Persons (12 U.S.C. 1701u), and with implementing regulations at 24 CFR part 135. Section 3 requires, that to the greatest extent feasible, opportunities for training and employment arising in connection with housing rehabilitation, construction, or other public construction projects be given to lower income residents within the metropolitan area (or nonmetropolitan county) and contracts for work to be performed in connection with the housing rehabilitation, construction, or other public construction project be awarded to eligible businesses that provide economic opportunities for low and very-low income persons residing within the metropolitan area (or non-metropolitan county) in which the assistance is expended;

(ii) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1; and

(iii) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against persons with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

(k) *Other matters.*

Environmental Review. Grants under this program are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) in accordance with 24 CFR part 50.20(p). However, prior to an award of grant funds, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

Federalism Impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government and, therefore, the provisions of this notice do not have ''federalism implications'' within the meaning of the Order. The notice only makes available technical assistance for housing authorities to address the problem of drug-related crime.

Family Impact. The General Counsel, as the Designated Official for Executive Order 12606, *the Family*, has determined that the provisions of this notice have the potential for a positive, although indirect, impact on family formation, maintenance and general well-being within the meaning of the Order. This notice is intended to provide funding for technical assistance that will improve the quality of life of public and Indian housing development residents, including families, by reducing the incidence of drug-related crime.

Section 102 HUD Reform Act—Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Documentation and public access. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR

1942), for further information on these requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942).

Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by Part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well.

Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Prohibition Against Lobbying Activities

The use of funds awarded under this grant is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The ''Byrd Amendment'') and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying.

Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Authority: Sec. 5127, Public Housing Drug Elimination Act of 1988 (42 U.S.C. 11901 et. seq.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 7, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–18126 Filed 7–24–95; 8:45 am]

BILLING CODE 4210–33–P

federal register

Tuesday
July 25, 1995

Part VIII

Department of Energy

10 CFR Part 810

Office of Arms Control and Nonproliferation; Nuclear Information Export Policy; Determining Sensitive Nuclear Technology; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 810

Office of Arms Control and Nonproliferation Nuclear Information Export Policy; Determining Sensitive Nuclear Technology

AGENCY: Department of Energy.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Energy (Department) today begins a rulemaking proceeding to codify and, if appropriate, modify its ''Guidelines for the Designation of Sensitive Nuclear Technology.'' These guidelines have been used since 1986 to guide the Department's staff in determining on a case-by-case basis whether information proposed for export is ''sensitive nuclear technology'' under the Atomic Energy Act and the Nuclear Non-Proliferation Act. The Department has now decided to initiate this rulemaking to codify the guidelines in order to make them easily available to interested members of the public and to provide an opportunity for public comments.

DATES: Comments (3 copies) are due on or before August 24, 1995.

ADDRESSES: Comments must be submitted to U.S. Department of Energy, Office of Arms Control and Nonproliferation, Export Control Division, NN–43, SNT ANOPR, Docket No. [NN–RM–810], 1000 Independence Avenue, SW., Washington, DC 20585. FAX comments will not be accepted. The administrative record on file will be located in the Department's Freedom of Information Reading Room, Room 1E–190, 1000 Independence Ave. SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Zander Hollander, Export Control Operations Division, Office of Arms Control and Nonproliferation, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2125, or Robert Newton, Office of General Counsel, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0806.

SUPPLEMENTARY INFORMATION:

I. Background

The Nuclear Non-Proliferation Act, 22 U.S.C. 3203(a)(6), describes ''sensitive nuclear technology'' (or SNT) as any information (including information incorporated in a production or utilization facility or important component part thereof) which is not available to the public and which is important to the design, construction, fabrication, operation or maintenance of a uranium enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water, but shall not include Restricted Data.

''Sensitive nuclear technology'' may only be exported subject to special conditions to prevent dissemination of information which could be exploited for nuclear weapons-related purposes. Section 305 of the Nuclear Non-Proliferation Act, which amended the Atomic Energy Act by adding section 127, imposes six requirements for exports of source material, special nuclear material, production or utilization facilities, and SNT from the United States for peaceful nuclear uses. These requirements are:

(1) IAEA (International Atomic Energy Agency) safeguards as required by Article III(2) of the (Treaty on the Non-Proliferation of Nuclear Weapons) will be applied with respect to any such material or facilities proposed to be exported, to any such material or facilities previously exported and subject to the applicable agreement for cooperation, and to any special nuclear material used in or produced through the use thereof.

(2) No such material, facilities, or sensitive nuclear technology proposed to be exported or previously exported and subject to the applicable agreement for cooperation, and no special nuclear material produced through the use of such materials, facilities, or sensitive nuclear technology, will be used for any nuclear explosive device or for research on or development of any nuclear explosive device.

(3) Adequate physical security measures will be maintained with respect to such material or facilities proposed to be exported and to any special nuclear material used in or produced through the use thereof * * *.

(4) No such materials, facilities, or sensitive nuclear technology proposed to be exported, and no special nuclear material produced through the use of such material, will be retransferred to the jurisdiction of any other nation or group of nations unless the prior approval of the United States is obtained for such retransfer. In addition to other requirements of law, the United States may approve such retransfer only if the nation or group of nations designated to receive such retransfer agrees that it shall be subject to the conditions required by this section.

(5) No such material proposed to be exported and no special nuclear material produced through the use of such material will be reprocessed, and no irradiated fuel elements containing such material removed from a reactor shall be altered in form or content, unless the prior approval of the United States is obtained for such reprocessing or alteration.

(6) No such sensitive nuclear technology shall be exported unless the foregoing conditions shall be applied to any nuclear material or equipment which is produced or constructed under the jurisdiction of the recipient nation or group of nations by or through the use of any such exported sensitive nuclear technology.

42 U.S.C. 2156

In addition, section 306 of the Nuclear Non-Proliferation Act added section 128 to the Atomic Energy Act which, subject to an exception not relevant here, requires:

> As a condition of continued United States export of source material, special nuclear material, production or utilization facilities, and any sensitive nuclear technology to non-nuclear-weapon states, no such export shall be made unless IAEA safeguards are maintained with respect to all peaceful nuclear activities in, under the jurisdiction of, or carried out under the control of such state at the time of the export.

42 U.S.C. 2157

It has been the Department's experience that, as a practical matter, once information has been determined to be SNT, it has not been exported because foreign recipients were unwilling to agree to U.S. consent rights over nuclear activities within the recipient nation's borders.

The Department exercises jurisdiction over the transfer of SNT by entities other than the Department through its regulations under 10 CFR part 810, which governs authorizations of nuclear assistance to foreign atomic energy activities and defines SNT in the same manner as the Nuclear Non-Proliferation Act. In determining whether to grant or deny a request for authorization for the export of any nuclear assistance, including SNT, the Secretary of Energy must find that the proposed export ''will not be inimical to the interest of the United States.'' 42 U.S.C. 2077 (b). The 10 CFR part 810 regulations require the Secretary to consider several factors in making this finding, including the recipient country's nuclear nonproliferation credentials, the country's acceptance of international safeguards for all their nuclear projects, the availability of comparable assistance from other sources and ''any other factors that may bear upon the political, economic, or security interests of the United States.'' 10 CFR 810.10 (b). In addition, authorizations for the export of information which is not SNT, but nevertheless may be proliferation sensitive, contain the requirement that the recipient nation guarantee that the information will not be retransferred. While the Department itself is not subject to the part 810 regulations, its Office of Arms Control and Nonproliferation reviews the proposed export of Department-owned information in a manner consistent with 10 CFR part 810.

After the Nuclear Non-Proliferation Act became law, from 1979 to 1986 the Department made its case-by-case determinations without the aid of any written guidance other than the terms of the statute, which are for the most part undefined. In a few cases, where there was a determination that a proposed export could involve SNT, the applicants narrowed their requests to avoid the areas that might involve SNT. Where the scope of work under part 810 authorizations had the potential to involve SNT, the authorizations were specifically conditioned to exclude such technology.

In 1986, the Department developed the guidelines for the purpose of promoting a more uniform approach to making SNT determinations on a case-by-case basis in light of prior decisions. They had the effect of formalizing the Department's prior experience and turning it into guidance for those individuals involved in the review process, thus ensuring that the reviewers operated from a common knowledge base. However, the guidelines are not controlling with respect to such a decision, and the Department has the discretion to depart from the determination suggested by the guidelines if it appears warranted in particular cases. Specifically, the Department has not used the guidelines as a definitive determinant of what constitutes SNT. An applicant for an export license is always free to dispute the merits of the Department's interpretations and policies under the law.

The Department has now decided to initiate this rulemaking to codify the guidelines in order to make them easily available to interested members of the public and to provide an opportunity for public comment. This rulemaking will not affect any decisions that have already been made. Any changes in policy the Department may adopt in the course of this rulemaking would apply prospectively, that is to say, with respect to SNT decisions made after the effective date of the rule.

II. Approach to Codifying the Guidelines

Apart from some introductory narrative material, the guidelines, which are reprinted at the end of this notice, consist of a series of inquiries and forms for completion by the Department's staff. Most of the provisions of the guidelines are self-explanatory. In this rulemaking, the Department will consider whether to redraft the guidelines in a Regulatory format and style common to most Rules in the *Code of Federal Regulations,* or to propose them in the form of narrative appendix to 10 CFR part 810, which could be done without significant change in format and style. Whichever approach to format and style the Department takes, the Department is eliciting public comment on whether any changes in the content of the guidelines and the Department's approach to SNT determinations are warranted.

III. Determining Importance

The Department anticipates that one part of the guidelines may prove to be controversial with some members of the public. Some citizen organizations have taken issue with the portion of the guidelines the Department uses to aid in determining whether the information in question is ''important to the design, construction, fabrication, operation or maintenance of a uranium enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water,'' within the statutory definition of SNT. The guidelines provide that three types of assessments are relevant to determining importance: (1) A categorization of the information proposed to be transferred, i.e., what type of activity or equipment is proposed for transfer; (2) a technical evaluation of the proposed transfer, i.e., a determination of its significance to design, construction, operation, or maintenance of a facility covered by the statute; and (3) a judgment as to the technical significance of the information to the proposed recipient given the level of development of that country's nuclear program and other case-specific considerations bearing on such things as available intelligence regarding the proposed recipient, the proprietary value of the information, prior treatment of similar export issues, and impact on United States and international nuclear nonproliferation issues.

In some cases, the Department has concluded that certain kinds of information may not be ''important'' within the meaning of the statutory language if the proposed recipient is from a country with an advanced nuclear program, even if the same information could be important to a recipient with a less advanced nuclear capability. In other words, information may be ''important'' to a facility in one country but not to an identical facility in another country, if the proposed recipient country did not independently possess sufficient nuclear expertise to ''design, construct, fabricate, operate or maintain'' the facility in the first case, but did possess such expertise in the second case.

The Nuclear Non-Proliferation Act does not define ''important'' and there is no controlling guidance in its legislative history. Thus, it is the Department's view that the word ''important'' could have a wide range of meanings in the context of the Act. The Department view in 1986 was that the most rational approach was to make this determination as a function of all the particular relevant facts and circumstances, including the state of indigenous nuclear technology in the recipient country. In making these determinations on a case-by-case basis, the Department has sought to make reasonable distinctions consistent with the underlying purposes of the Atomic Energy Act. These purposes include promoting as well as controlling the use of nuclear energy. 42 U.S.C. 2013. Likewise, the Nuclear Non-Proliferation Act sought to assure other countries dependent upon the United States for nuclear fuel and other nuclear exports that the United States would be a ''reliable trading partner,'' while at the same time it tightened controls on those exports. The Department believes that the interpretation reflected in the guidelines has been used to develop all relevant information necessary for balancing these competing purposes in a reasonable manner.

The Department also believes that the interpretation of ''important'' contained in the guidelines represents an allowable exercise of its statutory authority. In the absence of clear, definitive direction from Congress, DOE applied its expertise to develop an interpretation of SNT which it believes to be both permissible and reasonable. At the same time, because the statute is silent on the issue, the Department has the discretion to adopt a different interpretation if it concludes that the nuclear nonproliferation objectives of the United States are better served by doing so. That is, the Department could conclude, as a matter of policy, that the definition of SNT needs to be applied differently in the future to address the changing circumstances presented by proliferation threats in the post-Cold War world.

The Department's interpretation of the definition of SNT has been criticized by certain citizen organizations which have argued that the Nuclear Non-Proliferation Act was intended to establish a purely objective technology-based test of what is ''important'' and therefore ''importance'' cannot lawfully be a function of the ''level of expertise of the proposed recipient.'' As the Department interprets this view, the ''importance'' of technology must be judged solely on the contribution which it could make to a generic type of facility, rather than on its contribution to a specific facility of a particular proposed recipient. Although the Department has concluded that the Nuclear Non-Proliferation Act does not dictate such a conclusion, it is interested in receiving comments on whether such an approach would serve nuclear nonproliferation policy objectives better than the approach reflected in the existing guidelines.

Specifically, during this rulemaking, the Department will examine the question of whether the guidelines promote an adequate balance between the need to cooperate with other countries in the development of peaceful nuclear technologies and the requirement to assure the national defense and security through the aggressive support of U.S. nonproliferation policies. The Department specifically requests comment on whether circumstances now exist that warrant a change in the Department's approach to the evaluation of the ''importance'' criterion.

One of the citizen organizations, Greenpeace, Inc., that criticized the Department's interpretation of the word ''important'' and the related provisions of the guidelines has released a report on the Department's collaborative research with Japanese entities on plutonium reprocessing and breeder reactor technology, entitled ''The Unlawful Plutonium Alliance.'' That report was accompanied by a legal memorandum setting forth the Greenpeace interpretation of the relevant statutory provisions. Although the particular agreements with Japanese entities are not the subject of this rulemaking and the Department does not agree with the legal arguments Greenpeace presented, the Greenpeace study is relevant to the policy question of how the determination of importance should be made and, in particular, whether it should take into account the level of expertise of the proposed recipient. It may be useful to interested members of the public to examine Greenpeace's report. Accordingly, the Department has placed a copy of the report and of the legal memorandum in the administrative record on file in its Freedom of Information Reading Room where a copy of public comments in response to this notice will be available for public inspection. The Department has also placed in the administrative record its analysis of the Greenpeace legal memorandum, as well as a 1990 memorandum on the same subject prepared by the Department's Office of General Counsel.

IV. Procedural Matters

A. Review Under Executive Order 12866

DOE has concluded that this is not a significant regulatory action because it does not meet the criteria which define such actions under Executive Order 12866, 58 FR 51735, and is therefore exempt from regulatory review. Accordingly, no clearance of this action by the Office of Management and Budget is required.

B. Environmental Review

The Department has determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), and therefore that neither an environmental assessment nor an environmental impact statement is required. Two categorical exclusions contained in subpart D, appendix A of the Department's regulations implementing the National Environmental Policy Act (10 CFR part 1021) apply to this rulemaking. Categorical exclusion A6 applies to rulemakings which are procedural in nature. This is a procedural rulemaking that will codify a process for determining on a case-by-case basis whether technology which is proposed to be exported constitutes SNT. Categorical exclusion A9 applies to information gathering and dissemination. The codified guidelines will be used to determine, again on a case-by-case basis, whether particular information is SNT, so that conditions required by statute are properly imposed on the dissemination—through export—of that information.

Any indirect environmental impacts which may occur when the exported technology is applied would occur beyond the borders of the United States. Executive Order 12114, ''Environmental Effects Abroad of Major Federal Actions,'' excludes from environmental review ''actions relating to nuclear activities,'' unless such activities provide to a foreign nation a nuclear production, utilization or waste management facility. The codified guidelines would apply only to the export of technology, not facilities.

C. Public Comment

Interested persons are invited to participate in this proceeding by submitting 3 copies of their comments to the address indicated in the **ADDRESSES** section of this notice. The deadline for receipt of comments is indicated in the **DATES** section of this notice. The Department reserves the discretion to consider relevant late-filed comments to the extent that time allows such consideration. Comments should be identified on the outside of the envelope and on the documents themselves with the designation ''SNT ANOPR, DOCKET NO. [NN–RM–810].'' In the event that any person cannot provide the required number of copies, alternative arrangements can be made in advance with the Department by contacting the information contact indicated in the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice.

All written comments will be available for public inspection as part of the administrative record on file for this rulemaking in the Department's Freedom of Information Reading Room at the address provided at the beginning of this notice. If informal meetings or other contacts occur during this rulemaking, the Department may add a memorandum to the administrative record on file summarizing what transpired.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy of the document, as well as two copies from which the information claimed to be confidential has been deleted. The Department reserves the right to determine the confidential status of the information and to treat it according to its determination.

V. The Current Guidelines

The guidelines currently provide as follows:

Guidelines for the Designation of Sensitive Nuclear Technology

I. Purpose

The purpose of these guidelines is to provide a systematic approach for DOE to use in its assessment of an application under 10 CFR part 810 to determine whether the proposed scope of work involves the transfer of sensitive nuclear technology (SNT).

II. Background

The Nuclear Non-Proliferation Act of 1978 (NNPA) created a new category of nuclear information, designated ''Sensitive Nuclear Technology,'' the export of which from the United States is subject to certain conditions and controls specified in the legislation. Accordingly, the administration of these controls requires, as a first step, a means of identifying information proposed to be exported which falls into the category of SNT.

Under section 4(a)(6) of the NNPA, SNT is confined to information in the fields of uranium enrichment, nuclear fuel reprocessing, and heavy water production. This section also provides additional broad criteria which delineate the information which is to be designated SNT. According to these criteria, SNT is to include any information, and only that *information* which:

- Is *not* Restricted Data;
- Is *not* ''available to the public;'' and
- Is ''*important* to the design, construction, operation, or maintenance'' of a facility for *uranium enrichment, nuclear fuel reprocessing, or heavy water production.*

The fields in which SNT may exist constitute three of the four fields in which unclassified information (other than that ''which is available to the public in published form'') may not be transferred abroad without specific authorization by DOE. The fourth area requiring specific authorization under part 810 is plutonium (i.e., mixed oxide) fuel fabrication. Thus, while there is an obvious overlap between SNT and unclassified information whose transfer abroad requires part 810 authorization, these two categories of information are not identical. This is so not only because plutonium fuel fabrication is not among the areas which may include SNT but because the standard of ''important'' is not applicable to information which requires part 810 authorizations. Any information in the designated fields which is not Restricted Data and which is not available to the public in published form and assists directly or indirectly in the production of special nuclear material requires specific authorization for transfer abroad.

It is important to note that:

- *Not all* information whose export requires part 810 specific authorization is SNT, but
- *All* information which is SNT requires part 810 specific authorization for export.

III. Scope

Although the establishment of the category of SNT and the criteria for making an SNT determination as discussed below apply most frequently to private firms, the scope of their applicability is much broader.

Section 127 of the AEA (introduced by section 305 of the NNPA) states:

> ''The United States adopts the following criteria which * * * will govern exports * * * from the United States of * * * any sensitive nuclear technology.''

The language above makes no distinction between exports by private firms, individual persons, or U.S. Government entities. Therefore, while the DOE is exempt from section 57b and the implementing regulation 10 CFR part 810, the NNPA provisions related to SNT apply equally to all agencies of the government (including DOE) as well as private firms and individuals. Because of this, DOE participation in foreign reprocessing, enrichment, or heavy water programs is reviewed by the Office of International Security Affairs, the office with responsibility for part 810 and related matters.

IV. Methodology

A part 810 application will be analyzed by careful consideration of each of the three criteria contained in the definition of SNT to determine if information to be transferred

- Does not include Restricted Data;
- Is not ''available to the public''; or
- Is ''important to the design, construction, operation, or maintenance of a facility for uranium enrichment, nuclear fuel reprocessing, or heavy water production.

The first step in the process, if the application involves enrichment technology, is to determine whether the proposed transfer involves Restricted Data (the areas of reprocessing and heavy water production have been declassified and no longer contain any Restricted Data). If Restricted Data is involved, the analysis will end and no further consideration of the application under part 810 will take place. The applicant will be advised and appropriate action will be taken under other sections of the Atomic Energy Act.

The second step is a determination of whether the proposed information to be transferred is available to the public. A decision on this point must take into account paragraph (1) of Part B of Annex A of the Nuclear Supplier's Guidelines (INFCIRC/254), since the NNPA definition of SNT was drafted to be consistent with the NSG Guidelines, and allow the U.S. Government to implement its obligations under those Guidelines. This paragraph indicates that information available to the public is that which is ''for example, in published books or periodicals, or that which has been made available internationally without restrictions on its further dissemination.'' Data that have been made generally available to the public in any form, includes:

- Data distributed in documentary or other physical form at open conferences, lectures, trade shows, or other media open to the public; and
- Publications that may be purchased without restrictions at a nominal cost, or obtained without costs, or are readily available at libraries accessible to the public. The term ''nominal cost'' is intended to reflect realistically only the cost of preparing and distributing the publication and not the intrinsic value of the technical data.

If, after consideration of all the following factors, it is determined that all of the information is available to the public, the case by definition does not involve SNT. If, on the other hand, the information is not available to the public, then the determination must be made if any of the information is SNT. In determining the extent to which the information to be transferred is available to the public, the following questions should be considered:

A. Is any or all of the information contained in U.S. Government documents that would be available pursuant to a Freedom of Information Act (FOIA) request?

Note: In responding to this question it must be recognized that this goes beyond those documents that are placed on sale or given routine distribution.

B. Is any or all of the information available, for not more than a nominal fee, to the public in published documents or data banks (other than Question A) including information provided to the Nuclear Regulatory Commission (NRC) without restrictions on further dissemination?

Note: This includes government and nongovernment publications and all material which has been placed in the NRC public document room for public inspection.

C. Has any or all of the information been distributed in physical form (documents, tapes, etc.) in an open forum?

Note: This includes meetings or conferences sponsored by nationally recognized scientific or technical organizations.

D. Is any or all of the information publicly available or available internationally without restriction on further dissemination in forms other than those considered in Questions A through C?

Note: This would include information distributed at education courses and facility visits. This question is included for completeness to ensure that all sources are explored.

In responding to these questions it is essential to determine how the information is to be transmitted. For example, will it be accompanied by other information or services which may go beyond the actual content of the available information? It should also be recognized that the primary burden for proof of public availability rests with the applicant.

If it is determined that the information proposed to be transferred is not publicly available, then the third step is to determine if the information involves SNT. The SNT determination is divided into three parts as follows:

Part 1: Categorization of the Information Proposed To Be Transferred

A matrix similar to the one that follows will be completed in order to indicate the type of activity and equipment covered by the information proposed to be transferred. There may be part 810 cases where the activity or equipment involved does not fit the matrix and in these cases a narrative description should be made to describe the information proposed to be transferred. The matrix that follows is for a reprocessing facility. A comparable matrix and analysis (part 2), and assessment (part 3) would be established for proposed assistance in enrichment or heavy water production.

ANAYLSIS OF NUCLEAR TECHNOLOGY TRANSFER PROPOSALS FOR WHETHER SENSITIVE NUCLEAR TECHNOLOGY IS INVOLVED

[Part 1: Categorization of information proposed to be transferred[1]]

Activity	Prepare design specs	Conceptual design	Design review	Detailed design	System analysis	Prepare purchase specs	Fabrication support	Prepare construction specs	Quality control	Facility startup
Unit operations.										
Fuel receiving & storage.										
Fuel shear/dissolver.										
Solvent extraction.										
PU Purification & concentration.										
PU storage & conversion.										
U purification & concentration.										
U storage & conversion.										
Waste processing.										
Solvent recovery.										
Process control & instrumentation.										
Process off-gas & building ventilation.										

Activity	Operational support	Maintenance and repair	Training	Regulatory support	Technology exchange	Quality control	Management support
Unit operations.							
Fuel receiving & storage.							
Fuel shear/dissolver.							
Solvent extraction.							
PU Purification & concentration.							
PU storage & conversion.							
U purification & concentration.							
U storage & conversion.							
Waste processing.							
Solvent recovery.							
Process control & instrumentation.							

Activity	Operational support	Maintenance and repair	Training	Regulatory support	Technology exchange	Quality control	Management support
Process off-gas & building ventilation.							

X—Indicates that information relevant to this area is proposed to be transferred.
1—Example used is for a reprocessing facility.

GAS CENTRIFUGE ENRICHMENT FACILITY ANALYSIS OF NUCLEAR TECHNOLOGY TRANSFER PROPOSALS FOR WHETHER SENSITIVE NUCLEAR TECHNOLOGY IS INVOLVED

[Part 1: Categorization of information proposed to be transferred]

Activity	Process development	Prepare design specs	Conceptual design	Design review	Detailed design	System analysis	Prepare purchase specs	Fabrication support	Prepare construc specs	Construction support
Unit operations or process building.										
Feed & withdrawal process.										
Process building.										
Process equipment.										
Centrigue machine.										
Recycle & assembly equip.										
Recycle & assembly equip.										
Maintenance facilities.										
Process controls.										
Utility systems.										

X—Indicates that information relevant to this area is proposed to be transferred.

Activity	Facility startup	Operational support	Maintenance and repair	Training	Regulatory support	Technology exchange	Quality control	Management support
Unit operations or process building.								
Feed & withdrawal process.								
Process building.								
Process equipment.								
Centrigue machine.								
Recycle & assembly equip.								
Recycle & assembly equip.								
Maintenance facilities.								
Process controls.								
Utility systems.								

X—Indicates that information relevant to this area is proposed to be transferred.

Part 2: Significance of the Information Proposed To Be Transferred

Category: (Row): (For each box that is marked, (Column): On the matrix the following questions will be answered.)

Specific Information to be Transferred (Exclusive of information generally available from industrial sources for non-nuclear applications):

Technical Evaluation

Will the transferred information:

1. Provide assistance of such significance that, without it the design, construction, operation, or maintenance of a facility would not be possible?

2. Contribute significantly to the ability to carry out a facility unit operation (see examples on Part 1 chart) or key activity? If yes, how essential is the unit operation/activity, and to what degree will the transferred information contribute to its accomplishment?

3. Solve or provide significant help in dealing with a key technical problem whose solution is critical to the ability to obtain an operational capability?

4. Supplant or significantly reduce the need to carry out costly, technically

difficult or lengthy R&D and/or test activities?

5. Provide key information that is obtainable only from entities with practical experience in the particular area on critical aspects of facility design or operation optimization?

6. Concern a key process, component or subsystem that has been the subject of extensive R&D in the U.S. or which has been a problem at U.S. or foreign facilities?

7. Contribute significantly to the design, development or effective operation of a safety feature that is essential to facility operation?

8. Contribute significantly toward enabling an otherwise inoperable facility to operate at some level and produce useable quantities of material?

9. Significantly reduce the lead time and/or costs involved in designing constructing, operating, or maintaining a facility?

Judgment as to the Technical Significance of the Information Proposed to be Transferred

Part 3: Consideration of Other Factors

The following factors shall be considered as a further help in arriving at a determination as to whether the Part 810 activity under consideration involves the transfer of SNT.

A. *Level of expertise of the information recipient:*

1. At what stage of research or development is the recipient's overall program?

2. Does the country of the recipient have an operating facility of this type?

3. Is the staff of the recipient facility or country experienced in this technology area?

4. Are there technical resources in the recipient country already in possession of information of the kind proposed to be transferred?

5. Does the country of the recipient have adequate technical resources and/or operating experience to be able to proceed independently of the information to be transferred?

B. *Overall relative capability of the transferor and the recipient.*

C. *Probable reason for recipient's interest in assistance from U.S. industry* (if A and B lead to the view that there are substantially comparable capabilities in the recipient's country or available from other foreign sources).

D. *Benefit to the recipient of the information to be transferred.*

Factors to be considered include:

—Whether the information proposed to be transferred represents a significant net transfer of capabilities to the recipient country

—Whether there would be a significant impact (relative to strict reliance on the recipient's indigenous capabilities) on the construction schedule or initial operational capability or on the technical or economic viability

—Whether the specific information relates to a laboratory scale or small scale pilot project

E. *Any other case specific considerations* bearing on whether information of ''key technical significance'' should or should not be designated ''sensitive nuclear technology.''

F. *Supplemental information.* In the preparation of an analysis for a particular case, useful insight can be provided by an examination of previous export matters and other factors related to the application, such as the following:

1. How does this case compare to other cases where an SNT determination was made?

2. What Department of Commerce-licensed items have been processed for this activity?

3. Is the information to be transferred considered to be proprietary by the transferor?

4. Is there any relevant intelligence information available about the activity?

5. What is known about any competing bids from foreign suppliers?

V. Summary Assessment

After a careful assessment of all the factors in Part IV (Parts 1, 2 and 3) is made and documented, the entire analysis will be examined to determine whether any portion or the overall scope of the proposed transfer involves SNT. If the proposed application involves the transfer of SNT, the conditions set forth in section 127 and 128 of the Atomic Energy Act and those in the London Nuclear Supplier's Guidelines (INFCIRC/254) must be met as a condition of approval under part 810. If the application is found not to contain SNT, the normal procedures for processing a part 810 application will be followed.

VI. Implementation

The DOE Export Control Working Group (ECWG) is responsible for the analysis, using these Guidelines, of specified requests for authorization or advisory opinions to determine whether they involve SNT. Frequency of meetings is determined by the number of cases to be considered. The Working Group Secretary prepares and distributes an agenda prior to meetings. At the conclusion of each meeting the Secretary of the ECWG documents the proceedings.

Membership on the Working Group is determined on the basis of the business to be conducted to ensure the highest level of expertise. It normally consists of:

- Director, PMSA (Chairman)
- ECWG Secretary, PMSA
- Chief, Operations Branch, PMSA
- Appropriate Action Officer, Operations Branch, PMSA
- A representative from the Office of the General Counsel
- A representative from International Programs, Office of Nuclear Energy
- A reprocessing, enrichment, or heavy water expert from the Office of Nuclear Energy
- A representative from the Office of International Affairs and Energy Emergencies
- Laboratory and contractor consultants (as needed)

The Director, PMSA is the final staff level authority for all SNT determinations.

When the preliminary review called for in section 12a of the Executive Branch Procedures is completed, ISA will transmit to the SNEC agencies the application along with any conclusion that SNT is involved.

Issued in Washington, DC, on July 18, 1995.

Kenneth E. Baker,

Acting Director, Office of Nonproliferation and National Security.

[FR Doc. 95–18236 Filed 7–24–95; 8:45 am]

BILLING CODE 6450–01–P

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Vol. 60, No. 142

Tuesday, July 25, 1995

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