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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–95–302]

Peaches; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the United States Standards for Grades of Peaches by changing the method in which peaches are sized. The revision will bring the standards into conformity with current cultural, harvesting and marketing practices by revising the definition of ''diameter'' from the shortest distance to the greatest distance. The Agricultural Marketing Service (AMS), in cooperation with industry, and other interested parties develops and improves standards of quality, condition, quantity, grade, and packaging in order to facilitate commerce by providing buyers, sellers, and quality assurance personnel uniform language and criteria for describing various levels of quality and condition as valued in the marketplace.

EFFECTIVE DATE: October 2, 1995.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056 South Building, Washington, DC 20090–6456, (202) 720–2185.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities. The revision of U.S. Standards for Grades of Peaches will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the use of these standards is voluntary.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

Agencies periodically review existing regulations. An objective of the review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The proposed rule, United States Standards for Grades of Peaches, was published in the **Federal Register** on March 3, 1995, (60 FR 11918).

The National Peach Council (NPC), with the support of the Georgia Peach Council, New Jersey Peach Promotion Council, Inc., and the South Carolina Peach Council and Promotion Board, Inc., requested that the USDA revise the United States Standards for Grades of Peaches, which were last revised in 1952. The NPC requested that the standards be revised in order to bring them into conformity with current cultural, harvesting and marketing practices. The NPC contends that due to new improved varieties, that changes to the current standards are necessary. Currently, peaches are sized based on the shortest diameter, which requires the use of a caliper or slotted sizing ring. This method was adopted several years ago when most peaches were oblong and heavily sutured. Industry research has demonstrated that today's varieties are generally much more round and more uniform in shape than older varieties. The shape of peaches is similar to nectarines. Nectarines are sized by using the greatest diameter of the nectarine, which allows fruit to be sized using a sizing ring. Therefore, in order to create uniformity in the marketplace, peaches should be sized on the same basis as nectarines, by using the greatest dimension measured at right angles to a line from stem to blossom end of the fruit, using a sizing ring.

The 60-day comment period on the proposed rule ended May 2, 1995, and a total of twenty-six comments were received from growers, shippers, and receivers. All comments were in favor of the proposal in its entirety, although concerns were raised. In addition, one comment was received from the Agricultural Research Service (ARS).

A copy of the proposed rule was provided to the ARS for helping identifying studies, data collection or other information relevant to the possible effect of the proposed revision on pesticide use. ARS reported that they were unable to find much information on the subject. The information that was found by ARS proved not to be relevant.

Twenty-six comments were in favor of revising the United States Standards for Grades of Peaches by changing the method in which peaches are sized from shortest diameter using a caliper or slotted sizing ring to the greatest diameter using a sizing ring. It is believed that this revision will create uniformity within the marketplace.

One comment from a receivers association went on to state that they were concerned that the proposed change would allow shippers to market smaller peaches than those that are marketed under the current method of sizing peaches. They did not believe that shipment of smaller peaches would be beneficial to the receivers, wholesalers, retailers or consumers. Another comment from a State association stated that ''it is estimated that fruit sized with a ring will yield approximately four fruit per pound while fruit labeled the same size but measured with a caliper will yield only three fruit per pound.'' Although this change in sizing method may yield slightly more fruit per pound, this change is insignificant when considering the ease of determining size by the new method.

Sizing machinery used by packers/shippers has never measured peaches based on a slotted sizing method. Most automated sizing methods have generally been based on a ring sizing

method. As a result, peach industry packers/shippers had to estimate the size of the final pack. Ultimately, this meant using trial and error methods to yield properly sized fruit. This change should result in a more uniform and accurately sized pack, and at the same time alleviate the unnecessary time spent by these individuals by eliminating this trial and error method.

The revision will affect peaches that are sized to a minimum diameter, which are mostly grown on the east coast and some in the Midwest. This will not affect peaches grown on the west coast as they are sized based on 7 CFR part 917, consisting of a weight-count system.

AMS develops and improves standards of quality, condition, grade, and packaging in order to facilitate efficient marketing. The provisions of this final rule are the same as those in the proposed rule.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

For reasons set forth in the preamble, 7 CFR Part 51 is amended as follows:

PART 51—[AMENDED]

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. In part 51, § 51.1216(c) is revised to read as follows:

Subpart—United States Standards for Grades of Peaches

§ 51.1216 Size requirements.

* * * * *

(c) *Diameter* means the greatest dimension measured at right angles to a line from stem to blossom end of the fruit.

* * * * *

Dated: July 24, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–18904 Filed 8–1–95; 8:45 am]

BILLING CODE 3410–02–P

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

Official/Unofficial Weighing Service

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Direct final rule.

SUMMARY: In compliance with the requirements for periodic review of existing regulations and the President's Regulatory Review Initiative, the Federal Grain Inspection Service (FGIS), of the Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending portions of Part 800, General Regulations under the United States Grain Standards Act, as amended (USGSA) to allow official agencies to provide both official and unofficial weighing within their assigned area of responsibility but not at the same facility. This action will make official Class X and Class Y weighing services more readily available at a lower cost to the grain industry at nonexport locations.

DATES: This rule will be effective on October 2, 1995. Unless we receive written adverse comments or written notice of intent to submit adverse comments on or before September 1, 1995.

ADDRESSES: Please send any adverse comments or notice of intent to submit adverse comments to George Wollman, GIPSA–FGIS, USDA, Room 0623–S, P.O. Box 96454, Washington, D.C. 20090–6454; FAX (202) 720–4628. All comments received will be made available for public inspection at the above address during business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT:

George Wollman, address as above, telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not-significant for the purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Executive Order 12778

This amended rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. The United States Grain Standards Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

James R. Baker, Administrator, GIPSA, has determined that this rule will not have a significant economic impact on a substantial number of small entities. Most users of the official inspection and weighing services and those persons that perform those services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Further, the standards are applied equally to all entities.

Information Collection and Record Keeping Requirement

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection and Record keeping requirements in Part 800 have been approved previously by OMB and assigned OMB No. 0580–0013.

Background

Enactment of the United States Grain Standards Act of 1976, as amended, required FGIS to establish a national weighting program for gain. Regulations under the USGSA prohibit designated agencies or official personnel from providing official services if they provide similar unofficial services. Designated agencies are agencies granted authority under the USGSA to provide either official inspection service, or Class X or Class Y weighing services or both, at locations other than export port locations. A large portion (88%) of the designated agencies are designated for inspection services only. The reason is that before 1976 most grain inspection agencies were already providing weighing as an accessory service to grain inspection. The agencies were affiliated with and supervised by the then existing weighting and inspection bureaus under the direction of the Association of American railroads, local grain exchanges, boards of trade, and various State programs. After the FGIS weighting programs started, the weighing being performed by the grain inspection agencies became unofficial weighing. Most agencies continued their unofficial weighing and applied for inspection designations only.

Since 1976 many inspection and weighing bureaus, boards of trade, and the Association of American Railroads have ceased providing supervision of this unofficial service. Because of the decreasing availability of supervision caused by the lack of supervising entities, the need for more access to Class X or Class Y weighing exists. If allowed to provide both types of service,

many more agencies who are now designated for inspection only could also provide official weighing service. Designated agencies can provide Class X and Class Y weighing at a much lower cost than FGIS field offices due to their proximity to the grain facilities.

FGIS initially did not allow agencies to provide both types of service because confusion may have resulted on the part of the grain industry and agency licensees on which type of service the agency was providing.

FGIS has reevaluated this policy because of the distinct differences in the services. Primary differences between official and unofficial weighing are: (1) Official weighing requires an officially tested scale; (2) FGIS has established procedures to maintain proper operation and accurate weighing; (3) FGIS provides an official grain weight certificate certifying the accuracy of weighing. This rule continues to separate official and unofficial weighing service by not allowing agencies to provide both types of service at the same facility.

This rule does not change the requirements for inspection services. FGIS proposes to change only the weighing provisions of the regulations.

We are publishing this rule without a prior proposal because we regularly update the regulations and view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or suggest the rule should be changed. If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this direct final, confirming that it is effective on the date indicated in this document.

Direct Final Action

List of Subjects in 7 CFR Part 800

For reasons set forth in the preamble, 7 CFR Part 800 is amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.)

2. Section 800.76(a) is revised as follows:

§ 800.76 Prohibited Services; restricted services.

(a) *Prohibited services.* No agency shall perform any inspection function or provide any inspection service on the basis of unofficial standards, procedures, factors, or criteria if the agency is designated or authorized to perform the service or provide the service on an official basis under the Act. No agency shall perform official and unofficial weighing on the same mode of conveyance at the same facility.

* * * * *

3. Section 800.186(c)(3) introductory text is revised to read as follows:

§ 800.186 Standards of conduct.

(c) * * *

(3) Excluding the unofficial weighing described in § 800.76(a) engage in any outside (unofficial) work or activity that:

* * * * *

4. Section 800.195(f)(5)(ii) is revised to read as follows:

§ 800.195 Delegations.

(f) * * *

(5) * * *

(ii) Unofficial activities. Excluding the unofficial weighing described in § 800.76(a) delegated State or personnel employed by the State shall not perform any unofficial service that is the same as any of the official services covered by the delegation.

* * * * *

6. Section 800.196(g)(6)(ii) is revised to read as follows:

§ 800.196 Designations.

(g) * * *

(6) * * *

(ii) Unofficial activities. Excluding the unofficial weighing described in § 800.76(a) the agency or personnel employed by the agency shall not perform any unofficial service that is the same as the official services covered by the designation.

* * * * *

Dated: July 25, 1995.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 95–18905 Filed 8–1–95; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–09–AD; Amendment 39–9326; AD 95–16–06]

Airworthiness Directives; Jetstream Aircraft Limited HP137 Mk1 and Jetstream Series 200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 83–05–01, which currently requires the following on Jetstream Aircraft Limited (JAL) HP137 Mk1 and Jetstream series 200 airplanes: repetitively inspecting the wing lower skin panels at the main gear bay cutouts for loose or damaged rivets and cracks, replacing loose or damaged rivets, and repairing any cracked wing lower skin panel. The Federal Aviation Administration's policy on commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. The proposed action would require reinforcing the wing lower skin at both the landing gear cutouts at Wing Station (WS) 115 and the undercarriage bay cutouts at WS 60 and WS 90, as terminating action for the repetitive inspections that are currently required by AD 83–05–01. The actions specified in the proposed AD are intended to prevent wing damage caused by cracks or loose or damaged rivets in the wing lower skin panels, which, if not detected and corrected, could result in structural damage to the point of failure.

DATES: Effective September 26, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 26, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Jetstream Aircraft Limited, Manager, Product Support, Prestwick 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 may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–09–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

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. Marvin R. Nuss, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64105; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to JAL HP137 Mk1 and Jetstream series 200 airplanes was published in the **Federal Register** on March 2, 1995 (60 FR 11637). The action proposed to supersede AD 83–05–01 with a new AD that would (1) retain the requirements of repetitively inspecting the wing lower skin panels at the main gear bay cutouts for loose or damaged rivets and cracks, replacing loose or damaged rivets, and repairing any cracked wing lower skin panel; and (2) require reinforcing the wing lower skin (incorporation of Modifications Nos. 5221 and 5146) as terminating action for the repetitive inspections. The proposed inspection would be accomplished in accordance with Jetstream Service Bulletin (SB) No. 7/3, dated October 1980. Modification 5221 would be accomplished in accordance with Jetstream SB 57–JM5221, dated September 28, 1984, and Modification 5146 would be accomplished in accordance with Part 2 of Modification No. 5146 Ref 7/5146, dated October 1984.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of this AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 10 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 332 work hours per airplane to accomplish the required modifications (172 work hours for Modification 5221 and 160 work hours for Modification 5146), and that the average labor rate is approximately $60 an hour. Parts cost approximately $12,000 per airplane ($2,400 for Modification 5221 and $9,600 for Modification 5146). Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $319,200 ($31,920 per airplane).

All 10 of the affected airplanes are HP137 Mk1 airplanes; there are no Jetstream series 200 airplanes registered in the United States, but they are type certificated for operation in the United States. According to FAA records, none of these HP137 Mk1 airplanes are in operation. JAL no longer stocks Modification No. 5221, but can develop modification kits within three months after order. Since there are no airplanes currently in operation, the cost impact of this AD is narrowed to only those owners/operators returning their airplane to operation.

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 83–05–01, Amendment 39–4573, and adding a new AD to read as follows:

95–16–06. Jetstream Aircraft Limited: Amendment 39–9326; Docket No. 95–CE–09–AD; Supersedes AD 83–05–01, Amendment 39–4573;

Applicability: HP137 Mk1 and Jetstream series 200 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 (d) 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 after the effective date of this AD, unless already accomplished.

To prevent wing damage caused by cracks or loose or damaged rivets in the wing lower skin panels, which, if not detected and corrected, could result in structural damage to the point of failure, accomplish the following:

(a) Upon the accumulation of 6,500 hours time-in-service (TIS) or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished (compliance with superseded AD 83–05–01), and thereafter at intervals not to exceed 100 hours TIS until the modifications required by paragraphs (b)(1) and (b)(2) of this AD are incorporated, accomplish the following:

(1) Inspect the wing lower skin between Wing Station (WS) 60 and WS 115 for loose or damaged rivets or cracks in accordance with section 3. ACTION, paragraphs (a)

through (e), of Jetstream Service Bulletin (SB) No. 7/3, dated October 1980.

(2) Replace any loose or damaged rivets and repair any cracked wing lower skin panel in accordance with section 3. ACTION, paragraphs (f) through (k), of Jetstream SB No. 7/3, dated October 1980.

(b) Upon the accumulation of 10,000 hours TIS or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, accomplish the following:

(1) Reinforce the wing lower skin at the landing gear bay cutouts at WS 115 in accordance with Jetstream SB 57–JM5221, dated September 28, 1984. This is referred to as Modification 5221.

(2) Reinforce the wing lower skin at undercarriage bay cutouts between WS 60 and WS 90 in accordance with Part 2 of Modification No. 5146 Ref. 7/5146, dated October 1984.

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

(d) An alternative method of compliance or adjustment of compliance time that provides an equivalent level of safety, may be approved by the Manager, Brussels Aircraft Certification Office (ACO), Europe, Africa, Middle East office, FAA, 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 ACO.

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.

(e) The inspections and replacements required by this AD shall be done in accordance with Jetstream Service Bulletin No. 7/3, dated October 1980. The reinforcements required by this AD shall be done in accordance with Jetstream Service Bulletin 57–JM5221, dated September 28, 1984, or Modification No. 5146 Ref. 7/5146, dated October 1984, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft Limited, Manager, Product Support, Prestwick 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. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(f) This amendment (39–9326) supersedes AD 83–05–01, Amendment 39–4573.

(g) This amendment (39–9326) becomes effective on September 26, 1995.

Issued in Kansas City, Missouri, on July 24, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18712 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–123–AD; Amendment 39–9324; AD 95–16–05]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This action requires an inspection to identify defective lower drag links on the nose landing gear (NLG), and replacement of defective drag links with new parts. This amendment is prompted by a report indicating that a potential failure condition of the lower drag link on the NLG could occur due to improper de-embrittlement treatment of the drag link during manufacturing. The actions specified in this AD are intended to prevent collapse of the NLG due to failure of the lower drag link as a result of improper de-embrittlement treatment of the drag link.

DATES: Effective August 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 17, 1995.

Comments for inclusion in the Rules Docket must be received on or before October 2, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–123–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5324; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA received a report indicating that a potential failure condition exists relative to the lower drag link (assembly part number ACG7208–507 and detail part number ACG7208–17) of the nose landing gear (NLG) installed on McDonnell Douglas Model MD–11 series airplanes. This condition is the result of improper de-embrittlement treatment of a certain batch of drag links during manufacturing. The discrepant drag links are identifiable by serial number. Failure of the lower drag link on the NLG, if not corrected, could result in collapse of the NLG.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–32A058, dated June 30, 1995, which describes procedures for a one-time visual inspection to identify defective lower drag links on the NLG, and replacement of defective drag links with new parts. The inspection involves identifying the serial number of the lower drag links. Replacement of any defective drag link found will minimize the possibility of failure of the lower drag link and subsequent collapse of the NLG.

Since an unsafe condition has been identified that is likely to exist or develop on other Model MD–11 series airplanes of the same type design, this AD is being issued to prevent collapse of the NLG due to failure of the lower drag link on the NLG.

This AD requires a one-time visual inspection to identify defective lower drag links on the NLG, and replacement of defective drag links with new parts. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

This AD also requires that operators submit a report of inspection results to the FAA.

This AD requires that the inspection be accomplished within 120 days. A compliance time of 120 days is usually sufficient to provide for a brief period for public comment before the adoption of a final rule. In this AD, however, that compliance time was selected because

of a short-term problem with availability of sufficient replacement parts if defective parts are found; a shorter compliance time might have resulted in the unnecessary removal of airplanes from service pending delivery of replacement parts. Nevertheless, the FAA has determined that immediate adoption of this rule is necessary in this case because of the importance of initiating the required inspection and eliminating the discrepant parts from the fleet as soon as possible.

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

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–123–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–16–05 McDonnell Douglas: Amendment 39–9324. Docket 95–NM–123–AD.

Applicability: Model MD–11 series airplanes, manufacturer's fuselage numbers 0447 through 0527 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) 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 collapse of the nose landing gear (NLG) due to failure of the lower drag link on the NLG, accomplish the following:

(a) Within 120 days after the effective date of this AD, perform a visual inspection to identify the serial number of the lower drag link (assembly part number ACG7208–507 and detail part number ACG7208–17) on the NLG, in accordance with McDonnell Douglas Alert Service Bulletin MD11–32A058, dated June 30, 1995. Prior to further flight, replace any lower drag link having a serial number identified in Figure 1 of the alert service bulletin with a new part having a serial number other than those identified in Figure 1 of the alert service bulletin. Perform the replacement in accordance with the alert service bulletin.

(b) Within 10 days after accomplishing the inspection required by this AD, report inspection results, positive or negative, to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712; fax (310) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0056.

(c) After the effective date of this AD, no person shall install on the NLG of any airplane a lower drag link (assembly part number ACG7208–507 and detail part number ACG7208–17) having a serial number identified in Figure 1 of McDonnell Douglas

Alert Service Bulletin MD11–32A058, dated June 30, 1995.

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

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

(e) 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.

(f) The inspection and replacement shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–32A058, dated June 30, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 17, 1995.

Issued in Renton, Washington, on July 24, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18586 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 95–ANM–11]

Amendment of Class E Airspace; Salt Lake City, Utah

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Salt Lake City, Utah, Class E airspace. This action is necessary to accommodate a new instrument approach procedure at Salt Lake City International Airport, Salt Lake City, Utah.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: James Riley, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 95–ANM–11, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

History

On May 9, 1995, the FAA proposed to amend part 71 of Federal Aviation Regulations (14 CFR part 71) to amend the Salt Lake City, Utah, Class E airspace area (60 FR 24595). This action is necessary to accommodate a new instrument approach procedure at Salt Lake City International Airport, Salt Lake City, Utah. The area will be depicted on aeronautical charts for pilot reference.

Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extended 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 will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations amends Class E airspace at Salt Lake City, Utah. 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 regulation action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANM UT E5 Salt Lake City, UT [Revised]

Salt Lake City International Airport, UT
(Lat. 40°47′13″ N, long. 111°58′08″ W)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 41°00′00″ N, long. 111°45′03″ W, thence south along long. 111°45′03″ W, to lat. 40°22′30″ N, thence southeast to lat. 40°10′20″ N, long. 111°35′03″ W, thence southwest to lat. 40°03′30″ N, long. 111°48′33″ W, thence northwest to lat. 40°43′00″ N, long. 112°22′03″ W, thence north along long. 112°22′03″ W, to lat. 41°00′00″ N, thence east along lat. 41°00′00″ N, to the point of beginning; that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 41°00′00″ N, on the east by long. 111°25′33″ W, on the south by lat. 39°56′30″ N, to long. 111°55′03″ W, thence south along long. 111°55′03″ W, to lat. 39°48′00″ N, long. 111°55′03″ W, thence south along long. 111°55′03″ W, to lat. 39°48′00″ N, long. 111°55′03″ W, thence south to lat. 39°04′00″ N, long. 112°27′30″ W, thence northwest to lat. 39°48′00″ N, long. 112°50′00″ W, thence west via lat. 39°48′00″ N, to the east edge of Restricted Area R–6402A, and on the west by the east edge of Restricted Area R–6402A, Restricted Area R–6402B and Restricted Area R–6406B and long. 113°00′03″ W; that airspace of Salt Lake City extending upward from 11,000 feet MSL bounded on the northwest by the southeast edge of V–32, on the southeast by the northwest edge of V–235, on the southwest by the northeast edge of V–101 and on the east by long. 111°25′33″ W; excluding that airspace within the Evanston, WY, 1,200-foot Class E airspace area; that airspace southeast of Salt Lake City extending upward from 13,500 feet MSL bounded on the northeast by the southwest edge of V–484, on the south by the north edge of V–200 and on the west by long. 111°25′33″ W; excluding the portion within Restricted Area R–6403 and the Bonneville, UT Class E airspace area.

* * * * *

Issued in Seattle, Washington, on July 5, 1995.

Richard E. Prang,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 95–18917 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 204

[Docket No. 950203036–5180–02; I.D. 070695A]

NOAA Information Collection Requirements; Update and Consolidation

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

ACTION: Final rule; technical amendment.

SUMMARY: NMFS consolidates and updates Office of Management and Budget (OMB) control numbers for NOAA information collection requirements and makes minor corrections to the accompanying text. The intent is to update, simplify, and shorten the regulations, while still making this information available to the public.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: George H. Darcy, NMFS, 301/713–2344.

SUPPLEMENTARY INFORMATION: Part 902 of title 15 CFR and part 204 of title 50 CFR display control numbers assigned to NOAA and NMFS information collection requirements, respectively, by OMB, pursuant to the Paperwork Reduction Act. These parts fulfill the requirement that agencies display a current control number, assigned by the Director of OMB, for each agency information collection requirement.

This final rule, technical amendment, consolidates the list of OMB control numbers associated with NOAA information collection requirements contained in regulations appearing in CFR titles 15 and 50. Because NMFS is a component of NOAA, these parts logically can be combined to shorten the regulations and to ease use by the public. All of the collection-of-information requirements consolidated in 15 CFR 902.1(b) have previously been submitted to OMB for approval during implementation of regulations appearing in the individual parts of titles 15 and 50; this final rule does not involve any new reporting or recordkeeping requirements. In addition, the list of OMB approval numbers is corrected and updated to reflect the currently valid OMB approvals, and the text of § 902.1(a) is updated to reflect the Paperwork Reduction Act of 1995.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Classification

Because this rule only consolidates existing information for purposes of public information, it is strictly administrative in nature; no useful purpose would be served by providing prior notice and opportunity for comment on this rule. Accordingly, under 5 U.S.C. 553(b)(B), it is unnecessary to provide such notice and opportunity for comment. Also, because this rule is only administrative in nature and is not a ''substantive rule'' under 5 U.S.C. 553(d), it will be immediately effective upon publication.

This rule is exempt from review under E.O. 12866.

List of Subjects in 15 CFR Part 902 and 50 CFR Part 204

Reporting and recordkeeping requirements.

Dated: July 25, 1995.

Richard H. Schaefer,

Acting Assistant Administrator for Fisheries, NOAA.

For the reasons set out in the preamble, under the authority of 44 U.S.C. 3501 *et seq.*, 50 CFR chapter II and 15 CFR chapter IX are amended as follows:

15 CFR Chapter IX

1. 15 CFR part 902 is revised to read as follows:

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

Authority: 44 U.S.C. 3501 *et seq.*

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This part collects and displays the control numbers assigned to information collection requirements of the National Oceanic and Atmospheric Administration (NOAA) by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act (PRA). NOAA intends that this part comply with the requirements of section 3507(c)(B)(i) of the PRA, which requires that agencies inventory and display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
15 CFR	
Part 908	–0025.
Part 911	–0157.
917.11	–0008, –0019 and –0034.
917.22	–0008, –0019 and –0034.
917.30(b)	–0008, –0019 and –0034.
917.41	–0008, –0019 and –0034.
917.43(c)	–0119.
918.7	–0147.
Part 921, subpart B	–0121.
Part 923	–0119.
924.6	–0141.
928.3	–0119.
929.10	–0141.
935.9	–0141.
936.8	–0141.
937.8	–0141.
938.8	–0141.
941.11	–0141.
942.8	–0141.
943.10	–0141.
944.9	–0141.
Part 960, subpart B	–0174.
Part 970	–0145.
Part 971	–0170.
Part 981	–0144.
50 CFR	
216.22	–0178.
216.23	–0179.
216.24(b)	–0083.
216.24(c)	–0083.
216.24(d)	–0083, –0084, –0099 and –0217.
216.24(e)	–0040.
216.31	–0084.
216.33	–0084.
216.45	–0084.
222.11–2	–0078.
222.11–8	–0079.
222.12–7	–0078.
222.12–8	–0078.
222.22	–0230.
222.23	–0084.
227.72	–0230 and –0267.
228.4	–0151.
228.6	–0151.
228.14	–0151.
228.25	–0151.
228.37	–0151.
228.55	–0151.
229.5	–0224.
229.6	–0225.
229.7	–0225.
255.4	–0012.

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
259.30	–0090.
259.35	–0041.
260.103	–0266.
280.10	–0148.
280.50	–0202.
280.51	–0239.
280.53	–0040.
282.3	–0218.
282.5	–0218.
285.7	–0202.
285.8	–0202.
285.21	–0202.
285.27	–0247.
285.28	–0202.
285.29	–0239.
285.52	–0202.
285.53	–0168.
285.54	–0239.
285.55	–0239.
285.201	–0040.
296.5	–0082.
299.3	–0228.
299.4	–0228.
299.5	–0228.
380.4	–0194.
380.5	–0194.
380.6	–0194.
380.8	–0194.
380.20	–0194.
380.24	–0194.
380.28	–0194.
601.37	–0192.
611.3	–0089.
611.4	–0075.
611.6	–0075.
611.8	–0075.
611.9	–0075.
611.12	–0075.
611.50	–0075.
611.61	–0075.
611.70	–0075.
611.80	–0075.
611.81	–0075.
611.82	–0075.
611.90	–0075.
611.92	–0075.
611.93	–0075.
611.94	–0075.
625.4	–0202.
625.5	–0202.
625.6	–0018, –0212 and –0229.
625.20	–0202.
625.27	–0202.
628.4	–0202.
630.4	–0205.
630.5	–0013 and –0016.
630.10	–0016.
630.31	–0277.
638.4	–0205.
638.5	–0016.
638.27	–0016.
640.4	–0205.
641.4	–0205.
641.5	–0013 and –0016.
642.4	–0205.
642.5	–0013 and –0016.
644.24	–0216.
645.4	–0205.
645.6	–0205.
646.4	–0205.
646.5	–0013 and –0016.
646.6	–0205.
646.10	–0262.
649.4	–0202.
649.5	–0202.
649.6	–0202.
650.4	–0202.
650.5	–0202.
650.6	–0202.
650.7	–0018, –0212 and –0229.
650.24	–0202.
650.25	–0202.
650.26	–0202.
650.28	–0202.
651.4	–0202.
651.5	–0202.
651.6	–0202.
651.7	–0018, –0212 and –0229.
651.20	–0202.
651.21	–0202.
651.22	–0202.
651.28	–0202.
651.29	–0202.
652.4	–0202.
652.5	–0202.
652.6	–0212 and –0229.
652.9	–0202.
652.20	–0238.
652.24	–0240.
653.5	–0013.
655.4	–0202.
658.5	–0013.
661.4	–0222.
661.20	–0222.
663.4	–0271.
663.10	–0203.
663.11	–0203.
663.33	–0203.
669.6	–0205.
672.4	–0206.
672.5	–0213.
672.6	–0206.
674.4	–0206.
675.4	–0206.
675.5	–0213.
675.6	–0206.
675.27	–0269.
676.3	–0206.
676.4	–0206.
676.5	–0206.
676.13	–0272.
676.14	–0272.
676.17	–0272.
676.20	–0272.
676.21	–0272.
676.25	–0269.
677.4	–0206.
677.6	–0280.
677.10	–0280.
678.4	–0205.
678.5	–0013, –0016 and –0229.
678.10	–0016.
680.4	–0204.
680.5	–0214.
680.10	–0204.
681.4	–0204.
681.5	–0214.
681.10	–0214.
681.24	–0214.
681.25	–0214.
681.30	–0204.
683.4	–0214.
683.9	–0204 and –0214.
683.21	–0204.
683.25	–0204.
683.27	–0214.
683.29	–0214.
685.4	–0214.
685.9	–0204.
685.11	–0214.
685.13	–0214.
685.14	–0214.
685.15	–0204.
685.24	–0214.
695.4	–0205.
695.5	–0016.

50 CFR Chapter II

PART 204—[REMOVED]

2. 50 CFR part 204 is removed.

[FR Doc. 95–18638 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–22–P

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15 CFR Part 905

[Docket No. 950104002–5188–02; I.D. 061394C]

RIN 0648–AE40

Use in Enforcement Proceedings of Information Collected by Voluntary Fishery Data Collectors

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (Secretary), through NOAA, publishes this final rule restricting the use of information collected by voluntary fishery data collectors (VFDC). This rule limits the extent to which such information can be used in civil and criminal enforcement proceedings conducted pursuant to the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA). In implementing these regulations, NOAA seeks to encourage the use of VFDCs by the fishing industry, while protecting the necessary use of observer information by law enforcement personnel.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Joel La Bissonniere, (301) 427–2202.

SUPPLEMENTARY INFORMATION: Section 303(f) of the Magnuson Act calls upon

the Secretary to issue regulations that restrict, in civil and criminal enforcement proceedings conducted under the Magnuson Act, MMPA, and ESA, the use of information collected by VFDCs for conservation and management purposes while aboard a vessel.

On March 3, 1995, NOAA published a proposed rule in the **Federal Register** (60 FR 11947) implementing this statutory mandate. The proposed rule encouraged industry participation in voluntary observer programs by limiting the risk of prosecution based upon information collected by a VFDC. The proposed rule also protected essential law enforcement activities by allowing the use of VFDC information in limited circumstances. With this proposed rule, NOAA sought to balance two equally important methods of conserving and managing living marine resources: The use of observer data for scientific purposes and for compliance monitoring.

Under the proposed rule, information collected by a VFDC may not initially be introduced as evidence by the government against any consenting owner that is a party to an enforcement proceeding. By contrast, any party other than the government may introduce such information, presumably for purposes of establishing innocence. Once introduced, however, any party including the government may introduce all other information collected by the VFDC.

The proposed rule provided two exceptions to these general restrictions. First, the restrictions do not apply to the use of independent evidence derived from information collected by a VFDC. Second, the restrictions do not apply in any enforcement proceeding alleging the assault, intimidation, or harassment of any person, or the impairment or interference with the duties of a VFDC.

Comments and Responses

Comments on this proposed rule were invited until May 2, 1995. Two organizations responded: The Center for Marine Conservation (CMC); and the Manomet Observatory for Conservation and Sciences (Manomet).

Comment: Manomet believes that the restrictions outlined in the proposed rule will not adequately encourage industry participation with voluntary observer programs. Rather, industry participation would be enhanced if NOAA prohibited the use, in any prosecution against a consenting owner, of information collected by a VFDC.

Response: A total prohibition on the use of VFDC information is inappropriate for several reasons. First, a total prohibition is contrary to the plain language of the statute. Section 303(f) of the Magnuson Act calls for regulations that restrict the use of VFDC information in enforcement proceedings. The statute does not call for a total prohibition on the use of VFDC information.

Second, a total prohibition is inconsistent with the larger goals established by Congress. All three statutes seek to manage and conserve living marine resources through the acquisition of scientific data and through effective enforcement. Historically, observers have played a critical role in facilitating both goals. A total prohibition ignores the essential role played by enforcement. By restricting the use of VFDC information, NOAA seeks to balance these important management tools, providing industry with an incentive to carry voluntary observers, while protecting the government's ability to use such information in very limited circumstances.

Third, a total prohibition is constitutionally suspect. In certain instances, information collected by a VFDC may establish a party's innocence. Denying a party the right to use VFDC information in a criminal proceeding might run counter to a party's right to compulsory process under the Sixth Amendment of the U.S. Constitution.

Comment: Manomet is opposed to the use of VFDC information for investigative purposes. In a somewhat related comment, CMC supports the use of independent evidence derived from information collected by VFDCs.

Response: Consistent with section 303(f) of the Magnuson Act, these regulations only govern the use of VFDC information in civil and criminal enforcement proceedings. They do not control the use of VFDC information for other investigative purposes. Information obtained by VFDCs may be used for investigative purposes, provided that it is accessible to enforcement personnel.

These regulations, however, do not expand enforcement's authority to access information collected by VFDCs. Rather, access to information collected by VFDCs remains subject to existing statutory, regulatory and internal agency provisions that govern access to various categories of information collected by the government.

NOAA supports the use, in enforcement proceedings, of independent evidence derived from information collected by VFDCs. Absent this exception, prosecutors might be denied use of relevant evidence, wholly unrelated to the purposes of part 905, simply because the evidence was acquired through information collected by a VFDC.

Comment: Manomet believes that information collected by a VFDC should be admissible if a VFDC, stationed aboard one vessel, observes a violation that is committed aboard another vessel.

Response: NOAA agrees with this comment. Under these regulations, information collected by a VFDC may not be introduced by the government against any consenting party to an enforcement proceeding. A consenting party is defined to include only the owner, operator, or crewmember of a vessel carrying a VFDC.

Comment: Manomet believes that NOAA should clarify which observer programs are entitled to the evidentiary protections afforded by these regulations. Some uncertainty remains since some programs that are mandatory in nature, are operated on a voluntary basis. With such programs, confusion exists as to whether observers are stationed on a voluntary or mandatory basis.

Response: Pursuant to section 303(f) of the Magnuson Act, NOAA must implement regulations restricting the use of observer information, when the observer stationed aboard a vessel is not required by the Magnuson Act, MMPA, ESA, or implementing regulations. Consistent with this mandate, these evidentiary restrictions only apply when the observer is stationed aboard a vessel under a purely voluntary scheme. These restrictions do not apply to mandatory programs that are operated on a voluntary basis.

Comment: Manomet supports the government's ability to use information collected by a VFDC in any enforcement proceeding that alleges the assault, intimidation, or harassment of an observer.

Response: NOAA agrees with this comment. In fact, these evidentiary restrictions do not apply in any enforcement proceeding that alleges the assault, intimidation, or harassment of any person, including a VFDC. This expansive language is premised upon the view that these restrictions seek to reduce the risk of prosecution for fishing-related violations. They are not designed to shield misconduct unrelated to fishing activities.

Changes From the Proposed Rule

The language of this final rule is identical to the language contained in the proposed rule that was published on March 3, 1995.

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were published along with the proposed rule. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 15 CFR Part 905

Fisheries, Statistics.

Dated: July 26, 1995.

Terry D. Garcia,

General Counsel, National Oceanic and Atmospheric Administration.

For the reasons set out in the preamble, 15 CFR part 905 is added to read as follows:

PART 905—USE IN ENFORCEMENT PROCEEDINGS OF INFORMATION COLLECTED BY VOLUNTARY FISHERY DATA COLLECTORS

Sec.
905.1 Scope.
905.2 Definitions.
905.3 Access to information.
905.4 Use of information.
905.5 Exceptions.

Authority: 16 U.S.C. 1853(f).

§ 905.1 Scope.

This part applies to the use, in enforcement proceedings conducted pursuant to the Magnuson Act, the MMPA, and the ESA, of information collected by voluntary fishery data collectors.

§ 905.2 Definitions.

When used in this part:

Consenting owner means the owner, operator, or crewmember of a vessel carrying a voluntary fishery data collector.

Enforcement proceeding means any judicial or administrative trial or hearing, initiated for the purpose of imposing any civil or criminal penalty authorized under the Magnuson Act, MMPA, or ESA, including but not limited to, any proceeding initiated to: Impose a monetary penalty; modify, sanction, suspend or revoke a lease, license or permit; secure forfeiture of seized property; or incarcerate an individual.

ESA means the Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*, and implementing regulations.

Information means all observations, data, statistics, photographs, film, or recordings collected by a voluntary fishery data collector for conservation and management purposes, as defined by the Magnuson Act, MMPA, or ESA, while onboard the vessel of a consenting owner.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended, 16 U.S.C. 1801 *et seq.*, and implementing regulations.

MMPA means the Marine Mammal Protection Act, as amended, 16 U.S.C. 1361 *et seq.*, and implementing regulations.

Secretary means the Secretary of Commerce, the Secretary of the Interior, their chosen designees, or any other Federal agency authorized to enforce the provisions of the Magnuson Act, MMPA, or ESA.

Vessel means any vessel as defined at 16 U.S.C. 1802(31).

Voluntary fishery data collector means:

(1) Any person, including an observer or a sea sampler;

(2) Placed aboard a vessel by the Secretary;

(3) For the purpose of collecting information; and

(4) Whose presence aboard that vessel is not required by the Secretary pursuant to provisions of the Magnuson Act, MMPA, or ESA, or their implementing regulations.

§ 905.3 Access to information.

Information collected by a voluntary fishery data collector:

(a) Is subject to disclosure to both the Secretary and the public, to the extent required or authorized by law; and

(b) Is subject to discovery by any party to an enforcement proceeding, to the extent required or authorized by law.

§ 905.4 Use of information.

(a) Except as provided for in paragraph (b) of this section, information collected by a voluntary fishery data collector may not be introduced by the Secretary as evidence against any consenting owner that is a party to an enforcement proceeding.

(b) Provided that all applicable evidentiary requirements are satisfied:

(1) Information collected by a voluntary fishery data collector may be introduced in an enforcement proceeding by any party except the Secretary;

(2) If information is introduced pursuant to paragraph (b)(1) of this section, all information collected by a voluntary fishery data collector may be introduced by any other party, including the Secretary.

(c) Independent evidence derived from information collected by a voluntary fishery data collector may be introduced by any party, including the Secretary, in an enforcement proceeding.

§ 905.5 Exceptions.

The provisions of this part shall not apply in any enforcement proceeding against a consenting owner that alleges the actual or attempted:

(a) Assault, intimidation, or harassment (including sexual harassment) of any person; or

(b) Impairment or interference with the duties of a voluntary fishery data collector.

[FR Doc. 95–18899 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM94–14–001]

Nuclear Plant Decommissioning Trust Fund Guidelines; Order Granting Rehearing for Purpose of Further Consideration and Granting Limited Stay of Certain Portions of Final Rule

Issued July 27, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order granting rehearing for purpose of further consideration and granting limited stay of certain provisions of final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is granting rehearing for the purpose of further considering the matters that parties have raised in requests for rehearing and clarification and is staying certain provisions of the Final Rule. The provisions that the Commission is staying involve the requirements that: Public utilities create a separate fund for Commission-jurisdictional Fund collections; and Fund investment managers have a net worth of at least $100 million. The grant of rehearing for the purpose of further consideration and the stay of these provisions will afford the Commission time to consider the merits of the parties' requests.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph C. Lynch (Legal Information), Federal Energy Regulatory Commission, Office of the General

Counsel, 825 North Capitol Street NE., Washington, D.C. 20426, Telephone: (202) 208–2128

James K. Guest (Accounting Information), Office of Chief Accountant, 825 North Capitol Street NE., Washington, D.C. 20426, Telephone: (202) 219–2602.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3401, at 941 North Capitol Street NE., Washington, D.C. 20426.

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[Docket No. RM94–14–001]

Nuclear Plant Decommissioning Trust Fund Guidelines; Order Granting Rehearing for Purpose of Further Consideration and Granting Limited Stay of Certain Portions of Final Rule

Issued July 27, 1995.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

On June 16, 1995, the Commission issued a Final Rule in *Nuclear Plant Decommissioning Trust Fund Guidelines*,[1] setting forth requirements for the formation, organization and purpose of nuclear plant decommissioning trust funds (Fund) and for Fund investments. The Commission has received motions for stay and/or requests for rehearing and for clarification from: a group of investment management firms and trust companies; a group of public utility companies; Strong Capital Management, Inc.; Commonwealth Edison Company; Indiana Michigan Power Company; Maine Yankee Atomic Power Company; New England Public Power Nuclear Customers; and Edison Electric Institute.

In the absence of Commission action within 30 days, the requests for rehearing would be deemed to have been denied. 18 CFR 385.713. In order to allow sufficient time for due consideration of the matters raised, we will grant rehearing for the limited purpose of further consideration.

A number of the parties request that the Commission stay the following provisions of the Final Rule while the requests for rehearing are pending:

1. The requirement that public utilities must establish a separate nuclear decommissioning trust fund for Commission-jurisdictional Fund collections; and

2. The requirement that a Fund investment manager must have a net worth of at least $100 million.[2]

In acting on stay requests, the Commission applies the standard set forth in the Administrative Procedure Act,[3] *i.e.*, the stay will be granted if the Commission finds that ''justice so requires.''[4] In this instance, we will grant a stay of the two challenged provisions of the Final Rule so that we may further consider them while the requests for rehearing are pending.

The remaining provisions of the Final Rule will go into effect on July 31, 1995.

The Commission orders:

(A) Rehearing is hereby granted for the limited purpose of further consideration.

(B) The following note is added to the end of § 35.32 (18 CFR 35.32):

Note: The following provisions of this section are stayed as of July 31, 1995:

1. The requirements in 18 CFR 35.32(a)(1) and (f) that public utilities must establish a separate nuclear decommissioning trust fund for Commission-jurisdictional Fund collections.

2. The requirement in 18 CFR 35.32(a)(4) (the words ''and any other Fiduciary'') that a Fund investment manager must have a net worth of at least $100 million.

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–19034 Filed 7–28–95; 3:37 pm]

BILLING CODE 6717–01–P

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[1] Nuclear Plant Decommissioning Trust Fund Guidelines, Order No. 580, 60 FR 34109 (June 30, 1995), 71 FERC ¶ 61,350 (1995).

[2] *See* 60 FR 34117, 34123; *slip op.* at 37, 71–72.

[3] 5 U.S.C. 705.

[4] *See* Power Authority of the State of New York, 71 FERC ¶ 61,321 (1995).

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18 CFR Part 284

[Docket No. RM93–4–008; Order No. 563–E]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

Issued July 27, 1995.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order modifying capacity release data sets.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order making changes to its capacity release data sets and Electronic Data Interchange implementation guide in response to a filing by the Electronic Bulletin Board Working Group. The Commission's order revises its ''Standardized Data Sets and Communication Protocols,'' available at the Commission's Public Reference and Files Maintenance Branch.

EFFECTIVE DATE: Pipelines must implement the new requirements by October 25, 1995.

ADDRESSES: Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–2294

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 208–1283

Brooks Carter, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 501–8145.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street NE., Washington D.C. 20426.

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Order Modifying Capacity Release Data Sets

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

On June 29, 1995, the Electronic Bulletin Board (EBB) Working Group submitted a consensus proposal to modify the capacity release data sets adopted by the Commission in Order No. 563.[1] The filing also contained proposed revisions to the Electronic Data Interchange (EDI) implementation guide relating to these changes. The approved data sets and implementation guide are included in a document entitled ''Standardized Data Sets and Communication Protocols,'' available at the Commission's Public Reference and Files Maintenance Branch.

The Working Group requests that the changes become effective 90 days after a Commission order to provide sufficient implementation time. The Working Group, through a filing made on May 11, 1995, also provided notification that, by consensus agreement, it intends to transfer future responsibility for maintenance of the capacity release data sets and for the PI GRID™ Common Code Database to the Gas Industry Standards Board.

Pursuant to the process adopted by the Commission to make modifications to the data sets,[2] public notice of the June 29, 1995 filing was issued on July 3, 1995, with comments due by July 12, 1995.

Natural Gas Clearinghouse (NGC), a member of the Working Group, filed a comment stating that the field entitled discount indicator needs to be clarified. The discount indicator is a mandatory ''yes/no'' field where:

> ''Y'' signifies that the rates associated with the capacity being released include rates discounted by transporter which could result in additional charges to the bidder if other than the Gas transaction points used to describe the capacity are utilized, and ''N'' or blank, signifies that no discounts apply.

NGC states that this field was accepted at its behest to reflect the Commission's decision in *ANR*,[3] under which a replacement shipper may be assessed charges in excess of its bid if it uses alternate receipt or delivery points.

NGC contends that, after the Working Group filed the data sets, an ambiguity became apparent. It is concerned that parties that were not a part of the Working Group process may interpret this provision to mean that the field would be coded as ''yes'' whenever a shipper is releasing capacity on which it pays discounted rates. NGC maintains that it and the Working Group's intent was that the field be coded ''yes'' only when the replacement shipper would be exposed to a higher rate for the use of alternate points. NGC requests clarification of this point and also recommends revision to the description of the field to better reflect this intent.[4]

The Commission accepts the data sets and EDI implementation guide, and will grant the clarification and accept the proposed language revision requested by NGC. This clarification will help ensure that the discount indicator field is coded in a consistent manner so that replacement shippers can rely on the information provided.

In *El Paso*[5] and *ANR*,[6] the Commission explained that when a replacement shipper obtains capacity that the pipeline sold to the releasing shipper at a discount rate, the replacement shipper may be subject to additional charges for using alternate receipt or delivery points.[7] The replacement shipper is subject to additional charges only when the releasing shipper includes a specific condition in the release obligating the replacement shipper to pay the additional charges resulting from its use of alternate points. Absent an express condition, the replacement shipper pays the rate established by its bid and the releasing shipper is required to pay the differential between the discount rate and the maximum rate.

In line with this policy, the Commission clarifies that the discount indicator is to be coded ''yes'' only when the replacement shipper could be subject to additional charges for changing points. This clarification will ensure that replacement shippers receive consistent and correct information about their potential exposure to additional charges. The language revision suggested by NGC provides a better reflection of this intent than the version proposed by the Working Group and, therefore, will be adopted.

Pipelines will be required to implement the new fields within 90 days of the date of this order. The ''Standardized Data Sets and Communication Protocols'' will be modified to include the new fields and will be made available at the Commission's Public Reference and Files Maintenance Branch.

The Commission Orders

(A) The data sets and implementation guide are accepted with the revision discussed in the body of this order.

(B) Pipelines must implement the requirements of this order within 90 days of the date of the order.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18957 Filed 8–1–95; 8:45 am]

BILLING CODE 6717–01–P

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[1] Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994), III FERC Stats. & Regs. Preambles ¶ 30,988 (Dec. 23, 1993), *order on reh'g*, Order No. 563–A, 59 FR 23624 (May 6, 1994), III FERC Stats. & Regs. Preambles ¶ 30,994 (May 2, 1994), *reh'g denied*, Order No. 563–B, 68 FERC ¶ 61,002 (1994).

[2] Order No. 563–A, III FERC Stats. & Regs. Preambles at 31,036–37.

[3] ANR Pipeline Company, 66 FERC ¶ 61,340, at 62,130–32 (1994).

[4] Specifically, NGC recommends the field be reworded to state:

> ''Y'' signifies that the rates associated with the capacity being released include rates discounted by transporter which *that* could result in additional charges to the bidder if other than the Gas transaction points used to describe the capacity are utilized, and ''N'' or blank, signifies that no discounts *such additional charges could* apply.

NGC states the revised definition should be included in both the ''description of field'' and the ''data type and explanation'' columns.

[5] El Paso Natural Gas Company, 62 FERC ¶ 61,311, at 62,991 (1993).

[6] ANR Pipeline Company, 66 FERC ¶ 61,340, at 62,130–32 (1994).

[7] In general, when the pipeline has sold capacity at a discount, the pipeline is entitled to collect the maximum rate when shippers change to alternate points (unless the pipeline has agreed by contract that the discounted rate applies to all points).

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–206B]

Safety Standards for Fall Protection in the Construction Industry

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; correcting amendment.

SUMMARY: Negotiated rulemaking is currently underway to develop a proposed revision of OSHA's standards for steel erection in subpart R of part 1926. That proposal is expected to include fall protection requirements for employees performing steel erection work. OSHA has concluded that the Agency's recently revised general requirements for fall protection (subpart M of part 1926) should be amended at this time to clarify that they do not apply to any steel erection activities. Therefore, OSHA is withdrawing amendments to subpart E which have not yet become effective and is amending certain provisions of subpart M of part 1926 in order to maintain the fall protection requirements for steel erection that were in effect before the issuance of revised subpart M.

EFFECTIVE DATE: This document is effective on August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Liblong, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION:

I. Background

On August 9, 1994, the Occupational Safety and Health Administration (OSHA) issued a final rule on Fall Protection in the Construction Industry, 29 CFR part 1926, subpart M (59 FR 40672), which became effective, except as described below, on February 6, 1995. With respect to steel erection activities, the new subpart M established the duty to provide fall protection for employees engaged in steel erection in structures other than buildings (revised §§ 1926.500(a)(2)(iii)), and 1926.501(b)) and established the fall protection systems criteria and training requirements for employees engaged in all steel erection work (revised §§ 1926.500(a)(2)(iii), (a)(3), (a)(4), 1926.502, and 1926.503).

On October 7, 1994, five steel erection companies petitioned OSHA for an administrative stay of final subpart M to the extent the standard applies to steel erection activities. They argued that OSHA had not given fair notice that subpart M would apply to the steel erection industry at all, and that, in consequence, they did not have the opportunity to comment on this issue.

After reviewing the rulemaking record in light of petitioner's fair notice claims, OSHA agreed that the petitioners and other interested persons did not receive adequate notice of OSHA's intention that some steel erection activities would be covered by revised subpart M. Because of the notice deficiency, OSHA recognized that the rulemaking record was incomplete with respect to steel erection and that revised subpart M was not a final rule to the extent it applied to steel erection.

Accordingly, OSHA granted the request for an administrative stay and delayed the effective date of revisions to subpart M and subpart E, to the extent they applied to steel erection, until August 6, 1995 (60 FR 5131, January 26, 1995). OSHA explained in the January 1995 notice that it intended to reopen the subpart M record for supplemental comments concerning subpart M coverage of certain steel erection work. See 60 FR 5131.

For construction activity other than steel erection, revised subpart M and supporting amendments to subparts E, H, N, P, Q, and V became effective on February 6, 1995.

At the time OSHA granted the petitioners' request for an administrative stay and delayed the effective date of revised subpart M, a negotiated rulemaking committee was in the process of developing a proposal to revise 29 CFR part 1926, subpart R. Subpart R currently applies to steel erection of buildings. The Steel Erection Negotiated Rulemaking Advisory Committee, SENRAC, was expected to issue a proposal in June 1995 which would, among other things, expand subpart R's scope. In order to avoid overlap or conflict between two rulemakings concerning steel erection fall hazards, OSHA decided to wait to reopen subpart M for additional comment concerning coverage of steel erection until after SENRAC's June proposal made clear which steel erection activities would remain unregulated by subpart R. Accordingly, OSHA delayed the effective date of revisions to subpart E and subpart M purporting to apply to steel erection for six months, or until August 6, 1995 (60 FR 5131, January 26, 1995).

To date, SENRAC has not decided which steel structures will be subject to subpart R's fall protection requirements. Accordingly, OSHA has granted SENRAC additional time to develop a proposal to revise subpart R. In light of these developments, further extending the administrative stay of subpart M would prolong indefinitely the time in which the text of the standard does not reflect the standard's actual scope. OSHA has decided therefore that subpart M should be amended at this time to accurately reflect that it does not cover steel erection and that subpart E should be amended so that the generic fall protection provisions that have applied to steel erection continue in effect.

OSHA intends, after the SENRAC proposal is issued and the scope of the subpart R revision rulemaking is definite, to formally propose to amend subpart M to include any steel erection activity omitted from the subpart R revision process.

Until subparts M and R are finally revised, the Agency's enforcement policy on fall protection during steel erection is the policy outlined in Deputy Assistant Secretary Stanley's July 10, 1995 memorandum to the Office of Field Programs, ''Fall Protection in Steel Erection.'' The memorandum provides that the term ''steel erection activities'' means the movement and erection of skeleton steel members (structural steel) in or on buildings or non-building structures. It includes the initial connecting of steel, employees moving point-to-point, installing metal floor or roof decking, welding, bolting and similar activities.

The memorandum further provides that steel erection does not include the erection of steel members such as lintels, stairs, railings, curtainwalls, windows, architectural metalwork, column covers, catwalks, and similar non-skeletal items or the placement of reinforcing rods in concrete structures.

Accordingly, OSHA is amending subpart M and subpart E in order to maintain, until such time as further rulemaking procedures may be initiated and completed, the fall protection requirements for steel erection that were in effect before the issuance of revised subpart M.

II. Summary and Explanation

A. Personal Protective Equipment—Subpart E

OSHA is amending subpart E to withdraw the actions whereby the Agency removed §§ 1926.104, Safety belts, lifelines and lanyards; 1926.105, safety nets; and 1926.107 (b), (c) and (f)

(definitions for the terms ''lanyard'', ''lifeline'' and ''safety belt'', respectively), insofar as those provisions relate to steel erection. Through this amendment, OSHA will maintain the existing fall protection requirements for steel erection activities pending rulemaking that addresses the steel erection industry.

B. Scope and Application—Subpart M

OSHA is amending § 1926.500(a), Scope and application, of subpart M to indicate clearly that the provisions of revised §§ 1926.501, Duty to have fall protection; 1926.502, Fall protection systems criteria and practices; and 1926.503, Training requirements, do not apply to steel erection activities. The revised provision clearly indicates that subpart R and specified provisions of subpart E cover steel erection.

Exemption From Delayed Effective Date Requirement

Under 5 U.S.C. 553, OSHA finds that there is good cause for making this amendment effective upon publication in the **Federal Register**. This amendment simply maintains the fall protection requirements which have applied to the steel erection industry, notwithstanding the promulgation of subpart M, Fall protection, so it does not increase the existing regulatory burden.

Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

List of Subjects in 29 CFR Part 1926

Construction industry, Construction safety, Excavations, Fall protection, Hoisting safety, Occupational safety and Health, Protective equipment, Safety, Tools.

Accordingly, pursuant to sections 4, 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333); section 4 of the Administrative Procedure Act (5 U.S.C. 553); Secretary of Labor's Order No. 1–90 (55 FR 35736); and 29 CFR part 1911, the amendment to 29 CFR part 1926 made in the **Federal Register** on August 9, 1994 (59 FR 40672) is further amended as set forth below.

Signed at Washington, D.C. this 28th day of July 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

PART 1926—[AMENDED]

Subpart E—[Amended]

1. The authority citation for subpart E of part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

2. Amendatory items 4, 5, 6, and 7 to subpart E, published in the **Federal Register** issue of August 9, 1994 (59 FR 40729) and stayed in the issue of January 26, 1995 (60 FR 5131), are withdrawn.

Subpart M—Fall Protection

3. The authority citation for subpart M of part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1–90 (55 FR 9033); and 29 CFR Part 1911.

4. Paragraphs (a)(2)(iii), (a)(3)(iv) and (a)(4) of § 1926.500 are revised to read as follows:

§ 1926.500 Scope, application, and definitions applicable to this subpart.

(a) * * *

(2) * * *

(iii) Requirements relating to fall protection for employees performing steel erection work are provided in § 1926.105 and in subpart R of this part.

* * * * *

(3) * * *

(iv) Section 1926.502 does not apply to steel erection activities. (Note: Section 1926.104 sets the criteria for body belts, lanyards and lifelines used for fall protection in steel erection activities. Paragraphs (b), (c) and (f) of § 1926.107 provide definitions for the pertinent terms).

(4) Section 1926.503 sets forth requirements for training in the installation and use of fall protection systems, except in relation to steel erection activities.

* * * * *

[FR Doc. 95–18921 Filed 8–1–95; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations; Information and Informational Materials

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: The Treasury Department is amending the Cuban Assets Control Regulations (the ''Regulations'') to bring the Regulations into conformity with amendments to the Trading with the Enemy Act concerning information and informational materials included in the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing, tel.: 202/622–2480, or William B. Hoffman, Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

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Background

Section 525 (b) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Pub. L. 103–236, 108 Stat. 474, amended section 5(b)(4) of the Trading with the Enemy Act, 50 U.S.C. App. 1–44 (''TWEA''), to expand the list of items considered to be information or informational materials to include compact discs, CD ROMs, artworks, and news wire feeds. In addition, section 5(b)(4) of TWEA, as

amended, exempts from the authority granted to the President the authority to regulate or prohibit, directly or indirectly, the importation from any country or the exportation to any country, whether commercial or otherwise, of information or informational materials, regardless of format or medium of transmission.

Section 515.206 of the Regulations is amended to reflect the exemption that applies to transactions concerning information and informational materials. The definition of the term ''information or informational materials'' contained in § 515.332 is amended to conform the section to amended section 5(b)(4) of TWEA. Conforming amendments are also made to § 515.545, which authorizes transactions related to the importation and exportation of information and informational materials. Section 515.570, which authorizes the importation of paintings and drawings, is removed from the Regulations because the exemption contained in § 515.206, as amended, makes this separate authorization unnecessary.

Section 515.542, which concerns authorization for telecommunications is revised to generally license certain forms of telecommunications services between Cuba and the United States. The provision of, and payments for, telecommunications services between Cuba and the United States are governed exclusively by section 1705 of the Cuban Democracy Act, 22 U.S.C. 6001–6010 (''CDA''). That section authorizes such services, but permits the regulation of payments to Cuba for telecommunications. The CDA provision on telecommunications preempts the provisions of TWEA on information and informational materials to the extent that the provisions are inconsistent. The general license contained in § 515.542(b) authorizes the provision of telecommunications services between Cuba and the United States. Consistent with the authority provided in the CDA, § 515.542(c) requires the obtaining of specific licenses on a case–by–case basis as a condition for any full or partial payments to Cuba arising out of telecommunications services between the United States and Cuba.

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 515

Administrative practice and procedure, Air carriers, Banks, banking, Cuba, Currency, Estates, Exports, Fines and penalties, Foreign investment in the United States, Foreign trade, Imports, Informational materials, Publications, Reporting and recordkeeping requirements, Securities, Shipping, Travel restrictions, Trusts and trustees, Vessels.

For the reasons set forth in the preamble, 31 CFR part 515 is amended as set forth below:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 515 continues to read as follows:

Authority: 50 U.S.C. App. 1–44; 22 U.S.C. 6001–6010; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1147; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart B—Prohibitions

2. Section 515.206 is amended by revising the references to § 515.550 to read § 515.545 in Examples 2, 3, and 4; by removing paragraph (b) and redesignating paragraphs (c),(d), and (e) as paragraphs (b),(c), and (d) respectively; by adding the words, ''information or'' before the words, ''informational materials,'' each time they are used in redesignated paragraph (b) and Example 3; by removing the word ''synchronization'' and the comma following it from Example 4; and by revising the section heading and paragraph (a) to read as follows:

§ 515.206 Exemption of information and informational materials.

(a) The importation from any country and the exportation to any country of information or informational materials as defined in § 515.332, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions and regulations of this part except for payments owed to Cuba for telecommunications services between Cuba and the United States, which are subject to the provisions of § 515.542.

* * * * *

Subpart C—General Definitions

3. Section 515.332 is revised to read as follows:

§ 515.332 Information and informational materials.

(a) For purposes of this part, the term *information and informational materials* means:

(1) Publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, news wire feeds, and other information and informational articles.

(2) To be considered informational materials, artworks must be classified under Chapter subheadings 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information and informational materials* does not include items:

(1) That would be controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (1993) (the ''EAA''), or section 6 of the EAA to the extent that such controls promote nonproliferation of antiterrorism policies of the United States, including ''software'' that is not ''publicly available'' as these terms are defined in 15 CFR Parts 779 and 799.1 (1994); or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

4. The section heading and paragraphs (b) and (c) of § 515.542 are revised to read as follows:

§ 515.542 Telecommunications, information, and informational materials.

* * * * *

(b) Except as provided in paragraph (c) of this section, all transactions incident to the use of cables, satellite channels, radio signals, or other means of telecommunications for the provision of telecommunications services between Cuba and the United States, including telephone, telegraph and similar services, and the transmission of radio and television broadcasts and news wire feeds between Cuba and the United States, are authorized.

(c) Full or partial payments owed to Cuba as a result of telecommunications services authorized in paragraph (b) of this section are prohibited unless authorized pursuant to specific licenses, which will be issued on a case–by–case basis provided such payments are determined to be consistent with the public interest and the foreign policy of the United States.

5. The section heading and paragraph (a) of § 515.545 are revised to read as follows:

§ 515.545 Transactions related to information and informational materials.

(a) Except as provided in § 515.542(c), all financial and other transactions directly incident to the importation or exportation of information or informational materials are authorized.

* * * * *

§ 515.570 [Removed]

6. Section 515.570 is removed.

Dated: July 14, 1995.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: July 18, 1995.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement).

[FR Doc. 95–18952 Filed 7–28–95; 12:34 pm]

BILLING CODE 4810–25–F

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC23

Voyageurs National Park; Aircraft Operations—Designation of Areas

AGENCY: National Park Service, Interior.

ACTION: Interim rule.

SUMMARY: The National Park Service (NPS) is adopting this interim rule for Voyageurs National Park to allow an activity that has been identified in the 1980 Master Plan and the 1992 Wilderness Plan. The interim rule will designate certain areas open to aircraft use within the park for a limited duration of time while the agency develops a special regulation to address the activity through public notice and comment rulemaking. This addition is necessary because NPS general regulations require special regulatory designations for areas in parks open to the operation or use by aircraft. The intended effects are to ensure safety, protect resources and provide appropriate enjoyment to park users.

DATES: This rule is effective on August 2, 1995 and will expire upon the publication of a final rule developed through the normal public notice and comment rulemaking process. Written comments will be accepted through October 2, 1995.

ADDRESSES: Comments should be addressed to: Superintendent, Voyageurs National Park, 3131 Highway 53, International Falls, MN 56649–8904.

FOR FURTHER INFORMATION CONTACT: Chief Ranger, Voyageurs National Park, 3131 Highway 53, International Falls, MN 56649–8904, Telephone: (218) 283–9821.

SUPPLEMENTARY INFORMATION:

Background

The enabling legislation for Voyageurs National Park states ''The Secretary may, when planning for development of the park, include appropriate provisions for * * * use by seaplanes * * *.'' 16 U.S.C. Section 160h. The 1980 Master Plan for the park states that float planes and ski planes will be allowed upon all lakes deemed safe by the Minnesota Department of Transportation. It also states that this allowance would be subject to the findings of the wilderness study. The 1992 wilderness study recommended that planes be allowed on the four major lakes (Rainy, Kabetogama, Namakan and Sand Point), as well as the following interior lakes: Locator, War Club, Quill, Loiten, Shoepack, Little Trout and Mukooda. The park has received several requests for permission to land float planes on park lakes this summer.

Public aircraft use on park waters occurred prior to the designation of the park in 1971. This use is primarily related to fishing, camping, transportation to resorts and summer dwellings and is typical for the area. Float plane use is mainly associated with the four major lakes with use of the interior lakes constituting less than 1% of the park's use. Aircraft are currently prohibited from using about 22 small interior lakes that have been determined to be too small to use safely by the Minnesota Department of Transportation. Three other lakes that have been used periodically and are accessible by hiking trails will not be opened to float plane use by this regulation. The closing of these three interior lakes will allow the park to manage the interior lakes on an equitable basis since other motorized uses are prohibited. Section 2.17 of 36 CFR prohibits the operation or use of aircraft on lands and waters within park areas except at locations designated through the special rulemaking process.

This interim rule will allow the park to grant appropriate requests for aircraft operation this summer. It will also increase public safety by identifying where and under what conditions aircraft are allowed to operate and improving information to the public on where they may expect to see aircraft within the park. This will lessen potential conflicts among user groups and encourage those that do not want to associate with aircraft operations to select areas within the park that are closed to aircraft use. There will be increased enjoyment among users by delineating areas appropriate to specialized uses. By identifying areas open to aircraft use, the park will be able to limit aircraft use to less sensitive areas and improve protection of resources. The park will also be able to improve information to pilots on what areas are open and what areas are closed to aircraft operations as well as information on sensitive areas that would be affected by aircraft use. This regulation will allow the park to identify those areas where appropriate use may occur, improve public information and protect area resources.

The NPS is adopting this interim rule to allow an activity that has been identified as compatible with the establishment of the park and an activity that was specifically identified in the park's enabling legislation as an acceptable activity in the park. Because of the time requirements associated with the normal rulemaking process, and the fact that the NPS has been unable to proceed in a timely manner with a proposed rule this summer, the agency has determined that an interim rule would allow for aircraft use in a more expeditious manner. The interim rule will allow aircraft use to occur while the agency proceeds with the required rulemaking to adopt a permanent special regulation for Voyageurs National Park.

The NPS is adopting this interim rule pursuant to the ''good cause'' exception of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) from general notice and comment rulemaking. As discussed above, the NPS believes that this exception is warranted in order to authorize float plane use this summer, insofar as such use is identified in the park's enabling legislation, management plan, wilderness plan, environmental assessment and environmental impact statement. Moreover, the development of these documents solicited and provided ample opportunity for public comment, and the public comment revealed support for appropriate aircraft use.

Because public comment is a principal reason for the general regulation requirement of special regulations to allow the designation of locations for this activity, the NPS finds that notice and comment are unnecessary and contrary to the public interest for this interim rule. Furthermore, the NPS is developing and will be publishing soon in the **Federal Register** a proposed rule requesting public comment on a special regulation to allow the use of aircraft in Voyageurs National Park. This interim rule is

limited in duration and will terminate with the publication of a final rule in the **Federal Register**.

The NPS has also determined, in accordance with the Administrative Procedure Act (5 U.S.C. 553(d)(3)), that the publishing of this interim rule 30 days prior to the rule becoming effective would be counterproductive and unnecessary for the reasons discussed above. A 30-day delay would be contrary to the public interest. Therefore, under the ''good cause'' exception of the Administrative Procedure Act (5 U.S.C. 553(d)(3)), it has been determined that this interim rulemaking is excepted from the 30-day delay in the effective date and shall therefore become effective on the date published in the **Federal Register**.

Drafting Information. The primary authors of this interim rule are Bruce D. McKeeman, Chief Ranger, Voyageurs National Park and Dennis Burnett, Washington Office of Ranger Activities.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

Pursuant to the Act of January 3, 1968, 84 Stat. 1972, 16 U.S.C. Section 160f(b), the NPS prepared a Wilderness Recommendation and, pursuant to the National Environmental Policy Act, 42 U.S.C. §§ 4332 *et seq.*, prepared an Environmental Impact Statement (EIS) assessing the effects of the Wilderness Recommendation. On page 30 of the EIS, the section titled ''Provisions Common To All Alternatives'' states: ''Under all alternatives motorized vehicles and aircraft would be allowed on Rainy, Kabetogama, Namakan and Sand Point lakes, subject to established regulations. Special regulations for aircraft access in the park will be required, * * *''. On page 35, the section titled ''Alternatives'' also states that the alternatives address the appropriateness of motorized use in the park, specifically the location of snowmobile routes and portages, as well as the lakes open to aircraft and motorboat use.'' Each of the six alternatives specifically lists the lakes that will be open to motorized and aircraft use. The NPS consulted with the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act, 16 U.S.C. Section 1536 and they issued a ''No Jeopardy Opinion'' as part of their biological opinion. Public input was provided during a series of public hearings. Extensive public comment, both oral and written, was received regarding the matter of snowmobile use and wilderness designation. There were very few comments received concerning aircraft use.

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The economic effects of this rulemaking are local in nature and negligible in scope.

Based on this determination, and in accord with the procedural requirements of the National Environmental Policy Act (NEPA), and by Departmental guidelines in 516 DM 6 (49 FR 21438), an Environmental Assessment (EA), which included consultation with the U.S. Fish and Wildlife Service, and a Finding of No Significant Impact (FONSI) have been prepared.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chap. I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and DC Code 40–721 (1981).

2. In § 7.33, a new paragraph (c) is added to read as follows:

§ 7.33 Voyageurs National Park.

* * * * *

(c) *Aircraft.* (1) Aircraft may be operated on the entire water surface and frozen lake surface of the following lakes, except as restricted in paragrah (c)(4) of this section and § 2.17 of this chapter: Rainy, Kabetogama, Namakan, Sand Point, Locator, War Club, Quill, Loiten, Shoepack, Little Trout and Mukooda.

(2) Approaches, landings and take-offs shall not be made within 500 feet of any developed facility, boat dock, float, pier, ramp or beach.

(3) Aircraft may taxi to and from a dock or ramp designated for their use for the purpose of mooring and must be operated with due care and regard for persons and property and in accordance with any posted signs or waterway markers.

(4) Areas within the designated lakes may be closed to aircraft use by the Superintendent taking into consideration public safety, wildlife management, weather and park management objectives.

Dated: July 21, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–18885 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[NC–72–1–6953a; FRL–5258–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On August 9, 1991, the North Carolina Department of Environmental Management (NCDEM), submitted a maintenance plan and a request to redesignate the Charlotte area from nonattainment to attainment for carbon monoxide (CO). The Charlotte CO nonattainment area consists only of Mecklenburg County. Subsequently, NCDEM submitted supplemental material to the Charlotte submittal on October 7, 1994. Included with this package was a request to redesignate the Raleigh/Durham area from nonattainment to attainment for CO. The Raleigh/Durham CO nonattainment area consists of Durham and Wake Counties. Under the Clean Air Act as amended in 1990 (CAA), designations can be revised if sufficient data is available to warrant such revisions. In this action, EPA is approving the North Carolina request because it meets the maintenance plan and redesignation requirements set forth in the CAA.

DATES: This action will be effective September 18, 1995, unless critical or adverse comments are received by September 1, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to Ben Franco, at the EPA Regional office listed below. Copies of the redesignation request and the State of North Carolina's submittal are available for public review during normal business hours at the addresses listed below.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Department of Environment, Health and Natural Resources, P.O. Box 29535, Raleigh, North Carolina 27626–0535.

FOR FURTHER INFORMATION CONTACT: Ben Franco of the EPA Region 4 Air Programs Branch at (404) 347–3555, ext. 4211, and at the above address.

SUPPLEMENTARY INFORMATION: In a March 15, 1991, letter to the EPA Region 4 Administrator, the Governor of North Carolina recommended the areas of Raleigh/Durham and Charlotte be designated as nonattainment for CO, as required by section 107(d)(1)(A) of the 1990 CAA (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–767lql). The cities were designated nonattainment and classified as ''moderate,'' except for Charlotte which was classified as ''not classified,'' under the provisions outlined in sections 186 and 187 of the CAA (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR part 81, § 81.334). The National Ambient Air Quality Standard (NAAQS) for CO is 9.5 ppm. CO nonattainment areas can be classified as moderate or serious, based on their design values. Since Raleigh/Durham had a design value of 10.9 ppm (based on 1988 and 1989 data), the area was classified as moderate. The Charlotte area was a pre-1990 nonattainment area and was designated by operation of law. However, the Charlotte area was classified as ''not classified'' because it had a design value of 8.4 ppm (based on 1988 and 1989 data), which is below the 9.5 ppm. The CAA established an attainment date of December 31, 1995, for all moderate CO areas. ''Not Classified'' areas, such as Charlotte, must attain by November 15, 1995.

The Raleigh/Durham and Charlotte areas have ambient air quality monitoring data showing attainment of the CO NAAQS from 1990 through 1993. The areas continued to monitor attainment in 1994 and 1995. Therefore, in an effort to comply with the CAA and to ensure continued attainment of the NAAQS, on August 9, 1991, and October 7, 1994, the State of North Carolina submitted CO redesignation requests and maintenance plans for the Charlotte and Raleigh/Durham areas, respectively. The October 7, 1994, submittal included a revision of the 1991 Charlotte redesignation request. The request for redesignation submittal and maintenance plan was approved by NCEMC on September 8, 1994. North Carolina submitted evidence that a public hearing was held on March 28 and March 30, 1994.

The 1990 CAA Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS;

2. The area must meet all applicable requirements under section 110 and Part D of the CAA;

3. The area must have a fully approved state implementation plan under section 110(k) of CAA;

4. The air quality improvement must be permanent and enforceable; and,

5. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA.

On November 12, 1991, and December 8, 1994, Region 4 determined the Charlotte and Raleigh/Durham submittal, respectively, constituted a complete redesignation request under the general completeness criteria of 40 CFR 51, appendix V, sections 2.1 and 2.2.

The North Carolina redesignation request for the Raleigh/Durham and Charlotte areas meet the five requirements of section 107(d)(3)(E), noted above. The following is a brief description of how the State has fulfilled each of these requirements. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

1. Attainment of the CO NAAQS

The North Carolina requests are based on an analysis of quality assured CO air monitoring data which is relevant to the maintenance plan and to the redesignation requests. The ambient air CO monitoring data for calendar year 1991 through calendar year 1993 shows no violations of the CO NAAQS in the Raleigh/Durham and Charlotte areas. The most recent ambient CO data for the calendar year 1994 continue to show no violations in the Raleigh/Durham and Charlotte areas. Because the Raleigh/Durham and Charlotte areas have complete quality assured data showing no more than one exceedance of the standard per year over at least two consecutive years, the area has met the first statutory criterion of attainment of the CO NAAQS (40 CFR 50.9 and Appendix C1). North Carolina has committed to continue monitoring in this area in accordance with 40 CFR Part 58.

2. Meeting Applicable Requirements of Section 110 and Part D

The 1990 CAA Amendments, modified section 110(a)(2) and, under Part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the CAA, EPA has reviewed the SIP to ensure that it contains all measures that were due under the 1990 Amendments prior to or at the time the State submitted its redesignation request.

A. Section 110 Requirements

Section 110 was amended by the 1990 Amendments. The North Carolina SIP meets the requirements of amended section 110(a)(2). The State implemented an Oxygenated Fuel program in the area of Raleigh/Durham during the 1992 and 1993 winter seasons. The Charlotte area was not required to implement an Oxygenated Fuels program. EPA has reviewed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2).

B. Part D Requirements

Before Raleigh/Durham and Charlotte may be redesignated to attainment, the applicable requirements of Part D must be fulfilled. Subpart I of Part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 3 of Part D establishes additional requirements for nonattainment areas classified under section 186(a). The Raleigh/Durham area was classified as moderate (See 40 CFR 81.334). Therefore, in order to be redesignated to attainment, the State must meet the applicable requirements of Subpart 1 of Part D, specifically sections 172(c) and 176, and the requirements of Subpart 3 of Part D, which became due on or before August 9, 1991, and October 7, 1994, the dates the State submitted complete redesignation requests for Charlotte and Raleigh/Durham, respectively. EPA interprets, according to section 107(d)(3)(E)(v) to mean that, for a redesignation request to be approved, the State must have met all requirements that become applicable to the subject area prior to or at time of the submission of the redesignation request. Requirements of the CAA due subsequent to the submission of the redesignation request will continue to be applicable to the area (See section 175A(c)) until the redesignation request is approved. If the redesignation is

disapproved, the State remains obligated to fulfill those requirements.

B1. Subpart 1 of Part D

Section 172(c) of Subpart 1 sets forth general requirements applicable to all nonattainment areas. Under section 172(b), the section 172(c) requirements are applicable as determined by the Administrator but no later than three years after an area is designated as nonattainment. Because the Raleigh/Durham area was designated as a new CO nonattainment area on June 6, 1992, the section 172(c) requirements are due by June 6, 1995. Therefore, the submission by North Carolina of New Source Review and contingency measures required under 172(c) are not yet due. To the extent the moderate CO nonattainment area requirements of section 187(a) supersede the section 172(c) requirements, as is the case with emission inventories, North Carolina has complied with those requirements.

B2. Subpart 1 of Part D

Section 176(c) of the CAA requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to general and transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act (''transportation conformity''). Section 176 further provides that the conformity revisions to be submitted by States be consistent with Federal conformity regulations that the CAA required EPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, EPA's General Preamble for the Implementation of Title I informed States that the EPA conformity regulations would establish a submittal date (*see* 57 FR 13498, 13557 (April 16, 1992)).

EPA promulgated final conformity regulations on November 24, 1993 (58 FR 62188)) and November 30, 1993 (58 FR 63214). These conformity rules require that the States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to section 51.396 of the transportation conformity rule and section 51.851 of the general conformity rule, the State of North Carolina is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, North Carolina is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. On March 3, 1995, NCDEM submitted general and transportation conformity regulations.

B3. Subpart 3 of Part D

Under section 187(a) areas designated nonattainment for CO under the amended CAA and classified as moderate were required to meet several requirements by November 15, 1992. Consequently, these requirements are pertinent only for the Raleigh/Durham area. These requirements included a 1990 Emission Inventory, an Inspection and Maintenance Program (I/M), and an Oxygenated Fuel Program. EPA has reviewed and is approving in this notice, North Carolina's 1990 Base Year Emission Inventory. Section 211(m) further required North Carolina to submit an oxygenated fuels regulation for the Raleigh/Durham area. NCDEM submitted a complete Oxygenated Fuel SIP on November 20, 1992, which was approved by EPA on June 30, 1994. On August 5, 1994, NCDEM submitted a complete I/M SIP, which was approved by EPA on June 2, 1995. Therefore, all Subpart 3 requirements that were applicable at the time the State submitted its redesignation request have been met.

3. Fully Approved SIP Under Section 110(k) of the CAA

Based on the approval of provisions under the preamended CAA and EPA's approval of SIP revisions under the 1990 Amendments, EPA has determined that the Raleigh/Durham and Charlotte areas have a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and Part D as discussed above.

4. Improvement in Air Quality Due to Permanent and Enforceable Measures

Under the pre-amended CAA, EPA approved the North Carolina SIP control strategy for the Charlotte nonattainment area, satisfied that the rules and the emission reductions achieved as a result of those rules were enforceable. The control measures due to an I/M program generates annual CO reductions of about 12 percent. The fleet turnover under the Federal Motor Vehicle Emission Control Program produced annual CO emission reductions of 6 percent. There were additional emission reductions of 19 to 21 percent in the Raleigh/Durham area due to the implementation of an Oxygenated Fuels program during the winter seasons of 1992 and 1993.

In association with its emission inventory discussed below, the State of North Carolina has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the CO emissions in the base year are not artificially low due to local economic downturn. EPA finds that the combination of existing EPA approved SIP and federal measures contribute to the permanence and enforceability of reduction in ambient CO levels that have allowed the area to attain the NAAQS.

5. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. In this notice, EPA is approving the State of North Carolina's maintenance plan for the Raleigh/Durham and Charlotte areas because EPA finds that North Carolina's submittals meet the requirements of section 175A.

A. Emissions Inventory—Base Year Inventory

On November 16, 1992, the State of North Carolina submitted a comprehensive inventory of CO emissions of the Raleigh/Durham and Charlotte areas. The inventory includes emissions from area, stationary, and mobile sources using 1990 as the base year for calculations.

The State submittal contains the detailed inventory data and summaries by county and source category. The comprehensive base year emissions inventory was submitted in the National Emission Data System format. The inventory was prepared in accordance with EPA guidance. It also contains summary tables of the 1990 and 1991 base years and projections to the year 2005 for the Charlotte and Raleigh/Durham areas, respectively.

1990 CO BASE YEAR EMISSIONS INVENTORY RALEIGH/DURHAM NONATTAINMENT AREA (TONS PER DAY)

Year	Area	Nonroad	Mobile	Point	Total
1990	40.57	5.03	594.671	.977	641.25

RALEIGH/DURHAM NONATTAINMENT AREA CO EMISSIONS INVENTORY SUMMARY (TONS PER DAY)

Year	Area	Nonroad	Mobile	Point	Total
1991	57.12	5.22	569.82	1.00	633.16
1993 [1]	57.60	5.58	419.68	1.01	483.87
1996 [2]	60.01	6.25	483.50	1.08	550.84
1999 [2]	63.45	7.18	507.5	1.13	579.26
2002 [3]	65.90	8.08	530.8	1.16	605.94
2005 [4]	67.87	8.98	552.80	1.20	630.85

[1] Oxygenated Fuel program in place (2.7% Oxygen by weight).
[2] Oxygenated Fuel program in place (2.0% Oxygen by weight).
[3] Oxygenated Fuel program in place (2.2% Oxygen by weight).
[4] Oxygenated Fuel program in place (2.6% Oxygen by weight).

CHARLOTTE NONATTAINMENT AREA CO EMISSIONS INVENTORY SUMMARY (TONS PER DAY)

Year	Area	Nonroad	Mobile	Point	Total
1990	33.74	7.39	429.08	23.55	493.76
1993	35.59	7.97	390.31	9.00	442.87
1996	37.11	8.55	395.87	3.94	445.47
1999	39.23	9.16	393.59	4.11	446.09
2002	40.75	10.00	401.55	4.28	456.58
2005	41.96	10.97	419.62	4.43	476.98

B. Demonstration of Maintenance—Projected Inventories

Total CO emissions were projected from 1990 base year out to 2005 for the Charlotte area, and from 1991 out to 2005 for the Raleigh/Durham area. These projected inventories were prepared in accordance with EPA guidance. The difference between Raleigh/Durham's 1990 Base Year Inventory area sources and 1991 Base Year were due to different methodologies. For 1991, additional data was included in the calculation of the emissions. North Carolina will reduce the minimum oxygen content for the Oxygenated Fuel program in Raleigh/Durham. The projections show that calculated CO emissions, assuming a less stringent oxygenated fuels program, are not expected to exceed the level of the base year inventory during this time period. Therefore, based on the results of Mobile5A modeling, it is anticipated that Raleigh/Durham will maintain the CO standard with this program. It is also anticipated that the Charlotte area will maintain the CO NAAQS over the projected years. In case of an air quality problem, an Oxygenated Fuel program will be implemented in Charlotte, as a contingency measure.

C. Verification of Continued Attainment

Continued attainment of the CO NAAQS in the Raleigh/Durham and Charlotte areas depend, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The State has committed to submit periodic inventories of CO emissions every three years.

D. Contingency Plan

The level of CO emissions in the Raleigh/Durham and Charlotte areas will largely determine their ability to stay in compliance with the NAAQS in the future. Section 175A(d) of the CAA requires that the contingency provisions include a requirement that the State implement all measures contained in the SIP prior to redesignation. Therefore, North Carolina has provided contingency measures with a schedule for implementation in the event of a future CO air quality problem. The plan contains triggering mechanisms to determine when contingency measures are needed. The Raleigh/Durham and Charlotte contingency plans, primary trigger will be a violation of the CO NAAQS. A secondary trigger will be activated within 30 days of the State finding either: (1) The periodic emissions inventory exceeds the base inventory by 10 percent or more, or (2) a monitored air quality exceedance pattern indicates that an actual CO NAAQS violation may be imminent. A pattern will be deemed to indicate an imminent violation if (a) one exceedance of the standard per year has been monitored at a single monitor for two successive years and those exceedances are at least greater than 20 percent above the standard (i.e., 10.8 ppm or above) or (b) the monitored air quality exceedance pattern otherwise suggests that a CO NAAQS violation is likely. Within 45 days of the trigger, the State will activate the pre-adopted regulations discussed below to become effective at the beginning of the next CO season. When other measures are needed to ensure that a future violation of the CO NAAQS does not occur, the State will complete the adoption process within one year of the secondary trigger. In case of a primary or secondary trigger, NCDEM will implement one or a combination of the following contingency measures: implementing either a 2.7 or 3.1 percent Oxygenated Fuel program, expanding the I/M program coverage, enhanced I/M, transportation control measures, or employee commute options program. EPA finds that the contingency measures provided in the State submittal meet the requirements of section 175A(d) of the CAA.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the State has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

Final Action

EPA is approving the Raleigh/Durham and Charlotte CO maintenance plans because they meet the requirements set forth in section 175A of the CAA. EPA is also approving the 1990 emissions inventory as complying with the requirements of section 172(c)(3) and 187(a)(1). In addition, the Agency is approving the requests and redesignating the Raleigh/Durham and Charlotte CO areas to attainment, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 18, 1995, unless, by September 1, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 18, 1995.

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

The CO SIP is designed to satisfy the requirements of Part D of the CAA and to provide for attainment and maintenance of the CO NAAQS. This final redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the CO emission limitations and restrictions contained in the approved CO SIP. Changes to CO SIP regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of non-implementation (section 179(a) of the CAA) and in a SIP deficiency call made pursuant to sections 110(a)(2)(H) and 110(k)(2) of the CAA.

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

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, it does not have any economic impact on any small entities. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. Accordingly, I certify that the approval of the redesignation request will not have an impact on any small entities.

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A and section 187(a)(1) of the Clean Air Act. The rules and commitments approved in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a mandate upon the private sector, EPA's action will impose no new requirements under State law; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, results from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: June 26, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671.

Subpart II—North Carolina

2. Section 52.1770 is amended by adding paragraph (c)(82) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(82) The redesignation and maintenance plan for Raleigh/Durham and Charlotte submitted by the North Carolina Department of Environmental Management on October 7, 1994 and August 9, 1991, as part of the North Carolina SIP. The emission inventory projections are included in the maintenance plans.

(i) Incorporation by reference. Section 3 of the Redesignation Demonstration and Maintenance Plan for Raleigh/

Durham, Winston-Salem, and Charlotte Carbon Monoxide Nonattainment Area adopted on September 8, 1994.

(ii) Other material. None.

* * * * *

PART 81—[AMENDED]

Subpart C—Section 107 Attainment Status Designations

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.334 the ''North Carolina-Carbon Monoxide'' table is amended by removing the entries for ''Charlotte area and Raleigh-Durham area''; and by adding entries for Mecklenburg, Durham, and Wake Counties in alphabetical order; and by revising the entry ''Rest of State'' to read ''Statewide''.

§ 81.334 North Carolina.

* * * * *

NORTH CAROLINA—CARBON MONOXIDE

	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment		
* * *	*	*	*	*
Durham County	September 18, 1995.			
* * *	*	*	*	*
Mecklenburg County	September 18, 1995.			
* * *	*	*	*	*
Wake County	September 18, 1995.			
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 95–18881 Filed 8–1–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 61

[FRL–5269–8]

Interim Approval of Delegation of Authority; National Emission Standards for Hazardous Air Pollutants; Radionuclides; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is granting interim delegation of authority to the state of Washington to implement and enforce two National Emission Standards for Hazardous Air Pollutants (NESHAPs) for radionuclides: National Emission Standards for Emissions of Radionuclides other than Radon from Department of Energy Facilities (40 CFR part 61, subpart H) and National Emission Standards for Radionuclide Emissions from Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities not covered by subpart H (40 CFR part 61, subpart I), as promulgated, for sources subject to the part 70 operating permits program of the state of Washington under Title V of the Clean Air Act.

DATES: This action will be effective on October 2, 1995 unless adverse comments are received by September 1, 1995. If the effective date is delayed due to comments, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Richard Poeton, Air & Radiation Branch (AT–082), EPA, 1200 Sixth Avenue, Seattle, Washington, 98101, and concurrently to Allen W. Conklin, Head, Air Emissions and Defense Waste Section, Washington Department of Health, Airdustrial Center Building #5, P.O. Box 47827, Olympia, Washington, 98504–7827.

Copies of the state of Washington's application are available for public inspection during normal business hours at the above locations.

FOR FURTHER INFORMATION CONTACT: Richard Poeton at (206) 553–8633.

SUPPLEMENTARY INFORMATION:

Background

Due to the unique nature of radionuclide materials, delegation of authority to states to implement and enforce a NESHAP program for radionuclides is not automatic, and certain standards may only be delegated as promulgated. EPA's regional offices have traditionally assumed the lead responsibility for administering the radionuclides NESHAP. However, EPA is committed to enabling state and local governments, as partners, to implement and enforce the requirements of the Clean Air Act.

On March 28, 1994, the state of Washington submitted an application for approval of its programs and delegation of authority under section 112(l) of the Clean Air Act and in accordance with 40 CFR 63.91, for NESHAPS pertaining to radionuclide emissions (40 CFR part 61, subparts H and I, as promulgated). These standards have been incorporated into the law of the state of Washington.

EPA already promulgated interim approval of the Part 70 operating permits program under Title V of the Clean Air Act for the state of Washington (see 59 FR 55813 (November 9, 1994)). Part 70 approval also confers approval under section 112(l) for delegation of unchanged federal standards because requirements for part 70 approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) approval requirements. Therefore, for part 70 sources, Part 70 approval also constitutes approval under section 112(l)(5) of the state's programs for delegation of section 112 standards that are unchanged from federal standards as promulgated.

EPA is granting interim delegation as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. However, as required by 40 CFR 63.91(a)(2), EPA is seeking public comments for 30 days. Comments shall be submitted concurrently to EPA and the state of Washington. If no adverse comments are received in response to this rule, this

Federal Register notice will serve as the final notice of the interim delegation of the implementation and enforcement of this program. The effective date will be 60 days from the date of this publication and no further activity is contemplated in relation to this rule. If EPA receives adverse comments, this direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the accompanying proposed rule which appears in the proposed rule section of this **Federal Register**. However, EPA will not institute a second comment period on this action. Thus, any parties interested in commenting on this action should do so in the next 30 days.

Final Action

Pursuant to Section 112(l) of the Clean Air Act, 42 U.S.C. 7412(l), and 40 CFR 63.91, EPA hereby grants interim delegation of its authority for the implementation and enforcement of the following National Emission Standards for Radionuclides for sources subject to part 70 and located, or to be located, in the state of Washington:

(1) National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities (40 CFR part 61, Subpart H); and

(2) National Emission Standards for Radionuclide Emissions From Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities Not Covered by Subpart H (40 CFR part 61, Subpart I).

This interim delegation is limited to the NESHAP standards and authorities as promulgated in 40 CFR part 61, Subparts H and I, applied to part 70 sources, and incorporated into the law of the state of Washington: the delegation does not extend to any additional state standards. Specifically, EPA's interim delegation applies to WAC 246–247–040(1), to the extent the standards reference the federal standards as promulgated; WAC 246–247–075(1); WAC 246–247–080(2); WAC 246–247–085(1), where it incorporates by reference the monitoring, testing, quality assurance, recordkeeping, reporting, and compliance determination procedures and requirements of the federal standards. The federal requirement to file an application to construct or modify has not been incorporated into Washington state law. Therefore, facilities subject to the federal NESHAPs are still required to submit all such applications to EPA.

Not all authorities for the implementing and enforcing the NESHAPs can be delegated to the state. For instance, the EPA Administrator retains authority to implement those sections of the NESHAP that require approval of equivalency determinations and alternative test methods, allow waivers for emission testing and compliance, and to promulgate rules to implement 40 CFR part 61.

EPA retains concurrent enforcement authority. In exercising its concurrent authority, EPA is not bound by any state action or determination in carrying out any authority delegated to the state pursuant to section 112(l). If at any time there is a conflict between the state and federal regulations, the federal standards apply if they are more stringent than the state regulations.

This interim delegation, which may not be renewed, extends until November 9, 1996, which is the expiration date of the interim approval of the Washington Title V operating permits program. If EPA grants full approval of the Washington Title V operating permits program, full delegation of these two radionuclide NESHAPS (40 CFR part 61, subparts H and I) for part 70 sources may be incorporated into that approval. If EPA has not granted full delegation to the state by that date, EPA will resume sole authority for implementation of the federal radionuclide NESHAPS in Washington at that time.

List of Subjects in 40 CFR Part 61

Environmental protection, Air pollution control, Intergovernmental relations, Radiation protection.

Dated: July 20, 1995.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 95–18987 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 86

[AMS–FRL–5268–6]

RIN 2060–AC65

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Regulations Requiring On-Board Diagnostic Systems—Revision to Requirements for Storage of Engine Conditions Associated With Extinguishing a Malfunction Indicator Light

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This direct final rulemaking makes certain technical revisions to the requirements associated with on-board diagnostic (OBD) systems, as specified by § 86.094–17. Changes are being made to the provisions associated with extinguishing an illuminated malfunction indicator light. The current provisions contained in § 86.094–17(d) have proven to be unexpectedly burdensome on the industry and do not provide the expected beneficial effects to vehicle owners, repair shop personnel, or air quality.

DATES: This final action will become effective on October 2, 1995, unless notice is received by September 1, 1995, that any person wishes to submit adverse comments. Should EPA receive such notice, EPA will publish one subsequent action in the **Federal Register** withdrawing this final action.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to: The Air Docket, room M–1500 (Mail Code 6102), Waterside Mall, Attention: Docket No. A–90–35, 401 M Street, SW., Washington, DC 20460. Materials relevant to this rulemaking are contained in Docket No. A–90–35, and are available for public inspection and photocopying between 8:00 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. Those wishing to notify EPA of their intent to submit adverse comments on this action should contact Todd Sherwood, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

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

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

On February 19, 1993, the EPA promulgated a final rulemaking requiring manufacturers of light-duty vehicles and light-duty trucks to install on-board emission control diagnostics (OBD) systems on such vehicles beginning in model year 1994.[1] The regulations promulgated in that final rulemaking require that, ''If a malfunction has previously been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which engine speed is within 375 rpm, engine load is within 10 percent, and the engine's warm-up status is the same as that under which the malfunction was first detected, and no new malfunctions have been detected.''[2] The State of California, in its second phase of OBD requirements

[1] 58 FR 9468, February 19, 1993.

[2] 40 CFR 86.094–17(d).

(OBD II),[3] had adopted the same requirement, but limited its applicability to fuel system and engine misfire malfunctions. In contrast, the federal requirement applies to all malfunctions. For non-fuel system and non-misfire related malfunctions, the OBD II regulation allowed the MIL to be extinguished after undergoing three subsequent trips without recurrence of the malfunction, regardless of whether or not the vehicle experienced similar engine conditions (i.e., engine speed, engine load, engine warm-up as described above) during the subsequent trips.

The intent behind the federal OBD provision was to have the MIL illuminated for any and all malfunctions unless it could be verified that the malfunction was not valid, or that the malfunction was only intermittent and no longer existed. Pursuant to that intent, EPA decided to require that the MIL must remain illuminated until the vehicle takes three subsequent trips during which engine conditions are similar and the malfunction does not reappear. This decision was made assuming that usually only one malfunction, and no more than two or three malfunctions, would exist on a vehicle at any given time with one malfunction trouble code stored for each. However, because of the way most OBD systems are designed, one real malfunction may cause storage of several different trouble codes; and, a set of ''similar operating conditions'' are, by manufacturer design not by regulation, stored for each trouble code, not one set for each malfunction. Consequently, according to auto manufacturers, two or three malfunctions could result in storage of as many as 15 trouble codes, with a set of similar operating conditions stored in the memory bank of the on-board computer for each of 15 trouble codes, rather than each of three malfunctions. As a result, auto manufacturers have stated that they are forced to dedicate enough computer memory to store similar engine conditions for as many as 50 to 200 trouble codes, depending on the number of codes used by the manufacturer, because they cannot risk having insufficient storage capacity in the unlikely event that such a high number of malfunctions are detected and trouble codes stored. Such computer memory requirements are costly, are inconsistent with California OBD II computer memory requirements, and, as explained below, are not necessary to achieve a highly effective OBD system.

II. Requirements of this Direct Final Rulemaking

This direct final rulemaking restricts the applicability of the requirement preventing the MIL from being extinguished unless the vehicle takes three subsequent sequential trips where similar engine operating conditions occur and the malfunction does not reoccur. The ''similar engine conditions'' requirement shall be restricted solely to the fuel system and engine misfire related malfunctions. For all other malfunctions, the MIL may be extinguished if the vehicle experiences three subsequent sequential trips where the malfunction does not reoccur, regardless of engine conditions.

EPA has determined that it is unnecessary and inappropriate to require ''similar engine conditions'' to be present for three trips before extinguishing the MIL for all non-fuel system and non-misfire related malfunctions. The similar engine conditions required for storage relate to engine operating speed and load. Under the regulations initially promulgated, these conditions would need to be stored for all malfunctions so that a vehicle passing through these same conditions without re-detecting the malfunction would be allowed to extinguish the MIL under the presumption that the first detection was not a valid detection. However, only fuel system and engine misfire related malfunctions are likely to occur exclusively at certain speed and load conditions. Therefore, only for malfunctions associated with the fuel system or engine misfire is it appropriate to assure the vehicle has been operated over the same speed and load conditions before determining the malfunction is not recurring. For all other malfunctions, the engine speed and load are not pertinent to the decision of whether the first malfunction detection was correct or incorrect. Therefore, for malfunctions other than those associated with fuel system or engine misfire, the vehicle will still have to undergo three trips without re-detecting the malfunction, but the engine speed and load would not be considered and, therefore, would not have to be stored in computer memory.

It is important to note that recent revisions to the California OBD II regulation specify three ''driving cycles'' rather than three ''trips'' prior to extinguishing the MIL.[4] The revised OBD II requirements define a driving cycle as ''engine startup, and engine shutoff,'' while a ''trip'' is specified as vehicle operation of sufficient length such that all components other than the catalyst and evaporative system are monitored. The federal OBD regulation specifies that all components be monitored periodically, but no less frequently than once per Urban Dynamometer Driving Schedule (UDDS) or similar ''trip.'' The preamble to the Agency's final rulemaking also states that all components monitored by the OBD system shall be evaluated at least once every trip, with one CVS–72 driving cycle qualifying as a trip.[5]

Therefore, under the OBD II regulation, MIL illumination associated with a specific malfunction can effectively be extinguished after three successful monitoring events provided the malfunction is not again detected[6], regardless of whether or not every component has been monitored. Under the federal OBD use of the term ''trip,'' the same holds true. The intent being that three subsequent sequential successful monitoring events occur without again detecting the malfunction prior to extinguishing an illuminated MIL associated with that malfunction.

III. Public Participation and Effective Date

The Agency is publishing this action as a direct final rule because it views the changes contained herein as noncontroversial and anticipates no adverse or critical comments. This direct final rulemaking alters an existing provision by reducing the required memory of vehicle computers and having no resultant impact on OBD effectiveness or air quality.

This action will be effective on October 2, 1995, unless EPA is notified by September 1, 1995, that adverse or critical comments will be submitted. Should EPA receive such notice, EPA will publish one action withdrawing this final action and another proposing this action and requesting comments.

[3] Title 13, California Code of Regulations, § 1968.1(d).

[4] California Air Resources Board Mail-Out #95–03.

[5] The CVS–72 driving cycle is equivalent to the UDDS as defined in 40 CFR part 86, Appendix I, paragraph (a).

[6] Specifically, the MIL may be extinguished after three subsequent sequential driving cycles during which the monitoring system responsible for illuminating the MIL functions without detecting the malfunction.

IV. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866,[7] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user 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.

It has been 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. Also, this rule is not subject to the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, because it does not have costs of $100 million or more.

B. Reporting and Recordkeeping Requirements

This direct final rulemaking does not change the information collection requirements submitted to and approved by OMB in association with the OBD final rulemaking.[8]

C. Impact on Small Entities

The Regulatory Flexibility Act of 1980 requires Federal agencies to identify potentially adverse impacts of federal regulations upon small entities. This direct final rulemaking will provide a small cost savings to both large and small volume automobile manufacturers by reducing the required computer memory capacity of their vehicle computers. This direct final rulemaking will have no impact on businesses which manufacture, rebuild, distribute, or sell automotive parts, nor those involved in automotive service and repair.

Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(B) *et seq.*, the Administrator certifies that this regulation will not have a significant impact on a substantial number of small entities.

D. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR Part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

E. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate; or by the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. This action has the net effect of reducing burden of the on-board diagnostic systems on regulated entities. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

F. Electronic Copies of Rulemaking Documents

Electronic copies of the preamble and the regulatory text of this direct final rulemaking are available on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network bulletin Board System (TTNBBS). Instructions for accessing TTNBBS and downloading the relevant files are described below.

TTNBBS can be accessed using a dial-in telephone line (919) 541–5742 and a 1200, 2400, or 9600 bps modem (equipment up to 14.4 Kbps can be accommodated). The parity of the modem should be set to N or none, the data bits to 8, and the stop bits to 1. When first signing on the bulletin board, the user will be required to answer some basic informational questions to register into the system. After registering, proceed through the following options from a series of menus:

(T) Gateway to TTN Technical Areas (Bulletin Boards)
(M) OMS
(K) Rulemaking and Reporting

At this point, the system will list all available files in the chosen category in chronological order with brief descriptions. File information can be obtained from the ''READ.ME'' file. To download a file, the user needs to choose a file transfer protocol appropriate for the user's computer from the options listed on the terminal.

TTNBBS is available 24 hours a day, 7 days a week except Monday morning from 8–12 Eastern Time, when the system is down for maintenance and backup. For help in accessing the system, call the systems operator at (919) 541–5384 in Research Triangle Park, North Carolina, during normal business hours Eastern Time.

List of Subjects in 40 CFR Part 86

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

Dated: July 25, 1995.

Carol M. Browner,

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 (d) to read as follows:

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

* * * * *

(d) The MIL shall illuminate and remain illuminated when any of the conditions specified in paragraphs (a) and (b) of this section are met, or

[7] 58 FR 51735 (October 4, 1993).

[8] 58 FR 9468, February 19, 1993; and, 59 FR 38372, July 28, 1994.

whenever the engine control enters a default or secondary mode of operation. The MIL shall blink under any period of operation during which engine misfire is occurring at a level likely to cause catalyst damage as determined by the manufacturer. The MIL shall also illuminate when the vehicle's ignition is in the ''key-on'' position before engine starting or cranking and extinguish after engine starting if no malfunction has previously been detected. If a fuel system or engine misfire malfunction has previously been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which engine speed is within 375 rpm, engine load is within 10 percent, and the engine's warm-up status is the same as that under which the malfunction was first detected, and no new malfunctions have been detected. If any malfunction other than a fuel system or engine misfire malfunction has been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which the monitoring system responsible for illuminating the MIL functions without detecting the malfunction, and no new malfunctions have been detected.

* * * * *

[FR Doc. 95–18990 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 30 and 150

[CGD 95–900]

RIN 2115–AF07

Bulk Hazardous Materials; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correction to final rule.

SUMMARY: This Document contains corrections to the final rule [CGD 95–900], which was published Thursday, June 29, 1995, (60 FR 34043). The rule amends the regulations on carriage of bulk hazardous materials by adding cargoes recently authorized for carriage or added to the International Maritime Organization's Chemical Codes.

EFFECTIVE DATE: This rule is effective on August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis G. Payne, Hazardous Materials Branch, (202) 267–1577.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final rule contains typographical errors and omissions which may prove to be misleading and are in need correction.

Correction of Publication

Accordingly, the publication on June 29, 1995, of the final rule [CGD 95–900], which was the subject of FR Doc. 95–15749, is corrected as follows:

1. On page 34045, in the second column, in paragraph 2.c. fourth line, paragraph 2.e. third line, paragraph 2.f. fourth line, paragraph 2.h. fourth line, and paragraph 2.i. third line, the superscript period ''·'' should be a bullet ''•''.

2. On the same page, in the second column, in paragraph 2., the following words should be in bold face type:

a. Paragraph 2.c., fifth line, the word ''alkyl''.

b. Paragraph 2.d., starting on the fifth line, the words ''Poly(2-8)alkylene glycol monoalkyl (C1–C6) ether acetate.''

c. Paragraph 2.e., fifth line, the word ''Polydimethylsiloxane''.

d. Paragraph 2.f., fifth line, the word ''mixture''.

e. Paragraph 2.i., fourth line, the words ''Alcohols (C13+)''.

3. On the same page, in the third column, in paragraph 6.d., ''(c10+)'' should read ''(C10+)''.

4. On page 34046, in the first column, in paragraph q., seventh line, add a quotation mark before the word ''Related''.

5. On the same page, in the second column, fourth line, the number ''7'' should be ''8''.

6. On the same page, in the second column, paragraph s. should read as follows:

s. In the ''Chemical name'' column, remove the words ''Ethylene glycol ethyl ether'' and add, in their place, the words ''Ethylene glycol ethyl ether, *see* Polk(2-8)alkylene glycol monoalkyl (C1–C6) ether'', and in the ''Related CHRIS codes'' column for the new entry, add the code ''PAG''.

7. On the same page, in the second column, in paragraph t., second and third lines, add a quotation mark before the word ''Diethyl''.

8. On the same page, in the third column, first line, add ''2 − '' before the word ''Ethoxyethyl''.

9. On the same page, in the third column, paragraph ee., fourth line, add a quotation mark before the word ''Ethylene''.

10. On page 34047, in Table 1, in the entry for ''Ammonia,aqueous, *see* Ammonium hydroxide'', the letters ''AMH'' should be removed from the ''CHRIS code'' column to the ''Related CHRIS codes'' column; and, in the entry for ''Glycidyl ester of C10 trialkyl acetic acid, *see* Glycidyl ester of tridecyl acetic acid'', the letters ''GILT'' should be moved from the ''CHRIS code'' column to the ''Related CHRIS codes'' column.

11. On page 34048, in Table 1,in the entry for ''*Octyl phthalate, see* Dialkyl (C7–C13) pathalates'', the letters ''DAN'' should be moved from the ''CHRIS code'' column to the ''Related CHRIS codes'' column; and, in the entry for ''Oils, edible: Maize'', the letters ''LEO/OCO'' should be moved from the ''CHRIS code'' column to the ''Related CHRIS codes'' column.

12. On page 34049, in Table 1, in the entry for ''Soyabean oil (epoxidized)'', the letters ''OSC/EVO'' should be moved from the ''CHRIS code'' column to the ''Related CHRIS codes'' column; in the entry for ''*Tetraprophlbenzene, see* Alkyl(69+)benzens'', the letters ''AKB'' should be moved from the ''CHRIS code'' column to the ''Related CHRIS codes'' column; in the entry ''1,3,5-Trioxane'', in the ''Group No.'' column, replace the number ''²42'' with ''²41''; in the entry for ''Trixylyl phosphate, *see* Trixylenyl posphate'', the letters ''TRP'' should be moved from the ''CHRIS code'' column to the ''Related CHRIS codes'' column; and, in the entry for ''Urea solution'', the letters ''URE'' should be moved from the ''CHRIS code'' column to the ''Related CHRIS codes'' column.

13. On the same page, in the third column, in paragraph e., third line, add a quotation mark before the second letter ''N–''; and in paragraph f., first line, ''Phonols'' should be ''Phenols'';

14. On page 34051, in Table 1, in column a., the entry—

''Bromochlorone- thane'' should read ''Bromochloromethane'';

''Dibromo-methane'' should read ''Dibromomethane'';

''3,4- Dichloro- 1-butene''should ''3,4-Dichloro-1-butene'';

''N-(2- Methoxy-1-ethyl)-2-ethyl-6-methyl chloro-acetanilide, *see* Metolachlor'' should read ''N-(2-Methoxy-1-methyl ethyl)-2-ethyl-6-methyl chloroacetanilide, *see* Metolachlor'';

''Nitro propane (20%), Nitroethane (80%) ⁷'' should read ''Nitropropane (20%), Nitroethane (80%) 7''; and

''Potassium polysul aide, Potassium thiosulfate solution (41% or less)'' should read ''Potassium polyslfide, Potassium thiosulfate solution (41% or less)''.

Dated: July 24, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–18764 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–14–M

46 CFR Part 160

[CGD 94–110]

RIN 2115–AE96

Recreational Inflatable Personal Flotation Device Standards

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; request for comments.

SUMMARY: The Coast Guard published an interim rule (IR) on Recreational Inflatable Personal Flotation Device (PFD) Standards on June 23, 1995, which introduced a new concept for approval of PFDs, the ''Life-Saving Index'' (LSI). Comments on the IR indicate that there is some confusion and uncertainty about use of the LSI. The Coast Guard will conduct a public meeting to discuss the use of the LSI in the approval of inflatable PFDs. This meeting is intended for PFD and inflation system manufacturers and technical experts knowledgeable in the field as well as other interested parties.

DATES: The meeting will be held August 28, 1995, from 9 a.m. to 4 p.m. Notice of interest in participation should be made by August 23, 1995 to ensure adequate space is available. Written material must be received not later than October 23, 1995.

ADDRESSES: The meeting will be held at U.S. Coast Guard Headquarters, Room 2415, 2100 Second Street, SW, Washington, DC 20593–0001. Persons having an interest in participating in the meeting, should notify the Coast Guard by contacting Mr. Samuel Wehr, Office of Marine Safety, Security and Environmental Protection, Attn: G–MVI–3/14, 2100 Second Street, SW, Washington, DC 20593–0001, telephone (202) 267–1444 between the hours of 8 a.m. and 4 p.m. Monday through Friday except Federal holidays, or facsimile (202) 267–1069.

Written comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA) (CGD 94–110), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel E. Wehr, Office of Marine Safety, Security and Environmental Protection, Attn: G–MVI–3/14, 2100 Second Street, SW, Washington, DC 20593–0001, telephone (202) 267–1444 between the hours of 8 a.m. and 4 p.m. Monday through Friday except Federal holidays, or facsimile (202) 267–1069.

SUPPLEMENTARY INFORMATION: The Coast Guard has received comments indicating that the ''Life-Saving Index'' (LSI) provisions of the Recreation Inflatable Personal Flotation Device Standards IR published in the **Federal Register** on June 23, 1995 (60 FR 32836) are confusing and have caused uncertainty for manufacturers. Appendix A to the Draft Regulatory Evaluation, which is on file as part of the docket where indicated under **ADDRESSES** and was sent to manufacturers, provides a great deal of guidance on how to apply the LSI provisions in the approval process. However, to facilitate the use of this method for approval so that as wide a variety as possible of inflatable PFDs can be approved, the Coast Guard is holding this meeting.

The agenda for the August 28, 1995 meeting will include the following topics:

(1) Overview of Appendix A to the Draft Regulatory Evaluation.

(2) Response to questions on the information in Appendix A to the Draft Regulatory Evaluation.

(3) Sample calculations of LSIs for representative PFD designs.

(4) Discussion of methods to standardize the LSI model.

(5) Discussion of potential methods to demonstrate increased wearability values for inflatable PFDs.

(6) Coast Guard policy on annual review and revision of the minimum LSI value required for approval and impact on existing approvals issued under the LSI.

(7) Discussion of PFD information pamphlet requirements and standardization.

Attendance is open to the public, but notice of intent to attend the meeting is requested in order that adequate space and audio/visual aids can be provided. In order to determine what accommodations need to be arranged, persons wishing to attend the meeting should notify Mr. Samuel Wehr at the number listed under **FOR FURTHER INFORMATION CONTACT** by August 23, 1995.

Participants are reminded that discussion of issues outside the above agenda may be limited by the Coast Guard.

With advance notice and as time permits, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should make notification no later than 4 p.m. Thursday, August 24, 1995. Individuals making oral presentations at the meeting are encouraged to submit a written copy of their remarks for the rulemaking docket.

Interested persons are also invited to participate by providing written comments as requested in response to the IR cited above.

If as an outgrowth of this meeting, a standard is developed for the LSI Model, which provides a suitable basis for the evaluation of inflatable PFDs under 46 CFR 160.076–27, notice of proposed rulemaking (NPRM) or supplemental NPRM (SNPRM) in which the Coast Guard discusses and proposes adoption of all or part of it, will be published in the **Federal Register**.

Dated: July 27, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–19007 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA95–1524]

Anti-Drug Abuse Act of 1988

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order will amend the Commission's Rules to reflect the correct citation to the Anti-Drug Abuse Act of 1988. The Commission amended its rules to be in compliance with the Anti-Drug Abuse Act of 1988. The purpose of this Order is to provide guidance to the public and avoid any potential uncertainty.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Wendy A. Whitley, Office of General Counsel, (202) 418–1720.

SUPPLEMENTARY INFORMATION:

Order

Adopted: July 7, 1995; Released: July 10, 1995

In the Matter of: Amendment of Sections 1.2001 and 1.2002 of the Commission's Rules.

By the Managing director:

1. By this Order, we amend Sections 1.2001 and 1.2002 of the Commission's Rules, 47 CFR 1.2001 and 1.2002 to reflect the correct citation to the Anti-Drug Abuse Act of 1988. 21 U.S.C. 862. The citation to this act was changed subsequent to the time our rules were written.

2. Accordingly, pursuant to Section 0.231(b) of the Commission's rules 47 CFR 0.231(b), It is ordered that Sections 1.2001 and 1.2002 of the Commission's Rules, 47 CFR 1.2001, 1.2002 are amended as set forth below effective upon publication in the **Federal Register**.

Federal Communications Commission

Andrew S. Fishel,

Managing Director.

Rule Changes

PART 1—PRACTICE AND PROCEDURE

Part 1 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 1 continues to read:

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. Section 1.2001 is revised to read as follows:

§ 1.2001 Purpose.

To determine eligibility for professional and/or commercial licenses issued by the Commission with respect to any denials of Federal benefits imposed by Federal and/or state courts under authority granted in 21 U.S.C. 862.

3. Section 1.2002 is amended by revising paragraph (a) to read as follows:

§ 1.2002 Applicants required to submit information.

(a) In order to be eligible for any new, modified, and/or renewed instrument of authorization from the Commission, including but not limited to, authorizations issued pursuant to sections 214, 301, 302, 303(1), 308, 310(d), 318, 319, 325(b), 351, 361(b), 362(b), 381, and 385 of the Communications Act of 1934, as amended, by whatever name that instrument may be designated, all applicants shall certify that neither the applicant nor any party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988. 21 U.S.C. 862. If a section 5301 certification has been incorporated into the FCC application form being filed, the applicant need not submit a separate certification. If a section 5301 certification has not been incorporated into the FCC application form being filed, the applicant shall be deemed to have certified by signing the application, unless an exhibit is included stating that the signature does not constitute such a certification and explaining why the applicant is unable to certify. If no FCC application form is involved, the applicant must attach a certification to its written application. If the applicant is unable to so certify, the applicant shall be ineligible for the authorization for which it applied, and will have 90 days from the filing of the application to comply with this rule. If a section 5301 certification has been incorporated into the FCC application form, failure to respond to the question concerning certification shall result in dismissal of the application pursuant to the relevant processing rules.

* * * * *

[FR Doc. 95–18949 Filed 8–1–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 95–19; Notice 2]

RIN 2127–AF–64

Consumer Information Regulations; Fees for Course Monitoring Tires and for Use of Traction Skid Pads

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule amends NHTSA's consumer information regulations on uniform tire quality grading by establishing fees for the purchase of treadwear course monitoring tires and for the use of the traction skid pads at NHTSA's Uniform Tire Quality Grading Test Facility in San Angelo, Texas.

DATES: The amendment established by this final rule will become effective on September 1, 1995.

Any petitions for reconsideration must be received by NHTSA not later than September 1, 1995.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Clive Van Orden, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. (202–366–2830).

SUPPLEMENTARY INFORMATION: This rule was preceded by a notice of proposed rulemaking (NPRM) that NHTSA published on March 24, 1995 (60 FR 15529). The NPRM noted that under uniform tire quality grading (UTQG) standards at 49 CFR 575.104, tires must be labelled with information indicating their relative performance in the areas of treadwear, traction, and temperature resistance. For the purpose of evaluating treadwear performance, NHTSA established a 400 mile roadway course near San Angelo, Texas, which is designed to produce treadwear rates that are generally representative of those encountered by tires in public use. Under the UTQG standards, the projected mileage obtained for tested tires must be corrected to account for environmental and other variations that occur during testing on the course. This is done by comparing the performance of the tested tires to that of course monitoring tires run in the same convoy. The course monitoring tires are specially manufactured under controlled conditions so that they can be used as a grading standard, and are made available by NHTSA for purchase at the San Angelo test facility.

The NPRM noted that the UTQG standards also require that tire traction be evaluated on skid pads that have specified locked-wheel traction coefficients. Two of these traction skid pads have been constructed at NHTSA's facility in San Angelo, as well as at several commercial facilities that may also be used by tire manufacturers.

The NPRM stated that an audit conducted by the Department of Transportation's Office of Inspector General (OIG) concluded that NHTSA was not recovering the full cost of the course monitoring tires that it sells at San Angelo and was not charging a user fee for the use of the traction skid pads at that facility, contrary to the requirements of Office of Management

and Budget (OMB) Circular A–25, which establishes Federal policy regarding fees assessed for Government services and for the sale or use of Government goods or resources. To address these deficiencies, the NPRM proposed to establish $379.00 as the fee for each course monitoring tire that NHTSA sells, and to assess a user charge of $288 per day for the use of the traction skid pads at San Angelo. The NPRM included calculations showing these amounts to be the minimum necessary for NHTSA to recover the direct and indirect costs that it incurs in furnishing these goods and services.

Two comments were submitted in response to the NPRM. The first of these was from Standards Testing Labs (STL) of Massillon, Ohio. STL challenged the statement in the NPRM that manufacturers are not restricted to the use of the traction skid pads at NHTSA's facility in San Angelo, and may instead use those at any commercial facility. STL contended that the list of commercial facilities provided in the NPRM included ones that were abandoned and others that are ill suited to meet the grade testing criteria of the UTQG standards. STL further contended that the statement regarding the availability of commercial facilities is undermined by the fact that these facilities were already in existence when NHTSA constructed traction skid pads at San Angelo, and that the agency has since replaced the pads at least once in their original location, and then relocated the pads to an oval track with all new asphalt and concrete surfaces. In STL's opinion, these actions were taken so that a facility meeting the requirements of the UTQG standards would be available.

STL further contended that because NHTSA built and must maintain traction skid pads at San Angelo in order to test assigned grades for traction compliance purposes, the agency incurs little if any additional costs in making the facility available for grade assignment purposes. STL estimated that the proposed fee for the traction skid pads will increase user costs by 70%, and will produce a decrease in the volume of testing. If costs are to be shared, STL stated it would be more equitable for the user fee to be imposed on a ''per set'' rather than a ''daily'' basis, since testing for any given day is sometimes aborted through no fault of the tester, due primarily to changes in the weather or to pad instability.

In response to the first issue raised by STL, NHTSA notes that it identified commercial facilities with traction skid pads in the NPRM to support the agency's position that the government is not acting in a sovereign capacity in making the San Angelo facility available for traction tests, and that it may accordingly charge a market rate for those services, as provided in OMB Circular A–25. This listing was not intended to suggest that all of the named facilities are well suited to meet the grade testing criteria of the UTQG standards. The capability of any of these facilities to meet those criteria is a matter of objective analysis that does not turn on whether the facility predated NHTSA's construction of traction skid pads at San Angelo.

STL's contention that NHTSA incurs little if any additional costs in making the traction skid pads at San Angelo available for commercial use is erroneous. Any use of the facility contributes to the deterioration of the skid pad surfaces, and reduces the service life of monitoring and maintenance support equipment. Even if this were not the case, NHTSA would still be obligated to impose a user fee for the use of the traction skid pads. As noted in the NPRM, OMB Circular A–25 expresses the general policy that ''[a] user charge . . . will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.'' The OIG cited this policy in its audit report findings that NHTSA's failure to assess a fee for the use of the traction skid pads was contrary to the requirements of OMB Circular A–25. The agency proposed a user fee for the traction skid pads at San Angelo in order to correct this deficiency.

As noted in the NPRM, NHTSA proposed a fee of $288.00 per day for the use of the traction skid pads at San Angelo by performing the following calculation, based on an equivalent of 360 days of industry use in 1993:

Skid pad calibration expenses	$6,210
General facility costs relating to skid pads	7,140
Depreciable items (skid system, water truck, air compressor, skid track, tractor sweeper, equipment, buildings)	65,904
Salaries relating to skid pads	24,375
Total	103,629

$103,629/360 days industry use = $287.86 cost per day.

Since NHTSA recognizes that some users may not need a full day to conduct traction testing, and that some tests may have to be aborted for reasons beyond the user's control, such as weather conditions or pad instability, the agency agrees with STL's contention that it would be more equitable for the user fee to be imposed on something other than a ''daily'' basis. STL recommended that the fee instead be imposed on a ''per set'' basis. Because inefficiencies may result in some users taking longer than others in performing each ''set,'' NHTSA has concluded that it would be more reasonable for the fee to be calculated at an hourly rate. The UTQG facility at San Angelo is open each day for eight and one-half hours, from 7:30 am to 4:00 pm. Based on a daily rate of $288.00, the hourly rate would be $34.00. NHTSA is adopting this hourly rate as the user fee for the traction skid pads at San Angelo. Fees will be assessed at this hourly rate for each hour and for each fraction of a hour that the traction skid pads are used.

A second comment was submitted in response to the NPRM, by the Rubber Manufacturers Association (RMA), on behalf of U.S. tire manufacturers. The RMA took exception to the proposed charge of $379.00 for each course monitoring tire that NHTSA sells, on the basis that manufacturers are obliged to purchase these tires from a single source—the Federal government—and that such a circumstance can lead to what the RMA characterized as excessive ''monopoly-type'' pricing. The RMA acknowledged that the government must cover its costs in setting the purchase price for course monitoring tires, but requested that NHTSA devise a plan for controlling and reducing overhead costs to keep the program efficient for tire manufacturers and effective for U.S. taxpayers.

NHTSA proposed a charge of $379.00 for each course monitoring tire, which was derived by performing the following calculation for the 700 course monitoring tires that are purchased annually by the agency:

Purchase price of course monitoring tires	$175,000
General facility costs relating to tires	3,400
Warehouse storage fees	24,000
Salaries relating to tires	29,825
Testing fees to establish base course wear rate for tires	32,800
Total	265,025

Number of tires purchased= 700

$265,025/700 = $378.61 cost per tire.

Two-thirds of the $379.00 proposed charge is attributable to NHTSA's acquisition cost of $250.00 for each tire. That price, which is set by the tire's manufacturer, is a matter beyond the government's control. An additional $45.00 is attributable to the testing that NHTSA must perform to establish the base course wear rate for these tires. Warehousing expenses result in an

additional charge of $34.00 for each tire. The only component of the proposed charge attributable to overhead expenses is the $50.00 that covers general facility costs and salaries relating to the testing, maintenance, and sale of the tires. In order to control these costs, NHTSA uses a minimal staff and relies extensively on electronic mail in processing orders for course monitoring tires. The $50.00 overhead expense represents thirteen percent of the sale price of each tire, an amount that appears quite reasonable, particularly when compared to overhead charges in the range of 110 to 150 percent that are applied within the tire industry. Although it recognizes that it is the only source for the purchase of these tires, as a government agency, NHTSA is in no position to take advantage of this situation by charging what the RMA characterizes as ''monopoly'' rates. If it recovered more than its actual costs in the sale of course monitoring tires, NHTSA would be in violation of a law that prohibits government agencies from augmenting the funds that they are appropriated by Congress. In view of these circumstances, NHTSA is adopting the proposed charge of $379.00 as the fee for the course monitoring tires that it sells.

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under E.O. 12866. NHTSA has analyzed this rulemaking action and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendment resulting from this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a regulatory flexibility analysis.

The agency believes that motor vehicle and tire manufacturers and tire brand owners typically do not qualify as small entities. This amendment may affect small businesses, small organizations, and small governmental units to the extent that these entities purchase vehicles and tires. However, because the user fees established through this amendment can be spread across a manufacturer's entire production, the amendment should have a negligible cost impact on vehicles and tires. For these reasons, vehicle manufacturers, small businesses, small organizations, and small governmental units that purchase motor vehicles should not be significantly affected by these user fees.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws will be affected.

4. National Environmental Policy Act

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that it will not significantly affect the human environment.

5. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, P.L. 96–511, the agency notes that there are no information collection requirements associated with this rulemaking action.

6. Civil Justice Reform

This rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30111), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (49 U.S.C. 30161) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 575

Consumer protection, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, § 575.104, *Uniform tire quality grading standards*, in Title 49 of the Code of Federal Regulations at Part 575, is amended as follows:

PART 575—[AMENDED]

1. The authority citation for Part 575 will continue to read as follows:

Authority: 49 U.S.C. 322, 30111, and 30123; delegation of authority at 49 CFR 1.50.

2. A new Appendix D is added to § 575.104, to read as follows:

§ 575.104 Uniform tire quality grading standards.

* * * * *

Appendix D—User Fees

1. *Course Monitoring Tires:* A fee of $379.00 will be assessed for each course monitoring tire purchased from NHTSA at Goodfellow Air Force Base, San Angelo, Texas This fee is based upon the direct and indirect costs attributable to: (a) The purchase of course monitoring tires by NHTSA, (b) a pro rata allocation of salaries and general facility costs associated with maintenance of the tires, (c) warehouse storage fees for the tires, and (d) testing fees paid by NHTSA to establish the base course wear rate for the tires.

2. *Use of Government Traction Skid Pads:* A fee of $34.00 will be assessed for each hour, or fraction thereof, that the traction skid pads at Goodfellow Air Force Base, San Angelo, Texas are used. This fee is based upon the direct and indirect costs attributable to: (a) depreciation on facilities and equipment comprising or used in conjunction with the traction skid pads (i.e., skid system, water truck, air compressor, skid track, tractor sweeper, equipment, buildings), (b) the calibration of the traction skid pads, and (c) a pro rata allocation of salaries and general facility costs associated with maintenance of the traction skid pads.

3. Fee payments shall be by check, draft, money order, or Electronic Funds Transfer System made payable to the Treasurer of the United States.

4. The fees set forth in this Appendix continue in effect until adjusted by the Administrator of NHTSA. The Administrator reviews the fees set forth in this Appendix and, if appropriate, adjusts them by rule at least every 2 years.

Issued on: July 27, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–19018 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 210, 216, 250, 270, and 604

[Docket No. 950718182–5182–01; I.D. 070695B]

RIN 0648–AI08

Removal of Regulations

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

ACTION: Final rule.

SUMMARY: NMFS amends the Code of Federal Regulations (CFR) to remove regulations that are no longer needed. This action is consistent with the President's Regulatory Reform Initiative.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: George H. Darcy, NMFS, 301/713–2344.

SUPPLEMENTARY INFORMATION:

On March 4, 1995, as part of the President's Regulatory Reform Initiative, the President directed agencies to conduct a page-by-page review of all regulations and eliminate or revise those that are outdated or otherwise in need of reform. After conducting a review of 50 CFR parts 210, 216 (subparts G and H), 250, 270, and 604, it was determined that they were not needed and could be removed.

50 CFR Part 210

Part 210 contains regulations that were promulgated under the North Pacific Fisheries Act of 1954, which implemented the International Convention for the High Seas Fisheries of the North Pacific Ocean. After that convention was replaced by the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, the 1954 statute was repealed by Public Law 102–567. Thus, part 210 is without statutory basis and is being removed.

50 CFR Part 216, Subparts G and H

Sections 101(a)(2), 101(a)(3)(A), and 101(b) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1371(a)(2), 1371(a)(3)(A), and 1371(b)) authorize the Assistant Administrator for Fisheries, NOAA (AA) to (1) issue regulations governing the taking of marine mammals incidental to commercial fishing operations; (2) waive section 101's moratorium on the taking and importing of marine mammals under the AA's jurisdiction, and adopt regulations with respect to the taking and importing of such mammals; and (3) prescribe regulations governing the taking of depleted marine mammals by any Indian, Aleut, or Eskimo, respectively. In prescribing regulations to carry out the provisions of these sections, section 101 requires that the procedures of section 103 (16 U.S.C. 1373) be followed. Section 103(d) requires that regulations be made on the record after opportunity for an agency hearing on such regulations and on any determination by the AA to waive the moratorium pursuant to section 101(a)(3)(A) (16 U.S.C. 1371(a)(3)(A)).

On March 5, 1975 (40 FR 10183), NMFS issued rules of practice and procedure for all hearings conducted pursuant to section 103(d). Subpart G of part 216 contains these rules. Since that time, MMPA 103(d) hearings have been held for only six rulemaking proceedings. As a result of amendments to the MMPA in 1984, 1991, and 1994, it is unlikely that section 103(d) hearings will be conducted in the foreseeable future. If section 103(d) rules of practice and procedure are needed in the future, NMFS will provide parties and the presiding Administrative Law Judge with proposed guidance for conducting the proceeding. As part of the pre-hearing conference, the participants will determine the process for conducting the hearing. Subpart H of part 216 contains only a reference note that is no longer needed. Because part 216 subparts G and H are no longer necessary, they are being removed.

50 CFR Part 250

Part 250 of title 50 CFR contains regulations that implemented section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742c), which established a Fisheries Loan Fund (Fund). Under that Act, the Fund ceased to exist on September 30, 1986, and any balance remaining in the Fund was transferred to the Treasury as miscellaneous receipts. Thus, part 250 is no longer needed and is being removed.

50 CFR Part 270

Part 270 of title 50 CFR governs the establishment and conduct of Fish and Seafood Promotional Councils (Councils) under the authority of the Fish and Seafood Promotion Act of 1986. That Act authorized the establishment of a National Council to carry out generic marketing programs, including consumer education and research. Congress funded the National Council, but did not fund the Regional Councils. Funding for the National Council expired in fiscal year 1991; no Regional Councils have been established by the industry, and NMFS is unaware of any plans to do so. Therefore, part 270 is no longer needed and is being removed.

50 CFR Part 604

Part 604 of title 50 CFR contains abbreviated summaries of laws, other than the Magnuson Fishery Conservation and Management Act, that are applicable to the development of fishery management plans. The information in part 604 is readily available to the public elsewhere, and its maintenance in part 604 is not needed. Therefore, part 604 is being removed.

Classification

Because this rule only removes regulations that are no longer necessary, no useful purpose would be served by providing prior notice and opportunity for public comment on this rule. Accordingly, under 5 U.S.C. 553(b)(B), the AA, for good cause, finds that it is unnecessary to provide prior notice and an opportunity for public comment for this rule. Also, because this rule only removes regulations that are no longer needed, the AA, for good cause, finds that no useful purpose would be served by delaying the rule's effective date for 30 days. Therefore, this rule is made effective upon publication.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

List of Subjects

50 CFR Part 210

Fisheries.

50 CFR Part 216

Administrative Practice and procedure, Imports, Indians, Marine Mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 250

Fisheries, Fishing vessels, Loan programs-business, Reporting and recordkeeping requirements.

50 CFR Part 270

Administrative practice and procedure, Fisheries, Reporting and recordkeeping requirements, Seafood.

50 CFR Part 604

Administrative practice and procedure, Fisheries, Fishing.

Dated: July 26, 1995.

Richard H. Schaefer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 210; part 216, subparts G (consisting of §§ 216.70–216.90) and H (Note); and parts 250, 270, and 604 are removed; and subchapter H is vacated.

[FR Doc. 95–18897 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 148
Wednesday, August 2, 1995

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

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) is committed to providing federal credit unions (FCUs) greater flexibility in pursuing lending opportunities that are consistent with principles of safety and soundness. The NCUA Board is therefore proposing to amend its regulations on loan participation to broaden loan participation authority by removing the requirement that the participation agreement precede loan disbursement.

DATES: Comments must be postmarked or posted on the NCUA electronic bulletin board by October 2, 1995.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA's current ''participation loan'' regulation requires the participation agreement to precede any disbursement of the loan proceeds. When Section 701.22 of NCUA's Rules and Regulations was originally issued, the Board discussed the term ''participation'' as follows:

> In granting Federal credit unions the power to participate in making loans to members, Congress was using the term ''participation'' to mean arrangements made prior to or at the time of origination and carried out within a reasonable time thereafter. Thus, 107(13) (of the Federal Credit Union Act, 12 U.S.C. § 1757(13)) was adopted to allow Federal credit unions to sell certain loans subsequent to origination * * *

43 FR 51610 (November 6, 1978). However, the Board amended its opinion in 1981 as follows:

> The participation regulation applies where a third party funnels funds into the credit union with the intent of actually participating in making the loan, for example where the participant will assist in preparing the loan documentation and the participant's funds will actually be disbursed at origination. The participation regulation does not apply when an organization merely arranges to purchase loans subsequently originated by the credit union.

49 FR 31660 (June 17, 1981).

In 1991, the Board considered but later rejected changes which would have amended the definition of ''participation loan'' and deleted the requirement that the loan participation agreement precede loan disbursement. The Board was concerned that:

> FCUs may have a decreased interest in properly underwriting a loan if they know they can later reduce their risk by selling participation interests in it. Alternatively, FCUs interested in obtaining a participation after the loan is made may not properly investigate the loan and may instead rely on the original participants to have properly underwritten the loan. FCUs may jump in without a proper due diligence review.

56 FR 15034, 15035 (April 15, 1991).

The Board now believes that the concerns it expressed in 1991 can be addressed through the FCUs exercise of due diligence before entering into participation agreements as required in this proposal. The FCU is still required to have a master participation agreement. The proposal does not specify at what point the agreement must be executed. The Board invites comment on whether the rule should require that the agreement (without identifying the specific loans) must be in place prior to the disbursement of the loan if the loan is intended for participation, and prior to the sale of the loan if the loan was originally made to hold in portfolio.

Although the regulation does not require that specific provisions be included in the master agreement, prudence dictates that at a minimum the agreement shall: (1) Identify types of loans; (2) state servicing and collection requirements; (3) provide that in the event of a loss each participant shall share in the loss equal to its interest in the participation loan; (4) provide for the distribution of payments of principal to each participant proportionate to its interest in the participation loan; (5) provide for loan status reports to each participant; and (6) state the terms or conditions under which the agreement may be terminated or modified.

Under the proposal, the ''originating lender'' is required to use the same underwriting standards it uses for loans that are not being sold as participation loans unless there is a participation agreement in place prior to the disbursement of the loan. If a participation agreement is in place prior to disbursement, all of the participating credit unions will have agreed on underwriting standards. The originating lender would reflect those standards either in its loan policies or the participation agreement. Also, the proposal requires the purchaser of a participation interest to have a participation policy in place prior to entering into a participation agreement.

Current Section 701.22(b)(2), as well as the proposed rule, allow either the board of directors or the investment committee to execute the participation agreement. In recognition of the far reaching impact a participation agreement has on an FCU's lending, investment and business strategies, the Board is interested in receiving comments on whether this authority should be solely with the board of directors.

With these safeguards in place, it is contemplated that eliminating the ''prior to disbursement'' restriction may assist FCUs with their liquidity management and will also provide FCUs with a means of reducing risk. By deleting this requirement, the Board recognizes that there may be some overlap between Sections 701.22 and 701.23 of NCUA's Rules and Regulations; the eligible obligations rule. This is a result of the interplay of Sections 107(5)(E) and 107(13) of the FCU Act. Both of these sections authorize the purchase and sale of a partial interest in certain loans. A loan purchase or sale will be viewed as permissible provided it is authorized under either section.

The Board welcomes comment on this proposal.

B. Section-by-Section Analysis

Proposed Section 701.22(a)(1)

Deletes the requirement that the participation agreement precede disbursement of the loan but retains the requirement of a participation agreement and that the participation be made with ''eligible organizations.''

Proposed Section 701.22(b)(2)

The phrase ''prior to final disbursement'' has been eliminated.

Proposed Section 701.22(c)(4)

A phrase has been added to the ''originating lender'' approval provision requiring the FCU to use the same underwriting standard for participation loans as those used for loans not being sold as participation loans unless there is a participation agreement in place prior to the disbursement of the loan. An additional sentence has also been added, requiring that, where a participation agreement is in place prior to disbursement, either the originating credit union's loan policies or the participation agreement addresses participation loan underwriting standards.

Proposed Section 701.22(d)(1)

A phrase has been added to the ''non originating lender'' approval provision requiring the FCU to have a participation policy in place prior to entering into a participation agreement.

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a potential number of small credit unions (primarily those under $1 million in assets). The NCUA Board has determined and certifies under the authority granted in 5 U.S.C. 605(b) that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

These amendments do not change the paperwork requirements.

Executive Order 12612

This amendment does not affect state regulation of credit unions. It implements provisions of the Federal Credit Union Act applying only to federal credit unions.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 27, 1995.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR chapter VII as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789 and Pub. L. 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.*, 42 U.S.C. 1981 and 42 U.S.C. 3601–3610.

Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.22 is amended by revising paragraphs (a)(1), (b)(2), (c)(4) and (d)(1) to read as follows:

§ 701.22 Loan participation.

(a) * * *

(1) *Participation loan* is a loan where one or more eligible organizations participates pursuant to a written agreement with the originating lender.

* * * * *

(b) * * *

(2) A written master participation agreement shall be properly executed, acted upon by the Federal credit union's board of directors or the investment committee and retained in the Federal credit union's office. The agreement shall include provisions which identify the participation loan or loans; and

* * * * *

(c) * * *

(4) Require the credit committee or loan officer to use the same underwriting standards for participation loans used for loans that are not being sold in a participation agreement unless there is a participation agreement in place prior to the disbursement of the loan. Where a participation agreement is in place prior to disbursement, either the credit union's loan policies or the participation agreement shall address any variance from non-participation loan underwriting standards.

(d) * * *

(1) Participate only in loans it is empowered to grant, having a participation policy in place which sets forth the loan underwriting standards prior to entering into a participation agreement;

* * * * *

[FR Doc. 95–18892 Filed 8–1–95; 8:45 am]

BILLING CODE 7535–01–P

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12 CFR Part 741

Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rule will consolidate all current regulations and requirements that apply to federally insured state-chartered credit unions (FISCUs) in one place, part 741, Requirements for Insurance. The proposal will not impose any new requirements on FISCUs.

DATES: Comments must be postmarked or posted on the NCUA electronic bulletin board by October 2, 1995.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration Board, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Linda Groth, State Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518–6360 or Mary Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Request for Comments

The NCUA Board seeks comments on the proposed changes to part 741 of the NCUA Rules and Regulations.

Background

Part 741 applies to all credit unions whose accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF). It applies to federal credit unions (FCUs), FISCUs and credit unions making application for insurance of accounts. It prescribes requirements for obtaining and maintaining federal insurance and for the payment of insurance premiums and an insurance capitalization deposit.

Part 741 also serves as a reference for FISCUs in determining which NCUA rules apply to them. It is NCUA's general practice, when a regulation for FCUs also applies to FISCUs, to refer to the regulation in part 741.

Some regulations that apply to FISCUs, however, are not currently included in part 741. Additionally, the Agreement for Insurance of Accounts, which outlines conditions for state-

chartered credit unions obtaining and maintaining federal insurance, contains requirements that are not included in part 741. This proposal corrects those shortcomings by addressing, in part 741, all regulations and requirements that apply to FISCUs. This revision will aid FISCUs by simplifying the process of determining which regulations they must follow. The revision does not impose any additional requirements or new burdens on FISCUs.

Additionally, the proposed revision reorganizes part 741 into subparts A and B. Subpart A contains requirements that apply to all insured credit unions and are not codified elsewhere in NCUA's regulations. Subpart B contains requirements that are set forth in various other parts of NCUA's regulations affecting FCUs and that are, by incorporation in part 741, applicable to FISCUs as well.

Section-by-Section Analysis

Proposed Section 741.0

This section has been modified to include an explanation of new subpart A which contains substantive requirements that are not codified elsewhere in this chapter and new subpart B which lists additional regulations, set forth elsewhere in this chapter as applying to federal credit unions, that also apply to FISCUs.

Subpart A

Proposed Sections 741.1, 741.2, 741.4, 741.5, 741.6, 741.7, 741.8 and 741.9.

In the current part 741, these sections appear as §§ 741.7, 741.5, 741.11, 741.10, 741.13, 741.12, 741.4 and 741.14, respectively. Except for the renumbering, the sections are unchanged. Only technical changes are made to these sections. They are as follows: The sections are renumbered. Section 741.1 is revised to clarify that pursuant to NCUA's examination authority, records and documents must be made available to the NCUA Board or its representative. The last fifteen words of section 741.2 are dropped because they are redundant. Section 741.4(b)(3) is revised to clarify that the NCUA Board may temporarily establish a normal operating level for the NCUSIF of less than 1.3%. Section 741.4(d) is revised to clarify that the annual insurance premium may be waived by the NCUA Board.

Proposed Section 741.3

This proposed section on criteria for insurance is a restatement of the existing § 741.9, with some minor changes. The introduction has been amended by adding the phrase, ''and in continuing insurability'' after ''insurance'' to clarify that the criteria listed in this section apply in order to maintain, as well as to obtain, federal insurance.

Proposed § 741.3(a)(3) incorporates a requirement imposed on FISCUs by the Agreement for Insurance of Accounts. An Investment Valuation Reserve Account must be established for those investments owned by FISCUs that do not conform to NCUA's investment regulation for federal credit unions (12 CFR part 703). The reserve must equal the net excess of book value over current market value. If the market value cannot be determined, a reserve equal to the full book value must be established. Current § 741.9(a)(3) requires a special reserve account, but does not address the market value issue.

The requirement that state-chartered corporate credit unions comply with part 704 has not been carried over from current § 741.9(a)(3) to proposed § 741.3(a)(3), because it is contained in proposed § 741.3(b)(3).

Similarly, the requirement that management agree to comply with ''full and fair disclosure'' has not been carried over from current § 741.9(c) to proposed § 741.3(c), because it is contained in proposed § 741.3(a)(1).

Proposed Section 741.10

This section is new and incorporates requirements currently imposed on FISCUs by the Agreement for Insurance of Accounts. It affects those FISCUs permitted by state law to accept uninsured nonmember shares or deposits. The FISCU is required to identify these nonmember accounts as nonmember shares or deposits on all statements or reports required by the NCUA Board and advise, in writing, any nonmember share and deposit holders that their accounts are not insured by NCUSIF. This would not apply to low income nonmember deposits that are insured pursuant to § 701.32.

Subpart B

Proposed Sections 741.201, 741.203, 741.204 and 741.205

These proposed sections appear in the current rule as §§ 741.1, 741.3, 741.6 and 741.8 respectively. Except for renumbering, these sections remain unchanged.

Proposed Section 741.202

This section appears in the current rule as § 741.2. It is changed for clarification purposes only. Proposed § 741.202(b) substitutes the term ''financial officer'' for ''treasurer''. The purpose of the change is to conform the wording to the Federal Credit Union Bylaws.

Proposed Sections 741.206 Through 741.218

As described below, these sections refer to other existing regulations that apply to FISCUs and are not currently addressed in part 741.

Proposed Section 741.206

This new section addresses NCUA's regulation concerning Corporate Credit Unions (part 704).

Proposed Section 741.207

This new section addresses the Community Development Revolving Loan Program for Credit Unions and Designation as a Low Income Credit Union (part 705 and § 701.32(d)).

Proposed Section 741.208

This new section provides that FISCUs choosing to merge or voluntarily terminate or convert their insured status must meet the requirements of Section 206 of the FCU Act (12 U.S.C. 1786) and parts 708a and 708b of the NCUA Rules and Regulations.

Proposed Section 741.209

This new section addresses Management Official Interlocks (part 711).

Proposed Section 741.210

This new section addresses the Central Liquidity Facility (part 725).

Proposed Section 741.211

This new section addresses Advertising (part 740).

Proposed Section 741.212

This new section addresses Share Insurance (part 745).

Proposed Section 741.213

This new section addresses Administrative Actions, Adjudicative Hearings, Rules of Practice and Procedure, and Investigations (part 747).

Proposed Section 741.214

This new section addresses the Report of Crime or Catastrophic Act and Bank Secrecy Act compliance (part 748).

Proposed Section 741.215

This new section addresses the Records Preservation Program (part 749).

Proposed Section 741.216

This new section addresses Flood Insurance (part 760).

Proposed Section 741.217

This new section addresses Truth in Savings (part 707).

Proposed Section 741.218

This new section addresses Involuntary Liquidation and Creditor Claims (part 709).

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe the significant economic impact any proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). This proposal is a compilation of existing regulations and requirements already in place for FISCUs. It does not add any additional requirements or burden. Accordingly, the NCUA Board has determined and certifies under the authority granted in 5 U.S.C. 605(b) that the proposed rule, if adopted, will not have a significant economic impact on a significant number of small credit unions and that a Regulatory Flexibility Act analysis is not required.

Paperwork Reduction Act

The proposed rule does not impose any new paperwork requirements.

Executive Order 12612

The proposed rule does not make any substantive changes. Therefore, no new analysis of part 741's effect on state interests is required.

List of Subjects in 12 CFR Part 741

Bank deposit insurance, Credit unions and Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 27, 1995.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to revise part 741 as follows:

PART 741—REQUIREMENTS FOR INSURANCE

Sec.
741.0 Scope.

Subpart A—Regulations that Apply to Both Federal Credit Unions and Federally Insured State-Chartered Credit Unions and That are Not Codified Elsewhere in NCUA's Regulations

741.1 Examination.
741.2 Maximum borrowing authority.
741.3 Criteria.
741.4 Insurance premium and one percent deposit.
741.5 Notice of termination of excess insurance coverage.
741.6 Financial and statistical and other reports.
741.7 Conversion to a state-chartered credit union.
741.8 Purchase of assets and assumption of liabilities.
741.9 Uninsured membership shares.
741.10 Disclosure of share insurance.

Subpart B—Regulations Codified Elsewhere in NCUA's Regulations as Applying to Federal Credit Unions That Also Apply to Federally Insured State-Chartered Credit Unions

741.201 Minimum fidelity bond requirements.
741.202 Audit and verification requirements.
741.203 Minimum loan policy requirements.
741.204 Maximum public unit and nonmember accounts, and low-income designation.
741.205 Reporting requirements for credit unions that are newly chartered or in troubled condition.
741.206 Corporate credit unions.
741.207 Community development revolving loan program for credit unions.
741.208 Mergers of Federally insured credit unions: voluntary termination or conversion of insured status.
741.209 Management official interlocks.
741.210 Central Liquidity Facility.
741.211 Advertising.
741.212 Share insurance.
741.213 Administrative actions, adjudicative hearings, rules of practice and procedure.
741.214 Report of Crime or Catastrophic Act and Bank Secrecy Act compliance.
741.215 Records preservation program.
741.216 Flood insurance.
741.217 Truth in savings.
741.218 Involuntary liquidation and creditor claims.

Authority: 12 U.S.C. 1757, 1766, and 1781–1790. Section 741.4 is also authorized by 31 U.S.C. 3717.

§ 741.0 Scope.

The provisions of this part apply to federal credit unions, federally insured state-chartered credit unions, and credit unions making application for insurance of accounts pursuant to Title II of the Act, unless the context of a provision indicates its application is otherwise limited. This part prescribes various requirements for obtaining and maintaining federal insurance and the payment of insurance premiums and capitalization deposit. Subpart A of this part contains substantive requirements that are not codified elsewhere in this chapter. Subpart B of this part lists additional regulations, set forth elsewhere in this chapter as applying to federal credit unions, that also apply to federally insured state-chartered credit unions. As used in this part, *insured credit union* means a credit union whose accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF).

Subpart A—Regulations That Apply To Both Federal Credit Unions and Federally Insured State-Chartered Credit Unions and That Are Not Codified Elsewhere in NCUA's Regulations

§ 741.1 Examination.

As provided in Sections 201 and 204 of the Act (12 U.S.C. 1781 and 1784), the NCUA Board is authorized to examine any insured credit union or any credit union making application for insurance of its accounts. Such examination may require access to all records, reports, contracts to which the credit union is a party, and information concerning the affairs of the credit union. Upon request, such documentation must be provided to the NCUA Board or its representative. Any credit union which makes application for insurance will be required to pay the cost of such examination and processing. To the maximum extent feasible, the NCUA Board will utilize examinations conducted by state regulatory agencies.

§ 741.2 Maximum borrowing authority.

Any credit union which makes application for insurance of its accounts pursuant to Title II of the Act, or any insured credit union, must not borrow, from any source, an aggregate amount in excess of 50 per centum of its paid-in and unimpaired capital and surplus (shares and undivided earnings, plus net income or minus net loss).

§ 741.3 Criteria.

In determining the insurability of a credit union which makes application for insurance and in continuing the insurability of its accounts pursuant to Title II of the Act, the following criteria shall be applied:

(a) *Adequacy of reserves.*

(1) *General rule.* State-chartered credit unions must meet, at a minimum, the statutory reserve and full and fair disclosure requirements imposed on federal credit unions by Section 116 of the Act and part 702 of this chapter.

(2) *Charges against reserves.* State-chartered credit unions may charge losses, including losses other than loan losses, against the statutory reserve in accordance with either state law or procedures established by the state supervisory authority. However, charges for losses other than loan losses shall be made only after notification to the Regional Director, unless the credit union's ratio of capital to assets is greater than 6 percent and the charge reduces the ratio by no more than ½ percent. For purposes of this section, capital is defined as the total of the

Regular Reserve, the Allowance for Loan Losses, the Allowance for Investment Losses, Undivided Earnings, and other reserves.

(3) *Special reserve for nonconforming investments.* State-chartered credit unions (except state-chartered corporate credit unions) are required to establish an additional special reserve for investments if those credit unions are permitted by their respective state laws to make investments beyond those authorized in the Act or the NCUA Rules and Regulations. For any investment other than loans to members and obligations or securities expressly authorized in Title I of the Act and part 703 of this chapter, as amended, state-chartered credit unions (except state-chartered corporate credit unions) are required to establish and maintain at the end of each accounting period and prior to payment of any dividend, an Investment Valuation Reserve Account in an amount at least equal to the net excess of book value over current market value of the investments. If the market value cannot be determined, an amount equal to the full book value will be established. When at the end of any dividend period, the amount in the Investment Valuation Reserve exceeds the difference between book value and market value, the board of directors may authorize the transfer of the excess to Undivided Earnings.

(b) *Financial condition and policies.* The following factors are to be considered in determining whether the credit union's financial condition and policies are both safe and sound:

(1) The existence of unfavorable trends which may include excessive losses on loans (i.e., losses which exceed the regular reserve or its equivalent [in the case of state-chartered credit unions] plus other irrevocable reserves established as a contingency against losses on loans), the presence of special reserve accounts used specifically for charging off loan balances of deceased borrowers, and an expense ratio so high that the required transfers to reserves create a net operating loss for the period or that the net gain after these transfers is not sufficient to permit the payment of a nominal dividend;

(2) The existence of written lending policies, including adequate documentation of secured loans and the protection of security interests by recording, bond, insurance, or other adequate means, adequate determination of the financial capacity of borrowers and comakers for repayment of the loan, and adequate determination of value of security on loans to ascertain that said security is adequate to repay the loan in the event of default;

(3) Investment policies which are within the provisions of applicable law and regulations, i.e., the Act and part 703 of this chapter for federal credit unions and the laws of the state in which the credit union operates for state-chartered credit unions, except state-chartered corporate credit unions. State-chartered corporate credit unions are permitted to make only those investments that are in conformance with part 704 of this chapter and applicable state laws and regulations;

(4) The presence of any account or security, the form of which has not been approved by the Board, except for accounts authorized by state law for state-chartered credit unions.

(c) *Fitness of management.* The officers, directors, and committee members of the credit union must have conducted its operations in accordance with provisions of applicable law, regulations, its charter and bylaws. No person shall serve as a director, officer, committee member, or employee of an insured credit union who has been convicted of any criminal offense involving dishonesty or breach of trust, except with the written consent of the Board.

(d) *Insurance of member accounts would not otherwise involve undue risk to the NCUSIF.* The credit union must maintain adequate fidelity bond coverage as specified in § 741.201. Any circumstances which may be unique to the particular credit union concerned shall also be considered in arriving at the determination of whether or not an undue risk to the NCUSIF is or may be present. For purposes of this section, the term ''undue risk to the NCUSIF'' is defined as a condition which creates a probability of loss in excess of that normally found in a credit union and which indicates a reasonably foreseeable probability of the credit union becoming insolvent because of such condition, with a resultant claim against the NCUSIF.

(e) *Powers and purposes.* The credit union must not perform services other than those which are consistent with the promotion of thrift and the creation of a source of credit for its members, except as otherwise permitted by law or regulation.

(f) *Letter of disapproval.* A credit union whose application for share insurance is disapproved shall receive a letter indicating the reasons for such disapproval, a citation of the authority for such disapproval, and suggested methods by which the applying credit union may correct its deficiencies and thereby qualify for share insurance.

(g) Nothing herein shall preclude the NCUA Board from imposing additional terms or conditions pursuant to the insurance agreement.

§ 741.4 Insurance premium and one percent deposit.

(a) *Scope.* This section implements the requirements of Section 202 of the Act (12 U.S.C. 1782) providing for capitalization of the NCUSIF through the maintenance of a deposit by each insured credit union in an amount equaling one percent of its insured shares and payment of an annual insurance premium.

(b) *Definitions.* For purposes of this section:

(1) *Insurance year* means the period from January 1 through December 31;

(2) *Insured shares* means the total amount of a credit union's share, share draft and share certificate accounts, or their equivalent under state law (which may include deposit accounts), authorized to be issued to members, other credit unions, public units, or nonmembers (where permitted under the Act or equivalent state law). ''Insured shares'' does not include amounts in excess of insurance coverage as provided in part 745 of this chapter; and

(3) *Normal operating level* means a total value of the NCUSIF equity equaling 1.3 percent of the aggregate of all insured shares in insured credit unions as of the end of the preceding insurance year, or such lower value as established by action of the NCUA Board.

(c) *One percent deposit.* Each insured credit union shall maintain with the NCUSIF during each insurance year a deposit in an amount equaling one percent of the total of the credit union's insured shares as of the close of the preceding insurance year. The deposit amount shall be adjusted annually on a date to be determined by the NCUA Board.

(d) *Premium.* Unless waived by the NCUA Board, each insured credit union shall pay to the NCUSIF, on a date to be determined by the NCUA Board, an insurance premium for that insurance year in an amount equaling one-twelfth of one percent of the credit union's total insured shares as of the close of the preceding insurance year.

(e) *Redistribution of NCUSIF equity.* When the NCUSIF exceeds its normal operating level, the NCUA Board will, at least annually, make a proportionate adjustment for insured credit unions of the amount necessary to reduce the NCUSIF to its normal operating level. Such adjustment will be in the form determined by the NCUA Board and

may include a waiver of insurance premiums, premium rebates, and/or distributions from NCUSIF equity.

(f) *Forms 1304 and 1305.* A certified copy of Form 1304 will be provided to all federally insured state-chartered credit unions and Form 1305 to all federally chartered credit unions in connection with the computation and funding of their annual premium payment and any change in their one percent deposit. Form 1305 also includes the annual operating fee. Forms 1304 and 1305 are invoices and are precalculated based on the credit union's previous year's insured shares. The forms provide for any adjustments declared by the NCUA Board, resulting in a single net transfer of funds between the credit union and the NCUA. Additional copies of each credit union's Form 1304 and 1305 may be obtained from the appropriate NCUA Regional Office.

(g) *New charters.* A newly-chartered credit union that obtains share insurance coverage from the NCUSIF during the insurance year in which it has obtained its charter shall not be required to pay an insurance premium for that insurance year. The credit union shall fund its one percent deposit on a date to be determined by the NCUA Board in the following insurance year, but shall not participate in any distribution from NCUSIF equity related to the period prior to the credit union's funding of its deposit.

(h) *Conversion to Federal insurance.* An existing credit union that converts to insurance coverage with the NCUSIF during an insurance year shall immediately fund its one percent deposit based on the total of its shares as of the close of the month prior to conversion and shall pay a premium (unless waived in whole or in part for all insured credit unions during that year) in an amount that is prorated to reflect the remaining number of months in the insurance year. The credit union will be entitled to a prorated share of any distribution from NCUSIF equity declared subsequent to the credit union's conversion.

(i) *Mergers of nonfederally insured credit unions.* Where a nonfederally insured credit union merges into a federally insured credit union, the continuing federally insured credit union shall immediately pay to the NCUSIF a prorated insurance premium (unless waived in whole or in part for all federally insured credit unions), and an additional one percent deposit based upon the increase in insured shares resulting from the merger.

(j) *Return of deposit.* Any insolvent credit union that is closed for involuntary liquidation will not be entitled to a return of its deposit. Any solvent credit union that is closed due to involuntary liquidation shall be entitled to a return of its deposit prior to final distribution of member shares. Any other credit union whose insurance coverage with the NCUSIF terminates will be entitled to a return of the full amount of its deposit immediately after the final date on which any shares of the credit union are insured, except that the NCUA Board reserves the right to delay payment by up to one year if it determines that immediate payment would jeopardize the financial condition of the NCUSIF. This includes termination of insurance due to mergers and consolidations. A credit union that receives a return of its deposit during an insurance year shall have the option of leaving a nominal sum on deposit with the NCUSIF until the next distribution from NCUSIF equity and will thus qualify for a prorated share of the distribution.

(k) *Assessment of administrative fee and interest for delinquent payment.* Each federally insured credit union shall pay to the NCUA an administrative fee, the costs of collection, and interest on any delinquent payment of its capitalization deposit or insurance premium. A payment will be considered delinquent if it is postmarked later than the date stated in the invoice provided to the credit union. The NCUA may waive or abate charges or collection of interest, if circumstances warrant.

(1) The administrative fee for a delinquent payment shall be an amount as fixed from time to time by the NCUA Board based upon the administrative costs of such delinquent payments to the NCUA in the preceding year.

(2) The costs of collection shall be calculated as the actual hours expended by NCUA personnel multiplied by the average hourly cost of the salaries and benefits of such personnel.

(3) The interest rate charged on any delinquent payment shall be the U.S. Department of the Treasury Tax and Loan Rate in effect on the date when the payment is due as provided in 31 U.S.C. 3717.

§ 741.5 Notice of termination of excess insurance coverage.

In the event of a credit union's termination of share insurance coverage other than that provided by the NCUSIF, the credit union must notify all members in writing of such termination at least 30 days prior to the effective date of termination.

§ 741.6 Financial and statistical and other reports.

(a) Each operating insured credit union with assets in excess of $50,000,000 shall file with the NCUA a quarterly Financial and Statistical Report on Form NCUA 5300, on or before January 22 (as of the previous December 31), April 22 (as of the previous March 31), July 22 (as of the previous June 30) and October 22 (as of the previous September 30) of each year. All other operating insured credit unions shall file with the NCUA on or before January 31 and on or before July 31 of each year a semiannual Financial and Statistical Report on Form NCUA 5300, as of the previous December 31 (in the case of the January filing) or June 30 (in the case of the July filing).

(b) Insured credit unions shall, upon written notice from the NCUA Board or Regional Director, file such financial or other reports in accordance with instructions contained in such notice.

§ 741.7 Conversion to a state-chartered credit union.

Any federal credit union that petitions to convert to a state-chartered federally insured credit union is required to apply to the Regional Director for continued insurance of its accounts and meet the requirements as stated in the Act and this part. If the application for continued insurance is not approved, such insurance will terminate subject to the conditions set forth in section 206(d) of the Act.

§ 741.8 Purchase of assets and assumption of liabilities.

(a) Any credit union insured pursuant to Title II of the Act must apply for and receive approval from the NCUA Board before either purchasing or acquiring loans or assuming or receiving an assignment of deposits, shares, or liabilities from:

(1) Any credit union that is not insured pursuant to Title II of the Act;

(2) Any other financial-type institution (including depository institutions, mortgage banks, consumer finance companies, insurance companies, loan brokers, and other loan sellers or liability traders); or

(3) Any successor in interest to any institution identified in paragraphs (a)(1) or (a)(2) of this section.

(b) Approval is not required for:

(1) Purchases of student loans or real estate secured loans to facilitate the packaging of a pool of loans to be sold or pledged on the secondary market under § 701.23(b)(1) (iii) or (iv) of this chapter or comparable state law for state-chartered credit unions, or purchases of member loans under

§ 701.23(b)(1)(i) of this chapter or comparable state law for state-chartered credit unions; or

(2) Assumptions or receipt of deposits, shares or liabilities as rollovers or transfers of member retirement accounts or in which an NCUSIF-insured credit union perfects a security interest in connection with an extension of credit to any member.

§ 741.9 Uninsured membership shares.

Any credit union that is insured pursuant to Title II of the Act may not offer membership shares that, due to the terms and conditions of the account, are not eligible for insurance coverage. This prohibition does not apply to shares that are uninsured solely because the amount is in excess of the maximum insurance coverage provided pursuant to part 745 of this chapter.

§ 741.10 Disclosure of share insurance.

Any credit union which is insured pursuant to Title II of the Act and is permitted by state law to accept nonmember shares or deposits from sources other than other credit unions and public units (or, for low-income designated credit unions, any nonmembers), shall identify such nonmember accounts as nonmember shares or deposits on any statement or report required by the NCUA Board for insurance purposes. Immediately after a state-chartered credit union receives notice from NCUA that its member accounts are federally insured, the credit union shall advise any present nonmember share and deposit holders by letter that their accounts are not insured by the NCUSIF. Also, future nonmember share and deposit fund holders will be so advised by letter as they open accounts.

Subpart B—Regulations Codified Elsewhere in NCUA's Regulations as Applying to Federal Credit Unions That Also Apply to Federally Insured State-Chartered Credit Unions

§ 741.201 Minimum fidelity bond requirements.

(a) Any credit union which makes application for insurance of its accounts pursuant to Title II of the Act must possess the minimum fidelity bond coverage stated in § 701.20 of this chapter in order for its application for such insurance to be approved and for such insurance coverage to continue. A federally insured credit union whose fidelity bond coverage is terminated shall mail notice of such termination to the Regional Director not less than 35 days prior to the effective date of such termination.

(b) Corporate credit unions must comply with § 704.17 of this chapter in lieu of § 701.20.

§ 741.202 Audit and verification requirements.

(a) The supervisory committee of each credit union insured pursuant to Title II of the Act shall make or cause to be made an audit of the credit union at least once every calendar year covering the period elapsed since the last audit. The audit must fully meet the requirements set forth in §§ 701.12 and 701.13 of this chapter.

(b) Each credit union which is insured pursuant to Title II of the Act shall verify or cause to be verified, under controlled conditions, all passbooks and accounts with the records of the financial officer not less frequently than once every 2 years. The verification must fully meet the requirements set forth in §§ 701.12(e) and 701.13 of this chapter.

§ 741.203 Minimum loan policy requirements.

Any credit union which is insured pursuant to Title II of the Act must:

(a) Adhere to the requirements stated in § 701.21(h) of this chapter concerning member business loans, § 701.21(c)(8) of this chapter concerning prohibited fees, and § 701.21(d)(5) of this chapter concerning nonpreferential loans. State-chartered, NCUSIF-insured credit unions in a given state are exempt from these requirements if the state regulatory authority for that state adopts substantially equivalent regulations as determined by the NCUA Board. In nonexempt states, all required NCUA reviews and approvals will be handled in coordination with the state credit union supervisory authority; and

(b) adhere to the requirements stated in part 722 of this chapter concerning appraisals.

§ 741.204 Maximum public unit and nonmember accounts, and low-income designation.

Any credit union that is insured, or that makes application for insurance, pursuant to Title II of the Act must:

(a) Adhere to the requirements of § 701.32 of this chapter regarding public unit and nonmember accounts, provided it has the authority to accept such accounts. Requests by federally insured state-chartered credit unions for an exemption from the limitation of § 701.32 will be made and reviewed on the same basis as that provided in § 701.32 for federal credit unions, provided, however that NCUA will not grant an exemption without the concurrence of the appropriate state regulator.

(b) Obtain a low-income designation in order to accept nonmember accounts, other than from public units or other credit unions, provided it has the authority to accept such accounts under state law. The state regulator shall make the low-income designation with the concurrence of the appropriate regional director. The designation will be made and reviewed by the state regulator on the same basis as that provided in § 701.32(d) for federal credit unions. Removal of the designation by the state regulator for such credit unions shall be with the concurrence of NCUA.

§ 741.205 Reporting requirements for credit unions that are newly chartered or in troubled condition.

Any federally insured credit union chartered for less than 2 years or any credit union defined to be in troubled condition as set forth in § 701.14(b)(3) of this chapter must adhere to the requirements stated in § 701.14(c) concerning the prior notice and NCUA review. Federally insured state-chartered credit unions must submit required information to both the appropriate NCUA Regional Director and their state supervisor. NCUA will consult with the state supervisor before making its determination pursuant to § 701.14(d)(2) and (f). NCUA will notify the state supervisor of its approval/disapproval no later than the time that it notifies the affected individual pursuant to § 701.14(d)(1).

§ 741.206 Corporate credit unions.

Any corporate credit union insured pursuant to Title II of the Act shall adhere to the requirements of part 704 of this chapter.

§ 741.207 Community development revolving loan program for credit unions.

Any credit union which is insured pursuant to Title II of the Act and is a ''participating credit union,'' as defined in § 705.3 of this chapter, shall adhere to the requirements stated in part 705 of this chapter.

§ 741.208 Mergers of federally insured credit unions: voluntary termination or conversion of insured status.

Any credit union which is insured pursuant to Title II of the Act and which merges with another credit union or non credit union institution, and any state-chartered credit union which voluntarily terminates its status as a federally-insured credit union, or converts from federal insurance to other insurance from a government or private source authorized to insure member accounts, shall adhere to the applicable requirements stated in Section 206 of the Act and parts 708a and 708b of this

chapter concerning mergers and voluntary termination or conversion of insured status.

§ 741.209 Management official interlocks.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements stated in part 711 of this chapter concerning management official interlocks, issued under the provisions of the Depository Institution Management Interlocks Act (12 U.S.C. 3201 et seq.).

§ 741.210 Central liquidity facility.

Any credit union which is insured pursuant to Title II of the Act and is a member of the Central Liquidity Facility, shall adhere to the requirements stated in part 725 of this chapter.

§ 741.211 Advertising.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements prescribed by part 740 of this chapter.

§ 741.212 Share insurance.

(a) Member share accounts received by any credit union which is insured pursuant to Title II of the Act in its usual course of business, including regular shares, share certificates, and share draft accounts, are insured subject to the limitations and rules in subpart A of part 745 of this chapter.

(b) The payment of share insurance and the appeal process applicable to any credit union which is insured pursuant to Title II of the Act are addressed in subpart B of part 745 of this chapter.

§ 741.213 Administrative actions, adjudicative hearings, rules of practice and procedure.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the applicable rules of practice and procedures for administrative actions and adjudicative hearings prescribed by part 747 of this chapter. Subpart E of part 747 applies only to federal credit unions.

§ 741.214 Report of crime or catastrophic act and bank Secrecy Act Compliance.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements stated in part 748 of this chapter.

§ 741.215 Records preservation program.

Any credit union which is insured pursuant to Title II of the Act shall maintain a records preservation program as prescribed by part 749 of this chapter.

§ 741.216 Flood insurance.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements stated in part 760 of this chapter.

§ 741.217 Truth in savings.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements stated in part 707 of this chapter.

§ 741.218 Involuntary liquidation and creditor claims.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the applicable provisions in part 709 of this chapter. Section 709.3 of part 709 applies only to federal credit unions.

[FR Doc. 95–18893 Filed 8–1–95; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ANM–3]

Proposed Alteration of Federal Airways V–19, V–148, and V–263; CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to realign three Federal airways located in Colorado. In May, the Byers, CO, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) became operational as part of the new Denver Airport airspace realignment. Consequently, the FAA is proposing to realign Federal Airways V–19, V–148, and V–263. This proposal would enhance air traffic procedures.

DATES: Comments must be received on or before August 18, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Docket No. 95–ANM–3, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal

Aviation Regulations (14 CFR part 71) to realign three Federal airways, V–19, V–148, and V–263, because of the commissioning of the Byers, CO, VOR/DME. This proposal would enhance air traffic procedures. Domestic VOR Federal airways are published in paragraph 6010(a) 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 Domestic VOR Federal airways 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. 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 as 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 the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–19 [Revised]

From Newman, TX, via INT Newman 286° and Truth or Consequences, NM, 159° radials; Truth or Consequences; INT Truth or Consequences 028° and Socorro, NM, 189° radials; Socorro; Albuquerque, NM; INT Albuquerque 036° and Santa Fe, NM, 245° radials; Santa Fe; Las Vegas, NM; Cimarron, NM; Pueblo, CO; Colorado Springs, CO; INT Colorado Springs 036° and Byers, CO, 211°T(201°M) radials; Byers; Gill, CO; Cheyenne, WY; Muddy Mountain, WY; 5 miles, 45 miles 71 MSL, Crazy Woman, WY; Sheridan, WY; Billings, MT; 38 miles 72 MSL, INT Billings 347° and Lewistown, MT, 104° radials; Lewistown; INT Lewistown 322° and Havre, MT, 226° radials; to Havre.

* * * * *

V–148 [Revised]

From Falcon, CO; Byers, CO; Thurman, CO; 65 MSL INT Thurman 067° and Hayes Center, NE, 246° radials; Hayes Center; North Platte, NE; O'Neill, NE; Sioux Falls, SD; Redwood Falls, MN; Gopher, MN; Hayward, WI; Ironwood, MI; to Houghton, MI.

* * * * *

V–263 [Revised]

From Corona, NM, INT Corona 278° and Albuquerque, NM, 160° radials; Albuquerque; INT Albuquerque 019° and Santa Fe, NM, 268° radials; Santa Fe; Las Vegas, NM; Cimarron, NM; Tobe, CO; 54 miles 69 MSL; Lamar, CO; 17 miles 63 MSL; Hugo, CO; Byers, CO; to Akron. From Pierre, SD; Aberdeen, SD.

* * * * *

Issued in Washington, DC, on July 26, 1995.

Reginald C. Matthews

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 95–18914 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–019A]

RIN 1218–AA51

Permit-Required Confined Spaces

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of informal public hearing; reopening of public comment period; correction.

SUMMARY: This notice schedules an informal public hearing concerning OSHA's proposal (59 FR 60735) to modify the existing rescue provisions of the standard (§ 1910.146) covering entry into permit-required confined spaces. The Agency requests that interested parties present testimony and evidence regarding the issues raised by the proposed revision and by this hearing notice. This notice also reopens the public comment period and corrects an error in the proposed revision.

DATES: An informal public hearing will begin at 9 a.m. on September 27, 1995 and on each succeeding day.

Notices of intention to appear at the informal pubic hearing, along with all testimony and evidence which will be introduced into the hearing record, must be postmarked by September 13, 1995.

Comments must be postmarked by September 13, 1995.

ADDRESSES: Notices of intention to appear at the hearing and testimony and documentary evidence which will be introduced into the hearing record must be submitted in quadruplicate to Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, room N3647, 200 Constitution Avenue N.W., Washington, D.C. 20210, telephone (202) 219–8615.

The informal public hearing will be held in the Frances Perkins Building auditorium, U.S. Department of Labor, 200 Constitution Avenue N.W., 20210.

FOR FURTHER INFORMATION CONTACT: *Hearings:* Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, room N3647, 200 Constitution Avenue N.W., Washington, D.C. 20210, telephone (202) 219–8615. *Proposal:* Mr. Richard E. Liblong, Office of Information, Division of Consumer Affairs, U.S. Department of Labor, room N3647, 200 Constitution Avenue N.W., Washington, D.C. 20210, telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: On January 14, 1993, the Occupational Safety and Health Administration (OSHA) issued a General Industry standard (§ 1910.146) to require protection for employees who enter permit-required confined spaces (permit spaces). The permit space standard, which provides a comprehensive regulatory framework for the safe performance of entry operations, became effective on April 15, 1995.

On March 15, 1993, the United Steelworkers of America (USWA) petitioned the United States Court of Appeals for the 11th Circuit for judicial review of § 1910.146. In particular, the USWA contended that § 1910.146(k)(2), which addresses the use of off-site rescue services, was vague and ineffective. The USWA also stated that OSHA had inappropriately omitted both a requirement for testing or monitoring performed to comply with the standard and a requirement for employees to

have access to testing or monitoring results.

Based on discussions with the USWA, OSHA agreed to initiate further rulemaking, issuing a notice of proposed rulemaking (NPRM) (59 FR 60735) on November 28, 1994. The proposed revisions to § 1910.146(k)(2) more clearly express what the Agency intended when it promulgated the permit space standard. They state specifically that host employers must ensure that prospective rescuers who are not employees of the host employer are able to respond to a rescue summons in a timely manner and are equipped and trained to perform permit space rescues at the host employer's facility.

In addition, based on information received subsequent to the promulgation of § 1910.146, OSHA proposed to make § 1910.146(k)(3)(i), which deals with the point of attachment for a retrieval line, more performance-oriented by allowing any point of attachment which enables the entrant's body to present the smallest possible profile during retrieval.

Also, the Agency asked for public input on the USWA's suggestion that OSHA add provisions which would require that employers provide for employee observation of permit space testing or monitoring, and that employers also provide employee access to the results of permit space testing or monitoring.

The NPRM set a 90 day comment period, ending on February 27, 1995, to receive written comments on the proposed revisions and the issues raised. OSHA received 51 written comments (Exs. 161–1 through 161–51). Several commenters (Ex. 161–21, 161–22, 161–38, 161–40, 161–44) required that OSHA convene an informal public hearing to address their concerns. The comments received in response to the proposed revision and issues raised are available for inspection and copying in the OSHA Docket Office, Docket No. S–019A, room N2625, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Based on the response to the NPRM, OSHA has decided to convene an informal public hearing, beginning on September 27, 1995, and to reopen the comment period to obtain public input regarding the need to more clearly express a host employer's responsibility to assess a prospective rescue service's capabilities (i.e., is equipped, trained, and can respond in a timely manner) and regarding the need for employee participation in testing and monitoring. The Agency requests that hearing participants and commenters provide supporting information for any recommendations, so OSHA can adequately assess these materials when drafting the final rule for this rulemaking.

Rescue and Emergency Services

Existing paragraph (k)(1) sets requirements for employers who have their own employees enter permit spaces to provide rescue and emergency services. The criteria set by this paragraph are designed to protect such employees from permit space hazards and to maximize their ability to provide effective rescue and emergency services. Paragraph (k)(1) applies both to rescuers employed by employers who are conducting permit space operations and to rescuers employed by outside rescue services, insofar as such employers are regulated by OSHA (State and local government employees in non-State Plan States are not covered).

OSHA's experience indicates that many employers who conduct permit space operations rely on off-site rescue services, such as those provided by local fire departments, in lieu of establishing an adequate rescue capability using their own employees. The Agency has acknowledged that there are circumstances where it is reasonable for ''host employers'' to rely on persons other than their own employees to provide rescue and emergency services. Accordingly, existing paragraph (k)(2) sets criteria for the use of such ''outside'' rescue and emergency services.

In particular, the host employer must provide the ''outside rescuers'' with pertinent information about the identified permit space hazards and give them access to any permit space from which rescue may be necessary, so that the rescue service can develop appropriate rescue plans and can practice performing rescues.

Pursuant to §§ 1910.146(d)(9) and (f)(11), the host employer is currently required to establish effective means of summoning rescuers and document those means in the entry permit. Unless non-entry rescue procedures have been implemented or the potential rescuers are standing by as entry operations proceed, some time will pass between the transmittal of the rescue summons and the retrieval of an entrant. OSHA expects affected employers to make arrangements for rescue which maximize the likelihood that entrants will be retrieved safely while minimizing the risks for potential rescuers.

However, in response to a submission (Ex. 1) from the United Steelworkers of America (USWA), the Agency has acknowledged (59 FR 60736) that the final rule may not have been sufficiently clear as to a ''host'' employer's responsibility for the performance of ''outside'' rescue services. Accordingly, the Agency has proposed to revise § 1910.146(k)(2) so the standard clearly indicates that ''host'' employers are required to retain rescue services that can respond adequately and in a timely fashion when summoned to perform rescues.

In response, some commenters (Exs. 161–9, 161–13, 161–31, 161–42 and 161–50) expressed support for the proposed revisions as the appropriate means to ensure that rescue services performed adequately. Those commenters indicated that compliance would pose no difficulties.

On the other hand, several commenters (Exs. 161–1, 161–2, 161–5, 161–6, 161–11 and 161–33) expressed concern that the proposed language appears to rule out the use of outside rescue services. Those commenters stated that OSHA should not discourage the use of off-site rescue services because there will be situations where affected employers have no viable alternative to relying on those services. Furthermore, those commenters have indicated that an ''off-site'' rescue service summoned by a ''host'' employer might well be able to respond at least as quickly and effectively as an ''on-site'' resuce service set up by the employer conducting entry operations.

One commenter (Ex. 161–1) expressed concern that ''[a]doption of this section as stated may force small inexperienced employers into establishing in-house resuce teams with little or no practical training.'' In addition, a commenter (Ex. 161–6) stated that ''[o]n-site rescue teams are usually comprised of electricians, pipefitters, maintenance workers and other craftspeople where rescue is a sideline. Whereas most on-site teams are only given a minimal amount of time to train, many off-site technical rescue teams do nothing but train for and run fire and rescue calls.'' However, another commenter (Ex. 161–40) stated that on-site employees, properly trained and equipped, would perform better than off-site rescue services, because on-site personnel would be familiar with the facility and closer to the spaces being entered.

In addition, the USWA (Ex. 161–38) commented as follows:

> In our June 22, 1993 letter, the USWA expressed concern that the provisions of the standard (primarily paragraph (k)(2)) allowing off-site rescue services were vague and ineffective. In subsequent discussions with OSHA and the DOL solicitors, we argued that only an on-site rescue service could respond in time to save the life of an

entrant overcome by a hazardous atmosphere, trapped by an engulfing liquid or solid, or critically injured by some other confined space hazard. We also pointed out that the standard imposes a number of requirements on on-site rescue services, but not on off-site services, thus giving employers an unwarranted incentive to choose off-site services.

Subsequent discussions with employers and professional rescue services, along with comments submitted to this docket [S–019A] by other parties, have caused us to modify that position. We remain skeptical that an off-site service can respond rapidly enough in most circumstances. We are, however, willing to admit the possibility. In addition, the mere fact that a rescue service is maintained on site is no guarantee that the service will reach the scene of an emergency on time, especially in a very large plant. Accordingly, we would support a performance-based approach to this issue, so long as the desired performance was spelled out with sufficient specificity, and so long as it applied to both on-site and off-site rescue services.

A number of commenters (Exs. 161–1, 161–14, 161–20, and 161–29) suggested that the Agency drop the proposed revisions to § 1910.146(k). For example, a commenter (Ex. 161–35) stated that the proposed revision ''places the host employer in an unenviable position of being held accountable for the performance of specified employee activities over which the host employer has no control.'' In addition, a commenter (Ex. 161–20) indicated that the rationale behind the proposed revisions failed to take into account the application of the requirements in existing § 1910.146(k)(1) to all employers (except some public sector employers) who send employees into permit spaces to perform rescues. That commenter also stated as follows:

Many employers will use off-site services because they do not have the specialized rescue training and experience of these organizations. If a host employer is utilizing the outside rescuer because it does not have the expertise to maintain a team in-house, how can the host determine, let alone be held accountable as to whether that expertise is ''functioning appropriately''? [emphasis in original]

Other commenters (Ex. 161–26, 161–37, 161–42, 161–46) suggested that any revision of existing § 1910.146(k) be limited to providing clear guidance regarding how to assess the relative merits of on-site and off-site options, and set performance criteria that would apply to *all* rescue services. These commenters were primarily concerned that the Agency apply the same criteria to all rescuers, whether on-site or off-site.

For example, several commenters (Exs. 161–23, 161–30, 161–38 and 161–45) asked that the Agency indicate clearly what constitutes ''timely'' response to a rescue summons. Some commenters. (Exs. 161–2, 161–6, 161–7 and 161–26) noted that rescuer proficiency was as important as the response time and suggested that OSHA set performance criteria for assessing the timeliness of response. Another commenter (Ex. 161–38) suggested that employers be required to have rescuers arrive within *four* minutes of summons where entrant has been exposed to atmospheric or engulfment hazards, and within *10* minutes otherwise.

One commenter (Ex. 161–25) stated as follows:

Even with well trained rescue personnel on-site, extracting an incapacitated person from a confined space while attempting to adminster first aid is not a quick process. Therefore, the fact that rescue capability happens to be off-site and perhaps is unfamiliar with the site's confined spaces may have little impact on the ultimate outcome of such an incident.

Another commenter (Ex. 161–39) recognized that a rescue service which responds to a permit space accident within four minutes will still need time to prepare for entry, making it ''impossible for an outside rescue service to * * * have oxygen to the patient within four minutes.'' However, that commenter stated ''if the rescuers can get to the patient close to this four-minute time frame, then a rescue may still be possible.''

Other commenters (Exs. 161–14, 161–20, 161–28 and 161–33) stated that OSHA should not attempt to specify what constitutes ''timeliness'' because the existing standard provides sufficient guidance regarding how to assess the adequacy of rescuer response in a specific situation. For example, a commenter (Ex. 161–33) stated as follows:

After careful deliberation, the Agency properly rejected any attempt to incorporate a timeliness requirement into the standard. Rather than adopting a timeliness requirement which would be infeasible, would encourage conduct likely to endanger rescuers, and inevitably would be subject to inconsistent enforcement through subjective (if not arbitrary) 20–20 hindsight, the Agency concluded ''that prevention of emergencies in permit spaces is the most effective approach to this problem.'' 58 FR 4527/1.

The Agency recognizes that permit space hazards vary in their capacity to kill or permanently injure employees and that what constitutes ''timely'' rescue will vary accordingly. A commenter (Ex. 161–6) has indicated that immediate rescue is not always imperative, because a slightly hypoxic environment may disable an entrant without creating a risk of permanent brain damage. Another commenter (Ex. 161–38) took issue with that comment, stating that OSHA must require rescue within the first few minutes, because the Agency cannot assume an environment is only slightly hypoxic.

Some atmospheric hazards can cause death or permanent injury within four to six minutes. However, rescuers responding from outside of the immediate area of the entry space would usually not be able to begin a rescue in four to six minutes. Therefore, the only way rescuers could successfully retrieve entrants under such circumstances would be to have personnel present and prepared to initiate rescue throughout the period of entry operations. One commenter (Ex. 161–33) has stated that the proposed rule appears to require ''a rescue team to be standing by immediately outside every space during every entry.'' The commenter indicated that such a measure would be inappropriate where there was ''non-emergency entry into a permit space.''

As stated both in the NPRM and elsewhere in this notice, OSHA intended this rulemaking simply to clarify the existing requirements of § 1910.146(k)(2). In particular, the Agency has attempted to indicate clearly that an employer who retains an off-site rescue and emergency service must ensure that the designated service has the equipment, training and overall ability to respond in a timely fashion when summoned to rescue a permit space entrant. OSHA does not thereby intend to require that host employers ''guarantee'' the performance of off-site services, to make compliance more burdensome for off-site services than for on-site services, or to prevent the use of off-site services. The Agency has consistently maintained that the purpose of § 1910.146(k) is to require that employers' provisions for rescue, by whatever means, are adequate. The proposed amendment to § 1910.146(k)(2) (59 FR 60735) was intended solely to clarify the original intent of that paragraph.

As amended, paragraph (k)(2) would read as follows:

(2) When an employer (host employer) arranges to have persons other than the host employer's employees (outside rescuer) perform permit space rescue, the host employer shall ensure that:

(i) The outside rescuer can effectively respond in a timely manner to a rescue summons.

(ii) The outside rescuer is equipped, trained and capable of functioning appropriately to perform permit space rescues at the host employer's facility.

(iii) The outside rescuer is aware of the hazards they may confront when called on to perform rescue at the host employer's facility.

(iv) The outside rescuer is provided with access to all permit spaces from which rescue may be necessary so that the outside rescuer can develop appropriate rescue plans and practice rescue operations.

The Agency requests testimony and further comment concerning both the need for and the adequacy of the proposed language. Does the proposed language adequately clarify the host employer's responsibilities in using the services of a rescue service not comprised of his own employees? If not, how can the proposed provisions be further improved? Is addition guidance necessary?

Two commenters (Ex. 161–2 and 161–44) have provided examples of programs for the proper organization, training and equipping of rescue services. The Agency solicits input regarding the extent to which it would be appropriate to incorporate criteria, such as that provided by the commenters, either as regulatory text or in a non-mandatory appendix.

Employee Participation in Testing and Monitoring

In response to a submission from the USWA (Ex. 1), the NPRM solicited comment as to whether § 1910.146 should be revised to require that affected employees, or their designated representatives, be permitted to observe the evaluation of confined space conditions, including any testing or monitoring conducted under the permit space standard. The USWA (Ex. 161–38), which requested a hearing on this issue, expressed support for incorporation of employee participation into the permit standard. In particular, the USWA stated that such a provision was required under section 8(c)(3) of the OSH Act, which provides for employee observation of monitoring performed to verity compliance with health standards. The commenter also stated ''A worker entering a confined space risks sudden death if the monitoring is not done properly. Surely that worker should have the right to observe the monitoring.''

Other commenters (Exs. 161–39 and 161–43) stated that it was appropriate to require employee participation in monitoring and testing because it would reassure employees that the results were accurate and reliable. In addition, a commenter (Ex. 161–40) indicated that employee participation in monitoring was an example of the approaches that could be used to involve workers in the development and implementation of a permit space program.

On the other hand, some commenters (Exs. 161–9, 161–12, 161–13, 161–25,161–30, 161–50) opposed the inclusion of a requirement for employee observation of monitoring, stating that existing § 1910.146 already addressed employee access to monitoring information and that the suggested requirement would impose unreasonable burdens and delays. Other commenters (Exs. 161–20, 161–26, 161–29, 161–35, 161–48) also stated that section 8(c)(3) of the OSH Act does not require employee participation in permit space monitoring, because § 1910.146 is a *safety* standard and the statute applies to the promulgation of *health* standards.

In addition, some commenters (Exs. 161–15, 161–27 and 161–35) stated that adoption of the suggested provision would intrude on labor/management relations by mandating collaboration, while other commenters (Exs. 161–26 and 161–49) expressed concern that such a requirement would raise safety problems because employees would be exposed to dangerous atmospheres. One other commenter (Ex. 161–45) stated that it was unnecessary to mandate employee participation, but that permit space programs should provide for the survey of a permit space at an affected employee's request, as a means of building trust that the employer is looking out for the well-being of the employees.

In response to the above-described comments, OSHA requests additional input regarding the need for regulatory language addressing employee participation in permit space monitoring.

Correction

In its notice of November 28, 1994 (59 FR 60735) OSHA made an error in the regulatory text portion of the proposed revision of paragraph (k)(3)(i). The preamble discussion (in the middle column of page 60738) makes it clear that OSHA intended to amend only the first sentence of paragraph (k)(3)(i). However, the proposed regulatory text (in the third column of page 60739) did not include the existing paragraph (k)(3)(i) language which provides for the use of wristlets, creating the impression that OSHA intended to disallow the use of wristlets. Indeed, several commenters (Exs. 161–20, 161–25, 161–26, 161–48) called the omission to the Agency's attention and expressed support for the retention of the sentence in the final rule. The exclusion of the sentence regarding the use of wristlets from the proposal was inadvertent. Therefore, the proposed revision to paragraph (k)(3)(i), of § 1910.146, beginning on the tenth line of the third column of page 60739, is corrected to read as follows:

(i) Each authorized entrant shall use a chest or full body harness, with a retrieval line attached at the center of the entrant's back near shoulder level, above the entrants head or other point which the employer can establish will ensure that the entrant will present the smallest possible profile during removal. Wristlets may be used in lieu of the chest or full body harness if the employer can demonstrate that the use or full body harness is infeasible or creates a greater hazard and that the use of wristlets is the safest and most effective alternative.

* * * * *

Public Participation—Notice of Hearing

Pursuant to section 6(b) of the act, an opportunity to submit oral testimony concerning the proposed revisions and issues raised will be provided at an informal public hearing scheduled to begin at 9 a.m. on September 27, 1995 in the auditorium of the Francis Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210. The hearing will be extended to subsequent days as necessary.

Notice of Intention To Appear

All persons desiring to participate at the hearing must file, in quadruplicate, a notice of intention to appear, postmarked on or before September 13, 1995. The notice must be addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket S–019A, room N3647, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 219–8615. The notice of intention to appear may also be transmitted by facsimile to (202) 219–5986, provided the original and 3 copies of the notice subsequently are sent to Mr. Hall.

The notices of intention to appear, which will be available for inspection and copying at the OSHA Technical Data Center Docket Office, room N2625, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 219–7894, must contain the following information:

(1) The name, address, and telephone number of each person wishing to appear;

(2) The capacity in which the person will appear;

(3) The approximate amount of time requested for the presentation;

(4) The specific issues that will be addressed;

(5) A statement of the position that will be taken with respect to each issue addressed, and;

(6) Whether the party expects to submit documentary evidence, and, if so, a brief summary of that evidence.

Filing of Testimony and Evidence Before the Hearing

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide, in quadruplicate, the complete text of the testimony, including any documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs. This material must be postmarked on or before September 13, 1995. These materials will be available for inspection and copying at the Technical Data Center Docket Office. The amount of time requested in each submission will be reviewed. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be provided appropriate notice.

Any party who has not substantially complied with the requirements for requesting more than 10 minutes of presentation time will be limited to a 10 minute presentation. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

The hearing will be open to the public, and any interested person is welcome to attend. However, only persons who have filed proper notice of intention to appear will be permitted to ask questions and otherwise participate fully in the proceeding.

Any participant who requires audiovisual equipment for their oral testimony must submit a request for such equipment in their notice of intent to appear, specifying the type of equipment needed.

Conduct and Nature of Hearing

The hearing will commence at 9 a.m. on September 27, 1995 in Washington, D.C. Any procedural matters relating to the hearing will be resolved immediately after commencement. The informal nature of the rulemaking hearing to be held is established in the legislative history of section 6 of the Act and is reflected in the OSHA hearing regulations (see 29 CFR 1911.15(a)). Although the presiding officer is an Administrative Law Judge and questioning by interested parties is allowed on the issues, it is clear that the hearing shall remain informal and legislative in type. The intent, in essence, is to provide an opportunity for effective oral presentation by interested parties which can be carried out expeditiously and in the absence of rigid procedures which might unduly impede or protract the rulemaking process.

The hearing will be conducted in accordance with 29 CFR part 1911. The hearing will be presided over by an Administrative Law Judge who will have all the necessary and appropriate authority to conduct a full and fair informal hearing as provided in 29 CFR 1911, including the powers to:

(1) Regulate the course of the proceedings;

(2) Dispose of procedural requests, objections and comparable matters;

(3) Confine the presentation to the matters pertinent to the issues raised;

(4) Regulate the conduct of those present at the hearing by appropriate means;

(5) In the Judge's discretion, question and permit the questioning of any witness and to limit the time for questioning, and;

(6) In the Judge's discretion, keep the record open for a reasonable, stated time to receive written information and additional data, views and arguments from any person who participated in the oral proceedings.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of the final standard.

The proposed revisions and issues raised will be reviewed in light of all testimony and written submissions received as part of the record. Decisions made by OSHA concerning the proposed revisions and issues will be based on the entire record of the proceeding, including the written comments and data received from the public.

Written Comments

Interested persons are invited to submit written data, views and arguments with respect to the issues raised in this notice. These comments must be postmarked on or before September 13, 1995, and submitted in quadruplicate to the Docket Office, Docket No. S–019A, room N–2625, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 219–7894. Comments limited to 10 pages or less also may be transmitted by facsimile to (202) 219–5046, provided the original and three copies are sent to the Docket Office thereafter. Written submissions must clearly identify the issue addressed and the position taken with respect to each issue.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address.

All timely written submissions will be made a part of the record for this proceeding.

Authority and Signature

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033) and 29 CFR part 1911.

Signed at Washington, D.C. this 28th day of July, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–18920 Filed 8–1–95; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 220

Collection From Third Party Payers of Reasonable Costs of Healthcare Services

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a new rule under the Third Party Collection program for determining the reasonable costs of health care services provided by facilities of the uniformed services in cases in which care is provided under TRICARE Resource Sharing Agreements. For purposes of the Third Party Collection program such services will be treated the same as other services provided by facilities of the uniformed services. The proposed rule also lowers the high cost ancillary threshold value from $60 to $25 for patients that come to the uniformed services facility for ancillary services requested by a source other than a uniformed services facility provider. The reasonable costs of such services will be accumulated on a daily basis.

DATES: Written comments on this proposed rule must be received on or before October 2, 1995.

ADDRESSES: LCDR Pat Kelly, Office of the Assistant Secretary of Defense

(Health Affairs), Health Services Operations and Readiness, Pentagon Room 3E343, Washington, D.C. 20301–1200.

FOR FURTHER INFORMATION CONTACT: LCDR Patrick Kelly, (703) 756–8910.

SUPPLEMENTARY INFORMATION: Currently, the Third Party Collection program regulation includes a special rule for Partnership Program providers. The Partnership Program allows civilian health care providers authorized to provide care under the CHAMPUS program to provide services to CHAMPUS beneficiaries in military hospitals and to receive payment from the CHAMPUS program. Pursuant to CHAMPUS payment rules, CHAMPUS is always the secondary payer to other health insurance plans; Thus, CHAMPUS may not make payment to the Partnership Program provider in cases in which the beneficiary has other health insurance. To accommodate this CHAMPUS requirement, the third Party Collection program currently excludes Partnership Program provider services from the military hospital claims. Thus, for example, for inpatient hospital care, the Third Party Payer now receives two claims, one from the military facility for the hospital and ancillary costs, and a separate claim from the provider for the professional services.

The current practice has produced some confusion in that it is a departure from the normal procedure for claims arising from care provided by military hospitals. In addition, because the Partnership Program providers function independently from the military hospital's management system, there are no DoD standards that govern the amounts claimed by various Partnership Program providers.

DoD is now proceeding with implementation of a major managed care program, called TRICARE, in its military medical treatment facilities and CHAMPUS. Under TRICARE, regional managed care support contractors will work with military treatment facilities on a wide range of managed care activities. Among the activities of the managed care contractors is the Resource Sharing Program. Under this program, the contractor makes agreements with military hospitals in the region under which the contractor will supply personnel and other resources in order to allow the facility to increase the services it can make available to DoD health care beneficiaries. The TRICARE program is now the subject of a separate rulemaking proceeding, which will result in comprehensive regulations codified at 32 CFR 199.17.

TRICARE Resource Sharing Agreements are similar to Partnership Program payment arrangements in that both result in civilian providers coming into the military facility and providing care in that facility. However, a significant difference exists in the method of payment. Under the Partnership Program, payment is on a fee-for-service basis under the normal operation of the CHAMPUS program. Under Resource Sharing, the method of payment may be on a salary basis or other arrangement made by the managed care support contractor. Under the Partnership Program, the CHAMPUS second payer requirement applies. Under Resource Sharing Agreements, the overall managed care contract separates the financing from the normal CHAMPUS payment rules and allows for special payment rules.

Based on this, we are establishing a special rule for Resource Sharing Agreements. Or, more accurately, we are establishing the normal rule for Resource Sharing Agreements. That is to say that care provided in whole or in part through TRICARE Resource Sharing Agreements will be handled for purposes of third party billings just like all other services provided in the military facility, and will be billed at the same rates. The special rule applicable to the Partnership Program providers, under which two claims are made to the third party payer, will not apply under TRICARE Resource Sharing Agreements. As a result, care provided in military facilities will be billed to third party payers in the same manner and same amount, regardless of whether the professional services were provided by a military physician or Resource Sharing Agreement provider.

The TRICARE program is being phased in region-by-region throughout the United States. As it takes hold, we expect the Partnership Program to be phased out and be replaced by TRICARE Resource Sharing Agreements. Thus, in several years, the special Partnerhship Program rule will no longer be needed, and the simpler, single-claim rule for TRICARE Resource Sharing Agreements will apply. We view this as both a simplification and an improvement in the Third Party Collection program.

With respect to regulatory procedures, this proposed rule is not a significant regulatory action under Executive Order 12866, nor does it significantly affect a substantial number of small entities under the Regulatory Flexibility Act, nor impose new information collection requirements under the Paperwork Reduction Act. This is a proposed rule. All public comments are invited. We expect to proceed with promulgation of a final rule within approximately 60 days after close of the comment period.

List of Subjects in 32 CFR Part 220

Claims, Health care, Health insurance.

For the reasons stated in the preamble, 32 CFR part 220 is proposed to be amended as follows:

PART 220—COLLECTION FROM THIRD PARTY PAYERS OF REASONABLE COSTS OF HEALTHCARE SERVICES

1. The authority citation for part 220 continues to read as follows:

Authority: 5 U.S.C 301; 10 U.S.C. 1095.

2. Section 220.8 is amended by revising paragraphs (h) and (k) to read as follows:

§ 220.8 Reasonable costs.

* * * * *

(h) *Special rule for certain ancillary services ordered by outside providers and provided by a facility of the Uniformed Services.* If a Uniformed Services facility provides certain ancillary services, prescription drugs or other procedures requested by a source other than a Uniformed Services facility and are not incident to any outpatient visit or inpatient services, the reasonable cost will not be based on the usual DRG or per visit rate. Rather, a separate standard rate shall be established based on the accumulated cost of the particular services, drugs, or procedures provided during one day. The billing threshold shall be published annually. For fiscal year 1996 that threshold limit shall be $25. The reasonable cost for the services, drugs or procedures to which this special rule applies shall be calculated and made available to the public annually.

* * * * *

(k) *Special rules for TRICARE Resource Sharing Agreements and Partnership Program providers.*

(1) *In general.* This paragraph (k) establishes special Third Party Collection program rules for TRICARE Resource Sharing Agreements and Partnership Program providers.

(i) TRICARE Resource Sharing Agreements are agreements under the authority of 10 U.S.C. 1096 and 1097 between uniformed services treatment facilities and TRICARE managed care support contractors under which the TRICARE managed care support contractor provides personnel and other resources to the uniformed services treatment facility concerned in order to help the facility increase the availability of health care services for beneficiaries. TRICARE is the managed care program authorized by 10 U.S.C. 1097 (and

several other statutory provisions) and established by regulation at 32 CFR 199.17.

(ii) Partnership Program providers provide services in facilities of the uniformed services under the authority of 10 U.S.C. 1096 and the CHAMPUS program. They are similar to providers providing services under TRICARE Resource Sharing Agreements, except that payment arrangements are different. Those functioning under TRICARE Resource Sharing Agreements are under special payment arrangements with the TRICARE managed care contractor; those under the Partnership Program file claims under the standard CHAMPUS program on a fee-for-service basis.

(2) *Special rule for TRICARE Resource Sharing Agreements.* Services provided in facilities of the uniformed services in whole or in part through personnel or other resources supplied under a TRICARE Resource Sharing Agreement are considered for purposes of this Part as services provided by the facility of the uniformed services. Thus, third party payers will receive a claim for such services in the same manner and for the same costs as any similar services provided by a facility of the uniformed services.

(3) *Special rule for Partnership Program providers.* For inpatient services for which the professional provider services were provided by a Partnership Program provider, the professional charges component of the total inpatient DRG rate will be deleted from the claim from the facility of the uniformed services. The third party payer will receive a separate claim for professional services directly from the individual health care provider. The same is true for the professional services provided on an outpatient basis under the Partnership Program. Claims from Partnership Program providers are not covered by 10 U.S.C. 1095 or this part, but are governed by statutory and regulatory requirements of the CHAMPUS program.

* * * * *

July 28, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18961 Filed 8–1–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–95–023]

RIN 2115–AE47

Drawbridge Operation Regulations; Chicago River, Illinois

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; notice of public hearing.

SUMMARY: The Coast Guard is proposing changing the operating regulations governing the drawbridges over the Chicago River system, most of which are owned and operated by the City of Chicago. This proposed rule would establish the times when, and the conditions under which, the bridges need to open for the passage of commercial and recreational vessels, and require advance notice of a recreational vessel's time of intended passage through the bridges. Special provisions would be added to provide drawbridge openings for flotillas of five or more recreational vessels. The proposed regulations have one set of rules for the period of high vessel activity, 1 April through 30 November, and other rules for the remainder of the year. Further, certain bridges on the North Branch of the Chicago River have been deleted from the previous permanent rule because they no longer exist or are no longer in the route of commercial or recreational vessels. The changes are being proposed in response to a request by the City of Chicago to reduce the number of required bridge openings. That request was premised on the unique situation in Chicago, where 26 bridges cross the Chicago River and its North and South branches in the very heart of the City. As a result, City officials asserted that drawbridge openings in Chicago have a greater potential impact on vehicular traffic than in any other major city in the United States. This action should accommodate the needs of vehicle traffic while providing for the reasonable needs of navigation. The Coast Guard will hold a public hearing on this proposal on August 22, 1995, in Chicago, IL.

DATES: Written comments on this proposed rulemaking must be received by August 30, 1995.

The hearing will be held on August 22, 1995, from 7 p.m. until 11 p.m.

ADDRESSES: Comments should be addressed to, and documents referenced in this preamble are available for inspection and copying at, the office of the Commander (obr), Ninth Coast Guard District, room 2083, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, between 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The public hearing on August 22, 1995 will be held at the Ralph H. Metcalfe Federal Building, 77 West Jackson Street, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn Malone, Bridge Branch, Ninth Coast Guard District, (216) 522–3993.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document were: Commander James M. Collin, U.S. Coast Guard, and Project Counsel; Mr. A.F. Bridgman, Jr., Chief, Regulations and Administrative Law Division, U.S. Coast Guard.

Request for Comments

The Coast Guard encourages interested persons to submit written data or views concerning this proposed rule. Persons submitting comments should include their names and addresses and identify this notice [CGD09–95–023]. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period. The comment period has been limited to August 30, 1995, in order to enable the Coast Guard to have a final rule in effect by the end of the boating season.

Public Hearing

The Coast Guard will hold a public hearing on this proposal on August 22, 1995, from 7 p.m. until 11 p.m. at the Ralph H. Metcalfe Federal Building, 77 West Jackson Street, Chicago, IL 60604. Attendance at the hearing is open to the public. Persons wishing to make oral presentations should notify Ms. Carolyn Malone at the number listed under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted at the hearing for inclusion in the public docket. Individuals making oral presentations at the hearing are encouraged to submit a written copy of their remarks for the rulemaking docket.

Regulatory History

Since the 1970's, the regulations for the operation of the bridges on the

Chicago River had provided for on signal openings seven days a week, except during rush hours Monday through Fridays. This regulation is referred to as the ''permanent rule.'' On May 12, 1993, under the provisions of 33 CFR 117.43, the Coast Guard published (58 FR 27933) a deviation from the permanent rule to allow the City of Chicago to limit weekday openings for recreational vessels, to require advance notice for opening, and to require the recreational vessels to be organized in flotillas of five to twenty-five vessels for passage. Deviations such as this for not more than 90 days are utilized to evaluate suggested changes to drawbridge operation requirements. Subsequent deviations, with varying requirements, were published on June 16 (58 FR 33191), August 12 (58 FR 42856), October 21 (58 FR 54289) and November 29, 1993 (58 FR 62532).

On Wednesday, December 22, 1993, the Coast Guard published a notice of proposed rulemaking and notice of public hearing entitled Drawbridge Operation Regulation: Chicago River, IL (58 FR 67745). The Coast Guard received 132 letters commenting on this proposal. A public hearing was held on January 20, 1994 in Chicago, Illinois, attended by 107 persons, of whom 32 made oral statements or furnished data on the proposed regulations.

Following this notice and comment rulemaking, on April 18, 1994, the Coast Guard promulgated a new final rule for drawbridge operations on the Chicago River. This rule provided for evening openings on Tuesday and Thursday, Saturday and Sunday openings during the day, and Wednesday daylight openings from April 15 through June 15. It also specified a flotilla size of between 5 and 25 vessels.

On September 26, 1994, the United States District Court for the District of Columbia issued an order in the case of *Crowley's Yacht Yard, Inc., Plaintiff,* v. *Federico Pena, Secretary, United States Department of Transportation, Defendant,* (C.A. No. 94–1152 SSH), rescinding the new final rule published on April 18, 1994, and reinstating the previous regulations or permanent rule. The Court's decision was based on its conclusion that there was not a sufficient basis in the administrative record to support the Coast Guard's decision to allow weekday daylight openings only in the spring, and its view that a traffic study provided by the City was suspect since it took place in part during the ''Taste of Chicago'' festival, which resulted in increased vehicular traffic.

As a result of the Court decision and to gather data for future use, the District Commander authorized a temporary deviation to the permanent rule for the period October 11, 1994 through December 5, 1994. A notice of this deviation, soliciting comments on the effect of the deviation, was published on October 24, 1994 (59 FR 53351). The deviation provided for openings of bridges, with a twenty-four hour advance notice to the City of Chicago, from 7 a.m. to 7 p.m. on Saturdays and Sundays, and on Wednesdays between the hours of 6:30 p.m. and 10 p.m., throughout the entire period. In addition, from October 11 through October 23 the draws were to be opened between the hours of 10:30 a.m. to 1:30 p.m. on Tuesdays and Thursdays, and from October 23 through December 5 the draws were to be opened for vessel passage between the hours of 10:30 a.m. and 1:30 p.m. on Wednesdays. Flotilla size was specified. The Coast Guard decided on this approach since it was consonant with public comments on behalf of the City and its citizens urging that ''on demand'' openings should not continue, and also with the boatyards which had stated that some weekday openings were necessary. Moreover, the schedule set forth in this deviation accommodated the Court's concern by providing weekday openings during the fall season.

The comment period ended on January 15, 1995. The Coast Guard received twenty-one comments on this deviation. The City expressed opposition to any new permanent regulation for the spring 1995 breakout. In support of its position, the City provided data concerning the number of boat runs during the preceding spring and fall seasons, including the number of boats traversing through the drawbridges and the number of times the individual drawbridges were opened and delays that occurred. The City was unable to provide a vehicular traffic count for the fall, but stated that it would provide traffic count statistics for the spring season. The City urged a deviation schedule allowing one weekday daylight opening and weekend openings. Comments from the boatyards favored the existing regulatory structure and also opposed a new permanent regulation for the spring breakout. Thirteen of the other twenty comments favored no change to the existing regulations and expressed opposition to establishing minimum and maximum flotilla sizes. Other comments indicated that, if a change is necessary, there should be weekday daylight openings and expressed opposition to flotilla sizes.

On February 16, 1995 (60 FR 8941), the Coast Guard published a Notice of Intent to issue a temporary deviation for the spring breakout and announced a public hearing to discuss the proposed schedule in the deviation. The proposed deviation would have required the draws to open, except during rush-hours, for recreational vessels that had provided twenty-four hours notice of their intended passage through the draws. This proposal was published to provide a basis for discussion and comment. The proposal explicitly noted that any deviation ultimately issued for the spring 1995 season might differ as a result of comments received and positions expressed during the course of a public hearing scheduled for March 9, 1995.

The hearing provided all concerned parties with the opportunity to present oral and written statements, with supporting data, to the Coast Guard for evaluation to determine if any revisions should be made to the proposed deviation. A Coast Guard representative presided at the hearing which was well attended. In addition to individual comments by boaters and other interested persons, there were multiple presentations, primarily by representatives of three interested groups: the City of Chicago, the boatyards, and national level maritime organizations.

The vast majority of the 68 written comments were received from a wide variety of Chicago civic organizations and businesses, including property owners and managers and developers. Individual businesses commenting ranged from taxi companies and delivery services to Union Station, AMTRAK, and De Paul University. The City of Chicago, including the Chicago Police Department and members of the Chicago City Council, also submitted comments and additional data. These comments opposed the temporary deviation which would have allowed unrestricted weekday openings, other than during rush hours, and urged that openings be limited to weekends and evenings. They vigorously opposed any daytime weekday openings. The boating organizations and the boatyards favored a 24-hour notification with no additional restrictions other than during rush hours.

At the public hearing, City representatives stated that they have determined that weekday daylight openings are not necessary, since all outgoing and incoming vessels can be accommodated on weekends. They stated that weekday openings are too disruptive to emergency services, commercial vehicular traffic during business hours, and pedestrian and midday vehicular traffic.

Representatives of commercial interests stated their opposition to weekday openings due to disruption of deliveries, public transportation, and emergency services. Representatives of the boatyards stated that the permanent regulation in effect should not be modified until data are collected for an entire navigation season. They discussed their practice of voluntarily arranging flotillas to minimize the number of openings required, and asserted there was a need for individual vessels to transit the Chicago River system in order to obtain routine servicing or repairs. They asserted that failure to provide convenient access to the boatyards seriously affected their business, citing a reduction in the number of vessels utilizing their yards for winter storage as well as a decline in income from repairs. Representatives of the boaters stated that not all boats can participate in weekend flotillas, but they can join weekday daylight flotillas. In their opinion, nighttime navigation is not conducive to safety. Individual boaters also expressed concern over the safety of large flotillas transitting the confined waters of the Chicago River system. Representatives of national manufacturing and boating interests expressed concern that the right of free navigation was being unduly restricted by the proposed temporary deviation, and that if the Coast Guard restricted openings on the Chicago River, it would be a precedent for restricting navigation elsewhere.

As a result of the public hearing and a reassessment of all the comments received, the Coast Guard promulgated a temporary deviation to the operating schedule of the Chicago River Bridges on April 10, 1995 (60 FR 18006) covering the period from April 15, 1995 to July 13, 1995. The temporary deviation featured daytime and evening openings on Tuesdays and Thursdays as well as weekend openings, flotilla maximums, and 24-hour advance notice prior to opening. The temporary deviation recognized the concerns of the City and business interests by limiting weekday openings. It also addressed the concerns expressed by the boatyards and boaters by not requiring a minimum flotilla size and by providing for transits on four days of the week. The advance notice requirement was selected as being adequate to allow scheduling of bridge openings by the City, but responsive to unanticipated needs for transits by boats. It provided the basis for comparing the merits of an alternative schedule with previously imposed schedules. Simultaneously, the Coast Guard published on April 10, 1995 (60 FR 18061) a Notice of Intent to form a negotiated rulemaking committee to bring together representatives of all affected parties to attempt to reach consensus on a new permanent rule.

On May 18, 1995, the United States District Court for the District of Columbia vacated the April 10, 1995 temporary deviation and reinstated the permanent rule in effect previously, codified at 33 C.F.R. 117.391 (1993). The Court's decision was premised on its conclusion that the Coast Guard's authority to issue temporary deviations is subject to the Administrative Procedures Act constraints and that, while the Coast Guard had provided notice, comment, and a hearing, the Court did not have before it the administrative record on which the decision was based. Although the reinstated permanent rule provides for opening the bridges ''on signal'' except during rush hours, the drawbridges have been operating on scheduled weekend and limited weekday openings through voluntary cooperative agreements between the principal boatyards and the City.

Negotiated Rulemaking

As detailed above, there have been a wide variety of temporary deviations and one permanent rule addressing bridge operating schedules on the Chicago River. In addition, there have been two court challenges that have overturned these schedules and reinstated the pre-1993 operating regulations. There have also been periods of voluntary cooperation when boatyard owners and City representatives have worked together to established scheduled openings within regulatory parameters. All of these activities have supported the idea that a formal negotiated rulemaking leading to a meeting of the minds and cooperation by all interested parties would provide the best chance for successful rulemaking. Utilizing an experienced and impartial facilitator, the Coast Guard contacted representatives of the City, commercial interests, boatyards, and boaters, and determined that they would participate in a negotiated rulemaking and received their assurances they would negotiate in good faith.

In light of the difficulties experienced in arriving at a drawbridge rule that best accommodates the needs of vehicular and boating traffic, as required by the 1988 amendment to 33 U.S.C. 499 which provides that rules and regulations governing drawbridges shall, to the extent practical and feasible, provide for regularly scheduled openings that would help reduce motor vehicle traffic delays and congestion, the Coast Guard chartered a negotiated rulemaking committee in accordance with the Federal Advisory Committee Act (5 U.S.C. App) (FACA). The negotiating committee, consisting of representatives of the City of Chicago, Chicago commercial interests, boatyards on the Chicago River system, the Chicago Yachting Association, and the Coast Guard, met to share views and attempted to come to consensus on the best possible operating parameters for the operation of the City of Chicago bridges. The committee met under the guidance of an experienced neutral facilitator, on June 5, 14, 20, 28 and July 12, 1995. During the day-long sessions the committee engaged in detailed discussions concerning the history of drawbridge operations, future concerns, and the goals sought by the interest groups represented. Despite a full and frank exchange of views, the presentation of several alternatives by the Coast Guard, and modifications suggested by members, the committee was unable to come to consensus on an appropriate operating schedule for the bridges. As stated in the notice announcing the establishment of the negotiated rulemaking committee, the Coast Guard is committed to proceeding with notice and comment rulemaking procedures in order to have a final rule in place by the end of the boating season in the fall, 1995, when recreational vessels leave Lake Michigan for winter storage. Accordingly, the Coast Guard has published this notice of proposed rulemaking and has scheduled a public hearing. In the absence of a consensus-based rule, this proposal is based on the extensive administrative record that the Coast Guard has assembled to date.

Summary of Issues

When the City of Chicago first came to the Coast Guard in 1993 with a request to change the bridge regulation that had been in existence since the 1970's, the Coast Guard began looking at whether that ''on demand'' regulation was appropriate. A primary factor in this review was the statutory change in 1988 that specifically requires the Coast Guard to balance land and water transportation needs. As amended in 1988, 33 U.S.C. 499 provides that rules and regulations governing drawbridges shall, to the extent practical and feasible, provide for regularly scheduled openings of drawbridges during seasons of the year, and during times of the day, when scheduled openings would help reduce motor vehicle traffic delays and congestion on roads and highways linked by drawbridges. As noted above, and detailed more fully below, Chicago

is unique in that no other major city has so many drawbridges incorporated into a downtown web of thoroughfares. Thus the potential for disruption of vehicular traffic related to openings of the drawbridges is greater in Chicago than in any other major city in the United States.

In recent years the number of boatyards on the Chicago River system has decreased. There also has been evidence of physical deterioration in bridge operations. Due to changes in the number of personnel utilized by the City to open the bridges, costs associated with operating the bridges have increased. Expanded commercial development outside of Chicago's ''Loop'' business district has generated additional vehicular and pedestrian traffic demands, raising concerns from City commercial interests as well as City officials. As a result, there has been growing disbelief on the part of the City and boatyards that voluntary cooperation among them would continue to provide for mutually satisfactory drawbridge operations. The City has desired increased predictability and a move away from an ''on demand'' opening schedule that leaves the City at the mercy of any boater's request to have up to 26 bridges, most owned by the City, open on demand. The City has asserted that the existing rule cost the City thousands of dollars in labor, caused thousands of hours of vehicle and pedestrian delay for each series of bridge openings, and benefited only a relatively few boat owners who chose to traverse the Chicago River without lowering the masts on their vessels. The boatyard owners also have wanted predictable drawbridge openings but were concerned that limited openings, particularly during weekday daylight hours, would adversely affect their business. The boaters were concerned that individual boaters would continue to have reasonable opportunity to traverse the river.

At the outset, the Coast Guard recognized that the situation involving the drawbridges over the Chicago River and its branches was both complex and unique. The Chicago River and the North and South branches divide the core portion of the third largest city in the United States into three segments. The main branch virtually bisects the downtown area, at the North edge of the Chicago Loop. There is virtually no vessel destination in the main branch. Recreational vessels that require bridge openings normally transit the entire main branch segment enroute to destinations on either Lake Michigan or the North or South branches, thus requiring the opening of all ten bridges over the main branch. In addition, due to the confined nature of the Chicago River and the close proximity of the bridges, few recreational sailing vessels ''cruise'' on the river. These circumstances are drastically different from the normal situations addressed by drawbridge regulations. Virtually all of the Coast Guard's drawbridge regulations concern single bridges. The procedures and guidance in the Bridge Administration Manual (COMDTINST M16590.5A) primarily address those normal situations. Accordingly, in the Chicago situation the Coast Guard adopted a systems approach to analyzing the need for changes to the existing rules and, if changes were found to be appropriate, the nature of those changes. It was recognized that unique solutions might be required and that any revised rules that resulted should not be considered as setting a precedent for the drawbridge regulations where normal navigational and land traffic exists.

In addition, the Coast Guard realized that it was necessary to distinguish between the provisions of the existing permanent rule and the practices that had been followed, on a voluntary basis, in earlier years and during more recent times. The existing rule requires the bridges to be opened on demand, and bridge logs for the years prior to 1993 showed that bridges were opened frequently, during weekday daylight hours, for single vessel transits. In 1992, apparently related to an accident involving the Michigan Avenue bridge and the flooding of a tunnel under the main branch of the river, the City desired to limit weekday daylight openings, concentrate openings on weekends, and arrange for recreational vessels to transit in flotillas. Since 1993, weekday daylight openings have been limited through the voluntary practices of the boatyards in grouping vessels into flotillas for transits, particularly during the spring breakout and the return to winter storage in the fall. While this practice has worked, with varying degrees of friction, to limit the number of drawbridge openings and the consequent impact on land traffic, the statute obligates the Coast Guard to regulate drawbridge openings, where necessary. If there is a need to restrict the number of openings of the drawbridges over the Chicago River, the Coast Guard cannot leave it to the good will of the boatyard owners and individual boaters to limit their requests for openings. There are no market forces available to balance the needs of the recreational boater and the citizens of the City. It is the Coast Guard's obligation to promulgate a rule which will balance the needs of land and maritime transportation and that clearly sets forth the rights and obligations of the bridge owner and the vessel owners.

It should be noted that the proposed rulemaking does not govern all the drawbridges on the Chicago River. The proposal only affects the bridges owned or operated by the City. With the exception of bridges which carry Chicago Transit Authority trains, the bridges carry vehicular and pedestrian traffic. There are four railroad bridges, not owned by the City, that are manned by bridge tenders 24 hours a day. These bridges would continue to open on signal for both commercial and recreational vessels.

Summary of Comments

Over the course of the history outlined above there have been two public hearings and many comments from a wide variety of special and public groups as well as individuals. Positions over the course of this two and one-half year process have run the spectrum from opening the bridges on demand, with no flotilla or advance notice restrictions, to opening only on weekends with a variety of restrictions. The following discussion briefly summarizes the positions of the interested parties, which have remained essentially unchanged since the City first requested a change to the existing regulations.

The City representatives have urged that weekday daylight openings are not necessary, since all outgoing and incoming vessels can be accommodated on weekends. Weekday openings are too disruptive to commercial vehicular traffic during business hours, emergency services, and midday pedestrian, public transit, and vehicular traffic. The City has submitted lengthy comments and data concerning the problems caused by multiple openings and the costs associated with maintaining and operating the aging drawbridges. Representatives of the City have attended hearings and discussed the potential impact of bridge openings on emergency response by police, fire, and rescue vehicles. In addition, City representatives have commented on the detrimental effects of vehicle delays on the environment and commercial development. The comments submitted on behalf of the City particularly oppose on demand openings.

Businesses in Chicago are not in favor of weekday daylight openings due to disruption of deliveries, public transportation, and emergency services. Comments to this effect have been received from taxi companies, couriers,

parcel delivery companies, an ambulance company, hotels, a bank, parking companies, property management firms, De Paul University, Union Station, AMTRAK, and business associations. The commercial and business interest comments particularly oppose on demand openings.

Representatives of the boatyards contended that predictable and readily available openings are essential to their continued business viability. They urged that provision for passage of single vessels must be retained and the rules should be as flexible as possible to account for peak traffic and unexpected vessels. They also urged that the regulations presently in effect should not be modified until data are collected for an entire navigation season to depict seasonal changes of impact.

Boating interests urged that requiring flotillas was too restrictive of the right to navigation and that openings during the weekday daylight hours were essential. Boating interests and individual boaters generally supported on demand openings, although some comments indicated that limited restrictions on weekday openings would be acceptable. They also indicated that if a change was necessary, there should be daylight openings during the weekdays and openings should not be restricted to strictly nighttime hours from Monday through Friday. Concerns were expressed about the difficulties encountered in arranging flotillas and the hazards to safe navigation presented by large numbers of vessels transiting the confined waters of the Chicago River. Some concerns were also expressed over the increased hazards to safety inherent in transiting the Chicago River and navigating on Lake Michigan at night.

The above summary contains the essence of the comments received by the Coast Guard over the past two and one-half years. The record of comments and data is voluminous. Some of the comments are duplicative, having been submitted directly to the Coast Guard and also included in submissions by the City. Extracts from the comments and references to the data can be found in the documents filed by both the plaintiff and the defendant in the litigation outlined above, copies of which have been included in the public record of this rulemaking.

The Coast Guard will continue to consider all comments previously received and all comments submitted in response to this notice of proposed rulemaking. It is not necessary to resubmit comments or data previously filed. Comments are desired that specifically address the methodology employed by the Coast Guard in developing the proposed rule, as discussed below, the data on which the proposal is based, or that provide new data.

Proposed Rule

In light of all the comments thus far received, in writing and during public hearings, the Coast Guard is proposing a rule that it believes best accommodates the needs of the City and its citizens, the commercial interests, the boatyards, and the individual boater, while still conforming to the statutory mandate which, in the Coast Guard's view, requires balancing the requirement that drawbridges be opened for the passage of vessels with the requirement that, to the extent practical and feasible, the regulations should provide for scheduled openings that would help reduce motor vehicle delay and congestion.

The proposed regulation would have different rules apply to the period of high vessel activity from April 1 through November 30 of each year and the period of low activity, from December 1 through March 31 of the following year. As data, written comments, and presentations at hearings show, the recreational boating season is over well before November 30 and from December 1 through March 30 there is little vessel traffic on the Chicago River. The current regulations provide different rules for the period from April 1 through December 31, and January 1 through March 31, each year.

Other than the above change, the proposed rules maintain the existing provisions for commercial vessels. Editorial changes have been made to clarify the rules and adopt a new format, which separates the regulations for commercial vessels from those for recreational vessels. The proposed rules also eliminate reference to some bridges which no longer exist.

For recreational vessels, the existing permanent rule provides that bridges will open on signal from April 1 through December 31, except for specified rush hours. In some cases, where bridges are not continually manned, a delay of up to 30 minutes is permitted before opening the bridge. The proposed rules would impose the following limitations:

(1) On Saturdays and Sundays openings to accommodate two transits would be available each day, if requested 20 hours in advance of the intended time of passage, without regard to the number of vessels.

(2) Weekday daytime openings, with no minimum flotilla requirement, would be limited to Wednesday morning, with 20-hour advance notice.

(3) On Monday and Friday evenings, after 6:30 p.m., the bridges would be required to open to accommodate transits, if requested 6 hours in advance, with no minimum flotilla requirement.

(4) In addition to the above openings, which would be available for the passage of one or more vessels, supplemental openings could be scheduled for flotillas of 5 or more vessels, with 20-hour advance notice. These openings could not be requested for rush hour periods.

(5) If requests were received for both outbound and inbound transits, the inbound transit would be scheduled to commence after the outbound transit had cleared Lakeshore Drive, so that only one opening of the Lakeshore Drive bridge could accommodate both transits.

The following discussion explains how these proposed rules were developed:

In crafting these regulations the Coast Guard took into account all the comments received from prior Chicago River rulemaking activities, in writing and at hearings, as well as views expressed and data furnished during the extensive negotiated rulemaking process. During the course of the negotiated rulemaking procedure the City of Chicago provided the Coast Guard and the committee with two volumes of traffic data to assist in determining the scope of the problems associated with bridge openings and to point out factors or parameters that would suggest solutions. They also had the consultant who prepared the study present at two meetings to answer questions on methodology and other study issues. In addition, the Coast Guard considered the voluntary practices followed by the boatyards and the City, which have demonstrated that using flotillas and scheduling openings in advance is a feasible means of reducing the number of drawbridge openings necessary to accommodate a major portion of the needs of recreational boaters.

First, the Coast Guard decided to concentrate on the situation affecting the 10 bridges across the Chicago River. While opening bridges across the North and South branches does impact land traffic in the downtown area, particularly traffic using the Ohio Street and Congress Street Parkway bridges, it is the Coast Guard's impression that the impact is not as immediate or as severe as the impact of opening the bridges on the Chicago River since, other than the two bridges mentioned, they are not primary arteries or are not in close proximity to the Chicago Loop. As

discussed above, whether a recreational vessel's transit originates on or terminates on either the North or South branch, and involves some or all of the bridges on either branch, the transit invariably involves opening all of the bridges on the Chicago River. If a beneficial and balanced approach is to be taken in modifying the existing regulations, the changes must address these bridges. In addition, it is the position of the Coast Guard that if a regulation can be developed that provides a reasonable balance between the needs of land and vessel traffic for the bridges on the Chicago River, a logical extension of those rules to the North and South branches would be appropriate.

The second step was to ascertain whether there was a demonstrable need to change the existing regulations. The traffic data presented by the City were based on directional traffic counts, taken at fifteen minute intervals, 24 hours per day, at certain bridges. Normal traffic flow counters and methodologies were used to record traffic activity for one week in the fall of 1994 and two weeks in the spring of 1995. The data showed that downtown Chicago traffic does not follow a typical urban traffic pattern. Rather than traffic levels increasing during the morning rush hour, decreasing during midday, and increasing again during the evening rush hour, the traffic increased in the morning, then declined slightly, but remained high until early evening. There was no significant variation in the traffic patterns or volumes between the two periods.

Although the traffic counts do not cover the full boating season, the Coast Guard has no reason to believe that there is substantially more or less vehicle traffic during the summer months. Chicago traffic does not appear to vary appreciably on a seasonal basis.

The study counted traffic during 1994 on the Lake Shore Drive, Michigan Avenue, Wells Street and LaSalle Street bridges. In 1995 the study counted traffic on the Lake Shore Drive, Michigan Avenue, Clark Street and Dearborn Street Bridges. It was determined that the location of the traffic counter on Lake Shore Drive was not in the best location to provide accurate traffic data for the bridge, since a substantial amount of traffic could exit before crossing the bridge, and some traffic may have been counted that did not cross the bridge. In lieu of disregarding the traffic on this major artery entirely, the volumes recorded for Lake Shore Drive were reduced by half for purposes of this proposed rule. The City has been requested to provide an accurate traffic count for this bridge prior to the public hearing. While the Coast Guard has received additional data from the City, the Coast Guard has not yet analyzed this new information in light of the entire record. The Coast Guard will consider these newly submitted data, any revised data, and any comments on the accuracy of those data, before action on a final rule. The 1994 and 1995 data were extrapolated to the other downtown bridges. Based on this analysis, it is conservatively estimated that in excess of 3,000 vehicles are potentially affected by each sequence of bridge openings on weekdays between the hours of 10:15 a.m. to 3:15 p.m.

The average opening cycle for a bridge takes 8 minutes for a single vessel transit and 10 minutes for a flotilla of 10 or more vessels. There was no significant variation in the opening time associated with the number of vessels in a flotilla. The average time for vehicle traffic to return to normal after an opening was 4 minutes, although there was substantial variation between bridges which appears related to the volume of traffic on a particular bridge.

From these data the Coast Guard concluded that the existing permanent rule does not strike a reasonable balance between the needs of vehicular traffic and the needs of recreational boaters. The existing rule requires the drawbridges to be opened, on demand, as many times as recreational boaters want, within specified times. Other than the rush hour restrictions, the rule does not provide for regularly scheduled openings and the data indicate that openings have the potential for affecting a large number of vehicles during periods of heavy traffic.

There is no set formula for balancing the burden on vehicular traffic against the burden on marine traffic. The Bridge Administration Manual indicates that the length of delay caused by a bridge opening, by itself, does not justify restricting bridge openings. There is sound reason for this, since the amount of delay caused by a bridge opening can be the result of many factors, including some within the control of the bridge owner, from initial design of the bridge through current maintenance and operational practices. On heavenly traveled roads the delay to people in vehicles will invariably exceed the delay to people on recreational vessels, unless the time between required openings is extremely long. Any attempt to measure and weigh the value of waiting time to persons in vehicles and compare it to the value of unrestricted scheduling to boaters is misleading. As noted previously, the statute requires the regulation to provide for scheduled openings to reduce motor vehicle traffic delays and congestion, where practical and feasible. The Coast Guard construes the statute as requiring only a common sense evaluation, on a broad level, of the impact of bridge openings on vehicular traffic and the reasonable expectations of the owners and operators of vessels to be able to use the navigable waters of the United States. In this instance the Coast Guard believes that an appropriate balance requires some restriction, beyond the current rush hour limitations, on the right of vessel owners and operators to request openings. The balance must reflect vehicular traffic needs and the peculiarities of the Chicago Loop and Must also accommodate the needs of boaters. A proper balance is not one that continues on demand openings except during rush hours. The voluntary restraint and scheduling efforts practiced by the boatyards and boaters do not cure the defects in the existing permanent rule. Since there are no market forces that are operable to limit or control exercise of the right to demand bridge openings, the Coast Guard concluded that revision of the existing rule was appropriate if a practical and feasible method of scheduling could be devised.

The third step was to analyze the available data to determine if there is a practical and feasible way to schedule or limit openings that would help reduce vehicle traffic delays and congestion on the roads and highways served by the bridges on the Chicago River. To do this, the Coast Guard analyzed available data from 1990 through July 5, 1995 concerning vessel transits of the Chicago River, concentrating on those transits that took place on weekdays. Data on several years of vessel traffic levels were provided by the City of Chicago, contained in their Drawbridge Study or previously furnished to the Coast Guard.

The number of vessels requesting transit each year ranged from a low of 461, in the spring of 1992, to a high of 662 in the fall of 1991. Of these, the number of vessels transiting on weekdays ranged from a high of 207 in the spring of 1990 to a low of 78 in the spring of 1993. Prior to 1993, approximately one-third of the vessel transits occurred on weekdays. In 1994 and 1995 the percentage of weekday transits decreased to 25% or less. It is noted that the data were influenced by the various restrictions in place since 1993, including the temporary deviation in effect from April 15, 1995 to May 18, 1995, and by the voluntary cooperative scheduling arranged between the

boatyards and the City that accommodated a substantial majority of vessel transits on weekends. These restraints favored flotillas of between 5 and 25 vessels on a run. Data available for spring transits in 1990 and 1991, where no restrictions were in effect, indicate that approximately 75% of the vessels transiting on weekdays did so in flotillas of 5 or more. Less than 100 vessels out of a total of 399 transited singly or in flotillas of less than 5 vessels, yet these vessel transits accounted for approximately two-thirds of the weekday openings.

Based on the data indicating that approximately one-quarter of the vessels utilizing daytime weekday openings are causing two-thirds of these openings, the Coast Guard believes that some restrictions on the number of daytime weekday openings that these vessels can request would help reduce traffic delays and congestion. It also appears that the use of flotillas is a practical and feasible means of providing for a large majority of the transits necessary to provide for the reasonable needs of navigation. It does not appear that providing on demand openings for single vessels on each weekday is necessary to accomodate the reasonable needs of navigation. The spring, 1995, breakout season appears to confirm the practicality of using flotillas. There were 69 openings during the period from April 15 to July 5. Of these, 41 were for flotillas of five or more vessels. Another 14 were for groups of from two to four vessels. Only 14 were for single vessels, of which 9 were on weekdays.

A review of the data showed that the greatest number of outbound vessels during the weekdays in April and May 1990 and 1991 occurred on Wednesday. Traditionally, Wednesday had been the day most used for outbound vessel movements prior to 1992. In 1994, a change to Tuesday and Thursday occurred after a temporary deviation of the drawbridge regulation was implemented. In 1995, the greatest number of outbound vessel movements occurred on Tuesday and Thursday due to the deviation in place and the voluntary agreement to follow that schedule after it was ruled invalid by the court.

The rule that the Coast Guard is proposing would not require the City to open the bridges for weekday transits of less than five vessels except on Monday and Friday evenings and on Wednesday morning. Monday and Friday evenings were selected to facilitate vessel transits from Lake Michigan to the boatyards for repairs or servicing after a weekend of sailing, and return to the Lake before the following weekend, a need that has been repeatedly expressed by boating interests. Wednesday morning was selected based on the pattern existing in the absence of restrictions and to equalize the periods when vessels not traversing in flotillas of five or more could be denied passage. On any day except Tuesdays and Thursdays, a single vessel would be able to transit the Chicago River at some point during the day. This, the Coast Guard believes, reasonably accommodates the expressed need for opportunities to secure midweek repairs to vessels and return to Lake Michigan. The rule provides for openings at any time for emergencies, and nothing in the rule precludes the City from responding to other requests.

The boatyards and boaters have urged maximum flexibility in arranging and scheduling flotillas. The voluntary scheduling practices agreed to by the City and the boatyards during recent years was discussed during the negotiated rulemaking sessions and the possibility of including provisions in the regulations that would provide flexible arrangements for flotillas was considered. The Coast Guard has adopted the concept of encouraging the use of flotillas to limit the number of openings required by proposing to require openings for flotillas of five or more vessels. The Coast Guard has also adopted the practice of allowing the scheduling of these flotillas to be as agreed to between the City and the boatyards. The proposed rule does not restrict openings for vessels transiting in flotillas of five or more, except for requiring advance notice and maintaining the existing rush hour closure times; however, the proposed rule does not schedule these openings. Thus, the proposed rule provides the flexibility urged by the boatyards and boaters. As discussed later, the City's countervailing need for predictability of schedules and time to mobilize bridge opening teams is provided by proposing to require longer advance notice of a requested opening.

The fourth step was to determine whether restricting bridge operations to particular times of the day would help reduce vehicle delay and congestion. The data indicate that downtown Chicago traffic does not follow a typical urban traffic pattern. Rather than traffic levels increasing during the morning rush hours, decreasing during midday, and then increasing again for the evening rush hours, the traffic only decline slightly after morning rush hours and remained high until early evening. The lowest level of weekday daytime traffic occurred between 10 a.m. and noon. The traffic data support the existing rush hour closed periods, which end at 6:30 p.m. Weekend traffic levels are lower than weekday levels, with the lowest levels occurring before 1 p.m.

In order for weekday daytime openings on the Chicago River to be least disruptive to vehicular traffic, the runs should start at 10 a.m. or as soon thereafter as practical. The first bridge would open at that time, with all other bridges following in sequence. Each bridge should be open as the vessel or lead vessel in a flotilla approaches, so that continuous movement of the vessel(s) can be maintained. Due to the proximity of the bridges, it may be necessary to have more than one bridge open at a time. For transits inbound from Lake Michigan, bridges on the North or South branches would continue this sequential opening pattern, depending on the destination of the vessel(s). For transits originating on the North or South branches, it will be necessary for the party requesting the run and the City to agree on the time for starting the run in order to have the vessel(s) arrive at the Franklin Street bridge as close to 10 a.m. as practical. Outbound transits will occur after 10 a.m. due to the rush hour restrictions on certain bridges on the North and South branches. This approach, which does not specify the exact time each bridge will open, is different from the usual drawbridge regulatory scheme but is based on the systems approach taken in this rulemaking. Comments are specifically requested on the feasibility of this approach and any problems that it may cause.

The fifth and final step was to determine whether requiring advance notice of a requested transit is appropriate and, if so, how much advance notice should be provided. The bridges are not manned continuously and, if the rule provides for restricted openings, it would be extremely burdensome to require all the bridges to be manned at all times. Due to the city's manpower constraints, the practice has been for necessary personnel to move from bridge to bridge as a vessel transit proceeds from Lake Michigan to the boatyards or in the opposite direction. The City has asserted that, at the present time, it requires assembling a crew of electricans and other tradesmen to ensure the satisfactory operation of the bridges. While efforts are underway to improve the operation of the bridges there is no reason to believe that this situation will improve in the near future. Thus, the City asserts a need for time to assign appropriate personnel and schedule their work hours to accommodate requested transits.

On the other hand, the boatyards and boaters have asserted that requiring a lengthy advance notice makes scheduling vessel transits difficult, especially when assembling a flotilla of 5 or more vessels. They also assert the unpredictability of single vessels desiring passage for maintenance or repairs.

In an attempt to accommodate these conflicting needs, the proposed rule provides for 20 hours advance notice for weekend and Wednesday daytime openings and for flotillas of 5 or more vessels. A 6 hour advance notice would be required for evening openings. Except for Sunday openings, these requirements should enable the City to arrange for the necessary personnel during normal business hours, either for an opening that evening or the next day, and would allow boaters and the boatyards to arrange for openings on relatively short notice. The Coast Guard believes that providing boaters an opportunity to request a Sunday opening, based on events occurring on Saturday, is appropriate and not unduly burdensome for the City.

The above discussion summarizes the analysis, methodology, and conclusions of the Coast Guard in arriving at this proposed rulemaking. During the many discussions with interested parties that have occurred, certain other issues were raised that are not determinative of the issues, but which still merit discussion.

The City expressed concern that runs would be scheduled in response to a request and crews mobilized, but that no vessels would show up. The available data do indicate that this has occurred, but the Coast Guard is unable to conclude that this is a problem requiring regulatory action. The statutes addressing drawbridge operation are generally directed at the responsibities of the bridge owner and provide penalties for not opening the bridge when required to do so. No specific penalties are provided under these statutes penalizing the vessel operator who does not show up for a requested opening, although there are prohibitions against requesting unnecessary openings. The Coast Guard will monitor this situation and may address it in a separate rulemaking if it appears necessary.

The data on pedestrian delays caused by drawbridge openings were informative but did not contribute significantly to the Coast Guard's decisions in the formulation of this proposed regulation. The amount of delay to vehicles and the extent of the vehicle ''backup'' also did not contribute significantly to the formulation of this proposal. Delay to land traffic caused by a drawbridge opening is unavoidable but can be mitigated by efficient operation of the bridges. The Coast Guard is not aware of any standardized method of determining the value of delay time and current procedures require only the submission of traffic count data. Therefore, the Coast Guard did not quantify delay time or assign a value to it to balance land traffic and vessel transits. The proposed action should reduce the number of openings and, therefore, the cumulative delay time of pedestrians and vehicles, which could be substantial, should be reduced.

During the negotiated rulemaking process, a letter from the boatyard's attorneys contained the following allegations concerning deficiencies in the traffic data presented by the City:

1. The letter asserted that the study grossly overstates the delay time by assuming each person is delayed 12 minutes.

Response: Coast Guard regulations, policy and procedures do not require data to be expressed in terms of person-hours of delay. The volume of vehicular and pedestrian traffic was considered, but delay time was not a determining factor in the rulemaking decision. Assigning a value to person-hours delay appears to be even more subjective than determining the impact of bridge openings on vehicles. Persons delayed could be engaged in personal affairs or on a business venture. The Coast Guard has not relied on estimates of person-hours of delay in formulating the proposed schedule of drawbridge openings in this rulemaking.

2. The letter asserted that, in addition to the methodological error described above, the placement of vehicle counters has led to a significant overstatement of bridge traffic.

Response: The location of the traffic counter on Lake Shore Drive was identified as being susceptible to recording traffic that did not cross the drawbridge over the Chicago River. The level of traffic recorded at the Lake Shore Drive counting station and projected for crossing the bridge may be subject to some inaccuracies. However, Lake Shore Drive Bridge is but one of 10 drawbridges on the main branch of the Chicago River. Although the data from Lake Shore Drive may be inaccurate, data from other bridges were considered accurate. As previously stated, the data pertaining to Lake Shore Drive were discounted for the purpose of developing this proposal and the City has been asked to provide more accurate data in time for the public hearing.

3. The letter assets that, in addition to the above errors, the traffic data are skewed by a failure to separate out delays caused by bridge malfunctions and other problems unrelated to boaters.

Response: The length of delays to land traffic caused by individual bridge opening was not a significant factor in formulating this regulation. Regardless of whether delays to land traffic were attributable to mechanical or other problems, the delay would not occur unless the bridge was opened for the passage of vessels. The length of the delay was not quantified or assigned a value in developing these proposed regulations.

4. The letter asserts that the evidence of delays to emergency vehicles is not believable.

Response: The information regarding documented cases of delays to emergency vehicles was requested by the Coast Guard to verify the cases reported by the City of Chicago. Impacts of drawbridges on emergency vehicle response were considered, but were not a determinative factor, in developing this proposed regulation. Emergency land vehicles are given special consideration, as stated in 33 CFR 117.31, which allows drawbridges to close for passage of emergency vehicles. In addition, readily available alternative routes exist. Requiring advance notice of requested opening will facilitate dispatching emergency vehicles when bridge openings occur.

5. The letter asserts that the conclusion that current restrictions on weekday daytime openings ''only achieve a small reduction in land traffic impacts'' and, therefore, support complete elimination of weekday daytime openings, is contradicted by the study's own data.

Response: The Coast Guard reviewed the data and has found that there is evidence of heavy vehicular traffic during most of the weekday hours, not just during rush hours. The proposed rule is based on evidence that there is a drop in weekday land traffic between 10 a.m. and noon. Bridge openings during that period would therefore have the least impact on land traffic, especially if the number of weekday openings is minimal. The proposed regulation provides that single vessels or flotillas of less than five vessels may request passage only on Wednesday in this time period.

The City asserts that there should be no continuation of on demand openings and expressed a desire for consistency and predictability to schedule bridge crews. The proposed restrictions on the days and times that openings can be requested for vessels not transiting in a flotilla of five or more, and the notification requirements, are designed

to accommodate those positions. The City also expressed major concerns about traffic and business disruption attributable to drawbridge openings. The data provided give evidence of patterns showing decreased traffic Saturday and Sunday mornings, weekday mornings near the 10 a.m. hour and during the evenings after 6:30 p.m. This proposal attempts to schedule openings to closely track the times when traffic and business disruption would be the least.

The boatyards' major concerns, as expressed through their comments, were that due to the unpredictable needs and desires of their customers they needed to be able to transit the river every day. the proposed rule addresses these concerns by allowing for daily transit for flotillas of 5 or more vessels, with advance notice. The boatyards said they needed access for repair work and to allow growth. Access by even a single vessel 5 days a week, with advance notice, addresses those needs. Boatyards also expressed a desire for some combination of predictability and flexibility. the notice requirements and supplementary openings in the proposal are designed to meet those concerns.

A major innovation in this rule is the addition of supplemental opening times. These unlimited openings, governed by a 20 hour notice requirement and a flotilla size of at least five vessels, allow the boatyards to schedule runs up or down the river as necessary: weekday daytime with rush hour limitations, weekends, or evenings.

Under this regime the boatyards would have a great amount of flexibility to meet the needs of their customers and grow, while at the same time, the notice and flotilla requirements would give the City enough lead time to meet its need for predictability in scheduling the complex series of openings necessary to accommodate a transit of the Chicago River system.

When looking at the spring 1995 period of cooperation between the competing interests, this proposed rule is designed to accommodate the needs expressed by the affected parties.

Regulatory Evaluation

This rule is not considered to be a significant rulemaking activity under Executive Order 12886 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

The economic impact of the proposed rule cannot be accurately determined. Its primary impact is on weekday openings of the bridges. The number of openings for single vessels, or groups of less than 5, should be substantially reduced. The number of these weekday runs each year has been approximately 60. If all these runs were eliminated, and no additional flotilla runs were added, the City could save approximately $400,000 per year. Since single vessel transits could still occur on 5 days a week, not all these runs will be eliminated. Assuming these runs will be reduced 50%, the savings to the City would be under $200,000 per year. However, the rule allows an unlimited number of flotilla runs to be scheduled, and it is impossible to predict how many will be actually utilized. Available data indicate that there are approximately 90 total runs per year. Assuming that flotilla runs increase by 10 per year due to the limitations on single vessel transits, the cost to the City would be approximately $70,000. Thus, the net savings to the City are estimated to be approximately $130,000 per year.

The boatyards have asserted that restricting openings of the drawbridges will adversely affect their business, because boaters will be unwilling to put up with the restrictions and will utilize boatyards in locations other than on the Chicago River. Information submitted to the Coast Guard indicates that the number of vessels using the affected boatyards has decreased and that utilizing alternative boatyards has increased. Some of this displacement is asserted to have been caused by the recent restrictions on drawbridge openings. Other displacements may be attributable to the inherent difficulties in transiting numerous drawbridges to get to the boatyards. Some loss of business may be due to different reasons, such as development of alternative facilities or personal choice of the boat owner. The Coast Guard has received assertions that the net income of the boatyards has been substantially reduced by past restrictions on bridge openings. This reduction appears to be a transfer of economic costs and benefits, and not an increased cost to the boat owner. The Coast Guard does not have an estimate of the dollar value of this transfer and invites comment on the economic impact of the proposed rules.

The Coast Guard has considered whether the proposed restrictions on bridge openings constitutes a ''taking'' under the Fifth Amendment to the Constitution, as discussed in E.O. 12630 and the Attorney General's Guidelines implementing that Order. The proposed regulation does not directly regulate the use of the boatyards' property, but it has been asserted that the restrictions will adversely affect their profit. It is the Coast Guard's position that the proposed regulation will substantially advance the governmental purpose of balancing the needs of land transportation and the navigational rights of recreational boaters. The proposed provisions for supplemental openings, as required, for flotillas of 5 or more vessels and the provisions ensuring access by all vessels on 5 out of the 7 days in each week should minimize the impact on the boatyards. The Coast Guard does not believe that the proposed regulations have significant taking implications. However, comments and data on this issue are specifically requested.

Small Entities

The Regulatory Flexibility Act requires an assessment of whether the proposed rule would have a significant economic impact on a substantial number of small entities. For this proposal, the Coast Guard considers any business employing less than 500 persons to be a small entity. The four boatyards remaining on the North and South branches of the Chicago River are small businesses and they have asserted that restricting the drawbridge openings will adversely affect their businesses. The proposed rule is not seen as having a significant adverse economic effect on any other business.

As discussed above, the Coast Guard has carefully considered the boatyards' views and has proposed unlimited supplemental openings to give the boatyards considerable flexibility to satisfy their customers' needs. The five-boat minimum for flotillas is based on an analysis of the data on past voluntary practices, which indicated that this limit is feasible. The rule does restrict single vessel passages, but does not prohibit them. The restrictions are considered to be the minimum necessary to achieve the intent of the statute.

Therefore, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. The Coast Guard specifically request comments on the impacts of the proposed rule on small entities and will consider any information provided before promulgating the final rule.

Collection of Information

The proposed rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). No reports or information would be submitted to the government. As is common with all other drawbridge regulations, persons

desiring passage of a vessel have to make their requests known to the operator of a drawbridge, frequently some time in advance. This advance notice is normally a single phone call. Advance notice has been required under the existing rule for drawbridges on the Chicago River and a simple verbal request for bridge openings would continue to be required under the proposed rules.

Federalism

The Coast Guard has analyzed this action under the principles and criteria contained in Executive Order 12612 and has determined that this proposal, if adopted, will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.5 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATING REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.391 is revised to read as follows:

§ 117.391 Chicago River.

The draws of the bridges operated by the City of Chicago shall operate as follows:

(a) For commercial vessels:

(1) From April 1 through November 30—

(i) The draws of the bridges across the Chicago River from its mouth to the junction of the North and South Branches, across the South Branch from the junction to and including the Roosevelt Road, and the Kinzie and Ohio Street bridges across the North Branch shall open on signal; except that, from Monday through Friday from 7:30 a.m. to 10:30 a.m., and 4 p.m. to 6:30 p.m., the draws need not be opened for the passage of commercial vessels.

(ii) The draws of the bridges across the North Branch of the Chicago River at Grand Avenue, the bridges across the North Branch of the Chicago River north of the Ohio Street bridge to and including North Halsted Street, and bridges across the South Branch of the Chicago River north of South Halsted Street to, but not including Roosevelt Road, shall open on signal; except that, from Monday through Friday from 7 a.m. to 8 a.m. and 5:30 p.m. to 6:30 p.m., the draws need not open for the passage of commercial vessels.

(iii) The draws of the bridges across the North Branch of the Chicago River north of North Halsted Street and the South Branch of the Chicago River south of South Halsted Street shall open on signal; except that, from Monday through Friday from 7 a.m. to 8 a.m. and 5:30 p.m. to 6:30 p.m. the draws need not be opened for the passage of commercial vessels.

(iv) Subject to the restrictions in paragraphs (a)(1)(i) through (a)(1)(iii) of this section, the draws of the Randolph Street, Cermak Road, and Loomis Street bridges across the South Branch of the Chicago River, shall open on signal. The draws of the following bridges in Chicago shall open on signal if tended or within 30 minutes after notice is given to the City of Chicago Bridge Desk:

South Branch

Washington Street
Madison Street
Monroe Street
Adams Street
Jackson Boulevard
Van Buren Street
Congress Street (Eisenhower Expressway)
Harrison Street
Roosevelt Road
Eighteenth Street
Canal Street
South Halsted Street

West Fork of the South Branch

South Ashland Avenue
South Damen Avenue

Chicago River, North Branch

Grand Avenue
Chicago Avenue
North Halsted Street
Ogden Street
Division Street

(2) From December 1 through March 31, the draws of the highway bridges across the Chicago River, the North Branch of the Chicago River, and the South Branch of the Chicago River shall open on signal if at least 12 hours notice is given. However, the bridges need not open during those periods of time specified in paragraphs (a)(1) (i), (ii) and (iii) of this section.

(b) For recreational vessels:

(1) From April 1 through November 30—

(i) The draws shall be scheduled to open, before 1 p.m., twice on Saturdays and twice on Sundays if requests for passage have been received at least 20 hours in advance. If the bridges have been authorized to remain closed for portions of a Saturday or Sunday to accommodate special events, openings shall be scheduled after 1 p.m. as necessary to provide two openings.

(ii) The draws shall open on Monday and Friday, after 6:30 p.m. Each opening requires notice that has been given at least 6 hours in advance of a vessel's requested time of passage.

(iii) The draws shall open on Wednesdays at 10 a.m., or as soon thereafter as practical, if a request for passage has been given at least 20 hours in advance.

(iv) The draws shall open at times in addition to those listed in paragraphs (b)(1)(i) through (b)(1)(iii) of this section, after notice has been given at least 20 hours in advance requesting passage for a flotilla of at least five vessels. However, the bridges need not open during those periods of time specified in paragraphs (a)(1) (i), (ii) and (iii) of this section.

(2) From December 1 through March 31, the draws of the highway bridges across the Chicago River, the North Branch of the Chicago River, and the South Branch of the Chicago River need open on signal only if at least 48 hours notice is given. However, the bridges need not open during those periods of time specified in paragraphs (a)(1) (i), (ii) and (iii) of this section.

(3) Paragraph (b) of this section applies to the following listed bridges:

Main Branch

Lake Shore Drive
Columbus Drive
Michigan Avenue
Wabash Avenue
State Street
Dearborn Street
Clark Street
LaSalle Street
Wells Street
Franklin-Orleans Street

South Branch

Lake Street
Randolph Street
Washington Street
Monroe Street
Madison Street
Adams Street
Jackson Boulevard
Van Buren Street
Eisenhower Expressway
Harrison Street
Roosevelt Road

18th Street
Canal Street
South Halsted Street
South Loomis Street
South Ashland Avenue

North Branch

Grand Avenue
Ohio Street
Chicago Avenue
North Halsted Street

(c) The following bridges need not be opened for the passage of vessels: The draws of the North Avenue, Cortland Street, Webster Avenue, North Ashland Avenue, Chicago and Northwestern Railroad, North Damen Avenue, and Belmont Avenue bridges across the North Branch of the Chicago River, and the draws of the North Halsted St. bridge, the Ogden Ave. bridge, the Division St. bridge and the Chicago, Milwaukee, St. Paul and Pacific Railroad bridge across the North Branch Canal.

(d) The opening signal for all Chicago River bridges is three short blasts or by shouting, except that four short blasts is the opening signal for the Chicago and Northwestern railroad bridge near Kinzie Street and the Milwaukee Road bridge near North Avenue and five short blasts is the opening signal for the Lake Shore Bridge when approaching from the north.

(e) The emergency provisions of § 117.31 apply to the passage of all vessels and the operation of all bridges on the Chicago River.

G.F. Woolever,

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

[FR Doc. 95–18976 Filed 7–28–95; 2:49 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–5269–1]

Preparation, Adoption, and Submittal of State Implementation Plans; Appendix M, Test Methods 204, 204A–204F

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to add seven methods to appendix M of 40 CFR part 51 for capture efficiency (CE) testing to assist States in adopting enforceable CE measurement protocols into their State implementation plans (SIP's) for ozone. These proposed methods, in conjunction with the protocols, would also improve EPA's ability to enforce State regulations to reduce volatile organic compounds (VOC) emissions in ozone nonattainment areas.

DATES: *Comments.* Comments must be received on or before October 2, 1995.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by August 16, 1995, hearing will be held on August 30, 1995, beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Betty Sorrell at (919) 541–5582 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by August 16, 1995.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to Public Docket No. A–91–70 at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code: 6102, 401 M Street, SW., Washington, DC 20460. The Agency requests that a separate copy also be sent to the contact person listed below. The docket is located at the above address in Room M–1500 Waterside Mall (ground floor), and may be inspected from 8:30 a.m.–12 p.m. and 1:30 p.m.–3:00 p.m., Monday through Friday. The proposed regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling *202–260–7548.* A reasonable fee may be charged for copying docket materials.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Betty Sorrell (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5582.

Docket. A Docket A–91–70, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:30 a.m.–12 p.m. and 1:30 p.m.–3:00 p.m., Monday through Friday, at the EPA's Air Docket Section Mail Code: 6102, Room M–1500, Waterside Mall (ground floor), 401 M Street, SW., Washington DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Candace Sorrell, Source Characterization Group A (MD–19), Emissions, Monitoring, and Analysis Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–4825.

SUPPLEMENTARY INFORMATION: The proposed regulatory text of the proposed rule is not included in this **Federal Register** notice, but is available in Docket No. A–91–70 or by written or telephone request from the Air Docket (see **ADDRESSES**). If necessary, a limited number of copies of the Regulatory Text are available from the EPA contact persons designated earlier in this notice. This Notice with the proposed regulatory language is also available on the Technology Transfer Network (TTN), one of EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free except for the cost of the phone call. Dial (919) 541–5742 for up to a 14400 bps modem. If more information on TTN is needed, call the HELP line at (919) 541–5384.

I. Summary

On February 10, 1995, EPA released a document entitled ''Guidelines for Determining Capture Efficiency'' which recommended the use of a permanent total enclosure (PTE), temporary total enclosure (TTE), or a building enclosure for determining CE. The EPA is proposing to add seven test methods, needed to carrying out the recommended protocols, to appendix M in 40 CFR part 51. The methods being proposed today can be used by States in developing CE protocols for regulated coating and printing facilities employing a VOC capture system and control device. The use of alternative methods and protocols is discussed in the guidance document mentioned above.

Each of the EPA recommended protocols relies on the use of an enclosure to contain the VOC emitted from a process. Either a gas/gas protocol (gas-phase measurements only) or a liquid/gas protocol (both liquid- and gas-phase measurements) would be considered acceptable in conjunction with the construction of a TTE around the process. The gas/gas or liquid/gas protocol could also be employed in situations where the building or room around the process meet the requirements in proposed Method 204 for a TTE.

An owner or operator installing a PTE meeting the requirements in proposed Method 204 would not be required to perform CE testing, because the CE would be assumed to be 100 percent. Testing of the destruction or removal efficiency of the control device would

still be required in order to provide a measure of the overall control efficiency of the total emission control system.

II. The Rulemaking

This rulemaking proposes to add seven methods for measuring CE to appendix M of 40 CFR part 51 to provide methods that States can use in their SIP's.

III. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed amendment in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to within 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify and locate documents readily so that they may effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated test method revisions and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [Section 307(d)(7)(A)].

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of this 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 obligation 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.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not ''significant'' because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

D. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year. Section 204 requires the Agency to establish a plan for obtaining input from and informing , educating , and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The RFA specifically requires the completion of an analysis in those instances where small business impacts are possible. This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Because this rulemaking imposes no adverse economic impacts, an analysis has not been conducted.

Pursuant to the provision of 5 U.S.C. 605(b), I hereby certify that the promulgated rule will not have an impact on small entities because no additional costs will be incurred.

F. Paperwork Reduction Act

The rule does not change any information collection requirements subject of Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

G. Statutory Authority

The statutory authority for this proposal is provided by section 110 of the Clean Air Act, as amended: 42 U.S.C., 7410.

Dated: July 25, 1995.

Carol M. Browner,

The Administrator.

[FR Doc. 95–18994 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[NC72–1–6953b; FRL–5258–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the state implementation plan (SIP) revision submitted by the State of North Carolina for the purpose of redesignating the areas of Charlotte and Raleigh/Durham to attainment for carbon monoxide (CO). In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal

because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by September 1, 1995.

ADDRESSES: Written comments should be sent to Ben Franco, EPA Region 4, Air Programs Branch, 345 Courtland Street NE, Atlanta, Georgia, 30365. Copies of the redesignation request and the State of North Carolina's submittals are available for public review during normal business hours at the addresses listed below. EPA's technical support document (TSD) is available for public review during normal business hours at the EPA addresses listed below.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Department of Environment, Health and Natural Resources, P.O. Box 29535, Raleigh, North Carolina 27626–0535.

FOR FURTHER INFORMATION CONTACT: Ben Franco of the EPA Region 4 Air Programs Branch at (404) 347–3555, ext. 4211, and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 26, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–18882 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 61

[FRL–5269–9]

Interim Approval of Delegation of Authority; National Emission Standards for Hazardous Air Pollutants; Radionuclides; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to grant interim delegation of authority to the state of Washington to implement and enforce two National Emission Standards for Hazardous Air Pollutants (NESHAPs) for radionuclides. The request for delegation was submitted by the state pursuant to 40 CFR 63.91 for delegation of federal standards, as promulgated. In the final rules section of this **Federal Register**, EPA is granting interim approval of the state's request for delegation as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. EPA's rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Thus, any parties interested in commenting on this action should do so in the next 30 days.

DATES: Comments on this proposed rule must be received in writing by September 1, 1995.

ADDRESSES: Written comments should be addressed to Richard Poeton, EPA Region 10, AT–082, 1200 6th Avenue, Seattle, Washington 98191 and concurrently to Allen W. Conklin, Head, Air Emissions and Defense Waste Section, Washington Department of Health, Airdustrial Center Building #5, P.O. Box 47827, Olympia, Washington, 98504–7827. Copies of the material submitted to EPA are available for public inspection during normal business hours at the above locations.

FOR FURTHER INFORMATION CONTACT: Richard Poeton at (206) 553–8633.

SUPPLEMENTARY INFORMATION: See the information provided in the final action which is located in the final rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 61

Environmental Protection, Air pollution control, Intergovernmental relations, Radiation protection.

Authority: 42 U.S.C. 7412.

Dated: July 20, 1995.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 95–18988 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 8E3574/P620; FRL–4963–5]

RIN 2070–AC18

Terbufos; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to extend the time-limited import tolerance for combined residues of the insecticide/nematicide terbufos and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity (RAC) green coffee beans for an additional 2 years. American Cyanamid Co. submitted a petition pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) requesting the proposed regulation to establish a maximum permissible level for combined residues of the insecticide/nematicide in or on the commodity.

DATES: Comments, identified by the document control number [PP 8E3574/P620], must be received on or before September 1, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132 CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m.,

Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 8E3574/P620]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert A. Forrest, Product Manager (PM) 14, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6600; e-mail: forrest.robert@epamail.epa.gov. .

SUPPLEMENTARY INFORMATION: EPA issued rules, published in the **Federal Register** of May 19, 1993 (58 FR 29118), and May 26, 1993 (58 FR 30220), which announced its decision to establish a time-limited tolerance for residues of the insecticide/nematicide terbufos on coffee beans for a period extending to May 19, 1995. The Agency limited the period of time that the regulation was to be in effect because the available rat metabolism study was found to only partially satisfy current guideline requirements of 85-1.

The American Cyanamid Co. has submitted a new rat metabolism study and has requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.352 by converting the 2-year time-limited import tolerance for combined residues of the insecticide/nematicide terbufos and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity coffee beans at 0.05 part per million (ppm) to permanent status.

The designation, coffee beans, is corrected to read ''green coffee beans'' to reflect the current definition of this raw agricultural commodity.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. A 1-year dog-feeding study with a lowest-observable-effect level (LOEL) of 0.015 milligram/kilogram/day (mg/kg/day) (the lowest dose tested) based on the inhibition of plasma cholinesterase activity.

2. A 4-week dog plasma cholinesterase study with a no-observable-effect level (NOEL) of 0.005 mg/kg/day in which inhibition of plasma cholinesterase activity was observed at the 0.015-dose level, the highest dose tested. This represents an increase in the NOEL value for plasma cholinesterase activity from 0.0013 (which was previously considered as the NOEL for this study), and is consistent with the LOEL observed for this activity in the 1-year dog study referenced in item one above where effects were also observed at the 0.015-dose level. Doses of 0.00125, 0.0025, 0.005, and 0.015 were administered in the 4-week dog study.

3. A 1-year rat feeding study with an NOEL of 0.5 ppm (0.025 mg/kg) for inhibition of plasma and brain cholinesterase activity.

4. An 18-month mouse carcinogenicity study with no carcinogenic effect observed at dosages up to and including 12.0 ppm (1.7 mg/kg/day), which was the highest level tested.

5. A 2-year rat carcinogenicity study with no carcinogenic effects observed at doses up to and including 2.0 ppm (0.10 mg/kg/day).

6. A three-generation rat reproduction study with a NOEL of 0.25 ppm (0.0125 mg/kg) for reproductive effects.

7. A rat teratology study with a NOEL of 0.1 mg/kg/day for developmental toxicity.

8. A rabbit teratology study with a NOEL of 0.25 mg/kg/day for developmental toxicity.

9. An acute delayed neurotoxicity study in chickens, which was negative for neurotoxic effects under the conditions of the study (highest dose tested was 40 mg/kg).

10. Several mutagenic tests which were all negative. These include a dominant-lethal study in rats; an acute *in vivo* cytogenic assay in rats; an Ames test including metabolic activation; a DNA repair chromosomal aberration (CHO cells); CHO/HGPRT mutation assay; and a rat hepatocyte primary culture/DNA repair test.

11. In a metabolism study with rats, 69.3 to 86.3% of the dose was excreted in the urine within 168 hours. The total recovery of the dose ranged from 89.1 to 98.7%. There was no evidence of terbufos or its metabolites bioaccumulating in tissues. The percentage of phosphorylated and nonphosphorylated metabolites recovered in the urine ranged from nondetectable to 0.68% and from 5.6 to 18.4 percent, respectively. The predominant compound recovered in the feces was the parent.

The reference dose(RfD), based on the plasma cholinesterase inhibition (ChE) NOEL as defined in a 4-week dog study (0.005 mg/kg/day) and using a safety factor of 100 to account for the inter-species extrapolation and intra-species variability, is calculated to be 0.00005 mg/kg of body weight (bwt)/day. The co-critical study is a 1-year dog feeding study in which an NOEL was not established. The LOEL was 0.015 mg/kg based on chloinesterase inhibition. The theoretical maximum residue contribution (TMRC) for existing tolerances and the current action is 0.000052 mg/kg/bwt/day for the overall U.S. population. The current action will increase the TMRC by 0.000003 mg/kg/bwt/day (6 percent of the RfD).

This tolerance and previously established tolerances utilize a total of 110 percent of the RfD for the overall U.S. population and represent an increase in the previously calculated value of 42.1%.

Available information on anticipated residues and/or percent of crop treated was incorporated into the analysis to estimate the Anticipated Residue Contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on tolerance-level residues and 100 percent crop treated. The ACR from established tolerances and the current action is estimated at 0.000016 mg/kg/day and utilizes 32.7 percent of the RfD for the U.S. population.

The ARC for children, aged 1 to 6 years old, and nonnursing infants (the group most highly exposed) for the established tolerances utilize 77.3 and 81.0 percent of the RfD, respectively. This action will not increase exposure to these subgroups because there is no information on coffee consumption for these subgroups.

Utilizing the NOEL from the 4-week dog plasma cholinesterase study (0.005 mg/kg/day), the estimated margins of exposure (MOEs) calculated as the acute dietary risk for coffee alone is 125 for four of the five subgroups indicating that coffee per se does not present an unacceptable acute risk and does not appear to substantially increase the acute dietary risk from terbufos. For the remaining subgroup, nonnursing infants, there is no exposure resulting from the green coffee bean tolerance.

The Agency is currently conducting a reassessment of all the established tolerances for terbufos and, if warranted, will refine the estimated MOEs based on results of that reassessment. The current estimated acute dietary risk for all the established terbufos tolerances indicates that an unacceptable risk exists assuming that residue levels are at the established tolerance and that 100 percent of the crop is treated. The Agency believes that actual residues to which the public is likely to be exposed are considerably less than indicated for the following reasons.

1. Most treated crops have residue levels which are below the established tolerance level at the time of consumption.

2. Not all the planted crop for which a tolerance is established is normally treated with the pesticide.

The nature of the residue in plants is adequately understood for the use of terbufos on coffee beans imported from Central America. There are no animal feed items involved with this use. Therefore, it is expected that no secondary residues in meat, milk, poultry, and eggs will result from the use of the pesticide on coffee beans.

An adequate analytical method, gas chromatography with a flame photometric detector, is available in the Pesticide Analytical Manual, Vol. II, for enforcement purposes.

There are currently no regulatory actions pending against the continued registration of this chemical.

The Agency is limiting the period of time that the proposed regulation is to be in effect to allow the Agency to complete its in-depth reassessment of the current established tolerances for terbufos. Upon completion of this reassessment, and, if warranted, the Agency will consider the establishment of a permanent tolerance for green coffee beans.

Residues not in excess of 0.05 part per million in or on green coffee beans after expiration of the tolerance will not be considered actionable if the insecticide-nematicide is legally applied during the term of, and in accordance with, provisions of the time-limited tolerance.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 8E3574/P620]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [PP 8E3574/P620] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 8E3574/P620], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 18, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.352, by revising paragraph (b), to read as follows.

§ 180.352 Terbufos; tolerances for residues.

* * * * *

(b) A time-limited tolerance to expire (date 2 years after date of publication of final rule based on this proposal) is established for combined residues of the insecticide/nematicide terbufos (*S*-[[1,1-dimethyl)thio] methyl] *O,O*-diethyl phosphorodithioate) and its cholinesterase-inhibiting metabolites in or on the following raw agricultural commodity:

Commodity	Parts per million
* * * * *	
Coffee beans, green[1]	0.05
* * * * *	

[1]There are no U.S. registrations as of August 2, 1995 for the use of terbufos on the growing crop, coffee.

[FR Doc. 95–19004 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 180 and 185

[OPP–300393; FRL–4967–1]

RIN 2070–AC18

Mevinphos; Proposed Amendment and Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of all tolerances listed at 40 CFR 180.157 and 185.4200 for residues of the insecticide mevinphos (Phosdrin®) in or on all raw agricultural commodities and processed foods. EPA is initiating this action because all U.S. mevinphos registrations were canceled on July 1, 1994. Because existing stocks of mevinphos may be used through November 30, 1995, the proposed revocations will become effective May 31, 1996, in order to ensure that no mevinphos residue will occur on legally treated crops, whether they are raw agricultural commodities or processed foods.

DATES: Written comments, identified by the docket control number OPP–300393, must be received on or before October 2, 1995.

ADDRESSES: By mail, submit comments to: Public Response Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number ''OPP–300393.'' No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit V. of this preamble.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Richard Dumas, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person: Special Review Branch, Third floor, Crystal Station 1, 2800 Crystal Drive, Arlington, VA 22202, Telephone number: (703) 308–8015, e-mail: dumas.richard@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Mevinphos (Phosdrin®) is a broad-spectrum organophosphate insecticide primarily used on specialty/minor use crops. It is used chiefly as an acaricide and was registered for use on 25 crops (principally leafy greens and cole crops) before cancellation. It has been produced in the U.S. by the sole technical registrant, Amvac Corporation of Los Angeles, California. Prior to its cancellation, approximately 200,000 to 500,000 pounds of active ingredient were used annually in the U.S.

II. Legal Background

The Federal Food, Drug, and Cosmetic Act (FFDCA) authorizes the establishment by regulation of maximum permissible levels of pesticides in or on foods. Such regulations are commonly referred to as ''tolerances.'' Without such tolerances or exemptions from tolerances, a food containing pesticide residues is considered to be ''adulterated'' under section 402 of the FFDCA, and hence may not legally be moved in interstate commerce (21 U.S.C. 342). Commodities subject to this proposal must no longer contain mevinphos residues following the revocation of the tolerances. To establish a tolerance for pesticide residues in or on raw agricultural commodities under section 408 of FFDCA, EPA must find that the promulgation of the rule would ''protect the public health'' (21 U.S.C. 346a(b)). To establish food additive regulations (FARs) to cover pesticide residues in processed foods under section 409 of FFDCA, EPA must determine that the proposed use of the food additive will be safe (21 U.S.C. 348). For a pesticide to be sold and used in the production of a food crop or food animal, the pesticide must not only have appropriate tolerances or FARs under FFDCA, but must be registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136 et seq.). FIFRA requires the registration of pesticides that are sold and distributed in the U.S.

This document proposes the revocation of all tolerances and FARs (hereafter tolerances will refer to both tolerances and FARs) established under sections 408 and 409 of the FFDCA, 21 U.S.C. 301 et seq., for residues of the pesticide mevinphos in or on all previously registered crops, as listed in 40 CFR 180.157 and 185.4200. In the absence of the appropriate clearances under FFDCA for residues of a pesticide on food or feed, any agricultural commodity or processed food domestically produced and/or imported into the United States found to contain mevinphos residues is adulterated under section 402 of FFDCA.

III. Regulatory Background

On June 30, 1994, when EPA was prepared to issue a Notice of Intent to Suspend all mevinphos registrations because of acute poisoning incidents involving agricultural workers, Amvac submitted a request for voluntary cancellation. EPA accepted this request and on July 1, 1994, issued a

Cancellation Order for all mevinphos registrations, effective immediately. The Agency subsequently published a Notice of Receipt of Request for Cancellation, Announcement of Cancellation Order, and FIFRA section 6(g) Notification for Mevinphos in the **Federal Register** of August 1, 1994 (59 FR 38973). The Cancellation Order was subsequently modified on January 13, 1995, to extend the distribution, sale, and use to November 30, 1995, from December 30, 1994, for sale and distribution and February 28, 1995, for use. Notice of this amendment was published on April 5, 1995 (60 FR 17357).

IV. Current Proposal

EPA is proposing to revoke all mevinphos tolerances. The proposed date of revocation is May 31, 1996. EPA believes that there is little likelihood, if any, that residues of mevinphos would be observed in legally treated commodities after May 31, 1996. Also, mevinphos is not persistent and the Agency does not believe that mevinphos residues will be found in processed foods. Therefore, setting action levels is not necessary.

The Agency believes that it is appropriate to initiate revocation of tolerances at this time because mevinphos is no longer registered in the U.S. In accordance with the voluntary cancellation requested by Amvac, the sole technical registrant for mevinphos, all use of mevinphos is scheduled to cease after November 30, 1995. EPA believes that it is appropriate to revoke tolerances covering residues of a pesticide for which there is no legal domestic use unless it can be shown by interested parties that there is a need for the tolerances, and that the tolerances are protective of the public health. Such tolerances may be needed, for example, if interested parties can show that the pesticide is used in foreign countries on crops that may be destined for the U.S.

It should be noted that in order for any tolerances to be retained, EPA must determine, under sections 408 and 409 of FFDCA, that the particular tolerance is protective of public health. For EPA to make this public safety finding, it must have adequate data to assess the risks that may result from exposure to mevinphos residues in or on food. EPA generally requires submission of such information (such as residue data) to support pesticide registrations under FIFRA and to maintain tolerances under FFDCA. With all domestic use of mevinphos ending November 30, 1995, EPA must have adequate data to demonstrate that imported foods treated with mevinphos are safe. Such data are not available at this time and EPA does not anticipate the receipt of such data because the sole technical registrant for mevinphos has voluntarily canceled all of its U.S. mevinphos registrations.

Based upon available data, the Agency has completed a preliminary acute dietary risk assessment from exposure to mevinphos. The assessment indicates a concern, particularly for infants and children. EPA recognizes that the dietary risk concern may be diminished if interested parties submit adequate exposure and/or toxicity data that show that the preliminary assessment is not accurate. However, the data base currently available to EPA is inadequate and does not appear to provide a basis to conclude that the preliminary assessment is inaccurate.

This proposal serves as a notice to all parties interested in the disposition of mevinphos tolerances. If EPA does not receive comment by October 2, 1995, EPA will issue a final order revoking all mevinphos tolerances. Because EPA believes it is appropriate to preclude review of objections raising issues not provided in comments submitted in response to the proposal, EPA encourages all parties interested in the status of mevinphos tolerances to submit comments.

V. Public Docket

A record has been established for this rulemaking under docket number ''OPP–300393'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for the rulemaking as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

VI. Other Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1994), the Agency must determine whether the regulatory action is ''significant,'' and therefore, subject to all the requirements of the Order, such as Regulatory Impact Assessments and review by the Office of Management and Budget (OMB). In section 3(f), the Order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the national economy of $100 million or more, or adversely and materially affecting a sector of the national economy, such as productivity, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues out of legal mandates, the President's priorities, or the principles set forth in the Order.

Pursuant to the terms of this Order, EPA has determined that this proposed rule is not ''significant'' and, therefore, is not subject to the requirements of the Order, such as OMB review or other actions. EPA does not expect any significant economic impacts to result from the revocation of mevinphos tolerances, because all U.S. mevinphos registrations have been canceled and no further use of mevinphos will be permitted after November 30, 1995.

B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*), and it has been determined that it will not have any impact on small businesses, small governments, or small organizations.

This proposed rule is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner, as well as to prevent food commodities containing any mevinphos residues from entering the U.S.

As stated above, because mevinphos is not registered in the U.S. and will not be used in the U.S. after November 30,

1995, EPA does not expect significant any economic impact at any level of business enterprise if mevinphos tolerances are revoked on May 31, 1996; especially since all use of mevinphos will have ended 6 months before this date. Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. (Sec. 408(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346 a(m))).

List of Subjects in Parts 180 and 185

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 25, 1995.

Losi Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR parts 180 and 185 be amended to read as follows:

1. In Part 180:

PART 180—AMENDED

a. The authority citation for part 180 would continue to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.157 [Removed]

b. Section 180.157 is removed.

2. In Part 185:

a. The authority citation for part 185 would continue to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.4200 [Removed]

b. Section 185.4200 is removed.

[FR Doc. 95–18874 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412, 413, 424, 485, and 489

[BPD–825–CN]

RIN 0938–AG95

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1996 Rates; Correction

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

ACTION: Proposed rule; correction.

SUMMARY: In the June 2, 1995, issue of the **Federal Register** (60 FR 29202), we published a proposed rule addressing revisions to the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes arising from our continuing experience with the system.

Additionally, in the addendum to that proposed rule, we described proposed changes in the amounts and factors necessary to determine prospective payment rates for Medicare hospital inpatient services for operating costs and capital-related costs. The changes would be applicable to discharges occurring on or after October 1, 1995. We also set proposed rate-of-increase limits as well as proposing policy changes for hospitals and hospital units excluded from the prospective payment systems. This document corrects errors made in the proposed rule.

FOR FURTHER INFORMATION CONTACT: Nancy Edwards (410) 966–4532.

SUPPLEMENTARY INFORMATION: In our June 2, 1995, proposed rule (60 FR 29202), we stated that we were including as Appendix C the report to Congress on our initial recommendation on the update factors for prospective payment hospitals and hospitals excluded from the prospective payment system (60 FR 29258). The report consists of letters to the President of the Senate and the Speaker of the House of Representatives. Subsequently, we discovered that the incorrect report was inadvertently printed in the proposed rule.

In addition to publishing the proper report to Congress, we are making several other corrections to the June 2, 1995 proposed rule.

The proposed rule (FR Doc 95–13183) published June 2, 1995 (60 FR 29202) is corrected as follows:

1. On page 29250, beginning at the bottom of the second column, section VIII.B.9 of the preamble is deleted and replaced with the following: 9. PPS Payment Impact File

This file contains data used to estimate FY 1996 payments under Medicare's prospective payment systems for hospitals' operating and capital-related costs. The data are taken from various sources, including the Provider-Specific File, the PPS–IX and PPS–X Minimum Data Sets, and prior impact files. The data set is abstracted from an internal file used for the impact analysis of the changes to the prospective payment system published in the **Federal Register**. This file is available for release one month after publication of the proposed rule in the **Federal Register**, with an updated version available one month after publication of the final rule.

Media: Diskette

File Cost: $145.00

Periods Available: FY 1996 PPS Update

§ 412.23 [Corrected]

2. On page 29251, second column, in § 412.23(e)(2)(i), at the end of the fifth line, add the word ''or''.

3. On page 29329, Table 6c—Invalid Diagnosis Codes is corrected and new Table 6d—Invalid Procedure Codes is added to read as follows:

TABLE 6C.—INVALID DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
005.8	Other bacterial food poisoning	N	6	182, 183, 184.
278.0	Obesity	N	10	296, 297, 298.
415.1	Pulmonary embolism and infarction	Y	4	78
			15	387, 389.
569.6	Colostomy and enterostomy malfunction	Y	6	188, 189, 190.
690	Erythematosquamous dermatosis	N	9	283, 284.
787.9	Other symptoms involving digestive system	N	6	182, 183, 184.
989.8	Toxic effect of other substances, chiefly nonmedicinal as to source	N	21	449, 450, 451.
997.0	Central nervous system complications	Y	1	34, 35
			15	387, 389.
997.9	Complications affecting other specified body systems, not elsewhere classified	Y	21	452, 453.
V12.5	Personal history of diseases of circulatory system	N	23	467.

TABLE 6C.—INVALID DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
V43.8	Organ or tissue replaced by other means, not elsewhere classified	N	23	467
V59.0	Blood donor	N	23	467.

TABLE 6D.—INVALID PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
33.5	Lung transplant	Y	Pre	495.
39.7	Periarterial sympathectomy	Y	5	478, 479.
60.2	Transurethral prostatectomy	Y	11	306, 307.
			12	336, 337, 476.

4. On pages 29376 through 29379, appendix C is removed and the following added in its place:

Appendix C—Report to Congress on the Update Factor for Prospective Payment Hospitals and Hospitals Excluded From the Prospective Payment System

The Secretary of Health and Human Services

Washington, DC 20201

May 26, 1995.

The Honorable Albert Gore, Jr.,
President of the Senate, Washington, D.C. 20510

Dear Mr. President: Section 1886(e)(3)(B) of the Social Security Act (the Act) requires me to report to Congress the initial estimate of the applicable percentage increase in inpatient hospital payment rates for Fiscal Year (FY) 1996 that I will recommend for hospitals subject to the Medicare prospective payment system (PPS) and for hospitals and unites excluded from PPS. This submission constitutes the required report.

My recommendations are consistent with the provisions of the Omnibus Budget Reconciliation Act (OBRA) of 1993 in which I am required to establish the update for PPS hospitals in both large urban areas and other areas as the market basket rate of increase reduced by 2.0 percentage points. The Office of Management and Budget currently estimates the PPS market basket rate of increase for FY 1996 to be 3.4 percent. Accordingly, we recommend an update for both large urban and other areas of 1.4 percent.

Sole community hospitals (SCHs) are the sole source of care in their area and are afforded special payment protection to maintain access to services for Medicare beneficiaries. SCHs are paid the higher of a hospital-specific rate or the Federal PPS rate. Under our recommendation and OBRA 1993, the update to hospital-specific rates equals the increase for all PPS hospitals; that is, market basket rate of increase of 3.4 percent minus 2.0 percentage points, or 1.4 percent.

Hospitals and distinct part hospital units that are excluded from PPS are paid based on their reasonable costs subject to a limit under the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982. Consistent with current law, we recommend an increase in the TEFRA limit equal to the rate of increase in the excluded hospital market basket (3.4 percent) minus the applicable reduction for each hospital. The applicable reduction with respect to a hospital is the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's update adjustment percentage for the fiscal year. Therefore, the hospital-specific update can vary between 2.4 and 3.4 percent. The weighted average update to the payment limit for PPS excluded hospitals and units equals 2.85 percent.

My recommendation for the updates is based on current projections of relevant data. A final recommendation on the appropriate percentage increases for FY 1996 will be made nearer the beginning of the new Federal fiscal year based on the most current market basket projection available at that time. The final recommendation will incorporate our analysis of the latest estimates of all relevant factors, including recommendations by the Prospective Payment Assessment Commission (ProPAC).

Section 1886(d)(4)(C)(iv) of the Act also requires that I include in my report recommendations with respect to adjustments to the diagnosis-related group (DRG) weighting factors. At this time I do not anticipate recommending any adjustment to the DRG weighting factors for FY 1996.

I am pleased to provide my recommendations to you. I am also sending a copy of this letter to the Speaker of the House of Representatives.

Sincerely,

Donna E. Shalala.

The Secretary of Health and Human Services

Washington, DC 20201

May 26, 1995.

The Honorable Newt Gingrich,
Speaker of the House of Representatives, Washington, D.C. 20515

Dear Mr. Speaker: Section 1886(e)(3)(B) of the Social Security Act (the Act) requires me to report to Congress the initial estimate of the applicable percentage increase in inpatient hospital payment rates for Fiscal Year (FY) 1996 that I will recommend for hospitals subject to the Medicare prospective payment system (PPS) and for hospitals and units excluded from PPS. This submission constitutes the required report.

My recommendations are consistent with the provisions of the Omnibus Budget Reconciliation Act (OBRA) of 1993 in which I am required to establish the update for PPS hospitals in both large urban areas and other areas as the market basket rate of increase reduced by 2.0 percentage points. The Office of Management and Budget currently estimates the PPS market basket rate of increase for FY 1996 to be 3.4 percent. Accordingly, we recommend an update for both large urban and other areas of 1.4 percent.

Sole community hospitals (SCHs) are the sole source of care in their area and are afforded special payment protection to maintain access to services for Medicare beneficiaries. SCHs are paid the higher of a hospital-specific rate or the Federal PPS rate. Under our recommendation and OBRA 1993, the update to hospital-specific rates equals the increase for all PPS hospitals; that is, market basket rate of increase of 3.4 percent minus 2.0 percentage points, or 1.4 percent.

Hospitals and distinct part hospital units that are excluded from PPS are paid based on their reasonable costs subject to a limit under the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982. Consistent with current law, we recommend an increase in the TEFRA limit equal to the rate of increase in the excluded hospital market basket (3.4 percent) minus the applicable reduction for each hospital. The applicable reduction with respect to a hospital is the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's update adjustment percentage for the fiscal year. Therefore, the hospital-specific update can vary between 2.4 and 3.4 percent. The weighted average update to the payment limit for PPS excluded hospitals and units equals 2.85 percent.

My recommendation for the updates is based on current projections of relevant data. A final recommendation on the appropriate percentage increases for FY 1996 will be made nearer the beginning of the new Federal fiscal year based on the most current market basket projection available at that time. The final recommendation will incorporate our analysis of the latest estimates of all relevant factors, including recommendations by the Prospective Payment Assessment Commission (ProPAC).

Section 1886(d)(4)(C)(iv) of the Act also requires that I include in my report recommendations with respect to adjustments to the diagnosis-related group (DRG) weighting factors. At this time I do not anticipate recommending any adjustment to the DRG weighting factors for FY 1996.

I would be pleased to discuss this recommendation with you. I am also sending a copy of this letter to the President of the Senate.

Sincerely,

Donna E. Shalala.

5. On page 29380, appendix D, second column, the second full paragraph is removed and the following added in its place:

In its March 1, 1995 report, ProPAC recommended update factors to the standardized amounts equal to the percentage increase in the market basket minus 1.8 percentage points for hospitals in both large urban and other areas. Based on its current market basket rate of increase estimate of 3.4 percent, ProPAC's recommended update to the standardized amounts equals 1.6 percent for hospitals in both large urban and other areas. ProPAC recommended that the update for the hospital-specific rates applicable to sole community hospitals be the same factor as the rate for all other prospective payment hospitals. This recommendation would result in a 1.6 percent update to the hospital-specific rates. The components of ProPAC's update factor recommendations are described in detail in the ProPAC report, which is published as Appendix E to this document. We discuss ProPAC's recommendations concerning the update factors and our responses to these recommendations below.

6. On page 29380, appendix D, section III is corrected up to the *Response* on page 29381, column 1 as follows:

III. ProPAC Recommendation for Updating the Prospective Payment System Standardized Amounts

For FY 1996, ProPAC recommends that the standardized amounts be updated by the following factors:

- The projected increase in the HCFA hospital market basket index, currently estimated at 3.5 percent, with an adjustment of −0.1 percentage points to account for the different wage and salary price proxies used for the ProPAC market basket rate of increase.
- A negative adjustment of 1.8 percentage points to correct for substantial error in the FY 1994 market basket forecast;
- A positive adjustment of 0.3 percentage points to reflect the cost-increasing effects of scientific and technological advances;
- A negative adjustment of 0.3 percentage points to encourage hospital productivity improvements; and
- A net adjustment of zero percentage points for case-mix change in FY 1995.

Overall, the net increase employing the above factors is the percentage increase in the hospital market basket minus 1.9 percentage points. Based on HCFA's market basket estimate of 3.5 percent, ProPAC recommends that hospitals in large urban and other areas receive a 1.6 percent update.

7. On page 29383, Table 1—Comparison of FY 1996 Update Recommendations is removed and the following added in its place:

TABLE 1.—COMPARISON OF FY 1996 UPDATE RECOMMENDATIONS

	HHS	ProPAC
Market Basket	MB	MB
Difference Between HCFA & ProPAC Market Baskets	.....	−0.1
Subtotal	MB	MB–0.1
Policy Adjustment Factors Productivity	−0.7 to −0.8	−0.3
Intensity	0.0	
Science and Technology	.....	+0.3
Practice Patterns	.....	(1)
Real Within DRG Change	.....	(2)
Subtotal	−0.7 to −0.8	+0.0
Case Mix Adjustment Factors:		
Projected Case Mix Change	−0.8	−1.0
Real Across DRG Change	0.8	+0.8
Real Within DRG Change	(3)	+0.2
Subtotal	0.0	0.0
Effect of 1994 Reclassification and Recalibration	−0.3	—
Forecast Error Correction	−1.8	−1.8
Total Recommended Update	MB–2.8 to MB–2.9	MB–1.9

(1) Included in ProPAC's Productivity Measure.

(2) Included in ProPAC's Case Mix Adjustment.

(3) Included in HHS's Intensity Factor.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 21, 1995.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 95–18770 Filed 8–1–95; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 5, 10, 12, and 15

[CGD 95–062]

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as revised by the 1995 Amendments to It

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting, availability of documents, and request for comments.

SUMMARY: The Coast Guard is holding a public meeting to discuss the outcome of the 1994 Conference of Parties to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), which adopted comprehensive amendments to the Annex to STCW. The amendments are scheduled to come into force on February 1, 1997, and they may affect virtually all phases of the system used in the United States to train, test, evaluate, document, and license merchant mariners. The meeting will provide an opportunity for the public to comment on the steps that the Coast Guard considers necessary to implement the requirements of STCW as amended under the laws of the United States, including regulations of the Coast Guard.

DATES: The meeting will be held August 31, 1995, from 9:30 a.m. to 2:30 p.m. Written comments must be received not later than September 29, 1995.

ADDRESSES: The meeting will be held in room 2415, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. Written comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard, 2100 Second Street SW., Washington DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments will become part of this docket [CGD 95–062] and will be available for inspection or copying at

room 3406, Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. A copy of the 1995 Amendments to STCW may be obtained by writing Commandant (G–MOS), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, or by calling (202) 267–0214, between 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays. Requests may also be submitted by facsimile at (202) 267–4570.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Young, Operating and Environmental Standards Division (G–MOS), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–0214.

SUPPLEMENTARY INFORMATION:

Background and Discussion

On July 7, 1995, a Conference of Parties to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), meeting at the International Maritime Organization in London, adopted a package of Amendments to STCW. The amendments will enter into force on February 1, 1997, unless a third of the parties to the Convention, or parties representing over 50 percent of the world's shipping tons, object to them by August 1, 1996. Because they were adopted unanimously by the Conference, no objections are expected. Consequently, the Coast Guard is taking necessary steps to implement them, to ensure that U.S. documents and licenses are issued in compliance with them.

The Coast Guard will hold a public meeting on August 31, 1995, to discuss the outcome of the Conference and seek public comment on how the 1995 Amendments to STCW, adopted by the Conference, should be implemented. Comments are invited not only on the substance of any new requirements but also on the economic impact of meeting the requirements, whether on individuals, maritime training, owners and operators of vessels, small businesses, or others.

The Coast Guard must consider revising the current regulations on licensing and documentation (46 CFR Parts 5, 10, 12, and 15) as well as those on workhours and watchkeeping (46 CFR Part 15) to reflect the requirements of the 1995 Amendments to STCW. The following is a list of the most significant changes necessary to the regulations:

1. All candidates for STCW certificates (i.e., licenses and documents for service on seagoing ships) will have to undergo approved training and assessment of competence.

2. Virtually all training will be subject to a system of approval and independent monitoring under standards of quality. Persons engaged in training, whether on board ship or at shore-side training facilities, will have to meet qualification standards. Many will have to use a training-record book.

3. Assessment of competence will involve both examination, to verify a sufficient level of knowledge and understanding of essential subjects, and demonstration of practical skills. Persons engaged in assessment of competence, whether on board ship or at shore-side assessment facilities, will themselves have to meet qualification standards. They will have to document proof of candidates' successful demonstration of skills.

4. Simulators used in training or assessment must meet certain performance standards.

5. All persons employed or engaged on seagoing vessels (i.e., all persons on board except passengers) will have to undergo familiarization training to ensure they can look after themselves in the event of an emergency or a life-threatening situation. Persons responsible for safety or pollution prevention (i.e., the required crew complement, as well as those with assigned safety duties) will have to get additional basic training in safety, including firefighting. Persons responsible for medical care must also meet certain standards.

6. All persons employed or engaged on seagoing vessels must meet certain standards of medical fitness.

7. Current standards for unlicensed seamen must be reviewed to ensure they reflect the 1995 Amendments to STCW relating to ratings for those who are members of navigational watches on ships of 500 gross tons or more, or those who are members of engine-room watches or are designated to perform duties in periodically unmanned engine-rooms on seagoing ships powered by propulsion machinery of 750 kW [1000 hp] or more.

8. Watchkeeping personnel must receive a minimum of rest. Masters must arrange watchkeeping adequate for safe watches.

9. Suspension-and-revocation procedures must enable the taking of appropriate action against a licensed or documented person who has (a) allowed a shipboard function to be performed by a person not holding a required STCW certificate or (b) certified that a skill has been properly demonstrated when it has not, or when it has not been directly observed.

10. Companies must ensure that new crewmembers are familiarized with ship-specific equipment, procedures, and other arrangements necessary for performing their jobs.

11. New regulations may be necessary to address the special provisions governing personnel on tankers and on ro-ro passenger ships.

12. New policy will be necessary to implement expanded port-state control.

Beyond the above, specific revisions will be necessary to ensure that requirements for being issued a license or document under domestic regulations fully meet those of the 1995 Amendments to STCW. For example, officers of the navigational watch will need training in the use of Automatic Radar Plotting Aids (ARPA) for service on ships fitted with ARPA. Also, such officers will have to hold radio operators' certificates valid under the Global Maritime Distress and Safety System (GMDSS) for service in ships operating in the GMDSS.

In revising domestic regulations, the Coast Guard should consider harmonizing the license categories with the structure outlined in the 1995 Amendments to STCW, which is as follows:

Deck Department

1. Officers of the navigational watch on ships of 500 gross tons or more.
2. Officers of the navigational watch on ships of less than 500 gross tons not engaged on near-coastal voyages.
3. Officers of the navigational watch on ships of less than 500 gross tons engaged on near-coastal voyages.
4. Masters and Chief Mates on ships of 3000 gross tons or more.
5. Master and Chief Mates on ships of between 500 and 3000 gross tons.
6. Masters on ships of less than 500 gross tons not engaged on near-coastal voyages.
7. Masters on ships of less than 500 gross tons engaged on near-coastal voyages.

Engine Department

1. Officers in charge of the engineering watch in manned engine-rooms.
2. Designated duty engineers in periodically unmanned engine-rooms.
3. Chief engineer officers of ships powered by main propulsion machinery of 3,000 kW [4000 hp] or more.
4. Second engineer officers of ships powered by main propulsion machinery of 3,000 kW [4000 hp] or more.
5. Chief engineer officers of ships powered by main propulsion machinery of between 750 kW [1000 hp] and 3,000 kW [4000 hp].
6. Second engineer officers of ships powered by main propulsion machinery

of between 750 kW [1000 hp] and 3,000 kW [4000 hp].

Likewise, in revising domestic regulations, the Coast Guard should consider applying the standards of competence set out in tables in the 1995 Amendments to STCW, by incorporating those tables by reference into the appropriate sections of the revised regulations.

The above subjects will be open for discussion and comment at the meeting on August 31. Any comments received at the meeting or in response to this notice will be taken into account in the development of implementing-regulations.

Attendance at the meeting is open to the public. Members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed above under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted before, during, or after the meeting.

Dated: July 27, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–19006 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–124, RM–8573]

Radio Broadcasting Services; Atlantic, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Wireless Communications Corp. seeking the allotment of Channel 239C3 to Atlantic, IA, as the community's first local FM transmission service. Channel 239C3 can be allotted to Atlantic in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 41–24–00 North Latitude and 95–00–54 West Longitude.

DATES: Comments must be filed on or before September 18, 1995, and reply comments on or before October 3, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Barry A. Friedman, Esq., Semmes, Bowen & Semmes, Suite 900, 1025 Connecticut Avenue, NW., Washington, DC 20036 (Counsel to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–124, adopted July 20, 1995, and released July 28, 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 contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–18950 Filed 8–1–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

RIN 2127–AF49

Federal Motor Vehicle Safety Standards; Termination of Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking.

SUMMARY: This notice terminates rulemaking in response to a petition filed by Karen Slay, asking that NHTSA require manufacturers of pickup trucks to place some kind of warning or recommendation on the cargo beds and in the owner's manual ''stating the dangers of passengers riding in the cargo area of these vehicles.'' Pickup manufacturers have agreed to include in their owners' manuals clear and specific warnings about the dangers of riding in cargo areas of vehicles and to join with the agency, vehicle dealers, and other interested organizations in a broad-based effort to educate the public about the dangers associated with riding in the cargo areas of vehicles. In these circumstances, NHTSA has concluded that no regulatory action is needed at this time.

FOR FURTHER INFORMATION CONTACT: Stephen Kratzke, Office of Vehicle Safety Standards, NHTSA (NPS–10), 400 Seventh Street, S.W., Washington, DC 20590. Mr. Kratzke can be reached by telephone at (202) 366–5203 or FAX at (202) 366–4329.

SUPPLEMENTARY INFORMATION: Karen Slay, a Lubbock, Texas housewife and mother of four, filed with NHTSA a petition for rulemaking dated October 13, 1994. In this petition, Ms. Slay requested that NHTSA require manufacturers of pickup trucks to place some kind of warning or recommendation on the cargo beds and in the owner's manual ''stating the dangers of passengers riding in the cargo area of these vehicles.'' Ms. Slay referred to a July 3, 1994 crash in Scurry County, Texas, in which eight children were killed and four others seriously injured. These 12 children were riding in the cargo bed of the pickup and all were ejected upon impact.

Ms. Slay indicated her understanding that State, not Federal, laws and regulations address how vehicles may be operated on the public roads. She stated that she has begun a ''campaign or crusade'' to get the law in her home State of Texas changed as it relates to persons riding in the cargo bed of pickups, ''so that Texas children do not lose their lives as innocent victims.'' However, Ms. Slay believed that a Federal requirement for a warning label and information in the owner's manual would serve a useful purpose by alerting persons to the hazards of riding in the cargo bed. In addition, Ms. Slay indicated her belief that not one pickup designer ever intended for the cargo area to be used for passengers.

NHTSA began its consideration of this request by determining the size of the safety problem. From 1983 to 1993,

there were about 210 fatalities to occupants of pickup cargo beds each year. The number of deaths each year shows remarkably little variation, beginning with 213 fatalities in 1983 and concluding with 211 fatalities in 1993. While the total size of the problem of injuries and fatalities to cargo bed occupants is small in the context of overall traffic safety (about one-half of one percent of annual motor vehicle fatalities), the relative constancy of the number over this decade suggests that it has not been much affected by the many safety improvements made to pickups during that decade, nor has it been much affected by the changes in personal behavior by vehicle occupants during that decade, such as significant increases in safety belt use by occupants and significant decreases in drunk and drugged driving. This suggests it may be appropriate for NHTSA to try a new approach specifically targeted to reduce injuries and deaths to passengers in cargo beds. NHTSA granted Ms. Slay's petition on January 25, 1995, to allow for a full and careful consideration of the issues raised.

However, the grant of the petition did not mean the agency endorsed Ms. Slay's suggested solution to the problem. The fatality data show that most of the fatalities in pickup cargo beds are teenagers or young adults aged 20–29. People in these age groups have traditionally been among the least receptive to safety warnings on labels. This information raises doubts about the effectiveness of a warning label as a solution to this problem.

Given all of this information, NHSTA sought a creative alternative to address this safety risk outside of the traditional regulatory process. NHTSA began by sending a letter to each of the pickup manufacturers asking for their reaction to Karen Slay's petition and her suggested solution to the problem. Although the manufacturers did not agree with labeling their trucks, they did agree with Ms. Slay that something ought to be done. All of the pickup manufacturers agreed to voluntarily include clear language in each pickup owner's manual warning against riding in beds. Chrysler, Ford, and General Motors, whose vehicles collectively comprise more than 86 percent of annual pickup sales in the U.S., went a step further. These three manufacturers agreed to provide a simple and uniform warning about the hazards of riding in cargo areas in the owner's manuals for each of their vehicles starting no later than the 1997 model year. All of the pickup manufacturers also committed to join in a broad-based effort to raise the public's awareness of this safety concern, including joining in promoting the adoption and enforcement of State laws restricting people from riding in pickup cargo beds and joining in a public education campaign on this subject.

Having this understanding with the pickup manufacturers was encouraging, but NHTSA believed it needed to involve more potential partners in this effort if it was to be successful. Accordingly, the agency contacted the National Automobile Dealers Association to see if they would join in the effort to address this problem. The dealers' organization agreed. Also, the National PTA had written a letter to NHTSA in support of Karen Slay's petition. NHTSA contacted the National PTA to see if it would agree to participate in an information campaign on the hazards of riding in cargo beds, and the National PTA agreed to do so.

NHTSA held a news conference on May 25, 1995 to announce this new cooperative effort to reduce injuries and deaths in pickup truck cargo beds. This cooperative effort will rely on the slogan ''Kids Aren't Cargo'' to raise the public's awareness about this safety risk. NHTSA has followed this up by including some ''Kids Aren't Cargo'' materials in the Campaign Safe and Sober materials made available to all of the States and by contacting national organizations other than the National PTA to see if they are interested in joining this effort.

Since manufacturers and others have already voluntarily committed to join in a broad-based effort to reduce the injuries and deaths to occupants of cargo beds, there is no reason to proceed with consideration of a regulatory requirement to achieve that same goal. Accordingly, the rulemaking action associated with the January 25, 1995 grant of Karen Slays's petition for rulemaking is hereby terminated.

This termination should not be misinterpreted. If at some point in the future it becomes clear that the ''Kids Aren't Cargo'' campaign has not achieved its purpose, the agency will evaluate all of its options to reduce injuries and deaths to occupants in cargo areas, including possible regulatory requirements. At this time, however, the agency believes the ''Kids Aren't Cargo'' campaign represents an approach that is more likely to address effectively this safety risk than a regulatory approach would be. Therefore, rulemaking action on the Slay petition is terminated.

The agency would like to close by expressing its appreciation to Ms. Slay for her petition and her work in this area. It is rare that an individual citizen with no previous involvement in the area of highway safety or dealing with State and Federal government can get a bill introduced in the State legislature and pass one of the two houses easily on its first hearing, and move the Federal government to put together a coalition of parties to try to address the issue on a National level. These accomplishments can be traced to a single citizen working out of her house with no funding, no list of members for whom she purported to speak—nothing more than her dedication to this issue and her ability to present clear, reasonable, and articulate arguments for why some action was necessary.

Issued on July 27, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–19024 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD35

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Arctostaphylos Pallida (Pallid Manzanita), a Plant From the Northern Diablo Range of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list *Arctostaphylos pallida* (pallid manzanita) as a threatened species, pursuant to the Endangered Species Act of 1973, as amended (Act). This plant species is found only in the northern Diablo Range of California in Alameda and Contra Costa Counties. The species is threatened by shading and competition from native and non-native plants, fire suppression, habitat fragmentation, hybridization, disease, herbicide spraying, unauthorized tree cutting, inadequate regulatory mechanisms, and stochastic events by virtue of the small isolated nature of the remaining populations. This proposal, if made final, would extend Federal protection and recovery provisions afforded by the Act for this 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, 2800 Cottage Way, Room E–1803, Sacramento, California 95825–1846. Comments and materials received and information used to support this proposal will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dale Pierce, Assistant Field Supervisor, Sacramento Field Office (see **ADDRESSES** section) (telephone 916/979–2710; facsimile 916/979–2723).

SUPPLEMENTARY INFORMATION:

Background

Arctostaphylos pallida (pallid manzanita) is found only in the northern Diablo Range of California. The Diablo Range is part of the inner South Coast Range of California. The Diablo Range extends in a northwest to southeast direction as a more or less continuous mountain chain, 32 to 48 kilometers (km) (20 to 30 miles (mi)) wide, for approximately 300 km (190 mi) from San Pablo Bay in central California to Polonio Pass in northeast San Luis Obispo County. The altitude of the Diablo Range varies from 600 to 1,280 meters (m) (2,000 to 4,200 feet (ft)) and is broken by four or five east to west passes. These passes divide the Diablo Range into several distinct units: Contra Costa Hills, Mt. Diablo, Mt. Hamilton Range, Panoche Hills, San Carlos Range, and Estrella Hills (Sharsmith 1982). *Arctostaphylos pallida* occurs in the Contra Costa Hills section of the Diablo Range.

Portions of the Diablo Range are thought to have been surrounded by marine embayments since the middle Miocene era, when modern flora and fauna were developing (Sharsmith 1982). Much of the surface of the Diablo Range is comprised of rock in the Franciscan series. The soils formed from Franciscan rock are believed to control partially the present distribution of plant species in the Diablo Range (Sharsmith 1982). Serpentine rock, which is a frequent component of Franciscan rock, yields a soil rich in heavy metals and low in the nutrients required for plant growth (Kruckeberg 1984). Because of the distinctive serpentine soil and the long exposure of this land mass to colonization by plants, a distinctive group of plant species has developed in the Diablo Range.

Alice Eastwood described *Arctostaphylos pallida* in 1933 from specimens collected in 1902 by W.W. Carruth in the ''East Oakland Hills.'' This area is believed to be Huckleberry Ridge in Alameda and Contra Costa Counties, California. *Arctostaphylos pallida* is a member of the *A. andersonii* complex, a group of *Arctostaphylos* species found in central coastal California. The species is considered by some taxonomists to be *A. andersonii* var. *pallida* Adams ex McMinn (Amme and Havlik 1987a); McMinn reduced the species to the varietal level in 1939. However, Wells (1993) treats the species as *A. pallida.*

Arctostaphylos pallida is an upright, non-burl-forming shrub in the heath family (Ericaceae). *Arctostaphylos pallida* grows from 2 to 4 m (6.5 to 13.0 ft) high or more with rough, gray or reddish bark. The twigs are bristly. The ovate to triangular leaves are bristly, strongly overlapping, and clasping; they are 2.5 to 4.5 centimeters (cm) (1.0 to 1.8 inches (in.)) long and 2 to 3 cm (0.8 to 1.2 in.) wide. The dense, white flowers are urn-shaped and 6 to 7 millimeters (mm) (0.2 to 0.3 in.) long. Flowering period is from December to March. *Arctostaphylos tomentosa* ssp. *crustacea* commonly co-occurs with *A. pallida* but is a burl-forming species with spreading leaves (Amme *et al.* no date, Wells 1993).

Arctostaphylos pallida continues to occupy its original range in Alameda and Contra Costa Counties, where it is known from approximately 13 populations. The two largest populations are located at Huckleberry Ridge, the type locality in Alameda and Contra Costa Counties, and at Sobrante Ridge in Contra Costa County. Several other small, natural and planted populations occur in Alameda and Contra Costa Counties. The species is found from 200 to 445 m (656 to 1,460 ft) in elevation, primarily on thin soils composed of chert and shale (Amme and Havlik 1987a). Generally, the plants are found in manzanita chaparral habitat that frequently is surrounded by oak woodlands and coastal scrub (Amme *et al.* no date). The two largest occurrences occupy an area of approximately 34 hectares (ha) (82 acres (ac)). These two populations are found in maritime chaparral, a habitat with mesic soil conditions and a maritime influence. Many of the smaller populations occur in coastal scrub (B. Olson, East Bay Chapter, California Native Plant Society (CNPS), *in litt.* 1994). *Arctostaphylos pallida* is threatened by shading and competition from other plant species, fire suppression, hybridization with other *Arctostaphylos* species, herbicide spraying, habitat fragmentation resulting from past housing and road construction, unauthorized tree cutting, fungal disease, inadequate regulatory mechanisms, and stochastic events.

Previous Federal Action

Federal government action on this species began as a result of section 12 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), 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, and included *Arctostaphylos pallida* (as *Arctostaphylos andersonii* var. *pallida*) as endangered. 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. The above taxon was included in the July 1, 1975, notice. On June 16, 1976, the Service published a proposal (42 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Arctostaphylos pallida* was included in the June 16, 1976, publication.

General comments received in relation to the 1976 proposal were summarized in the April 26, 1978, **Federal Register** (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 a December 10, 1979, notice (44 FR 70796), the Service withdrew the June 6, 1976, proposal along with four other proposals that had expired.

The Service published a Notice of Review for plants on December 15, 1980 (45 FR 82480). This notice included *Arctostaphylos pallida* as a Category 1 candidate species for Federal listing. Category 1 taxa are those for which the Service has on file sufficient information on biological vulnerability and threats to support preparation of listing proposals. On November 28, 1983, the Service published a supplement to the Notice of Review (48 FR 53640). This supplement changed this taxon from a Category 1 to a Category 2 candidate species. Category 2 taxa are those for which data in the Service's possession indicate listing is

possibly appropriate, but for which sufficient data on biological vulnerability and threats are not currently known or on file to support proposed rules. The plant notice was revised on September 27, 1985 (50 FR 39526). *Arctostaphylos pallida* was again included as a Category 2 candidate species. In the revision of the plant notice published on February 21, 1990 (55 FR 6184), *A. pallida* was included as a Category 1 candidate species. In the revision of the plant notice published on September 30, 1993 (58 FR 51144), this category remained unchanged.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on 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 *Arctostaphylos pallida* because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1982, the Service found that the petitioned listing of this 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 annually, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1983 through 1992. In 1993, the Service found that the petitioned listing of *Arctostaphylos pallida* was again warranted but precluded by other higher priority listing actions. Publication of this proposal constitutes the final finding for the petitioned action for this species.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (Act) 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 endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Arctostaphylos pallida* Eastw. (pallid manzanita) are as follows:

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* The current range of *Arctostaphylos pallida* is unchanged from what was known to exist at the time the species was described in 1933; however, the present populations of this species are thought to be smaller due to habitat fragmentation by urbanization (B. Olson, CNPS, *in litt.* 1994). The distribution of *A. pallida* consists of 2 large populations and approximately 11 smaller populations in Alameda and Contra Costa Counties, California. Both large populations occur on lands owned by the East Bay Regional Park District (EBRPD) (Amme and Havlik 1987b) with the smaller populations occurring on other park lands or on privately owned land (B. Olson, *in litt.* 1994). Up to 50 percent of the original *A. pallida* population on Huckleberry Ridge, which occurs in both Alameda and Contra Costa Counties, has been developed for housing or is privately owned. This residential development has eliminated a large number of *A. pallida* plants and fragmented and reduced the amount of habitat at this site (Amme and Havlik 1987b). Splitting the habitat into smaller, more isolated units has and may further alter the physical environment of the habitat, changing the amount of incoming solar radiation, water, wind, or nutrients for the remnant vegetation (Saunders *et al.* 1991). In addition, a higher proportion of these fragmented natural areas is subject to influences of external factors (e.g., invasion of non-native plants, foot traffic, and increased erosion) that disrupt natural ecosystem processes.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although this species is not known to be sought after by collectors, *A. pallida* is commercially cultivated (Wells 1993). Many members of this genus are considered desirable for landscape use and are collected for cultivation. Overutilization is not currently known to be a threat to this species, but unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity as a result of this proposal.

C. *Disease or predation.* Approximately 50 percent of the Huckleberry Ridge population of *Arctostaphylos pallida* was affected by a fungal infection in the 1980's that attacked the roots of the plants, causing branch and stem dieback (Amme and Havlik 1987a, CDFG 1987). This population remains in poor condition (Amme and Havlik 1987a). If the wet, cold weather conditions that induced the fungal infection are repeated, another infection could occur, resulting in reduced vigor of the population (D. Amme, pers. comm. 1994).

D. *The inadequacy of existing regulatory mechanisms.* The State of California Fish and Game Commission has listed *Arctostaphylos pallida* as an endangered species under the California Endangered Species Act (chapter 1.5 § 2050 *et seq.* of the California Fish and Game Code, and title 14 California Code of Regulations 670.2). 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 the ''take'' of State-listed plants is prohibited (California Native Plant Protection Act, chapter 10, division 2, § 1908 and California Endangered Species Act, chapter 1.5, division 3, § 2080), State law exempts the taking of such plants via habitat modification or land use changes by the owner. After CDFG notifies a landowner that a State-listed plant grows on his or her property, State law only requires that the landowner notify the agency ''at least 10 days in advance of changing the land use to allow salvage of such a plant'' (Native Plant Protection Act, Fish and Game Code, chapter 10, § 1900 *et seq.*).

The California Environmental Quality Act (CEQA) requires full disclosure of the potential environmental impacts of proposed projects. 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.'' Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State or Federal governments. Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the lead agency.

CDFG and EBRPD jointly developed the Alameda Manzanita Management Plan in 1987. This plan has not, however, been adopted completely. The mission of the plan was to determine and implement management activities that would improve the condition of the species and help in its recovery (Amme

and Havlik 1987b). Currently, EBRPD is reducing the amount of flammable dead plant material in the Huckleberry Ridge population (E. Leong, EBRPD, pers. comm. 1994). The reduction in plant litter, in turn, has helped to stimulate germination of the species (D. Amme, pers. comm. 1994).

E. *Other natural or manmade factors affecting their continued existence.* Fragmentation of *Arctostaphylos pallida* habitat caused by residential development at Huckleberry Ridge has also resulted in introduced exotic landscape and weedy plant species that compete with the remnant population (Amme and Havlik 1987b). Although no current residential construction threatens the remaining Huckleberry Ridge populations of *A. pallida*, the populations of fewer than 10 plants in this area are threatened by stochastic events due to the small number of plants in combination with competition with aggressive plant species and loss of habitat from past urbanization. These small populations are threatened by shading from planted eucalyptus (*Eucalyptus* sp.), Monterey pines (*Pinus radiata*), and cypresses (*Cupressus* sp.) and by competition with aggressive non-native plant species including French broom (*Cytisus monspessulanus*), periwinkle (*Vinca major*), and German ivy (*Senecio mikanioides*) (Amme *et al.* no date).

The genetic integrity of *Arctostaphylos pallida* is threatened by hybridization resulting from the introduction of other species of *Arctostaphylos* into the vicinity of *A. pallida* populations (D. Amme, pers. comm. 1994). At least three other species of *Arctostaphylos* have been used for landscaping on Manzanita Way, a road that borders the Huckleberry Ridge Preserve. Hybridization of *A. pallida* with at least two other species is known to have occurred (Amme and Havlik 1987a). Hybridization could result in a hybrid manzanita swarm taking the place of *A. pallida* (Amme and Havlik 1987b, Amme *et al.* no date).

Alteration of the natural fire regime threatens *Arctostaphylos pallida* by inhibiting seed germination and nutrient recycling that occurs naturally after fires. Fires are currently suppressed on Huckleberry Ridge and Sobrante Ridge to protect the surrounding residential areas (D. Amme, pers. comm. 1994; A. Olivera, Park Supervisor, Sobrante Ridge Preserve, EBRPD, pers. comm. 1994). For non-burl-forming manzanitas such as *A. pallida,* fire is a necessary part of reproduction (Keeley 1992). Following fire or other disturbance, regeneration occurs from seed rather than from burls.

The accumulated leaf and bark litter, fallen fruits, and roots of *Arctostaphylos* species, however, have a self-inhibitory effect on seed germination (Amme and Havlik 1987b). Fire is believed to remove these toxic materials and promote subsequent germination of *Arctostaphylos* and other herbs and shrubs (Amme *et al.* no date). Fire also is necessary to the species to recycle limited nutrients in the soil (Amme and Havlik 1987b).

The roadside spraying of herbicides has had negative effects on regeneration of *Arctostaphylos pallida* along Skyline Boulevard (Amme and Havlik 1987a). Unauthorized tree cutting also poses a threat to *A. pallida.* At least two mature *A. pallida* plants have been killed by unauthorized cutting of eucalyptus trees, for unknown purposes, that subsequently fell on the *A. pallida* plants (Amme and Havlik 1987b).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Arctostaphylos pallida* in determining to propose this rule. This species is not now in immediate danger of extinction throughout all or a significant portion of its range. *Arctostaphylos pallida* exists as 2 major and 11 small occurrences and is located almost entirely on EBRPD property. The largest occurrences of *A. pallida* are protected from habitat loss resulting from urbanization or land use conversion. However, *A. pallida* is threatened by shading and competition from native and non-native plant species, fire suppression, hybridization, herbicide spraying, disease, tree cutting, habitat fragmentation resulting from past urbanization, stochastic events, and inadequate regulatory mechanisms.

Although not in immediate danger of extinction at this time, *Arctostaphylos pallida* is likely to become an endangered species in the foreseeable future if the present threats persist and population declines continue. As a result, the preferred action is to list *Arctostaphylos pallida* as a threatened species. Critical habitat is not being proposed for this taxon at this time, as 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 consideration 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 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 listed. The Service finds that designation of critical habitat is not prudent for this species 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 threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Arctostaphylos pallida faces anthropogenic threats (see Factors A and E in ''Summary of Factors Affecting the Species'') and occurs entirely on non-Federal land. All of the 13 occurrences of *A. pallida* are located near or adjacent to residential areas and public roads. The publication of precise maps and descriptions of critical habitat in the **Federal Register** would make this plant vulnerable to incidents of vandalism and, therefore, could contribute to the decline of the species. Although this species is not known to be sought after by collectors, *A. pallida* is commercially cultivated (Wells 1993). Many members of this genus are considered desirable for landscape use and are collected for cultivation. The desirability and accessibility of the species, therefore, could make the plants subject to collection if their precise location was publicized.

In addition, critical habitat designation for the species is not prudent due to lack of benefit. At present, all known populations occur on non-Federal land, with no Federal action, authorization, licensing, or funding currently occurring on these lands. Due to the small, fragmented populations of this species, any future Federal actions, authorizations, or funded projects that would appreciably diminish the value of the known habitat for the survival and recovery of the species may also jeopardize its continued existence. A jeopardy opinion would require formal agency

consultation with the Service on virtually any federally-related project. Therefore, the Service finds that designation of critical habitat for this plant is not prudent at this time, because such designation would likely provide no benefit beyond that the species would receive by virtue of its designation as a threatened species. Further discussion of jeopardy opinions and consultation is included in the following section.

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 activities. 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 State 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 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) of the Act requires Federal agencies to confer 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 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 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 consultation with the Service.

None of the populations of *Arctostaphylos pallida* occur on Federal lands; however, some populations occur on protected non-Federal lands. The EBRPD owns and manages the land where both major populations of *A. pallida* occur. The EBRPD and CDFG jointly developed the Alameda Manzanita Management Plan in 1987. Although this plan was not adopted by Alameda or Contra Costa County governments, portions of the plan are in use by the EBRPD where the species occurs (D. Amme, pers. comm. 1944; Ed Leong, EBRPD, pers. comm. 1994).

Listing this plant species would necessitate development of a recovery plan. Such a plan would bring together both State and Federal efforts for conservation of the plant. The plan would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also would describe site-specific management actions necessary to achieve conservation and survival of the plant species. Additionally, pursuant to section 6 of the Act, the Service would be able to grant funds to the State for management actions promoting the protection and recovery of the species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened species. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, 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. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. The protection may apply to this species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked ''Of Cultivated Origin.'' Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, education purposes, or special purposes consistent with the purposes of the Act. It is anticipated that few trade permits would ever be sought or issued because the species is not common in the wild.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), 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. Collection, damage, or destruction of listed species on Federal lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. *Arctostaphylos pallida* is not known to occur on any Federal lands; however, such activities on non-Federal lands would constitute a violation of section 9, if 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 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 Sacramento 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, or other relevant data concerning any threat (or lack thereof) to *Arctostaphylos pallida*;

(2) The location of any additional populations of this 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 the species; and

(4) Current or planned activities in the subject areas and their possible impacts on the species.

The Service specifically solicits expert opinion from independent specialists regarding pertinent scientific or commercial data and assumptions relating to taxonomy, population models, and supportive biological and ecological information.

Final promulgation of the regulation on this 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 be addressed to the Field Supervisor, Sacramento 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 Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Elizabeth Warne, Sacramento 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							
*	*	*	*	*	*		*
Arctostaphylos pallida.	Pallid manzanita	U.S.A. (CA)	Ericaceae—Heath .	T	NA	NA	
*	*	*	*	*	*		*

Dated: July 5, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–18813 Filed 8–1–95; 8:45 am]

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50 CFR Part 17

RIN 1018–AD36

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Nine Plants from the Grasslands or Mesic Areas of the Central Coast of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list *Alopecurus aequalis* var. *sonomensis* (Sonoma alopecurus), *Astragalus clarianus* (Clara Hunt's milkvetch), *Carex albida* (white sedge), *Clarkia imbricata* (Vine Hill clarkia), *Lilium pardalinum* ssp. *pitkinense* (Pitkin Marsh lily), *Plagiobothrys strictus* (Calistoga allocarya), *Poa napensis* (Napa bluegrass), *Sidalcea oregana* ssp. *valida* (Kenwood marsh checkermallow), and *Trifolium amoenum* (showy Indian clover) as endangered pursuant to the Endangered Species Act of 1973, as amended (Act). These nine species grow in a variety of habitats including valley grasslands, meadows, freshwater marshes, seeps, and broad-leaf upland forests in Marin, Napa, and Sonoma counties on the central coast of California. Habitat loss and degradation, competition from aggressive plant species, elimination through plant community succession, grazing, inadequate regulatory mechanisms, collection for horticultural use, and hydrological modifications to wetland areas threaten the continued existence of these plants. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for these plants.

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, Sacramento Field Office, 2800 Cottage Way, Room E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dale Pierce, Assistant Field Supervisor, Sacramento Field Office (see **ADDRESSES** section) (telephone 916/979–2710; facsimile 916/979–2723).

SUPPLEMENTARY INFORMATION:

Background

Populations of the nine plant species in this proposed rule are found in Sonoma County and east as far as Napa Valley, California. *Alopecurus aequalis*

var. *sonomensis* (Sonoma alopecurus), *Carex albida* (white sedge), *Clarkia imbricata* (Vine Hill clarkia), *Lilium pardalinum* ssp. *pitkinense* (Pitkin Marsh lily), *Sidalcea oregana* ssp. *valida* (Kenwood Marsh checkermallow), and *Trifolium amoenum* (showy Indian clover) are found in mesic areas mostly within 33 kilometers (km) (15 miles (mi)) of the central coast of California. *Astragalus clarianus* (Clara Hunt's milkvetch), *Plagiobothrys strictus* (Calistoga allocarya), and *Poa napensis* (Napa bluegrass) are found up to 70 km (32 mi) inland in a variety of habitats around the City of Calistoga in the Napa Valley, California. Urbanization, road construction, a possible water storage project, airport construction, development of hot springs into commercial resorts, agricultural land conversion, wetland drainage, waste disposal, competition with aggressive plant species, collection for horticultural use, and livestock grazing have destroyed much of the habitat and numerous populations of these nine plant species. Historically, these nine species have not been known to occur outside of Alameda, Marin, Mendocino, Napa, Santa Clara, Solano, and Sonoma counties.

Discussion of Inland Species

The habitats in which *Plagiobothrys strictus* and *Poa napensis* can be found include meadows near small thermal hot springs underlain by gravelly loams mixed with clays that are associated with high water tables. High concentrations of boron, arsenic, and sulfates, which are usually toxic to plants, are found in thermal pools and meadows. A few unique plants have evolved under these normally adverse conditions, including *P. strictus* and *P. napensis. Astragalus clarianus* occurs in openings within valley grasslands or in broad-leaf upland forests. *Astragalus clarianus, P. strictus,* and *P. napensis* have only been found in Napa and Sonoma counties. Large amounts of habitat have been lost to urbanization, road construction, lake building, airport construction, and development of hot springs into commercial resorts.

Willis Jepson (1925a) first described *Astragalus clarianus* in 1909 from specimens collected by Clara Hunt in the Conn Valley near St. Helena, Napa County, California. Axel Rydberg (1929) and Willis Jepson (1936) treated this taxon as *Hamosa clariana* and *Astragalus rattani* var. *clarianus,* respectively. Rupert Barneby (1950) re-established *Astragalus clarianus* as a full species. *Astragalus clarianus* is a low-growing annual herb belonging to the pea family (Fabaceae). *Astragalus clarianus,* a slender, sparsely leafy plant, is sparingly covered with sharp, stiff, appressed hairs. The simple single or few basally branching, ascending stems reach 7 to 20 centimeters (cm) (3 to 8 inches (in.)) in height. The leaves are alternate, 1.5 to 6.0 cm (0.5 to 2.5 in.) long, with 5 to 9 uncrowded leaflets 2 to 10 millimeters (mm) (0.1 to 0.4 in.) long. The leaflets are oblong to obovate, narrow at the base, and notched at the tip. Small, pea-like flowers appear from March through April. The petals are bicolored, with the wings whitish and the banner and keel purple in the upper third. The keel is longer and wider than the wings. The horizontal to declining seed pods are narrow, linear, slightly curved, pointed at both ends, and occur on a 1.5 to 2.5 mm (0.06 to 0.10 in.) long slender stalk. *Astragalus rattanii* var. *jepsonianus* looks similar to A. *clarianus,* but grows 10 to 36 cm (4 to 14 in.) tall, has larger flowers, and seed pods that are not elevated on a seed stalk.

Astragalus clarianus is found on thin, rocky clay soils derived from volcanic substrates in foothill grasslands, in openings in *Arctostaphylos* (manzanita), and in openings in *Quercus douglasii* (blue oak) woodlands over an elevational range of 75 to 225 meters (m) (240 to 750 feet (ft)). Historically, six populations were known from Napa and Sonoma counties. Two historical populations have been extirpated by urbanization and viticulture (California Natural Diversity Data Base (CNDDB) 1993). The population at the type locality was reduced in size by the creation of Lake Hennessey in the 1940s. Currently, three populations are found in northwestern Napa County and one on the eastern side of adjacent Sonoma County. Collectively, the four populations of *A. clarianus* are scattered over approximately 16 hectares (ha) (40 acres (ac)) (CNDDB 1994). ''The trend for Clara Hunt's milkvetch is one of decline as a result of habitat destruction and modification'' (California Department of Fish and Game (CDFG 1991)). The four populations of *A. clarianus* are variously threatened by urbanization, recreational activities, airport maintenance, elimination due to plant community succession, competition from nonnative weed species, inadequate regulatory mechanisms, stochastic events, and a possible future water storage project. One population occurs in the Bothe Napa Valley State Park. Another population occurs on the shore of Lake Hennessey and is owned by The City of Napa. Two remaining populations occur on private land.

Edward Greene (1892) and Willis Jepson (1901) treated *Plagiobothrys strictus* as *Allocarya stricta* and *Allocarya californica* var. *stricta,* respectively, before Ivan Johnston (1923) assigned the present name, *Plagiobothrys strictus,* to specimens collected on alkaline flats near sulphur springs at Calistoga, Napa County, California. *Plagiobothrys strictus* is a small, erect, annual herb belonging to the borage family (Boraginaceae). *Plagiobothrys strictus* grows 1 to 4 decimeters (dm) (4 to 15 in.) in height. The nearly hairless plant has either a single stem or branches from near the base. The linear lower leaves are 4 to 9 cm (1.5 to 4 in.) long. Small, usually paired, white flowers appear in March to April in a slender, unbranched inflorescence. The fruit is an egg-shaped nutlet about 1.5 mm (0.6 in.) long, keeled on the back, with wart-like projections without any prickles. *Plagiobothrys greenei, P. lithocaryus, P. mollis* var. *vestitus, P. stipitatus,* and *P. tener* occur in vernal pools and have ranges that overlap with the range of *Plagiobothrys strictus,* but they do not resemble *P. strictus.*

Plagiobothrys strictus is found in vernal pools adjacent to and fed by hot springs and small geysers in foothill grasslands at an elevational range of 90 to 160 m (300 to 500 ft). Three historical populations occurred within a 3 km (2 mi) radius of Calistoga, Napa County, California. One population has been extirpated by urbanization and agricultural land conversion. One remaining population of *P. strictus* occurs at a small, undeveloped thermal hot spring. The other population occurs at the Calistoga Airport in the center of the city of Calistoga. The combined area of the two remaining populations in Napa County is less than 80 square (sq) m (900 sq ft) (California Native Plant Society (CNPS) 1990). Most of the thermal hot springs in Napa County have been developed. The remaining undeveloped hot springs occupy very few acres (Dave Steiner, Napa County Soil Conservation Service, pers. comm. 1993). ''The overall trend for Calistoga popcornflower (*Plagiobothrys strictus*) is one of decline'' (CDFG 1991). The species is threatened by recreational activities, airport maintenance, urbanization, inadequate regulatory mechanisms, and stochastic events. Both populations occur on private land and neither is protected.

Alan Beetle (1947) first described *Poa napensis* in 1946 from specimens that he collected in a meadow moistened by seepage from hot springs, 3 km (2 mi)

north of Calistoga at Myrtledale Hot Springs, Napa County, California. *Poa napensis* is an erect, tufted perennial bunchgrass belonging to the grass family (Poaceae) that grows to 1 dm (4 in.) in height. Leaves are folded, stiffly erect, 1 mm (0.04 in.) wide, with the basal leaves 20 cm (8 in.) long and upper stem leaves to 15 cm (6 in) in length. A few stiff, erect flowering stems appear in May and grow 7 dm (27 in) in height. Flower clusters occur as a pale green to purple, condensed, oblong-oval panicle 10 to 15 cm (4 to 6 in) long and 2 to 5 cm (0.8 to 2.0 in) wide. *Poa napensis* most closely resembles *P. unilateralis* (ocean bluff bluegrass) but differs in leaf and panicle form as well as habitat.

Poa napensis is found in valley grasslands and moist, alkaline meadows fed by hot springs. The elevational range of this plant is 100 to 120 m (340 to 400 ft) within a radius of 6 km (4 mi) of Calistoga. Historically, the range of this plant has been diminished by the development of recreational hot springs and the growth of the town of Calistoga. The larger population of *P. napensis* near Myrtledale Hot Springs occurs in a 100 sq m (1,100 sq ft) area, with an additional small population of 100 plants just across an adjoining road (CDFG 1979). Both remaining populations of *P. napensis* are dependent on moisture derived from adjacent hot springs or overland runoff. Any development that would alter the hydrology or flow from these hot springs would be detrimental to these populations (CDFG 1979). ''The trend for Napa bluegrass is one of decline'' (CDFG 1991). *Poa napensis* is threatened by recreational activities, airport maintenance, urbanization, inadequate regulatory mechanisms, and stochastic events. The two extant populations are on private land and are not protected.

Coastal Species

Alopecurus aequalis var. *sonomensis, Carex albida, Lilium pardalinum* ssp. *pitkinense,* and *Sidalcea oregana* ssp. *valida* are restricted to permanent freshwater wetlands in or near Pitkin Marsh, north of San Francisco Bay, California. *Clarkia imbricata* is restricted to a very narrow range in open grasslands near Pitkin Marsh. The Pitkin Marsh area, in which several disjunct and restricted species are found, is contained in the Franciscan area, described by Jepson (1925b) as a portion of the Coast Ranges that supports a high degree of plant endemism. The Coast Ranges in this area, south of the city of Healdsburg, are lower in elevation in comparison to areas north of Healdsburg, thus increasing the exposure of this inland area to the influence of cool, moist ocean air currents. Many species in this region reach their southernmost limit and are often separated by long distances from the major portions of their ranges (Rubtzoff 1953). Historically, these five species were not known to occur outside Sonoma and Marin counties (CNDDB 1993). *Carex albida* occurs in a sphagnum bog in Lower Pitkin Marsh, Sonoma County. *Alopecurus aequalis* var. *sonomensis, L. pardalinum* ssp. *pitkinense,* and *S. oregana* ssp. *valida* are restricted to moist soils in permanent freshwater marshes in Sonoma and Marin counties. *Clarkia imbricata* occurs on acid sands and has not been found outside a very restricted range in Sonoma County. Historically, the widest ranging of the nine species is *Trifolium amoenum,* which occurred from Mendocino County south to Sonoma, Marin, Alameda and Santa Clara counties and east to Napa and Solano counties. *Trifolium amoenum* typically was found in low, wet swales and grasslands. This species was considered extinct until 1993, when a single plant was discovered in Sonoma County. Seeds from this individual were collected and *T. amoenum* currently exists only in cultivation. The land that most recently supported this taxon is privately owned. Habitat of this species has been lost to land conversion for urbanization or agriculture, livestock grazing, wetland drainage, waste disposal, and competition with aggressive species.

On May 7, 1955, Peter Rubtzoff (1961) collected *Alopecurus aequalis* var. *sonomensis* in Guerneville Marsh, Sonoma County, California. He described the species in 1961. Specimens of this taxon collected as early as 1880 in Sonoma and Marin counties had been identified as *Alopecurus aequalis* Sobol., a circumboreal foxtail grass found as far south as Mendocino County. These specimens, however, deviated considerably from typical *A. aequalis* and were identified by Rubtzoff as *A. aequalis* var. *sonomensis.*

Alopecurus aequalis var. *sonomensis* is a tufted perennial in the grass family (Poaceae) that reaches 30 to 75 cm (12 to 30 in.) in height. The stems are mostly erect and either straight or weakly bent near the base. The leaf blades are up to 7.5 mm (0.3 in.) wide. The panicle is 2.5 to 9.0 cm (1.0 to 3.5 in.) long and 4 to 8 mm (0.1 to 0.3 in.) wide. The spikelets are usually tinged violet-gray near the tip. The awn is straight, and exceeds the lemma body by 1.0 to 2.5 mm (0.04 to 0.1 in.). This variety is distinguished from *A. aequalis* var. *aequalis* by a more robust, upright appearance, generally wider panicle, violet-gray tinged spikelets, and longer awn (Rubtzoff 1961; W. Crins, Ontario Ministry of Natural Resources, *in litt.* 1993).

Alopecurus aequalis var. *sonomensis* is currently known from only five natural populations. The three sites in Sonoma County are privately owned and the two sites on the Point Reyes National Seashore, in Marin County, are federally owned (CNDDB 1993; V. Norris, Marin CNPS, pers. comm. 1993). The elevational range of the species is from 6 to 210 m (20 to 680 ft). The total number of plants is estimated at 200 (B. Guggolz, CNPS, pers. comm. 1993). *Alopecurus aequalis* var. *sonomensis* was known historically from 16 populations. The historical range was approximately 48 km (30 mi), reaching north from Point Reyes Peninsula to Guerneville and east to Cunningham Marsh. Although fewer sites are now present, the range of the species has changed little. The numbers of populations of this species are declining due to competition from nonnative plant species, trampling and grazing by cattle, and low regeneration. The species is also threatened by inadequate regulatory mechanisms. Two attempts to reintroduce the species in the Point Reyes National Seashore failed. One attempt was destroyed by a flash flood (CNDDB 1992; V. Norris, pers. comm. 1993).

John Bigelow collected the type specimen of *Carex albida* in 1854 on Santa Rosa Creek, Sonoma County, California. Liberty Bailey described the species in 1889. Specimens of the plant subsequently collected by John T. Howell and John W. Stacey in 1937 in Pitkin Marsh were described by them as *C. sonomensis* (Stacey 1937). Howell (1957) later stated that the herbarium specimen of *C. albida* had been misinterpreted by Stacey and others and that *C. sonomensis* is a synonym of *C. albida.*

Carex albida is a loosely tufted perennial herb in the sedge family (Cyperaceae). The stems are triangular, 4 to 6 dm (1.3 to 2.0 ft) tall, erect, and longer than the leaves. The leaves are flat and 3 to 5 cm (1 to 2 in.) wide with closed sheaths. The inflorescence consists of 4 to 7 ovoid or obovoid to oblong spikelets 8 to 18 mm (0.3 to 0.7 in.) long. The achenes (fruits) are three-sided when mature. The sacs (perigynia) surrounding the achenes are light green to yellow-green when mature and 3.0 to 4.5 mm (0.1 to 0.2 in.) long. Several traits distinguish *C. albida* from other closely related sedges. *Carex albida* has inflorescences with staminate flowers

above the pistillate flowers, especially on the terminal inflorescence, lateral spikelets, and leaves that are shorter than the stems and 3 to 5 mm (0.1 to 0.2 in.) wide.

Carex albida, which was thought to be extinct, is currently known from only one population, discovered in 1987. The population contains approximately 800 to 1,000 plants on privately owned property in Sonoma County (CDFG 1993a, CNDDB 1993). *Carex albida* was known historically from four other locations: the type locality on Santa Rosa Creek, one site in Perry Marsh, and two sites in Pitkin Marsh, all in Sonoma County. The marsh habitat containing *C. albida* at the Santa Rosa Creek site was destroyed in the 1960s by channelization and other alterations to Santa Rosa Creek (B. Guggolz, *in litt.* 1993). The Perry Marsh site has been used for cannery waste disposal beginning in 1971, causing the probable loss of the population (CNDDB 1993). One of the Pitkin Marsh populations has not been seen since 1951. Permission for access to the second Pitkin Marsh site has been denied since 1976. The occurrence has not been confirmed since that time. Pitkin Marsh, which has become drier in recent years because of the addition of wells and other construction that have altered marsh hydrology, likely no longer supports the species (B. Guggolz, *in litt.* 1993). The known remaining population of *C. albida* is found in a sphagnum bog near Pitkin Marsh, between 45 and 60 m (150 and 200 ft) in elevation. The original habitat of all populations occurred within an area of approximately 10 sq km (4 sq mi). The species occurs in conjunction with *Lilium pardalinum* ssp. *pitkinense,* spikerush (*Eleocharis* spp.), rush (*Juncus* spp.), and Himalayan blackberry (*Rubus discolor).* *Carex albida* is threatened by potential alteration of hydrology from changes in land use or potential disturbance from a proposed wastewater treatment project, inadequate regulatory mechanisms, competition from nonnative species, stochastic events, small population size, and potential disturbance from repair or alteration of a nearby State highway.

Frank H. Lewis and Margaret Lewis (1953) described *Clarkia imbricata* from specimens they collected on July 10, 1951, along the roadside of Vine Hill Road, near Pitkin Ranch. Searches for this plant at the type locality have been made since 1974, but no plants have been observed (CNDDB 1994). Currently, *C. imbricata* is known from two populations in southern Sonoma County.

Clarkia imbricata is an erect, annual herb in the evening-primrose family (Onagraceae). The stems grow to 6 dm (2.5 ft) tall, unbranched or with numerous short branches in the upper parts. This plant is densely leafy, with entire, lanceolate leaves 2.0 to 2.5 cm (0.8 to 1.0 in.) long and 4 to 7 mm (0.2 to 0.3 in.) broad that are ascending and overlapping. The showy inflorescences appear from June through July. The flowers are grouped closely together and each flower has a conspicuous funnel-shaped tube at its base. Each flower has four fan-shaped, lavender petals 2.0 to 2.5 cm (0.8 to 1.0 in.) long with a V-shaped purple spot extending from the middle to the upper margin of the petal. *Clarkia purpurea* ssp. *viminea* is the only other *Clarkia* taxon with which *C. imbricata* can be confused. *Clarkia purpurea* ssp. *viminea* has a much shorter, funnel-shaped tube and does not have the relatively broad, ascending, overlapping leaves of *C. imbricata.*

Historically, *Clarkia imbricata* has never been common. This taxon is only known from two populations found in grasslands on acidic sand in Sonoma County. The type locality is presumed to have been extirpated by changing land uses (CNDDB 1994, B. Guggolz, *in litt.* 1993). The remaining natural population was the source population for cuttings that were transplanted into a preserve in 1974. The elevational range for the two extant populations is 60 to 75 m (200 to 250 ft). The two populations are 1.2 km (0.75 mi) apart and occur on privately owned land. The natural population contains 2,000 to 5,000 plants and occurs on an open, flat grassland surrounded by a variety of introduced trees and shrubs. The planted population, located in a 0.6 ha (1.5 ac) preserve, has fluctuated between 200 and 300 plants. The preserve is owned and managed by the California Native Plant Society. The planted population recently has expanded its range onto the adjacent private parcel east of the preserve, where 70 to 100 plants were found in 1993. Both populations are threatened variously by agricultural land use conversion, inadequate regulatory mechanisms, stochastic events, and damage associated with trespassers collecting other rare plants found in the preserve (B. Guggolz, *in litt.* 1993).

Lawrence Beane and Albert M. Vollmer first collected *Lilium pardalinum* ssp. *pitkinense* on July 20, 1954, in Pitkin Marsh, Sonoma County, California. Beane (1955) described the plant as *Lilium pitkinense.* The plant subsequently was treated as a subspecies of *L. pardalinum* (Skinner 1993).

Lilium pardalinum ssp. *pitkinense* is an herbaceous, rhizomatous perennial in the lily family (Liliaceae). The slender, erect stems reach 1 to 2 m (3 to 6 ft) in height. Leaves are yellow-green, up to 14 cm (5.5 in.) long, and 1 to 2 cm (0.4 to 0.8 in.) wide. The leaves are generally scattered along the stem, but in some plants occur in 2 or 3 whorls of 3 to 6 leaves near the middle of the stem. The inflorescence is a terminal raceme. The flowers are large, showy, and nodding. The petals, which are reflexed from the middle, are red at the outer edge changing to yellow at the center with small, deep maroon dots mostly within the yellow zone. Anthers are purple-brown. The fruit is an elliptical capsule containing many rounded seeds (CDFG 1993b). The species flowers from June to July. *Lilium pardalinum* ssp. *pitkinense* is distinguished from *L. pardalinum* ssp. *pardalinum* by generally shorter petals and anthers.

Lilium pardalinum ssp. *pitkinense* grows only in permanently saturated, sandy soils in freshwater marshes and wet meadows that are 35 to 60 m (115 to 200 ft) in elevation. Only three populations of *L. pardalinum* ssp. *pitkinense* were recorded historically. All the sites are found in Sonoma County on privately owned land. The three populations, located over a distance of 13 km (8 mi), are presumed extant. Since 1975, access to one of the sites has been denied by the landowner (CNPS 1988a). As a result, the status of this population has not been confirmed. Currently, 200 individual plants remain on the two known sites (CDFG 1993b; B. Guggolz, pers. comm. 1993). The extent of the two populations has declined from loss of habitat from urbanization and competition with blackberries (*Rubus* spp.) (CDFG 1993b). Collection of plants, seeds, and bulbs for horticultural use, competition from invasive plant species, potential disturbance from a proposed subdivision, grazing, stochastic events, inadequate regulatory mechanisms, and low plant numbers threaten this species (Lynn Lozier, The Nature Conservancy (TNC), *in litt.* 1990).

Edward L. Greene (1897) first described *Sidalcea oregana* ssp. *valida* in June, 1894, based on material he collected from Knight's Valley, Sonoma County, California. Since then, this taxon has been known as *S. maxima* (Baker), *S. oregana* var. *spicata (*Jepson), *S. eximia* (Baker), and *S. spicata* ssp. *valida* (Wiggins) (CNPS 1988c). Charles Hitchcock (1957) treated the genus *Sidalcea* and recognized four subspecies, including *S. oregana* ssp. *valida.*

Sidalcea oregana ssp. *valida* is a perennial herb in the mallow family (Malvaceae). The plants are 1 to 2 m (3 to 6 ft) tall. The leaves are rounded. Lower leaves have 5 to 7 shallow lobes; upper leaves are generally smaller and divided into 3 to 5 entire, lanceolate segments. The compound inflorescence consists of densely flowered, spike-like racemes 2 to 5 cm (0.8 to 2.0 in.) long. Petals are 1.0 to 1.5 cm (0.4 to 0.6 in.) long, notched at the apex, and deep pink-mauve. The flowers appear from late June to September. *Sidalcea oregana* ssp. *valida* differs from *S. oregana* ssp. *eximia* in having a hairless calyx.

Sidalcea oregana ssp. *valida* has never been recorded as abundant and only two occurrences, both located on privately owned land, have ever been known. *Sidalcea oregana* ssp. *valida* inhabits freshwater marshes approximately 150 m (490 ft) in elevation, at Kenwood Marsh and Knight's Valley, Sonoma County, California. The two sites are located approximately 29 km (18 mi) apart. The Knight's Valley population covers less than 0.1 ha (0.25 ac). This population was reported to have fewer than 100 plants in 1979 (CDFG 1987) and approximately 60 plants in 1993 (N. Wilcox, State Water Resources Control Board, pers. comm. 1993). The Kenwood Marsh population contained approximately 70 individuals in 1993 (A. Howald, CDFG, pers. comm. 1993). Both populations are adversely affected by trampling and reduced seed set resulting from cattle grazing. Potential alteration of the hydrology of Kenwood Marsh due to urbanization and water withdrawal threatens the species (A. Howald, pers. comm. 1993). The plants may also suffer from competition by common tule (*Scirpus acutus*) and yellow star-thistle (*Centaurea solstitialis*), and from periodic maintenance of the Sonoma Aqueduct located in Kenwood Marsh (A. Howald, pers. comm. 1993). This species is also threatened by stochastic events and inadequate regulatory mechanisms.

Edward L. Greene described *Trifolium amoenum* in 1891 from specimens that he collected near Vanden, Solano County, California, in 1890. Historically, this species has been found in a variety of habitats including low, wet swales, grasslands, and grassy hillsides up to 310 m (1,020 ft) in elevation. This annual plant, which is a member of the pea family (Fabaceae), is hairy, erect, and grows to 1 to 6 dm (4 to 27 in.) in height. The leaves are pinnately compound, widely obovate, and 2 to 3 cm (0.8 to 1.2 in.) long. The flowers, which are purple with white tips, are 12 to 16 mm (0.5 to 0.6 in.) long and occur in dense, round or ovoid heads, 2 to 3 cm (0.8 to 1.2 in.) long. Flowers appear from April to June. *Trifolium amoenum* is similar in appearance to *T. macraei*, but is generally larger and the flowers lack subtending bracts.

In 1993, Peter Connors, Bodega Marine Laboratory, discovered a single *Trifolium amoenum* plant in Sonoma County. The species was previously considered extinct. The land on which this plant was found is privately owned and is currently for sale (P. Connors, Bodega Marine Laboratory, pers. comm. 1994; CNDDB 1994). This property currently is not being used. If it is sold, it may be converted to residential use, similar to other land parcels surrounding this site (P. Connors, pers. comm. 1994). In 1994, Dr. Connors grew 18 plants in cultivation from seed produced by the single plant found in 1993 (Connors 1994). These plants were grown to produce seed for later reintroduction efforts (P. Connors, pers. comm. 1994). The soil seed bank in the remaining natural habitat within the species' historical range may contain *T. amoenum* seed. Should *T. amoenum* be found in these areas, the species would likely be threatened by urbanization, competition with nonnative plants, land conversion to agriculture, livestock grazing, stochastic events, and inadequate regulatory mechanisms.

Previous Federal Action

Federal government actions on these nine species began as a result of section 12 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act) 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, and included *Astragalus clarianus, Carex albida, Clarkia imbricata, Lilium pardalinum* ssp. *pitkinense* (as *L. pitkinense*), *Plagiobothrys strictus, Poa napensis,* and *Trifolium amoenum* as endangered and *Sidalcea oregana* ssp. *valida* as 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. The above eight taxa were included in the July 1, 1975, notice. On June 16, 1976, the Service published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Astragalus clarianus, Carex albida, Clarkia imbricata, Lilium pardalinum* ssp. *pitkinense, Poa napensis,* and *Trifolium amoenum* were 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 June 6, 1976, proposal, along with four other proposals that had expired.

The Service published a Notice of Review for plants on December 15, 1980 (45 FR 82480). This notice included *Alopecurus aequalis* var. *sonomensis, Astragalus clarianus, Carex albida, Clarkia imbricata, Lilium pardalinum* ssp. *pitkinense, Plagiobothrys strictus, Poa napensis, Sidalcea oregana* ssp. *valida,* and *Trifolium amoenum* as Category 1 candidate species. 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. On November 28, 1983, the Service published a supplement to the Notice of Review in the **Federal Register** (48 FR 53640). This supplement changed *Alopecurus aequalis* var. *sonomensis, Astragalus clarianus, Plagiobothrys strictus, Poa napensis, Sidalcea oregana* ssp. *valida,* and *Trifolium amoenum* from Category 1 to Category 2 candidates. 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.

The plant notice was revised again on September 27, 1985 (50 FR 39526). The candidate status of eight of the plant species remained unchanged in this notice. *Trifolium amoenum* was included as a Category 2* candidate, indicating that the Service had evidence that the species might be extinct. Another revision of the plant notice was

published on February 21, 1990 (55 FR 6184). In this revision, *Astragalus clarianus, Plagiobothrys strictus, Poa napensis,* and *Sidalcea oregana* ssp. *valida* were returned to Category 1 status. The Service made no changes to the status of any of the nine species in the plant notice published on September 30, 1993 (58 FR 51144). The Service approved Category 1 status for *Alopecurus aequalis* var. *sonomensis* on August 26, 1993. However, the status change was inadvertently not published in the plant notice published on September 30, 1993. Since the publication of that notice, additional information has been received on the status of *Trifolium amoenum,* indicating its rediscovery. The Service, therefore, believes that sufficient information is now available to support the listing of these nine species.

Section 4(b)(3)(B) of the Act 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 *Astragalus clarianus, Carex albida, Clarkia imbricata, Lilium pardalinum* ssp. *pitkinense, Plagiobothrys strictus, Poa napensis, Sidalcea oregana* ssp. *valida,* and *Trifolium amoenum* because the 1975 Smithsonian report had been accepted as a petition. The Service found that the petitioned listing of those eight taxa was warranted but precluded by other higher priority listing actions. The finding was reviewed annually in October from 1983 through 1993. Publication of this proposal constitutes the final finding for the petitioned action for these eight species.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act 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 *Alopecurus aequalis* Sobol. var. *sonomensis* Rubtzoff (Sonoma alopecurus), *Astragalus clarianus* Jepson (Clara Hunt's milkvetch), *Carex albida* Bailey (white sedge), *Clarkia imbricata* Lewis and Lewis (Vine Hill clarkia), *Lilium pardalinum* Kellogg. ssp. *pitkinense* (Beane and Vollmer) M. Skinner (Pitkin Marsh lily), *Plagiobothrys strictus* (Greene) I.M. Johnston (Calistoga allocarya), *Poa napensis* Beetle (Napa bluegrass), *Sidalcea oregana* (Nutt.) Gray ssp. *valida* (Greene) C.L. Hitchcock (Kenwood Marsh checkermallow), and *Trifolium amoenum* Greene (showy Indian clover) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Their Habitat or Range

Habitat destruction, including urbanization, land use changes, and alteration in hydrology of springs poses the most serious threat to the survival of most of these nine plant species.

Inland Species

Astragalus clarianus is known currently from three populations in Napa County and one in Sonoma County (CNDDB 1993, CNPS 1989). The four populations face a variety of threats to their continued existence. Historically, one population in Napa County occupied a larger area but the creation of Lake Hennessey in the 1940s inundated much of the site (Lynn Lozier, pers. comm. 1993). The city of Napa owns the lake and uses Lake Hennessey as a water source for the town. Recently, the city of Napa conducted a feasibility study that considered raising the elevation of the dam as part of a project to increase water storage for the city. Such an elevation change would have raised the lake level, submerging the population of *A. clarianus* (Jake Ruygt, CNPS, *in litt.* 1993). This increased water-storage project at Lake Hennessey has been determined by the city of Napa to be too costly (Don Ridenhour, Public Works Dept., city of Napa, pers comm. 1993). Any future water storage project that would involve increasing the height of the dam and raising the level of Lake Hennessey would constitute a threat to the population of *A. clarianus* due to its proximity to the lakeshore. In December 1990, this remnant population was nearly destroyed when dredge spoils from the lake were placed on top of it (A. Howald, pers. comm. 1993). Eight plants of *A. clarianus* were counted at this site in 1991, 325 plants in 1992, and 156 plants in 1993 (CDFG 1989; J. Ruygt, *in litt.* 1993). The city of Napa, in cooperation with CDFG, removed most of the dredge spoils and fenced the 1 ha (2 ac) area, placing a gate in the fence for fishing access to the lake. Disturbance associated with dredge spoils removal resulted in proliferation of nonnative weeds that further threaten the site, as discussed below under Factor E. The fenced and gated area remains a favorite fishing access to the lake and receives significant use by the public (CDFG 1989). The city of Napa has repaired damage to the fence several times (A. Howald, pers. comm. 1993).

Another population of *Astragalus clarianus* exists in Bothe Napa Valley State Park. Plant numbers have ranged from 8 plants in 1988 to 101 plants in 1993 on a 1 ha (2 ac) monitoring site (J. Ruygt, *in litt.* 1993). The larger portion of the population of *A. clarianus* outside of the monitoring zone occurs sparsely on a 6 ha (15 ac) area. This area has been historically protected by placing brush piles next to a foot trail to divert people away from the population (Bill Grummer, Bothe Napa Valley State Park, California Dept. of Parks and Recreation, pers. comm. 1993). Although the general plan for the park indicates a campground to be placed over the larger portion of *A. clarianus,* the Service does not consider this plan as an imminent threat because of lack of funding and possible revisions to the park plan (B. Grummer, pers. comm. 1993). Although the campground development may be relocated away from the population of *A. clarianus,* the Service considers that increased recreational use from an additional campground in this park constitutes a potential threat.

Another population of *Astragalus clarianus* occurs nearer to the city of Santa Rosa in eastern Sonoma County. This population, scattered over 6 ha (15 ac), is on privately owned land under a voluntary protection agreement with TNC. Upslope and adjacent to this population is the 454 ha (1,350 ac) approved subdivision, Saddle Mountain Development. Soil erosion from proposed road and pad construction for house lots potentially threatens this population of *A. clarianus* (J. Ruygt, *in litt.* 1993).

Over 70 percent of the original habitat of *Plagiobothrys strictus* has been destroyed by urbanization and viticulture (CNPS 1990). The two remaining populations of *P. strictus* are threatened by urbanization (CNDDB 1994, CNPS 1990). One population site occurs at the Calistoga Airport. The construction of the airport fragmented and reduced this population to fewer than 100 plants. Further development at this site could potentially threaten this population (J. Ruygt, *in litt.* 1993). Another population of *P. strictus* is scattered over a 4 ha (10 ac) area of private land near Myrtledale Hot Springs. This population has been bisected by an asphalt road. The landowner has proposed to build a convalescent community on this site, but has been unsuccessful due to current zoning status (CDFG 1988; J. Ruygt, *in litt.* 1993).

Historically, the habitat of each of the two remaining populations of *Poa napensis* has been reduced by the development of health spas and resorts in the city of Calistoga and other construction activities at the Calistoga Airport (CNPS 1987). The remnant population of *P. napensis* at the Calistoga Airport was thought to be extirpated as a result of construction activities in 1981, because no plants were found that year. By 1987, however, 500 plants were counted at the airport location (CDFG 1979; J. Ruygt, *in litt.* 1993). Because *Poa napensis* and *Plagiobothrys strictus* co-occur at the Calistoga Airport and another site in the city of Calistoga, the threats from urbanization, including construction of a hospital, are similar for both species at these sites (CNPS 1987, 1990; J. Ruygt, *in litt.* 1993).

Coastal Species

The single known population of *Carex albida* is located approximately 46 m (150 ft) from State Highway 116, which is a potential source of disturbance. Any change in hydrology of the area resulting from highway construction or maintenance or change in land use would adversely affect the population. Draining the wetland would not only directly impact the species, but would encourage the spread of blackberry (*Rubus* spp.). Invading blackberry vines have become dominant in other parts of Pitkin Marsh that have been drained (CNDDB 1993; B. Guggolz, *in litt.* 1993).

A wastewater treatment project for the cities of Forestville and Graton, Sonoma County, is proposed to be built 0.3 km (0.2 mi) from the single extant population of *Carex albida.* Potential impacts from this project include application of recycled wastewater and temporary or permanent removal of wetlands, riparian vegetation, and special status plants and their habitats (Environmental Science Associates (ESA) 1993). From 1,200 to 4,900 cubic m (1 to 4 ac-ft) of wastewater per year would be applied on approximately 14 to 27 ha (35 to 60 ac) of land. Although the population of *C. albida* would not be directly impacted, the application of this volume of wastewater could result in the alteration of the remaining habitat within the historical range of *C. albida* through modification of surface drainage patterns (ESA 1993). The historical ranges of *Lilium pardalinum* ssp. *pitkinense* and *Alopecurus aequalis* var. *sonomensis* also occur within the project boundaries.

The type locality of *Clarkia imbricata* along the roadside at Pitkin Ranch was extirpated prior to 1974, as a probable result of changes in land use or roadside maintenance (B. Guggolz, *in litt.* 1993). Another population of *C. imbricata* in Sonoma County has been extirpated as a result of Christmas tree farming and weed control activities (B. Guggolz, *in litt.* 1993). The larger of the two extant populations of *C. imbricata* is threatened by changing land use such as agricultural land conversion (B. Guggolz, *in litt.* 1993).

One population of *Lilium pardalinum* ssp. *pitkinense* was largely destroyed by urbanization in 1961; however, approximately 200 plants remain (CDFG 1993b; B. Guggolz, pers. comm. 1993). Although a subdivision is currently planned for the area surrounding a portion of this population, the landowner has agreed to place the *L. pardalinum* ssp. *pitkinense* habitat area in a conservation easement. The agreement between CDFG and the landowner places all sensitive natural resource areas in a conservation easement for long-term management, with CDFG as easement holder (A. Buckmann, CDFG, *in litt.* 1993). Wetland fills at Pitkin Marsh have lowered the water table and resulted in drier soil conditions, which has negatively affected *L. pardalinum* ssp. *pitkinense.* This change in habitat quality is considered an ongoing threat to the population at Pitkin Marsh, since there are only two plants remaining (CDFG 1993b).

The two populations of *Sidalcea oregana* ssp. *valida* are threatened by permitted and apparently unauthorized water diversions from the unnamed stream that feeds Kenwood Marsh. In the past, unauthorized diversions have removed all water from the stream channel, eliminating one source of surface water to the marsh (A. Howald, pers. comm. 1993). Plant census data from 1991 indicate that the eastern subpopulation in Kenwood Marsh declined by approximately 40 percent and the western subpopulation declined by approximately 30 percent compared to 1989 and 1990 data. These figures suggest that the Kenwood Marsh population may be experiencing a delayed response to a drought. The effects of the drought may be exacerbated by effects of increased surface water diversion and result in a further decline in the population (John Turner, CDFG, *in litt.* 1993).

Trifolium amoenum has been extirpated from all of its 24 historical occurrences in 7 counties. Loss of this habitat resulted primarily from urbanization and land conversion to agriculture (Zoe Chandik, CNPS, *in litt.* 1993). The most recently discovered occurrence, found in 1993 in Sonoma County, consisted of one plant located on privately owned property that is currently for sale (CNDDB 1994). If this property is developed or altered, it may no longer contain suitable habitat for *T. amoenum*. In addition, the human population of Sonoma County is expected to grow by 21.4 percent by the year 2000 (California Department of Finance 1992), and any remaining *T. amoenum* habitat may be converted to urban use.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

One of the two populations of *Lilium pardalinum* ssp. *pitkinense* has been nearly extirpated by uncontrolled collection of plants, seeds, and bulbs for horticultural use. This species was abundant historically at the Pitkin Marsh site, but the removal of plants and bulbs for horticultural use has reduced this population to two plants (CDFG 1993b). Similar activities at the remaining site, containing only 200 plants, would result in the extinction of the species (B. Guggolz, pers. comm. 1993). Of the two remaining populations of *Clarkia imbricata,* one population is found in a preserve owned by the California Native Plant Society (CNPS). Although CNPS has attempted to discourage unauthorized collection by fencing the preserve and by not publicizing the exact location of the site, trespassers have damaged the fence, trampled the vegetation, and collected seed of *C. imbricata* on several occasions (B. Guggolz, *in litt.* 1993). Any occurrences of *Trifolium amoenum* that may be discovered in the future also may attract collectors of plants or seed because the species was previously considered to be extinct. Overutilization is currently not known to be a factor for the remaining six species, but unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity as a result of this proposal.

C. Disease or Predation

All five populations of *Alopecurus aequalis* var. *sonomensis* are grazed by cattle (CNDDB 1993), but only two populations in Sonoma County, containing a total of 50 plants, are currently threatened by cattle grazing (CNDDB 1993). One population on the Point Reyes National Seashore was fenced in 1987 to stop cattle from overgrazing (V. Norris, *in litt.* 1993). The species presently consists of only 200 known plants.

Carex albida is currently not grazed, although cattle graze other portions of the parcel on which the species is

located. A change in management of the site to allow grazing near *C. albida* may adversely affect the species (B. Guggolz, *in litt.* 1993). The associated trampling and disturbance of the wet soils would also be detrimental to the species (J. Mastrogiuseppe, Washington State Univ., pers. comm. 1993).

Sidalcea oregana ssp. *valida* is adversely affected at both of its locations by trampling and reduced seed set resulting from cattle grazing (CNDDB 1993). *Lilium pardalinum* ssp. *pitkinense* has been enclosed with 2 m (6 ft) high wire fencing at both locations to prevent grazing by cattle, horses, and deer. In spite of this effort, the plants continue to suffer herbivory resulting in loss of flowers and seeds (L. Lozier, *in litt.* 1990).

Trifolium amoenum may have disappeared from some of its former locations due to grazing (Connors 1994). This species is a large clover that blooms when many grassland plants have already turned brown, likely making it attractive to grazing herbivores. Most recent sightings of the plant were located outside of fences along roadsides, suggesting that the species survived for a period where it was protected from grazing (Connors 1994). Although no naturally occurring populations of this species are currently known, any populations that are subsequently discovered on pasture land may be subject to the same grazing pressure as historical populations.

D. The Inadequacy of Existing Regulatory Mechanisms

The California Fish and Game Commission has listed *Carex albida, Clarkia imbricata, Lilium pardalinum* ssp. *pitkinense, Poa napensis,* and *Sidalcea oregana* ssp. *valida* as endangered species under the California Endangered Species Act (Division 3, Chapter 1.5 section 2050 et seq. of the California Fish and Game Code and Title 14 California Code of Regulations 670.2). The California Fish and Game Commission has also listed *Astragalus clarianus* and *Plagiobothrys strictus* as threatened species. Listing by the State of California requires individuals to obtain a memorandum of understanding with CDFG to possess or ''take'' a listed species. Although the ''take'' of State-listed plants is prohibited (California Native Plant Protection Act, Division 2, Chapter 10, section 1908 and California Endangered Species Act, Division 3, Chapter 1.5, section 2080), State law exempts the taking of such plants via habitat modification or land use changes by the owner. After CDFG notifies a landowner that a State-listed plant grows on his or her property, State law only requires that the landowner notify the agency ''at least 10 days in advance of changing the land use to allow salvage of such a plant'' (Native Plant Protection Act, Division 2, Chapter 10, section 1913).

The California Environmental Quality Act (CEQA) requires a full disclosure of the potential environmental impacts of proposed projects. 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.'' Species that are eligible for State listing as rare, threatened, or endangered, but are not so listed, are given the same protection as those species that are officially listed with the State or Federal governments. Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the agency involved.

Hot spring areas and perennial freshwater emergent marshes are generally small and scattered, and treated as isolated wetlands or waters of the United States for regulatory purposes by the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act. However, this law by itself does not protect *Alopecurus aequalis* var. *sonomensis, Carex albida, Lilium pardalinum* ssp. *pitkinense, Poa napensis, Plagiobothrys strictus, Sidalcea oregana* ssp. *valida,* and *Trifolium amoenum*. Nationwide Permit No. 26 (33 CFR part 330 Appendix B (26)) was established by the Corps to facilitate issuance of permits for discharge of fill into wetlands up to 4 ha (10 ac). For project proposals falling under Nationwide Permit 26, the Corps has been reluctant to withhold authorization unless a listed threatened or endangered species is known to be present, regardless of the significance of other wetland resources. Section 404 regulations require an applicant to obtain an individual permit to fill isolated wetlands or waters greater than 4 ha (10 ac). In either case, candidate species receive no special consideration. Additionally and equally important, the upland watersheds that contribute significantly to the hydrology of marshes are not provided any direct protection under section 404. Disturbance to or loss of seep or marsh habitat and alteration of hydrology have damaged populations and habitat as discussed previously under Factor A. Reductions in water volume or inundation of the sites have the potential to adversely affect the seven plant taxa listed above. Thus, as a consequence of the small size of these marsh, meadow, and hot spring areas and lack of protection of associated uplands, these types of habitats receive insufficient protection under section 404 of the Clean Water Act.

The Sonoma County Department of Planning has designated Pitkin, Cunningham, and Kenwood Marshes as ''critical habitat'' (Sonoma County 1989). The streams within these marshes are designated as ''riparian corridors.'' It is not likely that these designations will adequately protect the species involved. County policies for ''critical habitat'' designation include 15 m (50 ft) setbacks of construction from wetland boundaries and preparation of biotic resource assessments for development of mitigation measures, if the planning director determines that a ''critical habitat'' area will be impacted (Sonoma County 1989). A setback may be waived, however, if the setback is determined to make the parcel unsuitable for construction. The single population of *Carex albida* and the larger population of *Lilium pardalinum* ssp. *pitkinense* occur within 15 m (50 ft) of streams in Sonoma County (CNDDB 1993). The Sonoma County policy for ''riparian corridors'' allows the removal of riparian vegetation as part of a pest management program administered by the County Agricultural Commissioner, as well as construction of roads and summer dams (Sonoma County 1989). In addition, agricultural projects that may involve removal of native vegetation, including the proposed species or alteration of their habitats, are considered in Sonoma County to be ''ministerial'' (K. Ellison, Sonoma County Department of Planning, pers. comm. 1993). Ministerial projects are those projects that the public agency must approve after the applicant shows compliance with certain legal requirements. They may be approved or carried out without undertaking CEQA review.

Only a few measures have been taken to protect some of the species in this proposed rule. In 1989, the landowners of the two confirmed populations of *Lilium pardalinum* ssp. *pitkinense*

entered into voluntary protection agreements with TNC (CDFG 1993b). Since that time, TNC and the California Conservation Corps have jointly built and maintained cattle exclosures in an attempt to protect the plants at both sites. Some plants, however, continue to suffer herbivory from livestock and wildlife, resulting in loss of flowers and seeds (L. Lozier, *in litt.* 1990). A Memorandum of Understanding is currently in effect between CDFG and the Berry Botanic Garden, Portland, Oregon, for research on germination and recovery of this species (CDFG 1993b). Additionally, TNC obtained a voluntary agreement in 1990 with private landowners to protect one population of *Astragalus clarianus.* CDFG is proposing to purchase approximately 37 ha (90 ac) of the Kenwood Marsh as an ecological preserve (A. Howald, pers. comm. 1993). The date for acquisition of the preserve, however, is dependent on cooperation with the current landowners. The owner of one parcel, which contains approximately one half of the Kenwood population, has declined to sell her property to the State (N. Wilcox, pers. comm. 1994). Purchase of the land as a preserve would prevent grazing on the site and would allow direct management of the plant population with possible opportunities to expand the population (A. Howald, pers. comm. 1993). The preserve would be comprised of only a small portion of the watershed, however, limiting the protection that the preserve could afford to the hydrology of the marsh (N. Wilcox, pers. comm. 1994). TNC also has entered into a verbal conservation agreement with a landowner for the protection of one of the two populations of *Clarkia imbricata*. However, this larger population of *C. imbricata* was mowed before seed set in 1989 and 1991, reducing the seed production and number of plants in the years following mowing (B. Guggolz, *in litt. 1993*).

Seed from cultivated *Trifolium amoenum* plants is currently being collected for future reintroduction efforts (P. Conners, pers. comm. 1994). In addition, half of the seed that was recovered from the single plant in 1993 was deposited for long-term storage at the U.S. Department of Agriculture National Seed Storage Laboratory in Fort Collins, Colorado (Conners 1994).

Although Point Reyes National Seashore (Seashore) is part of the National Park system, 17 cattle and dairy ranches are contained within the Seashore boundaries. Grazing and ranching, which have occurred on the peninsula for more than a century, have been determined to be ''consistent with the purpose for which the Seashore was authorized'' (Clark and Fellers 1987). Fowler and Fellers (1985) state that grazing has been a serious threat to *Alopecurus aequalis* var. *sonomensis* occurrences located on the Seashore.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

Alopecurus aequalis var. *sonomensis* suffers from competition from aggressive emergent wetland species, including rushes (*Juncus* spp.) and sedges (*Cyperus* spp.) at one location. These wetland plants have nearly extirpated *A. aequalis* var. *sonomensis* from that site (V. Norris, *in litt.* 1993; CNDDB 1993). Additionally, *A. aequalis* var. *sonomensis* is not readily propagated. Two attempts to reintroduce the species from seed to suitable habitat within its range have failed. Naturally occurring floods also may be an ongoing threat. One reintroduction failed due to a flash flood in 1993 (V. Norris, pers. comm. 1993).

The population of *Astragalus clarianus* located on the north shore of Lake Hennessey has an infestation of an aggressive and dominating nonnative weed, yellow star-thistle (*Centaurea solstitialis*). This nonnative weed infestation was a direct result of ground disturbance associated with the removal of dredge spoils that were placed on top of this population as discussed under Factor A (A. Howald, pers. comm. 1993). Competition from this nonnative annual weed is also considered a threat to the population of *A. clarianus* at the Bothe Napa Valley State Park (J. Ruygt, *in litt.* 1993). A proposed application to build two small agricultural water storage reservoirs along a creek in Napa County would avoid direct impacts to another population of *A. clarianus,* but ground disturbance would most likely introduce this same nonnative aggressive weed (A. Howald, pers. comm. 1993). Establishment of yellow star-thistle from this proposed activity is considered a threat to this population.

Plant succession may be excluding or reducing the population of *Astragalus clarianus* at one site (J. Ruygt, *in litt.* 1993) where *A. clarianus* grows sparingly in the interspaces of the developing manzanita plant community. As new manzanita seedlings emerge and grow and the existing plants grow larger, less and less interspace between plants is available for *A. clarianus.* Fire suppression has reduced fire occurrences in the manzanita community. Periodic fire is needed to reduce manzanita cover and create interspaces for this plant. This species, therefore, is vulnerable to habitat loss from advancing plant succession. Another population of *A. clarianus* is threatened by competition from French broom (*Genista monospessulana*), a nonnative aggressive shrub (CNDDB 1993).

The potential for loss of the Kenwood Marsh population of *Sidalcea oregana* ssp. *valida* from stochastic events, because of the small population size, is exacerbated by drought and water diversions. In addition, this population is being encroached upon by aggressive weeds, including yellow star-thistle and blackberry (*Rubus* spp.) (A. Howald, pers. comm. 1993). One of the Kenwood Marsh subpopulations was driven over by Sonoma County personnel during maintenance of the Sonoma Aqueduct, which passes through Kenwood Marsh. The maintenance activity occurred late in the season when the soil was relatively dry, resulting in minimal damage to the plants. If maintenance activities occur during a time when the soil is saturated, they pose a threat to the plants (A. Howald, pers. comm. 1993).

Because it is unlikely that *Lilium pardalinum* ssp. *pitkinense* is self-pollinating, single plants or widely separated plants in sparse populations may not set viable seed (Mark Skinner, CNPS, pers. comm. 1993). The two remaining plants at Pitkin Marsh are monitored closely by CNPS volunteers and have not been observed to have set seed for several years (M. Skinner, pers. comm. 1993). Much of Pitkin Marsh has been invaded by blackberry vines that compete with *L. pardalinum* ssp. *pitkinense* for space, light, and nutrients (CDFG 1993b).

Grass mowing, vehicle traffic, and parking have impacted and continue to threaten one population of *Poa napensis* at the Calistoga Airport site (CNPS 1990; Robert Soreng, Cornell Univ., *in litt.* 1993). Grass mowing is done at regular intervals through the spring and summer growing season to reduce fire and aircraft safety hazards. The airport is used by a spray plane service, recreational gliders, and associated tow planes. The service vehicles for the planes and private vehicle traffic of the customers impact this population of *P. napensis,* especially during the spring and summer when airport use increases.

The extirpation of all historical populations of *Trifolium amoenum* may have partially been a result of competition with weedy, nonnative plant species. A recent germination study of other *Trifolium* species from historical *T. amoenum* habitat in Sonoma County suggested that some annual *Trifolium* species germinate in late November, well after many introduced species, including redstem storkbill (*Erodium cicutarium*), ripgut

brome (*Bromus diandrus*), and California burclover (*Medicago polymorpha*) (Connors 1994). By germinating and growing earlier, it is likely that nonnative species have reduced the numbers of *T. amoenum* plants by occupying available space (Connors 1994).

Small numbers of populations and small population size threaten most of the plants proposed herein. There are 5 populations of *Alopecurus aequalis* var. *sonomensis* with a total of 200 plants. There are 2 populations of *Lilium pardalinum* ssp. *pitkinense* with a total of 200 plants. There are 2 populations of *Sidalcea oregana* ssp. *valida* with fewer than 100 plants. These three species may be subject to increased genetic drift and inbreeding as a consequence of their small population sizes (Menges 1991, Ellstrand and Elam 1993). The increased homozygosity results in a loss of genetic fitness (Ellstrand and Elam 1993). The reduction in genetic fitness affords less chance of any species to successfully adapt to any environmental changes. The very small numbers make them extremely vulnerable to extirpation from stochastic events.

In addition to the 3 species listed above, there are only 4 populations of *Astragalus clarianus* with fewer than 2,000 plants; 1 population of *Carex albida* with 800 to 1,000 plants; 2 populations of *Clarkia imbricata* with fewer than 6,000 plants; 3 populations of *Plagiobothrys strictus* with fewer than 10,000 plants; and 3 populations of *Poa napensis* with fewer than 1,000 plants. Fewer than 18 *Trifolium amoenum* plants exist in cultivation. The combination of a few small populations, very narrow range, and restricted habitat makes these nine species susceptible to destruction of all or a significant portion of any population from random natural events, such as flood, drought, disease, or other natural occurrences (Shaffer 1981, Primack 1993). Such events are not usually a concern until the number of individuals or geographic distribution become as limited as is the case with the species discussed herein. Once a plant population is reduced due to habitat destruction and fragmentation, the remnant population has a higher probability of extinction from random events. Thus, all nine taxa are threatened by potential loss of genetic fitness associated with their small populations or damage and destruction by random natural events across the entire range of each taxon.

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. Cattle grazing or competition with aggressive plant species threatens 3 of the 5 remaining populations of *Alopecurus aequalis* var. *sonomensis*, totalling approximately 200 plants. Efforts to reintroduce this species to sites within its range have failed. *Alopecurus aequalis* var. *sonomensis* is susceptible to extinction due to small numbers of populations and individuals and is threatened by inadequate regulatory mechanisms. If combined, all four populations of *Astragalus clarianus* could fit into a 0.5 ha (1 ac) area and are threatened variously by a potential water storage project, a potential subdivision, competition from nonnative plant species, recreational activities, airport maintenance, inadequate regulatory mechanisms, stochastic events, and elimination through plant community succession. The single *Carex albida* population, totaling approximately 800 to 1,000 plants, is located 46 m (150 ft) from a State highway and is threatened by potential changes in the site's hydrology resulting from wetland drainage or fill, competition from aggressive plant species, changes in land management by the owner, highway construction or maintenance, potential disturbance from a proposed wastewater treatment project, inadequate regulatory mechanisms, and stochastic events. The two remaining populations of *Clarkia imbricata* are threatened by changing land use, unauthorized collection, inadequate regulatory mechanisms, and stochastic events. The 2 remaining populations of *Lilium pardalinum* ssp. *pitkinense*, totalling approximately 200 plants, suffer from uncontrolled collection of plants, seeds, and bulbs for horticultural use, and by grazing. One population is potentially threatened by a proposed wastewater treatment project; the other population is potentially threatened by a proposed subdivision. *Lilium pardalinum* ssp. *pitkinense* also is threatened by nature of its small populations, stochastic events, and inadequate regulatory mechanisms. If combined, the remaining populations of *Plagiobothrys strictus* and *Poa napensis* would occupy an area of less than 0.5 ha (1 ac) each and are surrounded by hot springs resorts or housing. *Plagiobothrys strictus* and *Poa napensis* co-occur at two sites and both species are threatened by airport activities, including traffic and vehicle parking on the plants, grass mowing, and potential development of remnant habitat, including the construction of a hospital at this site. Additionally, all populations of the two species are threatened by potential alteration of hot springs hydrology, stochastic events, and inadequate regulatory mechanisms. The two populations of *Sidalcea oregana* ssp. *valida* are threatened by trampling and reduced seed set resulting from cattle grazing, aqueduct maintenance, competition from nonnative plant species, potential loss of normal hydrology from urbanization, inadequate regulatory mechanisms, and stochastic events and reduced genetic fitness because of the small number of individuals and populations.

Trifolium amoenum has been extirpated from all 24 historical occurrences in 7 counties; the species currently exists as 18 plants in cultivation. This species is threatened by stochastic events due to the small number of plants, competition with aggressive plant species, loss of habitat from urbanization, livestock grazing, and inadequate regulatory mechanisms.

These nine species are imminently threatened by extinction throughout all or a significant portion of their range by the factors summarized above and therefore meet the definition of endangered in the Act. Based on this evaluation, the preferred action is to list *Alopecurus aequalis* var. *sonomensis, Astragalus clarianus, Carex albida, Clarkia imbricata, Lilium pardalinum* ssp. *pitkinense, Plagiobothrys strictus, Poa napensis, Sidalcea oregana* ssp. *valida,* and *Trifolium amoenum* as endangered.

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 consideration 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. The Service finds that designation of critical habitat is not

prudent for these nine plant taxa 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 threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

As required for proposals to designate critical habitat, the publication of maps and the precise locations of involved plant populations could contribute to the further decline of the nine taxa proposed herein and increase enforcement problems, particularly in the case of *Lilium pardalinum* ssp. *pitkinense.* This taxon, which is threatened primarily by uncontrolled collection for horticultural use, is especially at risk from additional publicity. Two of the three privately owned populations of *Alopecurus aequalis* var. *sonomensis* are found in close proximity to *L. pardalinum* ssp. *pitkinense.* Although *A. aequalis* var. *sonomensis* is not collected for horticultural use, any increase in publicity of *A. aequalis* var. *sonomensis* could lead to collection or destruction of that species, as well as increased collection of *L. pardalinum* ssp. *pitkinense.* One of the two populations of *Clarkia imbricata* in a preserve owned by the California Native Plant Society has experienced unauthorized collection, despite a deliberate decision not to publicize the preserve's exact location. Thus, the Service finds that designation of critical habitat for *Alopecurus aequalis* var. *sonomensis, Clarkia imbricata,* and *Lilium pardalinum* ssp. *pitkinense* is not prudent because of potential vandalism and uncontrolled collection for horticultural use. No *Trifolium amoenum* plants are currently known to exist in the wild, but designation of critical habitat could encourage vandalism and preclude recovery efforts for the species.

The single *Carex albida* population and a portion of one of the two populations of *Sidalcea oregana* ssp. *valida* are adjacent to State highways. Any specific locality information could subject these species to activities that would jeopardize their survival. Thus, the Service finds that designation of critical habitat is not prudent for *Carex albida* and *Sidalcea oregana* ssp. *valida* because of potential vandalism.

Because *Astragalus clarianus, Plagiobothrys strictus,* and *Poa napensis* have very specific known habitat requirements and occur at very few locations in or near cities, any activity that would adversely modify habitat or destroy plants would likely jeopardize the continued existence of each of these species. Therefore, the Service finds that designation of critical habitat is not prudent for *Astragalus clarianus, Plagiobothrys strictus,* and *Poa napensis* because it would not provide additional benefit beyond that provided by listing for the conservation of the species.

Additionally, publicity that might result in public trespass on privately owned sites by individuals seeking the plants could reduce the landowners' willingness to cooperate with public or private agencies in their protection efforts for the involved taxa (B. Guggolz, pers. comm. 1993). Designation would provide no additional benefit to any of these nine species beyond the benefit received by virtue of their designation as endangered species. Protection of these nine species will be addressed through the recovery process and through the section 7 consultation process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species 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 State 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) of the Act 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 formal consultation with the Service.

All nine plant species may be affected by Federal mortgage programs, including those managed by the Veterans Administration and the U.S. Department of Housing and Urban Development (Federal Home Administration loans). Since six of the nine taxa proposed herein exist in or near marshes, meadows, perennial streams, or thermal hot springs, the Corps may become involved in regulating fill of these wetland areas through jurisdiction of section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*). The plants may also be affected by road and highway construction by the Federal Highway Administration. The National Park Service may become involved through section 7 consultation because of potential grazing impacts to *Alopecurus aequalis* var. *sonomensis* at Point Reyes National Seashore (Seashore). The Seashore has twice attempted to reintroduce *A. aequalis* var. *sonomensis* using seed collected within the Seashore. In 1987, the Seashore erected a cattle exclosure fence to protect this species from grazing (V. Norris, *in litt.* 1993).

Listing *Alopecurus aequalis* var. *sonomensis, Astragalus clarianus, Carex albida, Clarkia imbricata, Lilium pardalinum* ssp. *pitkinense, Plagiobothrys strictus, Poa napensis, Sidalcea oregana* ssp. *valida,* and *Trifolium amoenum* would provide for development of a recovery plan (or plans) for them. Such plan(s) would bring together both State and Federal efforts for conservation of the plants. The plan(s) would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan(s) would set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also would describe site-specific management actions necessary to achieve conservation and survival of the nine plant species. Additionally, pursuant to section 6 of the Act, the Service would be more likely to grant funds to affected states for management actions promoting the protection and recovery of 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 of any such species on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plant species 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 plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. The Service anticipates that few permits would ever be sought or issued for eight of the species because they are not common in cultivation or in the wild. *Lilium pardalinum* ssp. *pitkinense*, however, is collected for horticultural use.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), 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 the listing of the nine plant species on proposed and ongoing activities within the species' range. The Service believes that activities such as landscape maintenance, clearing vegetation for firebreaks, and livestock grazing on privately owned lands, not under Federal funding or authorization, would not be considered a violation of section 9 of the Act. Questions regarding whether specific activities would constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Sacramento Field Office (see **ADDRESSES** section). Requests for copies of the regulations regarding listed plants and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE 11th Ave., Portland, Oregon 97232–4181 (phone 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 *Alopecurus aequalis* var. *sonomensis, Astragalus clarianus, Carex albida, Clarkia imbricata, Lilium pardalinum* ssp. *pitkinense, Plagiobothrys strictus, Poa napensis, Sidalcea oregana* ssp. *valida*, and *Trifolium amoenum*;

(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 pursuant to 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 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, Sacramento 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 is available upon request from the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

Authors

The primary authors of this proposed rule are Elizabeth Warne and Kenneth Fuller, Sacramento 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							
*	*	*	*	*	*	*	
Alopecurus aequalis var. sonomensis.	Sonoma alopecurus	U.S.A. (CA)	Poaceae	E		NA	NA

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	
Astragalus clarianus.	Clara Hunt's milkvetch.	U.S.A. (CA)	Fabaceae	E		NA	NA
*	*	*	*	*	*	*	
Carex albida	White sedge	U.S.A. (CA)	Cyperaceae	E		NA	NA
*	*	*	*	*	*	*	
Clarkia imbricata	Vine Hill clarkia	U.S.A. (CA)	Onagraceae	E		NA	NA
*	*	*	*	*	*	*	
Lilium pardalinum ssp. pitkinense.	Pitkin Marsh lily	U.S.A. (CA)	Liliaceae	E		NA	NA
*	*	*	*	*	*	*	
Plagiobothrys strictus.	Calistoga allocarya	U.S.A. (CA)	Boraginaceae	E		NA	NA
*	*	*	*	*	*	*	
Poa napensis	Napa bluegrass	U.S.A. (CA)	Poaceae	E		NA	NA
*	*	*	*	*	*	*	
Sidalcea oregana ssp. valida.	Kenwood Marsh checkermallow.	U.S.A. (CA)	Malvaceae	E		NA	NA
*	*	*	*	*	*	*	
Trifolium amoenum.	Showy Indian clover	U.S.A. (CA)	Fabaceae	E		NA	NA
*	*	*	*	*	*	*	

Dated: July 5, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–18812 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 17

[RIN 1018–AD09]

Endangered and Threatened Wildlife and Plants; Proposed Rule to Determine Five Plants and a Lizard from Monterey County, California, as Endangered or Threatened

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 four plants and a reptile: *Astragalus tener* var. *titi* (coastal dunes milk-vetch), *Piperia yadonii* (Yadon's piperia), *Potentilla hickmanii* (Hickmann's potentilla), *Trifolium trichocalyx* (Monterey clover) and the black legless lizard (*Anniella pulchra nigra*); and threatened status for *Cupressus goveniana* ssp. *goveniana* (Gowen cypress). The six taxa are found primarily along the coast of northern Monterey County, California. The five plant taxa and the lizard are threatened by one or more of the following: alteration, destruction, and fragmentation of habitat resulting from urban and golf course development; recreational activities; highway widening; military activities; competition with non-native species; and alteration of natural fire cycles. All taxa are also threatened with stochastic extinction due to the small numbers of populations or individuals. This proposed rule, if made final, would extend the Act's protection to these taxa.

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, 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

The Monterey Peninsula on the central California coast has been noted for a high degree of species endemism (Axelrod 1982, Howitt 1972, Raven and Axelrod 1978). Species with more northern affinities reach their southern limits on the Peninsula; species with more southern affinities reach their northern limits here as well (Howitt and Howell 1964). The Monterey Peninsula is influenced by a maritime climate that is even more pronounced due to the upwelling of cool water from the Monterey submarine canyon. Rainfall amounts to only 38 to 51 centimeters (cm) (15 to 20 inches) per year, but summer fog-drip is a primary source of

moisture for taxa that would otherwise not be able to persist with such low rainfall. Some taxa, such as the coastal closed-cone pines and cypresses may represent relicts of species that once had a more continuous, widespread distribution in the more mesic climate of the late Pleistocene period, then retreated to small pockets of cooler and wetter conditions along the coast ranges during the hotter and drier xerothermic period between 8,000 and 4,000 years ago (Axelrod 1982).

In 1602, the Spanish government commissioned Sebastian Viscaino to map the coastline; he travelled as far north as the Mendocino coast. In his journal, he made note of the ''pine covered headlands'' and the ''great pine trees, smooth and straight, suitable for the masts and yards of ships'' that he saw while anchored in Monterey Bay (F.B. Larkey in Howitt 1972). During the early 1900s, Willis L. Jepson characterized the forests on the Monterey Peninsula as the ''most important silva ever'', and encouraged Samuel F. B. Morse of the Del Monte Properties Company to explore the possibilities of preserving the unique forest communities (F. B. Larkin in Howitt 1972). Morse believed that developing recreational facilities would allow income to be derived from the property while maintaining the forest intact.

In 1941, maps were compiled by the U.S. Forest Service to show plant associations that were similar in ''fire-hazard characteristics and in uses or qualities of economic importance'' (U.S. Forest Service 1941). The bulk of the Monterey Peninsula was mapped as Monterey pine forest with a discrete stand of Bishop pine in the center of the peninsula. The coastline was fringed with either ''barren'' stretches, grassland, or ''sagebrush'', and a stretch of ''cypress species'' extending east along the coast from what is known as Cypress Point. By 1930, however, the construction of three golf courses likely resulted in the removal of a number of Monterey pines.

Three native Monterey pine (*Pinus radiata*) stands remain in California: on the Monterey Peninsula; near Ano Nuevo Point in northern Santa Cruz County; and near Cambria in San Luis Obispo County. The Monterey Peninsula stand is not only the most extensive of the three, it is also unique in its association with *Pinus muricata* (Bishop pine), *Cupressus goveniana* ssp. *goveniana* (Gowen cypress), and *Cupressus macrocarpa* (Monterey cypress). While *P. radiata* grows well on a wide variety of soils, it does not do well on the acidic, poorly-drained soils found on Huckleberry Hill centrally located on Monterey Peninsula. Here, the less aggressive *C. goveniana* ssp. *goveniana* and *P. muricata* are spared competition from *P. radiata.* Some of the chaparral species associated with these forest stands include *Arctostaphylos pumila* (sandmat manzanita), *Arctostaphylos hookeri* ssp. *hookeri* (Hooker's manzanita), *Ceanothus dentatus* (toothleaf lilac), and *Ericameria fasciculata* (Eastwood's ericameria) (Holland 1986, Vogl *et al.* 1988).

Much of what the Forest Service mapped in 1941 as grassland or ''barren'' (which most likely included coastal dunes) on the peninsular coastline has been subsequently converted to golf courses. Remnant dunes support a coastal dune scrub community dominated by *Artemisia pycnocephala* (beach sagewort), *Baccharis pilularis* (coyote bush), and several bush lupines (*Lupinus arboreus, L. chamissonis*). The southernmost occurrences for *Erysimum menziesii* (Menzies wallflower), *Layia carnosa* (beach layia), *Lupinus tidestromii* (Tidestrom's lupine), and *Gilia tenuiflora* ssp. *arenaria* (dune gilia), all federally endangered species, occur on these remnant dunes (Holland 1986, U.S. Fish and Wildlife Service 1992). It is uncertain what species characterized the grasslands mapped by the Forest Service. Aside from harboring small populations of several of the species that are contained within this proposed rule, these patches of herbaceous vegetation support a large number of non-native grasses and succulents, as well as opportunistic native herbaceous species (Ferreira 1992a, Ferreira 1992b). As for the patches mapped by the Forest Service as ''sagebrush'', these most likely matched what is currently called coastal sage scrub, a community dominated by *Artemisia californica* (California sagebrush). For the most part, these patches occurred within what are now urbanized portions of the cities of Monterey and Pacific Grove and the Pacific Grove Municipal Golf Course.

Astragalus tener var. *titi* (coastal dunes milk-vetch) was first collected by Mrs. Joseph Clemens in 1904 along 17-Mile Drive on the Monterey Peninsula ''near an old hut composed of abalone shells and coal-oil cans.'' Alice Eastwood (1905) later named the plant *Astragalus titi* in honor of Dr. F. H. Titus. Subsequently, John Thomas Howell (1938), while comparing a specimen of *A. tener* that was collected by David Douglas near Salinas, Monterey County, remarked that although ''*Astragalus titi* Eastwood has generally been regarded as the same as *Astragalus tener*, * * * the two plants are not the same and *Astragalus titi* seems worthy of varietal, if not specific recognition.'' Rupert Barneby published the combination *A. tener* var. *titi* in 1950, noting the difference in flower size, habitat, and geographic range between it and *A. tener* var. *tener* (Barneby 1950).

Astragalus tener var. *titi* is a diminutive annual herb of the pea family (Fabaceae). The slender, slightly pubescent stems reach 1 to 1.5 decimeters (dm) (4 to 6 inches) in height, with leaves that are 7 to 11 pinnately compound and 2 to 7 cm (0.8 to 2.7 inches) long with slightly bilobed tips. The tiny lavender to purple flowers are 5 to 6 millimeters (mm) (0.25 inches) long and are arranged in subcapitate racemes of 2 to 12 flowers. The linear seed pods are straight to sickle-shaped and 6 to 14 mm (0.25 to 0.6 inches) long (Bittman 1985).

Two historical locations from Los Angeles County (Hyde Park in Inglewood and Santa Monica) and two from San Diego County (Silver Strand and Soledad) were annotated by Barneby as *Astragalus tener* var. *titi* (Barneby 1950). Numerous unsuccessful searches for the plant have been made in these locations over the past decade (Ferreira 1992a, Julie Vanderweir, botanical consultant, San Diego County, pers. comm., 1992). It is unlikely that suitable habitat remains, since the Los Angeles County locations have been heavily urbanized. The Silver Strand area is owned by the Department of Defense (Miramar Naval Weapons Center), and a portion has been subjected to amphibious vehicle training exercises. Another portion of Silver Strand has been leased by the Navy to the California Department of Parks and Recreation for development of a campground and recreational facilities.

The only known extant population of *Astragalus tener* var. *titi* occurs along 17-Mile Drive on the western edge of the Monterey Peninsula on land owned by the Pebble Beach Company. The milk-vetch occurs on a relatively flat coastal terrace within 30 meters (m) (100 feet (ft)) of the ocean beach and 8 m (25 ft) above sea level. The loamy fine sands that comprise a series of shallow swales on the terrace surface support standing water during wet winter and spring seasons. Individual plants are found on the bottoms or sides of the swales growing in association with other low growing grasses and herbs, including the non-native *Carpobrotus edulis* (hottentot fig) and *Plantago coronopus* (cut-leaf plantain). In 1992, only 120

individuals were counted from the known population, which over the past decade had fluctuated from 15 to 1,000 individuals (Ferreira 1992a).

The population was bisected by construction of 17-Mile Drive, which also likely altered the local hydrology. Half of the remaining habitat occurs between the road and the ocean bluff's edge, and the other half occurs between the interior side of the road and a horse trail that runs parallel to a golfing green. *Astragalus tener* var. *titi* is currently threatened with alteration of habitat from trampling associated with several recreational activities, including hiking, picnicking, ocean viewing, wildlife photography, equestrian use, and golfing. The species also faces threats from stochastic (i.e., random) extinction by virtue of the small size of the remaining population. The plant may also be threatened with competition from the non-native *Carpobrotus edulis* and *Plantago coronopus*, though current management by the Pebble Beach Company includes hottentot fig removal from a portion of the habitat.

Cupressus goveniana ssp. *goveniana* (Gowen cypress) was first discovered by Karl Hartweg ''on the pine barrens of Huckleberry Hill (Monterey Peninsula)'' in 1846. The plant was described as *Cupressus goveniana* by British horticulturalist George Gordon in 1849 who named it after fellow horticulturalist James R. Gowen (Sargent 1896). Charles Sargent (1896) described the tree as being widely distributed ''from the plains of Mendocino County to the mountains of San Diego County'' as he included taxa now recognized as distinct in his definition of *C. goveniana*. John G. Lemmon published the name *C. goveniana* var. *pigmaea* in 1895 to refer to the stands found on the ''White Plains'' of Mendocino County, also referred to as pygmy cypress or Mendocino cypress. As a result of this segregation, the material from the Monterey area would be treated as *C. goveniana* var. *goveniana*. However, Bartel (1993), in keeping with the use of subspecies in the treatment of Cupressus, used *C. goveniana* ssp. *goveniana* for the revision of Jepson's Manual. The Service is using Bartel's subspecific treatment for this taxon.

Cupressus goveniana ssp. *goveniana* (Gowen cypress) is a small coniferous tree or shrub in the cypress (Cupressaceae) family. Most of the 10 taxa in the genus *Cupressus* found in California have relatively small ranges (Bartel 1993). Of the three coastal cypresses, native stands of *C. macrocarpa* (Monterey cypress) and *C. goveniana* ssp. *goveniana* are both restricted to the Monterey Peninsula and Point Lobos in Monterey County.

Cupressus goveniana ssp. *goveniana* generally reaches a height between 5 and 7 m (17 to 23 ft) (Munz 1968), though Griffin noted one individual that was 10 m (33 ft) high at Huckleberry Hill (Griffin and Critchfield 1976). The sparsely branched tree forms a short, broad crown with a spread of 2 to 4 m (7 to 13 ft). The bark is smooth brown to gray, but becomes rough and fibrous on old trees. The scale-like foliage is a light rich green, with leaves 1 to 2 mm long (0.04 to 0.08 inches). The female cones are subglobose (nearly spherical), 10 to 15 mm (0.4 to 0.6 inches) long, and produce 90 to 110 seeds (Wolf and Wagener 1948). The cones, which typically mature in 2 years, remain closed for many years while attached to the cone. Seeds can be released upon mechanical removal from the tree, or more typically upon death of the tree or supporting branch as by heat generated by a wildfire. *Cupressus goveniana* ssp. *goveniana* is distinguished from its close relative *C. goveniana* ssp. *pigmaea* (pygmy or Mendocino cypress) by its much taller stature, the lack of a long, whip-like terminal shoot, and light to yellow-green rather than dark dull green foliage (Bartel 1993).

Only two natural stands of Cupressus goveniana ssp.*goveniana* are known to exist, though individuals can be found locally in cultivation. *Cupressus goveniana* ssp. *goveniana* is associated with *Pinus radiata* (Monterey pine), *Pinus muricata* (Bishop pine), and several taxa in the heath family (Ericaceae) (e.g. *Vaccinium, Gaultheria,* (*Arctostaphylos*) on poorly drained, acidic, podsol soils (Griffin and Critchfield 1976). The largest stand, referred to here as the Del Monte Forest stand, is near Huckleberry Hill on the western side of the Monterey Peninsula. This stand covers approximately 40 hectares (100 acres), with individuals scattered within a kilometer (½ mile) of the main stand.

At least three fires have burned portions of the Del Monte Forest stand in the last 100 years. A large fire burned most of the stand in 1901 (Coleman 1905, and Dunning 1906, in Vogl *et al.* 1988). The northern portion of the stand apparently burned in 1959 (California Department of Fish and Game (CDFG) 1992). The most recent fire burned through the central and eastern portions of the population in 1987. Wolf and Wagener (1948) reported that patches of crowded, poorly developed individuals, referred to as ''canes'', were cut for posts, making it difficult to determine the original extent of the grove.

The Del Monte Forest stand is on lands owned by the Pebble Beach Company and the Del Monte Forest Foundation (DMFF). The purpose of the DMFF, originally established as the Del Monte Foundation in 1961 by the Pebble Beach Company, is to ''acquire, accept, maintain, and manage lands in the Del Monte Forest which are dedicated to open space and greenbelt'' (DMFF, *in litt.*, 1992). A large portion of the Del Monte Forest stand is within a 34-hectare (84-acre) area designated as a botanical reserve (Samuel F.B. Morse Botanical Reserve) in the 1960s and donated to DMFF in 1976. In the early 1980s, development of the Poppy Hills Golf Course removed 840 Gowen cypress trees and surrounded other small patches by fairways. The remaining portion of the stand is on lands designated as ''open space'', and a conservation easement for this area is currently being acquired by DMFF.

A second smaller stand of *Cupressus goveniana* ssp. *goveniana* approximately 16 to 32 hectares (40 to 80 acres) in size occurs 10 km (6 miles) to the south near Gibson Creek on a 60-hectare (150-acre) parcel acquired by the California Department of Parks and Recreation (DPR) (Point Lobos State Reserve) in 1962. The very western edge of the stand is on privately owned ranchlands (Jones and Stokes Associates, Inc. 1989). In this stand, *C. goveniana* ssp. *goveniana* is associated with *Pinus radiata* and chaparral species Griffin and Critchfield 1976, Vogl *et al.* 1988). Due to the physical inaccessibility of the Point Lobos stand and the Reserve's mandate to protect sensitive plant taxa, the Point Lobos stand exhibits fewer signs of human disturbance than the Del Monte Forest stand.

Despite measures taken to protect the *Cupressus goveniana* ssp. *goveniana* stand at the Del Monte Forest, such as establishing the Morse Reserve, the opportunities for maintaining a viable long-term stand may be compromised by the site's close proximity to urbanization. This species is threatened by habitat alteration and destruction due to the influence of continued urban development in Pebble Beach and to the disruption of natural fire cycles as a result of fire suppression activities. In addition, the Del Monte Forest stand has been invaded by aggressive non-native species, including *Cortaderia sellanoa* (pampasgrass) and *Cytisus monspessulanus* (French broom). An increase in such invasive alien plants will undoubtedly alter the composition of the plant community and may adversely affect *C. goveniana* ssp. *goveniana*. The cypress is also

threatened with stochastic (i.e., random) extinction due to the small amount of habitat occupied by the species.

Piperia yadonii (Yadon's piperia) was first collected by Leroy Abrams in 1925 in open pine forest near Pacific Grove. At that time, it was identified as *Piperia unalascensi* (Morgan and Ackerman 1990), a polymorphic, wide-ranging species found from Alaska to Colorado, southern California, and northwestern Mexico. In the most recent treatment of the genus *Piperia*, James D. Ackerman (1977) segregated out several long-spurred taxa from the *P. unalascensis* complex, but attempted no analysis of the short-spurred forms. Subsequently, Morgan and Ackerman (1990) segregated out two new taxa from the *P. unalascensis* complex. One of these, *P. yadonii*, was named after Vernal Yadon, previous Director of the Museum of Natural History in Pacific Grove, Monterey County.

Piperia yadonii is a slender perennial herb in the orchid family (Orchidaceae). During the first few years of growth, the plant is visible only by its one or two lanceolate to oblanceolate basal leaves which die back each winter. In mature plants, the leaves are 10 to 15 cm (4 to 6 inches) long and 2 to 3 cm (0.8 to 1.2 inches) wide. After several years of vegetative growth, the plant sends up a single stem to 80 cm (31 inches) tall with flowers arranged in a dense narrow-cylindrical raceme. The flowers consist of three petal-like sepals and three petals, which together appear as one flower containing six tepals. The upper three tepals are basically green and the lower three white. The lowermost tepal is specialized into a lip that is narrowly triangular and is strongly decurved such that the tip nearly touches the spur of the flower (Morgan and Ackerman 1990). *Piperia yadonii* is sympatric with *P. elegans*, *P. elongata*, *P. michaelii*, and *P. transversa*, but is distinguished from them by the shorter spur length, the particular pattern of green and white floral markings, and the earlier flowering time (R. Morgan, botanical consultant, Soquel, California, pers. comm., 1992).

Piperia yadonii is found within Monterey pine forest and maritime chaparral communities in northern coastal Monterey County from the Monterey Peninsula northeast to the Elkhorn Slough area. This plant occurs primarily on sandstone and sandy soils that are often poorly drained, though dry in summer when the plants are flowering (Morgan and Ackerman 1990). Six populations are clustered on the Monterey Peninsula; two are on Pebble Beach Company lands, two are on DMFF lands, and two are in city parks in Pacific Grove and Monterey. Four populations are clustered generally between Prunedale and Elkhorn Slough; three of these are on privately owned lands, including one population on land managed by The Nature Conservancy (TNC) (Blohm Ranch), and one is on County property (Manzanita County Park). One small population is located at the northernmost corner of Fort Ord near Marina.

Recent surveys by Morgan indicate that the largest population, consisting of approximately 500 individuals, is scattered along a 2.1 km (1.3 mile) stretch of private road in Pebble Beach (Morgan, *in litt.*, 1992). One population, located in Long Valley between Prunedale and Elkhorn Slough, comprises approximately 150 individuals; the remaining populations range in size from a few individuals to fewer than 100 individuals (Morgan, *in litt.*, 1992).

Piperia yadonii was once more abundant on the Monterey Peninsula. Many historic collections were made from the Pacific Grove area, which has since been urbanized. It is also likely that the plant was previously more abundant in the Prunedale-Elkhorn Slough area; a lack of historical collections from this area is probably a reflection of the lower intensity of botanical collecting compared to the Monterey Peninsula area. Continued alteration and destruction of habitat due to urban and golf course development is currently the greatest threat to *P. yadonii.* Other threats include competition with non-native species, roadside mowing, and a proposed realignment of Highway 101 known as the Prunedale bypass. The small numbers of individuals and populations also make *P. yadonii* vulnerable to stochastic extinction.

Potentilla hickmanii (Hickmann's potentilla) was originally collected by Alice E. Eastwood in 1900 ''near the reservoir which supplies Pacific Grove, [Monterey County] California, along the road to Cypress Point''. The reference to a reservoir could refer to Forest Lake in Pebble Beach but more likely refers to the Pacific Grove reservoir (Ferreira 1992b). Eastwood (1902) described the species 2 years later, naming it after J. B. Hickman who was her guide on that collecting trip.

Potentilla hickmanii is a small perennial herb in the rose family (Rosaceae) that annually dies back to a woody taproot. The leaves are pinnately compound into generally six paired, palmately cleft leaflets each 2 to 8 mm (0.08 to 0.3 inches) long and 1 to 3 mm (0.04 to 0.1 inches) wide. Several reclining stems 8 to 15 cm (3 to 6 inches) long support two to four branched cymes (flowering stems) each of which is one- to two-flowered. The flowers consist of 5 ovate to obtuse sepals 6 mm (0.23 inches) long; yellow obcordate petals 6 mm (0.23 inches) long and 5 mm (0.19 inches) wide; and 20 stamens (Abrams 1944, CNPS 1987). *Potentilla hickmanii* is separated from two other potentillas that occur on the Monterey Peninsula (*P. egedii* var. *grandis* and *P. glandulosa*) by a combination of its small stature, leaflet size and shape, and color of the petals.

Only three historical locations for the plant are known (CDFG 1992). A collection was made by Ethel K. Crum in 1932, apparently in the vicinity of Eastwood's original collection. Ferreira (1992b) surveyed the area surrounding the Pacific Grove reservoir in 1992, but found no *Potentilla hickmanii* plants or suitable habitat for the species. A second location was observed by E.C. Suttliffe at Moss Beach near Half Moon Bay, San Mateo County, in 1933. This occurrence is presumed to be extirpated by urban development in the Half Moon Bay area.

Potentilla hickmanii is currently known from only one location, on the western Monterey Peninsula, in a meadow opening within Monterey pine forest. Loamy fine sandy soils support a meadow community of non-native grasses and several introduced and native herbs. A total of 24 individuals of *P. hickmanii* were located during 1992 surveys, 9 of which are within a small exclosure constructed by the Pebble Beach Company to protect the plants; the other 15 are located within 30 m (100 ft) of the exclosure (Ferreira 1992b). The Pebble Beach Company has maintained management responsibilities for the meadow, though ownership of the land has been transferred to the Del Monte Forest Foundation. *Potentilla hickmanii* is currently threatened with alteration of habitat resulting from recreational activities. The meadow, called Indian Village, is available for use by residents of Pacific Grove and has been developed as an outdoor recreational park. The extremely small numbers of individual plants and populations also make *P. hickmanii* vulnerable to stochastic extinction.

Trifolium trichocalyx (Monterey clover) is a member of the pea family (Fabaceae). The genus *Trifolium* is well-represented in North America, with approximately 50 species recognized in California (Munz 1959). Members of this herbaceous genus are characterized by the palmately three-foliate leaves (hence the name *Trifolium*) and flowers in spheroid or oblong heads.

Trifolium trichocalyx was first collected by Amos A. Heller ''in sandy pine woods about Pacific Grove'' in 1903, and described by him the following year (Heller 1904). Laura F. McDermott (1910) considered the taxon a variety of *T. oliganthum* in her treatment of the genus, but this was not recognized in subsequent floras. Axelrod (1982) deferred to Gillett's suggestion that *T. trichocalyx* is a sporadic hybrid between *T. microcephalum* and *T. variegatum* and recommended removing it from the list of taxa considered Monterey endemics. This view was challenged by Vernal Yadon (*in litt.*, 1983) who had grown *T. trichocalyx* and observed that it consistently produces up to seven seeds per pod, while both purported parents were two-seeded taxa. *Trifolium trichocalyx* has continued to be recognized as a distinct taxon by Abrams (1944), Munz (1959), Howitt and Howell (1964) and Isely (1993) and is accepted as such by the Service.

Trifolium trichocalyx is a much-branched prostrate annual herb with leaflets that are obovate-cuneate, 0.4 to 1.2 cm (0.2 to 0.5 inches) long, truncate or shallowly notched at the apex, and spinulose-denticulate along the margins. The numerous flowers are clustered into heads subtended by a laciniate-toothed involucre. The calyces are 7 mm (0.3 inches) long, toothed, and conspicuously pilose; the purple corollas scarcely equal the length of the calyx; the deciduous seed pods enclose up to seven seeds. The plant can be quite inconspicuous, as the prostrate branches may be only 3 to 4 cm (1.2 to 1.6 inches) long. With favorable conditions, however, branches may reach a length of 20 to 30 cm (8 to 12 inches) (Abrams 1944, Yadon, *in litt.*, 1983). Branches from one large plant may spread through the forest litter and give the appearance of many plants. Of the four species of *Trifolium* growing on Huckleberry Hill, all except *T. trichocalyx* contain two seeds per pod. *Trifolium trichocalyx* is currently known from only one area, Huckleberry Hill, covering approximately 16 hectares (40 acres) (Ferreira 1992c) on the Monterey Peninsula. The plant occurs in openings within Monterey pine forest on poorly drained soils consisting of coarse loamy sands. *Trifolium trichocalyx* appears to be a fire-follower, taking advantage of the reduced forest cover for the first few years after a fire, and then becoming more scarce as it is shaded out or outcompeted as the forest community recovers. Heller's collection in 1903 was made 2 years after a fire in the area. Only scattered individuals were reported by Theodore Niehaus in 1973 and 1979 and by Yadon in 1980 in forest openings or edges (CDFG 1992). One of these sites is presumed to have been extirpated when Poppy Hills Golf Course was developed in 1980; the other two are within the boundaries of the Morse Botanical Reserve.

Surveys for *Trifolium trichocalyx* were conducted in 1988. No plants were found at the locations previously reported by Niehaus and Yadon. However, several hundred to 1,000 plants were scattered throughout the 1987, 80-ha (200-acre) burn near Huckleberry Hill, just to the east of the historical locations (CDFG 1992). No *T. trichocalyx* were found during a 1992 survey of this area, probably because the dense cover of *Pinus radiata* (Monterey pine) seedlings and resprouting chaparral species did not allow the clover to persist. While no living plants of *T. trichocalyx* currently exist in native habitat, it is expected that a seedbank will persist in the soil until they are ''released'' again by a fire event. Major threats to the continued existence of *Trifolium trichocalyx* include alteration of natural fire cycles, a proposed development that overlaps with the southern portion of the habitat for the clover (as mapped in 1988), and stochastic extinction due to the small amount of remaining habitat and the ephemeral nature of the plant's reappearance after fires.

The black legless lizard was originally described by Fischer in 1885 as *Anniella nigra* (Fischer 1885 in Murphy and Smith 1991). It differs from the silvery legless lizard, *A. pulchra*, in having a darker dorsum, shorter tail, and longer preanal scales. Currently, the black legless lizard is considered a subspecies of *A. pulchra* (Bezy *et al.* 1977), a species with a range extending from the San Francisco Bay area south through western California to northern Baja California, Mexico. Hunt (1983) revised the taxonomy, changing the name of the black legless lizard to *A. nigra nigra* and the silvery legless lizard to *A. nigra argenteum*. However, this nomenclature was not widely accepted. The International Commission on Zoological Nomenclature has been petitioned to conserve the name Anniella *pulchra nigra* (Murphy and Smith 1985, 1991); the Commission has not yet responded with an official position on the subject. The Service accepts the more widely accepted treatment of the black legless lizard as *A. pulchra nigra*.

Anniella pulchra nigra has been collected primarily from coastal areas of the Monterey Peninsula and Monterey Bay between the Salinas and Carmel Rivers (Bury 1985, Miller 1943). *Anniella* with dark dorsums, possibly intergrades with the silvery legless lizard, have been collected north of the Salinas River and more than 160 km (100 miles) to the south in the Morro Bay and Pismo Beach areas (Miller 1943); the taxonomy of *Anniella* in these intergrade areas is unclear. Miller (1943) and Bury (1985) considered the black legless lizard to be restricted to the coastal area between the Salinas and Carmel Rivers. Bezy and others (1977) showed the black legless lizard as occurring in the Monterey area and somewhat south, while Stebbins (1985) considered the distribution of this taxon to be the Monterey Peninsula, Monterey Bay, and Morro Bay. All of these authors agree that coastal specimens of *Anniella* from between the Salinas and Carmel Rivers are black legless lizards. As a result, this proposal applies only to *A. p. nigra* from this area and, specifically, the range of this taxon as described by Miller (1943) and Bury (1985).

Based on electrophoretic analyses of *Anniella pulchra nigra* individuals collected from the vicinity of Asilomar on the Monterey Peninsula and Fort Ord on Monterey Bay, Bezy and others (1977) demonstrated that genetic distance between *A. p. nigra* and *A. p. pulchra* was consistent with subspecific classification. Further electrophoretic work has demonstrated genetic differences between dark morphs of *A. p. pulchra* from Morro Bay and the *A. p. nigra* from the Monterey Peninsula (Rainey 1984). This latter work also revealed considerable differences in allele frequencies among sites on the Monterey Peninsula, indicating genetic subdivisions even within that limited area. The emergence of a distinct form of *Anniella* on the Monterey Peninsula probably occurred when the Peninsula was isolated from the mainland as an island. Also, the Peninsula at one time extended farther to the north, providing greater geographic isolation than at present. In post-Pleistocene times there were also large rivers and bays in lowland areas which may have further isolated populations of *Anniella* (Bury 1985).

The black legless lizard (*Anniella pulchra nigra*) is a burrowing, limbless lizard about the diameter of a pencil and reaches a maximum length of about 23 cm (9 inches). It has a black or dark brown dorsum (hatchlings are light colored) and is yellow ventrally (Fisher 1934, Gans *et al.* 1992, Hunt in prep., Stebbins 1985). This species is distinguished from the silvery legless lizard (*A. p. pulchra*) by dark dorsal coloration, lower dorsal caudal scale count, and a relatively short tail (*Bezy*

et al. 1977, Bury and Corn 1984, Hunt 1983, Miller 1943).

Bury (1985) surveyed most potential habitat for the black legless lizard, as well as sites as far south as Morro Bay and north to Ano Nuevo State Reserve in San Mateo County where intergrades might occur. Black legless lizards were found at 17 sites, all of which lie on or near approximately 45 km (28 miles) of coastline between the Salinas and Carmel Rivers. Key sites included City of Monterey lands south of Salinas River National Wildlife Refuge, Marina State Beach, and Fort Ord, all on Monterey Bay; and several smaller areas on the Monterey Peninsula, including dunes or sandy areas at the U.S. Navy Post-graduate School, Monterey State Beach, Point Pinos, Asilomar State Beach, Spanish Bay, and Carmel State Beach. The largest population of the black legless lizard on federal land is on the Fort Ord property. This military base is undergoing closure; much of the land will be transferred to State and University ownership, and habitat management plans that call for the protection of the lizard will be developed.

Within the very limited range of the black legless lizard, habitat destruction due to urbanization, particularly on the Monterey Peninsula, has severely reduced the distribution of this lizard. About 60 percent of all localities that historically supported black legless lizards no longer contain suitable habitat (Lawrence E. Hunt, University of California, Santa Barbara, pers. comm., 1993). Remaining habitat is degraded by human trampling, sand mining, vehicular use, and introduction of exotic plants, particularly *Carpobrotus edulis* (hottentot fig) and related species and *Ammophila arenaria* (Marram grass). Remaining habitat has also been fragmented by highways and other forms of development (Bury 1985).

Previous Federal Action

Federal government action on the five 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. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that report, *Astragalus tener* var. *titi, Potentilla hickmanii,* and *Trifolium trichocalyx* were recommended for endangered status. On July 1, 1975, the Service published a notice in the **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 thereby to review the status of the plant taxa named therein. The above three taxa were included in the July 1, 1975 notice. 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. *Astragalus tener* var. *titi, Potentilla hickmanii,* and *Trifolium trichocalyx* were included in the June 16, 1976, **Federal Register** proposal.

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 *Astragalus tener* var. *titi, Potentilla hickmanii,* and *Trifolium trichocalyx* as category-1 species. Category-1 species are taxa for which data in the Service's possession are sufficient to support proposals for listing. On November 28, 1983, the Service published in the **Federal Register** a supplement to the Notice of Review (48 FR 53640); the plant notice was again revised September 27, 1985 (50 FR 39526). In both of these notices, *Astragalus tener* var. *titi, Potentilla hickmanii,* and *Trifolium trichocalyx* were included as category-2 species. Category-2 species are taxa for which data in the Service's possession indicate listing may be appropriate, but for which additional data on biological vulnerability and threats are needed to support a proposed rule. In the 1985 notice, *Cupressus goveniana* ssp. *goveniana* (as *Cupressus goveniana*) was also included for the first time as a category-2 species. On February 21, 1990 (55 FR 6184), the plant notice was again revised, and *Astragalus tener* var. *titi, Potentilla hickmanii,* and *Trifolium trichocalyx* were included as category-1 species, primarily because of additional survey information supplied by the California Natural Diversity Data Base, which indicated that the extremely limited populations of these taxa made them particularly vulnerable to impacts from a number of human activities and naturally caused stochastic events. Those three species also appeared as category 1 species in the current plant notice of review (September 30, 1993; 58 FR 51144). *Cupressus goveniana* ssp. *goveniana* was retained as a category-2 species in the 1990 and 1993 notices of review.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain 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 *Astragalus tener* var. *titi, Potentilla hickmanii,* and *Trifolium trichocalyx* because the 1975 Smithsonian report was 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. In October 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991 and 1992, the Service found that the petitioned listing of *Astragalus tener* var. *titi, Potentilla hickmanii,* and *Trifolium trichocalyx* was warranted, but that the listing of these species was precluded by other pending proposals of higher priority. Publication of this proposal constitutes the final finding for the petitioned actions on these three species.

The portion of this proposal to list *Piperia yadonii* is largely based on scientific and commercial information on the species, unpublished reports from the California Department of Fish and Game, and information submitted by Randall Morgan, which provides sufficient information to support a proposed rule to list this species as endangered. *Piperia yadonii* first appeared as a candidate in the 1993 notice of review (58 FR 51144) in category 1.

A reevaluation of the existing data on the status of *Cupressus goveniana* ssp. *goveniana* and threats to its continued existence provides sufficient information to support a proposal to list this species as threatened.

In its original Review of Vertebrate Wildlife, published in the **Federal Register** on December 30, 1982 (47 FR 58454), the Service included the black legless lizard as a category-2 candidate for listing. Subsequent revised candidate lists published September 18, 1985 (50 FR 37958); January 6, 1989 (54 FR 554); and November 21, 1991 (56 FR

58804), also included this taxa as a category-2 candidate. New information on the extent of habitat loss and the effects of *Carpobrotus edulis* (hottentot fig) on habitat quality now support a proposed rule to list this species as endangered.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) 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 *Astragalus tener* Gray var. *titi* (Eastw.) Barneby (coastal dunes milk-vetch), *Cupressus goveniana* Gord. ssp. *goveniana* (Gowen cypress), *Piperia yadonii* Morgan & Ackerman (Yadon's piperia), *Potentilla hickmanii* Eastw. (Hickman's potentilla), *Trifolium trichocalyx* Heller (Monterey clover), and the black legless lizard (*Anniella pulchra nigra* Fischer) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Three of the plant taxa— *Astragalus tener* var. *titi, Potentilla hickmanii,* and *Trifolium trichocalyx*—occur solely on the Monterey Peninsula. The largest of two *Cupressus goveniana* ssp. *goveniana* stands occurs on the Monterey Peninsula, as does the largest population of *Piperia yadonii*. Habitat for all five plant taxa has been altered, destroyed, and fragmented by the subdivision of residential lots and conversion to golf courses and other recreational facilities.

Of the approximately 4,000 hectares (ha) (10,000 acres) of Monterey Pine forest mapped on the Peninsula by the U.S. Forest Service in the 1930s, less than 10 percent remains. This remaining 10 percent is comprised of scattered islands of forest, the largest of which are a few hundred hectares (several hundred acres) in size. The Pebble Beach Company is currently developing a proposal to convert 277 ha (685 acres) into 17 residential subdivisions, another golf course, and associated recreational facilities (Pebble Beach Company 1992). Several of these subdivisions could remove individuals or clumps of *Cupressus goveniana* ssp. *goveniana* that currently survive as islands of native vegetation within the golf course landscape. A planned subdivision is adjacent to occurrences of *T. trichocalyx* and *Astragalus tener* var. *titi* at the Indian Village site. Several of the planned subdivisions may adversely affect *Piperia yadonii*.

Additional development in Pebble Beach is currently being planned that may affect habitat for *C. goveniana* ssp. *goveniana, P. yadonii,* and *T. trichocalyx* (Pebble Beach Company 1992). A hospice facility, to be built on lands donated by the Pebble Beach Company and recently approved by the City of Monterey, will remove a portion of a population of *P. yadonii* (Earth Metrics Inc. 1992). Maintenance of facilities, including mowing of golf courses and roadsides can indirectly affect *A. tener* var. *titi, P. hickmanii,* and *P. yadonii.*

The black legless lizard was never widely distributed. It is still extant within its range between the Salinas and Carmel Rivers; however, much of the coastal sandy plains and dunes that were historic habitat for this lizard have been converted to urban or other uses, particularly on the Monterey Peninsula. Although precise estimates are unavailable, in 1984 Bury found fewer than 35 hectares (86 acres) of suitable habitat for this species on the Monterey Peninsula (Bury 1985). Another 10 to 14 ha (25 to 35 acres) of potentially suitable habitat existed near Fan Shell Beach on the Monterey Peninsula but was not surveyed at the time (R.B. Bury, National Biological Survey, Ft. Collins, Colorado, pers. comm., 1993). This habitat is still intact, but remains to be surveyed (T. Moss, Asilomar State Beach, California, pers. comm., 1993). In reference to the Monterey Peninsula, Bury (1985) states that ''prior habitat was much more extensive but has been obliterated by urbanization, roadways, sand mining, and other surface-modifying activities.''

On Monterey Bay, south of the Salinas River, Bury (1985) identified about 374 hectares (925 acres) of potential *Anniella pulchra nigra* habitat, but nearly all areas examined were impacted by one or more human uses suspected of negatively impacting legless lizard habitat and populations, including sand mining, human trampling, military activities, and off-road vehicle activities. The largest contiguous tract of black legless lizard habitat exists at Ford Ord, although estimates on the extent of habitat differ. Estimates of suitable habitat at Fort Ord vary from 190 hectares (470 acres) (Bury 1985) to 1,206 hectares (2,980 acres) (U.S. Army Corps of Engineers 1993). The latter figure is based primarily on potentially suitable habitat in which the presence of the black legless lizard has not been confirmed. Additional suitable habitat existed in 1984 on unsurveyed private lands on Monterey Bay, but this habitat was of limited distribution, in very small parcels, and subject to development (R.B. Bury, pers. comm., 1992).

Exact amount of habitat loss throughout the range since 1984 has not been quantified (R.B. Bury, pers. comm., 1993; T. Moss, pers. comm., 1993). Of 27 localities from which legless lizards have been collected between the Salinas and Carmel Rivers, only 10 or 11 still contain suitable habitat (L. E. Hunt, pers. comm., 1993).

Although heavily impacted by military activities, the largest acreage of remaining suitable habitat for the black legless lizard identified by Bury (1985) occurs at Fort Ord. This U.S. Army base is scheduled to be closed, with the closure process occurring over a period of several years. Activities associated with the closure process, such as disposal (sale of the land) and clean-up, could adversely affect the species. The future disposition of the land is unknown at this time, however, it is likely that some portion of the base will be acquired by the private sector for development. Planned development at Sand City, adjacent to Fort Ord, would result in a loss of black legless lizard habitat, although restoration and long-term conservation of lands set aside for Smith's blue butterfly (*Ephilotes enoptes smithi*), a federally listed endangered species, would enhance the value of remaining habitat within Sand City for this lizard.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not currently known to be a factor for the five plant taxa, but unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity following publication of this proposal. *Piperia yadonii,* like many other orchids and showy-flowered monocots, may be particularly vulnerable to collecting by amateur and professional horticulturalists due to the plant's attractive flower and the ease with which it can be transplanted.

Vandalism is a potential threat for these plant species. The sites that these plants inhabit could be easily vandalized, resulting in the destruction of the plants. Many of the sites where these plants exist are small and easily accessible, increasing their susceptibility to destruction.

Although the black legless lizard is of interest to many people because it is an unusual reptile, overutilization does not

appear to be a factor threatening the species (Bury 1985). The State of California prohibits taking or possession of black legless lizards without a special permit (see Factor D). Federal listing could raise the interest in this animal among reptilian trade markets and increase the threat of collection. Interest in the species among reptile collectors could pose a serious threat to populations that contain few individuals.

C. Disease or Predation

Disease and predation are not known to be factors affecting the five plant taxa being proposed as endangered. Several references discuss diseases that affect cypresses (Peterson 1967, Wagener 1948). However, diseases, such as the oak root fungus (*Armillariella mellea*) and the canker-producing strain of *Cornyeum*, primarily seem to attack cypresses planted outside of their native range and in nursery settings (Wagener 1948). No signs of disease or predation have been noted by biologists familiar with the two *Cupressus goveniana* ssp. *goveniana* stands (Jim Griffin, Research Botanist, Hastings Natural History Reservation, Carmel Valley, CA, pers. comm., 1992, Yadon, pers. comm., 1992).

The black legless lizard has no known diseases, and, although it harbors some internal parasites (Hunt and vanLobenSels in press in Bury 1985), populations of this lizard do not seem to be negatively affected by either disease or parasites. Many lizards have broken or scarred tails, indicating possible attempted predation (Bury 1985). Miller (1944) indicated predation by feral house cats may affect some populations.

D. The Inadequacy of Existing Regulatory Mechanisms

Under the Native Plant Protection Act (California Fish and Game Code section 1900 *et seq.*) and the California Endangered Species Act (California Fish and Game Code section 2050 *et seq.*), the California Fish and Game Commission has listed *Astragalus tener* var. *titi, Potentilla hickmanii,* and *Trifolium trichocalyx* as endangered. *Piperia yadonii* and *Cupressus goveniana* ssp. *goveniana* are on List 1B of the California Native Plant Society's (CNPS) Inventory (CNPS 1992), indicating that, in accordance with section 1901, of the California Department of Fish and Game Code, it is eligible for State listing. Though both the Native Plant Protection Act and the California Endangered Species Act prohibit the ''take'' of State-listed plants (section 1908 and section 2080), State law appears to exempt the taking 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'' (section 1913).

The Pebble Beach Company, the primary landowner on the Monterey Peninsula, has developed policy to protect sensitive species and habitats for current management activities, as well as planning of future development (Fryberger, *in litt.,* 1992). While portions of the *Astragalus tener* var. *titi* population and the *Potentilla hickmanii* population have been fenced off, the remaining portions remain vulnerable to disturbance. No specific protection currently exists for *Piperia yadonii. Cupressus goveniana* ssp. *goveniana* and habitat for *T. trichocalyx* are partially protected by the restriction on development within the Morse Reserve. However, development of a golf course in the early 1980s removed a significant number of *C. goveniana* ssp. *goveniana* trees and fragmented the remaining habitat. Development is currently being planned within historical habitat for both of these taxa adjacent to the Reserve.

A management plan for Point Lobos State Park (California Department of Parks and Recreation 1979) states that the major management effort within the preserve will be ''management toward the pristine state, that is, the state the ecosystem(s) would have achieved if European man had not interfered,'' but also to provide limited public access to the *Cupressus goveniana* ssp. *goveniana* area. The stand is currently protected from human disturbance by virtue of its isolation and lack of public access, but the acquisition of key parcels now in private ownership may allow for development of limited public access. Any future development on adjacent private parcels may increase the vulnerability of *C. goveniana* ssp. *goveniana* to human disturbance.

The black legless lizard is listed as a protected reptile under Section 650 of the California Sport Fishing regulations. Except under special permit from the California Department of Fish and Game, collection of black legless lizards is prohibited by the State of California. The habitat of this species, however, is not specifically protected by any State or Federal regulation. Land use on black legless lizard habitat is controlled by local zoning, California State Park regulations on State parks such as Marina and Monterey State Beaches, and land management practices on Federal lands, including the Salinas River National Wildlife Refuge, Fort Ord, and the Naval Post-graduate School. The black legless lizard is often given special consideration in land use planning and National Environmental Policy Act and California Environmental Quality Act compliance documents. The California Coastal Act regulates approval of developments within the coastal zone and has slowed the loss of coastal habitats such as the dunes and sand habitats used by black legless lizards. This species has also been afforded some protection indirectly through special management for Federal candidate plant species that occur in coastal areas. Where the black legless lizard is sympatric with the endangered Smith's blue butterfly, protection of habitat for the butterfly has also benefitted the legless lizard.

These regulatory mechanisms have slowed the loss, degradation, and fragmentation of black legless lizard habitat, but additional protection is needed to address regional habitat conservation and long-term survival and recovery of this species.

Sand City is in the process of developing a habitat conservation plan for a 13 acre area known as East Dunes. This area supports Smith's blue butterfly (*Euphilotes enoptes smithi*), *Gilia tenuiflora* var. *arenaria* (sand gilia), *Chorizanthe pungens* var. *pungens* (Monterey spineflower), species that are federally listed as endangered, and the black legless lizard. Sand City is including the black legless lizard in this planning process, and it is likely that the plan would adequately provide for the conservation needs of the lizard on this one site.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Two of the five plant taxa occur in small patches of meadow habitat containing a high percentage of non-native taxa. Along 17-Mile Drive, *Astragalus tener* var. *titi* occurs with the non-native *Plantago coronopus* (cut-leaf plantain) and *Carpobrotus edulis*. These non-native species spread rapidly and compete aggressively with native species for space. The Pebble Beach Company has an active *C. edulis* eradication program in and adjacent to the exclosure on the ocean side of 17-Mile Drive. However, *C. edulis* has been planted and is being maintained within a few feet of the unfenced portion of the milk-vetch habitat on the inland side of 17-Mile Drive, and *P. coronopus*, a prolific seeder, is physically crowding

out native species on both sides of 17-Mile Drive (Ferreira 1992a).

The only population of *Potentilla hickmanii* occurs at Indian Village, where Ferreira (1992b) noted four non-native grass taxa associated with the potentilla at this site: *Aira caryophylla*, *Bromus mollis*, *Festuca arundinacea*, and *Lolium multiflorum*. The *Festuca* may have been introduced in a ''meadow mix'' used on adjacent fairways; its stature and invasiveness appear to offer competition to the potentilla. *Plantago coronopus* is also present at this site.

Cortaderia atacamensis (pampasgrass) and *Cytisus* sp. (genesta) are two other alien plant taxa that compete with native species on the Monterey Peninsula. The Pebble Beach Company has an on-going eradication program for these two taxa in the Huckleberry Hill area adjacent to the *Cupressus goveniana* ssp. *goveniana*. However, numerous fire roads provide open habitat for these invasive taxa and it is unlikely that they will ever be completely eradicated from the area.

Nearly all occupied or potentially occupied black legless lizard localities have substantial populations of exotic plants, particularly *Carpobrotus edulis* (hottentot fig). Legless lizards are primarily associated with moist soil and leaf litter under native vegetation such as *Lupinus albifrons* (bush lupine), *Haplopappus ericoides* (mock heather), and *Artemisia* sp. (sagewort), and are less abundant in areas dominated by *C. edulis* (Bury 1985, City of Sand City 1992, Miller 1944, Morey 1988, Stebbins 1954). As part of habitat restoration efforts at Asilomar State Beach, over 12 hectares (30 acres) of *C. edulis* were removed by hand. During this effort, black legless lizards were not found in pure stands of *C. edulis*, but were encountered where native shrubs were mixed with the hottentot fig (T. Moss, pers. comm., 1993). Hottentot fig may negatively affect insect populations, the prey base for the black legless lizard (Miller 1944, Stebbins 1954), and thus, adversely affect *Anniella* populations (Bury 1985).

Fire plays an important role in the regeneration of all cypress taxa. Alteration of the natural fire cycle may negatively affect *Cupressus goveniana* ssp. *goveniana* regeneration. Fire is essential since it opens cones that otherwise remain unopened on the trees, and it creates conditions appropriate for seedling establishment (Vogl *et al.* 1988).

Griffin (pers. comm., 1992) and Ferreira (1992c) have noted that establishment of *Pinus radiata* (Monterey pine) seedlings after the 1987 fire has been so vigorous that the pine may be expanding its range at the expense of *Cupressus goveniana* ssp. *goveniana*. Yadon (retired Director, Pacific Grove Museum of Natural History, pers. comm., 1992) believes that the pine's preference for richer soils than those that support *C. goveniana* ssp. *goveniana* would prevent long-term establishment of pines in *C. goveniana* ssp. *goveniana* habitat.

Alteration of habitat due to continuing recreational use of portions of Pebble Beach threaten the precipitously small populations of *Astragalus tener* var. *titi*, and *Potentilla hickmanii*. Trampling by humans and horses can affect these taxa directly, as well as alter soil compaction and erodability such that non-native taxa increase at the expense of native taxa.

At least three, and possibly all, of the five plant taxa are threatened with stochastic extinction by virtue of the limited number of individuals and/or range of the existing populations. Inbreeding may affect small populations, making local extirpations more likely from the inability to produce viable offspring in sufficient numbers. Small populations are also vulnerable to extinction by a single human-caused or natural event. While annual plant taxa, such as *Astragalus tener* var. *titi*, will undergo radical fluctuations in population size, the long-term perpetuation of this taxa depends on maintaining seed production at some critical level, and maintaining appropriate habitat for population expansion. While short-lived perennial taxa like *Piperia yadonii* and *Potentilla hickmanii* may be able to persist through a few climatically unfavorable years, it is still essential to maintain critical seed production levels and to maintain appropriate habitat. *Trifolium trichocalyx* exemplifies a taxon that may persist only as a seedbank for years until released by a fire event. Maintaining habitat and certain fire management prescriptions may be required to prevent the extinction of this species.

The range occupied by *Cupressus goveniana* ssp. *goveniana* is considered extremely small; only *Cupressus abramsiana* (Santa Cruz cypress) and *C. macrocarpa* (Monterey cypress) have stands that occupy as few hectares (acres) as *C. goveniana* ssp. *goveniana* (Griffin and Critchfield 1976). Apparently the 1901 fire on Huckleberry Hill reduced *C. goveniana* ssp. *goveniana* to only a few hectares. Though later observers commented on the extent of recolonization after the fire (Dunning 1906 in Vogl *et al.* 1988, Wolf 1948), the reduction in genetic variability from such events may leave species unable to adapt to changing environmental conditions (Brussard 1985, Menges 1990, Shaffer 1981).

Existing black legless lizard habitat is severely fragmented due to construction of roads, golf courses, and other urban development that creates barriers to movement and isolates populations. Some extant populations are restricted to extremely small habitat patches, such as at Monterey State Beach and the U.S. Navy Post-Graduate School, where a population persists on a remnant 0.5-hectare (1.2-acre) habitat patch (Bury 1985). Because of small size, these fragmented populations have an increased probability of extinction from stochastic (i.e., random) events (Wilcox and Murphy 1985). Once extirpated, isolation can prevent recolonization of these habitat patches (Frankel and Soule 1981).

The black legless lizard exhibits relatively low fecundity and it is suspected that not all adult females breed each year (Goldberg and Miller 1985, Miller 1944). The related silvery legless lizard has a 4 month gestation period, and produces only 1 or 2 eggs per adult female per year (Goldberg and Miller 1985). Similarly, an average of 1.7 eggs were found in the oviducts of black legless lizards (Miller 1944). This low reproductive potential implies relatively long population recovery times and a heightened sensitivity to habitat impacts such as off-road vehicles, trampling, and other disturbances.

Strong storms and extreme high tides periodically occur at Monterey Bay. These high tides can result in erosion of coastal dunes and shorelines, causing destruction of habitat and mortality of black legless lizards. Without adjacent refugia, such habitats can become devoid of lizards with little chance of recolonization. Because of the fragmented distribution and relatively low reproductive potential of the black legless lizard, these natural events may increase the chance of local extirpations.

As mentioned in Factor A, the alien plant *Carpobrotus edulis* may negatively impact native insect populations that provide prey for *Anniella* species (Miller 1944) and that could conceivably affect *Anniella* populations (Bury 1985).

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 Service finds that *Astragalus tener* var. *titi*, *Piperia yadonii*, *Potentilla*

hickmanii, Trifolium trichocalyx, and the black legless lizard are in imminent danger of extinction throughout all or a significant portion of their ranges. Threats to these four taxa include one or more of the following: habitat destruction, residential development, road maintenance activities, competition from alien plants, alteration of natural fire cycles, military activities, and extinction from stochastic events.

For the reasons discussed above, the Service finds that *Cupressus goveniana* ssp. *goveniana* is likely to become endangered within the foreseeable future throughout all or a significant portion of its range due to habitat alteration and destruction, urban development, disruption of natural fire cycles, competition from alien plants, and stochastic events. The Service has determined that threatened rather than endangered status is appropriate for *C. goveniana* ssp. *goveniana* primarily because one of two populations (the Gibson Creek stand managed by the California Department of Parks and Recreation) has not been significantly affected by human activities. Also, since it is long-lived, *C. goveniana* ssp. *goveniana* may be able to withstand a certain level of habitat disturbance as long as sufficient habitat is maintained. Other alternatives to this action were considered but not preferred because not listing this species at all would not provide adequate protection and not be in keeping with the purposes of the Act, and listing it as endangered would not be appropriate, as the California Department of Parks and Recreation has decreased the danger of extinction at the present time. Therefore, the preferred action is to propose *Astragalus tener* var. *titi, Piperia yadonii, Potentilla hickmanii, Trifolium trichocalyx,* and the black legless lizard as endangered; and *Cupressus goveniana* ssp. *goveniana* as threatened.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the taxa are determined to be endangered or threatened. Critical habitat results in additional protection to a species' habitat with respect to projects that are federally authorized, funded, or carried out, through the consultation requirements described in section 7 of the Act. The Service finds that designation of critical habitat is not presently prudent for these taxa. The Service's 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 imperiled 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.

In the case of *Astragalus tener* var. *titi, Potentilla hickmanii, Piperia yadonii, Cupressus goveniana* ssp. *goveniana, Trifolium trichocalyx,* and the black legless lizard both criteria are met. The publication of critical habitat descriptions and maps required in a proposal for critical habitat could increase the degree of threat to these six taxa from possible take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. These six taxa occur within small areas at few locations and are vulnerable to stochastic extinction. The listing of these plants and the lizard as either endangered or threatened publicizes the rarity of the taxa and thus can make them attractive to researchers, curiosity seekers, or collectors of rare plants or animals.

A determination of critical habitat would result in no known benefit to these taxa. The closure of Fort Ord is resulting in the transfer of lands to State Parks and the University of California at Santa Cruz ownership. These lands will be designated as protected habitats for which habitat management plans are under development. Other than the Fort Ord property, most of the known populations of these species are found on state or private lands where Federal involvement in land-use activities does not generally occur. Additional protection resulting from critical habitat designation is achieved through the section 7 consultation process. Since section 7 would not apply to land-use activities occurring on State and private lands and Fort Ord will designate protected habitats for these species, critical habitat designation would not appreciably benefit these species.

All Federal and State agencies involved and local major land owners and planning agencies have been notified of the general location and importance of protecting these species' habitat. Protection of these species' habitat will be addressed through the recovery process and through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for these species is not prudent at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following a listing. 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) of the Act 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 listed subsequently, section 7(a)(2) requires Federal agencies to insure 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.

Two of the taxa, *Piperia yadonii* (Yadon's piperia) and the black legless lizard, occur within the boundaries of Fort Ord. Military training activities may affect these taxa and their habitat as could the Federal decision for the ultimate disposition of this property. The Department of Defense would be required to consult with the Service on actions that may affect these two species. Other Federal lands that support habitat for the black legless lizard include the Salinas National Wildlife Refuge and the Naval Post-graduate School in Monterey; however, there are no currently proposed activities on those lands that would affect the lizard. Urban development projects that are occurring on private lands may require permits from Federal agencies, such as section 404 permits from the Army Corps of Engineers.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants,

and at 50 CFR 17.71 and 17.72 for threatened plants set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. With respect to the four plant taxa proposed to be listed as endangered, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 and 17.71, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant 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 these species in interstate or foreign commerce; remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such endangered plant species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. *Cupressus goveniana* ssp. *goveniana* (Gowen cypress), proposed to be listed as threatened, would be subject to similar prohibitions (16 U.S.C. 1538(a)(2)(E); 50 CFR 17.61, 17.71).

Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of ''cultivated origin'' appears on their containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. Several central coast nurseries have cultivated *Cupressus goveniana* ssp. *goveniana* on occasion, but it apparently is not popular enough to be kept in stock on a regular basis. The Pebble Beach Company is actively cultivating this plant to be used in efforts to restore disturbed habitat (Fryberger, in litt., 1992).

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. With respect to the black legless lizard, these prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Requests for copies of the regulations on listed plants and wildlife and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Permits Branch, 911 N.E. 11th Avenue, Portland, OR 97232–4181 (telephone 503/231–6241, 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.

The final decision on this proposal 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 Supervisor of the Ventura Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, 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 Ventura Field Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are Constance Rutherford and James Rorabaugh, 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

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under REPTILES, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	When listed	Status	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
REPTILES							
*	*	*	*	*	*		*
Lizard, black legless	*Anniella pulchra nigra*	U.S.A. (CA)	Entire		E	NA	NA
*	*	*	*	*	*		*

3. 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	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Astragalus tener var. *titi.*	Coastal dunes milkvetch.	U.S.A. (CA)	Fabaceae	E		NA	NA
*	*	*	*	*	*		*
Cupressus goveniana ssp. *goveniana.*	Gowen cypress	U.S.A. (CA)	Cupressaceae	T		NA	NA
*	*	*	*	*	*		*
Piperia yadonii	Yadon's piperia	U.S.A. (CA)	Orchidaceae	E		NA	NA
*	*	*	*	*	*		*
Potentilla hickmanii	Hickman's potentilla	U.S.A. (CA)	Rosaceae	E		NA	NA
*	*	*	*	*	*		*
Trifolium trichocalyx	Monterey clover	U.S.A. (CA)	Fabaceae	E		NA	NA
*	*	*	*	*	*		*

Dated: December 30, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

Editorial note: This document was received at the Office of the Federal Register on July 27, 1995.

[FR Doc. 95–18811 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018–AD34

Endangered and Threatened Wildlife and Plants; Proposed Endangered or Threatened Status for Seven Plants From the Mountains of Southern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list two plants as endangered under the Endangered Species Act of 1973, as amended (Act): *Poa atropurpurea* (San Bernardino bluegrass) and *Taraxacum californicum* (California dandelion). The Service also proposes to list five plants as threatened: *Arabis johnstonii* (Johnston's rock-cress), *Arenaria ursina* (Bear Valley sandwort), *Castilleja cinerea* (ash-grey Indian paintbrush), *Eriogonum kennedyi* var. *austromontanum* (southern mountain wild buckwheat), and *Trichostema austromontanum* ssp. *compactum* (Hidden Lake bluecurls).

These species are restricted to the Transverse and Peninsular Ranges of southern California, primarily the San Bernardino and San Jacinto mountains. *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum* occur primarily on pebble plains that are relatively open areas with clay soils. *Poa atropurpurea* and *Taraxacum californicum* are found in mountain meadows. The only known population of *Trichostema austromontanum* ssp. *compactum* is associated with an ephemeral pond. *Arabis johnstonii* is found in forest and chaparral habitats. These seven taxa are threatened by one or more of the following: urbanization, habitat degradation by domestic animals, grazing, competition from introduced weeds, off-road vehicle (ORV) use, trampling, recreational development, alteration of the hydrologic regime, overcollection, and genetic absorption with exotic species. *Poa atropurpurea,*

T. californicum, and *T. austromontanum* ssp. *compactum* are also threatened by stochastic extinction due to their small population sizes and limited distributions. This proposed rule, if made final, would extend protection under the Act to these 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 submitted 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 (619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

Arabis johnstonii (Johnston's rock-cress) is a herbaceous perennial in the mustard family (Brassicaceae), with leaves in a basal rosette from which the flowering stem arises. The leaves, which range from 1 to 2 centimeters (cm) (0.4 to 0.8 inches (in.)) long and 1.5 to 3.5 millimeters (mm) (0.06 to 0.14 in.) wide, are narrowly spatulate to oblanceolate, entire, and densely pubescent with fine dendritic (branched) hairs. This species blooms from February to June. It has purple flowers with four petals, 8 to 10 mm (0.32 to 0.4 in.) long. The fruit is a hairless, narrow silique (a linear, many-seeded pod), 3 to 5 cm (1.2 to 2 in.) long and 2 to 3 mm (0.08 to 0.12 in.) wide. *Arabis johnstonii* was first collected in 1922 by Philip A. Munz and I. M. Johnston at Kenworthy, San Jacinto Mountains, Riverside County and described by Munz (1932). *A. johnstonii* is readily distinguishable from all other *Arabis* species in its range by the size and shape of its petals, siliques, and basal leaves (Berg and Krantz 1982).

Arabis johnstonii is found in chaparral and pine forest habitats from 1,400 to 2,150 meters (m) (4,500 to 7,050 feet (ft)) in the southern San Jacinto Mountains. Two distinct population centers are known; one in the vicinity of Garner Valley and the other approximately 6.5 kilometers (km) (4 miles (mi)) east of Garner Valley along the Desert Divide. This species occurs on U.S. Forest Service and private land. Beginning around the late 1800's, habitat loss and degradation began as a result of urbanization and cattle trampling in the Garner Valley, and the construction of the Desert Divide trail. Urban and recreational pressures have substantially affected the species over the past 30 years.

Arenaria ursina (Bear Valley sandwort), *Castilleja cinerea* (ash-grey Indian paintbrush), and *Eriogonum kennedyi* var. *austromontanum* (southern mountain wild buckwheat) are perennial plants that occur predominantly on pebble plains in the San Bernardino Mountains of San Bernardino County. These plains are sparsely vegetated openings in the surrounding forest with clay soils supporting a uniquely adapted assemblage of plant species. Pebble plain habitat is found between 1,800 and 2,300 m (6,000 and 7,500 ft) in elevation, and occurs only within a 240 square km (92 square mile (sq mi)) area in the San Bernardino Mountains (Derby and Wilson 1978, Derby 1979, Krantz 1981a, Neel and Barrows 1990). Due to the unique combination of edaphic and climatic factors, pebble plains contain numerous plant species that are either endemic to the San Bernardino Mountains, or represent disjunct occurrences of species more common elsewhere.

Arenaria ursina is a low-lying perennial herb in the pink family (Caryophyllaceae) with many stems from 6 to 15 cm (2 to 6 in.) long. It has small, white, five-parted flowers with petals 4 to 5 mm (0.16 to 0.2 in.) long and nerveless sepals 3 to 4 mm (0.12 to 0.16 in.) in length with broad papery margins. This species blooms from May to August. *A. ursina* was first collected by S. B. Parish at Bear Valley in the San Bernardino Mountains in 1882, and described by B. L. Robinson (1894). It was subsequently reduced to a variety of *A. capillaris* by A. Gray (1897). B. Maguire (1951) returned the plant to species status. *A. ursina* is readily distinguished from other *Arenaria* species within its range by its sharp-pointed leaves, glandular-hairy stems, and sepals that are obtuse or rounded (Neel and Barrows 1990, Hickman 1993).

Seven populations of *Arenaria ursina* are known from pebble plain habitat in the vicinity of Big Bear and Baldwin Lakes, including Holcomb Valley, Sugarloaf Mountain, and Onyx Ridge (Krantz 1981a, Neel and Barrows 1990). Some of these populations occur on land owned by the California Department of Fish and Game (CDFG) and by private landowners. Most of the extant populations occur on Forest Service land and range from 1,800 to 2,900 m (6,000 to 9,500 ft) in elevation (Griggs 1979, Krantz 1981a, Neel and Barrows 1990). Habitat loss for this species began in the 1880's with the construction of the Big Bear Lake reservoir in the San Bernardino Mountains in an area that likely contained extensive meadows and pebble plains. Over the past 100 years, cattle trampling, mining, timber harvest, off-road vehicle use, fuelwood harvesting, campground and ski area development, and urbanization have affected the habitat of this species.

Castilleja cinerea is a semi-parasitic perennial plant in the snapdragon family (Scrophulariaceae), with few to many ascending to decumbent stems, 1 to 2 decimeters (dm) (4 to 8 in.) tall, sprouting from a woody root-crown. The short grayish leaves are from 1 to 2 cm (0.4 to 0.8 in.) long and are covered with whitish hairs. The inflorescence is a greenish yellow spike, tinged with red or purplish, and with distinctive yellowish hairs on the lower bracts. It flowers primarily in June and July. *C. cinerea* was described by Gray (1883) based on specimens collected by S. B. and W. F. Parish at Bear Valley in 1882. *C. cinerea* is easily distinguished from other species of *Castilleja* within its range by its yellow spike and calyx lobes of equal length (Neel and Barrows 1990).

Castilleja cinerea is known from fewer than 20 localities at the eastern end of the San Bernardino Mountains. The range of this taxon extends from Snow Valley and Fish Camp eastward to Onyx Peak, a distance of about 24 km (15 mi), and from South Fork Meadows northward to Holcomb Valley, a distance of about 19 km (12 mi) (Heckard 1980, Neel and Barrows 1990). Although most populations occur on pebble plains, *C. cinerea* is not strictly endemic to pebble plains. This species is also found near the Snow Valley Ski Area and along Sugarloaf Ridge in pine forest habitats. *C. cinerea* is known to occur on CDFG land, and Forest Service land, including land that is leased for vacation homes and a ski area. Habitat loss for this species began in the 1880's with the construction of the Big Bear Lake reservoir in the San Bernardino Mountains in an area that likely contained extensive meadows and pebble plains. Cattle trampling, mining, timber harvest, off-road vehicle use, fuelwood harvesting, campground and ski area development, and urbanization have affected habitat for this species.

Eriogonum kennedyi var. *austromontanum* is a low, branched perennial 8 to 15 dm (31 to 59 in.) high, in the buckwheat family (Polygonaceae). This species blooms from July through September, and forms loose leafy mats with oblanceolate leaves from 6 to 12

mm (0.2 to 0.5 in.) long. The type specimen, collected in 1920 by R. D. Harwood, is from Bear Valley in the San Bernardino Mountains. *E. k.* var. *austromontanum* was originally described by Munz and Johnston (1924). Though later treated as a subspecies by Stokes (1936), this designation is not generally accepted (Munz and Reveal 1968, Hickman 1993). This taxon is similar in appearance to *E. k.* var. *kennedyi* (Kennedy's buckwheat) (Munz and Reveal 1968). Although the two taxa are very similar in morphology and habitat characteristics, *E. k.* var. *kennedyi* can usually be distinguished by its smaller leaves, 2 to 4 mm (0.08 to 0.16 in.) long, and achenes, 2 mm (0.08 in.) long (Reveal 1979). Another species that could potentially be confused with *E. k.* var. *austromontanum* is *E. wrightii* ssp. *subscaposum*, which has a branched inflorescence and is found in yellow pine forest (Neel and Barrows 1990).

Eriogonum kennedyi var. *austromontanum* is known from six populations in the San Bernardino Mountains, primarily in the Bear Valley and Baldwin Lake areas (Krantz 1981a, Neel and Barrows 1990). *E. k.* var. *austromontanum* is known to occur on Forest Service, CDFG, and private land. The construction of the Big Bear Lake reservoir in the 1880's began habitat loss for this species. This area in the San Bernardino Mountains likely contained extensive meadows and pebble plains. Since then, cattle trampling, mining, timber harvest, off-road vehicle use, fuelwood harvesting, campground and ski area development, and urbanization have continued to affect habitat of this species.

Poa atropurpurea is a perennial in the grass family (Poaceae) with creeping rhizomes and erect stems from 3 to 4.5 dm (12 to 18 in.) high. The inflorescence is a dense spikelike panicle, with smooth, faintly nerved lemmas 2.5 to 3 mm (0.1 to 0.12 in.) long, and glumes 1.5 to 2 mm (0.06 to 0.08 in.) long. This species flowers from early May to June or July. *P. atropurpurea* was described by Scribner (1898) based on specimens collected by S. B. Parish in 1894 at Bear Valley. *P. atropurpurea* is known to occur in meadows of the Big Bear area in the San Bernardino Mountains and in the Laguna Mountains in San Diego County from about 1,800 to 2,300 m (6,000 to 7,500 ft) in elevation (Sproul 1979, Krantz 1981b, Curto 1992). Several other native and at least one exotic species of *Poa* can be found within the range of *P. atropurpurea*, including *P. fendleriana* (mutton grass), *P. incurva*, *P. nevadensis* (Nevada bluegrass), *P. pratensis* (Kentucky bluegrass), and *P. secunda* (*scabrella*) (Malpais bluegrass). *P. atropurpurea* is distinguished from *P. pratensis* by its smaller stature, contracted panicle, and lemmas that lack a tuft of cobwebby hairs at the base (Pierce and Beauchamp 1979). *P. atropurpurea* and *P. pratensis* are distinguished from the other sympatric *Poa* species by creeping rhizomes (Munz 1974).

Habitat for *Poa atropurpurea* is known to exist on Forest Service, CDFG, municipal, and private land in the San Bernardino Mountains. Eleven known population centers of *P. atropurpurea* currently are known to exist. These populations are distributed within a 13 km (8 mi) radius of the town of Sugarloaf (Krantz 1981b). Of these, two localities are on Forest Service land (Holcomb Valley and Wildhorse Meadows), one is administered by CDFG (North Baldwin), one is cooperatively owned by the Forest Service and a private youth camp (Hitchcock Ranch), and seven are privately owned. Eight of the 11 known sites are less than 2.5 hectares (ha) (6 acres (ac)) in size. Fewer than 40 ha (100 ac) of habitat for this species are known to remain in the San Bernardino Mountains: about 9 ha (23 ac) are administered by the Forest Service, 2 ha (5 ac) by the CDFG, and 28 ha (69 ac) are privately owned (Krantz 1981b). In 1979, four known populations of *P. atropurpurea* occurred in the Laguna Mountains. Sproul (1979) reported this taxon to be ''one of the rarest and most threatened plants in the Laguna-Morena area.'' From 1981 until 1993, *P. atropurpurea* was considered to be extirpated from the Laguna Mountains because no individuals could be found despite repeated surveys for this taxon (Curto 1992; Kirsten Winter, U.S. Forest Service, pers. comm. 1993). In spring of 1993, two sites that currently support *P. atropurpurea* were located in the Laguna Mountains within the Cleveland National Forest (Raymond Vizgirdas, U.S. Fish and Wildlife Service biologist, pers. comm. 1993). Each of the 2 populations consists of about 50 individuals (Winter, pers. comm. 1993).

Habitat loss for this species began in the 1880's with the construction of the Big Bear Lake reservoir in the San Bernardino Mountains in an area that likely contained extensive meadows and pebble plains. Since then, grazing, cattle trampling, mining, timber harvest, off-road vehicle use, fuelwood harvesting, campground and ski area development, and urbanization have continued to affect habitat for this species.

Taraxacum californicum is a thick-rooted perennial in the sunflower family (Asteraceae), 0.5 to 2 dm (0.2 to 0.7 ft) high, with light green, oblanceolate, subentire to sinuate-dentate leaves from 5 to 12 cm (2 to 5 in.) long and 1 to 3 cm (0.4 to 1.2 in.) wide. The numerous light yellow flowers are borne on leafless stalks, and bloom from May to August. The outer phyllaries (outer bracts beneath the inflorescence) are erect, lance-ovate, 5 to 7 mm (0.2 to 0.3 in.) long; the inner phyllaries are lance-linear, 12 to 15 mm (0.5 to 0.6 in.) long. This species has been previously treated as *T. officinale* var. *lividum* by Koch (*in* Hall 1907), as *T. lapponicum* by Handel-Mazzetti (1907), as *T. ceratophorum* by Sherff (1920), and *T. ceratophorum* var. *bernardinum* by Jepson (1925). *T. californicum* was described by Munz and Johnston (1925) based on specimens collected by S.B. and W.F. Parish at Bear Valley in 1882. Munz and Johnston (1924) emphasized the morphological distinctiveness of *T. californicum*, in addition to its extremely disjunct distribution. They elevated this taxon to species status primarily on the basis of its small achenes and erect appressed phyllaries. *T. californicum* is readily distinguished from other members of this genus within its range by its lighter green foliage, subentire leaves, erect phyllaries, and paler yellow flowers (Krantz 1980).

Taraxacum californicum occurs in moist meadow habitats in the San Bernardino Mountains from 2,000 to 2,800 m (6,700 to 9,000 ft) in elevation, often in association with *Poa atropurpurea* and other rare species. This species is known to occur on Forest Service, CDFG, municipal, and private land. Fewer than 15 occurrences of *T. californicum* currently are known, with population sizes ranging from 2 to 300 individuals. About half of these occurrences are located within or adjacent to developed areas such as Big Bear City, Big Bear Lake Village, and Sugarloaf in San Bernardino County. Habitat loss for this species began in the 1880's with the construction of the Big Bear Lake reservoir in the San Bernardino Mountains in an area that likely contained extensive meadows and pebble plains. Since then grazing, cattle trampling, mining, timber harvest, off-road vehicle use, fuelwood harvesting, campground and ski area development, and urbanization continue to affect habitat for this species.

Both *Poa atropurpurea* and *Taraxacum californicum* are found in wet meadow habitats, primarily in the northeastern San Bernardino Mountains. These taxa are further restricted to the relatively open edges or ecotonal (border) areas that offer less competition from more mesic species such as *P. pratensis*, *Carex* spp. or

Juncus spp. (Krantz 1981b). The perimeter of such meadows often intergrades with sagebrush scrub dominated by *Artemisia tridentata* or montane forest dominated by *Pinus jeffreyi*.

Trichostema austromontanum ssp. *compactum* is a compact, soft-villous (with long, shaggy hairs) annual in the mint family (Lamiaceae), approximately 10 cm (4 in.) tall. This species flowers in July and August. Its tiny blue, five-lobed flowers are less than 2 mm (0.1 in.) long, with two blue stamens. The fruit is a smooth, four-lobed nutlet. *T. austromontanum* ssp. *compactum* was described by Lewis (1945) based on specimens collected by M.L. Hilend at Hidden Lake (San Jacinto Mountains, Riverside County).

Trichostema austromontanum ssp. *compactum* has historically been restricted to a single vernal pool known as Hidden Lake at an elevation of about 2,400 m (8,000 ft) in the San Jacinto State Wilderness Area. Hidden Lake is the only naturally occurring body of water in the San Jacinto Mountains. The entire known range for this species encompasses less than 0.8 ha (2 ac) (Michael Hamilton, James Reserve Manager, pers. comm. 1993). The population size of *T. austromontanum* ssp. *compactum* declines during periods of either above or below normal precipitation because of its position along the perimeter of the vernal pool habitat (Hamilton 1991). Between 1979 and 1991, the population sizes of this species fluctuated from 11 to 10,000 individuals (Hamilton 1991). Since the creation of the Palm Springs tramway in 1964, Hidden Lake has incurred a greater intensity of trampling damage.

Previous Federal Action

Federal government actions on the seven taxa under consideration in this rule began as a result of section 12 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be threatened, endangered, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. 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)) of the Act, and its intention to review the status of the plant taxa named therein. *Arenaria ursina, Poa atropurpurea,* and *Trichostema austromontanum* ssp. *compactum* were included in that notice as endangered species, and *Arabis johnstonii, Castilleja cinerea,* and *Taraxacum californicum* were listed as threatened. On June 16, 1976, the Service published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the **Federal Register** notice dated July 1, 1975. *A. ursina, P. atropurpurea,* and *T. a.* ssp. *compactum* were included in the proposed rule.

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 a December 10, 1979, notice (44 FR 70796), the Service withdrew the outstanding portion of the June 16, 1976, proposal, along with four other proposals that had expired.

On December 15, 1980, the Service published a revised Notice of Review of plants in the **Federal Register** (45 FR 82480). *Arabis johnstonii, Poa atropurpurea, Taraxacum californicum,* and *Trichostema austromontanum*. ssp. *compactum* were included in that notice as category 1 candidate species for Federal listing. 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. *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum* were included in the notice as category 2 candidate species. 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. The status of these seven taxa remained unchanged in the Notice of Review published on September 27, 1985 (50 FR 39526). In the February 21, 1990, Notice of Review (55 FR 6184), *Arenaria ursina* was changed to a category 1 candidate species. The status of the other six taxa remained unchanged. In the revision of the plant notice published on September 30, 1993, (58 FR 51144), these categories remained unchanged.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on 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 the seven taxa covered by this rule, 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 annually, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1983 through 1994. Publication of this proposed rule constitutes the final 1-year petition finding for the seven taxa.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (Act) 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 list. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Arabis johnstonii* Munz (Johnston's rock-cress), *Arenaria ursina* Robinson (Bear Valley sandwort), *Castilleja cinerea* Gray (ash-grey Indian paintbrush), *Eriogonum kennedyi* Porter ex Watson var. *austromontanum* Munz & Johnston (southern mountain wild buckwheat), *Poa atropurpurea* Scribner (San Bernardino bluegrass), *Taraxacum californicum* Munz & Johnston (California dandelion), and *Trichostema austromontanum* Lewis ssp. *compactum* Lewis (Hidden Lake bluecurls) are as follows (see Table 1):

TABLE 1.—SUMMARY OF THREATS

Species	Threats					
	Trampling	Exotic plants	ORV activity	Development activity	Grazing	Limited numbers
Arabis johnstonii	X	.....	X	X	X	
Arenaria ursina	X	X	X	X		
Castilleja cinerea	X	X	X	X	X	
Eriogonum kennedyi var. *austromontanum*	X	X	X	X		
Poa atropurpurea	X	X	X	X	X	X
Taraxacum californicum	X	X	X	X	X	X
Trichostema austromontanum ssp. *compactum*	X	.....	.....	.....	.....	X

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* The seven taxa considered herein currently are threatened by a variety of activities that result in habitat modification, destruction, degradation, and fragmentation. These activities include urbanization, vehicular activity, hydrologic alterations, and habitat degradation by livestock.

Five of the seven taxa proposed in this rule (*Poa atropurpurea, Taraxacum californicum, Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum*) are predominantly found in pebble plains or meadow habitats in the vicinity of Big Bear Lake in the eastern San Bernardino Mountains. Pebble plains soils contain significant amounts of clay, and are subject to extreme diurnal and seasonal variation in soil temperature and moisture conditions. These soils have an extremely slow infiltration rate and, thus, have a high runoff potential.

Prior to European settlement, pebble plain and meadow habitats were much more abundant in the Big Bear Valley. Krantz (1987) estimated that over 1,000 ha (2,500 ac) of pebble plains and natural meadowlands were lost due to the construction of a dam and the resultant creation of Big Bear Lake in 1883. Subsequent urbanization of the valley, land disturbance from livestock, and off-road vehicle use, destroyed or damaged much of the remaining pebble plain and meadow habitat (Krantz 1987, Neel and Barrows 1990). These factors contributed to the decline of two meadow endemic species found only in the Big Bear Valley area, *Sidalcea pedata* (pedate checker-mallow) and *Thelypodium stenopetalum* (slender-petaled mustard), which were federally listed as endangered in 1984 (49 FR 34497). Nine existing pebble plain complexes have been identified (Neel and Barrows 1990). Less than 220 ha (550 ac) of this highly restricted community remain; about 208 ha (514 ac) is administered by the Forest Service and approximately 12 ha (32 ac) occurs on private land (Neel and Barrows 1990).

Recreational activities have affected and continue to affect the habitat of *Arabis johnstonii, Arenaria ursina, Castilleja cinerea, Eriogonum kennedyi* var. *austromontanum, Trichostema austromontanum* ssp. *compactum, Poa atropurpurea,* and *Taraxacum californicum*. These activities include heavy, widespread hiking; off-road vehicle use; and development of campgrounds, trails, and ski areas. The San Bernardino National Forest (SBNF) has the highest recreational use of any national forest (SBNF Draft Wildlife, Fisheries, Botany, and Threatened and Endangered Species Program 5-year plan, 1992). The Forest Service has implemented a number of measures (including fencing and signing) to protect pebble plains from illegal off-road vehicle activity. Despite this action, over 40 percent of the pebble plains habitat within Forest Service jurisdiction remains unprotected (Neel and Barrows 1990). Because of the heavy recreational pressures on the SBNF, unauthorized off-road vehicle use remains a threat to these species. The Forest Service has limited resources available for preventing recreational impacts to these habitats. Most of the privately owned pebble plains habitat receive no formal protection. A few, however, have voluntary non-binding landowner agreements to protect this habitat. See Factor D for additional information.

Vehicles cause considerable damage to pebble plains habitat, and all pebble plains habitat have some road development. The pebble plains are extremely susceptible to damage during spring thaw (Krantz 1981a). During the wet season, vehicles both directly destroy plants and create deep ruts that change the water flow patterns over the pebble plains, potentially indirectly affecting greater numbers of plants (Neel and Barrows 1990). All known *Arenaria ursina and Eriogonum kennedyi* var. *austromontanum* populations have been affected by vehicle use to some extent (Krantz 1981a). Vehicular activity directly impacts plants by crushing the plants and compacting and eroding the soil. Although the erosion potential of the soil is not considered high, due to the moderate slopes and rainfall, vehicle use can lead to a breakdown in soil structure (Neel and Barrows 1990). Vehicular activity also favors the establishment of species more tolerant of such disturbance, thereby altering the composition of the plant community over time.

Extensive damage to the pebble plains near North Baldwin Lake occurred in March 1992. A construction vehicle (front-end loader) from the adjacent San Bernardino County landfill was driven over this plant site while the soils were saturated and highly vulnerable to disturbance (Neel and Chaney 1992). Although the site was completely fenced and posted as a rare plant site, the driver trespassed onto the site, drove over the identifying signs and fences, and caused extensive damage to the habitat in an apparently intentional act of vandalism (Tim Krantz, consultant, *in litt.* 1993). Over 1,200 sq m (13,000 sq ft) of pebble plain habitat was moderately to severely damaged from this event. Although restoration was required by the Forest Service, it was not entirely successful since the indirect effects, including alteration of surface hydrology and the subsequent invasion of exotic species, can have significant, long-term effects on this delicate ecosystem (Neel and Chaney 1992, Krantz, *in litt.* 1993). These impacts are not easily reversed because soil compaction could impede germination and the exotic species could compete for nutrients for extensive periods of time.

Incidents involving destruction or degradation of pebble plains habitat by off-road vehicles and vehicular trespass have occurred in the past, and continue to present a significant threat to all pebble plain sites (Maile Neel, SBNF,

pers. comm. 1993, Krantz, *in litt.* 1993). For example, unpermitted grading destroyed a portion of the Castle Glen pebble plain in 1991 (Krantz, *in litt.* 1993). Generally, when such an event occurs, restoration is not undertaken since the persons responsible for the habitat destruction usually cannot be identified, and the Forest Service has insufficient staffing and funding to adequately restore all such disturbed areas. The cumulative effects of unauthorized off-road vehicle use resulted in the almost complete devegetation of a pebble plains site in the SBNF near Sugarloaf (Neel and Barrows 1990). Privately owned pebble plains habitat is unprotected at several locations, including the Big Bear Lake and Sawmill population complexes. In addition, unregulated off-road vehicle activity degraded part of the Horseshoe pebble plain (Sawmill complex) under both Forest Service and private ownership (Krantz, *in litt.* 1993). See Factor D for additional information.

Chaparral and forest habitats in the Garner Valley and Lake Hemet areas containing *Arabis johnstonii* continue to be destroyed or degraded by livestock trampling, and residential and recreational developments, including groundwater drawdown by numerous wells (Hamilton, pers. comm. 1993). These activities contributed to the decline of *A. johnstonii* in the region. The Garner and Wellman grazing allotments may affect several populations of *A. johnstonii* in Garner Valley. The clay substrate is especially vulnerable to trampling and disruption by cattle during the saturated period in winter and early spring. Berg and Krantz (1982) noted evidence of cattle-induced impacts to the substrate in the vicinity of Quinn Flat, located in central Garner Valley, which contains a dense population of *A. johnstonii*.

The decline of Poa atropurpurea and *Taraxacum californicum* can be attributed to a number of activities that destroyed and degraded their habitat, including urbanization, livestock, off-road vehicles, and hydrologic alteration. For example, the creation of Big Bear Lake inundated hundreds of acres of meadows that provided habitat for several sensitive taxa (Krantz 1981b). Subsequent urbanization and recreational developments at the lake eliminated or fragmented many populations of *P. atropurpurea* and *T. californicum* (Krantz 1980; California Natural Diversity Data Base 1992).

At least 70 percent of the remaining *Poa atropurpurea* habitat is unprotected. In several areas of the San Bernardino Mountains, *P. atropurpurea* is sympatric with two State and federally listed endangered species, *Sidalcea pedata* (pedate checker-mallow) and *Thelypodium stenopetalum* (slender-petaled mustard), and was similarly impacted by urbanization and development of meadow habitat. For example, development of the Big Bear airport facilities and the expansion of Bear Mountain Ski Area destroyed two populations of *P. atropurpurea*. A portion of another site was intentionally graded by the landowner in 1991, which also destroyed S. *pedata* habitat (CDFG 1991, Krantz, *in litt.* 1993). Since most of the remaining populations of *P. atropurpurea* are very small, their long-term survival is questionable (Krantz, *in litt.* 1993) (See Factor E). By 1979, half of the four known *Poa atropurpurea* populations in Laguna Meadow (San Diego County) were damaged by cattle trails, telephone line trenching, and soil removal for the construction of an earthen dam at Big Laguna Lake (Sproul 1979). The long-term alteration of surface and subsurface hydrology in Laguna Meadow through dam construction and livestock presence resulted in soil disturbance. In addition, several prolonged drought events in the early 1950's, middle 1970's, and late 1980's may have contributed to the decline of *P. atropurpurea* in this area (Curto 1992).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be a threat for any of the taxa under consideration in this proposed rule. All of the taxa proposed herein could potentially suffer vandalism either directly, or indirectly due to habitat destruction. An example of vandalism to pebble plains habitat is the incident at North Baldwin Lake (see Factor A), where a construction vehicle was driven over the plant site even though the site was completely fenced and posted as rare plant habitat. The plant habitat was extensively damaged (Tim Krantz, consultant, *in litt.* 1993).

C. *Disease or predation.* Disease is not known to be a factor affecting any of the taxa under consideration in this rule. However, consumption by livestock is a threat to *Arenaria ursina, Castilleja cinerea, Eriogonum kennedyi* var. *austromontanum, Poa atropurpurea, and Taraxacum californicum* (Krantz 1981a, Krantz, *in litt.* 1993). Krantz (1981b) noted that since animals grazed during the flowering period of P. *atropurpurea*, seed set and sexual reproduction are reduced. *T. californicum* is vulnerable to consumption as its flower heads and leaves are erect and readily removed by grazers (Krantz *in litt.* 1993). In the Big Bear Basin, wild burros forage in and around pebble plain and wet meadow habitats. Feral burros have been observed at North Baldwin and on the pebble plains of Gold Mountain and Sawmill Complex. Though levels of use and degrees of impact from burro grazing and trampling have not been systematically recorded, browsed plants and hoof prints in wet clay soils were noted (Neel and Barrows 1990).

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, (2) provisions under the California Native Plant Protection Act, (3) consideration under the California Environmental Quality Act (CEQA), (4) Forest Service management policies, (5) land acquisition and management by Federal, State, or local agencies, or by private groups and organizations, (6) State wilderness area management policies, (7) conservation provisions under the Federal Clean Water Act, and (8) local laws and regulations.

The Native Plant Protection Act (Chapter 10, Sec. 1908 *et seq.*) and the California Endangered Species Act (Chapter 1.5, Sec. 2080 *et seq.*) prohibit the ''take'' of State-listed plants. State law does not, however, protect the plants from taking via habitat modification or land use change by the landowner. After the CDFG 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'' (Chapter 10, Sec. 1913).

Although State laws could provide a measure of protection to the species, these laws are not adequate to protect the species in all cases. Numerous activities do not fall under the purview of the laws, such as certain projects proposed by the Federal government and projects falling under State statutory exemptions. Where overriding social and economic considerations can be demonstrated, these laws allow project proposals to go forward, even in cases where the continued existence of the species may be jeopardized, or where adverse impacts are not mitigated to the point of insignificance.

The taxa in this rule are included in the California Native Plant Society inventory, but none have been listed by the State. Hence, the California Endangered Species Act currently provides no protection for these species. Since the Native Plant Protection Act only applies to plant species listed by

the State, this act also provides no protection to the seven species in this rule. Although these seven taxa are not listed by the State, the CEQA specifies that a species not included on the State list shall be considered to be endangered if the species can be shown to meet the criteria for State listing.

The CDFG recognizes that plants on Lists 1A, 1B, and 2 of the ''Inventory of Rare and Endangered Vascular Plants of California'' (Smith and Berg 1988) would normally qualify for State listing. All seven plant taxa in this rule are included on California Native Plant Society List 1B, i.e. plants rare, threatened, or endangered in California and elsewhere (Smith and Berg 1988). CDFG generally requests the inclusion of such species in Environmental Impact Reports. However, several projects resulted in the loss of habitat for these taxa, including the expansion of the Big Bear Airport, ski areas, and the development of the Moonridge Golf Course in sensitive meadow habitat (California Natural Diversity Data Base 1992). In addition, projects such as the Eagle Point development have already been approved but do not provide adequate mitigation for the sensitive meadow plants (Neel, pers. comm. 1993). Recently, the City of Big Bear graded habitat containing the federally listed endangered plant species *Sidalcea pedata* without providing appropriate mitigation measures (Mary Meyer, CDFG, pers. comm. 1993). Furthermore, these taxa face threats that are not easily controlled by existing regulations, particularly unauthorized off-road vehicle activity.

With the exception of *Trichostema austromontanum* ssp. *compactum,* which only occurs on State land, all of the taxa under consideration in this rule are found on the SBNF and are recognized by the Forest Service as ''sensitive species'' (SBNF 1989). The Forest Service has policies to protect sensitive plant taxa, including attempting to establish these species in suitable or historic habitat, encouraging land acquisitions to protect sensitive plant habitat, establishing refugia for pebble plains species, and not permitting activities that may alter the hydrology or meadow habitat for sensitive plants (SBNF 1989). These guidelines, however, have not been entirely effective. Bluff Lake, which is privately owned and contains populations of *Poa atropurpurea* and *Taraxacum californicum,* was identified as a potentially suitable mitigation bank of wetland and wet meadow habitat for developments in the region. It was identified as a high priority for the Forest Service's Land Ownership Adjustment Program (Bruce Daniels, City of Big Bear Lake, *in litt.* 1992). Unfortunately, plans to acquire Bluff Lake are no longer being pursued because the parcel is not available for sale (Neel, pers. comm. 1993).

Although the Forest Service does not permit activities that alter the hydrology of pebble plains or meadows, unauthorized off-road vehicle use continues to be a problem in many areas and contributes to hydrologic modifications of these sensitive habitats. Even if most of the remaining pebble plains and meadow habitats on the SBNF could be adequately protected from human disturbance, the amount of habitat presently occupied by five of the seven taxa under consideration in this rule may not be sufficient to maintain their long-term viability.

The Holcomb Valley/North Baldwin Lake region, which contains known populations of five of the plant taxa in this proposed rule and significant examples of pebble plains habitat, was designated as a Special Interest Area by the Forest Service in 1989 due to its combination of unique botanical, zoological, and historical resources (Lardner, pers. comm. 1993). This designation means that certain activities, such as plant collecting, are restricted. At present, no specific management plan has been developed for the area due to resources being directed toward higher priority activities (Neel, pers. comm. 1993). The ''Barstow-to-Vegas'' motorcycle race was authorized by the Forest Service to pass through this area in 1992 and 1993 (Loe, pers. comm. 1992, 1994). Although the race is confined to existing dirt roads and no direct impacts to sensitive plants were incurred (Neel, pers. comm. 1993), this officially sanctioned large scale off-road vehicle event took place in one of the highly significant and vulnerable plant habitat areas of the forest (Krantz 1981a). The potential exists for indirect impacts such as foot trampling to occur within the area of these plants. Since the race is likely to become an annual event, it is a potential threat to sensitive plant habitat.

Two of the species in this proposal, *Poa atropurpurea* and *Taraxacum californicum* could potentially be affected by projects requiring a permit under section 404 of the Clean Water Act. Under section 404, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill material into waters of the United States, which include navigable and other waters, their headwaters (streams with an average annual flow of less than 5 cubic feet per second), and wetlands (either isolated or adjacent to other waters). Section 404 regulations require that applicants obtain a permit for projects that involve the discharge of fill into waters of the U.S. Projects that qualify for authorization under Nationwide Permit 26 (NWP 26) and will adversely impact 0.41 ha to 4.0 ha (1 to 10 ac) of waters above the headwater point or in isolated waters (including wetlands) can be permitted with minimal environmental review by the Corps (33 CFR Part 330). Projects that qualify for authorization under NWP 26 that affect less than 0.41 ha (1 ac) of isolated waters including wetlands may proceed without notifying the Corps if the project meets the terms and conditions of the Nationwide Permit. Formal evaluation of the impacts of such a project is thus precluded under the section 404 permit process. An individual permit may be required by the Corps if a project otherwise qualifying under NWP 26 would have greater than minimal adverse environmental impacts. The Corps is generally reluctant to withhold authorization under NWP 26 unless the existence of a federally proposed or listed threatened or endangered species would be affected. Candidate species receive no special consideration under section 404, regardless of the type of permit deemed necessary. Thus, these two taxa currently receive insufficient protection under section 404.

Representatives from various Federal, State, and local agencies, and individuals from the private sector are developing a Coordinated Resource Management Plan (CRMP) for the Big Bear Valley region. The CRMP process is essentially a planning tool that operates on the local level to minimize conflicts among various user groups, landowners, and governmental agencies (CRMP Handbook 1990). The goal of this process is to identify sensitive biological resources and to integrate conservation efforts with those of public and private entities. Although the Service supports these efforts, no protection for any of the species described herein can be guaranteed. This process is ongoing, and is not legally binding for participants (John Hanlon, U.S. Fish and Wildlife Service, pers. comm. 1993).

E. *Other natural or manmade factors affecting their continued existence.* The seven taxa considered in this rule currently are threatened by a variety of other factors including: trampling by humans and livestock, competition with other plant species, genetic absorption, drought, and stochastic events.

Activities related to fuelwood harvesting affect *Arenaria ursina, Castilleja cinerea, Eriogonum kennedyi* var. *austromontanum, Poa*

atropurpurea, and *Taraxacum californicum* due to human trampling of habitat and individual plants.

Trampling by recreational users adversely affects populations of at least three of the species (*Castilleja cinerea, Taraxacum californicum*, and *Trichostema austromontanum* ssp. *compactum*). Individuals of *Trichostema* showed reduced vigor under conditions of moderate to heavy trampling by recreational users (Hamilton 1991). Trampling by recreational users and livestock adversely affects *T. californicum* and favors the establishment of *Taraxacum officinale*, since the latter species responds to disturbance by producing flower heads close to the soil surface (Krantz, *in litt.* 1993). At least one population of *C. cinerea* was affected by trampling by recreational users. This site, located across from Snow Valley Ski Area within a Forest Service lease tract, was fragmented by the construction of several large cabins, a parking lot, and trails. In addition, increased trampling and excessive amounts of dust generated during the Barstow-to-Vegas motorcycle race in Holcomb Valley may impact populations of five of the species in this proposed rule: *Arenaria ursina, C. cinerea, Eriogonum kennedyi* var. *austromontanum, Poa atropurpurea*, and *T. californicum* (Neel, pers. comm. 1993).

Due to its accessibility, the *Trichostema austromontanum* ssp. *compactum* population at Hidden Lake is particularly vulnerable to trampling by recreational users. This site, managed by the California Department of Parks and Recreation, has been extremely popular with recreational users since the development of the Palm Springs tramway in 1964. Several measures were initiated by the State during the past decade to protect the vernal pool ecosystem and the *Trichostema* population, including removing references to the site from park interpretive materials. These measures, however, have not prevented impacts from trampling by hikers and horses. Fencing is not permitted because the site is located within a State wilderness area (Hamilton, pers. comm. 1992).

The presence of livestock typically changes the composition of native plant communities by reducing or eliminating those species that cannot withstand trampling, and enabling more resistant (usually exotic) species to increase in abundance. Livestock trampling and competition from exotic species could adversely affect all seven of these plant taxa. Taxa that were not previously part of the native flora may be introduced and flourish under a grazing regime. They may reduce or eliminate native plant species through competition for resources. Introduced species are used as forage in San Bernardino and Cleveland National Forest grazing allotments. The native grass *Poa atropurpurea* cannot successfully compete with these populations of non-native grass species (Winter 1991). Evidence of cattle-induced impacts in the vicinity of Quinn Flat, in central Garner Valley, was observed where a population of *Arabis johnstonii* exists (Berg and Krantz 1982).

Sites supporting *Arabis johnstonii, Arenaria ursina, Castilleja cinerea, Eriogonum kennedyi, Poa atropurpurea*, and *Taraxacum californicum* were moderately to heavily degraded by cattle trampling in the past (e.g., Big Meadow, Wildhorse Meadow, Holcomb Valley, Hitchcock Ranch, Bluff Lake, Garner Valley, and Laguna Meadow). Some areas continue to be grazed by cattle, horses, or burros. The Santa Ana grazing allotment includes a population of *C. cinerea* on Sugarloaf Ridge (Melody Lardner, SBNF, pers. comm. 1993). In the Cleveland National Forest, the major threat to P. *atropurpurea* is grazing, as all the Laguna Meadow populations are located within grazing allotments.

Introduced species of grasses and forbs have invaded many of California's native plant communities. Such weedy species can displace the native flora by competing for nutrients, water, light, and space. Weedy plant invasions are facilitated by disturbances such as grazing, urban and residential developments, and various recreational activities. Introduced weeds became established in many portions of the San Bernardino, San Jacinto, and Laguna mountains reducing the amount of suitable habitat for *Taraxacum californicum, Poa atropurpurea*, and other native plant species. For example, the invasion of the exotic cheatgrass (*Bromus tectorum*) is considered to be a threat to the Sawmill pebble plain habitat, which supports populations of *Arenaria ursina, Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* (Neel and Barrows 1990). In most localities, *T. californicum* was out-competed by the widespread, non-native *T. officinale*, especially in areas that were disturbed by grazing or human activities. Exotic grass and weed species could displace populations of both *P. atropurpurea* and *T. californicum* through competition if activities such as grazing, trampling, and off-road vehicles that favor aggressive introduced species continue.

Two species are threatened with the loss of their genetic distinctiveness due to genetic exchange with species of the same genera. *Poa atropurpurea* has potentially been affected by genetic absorption by the widespread non-native *P. pratensis* (Pierce and Beauchamp 1979, Sproul 1979, Curto 1992). Genetic absorption of *P. atropurpurea* by the exotic *P. pratensis* is a threat to the long-term viability of this species. *Taraxacum californicum* may also be threatened with genetic absorption by the introduced *T. officinale* (Krantz, *in litt.* 1993). Apparent hybrids between these two taxa were observed in areas where they overlap in distribution (Krantz, pers. comm. 1993; Krantz 1980). Since *T. californicum* rarely occurs in the absence of *T. officinale*, the potential for loss of genetic distinctiveness of the restricted species exists. Although both *T. californicum* populations are protected, in part, by fencing of habitat at North Baldwin Lake (owned by CDFG) and Holcomb Valley (Forest Service), this species is likely threatened at all sites by genetic absorption and competition with *T. officinale*.

Drought conditions can also negatively affect pebble plains species. The severe drought in 1989 dramatically reduced the number of flowering individuals of pebble plains taxa and their associated insect pollinators (Freas and Murphy 1990). Since both *Arenaria ursina* and *Eriogonum kennedyi* var. *austromontanum* are dependent on insects for seed set, such environmental conditions can adversely affect their reproductive success (O'Brien 1980, Freas and Murphy 1990). Therefore, if numbers of these species continue to decline and reproductive success is low, a series of drought events may pose a threat to the species because of now limited distribution.

Stochastic extinction threatens the plants discussed herein, particularly *Poa atropurpurea, Taraxacum californicum*, and *Trichostema austromontanum* ssp. *compactum*, by virtue of their small population size and limited distribution. Genetic viability is reduced in small populations, making them vulnerable to extinction by manmade or natural events. The potential for local extirpation precipitated by small population size can be exacerbated by environmental conditions such as the recent drought. For example, the few numbers of *P. atropurpurea* individuals at the two remaining sites in the Laguna Mountains could be eliminated by grazing (i.e., consumption, trampling, soil disturbance), competition from alien plants, alteration of the hydrologic regime, or other forms of disturbance,

resulting in the extirpation of the species (Curto 1992). Most known populations of *T. californicum*, including Hitchcock Ranch, Big Meadow (Forest Service), and Pan Hot Springs (City of Big Bear), are so limited in numbers (R. Vizgirdas, U.S. Fish and Wildlife Service, pers. comm. 1992) that they may not survive in the future without recovery actions such as reducing competition from exotic plants and restoring degraded habitat areas.

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 Service finds that *Poa atropurpurea* and *Taraxacum californicum* are in imminent danger of extinction throughout all or a significant portion of their ranges due to habitat destruction and alteration resulting from urban and recreational development; grazing; trampling by livestock and humans; inadequacy of existing regulatory mechanisms; genetic absorption; stochastic extinction; and competition from exotic plant species. Therefore, the preferred action is to list *P. atropurpurea* and *T. californicum* as endangered. Other alternatives to this action were considered but not preferred because not listing these species at all, or listing them as threatened would not provide adequate protection or would not be in keeping with the purposes of the Act.

For the reasons discussed above, the Service finds that *Arabis johnstonii, Arenaria ursina, Castilleja cinerea, Eriogonum kennedyi* var. *austromontanum*, and *Trichostema austromontanum* ssp. *compactum* are likely to become endangered within the foreseeable future throughout all or a significant portion of their ranges if identified threats are not reduced or eliminated. Threats to these five taxa include habitat destruction and alteration from urban development and off-road vehicle activity; habitat degradation and predation by livestock and feral burros; trampling; and stochastic events. The Service has determined that threatened rather than endangered status is appropriate for *A. johnstonii, A. ursina, C. cinerea, E. kennedyi* var. *austromontanum*, and *T. a.* ssp. *compactum* primarily because the Forest Service has initiated some measures to protect these species. Management activities conducted by the Forest Service (such as fencing, signing, and monitoring various sensitive habitat areas) have reduced the potential for habitat destruction by human activities to the degree that the danger of extinction for these taxa is not imminent. However, the signs and fences are often destroyed or removed, hence most localities containing these taxa remain vulnerable to trespass by off-road vehicles and other recreational users (Neel, pers. comm. 1993). Other alternatives to this action were considered but not preferred because not listing these species at all would not provide adequate protection and would not be in keeping with the purposes of the Act. Listing them as endangered would not be appropriate as the Forest Service has decreased the danger of extinction at the present time. Critical habitat is not being proposed for these species at this time, as discussed below.

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 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 424.21) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these taxa 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 threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

As discussed in Factors A and B, vandalism, primarily by through unauthorized trespassing in motorized vehicles, is a threat to these species. One documented example of intentional habitat destruction has been cited above in an area containing several of the species proposed herein for listing. Acts of vandalism and habitat destruction against other Federally listed endangered species in the region discussed in this rule have occurred when the location of plant populations were divulged (Mary Meyer, CDFG, pers. comm. 1995). The publication of the required maps and descriptions for a critical habitat proposal would increase the degree of threat to these taxa from possible take or vandalism. The listing of species as endangered or threatened publicizes their rarity, and can make them more susceptible to collection by researchers or curiosity seekers. Designation of critical habitat could further contribute to their decline and increase enforcement problems.

In addition, designation of critical habitat would not be beneficial for these species. All Federal agencies and local planning agencies involved were notified of the location and importance of protecting habitat for these species. For the populations under Federal jurisdiction, protection of the habitat of these species will be addressed through the Act's section 4 recovery process and section 7 consultation process. Those populations extant on privately owned lands would receive no benefit from critical habitat designation. For the reasons discussed above, the Service finds that designation of critical habitat for these taxa is not prudent at this time.

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 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 formal consultation with the Service.

Federal agencies expected to have involvement with section 7 regarding these species include the Forest Service through its management activities, and the U.S. Army Corps of Engineers and the Environmental Protection Agency, through their permit authority under section 404 of the Clean Water Act. The Federal Housing Administration may be affected through funding of housing loans where these species or their habitat occurs. The Federal Highway Administration may be affected through potential funding of future highway construction that could affect these species. The Federal Energy Regulatory Commission may be involved through its permitting authority for utility projects that might potentially affect these taxa.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR parts 17.61 or 17.71 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 any such species in interstate or foreign commerce, or to remove and reduce to possession the species 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. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to these species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked ''Of Cultivated Origin.'' 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 for endangered plants and Part 17.72 for threatened plants also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits area also available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. It is anticipated that few permits would ever be sought or issued because these species are not in cultivation or common in the wild.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), 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. Six of the seven species in this rule are known to occur on lands managed by the Forest Service. Collection, damage or destruction of these species on Forest Service lands is prohibited although in appropriate cases a Federal endangered species permit may be issued to allow collection. Removal, cutting, digging up, damaging or destroying endangered plants on non-Federal lands would constitute a violation of section 9 of the Act if conducted in knowing violation of California State law, including State criminal trespass law. The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9.

Questions regarding activities that may constitute violations 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, or other relevant data concerning any threat (or lack thereof) to these taxa;

(2) The location of any additional populations of these taxa 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 taxa; and

(4) Current or planned activities in the subject area and their possible impacts on these taxa.

The Service specifically solicits opinion from independent specialists regarding pertinent scientific or commercial data and assumptions relating to taxonomy, population models, and supportive biological and ecological information.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. 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 Act. 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 Carlsbad Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Edna Rey Vizgirdas, Carlsbad

Field Office (see **ADDRESSES** section) or telephone 619–431–9440.

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	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Arabis johnstonii	Johnston's rock-cress.	U.S.A. (CA)	Brassicaceae	T		NA	NA
*	*	*	*	*	*	*	
Arenaria ursina	Bear Valley sandwort	U.S.A. (CA)	Caryophyllaceae	T		NA	NA
*	*	*	*	*	*	*	
Castilleja cinerea	Ash-grey Indian paintbrush.	U.S.A. (CA)	Scrophulariaceae	T		NA	NA
*	*	*	*	*	*	*	
Eriogonum kennedyi var. *austromontanum.*	southern mountain wild buckwheat.	U.S.A. (CA)	Polygonaceae	T		NA	NA
*	*	*	*	*	*	*	
Poa atropurpurea	San Bernardino bluegrass.	U.S.A. (CA)	Poaceae	E		NA	NA
*	*	*	*	*	*	*	
Taraxacum californicum.	California dandelion	U.S.A. (CA)	Asteraceae	E		NA	NA
*	*	*	*	*	*	*	
Trichostema austromontanum ssp. *compactum.*	Hidden Lake bluecurls.	U.S.A. (CA)	Lamiaceae	T		NA	NA
*	*	*	*	*	*	*	

Dated: July 5, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–18975 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 23

RIN 1018–AC70

Export of River Otters Taken in Tennessee in the 1995–96 and Subsequent Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animal and plant species. Exports of animals and plants listed on Appendix II of CITES require an export permit from the country of origin. As a general rule, export permits are only issued after two conditions are met. First, the exporting country's CITES Scientific Authority must advise the permit-issuing CITES Management Authority that such exports will not be detrimental to the survival of the species. This advice is known as a ''no-detriment'' finding. Second, the Management Authority must make a determination that the animals or plants were not obtained in violation of laws for their protection. If live specimens are being exported, the Management Authority must also determine that the specimens are being shipped in a humane manner with minimal risk of injury or damage to health.

The purpose of this proposed rulemaking is to announce proposed findings by the Scientific and Management Authorities of the United States on the proposed export of river otters harvested in the State of Tennessee, and to propose the addition of Tennessee to the list of States and Indian Nations for which the export of river otters is approved. The Service intends to apply these findings to harvests in Tennessee during the 1995–96 season and subsequent seasons, subject to the conditions applying to approved States.

DATES: The Service will consider comments received on or before October 2, 1995 in making its final determination on this proposal.

ADDRESSES: Please send correspondence concerning this proposed rule to the Office of Scientific Authority; Mail Stop: 725 Arlington Square; U.S. Fish and Wildlife Service; 1849 C St. NW, Washington, DC 20240 (FAX number 703–358–2276). Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; Room 750, 4401 North Fairfax Drive; Arlington, Virginia, 22203. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington Square Building, 4401 North Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT:

Scientific Authority Finding—Dr. Marshall A. Howe, Office of Scientific Authority; phone 703–358–1708; FAX 703–358–2276.

Management Authority Findings/State Export Programs—Ms. Carol Carson, Office of Management Authority; Mail Stop: Arlington Square, Room 420c; U.S. Fish and Wildlife Service; Washington, DC 20240 (phone 703–358–2095; FAX 703–358–2280).

SUPPLEMENTARY INFORMATION: On January 5, 1984 (49 FR 590), the Service published a rule granting export approval for river otters and certain other CITES-listed species of furbearing mammals from specified States and Indian Nations and Tribes for the 1983–84 and subsequent harvest seasons. In succeeding years, approval for export of one or more species of furbearers has been granted to other States and Indian Nations, Tribes, or Reservations through the rulemaking process. These approvals were and continue to be subject to certain population monitoring and export requirements. The purpose of this notice is to announce proposed findings by the Scientific and Management Authorities of the United States on the proposed export of river otters, *Lontra* (=*Lutra*) *canadensis*, harvested in the State of Tennessee, and to add Tennessee to the list of States and Indian Nations for which the export of river otters is approved. The Service proposes these findings for the export of specimens harvested in the State of Tennessee during the 1995–96 season and subsequent seasons, subject to the conditions applying to other approved entities.

CITES regulates import, export, re-export, and introduction from the sea of certain animal and plant species. Species for which the trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that, although not necessarily now threatened with extinction, may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (*e.g.*, because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes species that any Party identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties to control trade.

In the January 5, 1984, **Federal Register** (49 FR 590), the Service announced the results of a review of listed species at the Fourth Conference of the CITES Parties that certain species of furbearing mammals, including the river otter, should be regarded as listed in Appendix II of CITES because of similarity in appearance to other listed species or geographically separate populations. The January 5, 1984, document described how the Service, as Scientific Authority, planned to monitor annually the population and trade status of each of these species and to institute restrictive export controls if prevailing export levels appeared to be contributing to a trend of long-term population decline. The document also described how the Service, as Management Authority, would require States to assure that specimens entering trade are marked with approved, serially unique tags as evidence that they had been legally acquired.

Scientific Authority Findings

Article IV of CITES requires that, before a permit to export a specimen of a species included in Appendix II can be granted by the Management Authority of an exporting country, the Scientific Authority must advise ''that such export will not be detrimental to the survival of that species.'' The Scientific Authority for the United States must develop such advice, known as a no-detriment finding, for the export of Appendix II animals in accordance with Section 8A(c)(2) of the Endangered Species Act of 1973, as amended (the Act). The Act states that the Secretary of the Interior is required to base export determinations and advice ''upon the best available biological information derived from professionally accepted wildlife management practices; but is not required to make, or require any State to make, estimates of population size in making such determinations or giving such advice.''

The river otter is managed by the wildlife agencies of individual States or Indian Nations. Those States and Indian Nations from which the Service has approved the export of river otters in 1983–84 and subsequent seasons were identified in the January 5, 1984, **Federal Register** (49 FR 590) and listed in 50 CFR 23.53. Each export-approved State or Indian Nation in which this animal is harvested has a program to regulate the harvest. Based on information received from the State of Tennessee, the Service proposes adding that State to the list of States and Indian Nations approved for export of river otters.

Given that the river otter is listed on Appendix II of CITES primarily because of similarity of appearance to other listed species in need of rigorous trade controls, an important component of the no-detriment finding by the Scientific Authority is consideration of the impact of river otter trade on the status of these other species. The Scientific Authority has determined that the dual practice of (1) issuing export permits naming the species being traded and (2) marking pelts with tags bearing the name of the species, country and State of origin, year of harvest, and a unique serial number, is sufficient to eliminate potential problems of confusion with, and therefore risk to, other listed species (see Management Authority Findings for tag specifications).

In addition to considering the effect of trade on species or populations other than those being exported from the United States, the Service will regularly examine information provided by the State of Tennessee to determine if there is a population decline in river otters that might warrant more restrictive export controls. This monitoring and assessment will follow the same procedures adopted for other States and Indian Nations. As part of this monitoring program, the States and Indian Nations that have been approved for export of river otters are requested annually to certify that the best available biological information derived from professionally accepted wildlife management practices indicates that harvest of river otters during the forthcoming season will not be detrimental to the survival of the species.

Whenever available information from the States or other sources indicates a possible problem in a particular State, the Scientific Authority will conduct a comprehensive review of accumulated information to determine whether conclusions about the treatment of these species as listed for similarity of

appearance need to be adjusted in the State.

Natural repopulation of river otters has been occurring in western Tennessee since the 1950's. This increase is consistent with a widespread pattern in the United States and is believed, in part, to reflect colonization of suitable habitat created recently by a rapidly expanding beaver population. Tennessee has supported a study of the demography, food habits, and habitat use of river otters in the State. The results of these studies show that age and sex ratios of river otters in western Tennessee are similar to those of healthy river otter populations elsewhere, including populations experiencing harvest.

The Tennessee Wildlife Resources Agency has conducted experimental river otter trapping seasons annually since 1989 in the western part of the State. Total annual harvest has ranged from 71 (1990–91) to 176 (1992–93). In the central and eastern parts of Tennessee, this species is still classified under State law as threatened and is not legally harvested at this time. The available biological and harvest information leads the Service to conclude that export of river otters legally harvested in Tennessee will not be detrimental to the survival of the species.

All otters taken by trappers are required to be marked with special tags approved by the Wildlife Resources Agency. The State also conducts a questionnaire survey of licensed trappers annually. These surveys identify the size and geographic derivation of the river otter harvest and will provide insight into State river otter population trends over time. Analysis of these data should detect population declines symptomatic of either an unhealthy population or overharvest in time to take corrective action through regulatory adjustments or other means.

Based upon (a) the information presented by the Tennessee Wildlife Resources Agency, including river otter harvest regulations, and (b) the determination that permitting and tagging requirements will eliminate the possibility that other similar-appearing, CITES-listed species in trade will be misrepresented as river otters, the Service proposes to issue Scientific Authority advice in favor of export of river otters harvested in 1995–96 and subsequent seasons from Tennessee.

Management Authority Findings

Exports of Appendix II species are allowed under CITES only if the Management Authority is satisfied that the specimens were not obtained in contravention of laws for the protection of the involved species. The Service, therefore, must be satisfied that the river otter pelts, hides, or products being exported were not obtained in violation of State, Indian Nation, Tribal, Reservation, or Federal law in order to allow export. Evidence of legal taking for Alaskan gray wolf, Alaskan brown or grizzly bear, American alligator, bobcat, lynx, and river otter is provided by State or tribal tagging programs. The Service annually contracts for the manufacture and delivery of special CITES animal-hide tags for export-qualified States and Indian Nations, Tribes, and Reservations. The Service has adopted the following export requirements for the 1983–84 and subsequent seasons:

(1) Current State or Indian Nation, Tribe, or Reservation hunting, trapping, and tagging regulations and sample tags must be on file with the Office of Management Authority;

(2) The tags must be durable and permanently locking and must show U.S.-CITES logo, State or Indian Nation, Tribe, or Reservation of origin, year of take, species, and a unique serial number;

(3) The tag must be attached to all pelts taken within a minimum time after take, as specified by the State and Indian regulation, and such time should be as short as possible to minimize movement of untagged pelts;

(4) The tag must be permanently attached as authorized and prescribed by the State or Indian regulation;

(5) Takers/dealers who are licensed/registered by States or Indian Nations, Tribes, or Reservations must account for tags received and must return unused tags to the State or Indian Nation, Tribe, or Reservation within a specified time after the taking season closes; and,

(6) Fully manufactured fur (or hide) products may be exported from the United States only when the CITES export tags, removed from the hides used to make the product being exported, are surrendered to the Service prior to export.

Proposed Export Decision

The Service proposes to approve exports of Tennessee river otters harvested during the 1995–96 or subsequent harvest seasons on the grounds that both Scientific Authority and Management Authority criteria have been satisfied.

Comments Solicited

The Service requests comments on these proposed findings and the proposed rulemaking adding Tennessee to the list of States approved for export of river otters. The final decision on this proposed rule will take into account comments received and any additional information received. Such consideration may lead to findings different from those presented in this proposal.

Effects of the Rule and Required Determinations

The Department has previously (48 FR 37494) determined that the export of river otters of various States and Indian Tribes or Nations, taken in the 1983–84 and subsequent harvest seasons, was not a major Federal action that would significantly affect the quality of the human environment under the National Environmental Policy Act (42 U.S.C. 4321–4347). This action is covered under an existing Departmental categorical exclusion for amendments to approved actions when such changes have no potential for causing substantial environmental impact.

This rule was not subject to Office of Management and Budget review under Executive Order 12866 and will not have significant economic effects on a substantial number of small entities as outlined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because the existing rule treats exports on a State-by-State and Indian Nation-by-Indian Nation basis and proposes to approve export in accordance with a State or Indian Nation, Tribe, or Reservation management program, the rule will have little effect on small entities in and of itself. The proposed rule would allow continued international trade in river otters from the United States in accordance with CITES, and it does not contain any Federalism impacts as described in Executive Order 12612.

This proposed rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

This proposal is issued under authority of the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*). The authors are Marshall A. Howe, Office of Scientific Authority, and Carol Carson, Office of Management Authority.

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Imports, Transportation, Treaties.

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, the Service proposes to amend Part 23 of Title 50, Code of Federal Regulations, as set forth below:

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, 27 U.S.C. 1087; and Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

2. In Subpart F—Export of Certain Species, revise § 23.53 to read as follows:

§ 23.53 River otter (Lontra canadensis).

States for which the export of the indicated season's harvest may be permitted under § 23.15 of this part:

(a) *States and Harvest Seasons Approved for Export of River Otter From the United States.*

	1977–78 [1]	11978–79 [2]	1979–80 [3]	1980–81	1981–82	1982–83	1983–84 and subsequent	1995–96 and subsequent
Alabama	Q	+	+	+	+	+	+	+
Alaska	+	+	+	+	+	+	+	+
Arkansas	Q	+	+	+	+	+	+	+
Connecticut	Q	+	+	+	+	+	+	+
Delaware	Q	+	+	+	+	+	+	+
Florida	Q	+	+	+	+	+	+	+
Georgia	Q	+	+	+	+	+	+	+
Louisiana	Q	+	+	+	+	+	+	+
Maine	Q	+	+	+	+	+	+	+
Maryland	Q	+	+	+	+	+	+	+
Massachusetts	Q	+	+	+	+	+	+	+
Michigan	Q	+	+	+	+	+	+	+
Minnesota	Q	+	+	+	+	+	+	+
Mississippi	Q	+	+	+	+	+	+	+
Montana	Q	+	+	+	+	+	+	+
New Hampshire	Q	+	+	+	+	+	+	+
New Jersey	–	–	–	–	–	+	+	+
New York	Q	+	+	+	+	+	+	+
North Carolina	Q	+	+	+	+	+	+	+
Oregon	Q	+	+	+	+	+	+	+
Penobscot Nation	–	–	–	–	–	–	+	+
Rhode Island	Q	+	–	–	–	–	–	–
South Carolina	Q	+	+	+	+	+	+	+
Tennessee	–	–	–	–	–	–	–	+*
Vermont	Q	+	+	+	+	+	+	+
Virginia	Q	+	+	+	+	+	+	+
Washington	Q	+	+	+	+	+	+	+
Wisconsin	Q	+	+	+	+	+	+	+

[1] For further information see 42 FR 43729, Aug. 30, 1977; 43 FR 11081, Mar. 16, 1978; and 43 FR 29469, July 7, 1978.
[2] For further information see 43 FR 11096, Mar. 16, 1978; 43 FR 13913, Apr. 3, 1978; 43 FR 15097, Apr. 10, 1978; 43 FR 29469, July 7, 1978; 43 FR 35013, Aug. 7, 1978; 43 FR 36293, Aug. 16, 1978; and 43 FR 39305, Sept. 1, 1978.
[3] For further information see 44 FR 25383, Apr. 30, 1979; 44 FR 31583, May 31, 1979; 44 FR 40842, July 12, 1979; 44 FR 52289, Sept. 7, 1979; and 44 FR 55540, Sept. 26, 1979.
Q Export approved with quota.
+ Export approved.
– Export not approved.
* Export for 1994–95 approved administratively.

(b) *Condition on export:* Each pelt must be clearly identified as to species, State of origin and season of taking by a permanently attached, serially numbered tag of a type approved by the Service and attached under conditions established by the Service. Exception to tagging requirement: finished furs and fully manufactured fur products may be exported from the U.S. when the State export tags, removed from the pelts used to manufacture the product being exported, are surrendered to the Service before export. Such tags must be removed by cutting the tag straps on the female side next to the locking socket of the tag, so that the locking socket and locking tip remain joined.

Dated: July 14, 1995.

Robert P. Davison,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–18970 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 60, No. 148

Wednesday, August 2, 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

Foreign Agricultural Service

Dairy Tariff-Rate Import Quota Licensing

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Department's intention to revise a currently approved information collection and currently approved license application forms for the purpose of permitting importers, manufacturers, and exporters of certain dairy articles subject to tariff-rate import quota licensing requirements to apply for such licenses in 1996.

DATES: Comments should be submitted on or before August 14, 1995.

ADDRESSES: Comments should be sent to the Dairy Import Quota Manager, Import Policies and Programs Division, AG BOX 1021, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C. 20250–1021. All comments received will be available for public inspection in room 5541 South Building at the above address between the hours of 8 a.m. and 4 p.m., Monday through Friday, except holidays. All responses to this notice will be summarized and included in the request submitted to the Office of Management and Budget on this matter.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Dairy Import Quota Manager, room 5541 South Building, U.S. Department of Agriculture, Washington, D.C. 20250–1021 or telephone (202) 720–2916. Copies of the information collection may be obtained from Pamela Hopkins, Information Collection Coordinator, room 4957 South Building, U.S. Department of Agriculture, AG BOX 1060, Washington, D.C. 20250–1060 or telephone (202) 720–6713.

SUPPLEMENTARY INFORMATION:

Background

Import Regulation 1, Revision 7 governs the administration of the import licensing system for certain dairy articles which were subject to quotas proclaimed under section 22 of the Agricultural Adjustment Act of 1933, as amended (Section 22). As a result of entry into force of the Uruguay Round Trade Agreements, Section 22 quotas on dairy articles were replaced by tariff-rate quotas (TRQs) on January 1, 1995 and proclaimed in the Harmonized Tariff Schedule of the United States (HTS). TRQs provide for the entry of a specified quantity of an article (in-quota quantity) at a reduced tariff rate during a given period. There is no limitation on the total amount of an article which may be entered, but quantities entered in excess of an in-quota quantity are subject to a higher tariff rate. For certain dairy articles subject to TRQs, imports may only be entered at the in-quota tariff rate by a person or firm to whom the Department has issued an import license. Import licenses are valid for a 12-month period from January 1 through December 31 of each year.

For 1995, existing license forms were issued to import that quantity of imports which had been subject to absolute quotas and licensing requirement when Section 22 quotas were in effect. The issuance of licenses for the Uruguay Round in-quota quantity increases for certain dairy articles, which became effective on January 1, 1995, was effected through an interim rule published in the **Federal Register** on January 6, 1995, which amended Import Regulation 1, Revision 7 for this purpose. A subsequent **Federal Register** notice, published on May 2, 1995, further amended Import Regulations 1, Revision 7, to implement the issuance of licenses for Uruguay Round in-quota quantity increases for cheese imported from certain countries which became effective on July 1, 1995. A revision to the approved information collection and license application forms was approved by the Office of Management and Budget for the Uruguay Round in-quota quantity license application forms for 1995. The Department intends to revise the currently approved information collection and currently approved applications forms to permit importers, manufacturers, and exporters of dairy articles subject to TRQ licensing requirements to apply for licenses to import in-quota quantities of such dairy articles for 1996. The Department intends to request expedited clearance from the Office of Management and Budget on the proposed revisions in order to implement the application process in the most efficient and timely manner.

Supporting Statement

A. Justification

1. *Circumstances requiring the collection of the information.* Dairy products which were subject to absolute quotas under section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624) were converted to tariff-rate quotas on January 1, 1995 under Presidential Proclamation 6763 of December 23, 1994 which implemented trade agreements resulting from the Uruguay Round of Multilateral Trade Negotiations. That Proclamation also implemented the President's authority to allocate the in-quota quantities of dairy products subject to tariff-rate quotas among supplying countries proclaimed in the Harmonized Tariff Schedule (HTS) as a result of the entry into force of the Uruguay Round Agreements. Congress approved the Uruguay Round Agreements under section 101(a) of the Uruguay Round Agreements Act (P.L. 103–465, 108 Stat. 4809).

The importation of most cheese and cheese products and certain non-cheese dairy articles must be accompanied by a license issued by the Department to enter at the TRQ in-quota tariff rate. The import licensing system is administered by the Department in accordance with Import Regulation 1, Revision 7 (7 CFR part 6). The Department expects to publish a revised Import Regulation, as envisioned in the Advanced Notice of Proposed Rulemaking (59 FR 28495), in the near future for the 1996 quota year. The Department intends to revise the currently approved information collection and currently approved application forms for 1996 for the purpose of issuing revised and improved license application forms permitting importers, manufacturers, and exporters of dairy products to apply for import licenses for the 1996 quota year.

2. *Purpose of information to be used.* The basic information regarding the purpose of the information to be used in the collection, provided in the current supporting statement is applicable with the following changes.

In addition to information requested in the application forms in 1995, the revised forms require that applicants for all lottery licenses rank order their requests in order of preference (most desirable to least desirable) as was required of applicants for Uruguay Round in-quota quantities of non-cheese dairy articles in the 1995 quota year. The purpose of applicants rank ordering their requests for licenses is to establish a rank order lottery system which is intended to provide a better alignment between importers' requirements and licenses obtained. In addition, the revised forms will add EC Uruguay Round in-quota quantities of cheese to the license application form for designated licenses. This is being done to implement the U.S. Uruguay Round commitment to the EC permitting the EC to designate importers for such cheese. Information which will no longer be required on a revised form is that applicants for historical licenses list each historical license allocated to that person or firm. This information is now considered redundant based on its availability in the computer data bank.

3. *Use of improved information technology.* The information provided in the supporting statement for the currently approved collection of information is applicable. In recent years, a system was developed under which basic applications could be read by an optical scanner. To further increase the ease of processing, and to reflect the proposed revised forms have been simplified and redesigned into an enhanced machine-readable format. The simplified forms require applicants to fill in a circle opposite the articles that they are applying for a license to import. The importer's control number will also be entered by filing in circles opposite the appropriate digit numbers.

4. *Efforts to identify duplication.* Not applicable.

5. *Methods to minimize burdens of small business entities.* The information provided in the supporting statement for the currently approved collection of information is applicable.

6. *Consequences if information collection were less frequent.* The information provided in the supporting statement for the currently approved collection of information is applicable.

7. *Inconsistency with guidelines in 5 CFR 1320.6.* The information provided in the supporting statement for the currently approved collection of information is applicable.

8. *Consultations with persons outside the agency.* The information provided in the supporting statement for the currently approved collection of information is applicable.

9. *Confidentiality provided to respondents.* The information provided in the supporting statement for the currently approved collection of information is applicable.

10. *Questions of a sensitive nature.* Not applicable.

11. *Annual cost to Government and respondents.* The information provided in the supporting statement for the currently approved collection of information is applicable, but the estimated costs for 1994 need to be updated. For 1995, the salaries and other administrative costs are estimated to be $322,681. The fee for 1995 was $89 for each import license issued. The cost to the respondents is included in item 12 below.

12. *Estimate of burden.* The information provided in the supporting statement for the currently approved collection of information is applicable for licenses issued in 1995. The estimate of the burden for 1996 is indicated in the following table.

Form No.	No. of responses	No. of responses per applicant	Total annual responses	Hours per response	Total
922	500	1	500	0.025	125
923	600	1	600	0.050	300
923A	.....	.....	.....	.....	.....
923B *	.....	.....	.....	.....	.....
Total	1,100	.....	1,100	.....	425

*923, 923A and 923B constitute one form.

13. *Reasons for the change in burden.* There is a reduction of 429 hours in the estimate of the burden of information collection between 1995 and 1996 which is based mainly on the elimination of forms 924 and 924A which were needed to conduct the separate application procedures under which licenses for the Uruguay Round in-quota increases where issued for January and July of that year. The elimination of these forms is estimated to reduce the total number of estimated responses for all types of licenses from 1,560 to 1,100. The estimated burden is also being reduced based on the use of the revised and improved application forms. The result is an estimated reduction in the total annual average hours used in preparing responses from 920 hours to 425 hours. There is no data with respect to the annual cost incurred by each respondent (person or firm) based on the amount of time used in filling out the application forms and the average hourly salary of such respondents. It is extremely difficult to calculate this cost because the executive or administrative level of the individual responsible for filling out the forms tends to vary depending on the size and location of the person or firm, the size of the license portfolio, and experience of the person or firm in importing licensed dairy products. Based on our research, the estimated total annual cost associated with the estimated total burden of 425 hours is $12,750.

14. Tabulation, analysis and publication plans. Not applicable.

Signed at Washington, D.C., July 28, 1995.

Timothy J. Galvin,

Acting Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 95–19027 Filed 8–1–95; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget for clearance the following proposals for collection of

information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Application for Export License.

Agency Form Number: BXA 622P.

OMB Approval Number: 0694–0005.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 11,763 hours.

Number of Respondents: 28,211.

Avg Hours Per Response: Ranges between 20 and 25 minutes.

Needs and Uses: The information provided in the export license application is used as the basis for decisions to grant licenses for export of goods and technology that are controlled for reasons of national security and foreign policy.

Affected Public: Businesses or other for–profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Project License Procedure.

Agency Form Number: None.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 323 hours.

Number of Respondents: 107.

Avg Hours Per Response: Approximately 3 hours.

Needs and Uses: The Project License Procedure is one of several special licenses established by BXA which authorize multiple shipments under a single license. It is a license used for the export of commodities and or technical data needed for large–scale overseas operations.

Affected Public: Businesses or other for–profit institutions.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Short Supply Regulations Petroleum (Crude Oil).

Agency Form Number: None.

OMB Approval Number: 0694–0027.

Type of Request: Reinstatement of a previously approved collection.

Burden: 144 hours.

Number of Respondents: 24.

Avg Hours Per Response: Approximately 6 hours.

Needs and Uses: The export of U.S. domestic crude oil is restricted by five separate but overlapping statutes. The information collected in support of license applications for crude oil is used by licensing officers to determine the exporter's compliance with these statutes.

Affected Public: Businesses or other for–profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Commodity Classification and Information Requests.

Agency Form Number: None.

OMB Approval Number: 0694-0048.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 3,661 hours.

Number of Respondents: 7,321.

Avg Hours Per Response: 30 minutes.

Needs and Uses: Exporters may request BXA's assistance in determining whether an export transaction requires a license or whether or not the exporter has chosen the appropriate commodity classification. In order to provide assistance, BXA needs certain information so that correct guidance can be provided.

Affected Public: Businesses or other for–profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Special Chemical License Procedure.

Agency Form Number: None.

OMB Approval Number: 0694–0067.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 556 hours.

Number of Respondents: 200.

Avg Hours Per Response: Ranges between 1 and 15 hours depending on the requirement.

Needs and Uses: BXA requires validated licenses for the export of precursor chemicals and certain dual–use equipment. To reduce the paperwork on exporters, BXA established a special procedure that allows U.S. exporters to make multiple shipments under one license. The information provided is used to make sure that all parties involved in the transaction are reputable and that proliferation controls are strictly observed.

Affected Public: Businesses or other for–profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Small–Craft Facility Questionnaire.

Agency Form Number: NOAA 77–1.

OMB Approval Number: 0648–0021.

Burden: 266 hours.

Number of Respondents: 2,000.

Avg Hours Per Response: 8 minutes.

Needs and Uses: The National Ocean Service (NOS) produces charts and publications that help ensure safe navigation on the nation's waterways. To meet the needs of recreational boaters, small–craft nautical charts are produced that contain information on marinas. NOS' requests marina operators to update information on the services provided as charts are revised.

Affected Public: Individuals, businesses or other for–profit institutions, state, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration.

Title: Cooperative Charting Program.

Agency Form Number: NOAA 77–4 and 77–5.

OMB Approval Number: 0648–0022.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 45,000 hours.

Number of Respondents: 3,000 (on average 5 responses per respondent).

Avg Hours Per Response: 3 hours.

Needs and Uses: This collection is used by members of the U.S. Power Squadrons and the U.S. Coast Guard Auxiliary to report observed needs for chart corrections. The information received is used by NOAA in maintaining and preparing the nautical charts that are used throughout the nation by recreational boaters and commercial vessels for safe navigation.

Affected Public: Individuals, not–for–profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Coastal Zone Management Program Administrative Grants.

Agency Form Number: None.

OMB Approval Number: 0648–0119.

Burden: 5,899.

Number of Respondents: 34.

Avg Hours Per Response: Ranges between 10 and 480 hours depending on the requirement.

Needs and Uses: Coastal zone management grants provide funds to states and territories to implement federally–approved coastal zone management plans and develop assessment documents and multi–year strategies. Information is used to determine if activities achieve national coastal management and enhancement objectives and if states are adhering to their approved plans.

Affected Public: State government.

Frequency: Quarterly, semi-annually, annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Management and Oversight of the National Estuarine Research Reserves System.

Agency Form Number: None.

OMB Approval Number: 0648–0121.

Type of Request: Revision of a currently approved collection.

Burden: 10,400.

Number of Respondents: 19.

Avg Hours Per Response: Ranges between 1 hour and 2,012 depending on the requirement.

Needs and Uses: Grant funds are available to states to establish estuarine research reserves. Other funds are available for research within these areas. Applications are necessary to determine eligibility, and reports are necessary to track the use of Federal funds.

Affected Public: State government, individuals, non–for–profit institutions.

Frequency: On occasion, annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration.

Title: National Marine Sanctuary Permits.

Agency Form Number: None assigned.

OMB Approval Number: 0648–0141.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 426 hours.

Number of Respondents: 248.

Avg Hours Per Response: Ranges between 30 minutes and 2 hours depending on the requirement.

*Needs and Uses:*The Marine Protection, Research, and Sanctuaries Act, provides for the establishment of National Marine Sanctuaries. The intended effect is to protect the conservation, recreational, ecological, historical, research, educational and aesthetic qualities of these special areas. Individuals who wish to conduct research or other regulated activities in a National Marine Sanctuary must submit an application for a permit. NOAA reviews the request to ensure that the activity is appropriate for a Sanctuary. Persons issued permits are required to submit activity reports.

Affected Public: Individuals, businesses or other for–profit institutions, non–for–profit institutions, federal, state, local and tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Application for Designation as a Sea Grant College or Regional Consortia.

Agency Form Number: None.

OMB Approval Number: 0648–0147.

Burden: 20 hours.

Number of Respondents: 1.

Avg Hours Per Response: 20 hours.

Needs and Uses: The National Sea Grant College Act, as amended by Public Law 94–461, provides for the designation of eligible institutions as Sea Grant Colleges or Consortia if certain criteria are met. Applications desiring such a designation must provide an outline of their capabilities and the reasons why they wish to be designated. The information is used for designation decisions.

Affected Public: Not–for–profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Final Regulations for Deep Seabed Mining Commercial Recovery.

Agency Form Number: None.

OMB Approval Number: 0648–0170.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 1 hour.

*Number of Respondents:*None at this time.

Avg Hours Per Response: N/A.

Needs and Uses: Regulations have been issued that contain the requirements for applications for permits for the commercial recovery of manganese nodules from the deep seabed under the Deep Seabed Hard Mineral Resources Act. Although no applications are anticipated in the near future, the regulations have been issued so that business persons know what the application requirements will entail.

Affected Public: Businesses or other for–profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Western Alaska Community Development Quota Program.

Agency Form Number: None.

OMB Approval Number: 0648-0269.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 1,517 hours.

Number of Respondents: 13 but with multiple submissions.

Avg Hours Per Response: Varies depending on the requirements but ranges between 10 and 160 hours.

Needs and Uses: The North Pacific Fishery Management Council requested that the National Marine Fisheries Service implement the Western Alaska Community Development Quota Program. This program is intended to help provide stable, long–term employment in disadvantaged communities by guaranteeing them a definite proportion of pollock, halibut, and sablefish resources. The information provided through the application process is used to determine the community's eligibility for this program and to make allocation decisions. Quota monitoring reporting requirements are also in place.

Affected Public: Individuals, businesses or other for–profit institutions.

Frequency: On occasion, annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: July 24, 1995

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–18939 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–CW–F

International Trade Administration

[A–428–814]

Certain Cold-Rolled Carbon Steel Flat Products From Germany; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the respondent, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on *Certain Cold-Rolled Carbon Steel Flat Products From Germany* (A–428–814). The review covers sales from one manufacturer of the subject merchandise to the United States during the period August 18, 1993 through July 31, 1994.

We have preliminarily determined that sales have been made below foreign market value (FMV). If these preliminary results are adopted in our final results of the administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and FMV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Robin Gray, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–1395 or (202) 482–0196, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On July 9, 1993 the Department published in the **Federal Register** (58 FR 37136) the final affirmative antidumping duty determination on certain cold-rolled carbon steel flat products from Germany, for which we published an amendment and an antidumping duty order on August 19, 1993 (58 FR 44170). On August 3, 1994, the Department published the notice of ''Opportunity to Request an Administrative Review'' of this order for the period August 18, 1993 through July 31, 1994 (59 FR 39543). C.D. Walzholz, J.N. Eberle & Cie, GmbH, Rochlinger Kaltwalzwerk and Thyssen Stahl AG (Thyssen) requested an administrative review. We initiated the administrative review on September 8, 1994 (59 FR 46391). Subsequently, C.D. Walzholz, J.N. Eberle & Cie, GmbH, and Rochlinger Kaltwalzwerk requested that they be allowed to withdraw from the administrative review. On April 12, 1995, we published a ''Notice of Partial Termination of Administrative Review of Antidumping Order'' with respect to these three respondents (60 FR 18581). The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The period of review (POR) is August 18, 1993 through July 31, 1994. This review covers sales of cold-rolled carbon steel by one manufacturer (Thyssen).

United States Price

The Department used exporter's sales price (ESP) because all sales to the first unrelated purchaser in the United States, whether before or after importation, met the requirements set forth by Section 772(c) of the Tariff Act. ESP was based on the packed prices at which the merchandise was sold under various terms to unrelated purchasers in the United States. We made adjustments, where applicable, for foreign inland freight, plant freight, ocean freight, marine insurance, brokerage and handling, U.S. inland freight, U.S. duty, U.S. credit, discounts, inventory carrying costs, technical service expenses, warranties, warehousing, and indirect selling expenses (which include interest on fixed assets, other U.S.-incurred selling expenses, and export selling expenses).

We also adjusted ESP for value added in further manufacturing, including an allocation of profit earned on U.S. sales.

We adjusted USP for taxes in accordance with our practice as outlined in various determinations, including *Silicomanganese from Venezuela; Final Determination of Sales at Less Than Fair Value*, 59 FR 55435, 55439 (November 7, 1994).

At the German and U.S. verifications, Thyssen suggested various corrections to be made to its database. At verification, the Department accepted the changes because each change was minor and ministerial in nature. On May 12, 1995, the Department instructed Thyssen to make all of the changes to its database, excluding the change suggested by Thyssen for certain discounts, as explained below. On May

22, 1995, Thyssen submitted a revised tape which incorporated these corrections. Based on a review of all of Thyssen's submissions and the Department's findings at verification, the Department determined that the revised May 22, 1995, tape contains the following problems: (1) the identification and deletion of what Thyssen characterized as ''duplicate'' invoices in a manner inconsistent with the changes suggested by Thyssen at verification; (2) unexplained changes to unshipped balances for one order; (3) changes to quantity of U.S. sales from Richburg, a division of Thyssen, Inc. (TINC), other than those suggested by Thyssen at verification, and other inconsistencies in the changes which Thyssen did suggest; (4) unexplained quantity and price changes for four observations; and (5) errors in the discount field for one U.S. customer. Due to these discrepancies we are unable to perform an accurate calculation for certain sales. Counsel for petitioners has argued that the Department should use total BIA in this case due to the deficiencies in Thyssen's response. We have determined, however, that resorting to total best information available (''BIA'') is not warranted because Thyssen's U.S. database is not sufficiently flawed such that the response as a whole is unreliable. *See National Steel Corporation v. United States,* 870 F. Supp. 1130, 1135 (CIT 1994); *see also* the July 20, 1995, decision memorandum from Richard O. Weible to Roland L. MacDonald. Instead, we used a margin based upon BIA only for those sales of U.S. products where we did not have complete and accurate information.

The adversity of the information used as partial BIA depends upon the level of sufficiency of the information provided. When partial BIA is warranted, but the errors in the information submitted constitute a failure to provide the necessary data, the Department consistently applies adverse BIA. *Id.* (citing, *inter alia, Certain Corrosion-Resistant Carbon Steel Flat Products From Finland,* 58 Fed. Reg. 37,122, 37,124 (1993)). By contrast, when only a minor adjustment in the data is involved or there is an inadvertent gap in the record, we apply a less adverse or neutral surrogate. *Nat'l Steel* at 1136.

Thyssen's revised database did contain unauthorized changes and other unexplained problems. However, the sales affected are minimal in quantity, and the apparent inaccuracies consist mostly of data-entry problems rather than omissions or insufficiencies in Thyssen's reporting. For these reasons, we have not applied the most adverse partial BIA. We have chosen as BIA Thyssen's weighted-average margin from the original investigation.

We disallowed the exchange rate expense which Thyssen claimed due to unexplained changes in this expense in the May 22, 1995 submission. *(See Analysis Memorandum to the File,* June 16, 1995).

Also, due to inaccurate and deficient information provided during the verification of product characteristics for one U.S. sale, we are assigning to that sale a margin based on BIA, as previously described. Further, Thyssen failed to report contemporaneous home market sales for 1992 requirements contract sales by the Budd Company, a related parts manufacturer. We have assigned these sales a margin based on BIA, as previously described (*see Analysis Memorandum to the File,* June 16, 1995). Finally, Thyssen failed to include in its database a storage/warehouse expense incurred by TINC on certain U.S. sales. We adjusted U.S. price to account for this expense, where appropriate (*see Analysis Memorandum to the File,* June 16, 1995). Also, due to errors noted at verification, we adjusted warehousing expense for the automotive division for both fiscal years.

No other adjustments were claimed or allowed.

Foreign Market Value

Based on a comparison of the volume of home market and third country sales, we determined that the home market was viable. Therefore, in accordance with section 773(a)(1)(A) of the Tariff Act, we based FMV on the packed prices at which the merchandise was sold under various terms to related and unrelated purchasers in the home market.

Based on a review of Thyssen's submissions and findings at verification, the Department determined that Thyssen need not report the home market sales made by Thyssen's related parties to the first unrelated party (downstream sales). The vast majority of the products sold by these related parties in the home market possessed physical characteristics that made them less similar to those imported into the United States than those sold directly by Thyssen to its related and unrelated home market customers in transactions suitable for matching purposes. The Department determined that only a small portion of the downstream sales could provide potential matches to the company's U.S. sales. Considering the burden that would have been required to report these sales relative to the potential utility of the sales, we determined that they need not be reported (*see Analysis Memorandum to the File,* June 16, 1995).

Petitioners alleged that Thyssen sold cold-rolled carbon steel in the home market at prices below their cost of production (COP). Based on this allegation, the Department determined that it had reasonable grounds to believe or suspect that Thyssen had sold steel flat products in the home market at below cost prices. A cost investigation was therefore initiated in accordance with section 773(b) of the Tariff Act. As a result, we investigated whether Thyssen sold such or similar merchandise in the home market at prices below the COP. In accordance with 19 CFR 353.51(c), we calculated COP for Thyssen as the sum of reported materials, labor, factory overhead, and general expenses. We compared COP to home market prices, discounts, and movement expenses. Based on our verification of Thyssen's cost response, we made the following adjustments to its COP data:

1. We recalculated the allocation of the thirteenth month adjustment on the basis of costs reported in the unconsolidated Thyssen Stahl income statements for the respective fiscal years.

2. We reduced the claimed interest income offset by eliminating dividend income.

3. We recalculated net financing expense on a model-specific basis by applying the net financing expense ratio to the COM of each unique product.

After computing COP, we compared the VAT-neutral product-specific COP to the VAT-neutral reported prices net of movement charges and discounts. In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made in substantial quantities over an extended period of time, and whether such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade.

To satisfy the requirement of Section 773(b)(1) that below cost sales be disregarded only if made in substantial quantities, we applied the following methodology. For each model for which less than 10 percent, by quantity, of the home market sales during the POR were made at prices below COP, we included all sales of that model in the computation of FMV. For each model for which 10 percent or more, but less that 90 percent, of the home market sales during the POR were priced below COP, we excluded those sales priced

below COP, provided that they were made over an extended period of time. For each model for which 90 percent or more of the home market sales during the POR were priced below COP and were made over an extended period of time, we disregarded all sales of that model in our calculation and, in accordance with section 773(b) of the Tariff Act, we used the constructed value (CV) of those models, as described below. *See, e.g., Mechanical Transfer Presses from Japan, Final Results of Antidumping Duty Administrative Review,* 59 FR 9958 (March 2, 1994).

In accordance with section 773(b)(1) of the Tariff Act, to determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular model to the number of months in which that model was sold. If the model was sold in fewer than three months, we did not disregard below-cost sales unless there were below-cost sales of that model in each month sold. If a model was sold in three or more months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews,* 58 FR 64720, 64729 (December 8, 1993).

Because Thyssen provided no indication that its below-cost sales of models within the ''greater than 90 percent'' and the ''between 10 and 90 percent'' categories were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade, we disregarded those sales of models within the ''10 to 90 percent'' category which were made below cost over an extended period of time. In addition, as a result of our COP test for home market sales of models within the ''greater than 90 percent'' category, we based FMV on CV for all U.S. sales for which there were insufficient sales of the comparison home market model at or above COP. Finally, where we found, for certain of Thyssen's models, home market sales for which less than 10 percent were made below COP, we used all home market sales of these models in our comparisons.

We also used CV as FMV for those U.S. sales for which there was no contemporaneous sale of such or similar merchandise in the home market. We calculated CV in accordance with section 773(e) of the Tariff Act. We included the cost of materials, labor, factory overhead, and U.S. packing in our calculations. Where the general expenses were less than the statutory minimum of 10 percent of the cost of manufacture (COM), we calculated general expenses as 10 percent of the COM. Where the actual profits were less than the statutory minimum of 8 percent of the COM plus general expenses, we calculated profit as 8 percent of the sum of COM plus general expenses. Based on our verification of Thyssen's cost response, we made the same adjustments to respondent's CV data as we made to its COP data, as discussed above.

In accordance with section 773 of the Tariff Act, for those U.S. models for which we were able to find a home market such or similar match that had sufficient above-cost sales, we calculated FMV based on the packed prices at which the merchandise was sold under various terms to unrelated purchasers or to related purchasers (where an arm's-length relationship was demonstrated) in the home market. We made adjustments, where applicable, for freight, inland insurance, discounts, credit and warehousing in accordance with 19 CFR 353.56(a)(1). We adjusted FMV for indirect selling expenses in the home market, which include plant freight, warranty, technical services, inventory carrying costs and other indirect selling expenses. We limited the home market indirect selling expense deductions by the amount of indirect selling expenses incurred in the United States, in accordance with 19 CFR 353.56(b)(2). FMV was also adjusted for differences in physical characteristics. After deducting home market packing, we added packing expenses incurred in Germany for U.S. sales to FMV. We adjusted for the German value added tax. No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our comparison of USP to FMV we preliminarily determine that the following margin exists for the period August 18, 1993 through July 31, 1994:

Manufacturer/reseller/exporter	Margin (percent)
Thyssen	4.80

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of these administrative reviews including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between the USP and FMV may vary from the percentages stated above.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided for by section 751(a)(1) of the Tariff Act. A cash deposit of estimated antidumping duties shall be required on shipments of certain cold-rolled carbon steel flat products from Germany as follows: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) For previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) If the exporter is not a firm covered in this review, or the original 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 review, the cash deposit rate will be 19.02 percent. This is the ''all others'' rate from the LTFV investigation. *See Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Germany,* 58 FR 44170 (August 19, 1993).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the

subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19013 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–331–602]

Certain Fresh Cut Flowers From Ecuador; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from the Floral Trade Council, petitioner in this proceeding, to conduct an administrative review, the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on certain fresh cut flowers from Ecuador. The review covers twelve producers and/or exporters of this merchandise and the period March 1, 1993 through February 28, 1994.

We have preliminary determined that sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the FMV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas E. Schauer, Joseph A. Fargo, or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733/4477.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1987, the Department of Commerce (''the Department'') published in the **Federal Register** (52 FR 8494) the antidumping duty order on certain fresh cut flowers from Ecuador. On March 4, 1994, the Department published a notice of ''Opportunity to Request Administrative Review'' with respect to the period March 1, 1993 through February 28, 1994 (59 FR 14608). The Department received a timely request for review from the petitioner, the Floral Trade Council, on March 31, 1994, in accordance with 19 CFR 353.22(a). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (''the Tariff Act''). Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of the Review

Imports covered by the review are shipments of certain fresh cut flowers from Ecuador (standard carnations, standard chrysanthemums, and pompom chrysanthemums). This merchandise is classifiable under Harmonized Tariff Schedule (''HTS'') items 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Flores La Antonia, Flores del Quinche S.A., Florisol Cia Ltda., Flores de Ibarra, Flores de Puewmbo, Flores del Ecuador, Flores Pichincha, Florestrade, Guaisa S.A., Inlandes S.A., Mundiflor, and Velvet Flores Cia S.A., which are producers and/or exporters of certain fresh cut flowers from Ecuador to the United States and the period March 1, 1993 through February 28, 1994.

Best Information Available

Because certain companies did not provide a response to the Department's request for information, in accordance with section 776(c) of the Tariff Act, we have preliminarily determined that the use of best information otherwise available (BIA) is appropriate for these firms. The Department's regulations provide that we may take into account whether a party refuses to provide information in determining what rate to use as BIA (19 CFR 353.37(b)). Generally, whenever a company refuses to cooperate with the Department or otherwise significantly impedes the proceeding, we use as adverse BIA the highest rate for any company for the same class or kind of merchandise from this or any other segment of the proceeding. When a company substantially cooperates with our requests for information, but fails to provide all the information requested in a timely manner or in the form requested, we use as cooperative BIA the higher of (1) the highest rate (including the ''all others'' rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in this review for any firm for the same class or kind of merchandise from the same country. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et al.; Final Results of Antidumping Duty Administrative Review,* 57 FR 28360, 28379–80 (July 24, 1992); *see also Allied-Signal Aerospace Co.* v. *United States* 996 F.2d 1185 (Fed. Cir. 1993).

For these preliminary results we have applied a cooperative BIA rate to sales made by Flores de Ibarra, Flores de Puewmbo, Flores del Ecuador, Flores Pichincha, Florestrade, and Mundiflor. These firms are no longer in business, and we have preliminarily determined, in accordance with the standards enumerated in *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review, and Notice of Revocation of Order (in Part),* 59 FR 15159 (March 31, 1994) (''*Colombian Flowers*''), that they are incapable of responding to the Department's questionnaire. In *Colombian Flowers,* the Department treated bankrupt, or otherwise out of business, firms as cooperative provided that they explained their situation to the Department. In this case, the firms mentioned above submitted certifications that they are no longer in business and thus could not respond. Therefore, in accordance with *Colombian Flowers,* we preliminarily find these firms to be cooperative.

In this proceeding, none of the firms named above had ever received a higher margin than that calculated for Flores La Antonia in the instant review. Therefore, we have applied the rate calculated for Flores La Antonia, which is 28.44 percent, to Flores de Ibarra, Flores de Puewmbo, Flores del Ecuador, Flores Pichincha, Florestrade, and Mundiflor.

United States Price

Pursuant to section 777A of the Tariff Act, we preliminarily determined that it was appropriate to average U.S. prices on a monthly basis in order (1) to use actual price information that is often available only on a monthly basis; (2) to account for large sales volumes; and (3) to account for perishable product pricing practices. *See Final Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from*

Colombia, 56 FR 50554 (October 7, 1991).

In calculating United States price (USP), we used purchase price (PP) when sales were made to unrelated purchasers in the United States prior to the date of importation, or exporter's sales price (ESP) when sales were made to unrelated purchasers in the United States after the date of importation, both pursuant to section 772 of the Tariff Act.

We calculated purchase price to the first unrelated purchaser in the United States. The terms of PP sales were either f.o.b. Quito or c.i.f. Miami. We made deductions, where appropriate, for foreign inland freight, air freight, brokerage and handling, U.S. Customs duties, and return credits.

ESP, for sales made on consignment or through a related affiliate, was calculated based on the packed price to the first unrelated customer in the United States. We made adjustments, where appropriate, for foreign inland freight, brokerage and handling, air freight, box charges, credit expenses, returned merchandise credits, royalties, U.S. Customs duties, and either commissions paid to unrelated U.S. consignees or indirect selling expenses of related consignees.

Foreign Market Value

In calculating foreign market value, the Department used home market prices since there were sufficient sales of such or similar merchandise in the home market. *See* section 773(a)(1) of the Tariff Act.

Home market prices were based on the packed, ex-factory or delivered prices to unrelated purchasers in the home market pursuant to section 773(a)(1) of the Tariff Act. Where applicable, we made adjustments for post-sale movement expenses and differences in packing in accordance with section 773(a)(1) of the Tariff Act. We also made adjustments for differences in circumstances of sale in accordance with 19 CFR 353.56, as follows. For comparisons to PP sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in PP and ESP calculations and to offset U.S. indirect selling expenses deducted in ESP calculations, but not exceeding the amount of the indirect U.S. expenses in accordance with 19 CFR 353.56(b).

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period March 1, 1993 through February 28, 1994:

Manufacturer/exporter	Margin (percent)
Flores la Antonia	28.44
Flores del Quinche S.A	1.25
Florisol Cia Ltda	0.06
Flores de Ibarra	28.44
Flores de Puewmbo	28.44
Flores del Ecuador	28.44
Flores Pichincha	28.44
Florestrade	28.44
Guaisa S.A	(1)
Inlandes S.A	(1)
Mundiflor	28.44
Velvet Flores Cia S.A	(1)

[1] No shipments during the period of review; since there was no prior review of this company, the ''all other'' rate from the less-than-fair-value (LTFV) investigation is applicable.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) the cash deposit rates for the reviewed companies will be those rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original 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) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 5.89 percent, the ''all others'' rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations (19 CFR 353.22(c)(5)).

Date: July 26, 1995.

Susan Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19015 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–502]

Iron Construction Castings from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the Municipal Castings Fair Trade Counsel and its individually-named members, Alhambra Foundry, Inc., Allegheny Foundry Co., Bingham & Taylor Division, Virginia Industries, Inc., Charlotte Pipe & Foundry Co., East Jordan Iron Works, Inc., Inland Foundry Company, Inc., LeBaron Foundry Inc., Municipal Castings, Inc., Neenah Foundry Co., Opelika Foundry Co., Tyler Pipe Industries Inc., U.S. Foundry & Manufacturing Co., and Vulcan Foundry, Inc., the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on iron construction castings from the People's Republic of China (PRC). The review covers one producer/exporter, the Liaoning Branch of the China National Machinery Import and Export Corporation (MACHIMPEX, Liaoning)

and entries of the subject merchandise into the United States during the period May 1, 1993, through April 30, 1994. We have preliminarily determined that a dumping margin exists for MACHIMPEX, Liaoning. The Department based this margin on the best information available (BIA).

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 4, 1994, the Department published in the **Federal Register** (59 FR 23051) a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on iron construction castings from the PRC (51 FR 17222 (May 9, 1986)). In accordance with 19 CFR 353.22(a)(1), the petitioner requested an administrative review for MACHIMPEX, Liaoning. On June 15, 1994, the Department published a notice of initiation of this review (59 FR 30770), covering the period May 1, 1993, through April 30, 1994. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered by this review are iron construction castings, limited to manhole covers, rings and frames; catch basin grates and frames; cleanout covers and frames used for drainage or access purposes for public utility, water, and sanitary systems; valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable. Certain iron construction castings are currently classifiable under numbers 7352.10.00.00 and 7325.10.00.50 of the *Harmonized Tariff Schedule of the United States* (HTSUS). The HTSUS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive as to the scope of the order.

This review covers sales of the subject merchandise manufactured by MACHIMPEX, Liaoning and entered into the United States during the period May 1, 1993, through April 30, 1994.

Use of Best Information Available

On July 27, 1994, the Department sent to the respondent, MACHIMPEX, Liaoning, a questionnaire to determine whether it was eligible for a separate rate in this review. On October 11, 1994, the Department sent to the respondent a general antidumping questionnaire. Although we established that the respondent received both questionnaires, MACHIMPEX, Liaoning failed to respond to either questionnaire. The Department therefore determines that MACHIMPEX, Liaoning is an uncooperative respondent, and that the use of BIA is appropriate, in accordance with section 776(c) of the Act. Whenever, as here, a company refuses to cooperate with the Department, or otherwise significantly impedes an antidumping proceeding, we use as BIA the higher of (1) the highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less-than-fair-value (LTFV) investigation or in prior administrative reviews; or (2) the highest rate found in this review for any firm for the same class or kind of merchandise. (*See Antifriction Bearings from France, et. al; Final Results of Review,* 58 FR 39729 (July 26, 1993).) As BIA, we have assigned the rate of 92.74 percent, which is the highest rate found for any iron construction casting producer from the prior reviews and the LTFV investigation. Since MACHIMPEX, Liaoning did not respond to our separate rates questionnaire, we have determined that we will not give a separate rate to MACHIMPEX, Liaoning.

Preliminary Results of Review

We preliminarily determine that a margin of 92.74 percent exists for MACHIMPEX, Liaoning for the period May 1, 1993 through April 30, 1994.

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the publication date of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs.

The following deposit requirements shall be effective for all shipments of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company, MACHIMPEX, Liaoning, shall be the rate established in the final results of this review; (2) for Minmetals Guangdong, which received a separate rate for the most recent period for which it was reviewed, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all other PRC exporters, the cash deposit rate will be 92.74 percent, the PRC country-wide rate; and (4) for non-PRC exporters of the subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: July 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19012 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–201–505]

Porcelain-on-Steel Cookingware from Mexico; Preliminary Results of a Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on porcelain-

on-steel cookingware from Mexico. We preliminarily determine the net subsidy to be *de minimis* for Acero Porcelanizado, S. A. de C.V. (APSA) and 0.53 percent *ad valorem* for all other companies for the period January 1, 1993 through December 31, 1993. If the final results remain the same as these preliminary results of administrative review, we will instruct U.S. Customs Service to assess countervailing duties as indicated above. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Norma Curtis or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; Telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1986, the Department published in the **Federal Register** (55 FR 51139) the countervailing duty order on porcelain-on-steel cookingware from Mexico. On November 26, 1993, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' (58 FR 62326) of this countervailing duty order. We received a timely request for review from APSA, a respondent company.

We initiated the review, covering the period January 1, 1993 through December 31, 1993 (POR), on January 18, 1994 (59 FR 2593). We conducted a verification of the questionnaire responses on September 7, 1994 through September 14, 1994. The review covers two manufacturers/exporters of the subject merchandise, APSA and Cinsa, S.A. de C.V. (Cinsa), which accounted for all exports of POS cookware during the POR and ten programs.

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751 (a) 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 shipments of porcelain-on-steel cookingware from Mexico. The products are porcelain-on-steel cookingware (except teakettles), which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. During the review period, such merchandise was classifiable under item number 7323.94.0020 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Calculation Methodology for Assessment and Cash Deposit Purposes

We calculated the net subsidy on a country-wide basis by first calculating the subsidy rate for each company subject to the administrative review. We then weight-averaged the rate received by each company using as the weight its share of total Mexican exports to the United States of subject merchandise, including all companies, even those with *de minimis* and zero rates. We then summed the individual companies' weight-averaged rates to determine the subsidy rate from all programs benefitting exports of subject merchandise to the United States.

Since the country-wide rate calculated using this methodology was above *de minimis*, as defined by 19 CFR § 355.7 (1994), we proceeded to the next step and examined the net subsidy rate calculated for each company to determine whether individual company rates differed significantly from the weighted-average country-wide rate, pursuant to 19 CFR § 355.22(d)(3). APSA had a significantly different net subsidy rate during the review period pursuant to 19 CFR § 355.22(d)(3). This company is treated separately for assessment and cash deposit purposes. All other companies are assigned the country-wide rate.

Analysis of Programs

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

1. *BANCOMEXT Financing for Exporters*

Banco Nacional de Comercio Exterior, S.N.C. (Bancomext) is a government program through which short-term financing is provided to producers or trading companies engaged in export activities. In order to be eligible for Bancomext financing a company must be established according to Mexican law, 30 percent Mexican national owned, and be an exporter. Bancomext provides two types of financing to exporters, denominated in either U.S. dollars or in Mexican pesos: working capital (pre-export loans), and loans for export sales (export loans). In addition, Bancomext may provide financing to foreign buyers of Mexican goods and services.

The Department has previously found this program to confer an export subsidy to the extent that the loans are provided at preferential terms (*See Porcelain-on-Steel Cookingware From Mexico; Preliminary Results of Countervailing Duty Administrative Review* (56 FR 48163; September 24, 1991) and *Porcelain-on-Steel Cookingware From Mexico; Final Results of Countervailing Duty Administrative Review* (57 FR 562; January 7, 1992)). In this review the Government of Mexico provided no new information that would lead the Department to alter that determination.

Both APSA and Cinsa had Bancomext loans on which interest was due during the POR. We found that the annual interest rates that Bancomext charged to borrowers for certain loans on which interest payments were due during the review period were lower than the commercial rates. The dollar-denominated Bancomext loans under review were granted at annual interest rates ranging from 6.0 percent to 8.75 percent. For these loans, we used the average quarterly weighted-average effective interest rates published in the Federal Reserve Bulletin, which resulted in an annual average benchmark of 6.5 percent in 1993. This is the same benchmark calculation methodology that has been applied in prior reviews (*See Porcelain-on-Steel Cookingware From Mexico; Preliminary Results of Countervailing Duty Administrative Review* (56 FR 48163; September 24, 1991) and *Porcelain-on-Steel Cookingware From Mexico; Final Results of Countervailing Duty Administrative Review* (57 FR 562; January 7, 1992)).

The peso-denominated Bancomext pre-export loan under review was granted at an annual interest rate of 14.8 percent. As a basis for our benchmark for this loan, we have relied in part on the effective rates for the years 1981 through 1984, as published monthly in the Banco de Mexico's Indicadores Economicos y Moneda (I.E.), because the Banco de Mexico stopped publishing data on nominal and effective commercial lending rates in Mexico after 1984. We calculated the average difference between the I.E. effective interest rates and the Costo Porcentual Promedio (CPP) rates, the average cost of short-term funds to banks, for the years 1981 through 1984. We added this average difference to the 1993 average annual CPP rates. For the peso-denominated loan on which interest was due during 1993, we

calculated an annual benchmark of 29.79 percent. This is the same benchmark calculation methodology that has been applied in prior reviews (*See Porcelain-on-Steel Cookingware From Mexico; Preliminary Results of Countervailing Duty Administrative Review* (56 FR 48163; September 24, 1991) and *Porcelain-on-Steel Cookingware From Mexico; Final Results of Countervailing Duty Administrative Review* (57 FR 562; January 7, 1992)). We consider the benefits from short-term loans to occur at the time the interest is paid. Because interest on Bancomext pre-export loans is paid at maturity, we calculated benefits based on loans that matured during the review period; such loans were obtained between December 1992 and September 1993.

During verification at APSA, we discovered one short-term loan that appears to be a Fomex loan which was not reported in the questionnaire responses. Fomex was a program previously found countervailable by the Department and operates much like the Bancomext program which the Department has also found countervailable (*See Porcelain-on-Steel Cookingware From Mexico; Preliminary Results of Countervailing Duty Administrative Review* (56 FR 48163; September 24, 1991) and *Porcelain-on-Steel Cookingware From Mexico; Final Results of Countervailing Duty Administrative Review* (57 FR 562; January 7, 1992)). However, the interest rate for this loan is higher than the benchmark and, therefore, there is no benefit to APSA.

During verification at the Government of Mexico, we discovered one Bancomext loan for Cinsa that had not been reported in the questionnaire responses, and for which the company did not provide the interest rate upon request at verification. (*See Bancomext Section of the Government of Mexico's Verification Report* dated May 9, 1995 and *Short-Term Loan Section of Cinsa's Verification Report* dated May 9, 1995, on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce). Section 776(c) of the Act requires the Department to use best information available (BIA) whenever a party or any other person refuses or is unable to produce information requested. Furthermore, 19 CFR 355.37 (1994) requires the Department to use BIA ''whenever the Secretary: (1) does not receive a complete, accurate, and timely response to the Secretary's request for factual information; or (2) is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted''. Since the interest rate for this loan was not reported in the questionnaire responses nor provided at verification when requested, we must use BIA to calculate the benefit from this loan. Therefore, as BIA we are assigning this loan a zero interest rate, and have used that rate to calculate the benefit from this loan. The interest rate we are applying as BIA is zero percent because it is the most adverse interest rate.

To calculate the benefit for each exporter, we multiplied the difference between the interest rate charged to exporters for these loans and the benchmark interest rate by the principal and then multiplied this amount by the term of the loan divided by 365. Because one company's monthly sales figures are indexed to account for inflation, we adjusted that company's benefit amounts to be on the same terms as the sales figures. Since neither APSA nor Cinsa was able to tie their loans to specific sales, we divided the benefit by total export sales. On this basis, we preliminarily determine the subsidy from this program to be 0.02 percent *ad valorem* for APSA and 0.60 percent *ad valorem* for Cinsa.

2. *FONEI Long-Term Financing*

The Fund for Industrial Development (FONEI) was a Government of Mexico trust administered by the Banco de Mexico until its dissolution on December 31, 1989. FONEI was a specialized financial development fund that provided long-term loans at below-market rates. FONEI was designed to foster the efficient production of services and industrial goods by Mexican companies.

The Department has previously found this program to confer a subsidy because it provides loans on terms inconsistent with commercial considerations and restricts loan benefits to companies located in specific regions (*See Porcelain-on-Steel Cookingware From Mexico; Preliminary Results of Countervailing Duty Administrative Review* (56 FR 48163; September 24, 1991) and *Porcelain-on-Steel Cookingware From Mexico; Final Results of Countervailing Duty Administrative Review* (57 FR 562; January 7, 1992)). In this review the Government of Mexico provided no new information that would lead the Department to alter that determination.

Cinsa had a FONEI loan outstanding during the review period. Because this peso-denominated loan had a variable interest rate, we treated it as a series of short-term loans, as we have done previously in *Porcelain-on-Steel Cookingware From Mexico; Preliminary Results of Countervailing Duty Administrative Review* (56 FR 48163; September 24, 1991) and *Porcelain-on-Steel Cookingware From Mexico; Final Results of Countervailing Duty Administrative Review* (57 FR 562; January 7, 1992). To calculate the benefit from this loan, we used the same benchmark as for the peso-denominated Bancomext pre-export loan. We compared this benchmark with the interest rate in effect for each FONEI loan payment made during the review period and multiplied the difference by the outstanding loan principal. We divided the benefit by the company's total sales to all markets during the review period. On this basis, we preliminarily determine the subsidy from this program to be 0.01 percent *ad valorem* for Cinsa.

II. Programs Preliminarily Found Not to be Used

We also examined the following programs and preliminarily determine that the exporters of the subject merchandise did not apply for or receive benefits under these programs during the review period:

(A) Certificates of Fiscal Promotion (CEPROFI)
(B) PITEX
(C) Other Bancomext Preferential Financing
(D) Import Duty Reductions and Exemptions
(E) State Tax Incentives
(F) Article 15 Loans
(G) NAFINSA FOGAIN-type Financing
(H) NAFINSA FONEI-type Financing

Preliminary Results of Review

For the period January 1, 1993 through December 31, 1993, we preliminarily determine the net subsidy to be 0.02 percent *ad valorem* for APSA and 0.53 percent *ad valorem* for all other companies. In accordance with 19 CFR 255.7, any rate less than 0.5% *ad valorem* is *de minimis*.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess the following countervailing duties:

Manufacturer/exporter	Rate (percent)
APSA	0.00
All Other Companies	0.53

The Department also intends to instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of zero percent of the f.o.b. invoice price on all shipments

of the subject merchandise from APSA, and 0.53 percent of the f.o.b. invoice price on all shipments of the subject merchandise from all other companies entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit written arguments in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under section 355.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: July 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19014 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–549–401]

Certain Textile Mill Products From Thailand; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of the Countervailing Duty Administrative Review on Certain Yarn Products covered under the Suspended Investigation on Certain Textile Mill Products from Thailand.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of Certain Yarn Products covered under the suspended countervailing duty investigation on Certain Textile Mill Products from Thailand (''suspension agreement''). We have preliminarily determined that for the period May 18, 1992, through December 31, 1993, the signatories were not in violation of the suspension agreement. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Lisa Yarbrough or Jackie Wallace, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On November 23, 1990, the Department published in the **Federal Register** (55 FR 48885) a notice terminating in part the suspension agreement on Certain Textile Mill Products from Thailand (50 FR 9837, March 12, 1985). On May 9, 1992, the Court of International Trade (CIT) held that the Department's termination was not in accordance with the law because the Department failed to strictly follow 19 CFR 355.25(d)(4). The Court of Appeals for the Federal Circuit (CAFC) affirmed the decision of the CIT on October 12, 1993, and instructed the Department to reinstate the suspension agreement. Subsequently, on October 22, 1993, the Department reinstated the suspension agreement, effective May 18, 1992, the date the Department published notice of the CIT decision.

On March 4, 1994 , the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' (59 FR 10368) of the suspended investigation for the period May 18, 1992 to December 31, 1993. The Department received requests for an administrative review of certain yarn products on March 31, 1994, from the American Yarn Spinners Association (AYSA) and certain individual yarn producers. On April 15, 1994, the Department initiated a countervailing duty administrative review on Certain Yarn Products for the period May 18, 1992 to December 31, 1993 (59 FR 18099, April 15, 1994). The Department verified the responses of the Royal Thai Government (RTG) and the Thai Textile Manufacturers Association (TTMA) from January 16 through January 25, 1995 pursuant to the administrative review.

Due to prior analysis of interested party status of AYSA in 1990, the Department initiated this review on certain yarn products only for the period May 18, 1992, through December 31, 1993 (FR 59 18099, April 15, 1994). The review covers nine programs and eight producers/exporters: Saha Union, Venus Thread, Union Thread, Union Spinning, Thai Melon, Thai American, Thai Blanket, and Thai Synthetic.

Applicable Statue and Regulations

The Department is conducting this administrative review in accordance with section 751(a) 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 Review

Imports covered by this review are shipments of certain yarns from Thailand. During the period of review, such merchandise was classifiable under the Harmonized Tariff Schedule (HTS) item numbers 5204.11.0000, 5204.19.0000, 5204.20.0000, 5206.21.0000, 5206.22.0000, 5206.23.0000, 5206.24.0000, 5206.25.0000, 5206.41.0000, 5206.42.0000, 5206.43.0000, 5206.44.0000, 5206.45.0000, 5207.10.0000, 5207.90.0000, 5401.10.0000, 5402.31.3000, 5402.32.3000, 5402.33.6000, 5406.10.0020, 5406.10.0040, 5406.10.0090, 5508.20.0000, 5510.12.0000, 5510.90.4000, and 5511.30.0000.

Analysis of Programs

1. Electricity Discounts

Under Section II(b) of the suspension agreement, the producers and exporters are not to apply for, or receive, any discount on electricity rates provided by the electricity authorities of Thailand (the Electricity Generating Authority of Thailand (EGAT), Metropolitan Electricity Authority (MEA) or the Provincial Electricity Authority (PEA)) for exports of subject merchandise.

EGAT is the general producing authority of electricity in Thailand selling to regional authorities such as MEA and PEA. PEA and MEA in turn sell electricity to companies in their jurisdiction. This program was

terminated effective January 1, 1990. However, producers and exporters who applied for discounts on exports prior to January 1, 1990, are still eligible to receive residual benefits on those exports.

Based on our verification, we found that neither EGAT, MEA, or PEA provided residual benefits during the POR on exports of subject merchandise to the United States. *See* verification report dated June 1, 1995.

2. Repurchase of Industrial Bills

Under Section II(f) of the suspension agreement, the producers and exporters are not to apply for, or receive, any promissory notes from the Bank of Thailand (BOT) for exports of subject merchandise to the United States.

In 1988, this program was changed from ''Rediscount of Industrial Bills'' to ''Repurchase of Industrial Bills'' (*see* ''Notification of the Bank of Thailand #2531 re: Repurchase of Industrial Bills 1988''). Under this program, companies can receive discounted financing for working capital on industrial bills for a period of 120 days. This program operates similarly to the Export Packing Credit Program where companies can receive financing from a commercial bank or the Industrial Finance Corporation at interest rates of 10% or less. The BOT will then repurchase 50% of the bills from the commercial bank or Industrial Finance Corporation.

Based on our verification, we found the signatories subject to this review were not among those that applied for, or received, industrial bills for exports of subject merchandise to the United States during the POR. *See* verification report dated June 1, 1995.

3. Investment Promotion Act: Section 28, 31, 35, and 36

Under Section II (i) of the suspension agreement, the producers and exporters are to notify the Department in writing prior to applying for, or receiving, benefits under the Investment Promotion Act on shipments exported to the United States.

The Investment Promotion Act of 1977 (IPA) is a general act, administered by the Board of Investment (BOI), that allows for the promotion of different industries selected for development assistance by the BOI. Under this program, producers and exporters must be granted a BOI license which enables them to receive various IPA benefits. Such benefits include the following:

Section 28—IPA Section 28 provides an exemption from payment of import duties on imported machinery.

Section 31—IPA Section 31 provides an exemption of juristic person income tax on the net profit derived from the promoted activity.

Section 35—IPA Section 35 provides certain income tax benefits to firms located in investment promotion zones.

Section 36 (1)—IPA Section 36(1) allows companies an exemption from import duties on raw and essential materials used to produce goods for export.

Section 36 (4)—IPA Section 36(4) grants companies permission to deduct from taxable income an amount equal to 5% of the increase in export earnings over the previous year.

Based on our verification, we found no indication of signatories receiving benefits under these programs during the POR. *See* verification report dated June 1, 1995.

4. International Trade Promotion Fund

Under Section II(h) of the suspension agreement, the producers and exporters are to notify the Department in writing prior to applying for or accepting any new benefit which is, or is likely to be, a countervailable bounty or grant on shipments of subject merchandise exported, directly or indirectly, to the United States. Although the Department has never determined this program to be countervailable, we reviewed this program in the administrative review.

This program, governed by the ''Rule on Administration of the International Trade Promotion Fund (ITPF), B.E. 2532 (1989),'' promotes and develops Thai exports worldwide through incoming and outgoing trade missions. The ITPF provides training and seminars for exporters, and publicity through public advertisements.

Based on our verification, we confirmed that Saha Union and its relateds (Union Spinning, Union Thread, and Venus Thread) participated in an international trade fair, promoting subject merchandise. Saha Union and its related companies paid their own expenses to participate in the trade fair. *See* verification report dated June 1, 1995.

5. Export Processing Zones

Under Section II (i) of the suspension agreement, producers and exporters shall notify the Department in writing prior to making an application to locate in an Export Processing Zone.

This program is governed by the ''Industrial Estates Authority of Thailand Act, B.E. 2522, 1979.'' Under this program, a company must apply to the Industrial Estate Authority of Thailand (IEAT) for permission to locate in an export processing zone (EPZ). All EPZ's are located inside an industrial estate. Companies located within an EPZ can receive import duty exemptions on equipment and raw materials, and exemption of export duties on exported goods.

Based on our verification, we found no use of this program by signatories to the suspension agreement. *See* verification report dated June 1, 1995.

6. Duty Drawback

Under Section II (c) of the suspension agreement, exporters and producers are not to apply for, or receive, rebates on shipments of subject merchandise in excess of the import duties paid on items that are physically incorporated into exported products.

Under this program, Thai Customs will refund import duties paid on imported goods used in the production of an exported product. In order to qualify for duty drawback, the goods must be exported through an authorized port, the exports must be shipped within one year of the date of importation of the goods on which drawback is claimed, and the producer/exporter must request drawback within six months of the date of exportation of the goods.

During the POR, Saha Union, Union Spinning, Union Thread, Venus Thread, and Thai Melon used duty drawback on exported goods of subject merchandise to the United States. Based on verification, we found that the amount of drawback received was not in excess of the items physically incorporated into the exported product. *See* verification report dated June 1, 1995.

7. Double Deduction for Foreign Marketing Expenses

Under Section II (e) of the suspension agreement, the producers and exporters are not to apply for, or receive, the double deduction of foreign marketing expenses for income tax purposes or financing on concessionary terms from the BOT on exports of subject merchandise.

From 1978 through 1981, the BOI granted trading companies a benefit on the double deduction of foreign marketing expenses from taxable income. In order to receive this benefit, a company had to be promoted through the BOI. This program was terminated in 1981 ''BOI Announcement No. 1/2524.''

Based on verification, we found no use of this benefit. *See* verification report dated June 1, 1995.

8. Tax Certificates

Under Section II (c) of the suspension agreement, the producers and exporters can apply or receive tax certificates on shipments of subject merchandise

exported directly or indirectly to the United States for import duties paid on items that are physically incorporated into exported products. If the producers and exporters apply for tax certificates in excess of the items physically incorporated, the suspension agreement requires that the producers and exporters repay to the RTG, in an annual adjustment, the amount in which the tax certificates exceed the import duties on physically incorporated inputs.

Tax certificate applications are made on a shipment by shipment basis after the producer/exporter receives payment for its shipment. The application can include up to 10 shipments and must be submitted within one year of the shipment date. Exporters can apply for an extension if they do not meet the one year deadline.

The law governing this program is the ''Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act, B.E. 2524 (1981).'' Effective January 1, 1992, new nominal rebate rates were established for all products by the Committee on Tax and Duty Rebates for Exported Goods Produced in the Kingdom. The new nominal rates applicable to signatories are categorized by the following sectors: spinning, weaving, made-up textile goods, and knitting. Because nominal rates are in excess of the physically incorporated inputs, the Department has calculated, and requested that the RTG implement non-excessive rates. *See* verification report dated September 15, 1994, and letter from Roland L. MacDonald to Arthur J. Lafave III dated November 15, 1994.

Thai Melon, Thai American, Thai Synthetic, and Thai Blanket have applied for tax certificates at nominal rates during the period of review (POR). The Department will require that these companies repay the RTG, in an annual adjustment, the amount in which the tax certificates exceed the import duties on physically incorporated inputs. *See* verification report dated June 1, 1995.

9. Export Packing Credits

Under Section II (a) of the suspension agreement, the producers and exporters are not to apply for, or receive, Export Packing Credits (EPCs) from the BOT that permit the rediscounting of promissory notes arising from shipments of subject merchandise to the United States.

EPCs are pre-shipment short-term loans available to exporters for a maximum of 180 days from the date of issuance. Under the EPC program, commercial banks issue loans based on promissory notes from creditworthy exporters. Such notes have to be supported by an irrevocable letter of credit, a sales contract, a purchase order, or a warehouse receipt. The commercial bank will then resell 50% of the promissory note to the BOT at a lower interest rate. The maximum interest rate a commercial bank can charge the exporter is 10% per annum.

If an exporter does not fulfill the contract by the due date of the EPC, the BOT will automatically charge the commercial bank a penalty interest rate. The commercial bank will then pass this penalty onto the exporter. The penalty interest rate is 6.5% per annum calculated over the full term of the loan. However, penalties can be refunded if the exporter ships the merchandise within 60 days after the due date. If only a portion of the goods is shipped by the due date, the exporter receives a partial refund in proportion to the value of the goods shipped.

Based on our verification, we found that Thai Melon and Thai American did use this program for exports of certain yarns to the United States during the review period. *See* verification report dated June 1, 1995.

The Department has calculated a subsidy rate for EPCs received by Thai Melon and Thai American for this administrative review. We first computed the total benefit received on the export packing credits. We then calculated a company specific subsidy rate for Thai Melon and included Thai American in the company rate because it is a related party . Next, we weight-averaged the benefit rate received by the company by its share of total exports of subject merchandise to the United States. The net subsidy received on EPCs for this administrative review is 0.19%.

Preliminary Results of Review

As a result of our review, we preliminarily determine that for the period May 18, 1992 through December 31, 1993, the signatories were not in violation of the suspension agreement. Due to the unusual circumstances surrounding this case and the reinstatement of the suspension agreement, we do not consider the calculation of EPCs in this POR to constitute a violation of the agreement within the meaning of 19 CFR Section 355.19 (d)(1994). However, we note that Section II (a) of the suspension agreement prohibits participation by any signatory in the EPC program at noncommercial rates and terms for subject merchandise. Thus, in future reviews, the signatories shall follow Section II (a) of the suspension agreement or they will be found in violation of the agreement.

For those signatories who received tax certificates in excess of the import duties paid on items physically incorporated into exports of subject merchandise, we will require that they repay to the RTG, in an annual adjustment, any amount by which the tax certificates exceed the amount of import duties on physically incorporated inputs. The annual adjustment shall be calculated in accordance with Section II c(i)(ii) of the suspension agreement.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice.

Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication, in accordance with 19 CFR 355.38(c)(1994). Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief, in accordance with 19 CRF 355.38(d)(1994). Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs (19 CRF 355.38(f)(1994)). Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CRF 355.38(e)(1994). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c)(1994), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief, or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)(1994)) and 19 CFR 355.22(1994).

Dated: July 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19016 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 051595K]

Marine Mammals and Endangered Species; Permits

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

ACTION: Issuance of scientific research permit no. 958 (P476B).

SUMMARY: Notice is hereby given that the University of Washington, Washington Cooperative Fish & Wildlife Research Unit, School of Fisheries, WH–10, Seattle, WA 98195 (Principal Investigator: Mr. Glenn VanBlaricom) has been issued a permit to harass up to 276 gray whales (*Eschrichtius robustus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg 1, Seattle, WA 99115–0070 (206/526–6150); and

Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4001).

FOR FURTHER INFORMATION CONTACT: Gary Barone (301/713–2289).

SUPPLEMENTARY INFORMATION: On September 26, 1994, notice was published in the **Federal Register** that an application had been filed by the above-named individual. The requested permit has been issued, under the authority of the Marine Mammal Protection Act of 1972 (MMPA) as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA) as amended (16 U.S.C. 1531 *et seq.*), the regulations governing endangered species permits (50 CFR parts 217–227), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and the fur seal regulations at 50 CFR part 215.

Issuance of this Permit as required by the ESA of 1973 was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the ESA.

Dated: July 26, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–18898 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

July 27, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 336/636 is being increased by application of swing and carryforward. The limit for Category 341 is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65531, published on December 20, 1994). Also see 59 FR 66007, published on December 22, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 27, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 15, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on August 3, 1995, you are directed to amend the directive dated December 15, 1994 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Nepal:

Category	Adjusted twelve-month limit [1]
336/636	200,225 dozen.
341	878,725 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–18937 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations on Cotton and Man-Made Fiber Nightwear and Pajamas

July 27, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On June 29, 1995, under the terms of Article 6 of the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the Government of the United States requested consultations with the Government of Costa Rica with respect to cotton and man-made fiber nightwear and pajamas in Categories 351/651, produced or manufactured in Costa Rica.

The purpose of this notice is to advise the public that, pursuant to the ATC, if no solution is agreed upon in consultations with the Government of Costa Rica, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 351/651, produced or manufactured in Costa Rica and exported during the twelve-month period which began on June 29, 1995 and extends through June 28, 1996, at a level of not less than 170,979 dozen.

A summary statement of serious damage, or actual threat thereof, concerning Categories 351/651 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 351/651, or to comment on domestic production or availability of products included in Categories 351/651, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Costa Rica.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute ''a foreign affairs function of the United States.''

The United States remains committed to finding a solution concerning Categories 351/651. Should such a solution be reached in consultations with the Government of Costa Rica, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Summary Statement of Serious Damage

Cotton and Manmade Fiber Pajamas and Other Nightwear—Category 351/651

June 1995

The initial determination of serious damage, or actual threat thereof, to the U.S. industry producing cotton and manmade fiber pajamas and other nightwear, Category 351/651, was made in March 1995. Pursuant to Article 6, paragraph 5, of the Agreement on Textiles and Clothing, the March 1995 statement of serious damage, or actual threat thereof, for cotton and manmade fiber pajamas and other nightwear, Category 351/651, is herein updated to include Costa Rica to which serious damage, or actual threat thereof, is attributed.

At the time of the initial determination of serious damage, or actual threat thereof, imports from Costa Rica were down. Imports from Costa Rica are now surging, increasing 17 percent for the year ending March 1995 when compared with the same period in a year earlier, and are up 129 percent during the first quarter of 1995 when compared with the same period in 1994.

Serious damage, or actual threat thereof, to the domestic industry resulting from the sharp and substantial increase in imports of cotton and manmade fiber pajamas and other nightwear is attributed to imports from Jamaica, El Salvador, Costa Rica, and Honduras. The combination of surging imports and low priced goods from these countries have resulted in loss of domestic output, market share, investment, employment, man-hours worked, and total annual wages.

Total imports from these countries increased from 377,536 dozen in 1992 to 1,014,361 dozen in 1994, a sharp and substantial increase of 169 percent. During the year ending March 1995 imports from these countries increased 52 percent when compared with the same period a year earlier. Together their year ending March 1995 imports were 9.1 percent of total Category 351/651 imports and were 9.9 of total U.S. production of Category 351/651 in calendar year 1994.

[FR Doc. 95–18938 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; Notice to Amend Systems of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is amending system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 1, 1995, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, U.S. Army Information Systems Command, ATTN: ASOP-MP, Fort Huachuca, AZ 85613–5000.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Turner at (602) 538–6856 or DSN 879–6856.

SUPPLEMENTARY INFORMATION: The Department of the Army 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 specific changes to the record system being amended are set forth below. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of an altered system report.

Dated: July 26, 1995.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AAFES 1609.02

SYSTEM NAME:

AAFES Customer Service *(February 22, 1993, 58 FR 10023).*

* * * * *

CHANGES

CATEGORIES OF RECORDS IN THE SYSTEM:

Add 'Social Security Numbers.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add ', and 8013; and E.O. 9397.'

PURPOSE(S):

Add ', and to monitor individual customer refunds.'

* * * * *

RETREIVABILITY:

Add ', Social Security Numbers'

* * * * *

NOTIFICATION PROCEDURE:

Add between 'Service, P.O.' 'ATTN: SD,'

RECORDS ACCESS PROCEDURE:

Add between 'Service, P.O.' 'ATTN: SD,'

* * * * *

AAFES 1609.02

SYSTEM NAME:

AAFES Customer Service.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, P.O. Box 660202, Dallas, TX 75266–0202; HQ Army and Air Force Exchange Service-Europe, Pinder Barracks, Schwabacherster 20 8502 Zirndorf; regional, area, post and base Exchanges in the United States.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army and Air Force Exchange Service (AAFES) customers who purchase merchandise on a time payment, layaway, or special order basis, or who need purchase adjustments or refunds.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual Social Security numbers, copies of layaway tickets, requests for refunds, special order forms/procurement request/logs, cash receipt/charge or credit vouchers, repair vouchers, warranty documents, correspondence between AAFES and the customer and/or vendor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012, 3013, 8012, and 8013; and E.O. 9397.

PURPOSE(S):

To record customer transactions/payment for layaway and special orders; to determine payment status before finalizing transactions; to identify account delinquencies and prepare customer reminder notices; to mail refunds on canceled layaway or special orders; to process purchase refunds; to document receipt from customer of merchandise subsequently returned to vendors for repair or replacement and initiate follow-up actions, and to monitor individual customer refunds.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file boxes and cabinets.

RETRIEVABILITY:

By customer's surname, document control number, Social Security Number and/or due date.

SAFEGUARDS:

Records are maintained in secured areas, accessible only to authorized personnel having need for the information in the performance of their duties.

RETENTION AND DISPOSAL:

Cancelled or completed layaway tickets are held for 6 months after cancellation or delivery of merchandise; purchase orders are retained for 2 years; refund vouchers are retained for 6 years; returned merchandise slips are retained for 6 years; cash receipt vouchers are retained for 3 years; repair/replacement order slips are held 2 years. All records are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, PO Box 660202, Dallas, TX 75266–0202.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: SD, PO Box 660202, Dallas, TX 75266–0202.

Individual should provide name and sufficient details or purchase to enable locating pertinent records, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: SD, PO Box 660202, Dallas, TX 75266–0202.

Individual should provide name and sufficient details or purchase to enable locating pertinent records, current address and telephone number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; vendor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 95–18968 Filed 8–1–95; 8:45 am]

BILLING CODE 5000–04–F

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Part 232, Contract Financing, and Related Clause at 252.232–7007; OMB Control Number 0704–0359.

Type of Request: Extension.

Number of Respondents: 800.
Responses per Respondent: 1.
Annual Responses: 800.
Average Burden per Response: 1 hour.
Annual Burden Hours: 800.
Needs and Uses: This requirement provides for the collection of information from contractors who are awarded incrementally funded, fixed-price DoD contracts. The information collected hereby, constitutes a notification of the Federal Government by the contractor, when the work under the contract will, within ninety days, reach the point at which the amount payable by the Government (including any termination costs) approximates 85 percent of the funds currently allotted to the contract. This information will also be used to determine what course of action the Government will take; i.e., allot additional funds for continued performance, terminate the contract, or terminate certain contract line items.
Affected Public: Business or other for-profit; Not-for-profit institutions.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Mr. Peter N. Weiss.
Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DoD Clearance Officer: Mr. William Pearce.
Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 28, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18963 Filed 8–1–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).
Title and OMB Control Number: DoD FAR Supplement, Subpart 203.170, Statutory Prohibitions on Compensation to Former DoD Employees, and Related Clause at 252.203–7000; OMB Control Number 0704–0277.
Type of Request: Extension.
Number of Respondents: 1,000.
Responses per Respondent: 1.
Annual Responses: 1,000.
Average Burden per Response: 8 hours.
Annual Burden Hours: 8,000.
Needs and Uses: This requirement provides for the collection of information from major contractors who employ certain former DoD employees. The information collected hereby, constitutes an annual report to the Secretary of Defense of the employment of these individuals.
Affected Public: Business or other for-profit.
Frequency: Annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Mr. Peter N. Weiss.
Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DoD Clearance Officer: Mr. William Pearce.
Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 28, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18962 Filed 8–1–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).
Title and OMB Control Number: DoD FAR Supplement, Subpart 223.70, Hazardous Waste Disposal, and Clause at 252.223–7005; OMB Control Number 0704–0343.
Type of Request: Extension
Number of Respondent: 45.
Responses per Respondent: 1.
Annual Responses: 45.
Average Burden per Response: 30 minutes.
Annual Burden Hours: 22.
Needs and Uses: This requirement provides for the collection of information from contractors performing offsite hazardous waste treatment or disposal services for DoD. It will be used to verify that such contractors have adequate liability insurance or financial assurance to cover sudden and non-sudden accidental occurrences, in accordance with 10 USC 2708.
Affected Public: Business or other for-profit.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Mr. Peter N. Weiss.
Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DoD Clearance Officer: Mr. William Pearce.
Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 28, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18966 Filed 8–1–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).
Title, Applicable Forms, and OMB Control Number: DoD FAR Supplement, Appendix F, Material Inspection and Receiving Report; DD Forms 250, 250C, and 250–1; OMB Control Number 0704–0248.
Type of Request: Expedited Processing—Approval Date Requested: 30 days following publication in the **Federal Register.**
Number of Respondents: 7,800,000.
Responses per Respondent: 1.
Annual Responses: 7,800,000.
Average Burden per Response: 8 minutes.
Annual Burden Hours: 988,000
Needs and uses: This requirement provides for the collection of

information in support of material inspection, shipping, and receiving reports. It will be used to process inspections, receipt of materials, and payments to contractors.

Affected Public: Business or other for-profit; Not-for-profit Institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 28, 1995.

Patricia L.Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18965 Filed 8–1–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: DoD FAR Supplement, Subpart 223.72, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives.

Type of Request: New collection.

Number of Respondents: 230.

Responses per Respondent: 1.

Annual Responses: 230.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 58.

Needs and Uses: The information collected hereby, is required to notify the Federal Government of subcontracts involving arms, ammunition, and explosives. It will be used to monitor contractor compliance with the requirements of DoD 5100.76–M, ''Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.''

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 28, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18964 Filed 8–1–95; 8:45 am]

BILLING CODE 5000–04–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0078]

Clearance Request for Make-or-Buy Program

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0078).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Make-or-Buy Program.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Price, performance, and/or implementation of socio-economic policies may be affected by make-or-buy decisions under certain Government prime contracts. Accordingly, Subpart 15.7, Make-or-Buy Programs, of the FAR—

(i) Sets forth circumstances under which a Government contractor must submit for approval by the contracting officer a make-or-buy program, i.e., a written plan identifying major items to be produced or work efforts to be performed in the prime contractor's facilities and those to be subcontracted;

(ii) Provides guidance to contracting officers concerning the review and approval of the make-or-buy programs; and

(iii) Prescribes the contract clause at FAR 52.215–21, Changes or Additions to Make-or-Buy Programs, which specifies the circumstances under which the contractor is required to submit for the contracting officer's advance approval a notification and justification of any proposed change in the approved make-or-buy program.

The information is used to assure the lowest overall cost to the Government for required supplies and services.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *8* hours per termination, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW, Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, *200*; responses per respondent, *3*; total annual responses, *600*; preparation hours per response, *8*; and total response burden hours, *4,800*.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0078, Make-or-Buy Program, in all correspondence.

Dated: July 24, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–18998 Filed 8–1–95; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

ACTION: Notice.

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on September 21, 1995 and from 8:30 a.m. to 4:30 p.m. on September 22, 1995. The meeting will be held at The Nonantum Inn, 95 Ocean Avenue, Kennebunkport, Maine 04046. The purpose of the meeting is to review planned changes and progress in developing paper-and-pencil and computerized enlistment tests, Department of Defense's Student Testing Program, and renorming of the tests. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management Policy), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271, no later than September 1, 1995.

Dated: July 28, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18967 Filed 8–1–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Corps of Engineers, Intent to Prepare a Supplemental Environmental Impact Statement (SEIS) for the Proposed Wyoming Valley Inflatable Dam in Luzerne County, Pennsylvania

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Baltimore District U.S. Army Corps of Engineers is preparing a formulation/design report with an integrated Supplemental Environmental Impact Statement (SEIS) for the construction of an inflatable dam in the Wyoming Valley region of the Susquehanna River Basin. This study is being accomplished as part of the continuing project process. The National Environmental Policy Act (NEPA) document is intended to supplement previous NEPA work accomplished, a final EIS which was done in September 1981 and a SEIS done in January 1995, for both the Phase I and Phase II General Design Memorandums (GDM). The dam is a component of the Wyoming Valley Levee Raising Project mitigation plan. The formulation/design study will review the recommended plans identified in the Wyoming Valley Inflatable Dam, Luzerne County, Pennsylvania Reconnaissance Report, dated April 1991, formulate additional plans as necessary, evaluate the associated impacts, and then provide a detailed analysis of the selected plan. The selected plan will be the alternative that fulfills Federal economic, engineering and environmental criteria and is preferred by both the Federal and non-Federal parties. The study was authorized under Section 102(w) of the Water Resources Development Act of 1992.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and SEIS can be addressed to Ms. Susan B. Hughes, Project Management, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB–PP–C, P.O. Box 1715, Baltimore, Maryland 21203–1715.

SUPPLEMENTARY INFORMATION: 1. The study area is located in northeastern Pennsylvania. The proposed inflatable dam would be constructed in an area known as the Wyoming Valley in Luzerne County, which extends along the Susquehanna River from the Borough of Pittston southwest approximately 15 miles to Nanticoke City. The Wyoming Valley is heavily developed, primarily by urban residential, commercial, and industrial facilities. There are also several abandoned and active coal mining operations in the valley.

2. The study area was plagued with recurring floods from the Susquehanna River for many years until a series of Federally authorized flood protection measures were constructed in the 1930's, 1940's and 1950's. The existing flood damage reduction system is composed of four projects, which are located in the Boroughs of Kingston and Edwardsville; the Boroughs of Swoyersville and Forty Fort; the Borough of Plymouth; and the Township of Hanover and the City of Wilkes-Barre.

3. In June 1972, Tropical Storm Agnes, the largest flood of record, overtopped the existing flood protection system by four to five feet. In December of 1972, the Baltimore District completed a document titled ''Wyoming Valley Flood Control, Susquehanna River, Pennsylvania'' which recommended that the existing flood protection system be modified to protect against an Agnes-level flood. In 1981, a more detailed Phase I General Design Memorandum (GDM)/Feasibility Report and Final Environmental Impact Statement (FEIS) were completed which recommended that the existing flood protection system be raised to protect against an Agnes-level flood. Section 401(a) of the Water Resources Development Act of 1986 (Public Law 99–662) authorized the construction of the project recommended in the 1981 Phase I GDM.

4. Section 102(w) of the Water Resources Development Act of 1992 (Public Law 102–580) modified the previous authorization as follows: ''to direct the Secretary to complete the final phase II design memorandum for the project (including the results of a review of nonstructural mitigation plans for the purpose of ameliorating damages from induced flooding)''. As such, the inflatable dam is being considered as a form of mitigation for the Wyoming Valley Levee Raising project.

5. The Phase II GDM for the Wyoming Valley Levee Raising project, which was made available for public review in November 1994, included the inflatable dam as a measure to mitigate against adverse intangible social and economic impacts of the improved levee system. A SEIS was completed for the Phase II GDM. The proposed mitigation plan was addressed within the GDM/SEIS. However, detailed investigations of the proposed inflatable dam were not.

6. The SEIS currently being prepared will build upon the previous environmental impact statements and address cumulative impacts related to the entire project. A range of alternatives will be analyzed and discussed. The formulation/design report will review the reconnaissance report and use it as the foundation for its analysis. Based on the reconnaissance report, preliminary formulation indicates that the dam would be located 220 feet upstream of the abandoned Delaware and Hudson railroad bridge crossing the Susquehanna River. The dam would consist of four inflatable rubber segments anchored to reinforce concrete piers, abutments and sill, spanning a total length of 850 feet across the Susquehanna River. Dam heights between 6.5 feet, 8 feet, and 10 feet will be investigated. The boating pool created by the 6.5-foot dam would extend approximately 4.4 miles upstream to Forty Fort and would provide about 365 acres of boating area (total surface area=410 acres). The deepest portion of the lake would be

near the activity centers at Kirby, Nesbitt, and River Commons Park. The higher alternatives would require larger foundations to support larger bags and the deeper impoundment provided by the dam. The boating pool created by the 10-foot dam would extend approximately 5.5 miles upstream near Monocanock Island and would provide about 495 acres of boating area (total surface area=520 acres).

7. The Baltimore District is preparing a SEIS which will document the alternatives analysis and describe the impacts of the proposed projects on environmental and cultural resources in the study area and the overall public interest. If applicable, the SEIS will also apply guidelines issued by the Environmental Protection Agency, under authority of Section 404 of the Clean Water Act of 1977 (Public Law 95–217).

8. A notice will be distributed to interested private individuals and organizations, as well as Federal, state, and local agencies, informing them of our intent to prepare a SEIS, and requesting their comments. The Baltimore District invites potentially affected Federal, state, and local agencies and other interested organizations and parties to participate in this study. Agencies that will be involved in the study and SEIS process include, but are not limited to the following: U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service; U.S. Geological Survey; U.S. Natural Resources Conservation Service; U.S. National Park Service; Pennsylvania Department of Environmental Resources; Pennsylvania Historical and Museum Commission; Pennsylvania Fish and Boat Commission; Pennsylvania Game Commission; Luzerne County, Pennsylvania; and the Susquehanna River Basin Commission. Additional study newsletters, notices and workshops may be included as part of the public involvement program, as needed.

9. The draft SEIS is tentatively scheduled to be available for public review in early summer 1996.

Randall R. Inouye,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 95–18940 Filed 8–1–95; 8:45 am]

BILLING CODE 3710–41–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, August 9, 1995. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 11 a.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be held at 10 a.m. at the same location and will include status reports on the Christina River Basin study and proposed Lehigh River Basin flood warning system as well as an opportunity for public dialogue.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *C S Water & Sewer Associates D–76–21 (Revised).* An application to revise DRBC Docket No. D–76–21 to approve an existing discharge from a 0.1 million gallons per day (mgd) sewage treatment plant (STP) to an unnamed tributary of the Delaware River. The STP was originally approved predicated upon a discharge directly to the Delaware River. The project STP is located in Lackawaxen Township, Pike County, Pennsylvania. The STP will continue to serve the community of Masthope Rapids.

2. *Borough of Shoemakersville D–90–7 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 7.5 million gallons (mg)/30 days of water to the applicant's distribution system from Well Nos. 1, 3, 4, 5 and 6. Commission approval on March 28, 1990 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 7.5 mg/30 days. The project is located in the Borough of Shoemakersville and Perry Township, Berks County, Pennsylvania.

3. *Jackson Township Municipal Utilities Authority D–94–18 CP.* An application for approval of a ground water withdrawal project to supply up to 21.6 mg/30 days of water to the Six Flags Great Adventure theme park from new recharge/withdrawal Well No. 12, and to retain the existing withdrawal limit of 26.42 mg/30 days from all Delaware River Basin wells. During periods of seasonal low water demand, the applicant proposes to inject treated water from existing Well Nos. 7 and 10 into Well No. 12 at a rate of 250 gallons per minute (gpm) to store the higher quality water within the aquifer for later withdrawal during periods of seasonal high water demand. The project is located in Jackson Township, Ocean County, New Jersey.

4. *Rosenberger's Dairies, Inc. D–95–1.* An application for approval of a ground water withdrawal project to supply up to 2.6 mg/30 days of water to the applicant's dairy production and processing facility from new Well No. 4, and to limit the withdrawal from all wells to 3.4 mg/30 days. The project is located in Hatfield Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

5. *Crompton & Knowles Corporation D–95–8.* A project to modify and expand the applicant's existing 0.18 mgd Gibraltar industrial wastewater treatment plant (IWTP) by replacing an earthen bio-lagoon surface impoundment with above-ground tanks. The IWTP will continue to serve only the applicant's dye and chemical manufacturing plant and will discharge at an average monthly rate of 0.22 mgd via an existing outfall on the Schuylkill River. The IWTP is located approximately one mile east of the Town of Gibraltar in Robeson Township, Berks County, Pennsylvania.

6. *Tel Hai Retirement Community D–95–21.* A project to modify and expand an existing 50,000 gallons per day (gpd) tertiary level STP to provide an additional 20,000 gpd capacity in order to serve a new apartment complex and community center for the applicant's retirement community. The STP will continue to serve only the applicant's retirement community in Honey Brook Township, Chester County, Pennsylvania. The expanded STP will continue to provide tertiary treatment and discharge to Two Log Run, a tributary of the West Branch Brandywine Creek.

7. *Connaught Laboratories Inc. D–95–34.* A project to modify the applicant's existing 0.15 mgd IWTP which will continue to serve both the applicant's vaccine production operations and the adjacent Salk Institute laboratory. The IWTP is located just east of State Route 611 in Pocono Township, Monroe County, Pennsylvania. The treated effluent will continue to discharge to Swiftwater Creek and the permitted discharge volume and effluent characteristics will remain unchanged.

8. *George School D–95–39.* An application for approval of a ground

water withdrawal project to supply up to 5.18 mg/30 days of water to the applicant's pond from Newtown Artesian Water Company's Well No. 10 which is located in Newtown Township. The proposed allocation of ground water is an increase from 1.37 mg/30 days to 5.18 mg/30 days. The pond will be used for teaching ecological and environmental courses. The project well is located in Newtown Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: July 25, 1995.

Susan M. Weisman,

Secretary.

[FR Doc. 95–18941 Filed 8–1–95; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of Closing Date for Filing the Fiscal Operations Report for 1994–95 and Application to Participate for 1996–97 (FISAP) in the Federal Perkins Loan, Federal Supplemental Educational Opportunity Grant (FSEOG), and Federal Work-Study (FWS) Programs (ED FORM 646–1; OMB No. 1840–0073).

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to apply for fiscal year 1996 funds—for use in the 1996–97 award year (July 1, 1996 through June 30, 1997)—under the Federal Perkins Loan, FWS, and FSEOG programs. Under these programs, the Secretary allocates funds to institutions for students who need financial aid to meet the costs of postsecondary education. An institution is not required to establish eligibility prior to applying for funds. However, the Secretary will not allocate funds under the Federal Perkins Loan, FWS, and FSEOG programs for the 1996–97 award year to any institution that is not currently eligible unless the institution files its institutional participation application and other documents required for an eligibility and certification determination by the closing date that will appear in a separate notice in the **Federal Register**.

The Secretary further gives notice that an institution that had a Federal Perkins Loan fund or expended FWS or FSEOG funds during the 1994–1995 award year (July 1, 1994, through June 30, 1995) is required to submit a Fiscal Operations Report to the Secretary to report its program expenditures as of June 30, 1995.

Applicants that did not participate in the Federal Perkins Loan Program, FWS Program, or FSEOG Program in the 1994–95 award year will be required to submit data for the application portion of the FISAP only. The Department is mailing only the application portion of the FISAP to first-time applicants.

In addition, an institution must submit one original completed FISAP signature page and one original signed combined lobbying, debarment, and drug-free workplace certifications form (ED 80–0013 and referred to collectively as the ''compliance certifications'' form) for the 1996–97 award year.

The Federal Perkins Loan, FWS, and FSEOG programs are authorized by parts E and C, and part A, subpart 2, respectively, of title IV of the Higher Education Act of 1965, as amended.

DATES: *Closing Date and Methods for Submitting a FISAP and Required Signed Documents.* An institution may submit its FISAP by—

(1) Submitting the completed data on a data diskette provided by the Department of Education (the Department);

(2) Creating a tape from data stored on a mainframe computer and submitting that tape in a format defined by the Department; or

(3) Transmitting the data from a personal or mainframe computer through a modem.

To ensure consideration for 1996–97 funds, an institution must submit an electronic FISAP by data diskette, tape, or modem, as well as one original completed FISAP signature page and one original signed ''compliance certifications'' form by September 29, 1995.

ADDRESSES: *FISAP Delivered by Mail.* A diskette or tape containing FISAP data along with one original completed FISAP signature page and one original signed ''compliance certifications'' form must be addressed to FISAP, c/o Universal Automation Labs (UAL), Suite 500, 8300 Colesville Road, Silver Spring, Maryland 20910.

An institution must show proof of mailing its FISAP and the required signed documents by September 29, 1995. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the Secretary of Education.

If a FISAP and the required signed documents are sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

FISAP Delivered by Hand. A diskette or tape containing FISAP data along with one original completed FISAP signature page and one original signed ''compliance certifications'' form must be taken to Universal Automation Labs (UAL), Suite 500, 8300 Colesville Road, Silver Spring, Maryland.

Hand-delivered FISAP diskettes or tapes and the required signed documents will be accepted between 9 a.m. and 5 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays. A FISAP and the required signed documents that are hand-delivered will not be accepted after 5 p.m. on September 29, l995.

FISAP Delivered Electronically. A FISAP that is delivered electronically must be transmitted by either a personal or mainframe computer to the host Department computer using a modem. If you are transmitting electronically via a modem, the data transmission must be completed prior to midnight, Eastern time, on September 29, 1995. (For purposes of this notice, this deadline means that an institution has all of September 29, 1995, to transmit electronically via a modem.) The institution should print a copy of its transmission receipt for its records. In addition, one original completed FISAP signature page and one original signed ''compliance certifications'' form must be mailed to Electronic FISAP, c/o Universal Automation Labs (UAL), Suite 500, 8300 Colesville Road, Silver Spring, Maryland 20910, by September 29, l995. An institution must show proof of mailing the required signed documents by the deadline. Proof of

mailing is explained under the heading ''FISAP Delivered by Mail.''

SUPPLEMENTARY INFORMATION: FISAP materials are mailed by the Department in late July 1995. An institution must prepare and submit its FISAP in accordance with the information included in the package.

The program information package is intended to aid applicants in applying for assistance under these programs. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the programs.

Applicable Regulations

The following regulations apply to these programs:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) Federal Perkins Loan Program, 34 CFR Part 674.

(3) Federal Work-Study Programs, 34 CFR Part 675.

(4) Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 676.

(5) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

(6) New Restrictions on Lobbying, 34 CFR Part 82.

(7) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.

(8) Drug-Free Schools and Campuses, 34 CFR Part 86.

FOR FURTHER INFORMATION CONTACT: To receive information or to request FISAP materials, contact Ms. Sandra Donelson, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 4714, ROB–3), Washington, D.C. 20202–5458. Telephone (202) 708–9751. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

(Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*)

(Catalog of Federal Domestic Assistance Numbers: 84.038 Federal Perkins Loan Program; 84.033 Federal Work-Study Program; and 84.007 Federal Supplemental Educational Opportunity Grant Program)

Dated: July 27, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–18928 Filed 8–1–95; 8:45 am]

BILLING CODE 4000–01–P

Office of Postsecondary Education

Availability of the Amendments to the National Direct Student Loan and Federal Perkins Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits for the 1994–95 School Year

AGENCY: Department of Education.

ACTION: Notice of availability of the amendments to the l994–95 National Direct Student Loan and Federal Perkins Loan Programs Directory of Designated Low-Income Schools.

SUMMARY: Institutions and borrowers participating in the Federal Perkins Loan and National Direct Student Loan Programs and other interested persons are advised that they may obtain information regarding the amendments to the National Direct Student Loan and Federal Perkins Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits for the l994–95 School Year (Directory). The amendments identify changes in the list of schools that qualify borrowers for teacher cancellation benefits under each of the loan programs.

DATES: The amendments to the Directory are currently available.

ADDRESSES: Information concerning specific schools listed in the amendments to the Directory may be obtained from Systems Administration Branch, Campus-Based Programs System Division, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 4621, ROB–3), Washington, D.C. 20202–5453, Telephone (202) 708–6730.

Information concerning deferment and/or cancellation of a National Direct Student Loan or Federal Perkins Loan may be obtained from Susan M. Morgan, Section Chief, Campus-Based Loan Programs Section, Loans Branch, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 3053, ROB–3), Washington, D.C. 20202–5345, Telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: The amendments to the Directory are available at (l) each institution of higher education participating in the Federal Perkins Loan Program, (2) each of the fifty-seven (57) State and Territory Departments of Education, (3) each of the major Federal Perkins Loan billing services, and (4) the U.S. Department of Education.

SUPPLEMENTARY INFORMATION: The Secretary of Education published a notice in the **Federal Register** (60 FR 5659) on January 30, l995, indicating that the Directory was available. The Secretary has revised the Directory due to the opening and closing of schools, school name changes, and the need for other corrections. These revisions are listed in the amendments to the Directory.

The procedures for selecting the schools that qualify borrowers for cancellation benefits are described in the Federal Perkins Loan Program regulations at 34 CFR 674.53 and 674.54. The Secretary has determined that for the l994–95 academic year full-time teaching in the schools set forth in the Directory and the amendments to the Directory qualifies a borrower for cancellation benefits.

The Secretary is providing the amendments to the Directory to each institution participating in the Federal Perkins Loan Program. Borrowers and other interested parties may check with their lending institutions, the appropriate State or Territory Department of Education, regional offices of the Department of Education, or the Office of Postsecondary Education of the Department of Education concerning the identity of qualifying schools for the l994–95 academic year.

The Office of Postsecondary Education retains, on a permanent basis, copies of all published Directories and amendments.

(Catalog of Federal Domestic Assistance Number 84.037; National Defense/Direct and Federal Perkins Student Loan Cancellations)

Dated: July 28, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–18927 Filed 8–1–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

(FE Docket No. EA–109)

Application to Export Electricity; Arizona Public Service Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Arizona Public Service Company (APS) has requested authorization to export electric energy to Mexico.

DATES: Comments, protests, or requests to intervene must be submitted on or before September 1, 1995.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael T. Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act. In addition, the construction, connection, operation, and maintenance of facilities at the international border of the United States for the transmission of electrical energy is prohibited in the absence of a Presidential permit pursuant to Executive Order No. 12038.

On June 22, 1995, APS filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to the Comision Federal de Electricidad (CFE), the national electric utility of Mexico, pursuant to section 202(e) of the Federal Power Act. APS proposes to export to CFE emergency energy pursuant to a Reciprocal Emergency Assistance Agreement between APS and CFE. This agreement commits both parties to establish 34.5 kilovolt (kV) electric transmission interconnections between the communities of Agua Prieta, Sonora, Mexico and Douglas, Arizona, and San Luis Rio Colorado, Sonora, Mexico, and San Luis, Arizona, and to provide emergency assistance when requested by the other party in order to mutually increase each party's distribution system reliability. Under two separate applications, APS has applied to FE for Presidential permits to construct the international transmission facilities required by this agreement. These applications have been docketed as PP–107 and PP–108, respectively.

Procedureal Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with sections 385.211 or 385.214 of the rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with: Dennis Beals, Arizona Public Service Company, P.O. Box 53999, Station 9860, Phoenix, Arizona 85072–3999, (602) 250–3101 and Bruce Gardner, Esq., Arizona Public Service Company, P.O. Box 53999, Station 9820, Phoenix, Arizona 850772–3999, (602) 250–3507.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE 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 petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or a security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after the DOE determines whether the proposed action would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities in accordance with section 202(e) of the Federal Power Act.

Before an export authorization may be issued, the environmental impacts of the proposed DOE action (i.e., granting the export authorization, with any conditions and limitations, or denying it) must be evaluated pursuant to the National Environmental Policy Act of 1969.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on July 26, 1995.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–19032 Filed 8–1–95; 8:45 am]

BILLING CODE 6450–01–P

[Number DE–PS07–95ID13375]

Amendment No. 1 to Solicitation for Financial Assistance; Refractory Containment Research, Development and Demonstration

The U.S. Department of Energy, Idaho Operations Office, published a complete solicitation in the **Federal Register** (Vol. 60, No. 122, Page Numbers 32948 through 32952) on June 26, 1995, requesting cost shared applications for Refractory Containment Research, Development and Demonstration. The purpose of this Amendment No. 1 is to change the following:

1. Page 32948, ''**DATES:** The deadline for receipt of applications is 4:00 p.m. MDT, August 17, 1995.'' is changed to ''**DATES:** The deadline for receipt of applications is 4:00 p.m. MDT, August 31, 1995.''

2. Page 32949, under E. Application Evaluation, a. Application Deadline: The sentence, ''The deadline for receipt of applications is 4:00 p.m. MDT, August 17, 1995.'' is changed to ''The deadline for receipt of applications is 4:00 p.m. MDT, August 31, 1995.''

3. Page 32950, under e. Merit Reviews. The sentence ''Selections for negotiations are expected to be made October 6, 1995, and financial assistance awards are expected to be made beginning November 26, 1995.'' is changed to ''Selections for negotiations are expected to be made October 20, 1995, and financial assistance awards are expected to be made beginning December 9, 1995.''

Dated: July 20, 1995.

R. Jeffrey Hoyles,

Director of Procurement Services Division.

[FR Doc. 95–19033 Filed 8–1–95; 8:45 am]

BILLING CODE 6450–01–M

Environmental Management Site Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy

ACTION: Notice of open meeting

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site

Specific Advisory Board (EM SSAB), Kirtland Area Office (Sandia)

DATES: Thursday, August 10, 1995: 6:45 pm–10:00 pm (Mountain Daylight Time).

ADDRESSES: Indian Pueblo Cultural Center, 2401 12th Street NW., Albuquerque, NM.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185 (505)845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:45 pm—Public Comment Period
7:00 pm—Issues Discussion: Future Land Use, Corrective Action Management Units
8:30 pm—Board Organizational Structure
9:30 pm—Evaluation
10:00 pm—Adjourn

A final agenda will be available at the meeting Thursday, August 10, 1995.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above.

Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting, due to programmatic issues that had to be resolved prior to publication.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on July 28, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–19031 Filed 8–1–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

[Case No. CAC–007]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Central Air Conditioner and Central Air Conditioning Heat Pump Test Procedure to Kool-Fire

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

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. CAC–007) granting a Waiver to Kool-Fire from the existing Department of Energy test procedure for central air conditioners and central air conditioning heat pumps. The Department is granting Kool-Fire's Petition for Waiver from the existing Department of Energy central air conditioner and central air conditioning heat pump test procedure for the company's lines of HC and LTH burner-assisted heat pumps.

FOR FURTHER INFORMATION CONTACT:

Michael G. Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9611

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR Part 430, § 430.27(l), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Kool-Fire has been granted a Waiver from the existing Department of Energy central air conditioner and central air conditioning heat pump test procedure for the company's lines of HC and LTH burner-assisted heat pumps.

Issued in Washington, DC, on July 19, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order; Department of Energy; Office of Energy Efficiency and Renewable Energy

In the Matter of: Kool-Fire (Case No. CAC–007).

Background:

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires the Department to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, the Department further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned the Department for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become

effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until the Department issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Kool-Fire filed a ''Petition for Waiver,'' dated July 18, 1994, in accordance with Section 430.27 of 10 CFR Part 430. The Department published in the **Federal Register** on March 3, 1995, Kool-Fire's petition, and solicited comments, data, and information respecting the petition. 60 FR 11967. Kool-Fire also filed an ''Application for Interim Waiver'' under Section 430.27(g), which the Department granted on February 22, 1995. 60 FR 11968, March 3, 1995.

No comments were received concerning either the ''Petition for Waiver'' or the ''Interim Waiver.'' The Department consulted with the Federal Trade Commission (FTC) concerning the Kool-Fire Petition. The FTC did not have any objections to the issuance of the waiver to Kool-Fire.

Assertions and Determinations

Kool-Fire's Petition seeks a waiver from the Department's testing of the heating mode operation for its burner-assisted heat pumps because the current Department test procedure does not address burner-assisted heat pumps. Thus, the Department is granting a waiver of the requirement to test Kool-Fire's HC and LTH models in the heating mode.

It is, therefore, ordered that:

(1) The ''Petition for Waiver'' filed by Kool-Fire (Case No. CAC–007) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4) and (5).

(2) Kool-Fire shall be required to test its lines of HC and LTH heat pumps on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix M, for the cooling mode of operation, Section 2.1. The heating mode test, Section 2.2, is waived.

(3) The Waiver shall remain in effect from the date of issuance of this Order until the Department prescribes final test procedures appropriate to the HC and LTH lines of burner-assisted heat pumps manufactured by Kool-Fire.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective July 27, 1995, this Waiver supersedes the Interim Waiver granted Kool-Fire on February 22, 1995. 60 FR 11967, March 3, 1995 (Case No. CAC–007).

Issued In Washington, DC, on July 27, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–19011 Filed 8–1–95; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration

Proposed Agency Information Collection Under OMB Review

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the Proposed Revision of Form RW–859, ''Nuclear Fuel Data,'' Proposed New Form RW–859S, ''Nuclear Fuel Data Supplement,'' and Solicitation of Comments.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed revision to the Form RW–859, ''Nuclear Fuel Data,'' and proposed new survey Form RW–859S, ''Nuclear Fuel Data Supplement.''

DATES: Written comments must be submitted by October 2, 1995. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Ms. Kathy Gibbard, Program Manager, Form RW–859 and RW–859S, U.S. Department of Energy, Energy Information Administration (EI–531), 1000 Independence Avenue, S.W., Washington, DC 20585, or via e-mail (internet) Kathy.Gibbard.@HQ.DOE.GOV. FAX (202) 254–5765.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ms. Gibbard at the address listed above, telephone (202) 254–5559.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. No. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The Energy Information Administration, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

The Nuclear Waste Policy Act of 1982, as amended (NWPA), 42 U.S.C. 10101 *et seq.*, requires that the Secretary develop and implement programs to dispose of spent nuclear fuel. The Office of Civilian Radioactive Waste Management (OCRWM) uses the information from Form RW–859 to understand and explore the specific requirements of developing and conducting programs to effectuate the purposes of the NWPA.

The EIA administers the Form RW–859, ''Nuclear Fuel Data'', which is used to collect data from owners of commercial nuclear power plants and owners and caretakers of spent nuclear fuel. The Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) authorizes the EIA to collect data. The current Form RW–859 collects data on every fuel assembly discharged from domestic commercial nuclear reactors,

spent fuel projected to be discharged, and spent fuel storage pool inventories and capacities. The form has been approved through December 31, 1997. Major revisions to Form RW–859 necessitate that the proposed form and new supplemental schedule be approved by the Office of Management and Budget (OMB).

II. Current Actions

This notice is to solicit comments on proposed revisions to Form RW–859 and corresponding instructions. The extension request to OMB will be through December 31, 1998. The DOE is proposing to reduce the content of the Form RW–859 survey to only collect data elements that require annual update. Data that are not subject to annual revision will be collected every five years on a new Form RW–859S supplementary survey form. A summary of the proposed changes follows.

The following items will no longer be collected on the survey:

- Capacity data other than licensed capacity and current usable capacity
- Temporarily discharged fuel (all discharged fuel will now be designated as permanently discharged) and changes in assembly status
- Cross-reference assembly identifiers including American National Standard Institute (ANSI) identifier and fuel fabricator assembly identifiers
- Data on reconstituted fuel.

The following items will no longer be collected annually on the Form RW–859 survey, but will be collected once every five years on the Form RW–859S survey supplement:

- Dates not subject to annual revision (license renewal, reactor retirement, etc.)
- Cask-handling data
- Specific data on canisters and their contents
- Nonfuel components data.

The following items have been added to the annual Form RW–859 survey:

- Questions on quality assurance procedures and traceability
- Assembly-specific information on initial uranium content, initial enrichment, and burnup
- Current cycle start date.

The following will now be collected on the five-year Form RW–859S supplement:

- Reactor information including type, nuclear steam system supplier, design type, operational status, location, and rating
- Pool site configuration
- Crane data including capacity, limiting factors, dimensions, and clearance
- Site specific access and configuration data for the receiving/upending area, cask handling area, pool cask loading area, and set-down platform area
- Transportation data including information on on-site roads, rail, and barge
- Historical assembly-specific data not previously reported.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

General Issues

EIA is interested in receiving comments from persons regarding:

A. Whether the proposed collection(s) of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility. Practical utility is the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can data be submitted in accordance with the due date specified in the instructions?

C. Public reporting burden for the annual Form RW–859 data collection is estimated to average 40 hours per response. Public reporting burden for the five-year Form RW–859S supplement is estimated to be 100 hours for the initial data collection and 20 hours for subsequent data collections. Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

Please comment on (1) the accuracy of our estimate and (2) how the agency could minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology.

D. What is the estimated cost of completing these forms, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

E. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Can you use data at the levels of detail indicated on the forms?

B. For what purpose would you use the data? Be specific.

C. Are there alternate sources of data and do you use them? If so, what are their deficiencies and/or strengths?

D. For the most part, information is published by EIA in U.S. customary units, e.g., cubic feet of natural gas, short tons of coal, and barrels of oil. Would you prefer to see EIA publish more information in metric units, e.g., cubic meters, metric tons, and kilograms? If yes, please specify what information (e.g., coal production, natural gas consumption, and crude oil imports), the metric unit(s) of measurement preferred, and in which EIA publication(s) you would like to see such information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, July 20, 1995.

John Gross,

Acting Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 95–18391 Filed 8–1–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 2680–017 Michigan]

Consumers Power Company and the Detroit Edison Company; Notice of Availability of Draft Environmental Assessment

July 27, 1995.

A draft environmental assessment (DEA) is available for public review. The DEA is for a settlement agreement containing proposed measures for fish protection and angler access at the Ludington Pumped Storage Project (FERC No. 2680). The DEA finds that approval of the settlement agreement and implementation of the proposed measures for fish protection and angler access would not constitute a major federal action significantly affecting the quality of the human environment. The Ludington Pumped Storage Project is located on the Eastern Shore of Lake Michigan in Mason County, Michigan.

The DEA was prepared by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed at the Commission's Reference and Information Center, Room 3308, 941 North Capitol Street, N.E., Washington, D.C. 20426. Copies can also be obtained by calling the project manager listed below.

Please submit any comments within 30 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Please denote ''Comments: Project No. 2680–017'' on all comments. For more information, please contact the project manager, John Mudre, at (202) 219–1208.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18958 Filed 8–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–257–001]

Equitrans, Inc.; Notice of Motion to Place Rates Into Effect

July 27, 1995.

Take notice that on July 24, 1995, Equitrans, Inc. (Equitrans) filed a motion to place into effect revised tariff sheets in accordance with the Commission's May 31, 1995 Order in this proceeding.

Equitrans states that the sheets listed in Appendix A of the Motion were included in Equitrans' April 28, 1995 filing, and Equitrans is moving to place them into effect without any modification. The rate and tariff sheets listed in Appendix B of the motion have been modified to incorporate minor clerical and conforming changes. Both sets of tariff sheets are proposed to become effective on August 1, 1995 in compliance with the May 31, 1995 Order. Equitrans has requested a waiver to permit the minor and clerical changes to the tariff sheets contained in Appendix B and any other waivers necessary to permit the Appendix A and B tariff sheets to become effective August 1, 1995.

Equitrans also states that the tariff sheets implement a new Appalachian pooling service for Equitrans' customers (APS service) which will make it easier for customers to nominate Appalachian production on the Equitrans system, while reducing administrative responsibility of the pipeline in scheduling and balancing the numerous Appalachian receipt points which Equitrans operates.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Section 835.211 of the Commission Rules of Practice and Procedure. All such protests should be filed on or before August 3, 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 this proceeding. Parties that have already filed motions to intervene in this proceeding need not file another 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. 95–18894 Filed 8–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–394–00]

Tennessee Gas Pipeline Company; Notice of Petition for Extension

July 27, 1995.

Take notice that on July 20, 1995, Tennessee Gas Pipeline Company (Tennessee) tendered for filing a Statement in Support of Maintaining its Transportation Cost Rate Adjustment Mechanism (TCRA) contained in Article XXIV of the General Terms and Conditions of its FERC Gas Tariff, Fifth Revised Volume No. 1.

Tennessee states that it is filing its Statement in accordance with Commission's ruling, in Tennessee's restructuring dockets, that indicates it intended to review the TCRA two years from the effective date of restructured services on Tennessee's system. Tennessee states that the TCRA should be maintained because the TCRA is necessary to allow Tennessee to continue to recover its eligible and prudent stranded upstream transportation costs in accordance with the Commission's findings in Docket No. RP93–148 and in the ''Ozark Exit Fee'' docket.

Tennessee also states that the TCRA should be maintained because Tennessee has made significant progress in reducing its TBO costs, and that the TCRA has been shown to be a proven and effective TCRA ''tracker'' mechanism that ensures that only those costs incurred under the unexpired TBO contracts are recovered from Tennessee's customer for the term of those contracts.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 3, 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. 95–18896 Filed 8–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–48–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 27, 1995.

Take notice that on July 25, 1995, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 revised tariff sheets, as listed on Appendix A. attached to the filing,

proposed to be effective April 1, 1995, June 1, 1995, June 11, 1995 and July 1, 1995.

Trunkline states that this filing is being made in compliance with Section 154.41(b) of the Commission's Regulations. The revised tariff sheets reflect updates to the Index of Firm Customers.

Trunkline states that copies of this filing are being mailed to affected shippers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 3, 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 ar on file with the Commission and are available for public inspecion in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18895 Filed 8–1–95; 8:45 am]

BILLING CODE 6717–01-M

[Docket No. ER95–1358–000]

Wisconsin Energy Company and Northern States Power Company; Notice of Filing

July 27, 1995.

Take notice that on July 10, 1995, Wisconsin Energy Company and Northern States Power Company tendered for filing two transmission service tariffs: A Network Integration Service Tariff, and a Point-to-Point Transmission Service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 28, 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 area available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18959 Filed 8–1–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearing and Appeals

Cases Filed; During the Week of June 26 Through June 30, 1995

During the Week of June 26 through June 30, 1995, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: July 26, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 26 through June 30, 1995]

Date	Name And Location Of Applicant	Case No.	Type of Submission
June 23, 1995 .	General Equities, Inc., Washington, D.C.	RR304–31	Request for Modification/Rescission in the Arco Refund Proceeding. If Granted: The February 23, 1995 Decision and Order, Case Number RR304–31, issued to General Equities, Inc. would be modified regarding the firm's application for refund submitted in the ARCO refund proceeding.
June 26, 1995 .	Fruehauf Trailer Corporation, Cleveland, Ohio.	RR321–184	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The May 16, 1995 Dismissal, Case No. RF321–20350, issued to Freuhauf Trailer Corporation, would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.
June 26, 1995 .	Richland Operations Office, Richland, Washington.	VSO–0044	Request for Hearing under 10 CFR Part 710. If Granted: An individual whose security clearance was suspended by the Richland Operations Office would receive a hearing under 10 CFR Part 710.
June 26, 1995 .	Simmons Oil Corp., Washington, D.C.	RD326–323	Motion for Discovery. If Granted: Discovery would be granted to Simmons Oil Corporation in connection with the statement of objections submitted in response to a proposed decision that tentatively denied the firm's request for a refund based upon alleged overcharges made by the Tesoro Petroleum Corporation.
June 28, 1995 .	Albuquerque Operations Office, Albuquerque, New Mexico.	VSA–0018	Request for Review of Opinion under 10 CFR Part 710. If Granted: The June 16, 1995 Opinion of an Office of Hearings and Appeals Hearing Officer, Case No. VSO–0018, would be reviewed at the request of an individual whose security clearance was suspended by the Albuquerque Operations Office.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of June 26 through June 30, 1995]

Date	Name And Location Of Applicant	Case No.	Type of Submission
June 28, 1995 .	Albuqerque Operations Office, Albuquerque, New Mexico.	VSO–0045	Request for Hearing under 10 CFR Part 710. If Granted: An individual whose security clearance was suspended by the Albuquerque Operations Office would receive a hearing under 10 C.F.R. Part 710.
June 28, 1995 .	Crock Texaco, Crock Texaco Service, Crock Texaco Service La Mesa, California.	RR321–186, RR321–187, RR321–188	Requests for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The June 15, 1995 Dismissal, Case Nos. RF321–19894, RF321–19895 and RF321–19896, issued to Crock Texaco, Crock Texaco Service and Crock Texaco Service would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.
June 30, 1995 .	Herbert Easterly, Crossville, Tennessee	VFA–0054	Appeal of an Information Request Denial. If Granted: The Freedom of Information Request Denial issued by the DOE Office of Inspector General would be rescinded, and Herbert Easterly would receive access to certain DOE information.

REFUND APPLICATIONS RECEIVED

[June 26 through June 30, 1995]

Date Received	Name of Refund Proceeding/Name of Refund Application	Case Number
6/26/95	Supplemental crude refunds	RB272–7 thru RB272–11.
6/26/95 thru 6/30/95	ARCO refund applications	RF304–15472 thru RF304–15478.
6/26/95 thru 6/30/95	Crude oil refund applications RG272–362 thru RG272–492..	
6/26/95	Supplemental crude refunds	RK272–499 thru RK272–528.
.....	Texaco refund applications	RF321–21076 thru RF321–21079.

[FR Doc. 95–19029 Filed 8–1–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of cases Filed; Week of June 5 through June 9, 1995

During the Week of June 5 through June 9, 1995, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585. July 26, 1995.

Dated: July 26, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 5 to June 9, 1995]

Date	Name and location of applicant	Case No.	Type of submission
6/6/95	Kanab Texaco, Kanab, Utah	RR321–183	Modification/Rescission First Stage. If granted: The May 12, 1995 Dismissal Letter, Case Number RF321–6331, issued to Kanab Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
6/7/95	Oak Ridge Operations Office, Oak Ridge, Tennessee.	VSA–0014	Request for Review of Opinion under 10 C.F.R. Part 710. If granted: The May 8, 1995 Opinion of the Office of Hearings and Appeals, Case No. VSO–0014, would be reviewed at the request of an individual employed at Oak Ridge Operations Office.
6/7/95	Oakland Operations Office, Oakland, California.	VSO–0039	Request for hearing under 10 C.F.R. Part 710. If granted: An individual employed at Oakland Operations Office would receive a hearing under 10 C.F.R. Part 710.
6/9/95	Albuquerque Operations Office, Albuquerque, New Mexico.	VSO–0040	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual employed at Albuquerque Operations Office would receive a hearing under 10 C.F.R. Part 710.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of June 5 to June 9, 1995]

Date	Name and location of applicant	Case No.	Type of submission
6/6/95	Munir A. Malik, Hartford, Connecticut	VFA–0048	Appeal of an Information Request Denial. If granted: The May 2, 1995 Freedom of Information Request Denial issued by Albuquerque Operations Office would be rescinded, and Munir A. Malik would receive access to certain Department of Energy information.
6/5/95	Albuquerque Operations Office, Albuquerque, New Mexico.	VSO–0038	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual employed at Albuquerque Operations Office would receive a hearing under 10 C.F.R. Part 710.
6/5/95	Sangre deCristo Animal Protection, Inc., Albuquerque, New Mexico.	VFA–0047	Appeal of an Information Request Denial. If granted: The April 27, 1995 Freedom of Information Request Denial issued by the U.S. Department of Energy would be rescinded, and Sangre deCristo Animal Protection, Inc. would receive access to certain DOE information.

REFUND APPLICATIONS RECEIVED

[Week of June 5 to June 9, 1995]

Date received	Name of refund proceedings/name of refund application	Case No.
3/17/95 thru 6/9/95	Supplemental Crude Applications	RK272–204 thru RK272–317
6/5/95 thru 6/9/95	Crude Oil Refund Applications	RG272–296 thru RG272–316
6/5/95	State Escrow Distribution	RF302–16
6/7/95	Citronelle Refunds Applications	RF345–41 thru RF345–43
6/8/95	Texaco Refund Applications	RF321–21072 thru RF321–21074
6/9/95	Supplemental Crude Refunds	RB272–5

[FR Doc. 95–19030 Filed 8–1–95; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods; Reference and Equivalent Method Designations

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated two additional equivalent methods and one additional reference method for ambient air monitoring. One of the equivalent methods is for the measurement of ambient concentrations of ozone and the other is for the measurement of ambient concentrations of lead. The reference method is for the measurement of ambient concentrations of carbon monoxide.

The new equivalent method for ozone is an automated method (analyzer) which utilizes the measurement principle based on absorption of ultraviolet radiation by ozone at a wavelength of 254 nm. This new designated method is identified as follows:

EQOA–0895–105, ''Environment S.A. Model $Q_3$41M UV Photometric Ozone Analyzer,'' operated on a full scale range of 0–500 ppb, at any temperature in the range of 15° C to 35° C, with the response time set to 50 seconds, and with or without any of the following options:

(1) Internal Ozone Generator
(2) Span External Control
(3) RS232–422 Serial Interface
(4) Internal Printer

Note: In addition to the standard U.S. electrical power voltage and frequency (115 Vac, 60 Hz), this analyzer is approved for use, with proper factory configuration, on 50 Hertz line frequency at any of the following voltage ranges: 105–125 Vac (115 V nominal) or 210–250 Vac (230 V nominal).

This method is available from Environmental S.A., 111, bd Robespierre, 78300 Poissy, France or from Environment U.S.A., 570 Higuera Street, Suite 25, San Luis Obispo, CA 93401. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 60, Number 111, June 9, 1995, page 30535.

The new reference method for carbon monoxide is an automated method (analyzer) which utilizes a cross flow modulated version of the measurement principle (non-dispersive infrared (NDIR) photometry) and the calibration procedure specified in appendix C of 40 CFR part 50. The new designated method is identified as follows:

RFCA–0895–106, ''Horiba Instruments Incorporated, Model APMA–360 Ambient Carbon Monoxide Monitor,'' operated on the 0–50 ppm range, with the Line Setting set to ''MEASURE'', with the Analog Output set to ''MOMENTARY VALUE'', and with or without the optional Rack Mounting Plate and Side Rails.

Note: In addition to the standard U.S. electrical power voltage and frequency (115 Vac, 60 Hz), this analyzer is approved for use, with proper factory configuration, on 50 Hertz line frequency at any of the following voltage ranges: 100–115 Vac and 220–240 Vac.

This method is available from Horiba Instruments Incorporated, 17671 Armstrong Avenue, Irvine, CA 92714. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 60, Number 111, June 9, 1995, page 30535.

A test analyzer representative of each of these methods has been tested by the respective applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicants, EPA has determined, in accordance with part 53, that these methods should be designated, respectively, as an

equivalent method and a reference method.

The new equivalent method for the determination of lead in suspended particulate matter collected from ambient air uses a graphite furnace atomic absorption method and is identified as follows:

EQL–0895–107, ''Determination of Lead Concentration in Ambient Particulate Matter by Flameless (Graphite Furnace) Atomic Absorption (City of Houston, Texas).''

The applicant's request for an equivalent method determination for the above method was received on May 23, 1995. This method has been tested by the applicant, the Health and Human Services Department of Houston, Texas, in accordance with the test procedures prescribed in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as an equivalent method.

This method uses the sampling procedure specified in the reference method for the determination of lead in suspended particulate matter collected from ambient air (43 FR 46258). Lead in the particulate matter is solubilized by extraction with nitric acid facilitated by heat. The lead content of the sample is analyzed by a Perkin Elmer HGA graphite furnace with Zeeman background correction and AS–40 Autosampler. Technical questions concerning the method should be directed to the City of Houston, Health and Human Services Department, Environmental Chemistry Service, 1115 S. Braeswood, Houston, Texas 77030.

The information submitted by the three applicants will be kept on file at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference or equivalent method, each of these methods is acceptable for use by States and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, each method must be used in strict accordance with the operation or instruction manual associated with the method or the procedures and specifications provided in the method description and subject to any limitations (e.g., operating temperature range) specified in the applicable designation (see description of the methods above). Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 of Appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, a designation applies to any analyzer which is identical to the analyzer described in the designation. In some cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading. States or other agencies using a graphite furnace atomic absorption method that employs procedures and specifications significantly different from those in method EQL–0895–107 must seek approval for their particular method under the provisions of Section 2.8 of Appendix C to 40 CFR part 58 (Modification of Methods by Users) or may seek designation of such a method as an equivalent method under the provisions of 40 CFR part 53.

Part 53 requires that sellers of designated method analyzers comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B–1 of part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with part 53.

(5) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been canceled or if adjustment of the analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, National Exposure Research Laboratory, Air Measurements Research Division (MD–78A), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these reference and equivalent methods is intended to assist the States in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning any of the methods should be directed to the applicant. Additional information concerning this action may be obtained from Frank F. McElroy, Air Measurements Research Division (MD–77), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–2622.

J.K. Alexander,

Acting Assistant Administrator for Research and Development.

[FR Doc. 95–18984 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–M

Acid Rain Division

[FRL–5269–4]

Acid Rain Provisions

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA today announces the allocation of allowances to small diesel refineries for desulfurization of fuel

during 1994, plus additional allocations for desulfurization from October 1, 1993 through December 31, 1993. The eligibility for and calculation of allowances to small diesel refineries is in accordance with Section 410(h) of the Clean Air Act, implemented at 40 CFR part 73, subpart G, and the notice published at 60 FR 14836, March 21, 1995.

FOR FURTHER INFORMATION CONTACT: Kathy Barylski, EPA Acid Rain Division (6204J), 401 M St., SW, Washington DC; telephone (202) 233–9074.

SUPPLEMENTARY INFORMATION: EPA's Acid Rain Program was established by Title IV of the Clean Air Act Amendments of 1990 (CAAA) to reduce acid rain in the continental United States. The Acid Rain Program will achieve a 50 percent reduction in sulfur dioxide (SO_2) emissions from utility units. The SO_2 reduction program is a flexible market-based approach to environmental management. As part of this approach, EPA allocates ''allowances'' to affected utility units. Each allowance is a limited authorization to emit up to one ton of SO_2. At the end of each calendar year, each unit must hold allowances in an amount equal to or greater than its SO_2 emissions for the year. Allowances may be bought, sold, or transferred between utilities and other interested parties. Those utility units whose annual emissions are likely to exceed their allocations may install control technologies or switch to cleaner fuels to reduce SO_2 emissions or buy additional allowances.

Section 410(h) of the Clean Air Act provides allowances for small diesel refineries that desulfurize diesel fuel from October 1, 1993 through December 31, 1999. Small refineries are not otherwise affected by the Acid Rain Program and do not need the allowances to comply with any provision of the Clean Air Act. Thus, the allowances serve as a financial benefit to small diesel refineries desulfurizing diesel fuel. On July 7, 1994, EPA announced the first allocation of allowances under the small diesel refinery program.

In late 1994, EPA was informed by several refiners that there was confusion regarding eligibility for the program. To resolve the confusion, EPA provided notice on March 21, 1995 (60 FR 14836) that extended the submittal date for requesting allowances for desulfurization in 1993 and in 1994 until May 15, 1995.

The following table lists 1,458 allowances to be allocated to five eligible refineries for desulfurization from October 1, 1993 through December 31, 1993. These refineries and allowances are in addition to the 7,944 allowances allocated in 1994 to fifteen refiners (see 59 FR 34811, July 7, 1994), bringing the total number of allowances allocated to 9,402. The allowances have a compliance year of 1995.

Refiner	Refinery name or location	Allocation
Big West Oil	Flying J	303
Crysen	Woods Cross, Utah	162
Hunt	Tuscaloosa, Alabama	580
La Gloria	Crown	400
Witco	Golden Bear	13

The following table lists the allowances allocated to eligible small diesel refineries for desulfurization in 1994. A total of 28215 allowances are allocated to 19 refiners. These allowances have a compliance year of 1995.

Refiner	Refinery name or location	Allocation
Big West Oil	Flying J	1230
Cenex	Laurel, Montana	1500
Crysen	Woods Cross, Utah	278
Frontier	Cheyenne, Wyoming	1500
Gary Williams	Bloomfield	1232
Giant	Ciniza	1275
Holly	Lea	1438
	Navajo	1479
	Montana	334
Hunt	Tuscaloosa, Alabama	1500
Kern	Bakersfield, California	1500
La Gloria	Crown	1500
Lion	El Dorato	1500
Paramount	Paramount, California	1500
Pennzoil	Atlas	1500
	Roosevelt	214
Powerine	Santa Fe Springs	1500
Pride	Abilene, Texas	1263
Sinclair	Little America	1362
	Sinclair, Wyoming	1500
	Tulsa, Oklahoma	1500
U.S. Oil & Refining	Tacoma, Washington	936
Witco	Golden Bear	51
Wyoming Refining	Denver, Colorado	623

Requests for allowances for desulfurization during 1995 are due no later than April 1, 1996. Allowances allocated in 1996 will have a compliance year of 1996.

Dated: July 27, 1995.

Paul M. Stolpman,

Director, Office of Atmospheric Programs.

[FR Doc. 95–18989 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5270–4]

Maryland: Final Determination of Adequacy of the State's Municipal Solid Waste Landfill Permitting Program

AGENCY: Environmental Protection Agency (Region III).

ACTION: Notice of Final Determination of Partial Program Adequacy for the State of Maryland's Application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether states have adequate ''permit'' programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, state/tribal landfill permit programs. The Agency intends to approve adequate state/tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, states/tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved state/tribal permit programs provide interaction between the state/tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in state/tribal areas with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the state/tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a state/tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

The State of Maryland, through the Maryland Department of the Environment (MDE), applied for a determination of adequacy under section 4005 of RCRA. EPA has reviewed Maryland's MSWLF permit program application and proposed a determination on March 21, 1995, that Maryland's MSWLF permit program is adequate to ensure compliance with a major portion of the revised MSWLF Criteria, as described below. EPA is today issuing a final determination that the State of Maryland's program is adequate for partial approval.

EFFECTIVE DATE: The determination of adequacy for the State of Maryland shall be effective immediately.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Mr. Andrew Uricheck, mailcode (3HW50), telephone (215) 597–7936.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires states to develop permitting programs that incorporate the Federal Criteria under 40 CFR part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which state/tribal programs must satisfy to be determined adequate.

EPA intends to approve state/tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for states or tribes to develop ''adequate'' programs for permits or other forms of prior approval, as imposing several minimum requirements. First, each state/tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the state/tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The state/tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the state/tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether state/tribal programs are ''adequate'' based on the criteria outlined above.

B. State of Maryland

On August 26, 1993, MDE submitted an application for adequacy determination for its MSWLF permit program. On March 21, 1995, EPA published a tentative determination of adequacy for most of the Maryland program, as described in detail below. Further background on the tentative determination of adequacy appears at Vol. 60, No. 54 **Federal Register** 14938–14941, March 21, 1995.

A public comment period began on March 21, 1995, and ended on May 19, 1995. As announced in the notice of tentative determination, a public hearing was held on May 17, 1995, in Baltimore, MD. Few people requested the opportunity to speak or offered public comments at the public hearing.

In the State's application for an adequacy determination, Maryland documented non-regulatory revisions to many portions of their existing program which had not fully met the Federal requirements in EPA's 40 CFR Part 258. EPA tentatively determined in the March 21, 1995 **Federal Register** that these changes, as described below, allowed Maryland's MSW landfill permitting program to be eligible for EPA approval as ensuring compliance with 40 CFR Part 258. Those portions of the Maryland municipal solid waste landfill permitting program proposed to be eligible for partial approval are as follows:

Subpart A—General

The existing Maryland requirements fully comply with 40 CFR Section 258.1, Purpose, Scope, and Applicability. MDE permit application checklists and internal guidance have been revised to fully incorporate the requirements of § 258.2, Definitions and § 258.3, Consideration of other Federal laws.

Subpart B—Location Restrictions

1. The existing Maryland requirements fully comply with § 258.11, Floodplains.

2. MDE permit application checklists and internal guidance have been revised to incorporate the requirements of § 258.10, Airport Safety; § 258.12, Wetlands; § 258.13, Fault areas; § 258.14, Seismic Impact Zones; § 258.15, Unstable Areas; and § 258.16, Closure of Existing Landfill Units.

Subpart C—Operating Criteria

1. The existing Maryland requirements fully comply with: § 258.20, Hazardous Waste Exclusion; § 258.21, Daily Cover; § 258.22, Disease Vectors Control; § 258.24, Air Criteria; § 258.25, Access requirements; and § 258.27, Surface Water Requirements.

2. MDE permit application checklists and internal guidance have been revised to incorporate the requirements of: § 258.23, Explosive Gas Control; § 258.26, Run-On/Run-Off Control Systems; § 258.28, Liquids Restrictions; and § 258.29, Record Keeping.

Subpart D—Landfill Design

1. MDE permit application checklists and internal guidance have been revised to incorporate the requirements of the § 258.40 design criteria. MDE now requires, as a minimum at all new MSW landfills and expansions to existing landfills, the bottom liner system described in § 258.40 (b). This consists of a composite liner composed of an upper synthetic (plastic) component in direct contact with a lower component at least two feet thick made of compacted soil (clay). MDE also allows an alternate design that meets the performance standards established in § 258.40 (a) and (c). MDE requires that conformance be demonstrated through the use of mathematical modeling, such as the Hydrologic Evaluation of Landfill Performance Model (HELP) and Multimedia Exposure Assessment Model (MULTIMED). MDE has, to date, submitted several alternate liner systems to EPA under the 40 CFR § 258.40(e) Liner Petition Process, which were subsequently approved, thereby demonstrating to EPA that this process is successfully in place. Submittal to EPA for such alternate liner approvals will no longer be required upon EPA final approval of this portion of the State's program.

Subpart E—Ground-Water Monitoring and Corrective Action

1. The previously existing Maryland requirements for groundwater sampling and corrective action were in need of substantial upgrading to meet the 40 CFR Part 258 requirements. Using existing authorities, MDE is requiring all current landfill operators to amend their existing ground-water monitoring plans to meet the requirements of Subpart E in terms of monitoring frequency and coverage, including the pollution parameters listed in Appendices I and II of 40 CFR Part 258. For proposed facilities and changes to existing facilities, MDE has amended their application forms and checklists to require the preparation and implementation of a monitoring program which incorporates the complete EPA requirements (§§ 258.50 thru 258.55).

2. In the assessment of corrective measures, selection of remedies, and implementation of corrective actions, MDE will use the EPA regulations (§§ 258.56; 258.57; 258.58) to guide their enforcement actions.

Subpart F—Closure and Post-Closure Care

1. Closure Criteria (§ 258.60)—Maryland now requires flexible membrane caps, where appropriate, in accordance with the EPA regulations, and is implementing the closure periods required.

C. Public Comments

EPA Region III received the following written and/or verbal public comments on its tentative determination of full program adequacy approval of the Maryland MSW landfill permitting program.

The first commenter questioned if revisions made by MDE to their existing guidances, checklists and procedures to more fully comply with the Federal requirements, but made before MDE regulations were revised, were in compliance with the Maryland Administrative Procedure Act (MAPA). This issue was specifically addressed in a December 15, 1994 letter from MDE to EPA, in response to a question raised by EPA. MDE, supported by a statement from their Attorney General's Office, and referencing several specific existing regulations, took the position that their existing regulations allow them flexibility to expand their checklists, procedures, and guidances to require additional information and/or impose additional conditions on persons applying for a landfill permit in Maryland. In response to the commenter, MDE reiterated this position to EPA in a letter dated June 26, 1995. Furthermore, MDE has formally agreed to incorporate these changes in their regulations as soon as possible, thereby satisfying another concern expressed by this commenter.

A commenter objected to MDE's commitment to specify a synthetic membrane final cover whenever the bottom liner permeability is less than 1x10–5 cm/sec, since this would be far more stringent than the EPA requirements. We agree that this is more stringent than the minimum EPA requirements, but the states are always free to adopt requirements more stringent than the federal requirements. MDE, in a letter dated June 26, 1995, agreed with this commenter, and has revised their checklists and proposed regulations to conform to the federal criteria requiring a final cover of no more permeability than the bottom liner. Thus, a synthetic cap will not be required under all circumstances, but only when the bottom liner contains a synthetic liner or at specific sites where the State believes a more impervious cap is needed to protect groundwater.

This same commenter stated that the MDE checklists for groundwater monitoring did not allow the owner/operators to do verification sampling before having to issue a notification of the finding and beginning assessment sampling, if a statistical increase is found under detection monitoring. This again is more stringent than the EPA requirements. MDE, in the June 26, 1995 letter to EPA, agreed with this statement also, and has revised their permit review checklists to adopt the federal criteria more exactly.

This same commenter noted that the ASTM standard for a minimum sampling well diameter is two inches, while the MDE requirement is four inches. He stated that the installation and operation of a four-inch diameter well was obviously more expensive than a two-inch well, and his company has successfully been using two-inch wells. EPA does not prescribe a minimum well diameter. MDE's response was that state procedures allow a permittee to request a variance to the four-inch diameter requirement, and, in fact, they have granted such variances to the commenter's company in the past.

A commenter also criticized the requirement to analyze groundwater samples for the extensive parameter lists contained in Appendices I and II, and the prohibition of field filtering groundwater samples. Both of these issues are beyond the scope of this determination, as they address the 40 CFR 258 regulations as issued. This commenter also noted that his company was working with EPA Headquarters over its concerns on the field-filtering ban. We encourage this effort as the more appropriate means to affect a change in the EPA requirements.

A commenter objected to the MDE requirement that four samples be taken to establish background groundwater quality conditions. EPA requirements do not establish a specific number of

samples to be taken, only that the number is appropriate to the statistical method of analysis chosen. MDE responded in the June 26, 1995 letter to EPA that they agree, and have revised their permit review checklists to more specifically reference the federal criteria.

As a State's regulations and statutes are amended to comply with the federal MSWLF landfill regulations, unapproved portions of a partially approved MSWLF permit program may be approved by the EPA. The State may submit an amended application to EPA for review and an adequacy determination will be made using the same criteria as for the initial application. This adequacy determination will be published in the **Federal Register** and will summarize the Agency's decision and the portion(s) of the State MSWLF permit program affected. It will also provide a 30-day public comment period. The adequacy determination will become effective sixty (60) days following publication if no adverse comments are received. If EPA receives adverse comments on its adequacy determination, another **Federal Register** notice will be published either affirming or reversing the initial decision while responding to the public comments.

To ensure compliance with all of the revised Federal Criteria and to obtain full EPA approval, MDE must revise the following aspects of its permit program. Consequently, these portions of the Maryland program are not being proposed for approval:

(1) Post-Closure Care Requirements (§ 258.61)—MDE must amend its existing regulations extending the post-closure care period of closed landfills from a minimum of 5 years to 30 years, with the flexibility to increase or decrease that period as necessary or demonstrated. The extension of the period required for financial assurance will require legislative action. The State must also specifically require leachate collection and treatment, as well as gas and groundwater monitoring, as post-closure care requirements. MDE has committed to make these changes.

(2) Subpart G—Financial Assurance Criteria (§§ 258.70—258.74)—Maryland's only existing financial assurance requirements are limited to the posting of a $5000 per acre closure bond, and even this requirement exempts, by statute, local governments, who currently operate most MSW landfills in Maryland. To comply with Federal requirements, MDE has committed to prepare a major revision to its regulations, adopting the financial assurance requirements in 40 CFR part 258 for closure, post-closure care, and corrective action. It is believed that these revisions will require an act by the Maryland legislature to revise the statute exempting local governments from financial assurance requirements. MDE has committed to submit the required legislation for consideration at the next General Assembly session.

Maryland has submitted a revised schedule, in a letter to EPA dated June 26, 1995, for completing the necessary changes to the laws, regulations, and/or guidance to comply with the remaining 40 CFR part 258 requirements. This schedule commits to revising the remaining portions of the MDE program not currently proposed for approval and have them in effect by December 20, 1996. Maryland will submit an application for full program approval to EPA when these revisions are effective.

D. Decision

Taking into consideration the public comments received as a result of our tentative determination, and several revisions made to the MDE program as a result thereof, we conclude that the State of Maryland's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Maryland is granted a determination of adequacy for partial approval of its municipal solid waste permit program, for those portions of their program as described above.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State/Tribal enforcement program. As explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a state/tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in Maryland's program are currently in effect as a matter of State law. EPA's action today does not impose any new requirements with which the regulated community must begin to comply, nor do these requirements become enforceable by EPA as federal law. Consequently, EPA does not find it necessary to give notice prior to making its approval effective.

Compliance With Executive Order 12866

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended; 42 U.S.C. 6912, 6945 and 6949(a)(c).

Dated: July 25, 1995.

W. Michael McCabe,

Regional Administrator.

[FR Doc. 95–19002 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–P

[OPP–180977; FRL 4968–6]

Cymoxanil; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the New Jersey Department of Environmental Protection (hereafter referred to as the ''Applicant'') to use the pesticide cymoxanil (CAS 57966–95–7) to treat up to 6,500 acres of tomatoes to control metalaxyl-resistant late blight. The Applicant proposes the use of a new (unregistered) chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before August 7, 1995.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–180977,'' should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP-180977]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8326; e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of cymoxanil on tomatoes to control late blight. Information in accordance with 40 CFR part 166 was submitted as part of this request.

Recent failures to control late blight in tomatoes as well as potatoes with the registered fungicides, have been caused almost exclusively by immigrant strains of late blight *Phytophthora infestans*, which are resistant to the control of choice, metalaxyl. Before the immigrant strains of late blight arrived, all of the strains in the U.S. were previously controlled by treatment with metalaxyl. The Applicants state that presently, there are no fungicides registered in the U.S. that will provide adequate control of the immigrant strains of late blight. The Applicant states that cymoxanil has been shown to be effective against these strains of late blight. Cymoxanil holds current registrations throughout many European countries for control of this disease. The Applicant indicates that a 75 percent yield reduction is expected based on the current infestation. Net revenues are expected to be reduced by over $7 million for the affected acreage without the use of cymoxanil.

The Applicant proposes to apply cymoxanil, manufactured by E. I. duPont de Nemours Co., as Curzate M-8, at a maximum rate of 0.1 lbs. a.i. (1.25 lb. of product) per acre by ground or air, with a maximum of 3 applications per season. A 14-day PHI will be observed. Use under this exemption could potentially amount to a maximum 1,950 lb. of cymoxanil. This notice does not constitute a decision by EPA on the application. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

A record has been established for this notice under docket number ''OPP–180977'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the New Jersey Department of Environmental Protection.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: July 20, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–19005 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66215; FRL–4965–8]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by October 31, 1995, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Rm. 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703) 305–5761; hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 32 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. --REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration no.	Product Name	Chemical Name
000070–00011	Kill-Ko Horse and Cattle Spray	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins 2,2-Dichlorovinyl dimethyl phosphate
000070–00138	Rigo Wasp Spray with Baygon	*o*-Isopropoxyphenyl methylcarbamate 2,2-Dichlorovinyl dimethyl phosphate
000241 OR–91–0010	Pursuit Herbicide	Ammonium salt of (+/-)-2-(4,5-dihydro-4-methyl-4-(1-methylethyl)-5-
000303–00150	Zilch Liquid Weed Killer	5-Bromo-3-sec-butyl-6-methyluracil Isooctyl(2-ethyl-4-methylpentyl) 2,4-dichlorophenoxyacetate
000352 TN–94–0005	Dupont Bladex 4l Herbicide	Cyanazine
000655–00491	Prentox Vapon 2	2,2-Dichlorovinyl dimethyl phosphate
000655–00703	Prentox Fly & Mosquito Killer	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins 2,2-Dichlorovinyl dimethyl phosphate
000655–00730	Prentox Greenhouse Spray	2,2-Dichlorovinyl dimethyl phosphate
001677–00132	Solidyne	Polyethoxypolypropoxyethanol - iodine complex Phosphoric acid
001677–00138	Mikrocide	onylphenoxypolyethoxyethanol - iodine complex Phosphoric acid
001677–00151	Iodofoam Concentrate 20	onylphenoxypolyethoxyethanol - iodine complex
001769–00063	Flair Aerosal Air Sanitizer and Deodorant	1,2-Propanediol
001769–00255	Root Out	2,6-Dichlorobenzonitrile
001769–00277	ational Chemsearch San-5-Pine	2-Benzyl-4-chlorophenol Pine oil
001769–00322	Aerosol Paint-Sect	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
003125 WA–80–0069	Meta-Systox-R Spray Concentrate	*S*-(2-(Ethylsulfinyl)ethyl) *O,O*-dimethyl phosphorothioate
004581–00230	Ziram F-4	Zinc dimethyldithiocarbamate
005197–00051	Kem New Formula 7–11	Ammonium 2-phenylphenate
006218–00013	Flora-Fog Vapona Greenhouse Fogging Insecticide	2,2-Dichlorovinyl dimethyl phosphate
006218–00026	Flora Fume Vapona Greenhouse Misting Insecticide	2,2-Dichlorovinyl dimethyl phosphate
006218–00070	Summit Tobacco Warehouse Fogging Insecticide	2,2-Dichlorovinyl dimethyl phosphate
006378–00022	Lab One	Potassium 2-benzyl-4-chlorophenate *o*-Phenylphenol, potassium salt
006962–00027	Steriloid Bacteriostat	Potassium 2-benzyl-4-chlorophenate *o*-Phenylphenol, potassium salt
007401–00060	Ferti-Lome Universal Garden Spray (containing Sevin & K	2,4-Dinitro-6-octyl* phenyl crotonate, 2,6-dinitro-4-octyl* phenyl crotonate and 1-Naphthyl-*N*-methylcarbamate
007969–00042	Basagran Manufacturers Concentrate	3-Isopropyl-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one-2,2-dioxide, sodium salt
007969–00054	Laddok Herbicide	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine 3-Isopropyl-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one-2,2-dioxide, sodium salt
007969–00103	Prompt Herbicide	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine 3-Isopropyl-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one-2,2-dioxide, sodium salt
010370–00127	Staffel's Malathion 25% Wettable Powder	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
019713–00222	Malathion Grain Protectant Dust	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
019713–00335	Aidex Mal Ex Dust Dry Insecticid	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
064296–00001	Bio-Path Fly Control Chamber	(*Z*)-9-Tricosene Metarhizium anisopliae Strain ESF1

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this ninety-day period.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. --REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000070	Wilbur-Ellis Co., Box 16458, Fresno, CA 93755.
000241	American Cyanamid Co., Agri Research Div - U.S. Regulatory Affairs, Box 400, Princeton, NJ 08543.
000303	Huntington Laboratories,inc., 968–970 E. Tipton St., Huntington, IN 46750.
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000655	Prentiss Inc., 21 Vernon Street, C.B. 2000, Floral Park, NY 11001.
001677	Ecolab Inc., 370 Wabasha St. Ecolab Center, St Paul, MN 55102.
001769	CH Corp., 2727 Chemsearch Blvd., Irving, TX 75062.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
004581	Elf Atochem North America Inc., Agrichemicals Div, 2000 Market St, 21st Floor, Philadelphia, PA 19103.
005197	Systems General, Inc., Box 152170, Irving, TX 75015.
006218	Summit Chemical Co, 7657 Canton Center Dr, Baltimore, MD 21224.
006378	Lab Automated Chemicals, Division of Systems General Inc., Box 152170, Irving, TX 75015.
006962	Madison Bionics, Division of Systems General, Inc., 1630 E. Northgate, Irving, TX 75062.
007401	Voluntary Purchasing Group Inc., Box 460, Bonham, TX 75418.
007969	BASF Corp., Agricultural Products, Box 13528, Research Triangle Park, NC 27709.
010370	Agrevo Environmental Health, 95 Chestnut Ridge Rd, Montvale, NJ 07645.
019713	Drexel Chemical Co, Box 13327, Memphis, TN 38113.
064296	Ecoscience Corp., 377 Plantation Dr, Worcester, MA 01605.

III. Loss of Active Ingredients

Unless the requests for cancellation are withdrawn, one pesticide active ingredients will not longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrant to explore the possibility of their withdrawing the request for cancellation. The active ingredient is listed in the following Table 3, with the EPA Company and CAS Number.

TABLE 3. -- ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

Cas No.	Chemical Name	EPA Company No.
52704–98–0.	Ammonium 2-phenylphenate	005197

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before October 31, 1995. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for one year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: July 13, 1995.

Frank Smith,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 95–18873 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–64027; FRL–4965–5]

Cancellation of Pesticides for Non-Payment of 1995 Registration Maintenance Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Since the amendments of October, 1988, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) has required payment of an annual maintenance fee to keep pesticide registrations in effect. The fee due last January 15 has gone unpaid for about 1,215 registrations. Section 4(i)(5)(D) of FIFRA provides that the Administrator may cancel these registrations by order and without a hearing; orders to cancel all but a few of them have been issued within the past few days. The Agency is deferring cancellation for certain of these registrations, however, to permit time for affected users to explore alternatives to cancellation directly with the registrants.

DATES: Reports of agreements to support continued registration or transfer of the registrations for which cancellation is being deferred must be received by October 31, 1995.

FOR FURTHER INFORMATION CONTACT: To report agreements to support continued registration of any of the products for which cancellation has been deferred, for instructions on payment of delinquent maintenance fees for these products, or for further information on the maintenance fee program in general, contact by mail: John Jamula, Office of Pesticide Programs (7504C), Environmental Protection Agency, 401

M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 226, Crystal Mall No. 2, 1921 Jefferson Davis Highway South, Arlington, VA 22202, (703) 305–6426. e-mail jamula.john@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 4(i)(5) of FIFRA, as amended in October, 1988 and again in December, 1991 requires that all pesticide registrants pay an annual registration maintenance fee, due by January 15 of each year, to keep their registrations in effect. This requirement applies to all registrations granted under section 3 as well as those granted under section 24(c) to meet special local needs. Registrations for which the fee is not paid are subject to cancellation by order and without a hearing.

The 1990 Farm Bill amended FIFRA to allow the Administrator to reduce or waive maintenance fees for minor agricultural use pesticides when she determines that the fee would be likely to cause significant impact on the availability of the pesticide for the use. The Agency has waived the fee for 52 minor agricultural use registrations at the request of the registrants.

In late November, 1994, all holders of either section 3 registrations or section 24(c) registrations were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Most responses were received by the statutory deadline of January 15. A notice of intent to cancel was sent in mid-March to companies who did not respond and to companies who responded, but paid for less than all of their registrations. Late payments of the fees were accepted until April 15, when the actual process of cancellation was begun.

Since mailing the notices, EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.

Maintenance fees have been paid for about 16,704 section 3 registrations, or about 95 percent of the registrations on file in December, 1994. Fees have been paid for about 2,574 section 24(c) registrations, or about 90 percent of the total on file in November, 1994. Cancellations for non-payment of the maintenance fee affect about 940 section 3 registrations and about 275 section 24(c) registrations.

II. Product Cancellations not affecting status of Active Ingredient

In the case of all but four section 3 registrations discussed in Section III below, the active ingredients will remain available in other registered products. We anticipate two types of impact for the bulk of these cancellations. First, some of these disappearing registrations will be survived in the market by substantially identical registrations. These substantially identical products may not, however, be readily available wherever a disappearing product was sold, so there may be local or regional disruptions while distribution patterns are adjusted. We expect these disruptions to be minor and temporary.

The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until January 15, 1996, the due date for the next annual registration maintenance fee. Existing stocks already in the hands of dealers or users, however, can generally be distributed, sold or used legally until they are exhausted. Existing stocks are defined as those stocks of a registered pesticide product which are currently in the U.S. and which have been packaged, labeled and released for shipment prior to the effective date of the order.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed, through Special Reviews or other Agency actions. These general provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

Second, in some cases unique non-agricultural uses will disappear, although the active ingredients will remain available for different uses in other products. When this situation occurs, there may be more serious impacts on users of the canceled products. Once again, existing stocks of the canceled products already in channels of trade will be usable to mitigate these impacts in the short term. For the longer term the mechanisms of section 3 amendments and 24(c) registrations will remain available to obtain replacement registrations.

Neither of these types of impact leaves users without the means to replace lost registrations; neither is considered to justify further deferral of cancellations for non-payment of the maintenance fee. Thus all these registrations for which the active ingredient will remain in other products have been canceled.

III. Cancellations Leading to Disappearance of Active Ingredients

A second type of impact arises if an active ingredient that is now or has recently been available in the marketplace disappears. The Agency believes there are four registered active ingredients in this category. Of these four active ingredients, none has been subject to prior regulatory action and all are likely to disappear as a consequence of these cancellations. One is a plant growth regulator; one is a microbial; one is a microbiocide, and one is a bacteriostat. If the last section 3 registration for an ingredient disappears, the section 24(c) registration process is unlikely to be able to compensate for the loss.

These four ingredients, grouped by these same general categories of use patterns, are listed along with the EPA Company Number of their registrants in the following Table 1.

TABLE 1. -- ACTIVE INGREDIENTS WITH RECENT PRODUCTION PENDING CANCELLATION OF ALL PRODUCTS FOR NON-PAYMENT OF 1995 REGISTRATION MAINTENANCE FEES, IN SEQUENCE BY BROAD USE PATTERN

Chemical Name	Registration No.	Product Name
A. Plant Growth Regulator.		
Glyphosate, Sesquisodium	000524–00332	Polado Plant Growth Salt Regulator
B. Microbial Pesticide.		
Bacillus Thuringiensis subsp. san diego	053219–00001	M-ONE Insecticide
C. Microbiocide.		
Amines, N-coco alkyl-trimethylenedi-, adipates	010349–00014	NALCO VISCO 1151
D. Bacteriostat.		
Quaternary ammonium compounds, benzyl-C10–18-alkylbis(hydroxy ethyl)-, chloride.	010349–00003	NALCO ADOMALL

Because these active ingredients are likely to disappear with their product registration, the Agency has deferred for 90 days the cancellation of these 4 registrations. During that time those registrants or other affected persons may make arrangements to continue the registration.

We encourage individual users or user groups who are concerned about the potential loss of these active ingredients to work directly with the registrant identified by the first 6 digits of the Reg. No. in Table 1 to persuade them to continue to support the ingredient, or to identify third parties who would be willing to support the ingredient if the registration were transferred to them. The full names and addresses of current registrants appear in Table 2 below. We also encourage users to consult with the Cooperative Extension Service or other local sources to identify alternatives to these active ingredients.

If the Agency is notified within 90 days of this notice at the address given above either (1) that the registrant will continue to support the registration, or (2) that an agreement has been reached to transfer the registration to another party, we will reinstate the registration to full active status as soon as the delinquent maintenance fee payment is received. It should be emphasized, however, that any such registrations would still be subject to all requirements for reregistration, including reregistration fees (except as they may be reduced through the statutory provisions for small businesses or low volume uses).

TABLE 2. -- REGISTRANTS OF SELECTED REGISTRATIONS PENDING CANCELLATION FOR NON-PAYMENT OF 1995 REGISTRATION MAINTENANCE FEE

EPA Company No.	Company Name and Address
000524	Monsanto Co., 700 14th St., N.W., Suite 1100, Washington, DC 20005.
010349	NALCO Chemical Co., One NALCO Center, Box 87, Naperville, IL 60563.
053219	MYCOGEN Corp., 4980 Carroll Canyon Rd., San Diego, CA 92121.

In addition to publishing this notice in the **Federal Register**, we are sending it directly to the States, to the U.S. Department of Agriculture, and to other parties who have previously expressed concern for minor uses. They should be receiving the notice at approximately the same time it is published. We hope that this extraordinary notification effort, and the deferral of cancellations for the most sensitive registrations, will serve to prevent any avoidable loss of critical minor use pesticides.

Because so many registrations are involved, it would be impractical to list those which have been canceled in this notice. Complete lists of registrations canceled for non-payment of the maintenance fee will, however, be available for reference during normal business hours in the OPP Public Docket, Room 1128, Crystal Mall 2, 1921 Jefferson Davis Highway South, Arlington VA, and at each EPA Regional Office. Product-specific status inquiries may be made by telephone by calling toll-free 1–800–444–7255.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: July 19, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 95–18872 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5269–2]

42 U.S.C. Section 122(h) Proposed Administration Agreement

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed settlement.

SUMMARY: USEPA is proposing to settle a claim under section 107 of CERCLA for response costs incurred during removal activities at the Nelson McCoy Pottery site in Roseville, OH. Respondents have agreed to reimburse USEPA in the amount of $125,000. USEPA today is proposing to approve this settlement offer because it reimburses USEPA, in part, for costs incurred during USEPA's removal action.

DATES: Comments on this proposed settlement must be received by September 1, 1995.

ADDRESSES: Copies of the proposed settlement are available at the following address for review: (It is recommended that you telephone Ms. Cheryl Allen at (312) 353–6196 before visiting the Region V Office). U.S. Environmental Protection Agency, Region V, Office of Superfund, Removal and Enforcement Response Branch, 77 W. Jackson Blvd. Chicago, Illinois 60604.

Comments on this proposed settlement should be addressed to: (Please submit an original and three copies, if possible) Cheryl Allen, Community Relations Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard (P–19J), Chicago Illinois 60604, (312) 353–6196.

FOR FURTHER INFORMATION CONTACT: Cheryl Allen, Office of Public Affairs, at (312) 353–6196.

SUPPLEMENTARY INFORMATION: The Nelson McCoy Pottery site, an abandoned pottery production plant located in a rural/residential area in Roseville, Ohio (Muskingum County), is not on the National Priorities List. In response to a request from the State of Ohio, USEPA investigated the Nelson McCoy site and undertook response actions designed to minimize the immediate threat, test the materials involved and properly dispose of the hazardous waste.

Respondents are a number of individuals and a corporation that generated hazardous substances at the site in the form of lead contaminated water, flammable wastes and hazardous solid wastes, as well as another party seeking to purchase the site for future use. A 30-day period, beginning on the date of publication, is open pursuant to section 122(i) of CERCLA for comments on the proposed settlement.

Comments should be sent to Ms. Cheryl Allen of the Office of Public Affairs (P–19J), U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

William E. Muno,

Associate Director for Superfund.

[FR Doc. 95–18983 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL-OW–5270–8]

Interim Economic Guidance for Water Quality Standards Workbook

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: EPA now has available *Interim Economic Guidance for Water Quality Standards Workbook,* (EPA 823–B–95–002). This interim document provides guidance with respect to the economic considerations incorporated in the water quality standards regulation affecting uses, variances, and the antidegradation policy.

The purpose of this interim guidance is to assist States, Tribes and other affected parties in understanding the economic factors that may be considered and the types of tests that can be used to determine if a designated use can be attained, if a variance is warranted, or if degradation of high quality water is warranted. States may use alternative economic analysis from that offered in the interim guidance.

EPA plans to revise this guidance from time to time based on experience gained in its implementation. Comments on this guidance are welcome at any time.

FOR FURTHER INFORMATION CONTACT: Rafael Stein, Economic and Statistical Analysis Branch, Office of Science and Technology, Office of Water, Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460. The telephone number is 202–260–5385.

FOR COPIES OF THE DOCUMENT CONTACT: Water Resource Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The telephone number is 202–260–7786.

Dated: June 28, 1995.

Dana D. Minerva,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 95–18993 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Notice

July 28, 1995

The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments concerning the Commission's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated information techniques are requested.

Written comments should be submitted on or before October 2, 1995. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov. Copies may also be obtained via fax by contacting the Commission's Fax on Demand System. To obtain fax copies call 202–418–0177 from the handset on your fax machine, and enter the document retrieval number indicated below for the collection you wish to request, when prompted.

OMB Approval Number: 3060–0028.

Title: Application for Authorization in the Auxiliary Radio Broadcast Services.

Form No.: FCC 313.

Type of Review: Extension of existing collection.

Resopondents: Businesses or other for-profit; State, Local or Tribal Governments.

Number of Respondents: 1,500.

Estimated Time Per Response: 5.166 hours.

Total Annual Burden: 7,749 hours.

Needs and Uses: This collection of information is used by applicants/licensees of AM, FM and TV Broadcast stations and eligibile networks when applying for a remote pickup, aural microwave, television microwave and other auxiliary Broadcast stations. The data collected is used by FCC staff to determine eligibility for a license; to determine if the proposal will meet statutory requirements; to aid in frequency spectrum management and to ensure interference will not be cuased. This data is also used to issue an authorization and may be used for enforcement purposes when necessary.

Fax Document Retrieval Number: 600028.

OMB Approval No: 3060–0398.

Title: Sections 2.948, 15.117(G)(2), 15.117(G)(3), 80.1053(C) Equipment Authorization Measurement Standards.

Form No.: N/A.

Type of Review: Extension of existing collection.

Respondents: Business and other for-profit.

Number of Respondents: 20 recordkeepers; and 400 respondents.

Estimated Time Per Response: 5 hours per recordkeeper; and 23.125 hours per response.

Total Annual Burden: 9,350.

Needs and Uses: Parties performing measurements for certification or verification of intentional or unintentional radiators will be subject to the requirement to file horizontal and vertical site attenuation data of their measurement facility, that sshows conformance with the criteria of American National Standards Institute (ANSI) test procedure C63.4–1922. The information gathered is used by the Commission to ensure that data that accompanies all requests for equipment authorizations is valid, and that proper testing procedures are utilized. Testing ensures that potential interference to radio communications is controlled, and if necessary the data may be used for investigating complaints of harmful interference or for verifying the manufactures compliance with the rules.

Fax Document Retrieval Number: 600398.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–19086 Filed 8–1–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Shelley Moine Customs Brokers, 1200 S. 192nd, Suite 204, Seattle, WA 98148, Shelley Moine, Sole Proprietor

Prime International Agency Inc., 2111 South Acacia Ave., Compton, CA 90220, Officers: Stephen Juang, President, Johnny Wang, Director.

Dated: July 27, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–18908 Filed 8–1–95; 8:45 am]

BILLING CODE 6730–01–M

Performance Review Board

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: William J. Herron, Jr., Director of Personnel, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Sec. 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

William D. Hathaway,

Chairman.

The Members of the Performance Review Board Are

1. Ming Chen Hsu, Commissioner
2. Delmond J.H. Won, Commissioner
3. Joe Scroggins, Jr., Commissioner
4. Harold J. Creel, Commissioner
5. Norman D. Kline, Chief Administrative Law Judge
6. Frederick M. Dolan, Jr., Administrative Law Judge
7. Charles E. Morgan, Administrative Law Judge
8. Robert D. Bourgoin, General Counsel
9. Joseph C. Polking, Secretary
10. Edward P. Walsh, Managing Director
11. Bruce A. Dombrowski, Deputy Managing Director
12. Vern W. Hill, Director, Bureau of Hearing Counsel
13. Sandra L. Kusumoto, Director, Bureau of Administration
14. Austin L. Schmitt, Director, Bureau of Economics and Agreement Analysis
15. Norman W. Littlejohn, Director, Bureau of Investigations
16. Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 95–18907 Filed 8–1–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Community Trust Financial Services Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 16, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Community Trust Financial Services Corporation, Hiram, Georgia; to establish Community Loan Company, Hiram, Georgia, a joint venture with Danny H. Drummond, and thereby engage in the sale of credit-related insurance, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y, and tax planning and preparation services to individuals, businesses, and non-profit organizations, pursuant to § 225.25(b)(21) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 27, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18932 Filed 8–1–95; 8:45 am]

BILLING CODE 6210–01–F

Fleet Financial Group, Inc. ; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-17974) published on page 37642 of the issue for Friday, July 21, 1995.

Under the Federal Reserve Bank of Boston heading, the entry for Fleet Financial Group, Inc., is revised to read as follows:

Comments on this application must be received by September 12, 1995.

Board of Governors of the Federal Reserve System, July 27, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18934 Filed 8–1–95; 8:45 am]

BILLING CODE 6210–01–F

Firstbank of Illinois Co., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications

must be received not later than August 25, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Firstbank of Illinois Co., Springfield, Illinois; to acquire 100 percent of the voting shares of Confluence Bancshares Corp., St. Peters, Missouri, and thereby indirectly acquire Duchesne Bank, St. Peters, Missouri.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Banks, Inc., Clayton, Missouri; to acquire at least 50 percent of the voting shares of First Commercial Bancorp, Inc., Sacramento, California, and thereby indirectly acquire First Commercial Bank, Sacramento, California. **Comments regarding this application must be received not later than August 11, 1995.**

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Rice Insurance Agency, Inc., Strasburg, Colorado; to acquire 100 percent of the voting shares of Collegiate Peaks Bancorporation, Buena Vista, Colorado and thereby indirectly acquire Collegiate Peaks Bank, Buena Vista, Colorado.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. First Saving Bank of Washington Bancorp, Inc., Walla Walla, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of First Savings Bank of Washington, Walla Walla, Washington, in connection with the conversion of First Savings Bank of Washington Bancorp, Walla Walla, Washington, from a mutual bank holding company to a stock holding company.

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105, or Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Wells Fargo and Company, San Francisco, California (Wells Fargo); and HSBC Holdings PLC, London, United Kingdom, HSBC Holdings BV, Amsterdam, The Netherlands, and Marine Midland Banks, Inc., Buffalo, New York, to acquire Wells Fargo HSBC Trade Bank, N.A., San Francisco, California (TradeBank). Wells Fargo will control 80 percent of the voting shares of TradeBank and HSBC will control 20 percent of the voting shares of TradeBank.

Board of Governors of the Federal Reserve System, July 27, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18933 Filed 8–1–95; 8:45 am]

BILLING CODE 6210–01–F

New York Mills 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 16, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. New York Mills Bancshares, Inc., New York Mills, Minnesota; to engage *de novo* in lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 27, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18935 Filed 8–1–95; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 16, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota, to acquire through its subsidiaries, Norwest Financial Special Services, Inc., Des Moines, Iowa, and Norwest Financial, Inc., Des Moines, Iowa, Orlandi Valuta, Los Angeles, California, and Orlandi Valuta Nacional, Boulder City, Nevada, and thereby engage in money transmission activities to foreign countries, pursuant to *Philippine Commercial International Bank*, 77 Federal Reserve Bulletin 271 (1991).

Board of Governors of the Federal Reserve System, July 27, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18936 Filed 8–1–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Dkt. C–3586]

Glaxo plc; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a British drug company to divest, within nine months, Wellcome's worldwide research and development assets for non-injectable drugs, or else agree to have a Commission-appointed trustee to complete the transaction. In addition, the consent order requires Glaxo, for a period of ten years, to obtain Commission approval before acquiring more than one percent interest in any entity involved in the clinical development, manufacture or sale of migraine drugs.

DATES: Complaint and Order issued June 14, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Claudia Higgins or Ann Malester, FTC/S–2224, Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: On Wednesday, March 29, 1995, there was published in the **Federal Register**, 60 FR 16139, a proposed consent agreement with analysis In the Matter of Glaxo plc, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comment have been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–18953 Filed 8–1–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[File No. 942 3294]

J. Walter Thompson USA, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a New York-based advertising agency, which prepared advertisements for Jenny Craig, Inc., from claiming that any weight-loss program is recommended, approved, or endorsed by any person, group, or other entity, unless it possesses and relies upon competent and reliable scientific evidence to substantiate the representation. In addition, the consent agreement prohibits the respondent from misrepresenting the existence, results, or interpretations of any test, study, or survey.

DATES: Comments must be received on or before October 2, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Matthew Gold, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of J. Walter Thompson USA, Inc., a corporation, and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between J. Walter Thompson USA, Inc., a corporation, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent J. Walter Thompson USA, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 466 Lexington Avenue, New York, New York 10017.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and

decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (a) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. The proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. The proposed respondent has read the proposed complaint and order contemplated hereby. The proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. The proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this order, the term ''diet-related food'' shall mean any food (as that term is defined in 15 U.S.C. § 55(b)) whose labeling or advertising makes any claim regarding its weight loss or weight maintenance benefits.

I

It is ordered that respondent, J. Walter Thompson USA, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that such program is recommended, approved or endorsed by any person, group or other entity, unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation. For the purposes of this order, ''competent and reliable scientific evidence'' shall mean those tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

Provided, however, that it shall be a defense hereunder that the respondent neither knew nor had reason to know of an inadequacy of substantiation for the representation.

II

It is further ordered that respondent, J. Walter Thompson USA, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, or sale of any weight loss or weight control program, weight loss product, health or fitness program, exercise equipment, or diet-related food, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or survey.

Provided, however, that it shall be a defense hereunder that the respondent neither knew nor had reason to know that the test, study or survey did not prove, demonstrate or confirm the representation.

III

It is further ordered that for five (5) years after the date of the last dissemination of the representation to which they pertain, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials relied upon to substantiate any claim or representation covered by this Order; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporation that may affect compliance obligations under this Order, including but not limited to any change in corporate name or address, dissolution, assignment or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

V

It is further ordered that respondent shall, within ten (10) days from the date of service of this Order upon it, distribute a copy of this Order to each of its operating divisions, to each of its managerial employees, and to each of its officers, agents, representative or employees engaged in the preparation, review or placement of advertising or other materials covered by this Order, and shall secure from each such person a signed statement acknowledging receipt of this Order.

It is further ordered that respondent shall, within sixty (60) days from the date of service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent J. Walter Thompson USA, Inc., a Delaware corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review that agreement and the comments received and will decide whether it should withdraw from the agreement and take

other appropriate action or make final the agreement's proposed order.

The Commission's complaint in this matter charges J. Walter Thompson with engaging in deceptive practices in connection with the advertising of the Jenny Craig Weight Loss Program. The advertisements at issue contain variations of the claim that nine out of ten Jenny Craig clients would recommend the Jenny Craig Weight Loss Program to a friend.

According to the complaint, print and television advertisement for the Jenny Craig Weight Loss Program represented that ninety percent or more of Jenny Craig customers would recommend the Jenny Craig Weight Loss Program. The complaint also alleges that those advertisements represented that competent and reliable studies or surveys establish that claim.

The complaint further alleges that J. Walter Thompson lacked substantiation for its ''nine out of ten'' claims, and falsely claimed that competent and reliable studies or surveys support those claims. Finally, the complaint alleges that J. Walter Thompson knew or should have known that these claims were false and misleading.

The consent order contains provisions designed to remedy the violations charged and to prevent J. Walter Thompson from engaging in similar deceptive and unfair acts and practices in the future.

Part I of the order prohibits J. Walter Thompson from misrepresenting that any weight loss program is recommended, approved or endorsed by any person, group or other entity unless it possesses and relies upon competent and reliable evidence, which, when appropriate, must be competent and reliable scientific evidence, that substantiates the representation. Part I provides J. Walter Thompson with a defense to liability if it neither knew nor had reason to know of an inadequacy of substantiation for the representation.

Part II prevents J. Walter Thompson from misrepresenting, with regard to any diet-related food, or any weight loss or weight control program, weight loss product, health or fitness program or exercise equipment, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or survey. ''Diet-related food'' is defined as ''any food (as that term is defined in 15 U.S.C. § 55(b)) whose labeling or advertising makes any claim regarding its weight loss or weight maintenance benefits.'' Part II provides J. Walter Thompson with a defense to liability if it neither know nor had reason to know that the test, study or survey did not prove, demonstrate or confirm the representation.

Part III requires J. Walter Thompson to maintain certain materials relating to advertisements covered by this order and to make such documents available for FTC inspection.

Part IV requires J. Walter Thompson to notify the Commission of any changes in the corporate structure that might affect compliance with the order.

Part V requires J. Walter Thompson to distribute copies of the order to certain company officials and employees and certain other representatives and agents of the company, and to secure from each such person a signed statement acknowledging receipt of the order.

Part VI requires J. Walter Thompson to file with the Commission one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

Concurring Statement of Commissioners Roscoe B. Starek, III and Christine A. Varney

In the Matter of J. Walter Thompson USA, Inc., File No. 942–3294

Although we have voted to accept the consent order negotiated with J. Walter Thompson USA, Inc. (''JWT'') in this matter, we write to comment on the scope of the product coverage in Part II of the order. Part II addresses the false ''establishment'' claim challenged in paragraphs five and six of the complaint, *i.e.*, the claim that a valid study or survey showed that ninety percent or more of Jenny Craig Weight Loss Program customers would recommend the program to their friends. Part II of the order prohibits misrepresentations regarding the existence, contents, validity, results, conclusions, or interpretations of any test, study, or survey, in connection with the promotion of any weight loss or weight control program, weight loss product, health or fitness program, exercise equipment, or diet-related food.

On three previous occasions JWT has signed consent orders settling allegations that it misrepresented the results of surveys or tests.[1] Because of the narrow scope of the product coverage applicable to the relevant order provisions, the Commission, on each occasion, had to pursue a new Section 5 case against the company, rather than being able to seek civil penalties for an order violation. Thus, the Commission's history with JWT raises the question of whether broader product coverage is warranted in this case.[2]

Extension of an order's product coverage beyond the product or service at issue in a complaint may be justified so long as the order bears a reasonable relationship to the unlawful practices alleged. *See Stouffer Foods Corp.*, D. 9250, slip op. at 17 (Sept. 26, 1994) (citing *Jacob Siegel Co.* v. *FTC*, 327 U.S. 608, 612–13 (1946)). The Commission generally considers three criteria to determine whether an order bears a reasonable relationship to a particular Section 5 violation: (1) the seriousness and deliberateness of the violation; (2) the ease with which the violative claim may be transferred to other products; and (3) whether the respondent has a history of prior violations. *Stouffer*, slip op. at 17 (citing cases). All three elements need not be present to warrant fencing-in. *Sears, Roebuck & Co.* v. *FTC*, 676 F.2d 385, 392 (9th Cir. 1982) (''In the final analysis, we look to the circumstances as a whole and not to the presence or absence of any single factor.'').

Although we do not have the benefit of a litigated record, from the evidence presented so far, it appears that in this case, the first two, and arguably the third, elements weigh in favor of broad fencing-in. First, the alleged violations are both deliberate and serious. The survey from which the ''nine out of ten'' claim was derived was obviously and severely flawed. JWT, the largest ad agency in the country, surely must be deemed to have expertise in conducting consumer surveys. Any ignorance in this regard must have been cured by the Commission's earlier decision to hold it liable for the dissemination of misrepresentations about the results of surveys.

The evidence also suggests the violations were serious, as measured by the extent of dissemination. The ad campaign in question was a national one that ran for over a year, and the ads were given to franchisees to run in their areas. Furthermore, the great length of the campaign's dissemination schedule indicates the campaign must have been quite costly.

The second element, the ease with which the violative claims may be transferred to other products, also supports fencing-in. The results of surveys or studies are easily misrepresented, regardless of the type of product or service. The fairly obvious transferability of this type of claim is borne out by the prior consent orders, as those cases involved a diverse range of product

[1] *J. Walter Thompson Co.*, 97 F.T.C. 333 (1981) (complaint alleged that JWT misrepresented that ''4 out of 5 dentists recommend'' the Water Pik; consent order prohibits claims regarding surveys of professional groups unless the surveys were designed, executed, and analyzed in a competent and reliable manner); *J. Walter Thompson Co.*, 94 F.T.C. 331 (1979) (complaint alleged that JWT misrepresented the results of tests of the cleaning effectiveness of Sears dishwashers; consent order prohibits, in advertising for major home appliances, misrepresenting the results of tests, studies, surveys, etc.); *J. Walter Thompson Co.*, 84 F.T.C. 736 (1974) (complaint alleged that JWT misrepresented the results of studies on the safety of Ford automobiles; consent order prohibits, in advertising for automobiles, presenting the results of tests, experiments, or demonstrations unless competent and reliable to prove the claimed feature).

[2] It is true that this consent order has broader product coverage than the prior JWT orders and appears to cover the range of diet- and fitness-related products.

categories (surveys of professionals, major home appliances, and automobiles).

The final element is the respondent's history of past violations. The question of whether consent orders may be used as evidence of past violations is at best unsettled. *Compare ITT Continental Baking Co.* v. *FTC*, 521 F.2d 207, 222 n.23 (2d Cir. 1976) (because consent orders do not constitute an admission that the respondent has violated the law, the Commission may not rely on consent orders as evidence of additional illegal conduct when formulating cease and desist orders in other proceedings) *with Thompson Medical Co.*, 104 F.T.C. 648, 833 n.78 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987) (while stating that a single consent order would not be used as a basis for concluding that the respondent has a history of past violations, the Commission expressly took no position on whether a pattern of consent orders would be a sufficient history of past violations to warrant fencing-in). Regardless of whether the prior consent orders may be considered evidence of past violations, they show that JWT was aware of the Commission's concern about this type of claim and of the requirements of the law with respect to claims involving surveys and tests.

Despite these concerns, for several reasons we believe that accepting the order as negotiated appears to be appropriate. For example, we understand that JWT has made clear it would litigate if the Commission attempted to obtain broader coverage; litigation inevitably presents resource allocation questions.[3] In addition, broad product coverage obviously weighs more heavily on an ad agency such as JWT that handles accounts for a divers assortment of products and services, than on a manufacturer or advertiser offering a limited range of products.[4] We write only to point out that in light of all the circumstances of this case, broad product coverage in Part II could have been justified as reasonably related to the violations alleged.

[3] Even so, a litigated order could be beneficial for several reasons. First, in case of future similar violations by JWT, a litigated order clearly could be used as evidence of prior law violations. Second, while there is no guarantee that the Commission would obtain broader product coverage in litigation than is contained in this consent order, it seems unlikely that the Commission would do any worse, and the potential gain is great, both in terms of having JWT under a broader order and in terms of precedential value for other cases. Third, a litigated opinion might resolve some of the uncertainties concerning the precedential value of prior consent orders.

[4] On the other hand, the potential burden of a broad order is partially mitigated by the fact that, as an ad agency, JWT's order contains a safe harbor insulating it from liability unless it knows or should know that the survey or test did not prove, demonstrate, or confirm the representation. In addition, it is not unusual for orders covering establishment claims to have broad product coverage because the type of claim covered—the results or validity of tests or surveys—is fairly discrete.

Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part

J. Walter Thompson USA, Inc., File No. 942–3294

I dissent from Part II of the proposed consent order because the product coverage is too narrow. Part II would prohibit J. Walter Thompson from making deceptive establishment claims for any weight loss or weight control program, weight loss product, health or fitness program, exercise equipment, or diet-related food. Although the product coverage in this provision does go beyond the product with respect to which a violation has been alleged, given the particular facts of this case, I would impose even broader product coverage. In my view, J. Walter Thompson relied on a clearly flawed study in making its deceptive claims, and it continued to make claims based on this flawed study even after it had received contradictory results from a more reliable study that it had commissioned. J. Walter Thompson also could readily transfer deceptive test result claims to other products, as demonstrated by the fact that J. Walter Thompson has entered into three other consent agreements to settle allegations that it made deceptive claims concerning survey or test results for three disparate products.[1] Given that J. Walter Thompson's deception appears to have been deliberate and that its deception readily could be transferred to other products, *see Stouffer Foods Corp.*, D. 9250, slip op. at 17 (Sept. 26, 1994), broader product coverage is appropriate.

[FR Doc. 95–18954 Filed 8–1–95; 8:45 am]

BILLING CODE 6750–01–M

[1] *J. Walter Thompson Co.*, 97 F.T.C. 323 (1981); (dental cleaning device); *J. Walter Thompson Co.*, 94 F.T.C. 331 (1979) (dishwashers); *J. Walter Thompson Co.*, 84 F.T.C. 736 (1974) (automobiles). Assuming the allegations in this and the previous cases to be true, we would have to conclude that J. Walter Thompson has had difficulty comprehending that the conduct alleged is conduct about which the Commission is concerned.

[Dkt. C–3588]

Korean Video Stores Association of Maryland, et al.; Prohibited Trade Practices, and Affirmative Correction Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Maryland based video store association and its members from entering into any agreement to raise, fix, or maintain prices in the retail video tape rental business; and requires, within 30 days, its members to display a poster announcing the settlement, in both English and Korean, in their respective stores and to publish the entire text of the poster in three Korean-language newspapers in the Washington, DC area.

DATES: Complaint and Order issued June 20, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Joseph G. Krauss, FTC/S–3627, Washington, DC 20580. (202) 326–2713.

SUPPLEMENTARY INFORMATION: On Tuesday, April 11, 1995, there was published in the **Federal Register**, 60 FR 18411, a proposed consent agreement with analysis In the Matter of Korean Video Stores, et al., for the purpose of soliciting public comment.

Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–18955 Filed 8–1–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

[File No. 951–0024]

Summit Communications Group, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, Summit and seven Wometco Cable TV companies from agreeing, attempting to agree or carrying out an agreement with any cable television provider to allocate or divide markets, customers, contracts or territories for cable television service in the incorporated and unincorporated areas of the Georgia counties of Cobb, Bartow, Dekalb, Walton, Gwinnett, Fulton, Douglas, Fayette, Coweta, Clayton, Henry, Rockdale, Newton and Cherokee.

DATES: Comments must be received on or before October 2, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald Rowe or Robert Doyle, Jr., FTC/S–2105, Washington, DC 20580. (202) 326–2610 or 326–2819.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of Summit Communications Group, Inc., a corporation, and Wometco Cable TV of Georgia, Inc., a corporation; Wometco Cable TV of Cobb County, Inc., a corporation; Wometco Cable TV of Clayton County, Inc., a corporation; Wometco Cable TV of Conyers-Rockdale, Inc., a corporation; Wometco Cable TV of Fayette County, Inc., a corporation; Wometco Cable TV of Fulton County, a corporation; and Wometco Cable TV of Henry County, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Summit Communications Group, Inc. (''Summit''), a Delaware corporation, and Wometco Cable TV of Georgia, Inc., a Georgia corporation, Wometco Cable TV of Cobb County, Inc., a Georgia corporation, Wometco Cable TV of Clayton County, Inc., a Georgia corporation, Wometco Cable TV of Conyers-Rockdale, Inc., a Georgia corporation, Wometco Cable TV of Fayette County, Inc., a Georgia corporation, Wometco Cable TV of Fulton County, a Georgia corporation, and Wometco Cable TV of Henry County Inc., a Georgia corporation (hereinafter collectively referred to as ''Wometco''), and it now appearing that Summit and Wometco are willing to enter into an agreement containing an order to cease and desist from the acts and the practices being investigated and providing for other relief:

It is hereby agreed by and between Summit and Wometco, by their duly authorized officers and attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Summit is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 115 Perimeter Center Place, Suite 1150, Atlanta, Georgia 30346.

2. Proposed respondent Wometco Cable TV of Georgia, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 5979 Fairburn Road, Douglasville, Georgia 30134.

3. Proposed respondent Wometco Cable TV of Cobb County, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 1145 Powder Springs Road, Marietta, Georgia 30064.

4. Proposed respondent Wometco Cable TV of Clayton County, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 6435 Tara Boulevard, Suite 22, Jonesboro, Georgia 30236.

5. Proposed respondent Wometco Cable TV of Conyers-Rockdale, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 1361 Iris Drive, Conyers, Georgia 30209.

6. Proposed respondent Wometco Cable TV of Fayette County, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 107 South Glynn Street, Fayetteville, Georgia 30214.

7. Proposed respondent Wometco Cable TV of Fulton County is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 6435 Tara Boulevard, Suite 22, Jonesboro, Georgia 30236.

8. Proposed respondent Wometco Cable TV of Henry County, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 6435 Tara Boulevard, Suite 22, Jonesboro, Georgia 30236.

9. Time Warner Inc. (''TWI'') is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 75 Rockefeller Plaza, New York, New York 10019. After consummation of a proposed acquisition of Summit by TWI, Summit will become a wholly-owned subsidiary of TWI.

10. U S WEST, Inc. (''USW'') is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business at 7800 East Orchard Road, Englewood, Colorado 80111. USW is an owner of approximately 25% of Time Warner Entertainment Company, L.P., an affiliate of TWI. On December 6, 1994, USW, through its wholly-owned subsidiary Multimedia Cable, Inc., a Delaware corporation, acquired Wometco.

11. Summit and Wometco admit all the jurisdictional facts set forth in the draft of complaint.

12. Summit and Wometco waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

13. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Summit and Wometco, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

14. This agreement is for settlement purposes only and does not constitute an admission by Summit or Wometco that the law has been violated as alleged in the draft of complaint or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

15. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the

Commission's Rules, the Commission may, without further notice to Summit or Wometco, (1) issue its complaint corresponding in form and substance with the draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the compliant and decision containing the agreed-to order to the addresses of Summit and Wometco, as stated in this agreement, shall constitute service. Summit and Wometco waive any right each may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

16. Summit and Wometco have read the proposed compliant and order contemplated hereby. They understand that once the order has been issued, each will be required to file one or more compliance reports showing that each has fully complied with the order. Summit and Wometco further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

It is Ordered that, as used in this order, the following definitions shall apply:

A. ''Summit'' means Summit Communications Group, Inc., its directors, officers, employees, agents and representatives, predecessors, successors and assigns, its subsidiaries, divisions, groups and affiliates controlled by Summit, and the respective directors, officers, employees, agents, representatives, successors and assigns of each:

B. ''Wometco'' means Wometco Cable TV of Georgia, Inc., Wometco Cable TV of Cobb County, Inc., Wometco Cable TV of Clayton County, Inc., Wometco Cable TV of Conyers-Rockdale, Inc., Wometco Cable TV of Fayeete County, Inc., Wometco Table TV of Fulton County, Wometco Cable TV of Henry County, Inc., their directors, officers, employees, agents and representatives, predecessors, successors and assigns, their subsidiaries, divisions, groups and affiliates controlled by Wometco, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;

C. ''TWI'' means Time Warner Inc., its directors, officers, employees agents and representatives, predecessors, successors and assigns, it subsidiaries, divisions, group and affiliates controlled by TWI, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;

D. ''USW'' means US West, Inc., its directors, officers, employees, agents and representatives, predecessors, successors and assigns, its subsidiaries, divisions, groups and affiliates controlled by USW, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;

E. ''Commission'' means the Federal Trade Commission;

F. ''Cable Operator'' means any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, that owns, controls or operates one or more Cable Television Systems; ''Cable Operator'' includes the partners, directors officers, employees, and agents of such partnership, sole proprietorship or corporation as well as the directors, officers, employees, and agents of such partnership's sole proprietorship's or corporation's subsidiaries, affiliates, divisions and joint ventures. The words ''subsidiary,'' ''affiliate,'' and ''joint venture'' refer to any firm in which there is partial (10% or more) or total ownership or control between corporations.

G. ''Cable Television Service'' means the delivery to the home of various entertainment and informational programming via a Cable Television System.

H. ''Cable Television System'' means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Television Service, which includes video programming and which is provided to multiple subscribers within a community. The term does not include: (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; or (b) a facility that serves only subscribers in one or more multiple dwelling units under common ownership, control, or management, unless such facility or facilities uses a public right-of way.

I. ''Relevant Geographic Area'' means the incorporated and unincorporated areas of the counties of Cobb, Bartow, Dekalb, Walton, Gwinnett, Fulton, Douglas, Fayette, Coweta, Clayton, Henry, Rockdale, Newton, and Cherokee, in the State of Georgia.

J. ''Overbuilding'' means instances in which two or more Cable Operators have the facilities to provide and are capable of providing Cable Television Service to the same subscribers.

II

It is further ordered that Summit and Wometco each cease and desist from, directly, indirectly, or through any corporate or other device, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, combining or attempting to combine, entering into or attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, carrying out or attempting to carry out, or soliciting or attempting to solicit, any combination, agreement, or understanding, either express or implied, with any Cable Operator or other provider or potential provider of Cable Television Service in any part of the Relevant Geographic Area:

A. To allocate or divide markets, customers, contracts, or territories for Cable Television Service in any part of the Relevant Geographic Area. ''Customers'' includes, but is not limited to, residents of existing, newly-constructed, or future housing developments, subdivisions, apartment complexes, or hotels; and

B. To refrain from Overbuilding any portion of any Cable Television System in any part of the Relevant Geographic Area.

Provided that nothing contained in the foregoing paragraphs of this order shall be construed to prohibit TWI or USW from engaging in any lawful conduct or entering into any lawful agreement.

III

It is further ordered that Summit and Wometco shall:

A. Within thirty (30) days after the date this order becomes final, distribute a copy of the complaint and order to each of their directors, officers, and supervisory employees who are in any way involved in Cable Television Service in the Relevant Geographic Area;

B. For a period of three (3) years after the date this order becomes final, furnish a copy of the complaint and order to each of their new directors, officers, and to each of their supervisory employees in any way involved in Cable Television Service in the Relevant Geographic Area, at the time they

become a director, officer, or supervisory employee;

C. For a period of three (3) years from the date this order becomes final, and within thirty (30) days after the date any entity becomes a majority-owned subsidiary of Summit or Wometco, provide a copy of the complaint and order to all directors, officers, and supervisory employees of such entity who are in any way involved in Cable Television Service in the Relevant Geographic Area.

IV

It is ordered that Summit and Wometco:

A. Within sixty (60) days after the date this order becomes final, and annually for the next five (5) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, shall each file a verified written report with the Commission setting forth in detail the manner and form in which each has complied and is complying with this order;

B. For the purpose of determining or securing compliance with this order, shall permit any duly authorized representative of the Commission:

1. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Summit or Wometco, relating to any matters contained in this order; and

2. Upon five days' notice to Summit and Wometco, and without restraint or interference from them, to interview officers, directors, or employees of Summit and Wometco, relating to any matters contained in this order. Summit and Wometco, and the officers, directors, and employees, may have counsel present.

C. Shall notify the Commission at least thirty (30) days prior to any proposed change in Summit or Wometco affecting the provision of Cable Television Service in the Relevant Geographic Area, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change that may affect their compliance obligations arising out of this order.

V

It is further ordered that this order shall terminate twenty (20) years from the date this order becomes final.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted for public comment from Summit Communications Group, Inc. (''Summit''), and Wometco Cable TV of Georgia, Inc., Wometco Cable TV of Cobb County, Inc., Wometco Cable TV of Clayton County, Inc., Wometco Cable TV of Conyers-Rockdale, Inc., Wometco Cable TV of Fayette County, Inc., Wometco Cable TV of Fulton County, and Wometco Cable TV of Henry County, Inc. (hereinafter collectively referred to as ''Wometco''), an agreement containing a proposed consent order to cease and desist.

The agreement has been placed on the public record for sixty (60) days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint prepared for issuance by the Commission along with the proposed order alleges that on or about April 26, 1990, officials of Summit and Wometco reached an understanding concerning which of the two companies would serve apartment complexes and/or housing complexes in an area of unincorporated Cob County, Georgia, where both companies have franchise authority to provide cable television service. The Complaint alleges that this understanding between Summit and Wometco was in operation from late April 1990 until at least March 24, 1993. The Complaint alleges that this understanding reached by Summit and Wometco was an agreement not to compete and has had the purpose or effect, or the tendency and capacity, to restrain competition unreasonably and to injure consumers by restraining competition between providers of cable television services in parts of unincorporated Cobb County, and depriving cable television subscribers in parts of unincorporated Cobb County of access to a competitively determined price and quality of cable television services.

Summit and Wometco have signed a consent agreement containing the proposed order. The proposed order prohibits Summit and Wometco from directly or indirectly combining or attempting to combine, entering into or attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, carrying out or attempting to carry out, or soliciting or attempting to solicit any combination, agreement, or understanding, either express or implied, with any cable operator or other provider or potential provider of cable television services to (a) allocate or divide markets, customers, contracts, or territories for cable television service, and (b) refrain from overbuilding any portion of any cable television system, in any part of the incorporated and unincorporated areas of the counties of Cobb, Bartow, Dekalb, Walton, Gwinnett, Fulton, Douglas, Fayette, Cowetta, Clayton, Henry, Rockdale, Newton, and Cherokee, in the State of Georgia.

The purpose of this analysis is to invite public comment concerning the proposed consent order. This analysis is not intended to consent order. This analysis is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way. The agreement would settle charges by the Commission that the proposed respondents violated Section 5 of the Federal Trade Commission Act by engaging in practices that restricted competition between providers of cable television services in parts of unincorporated Cobb County, Georgia.

Statement of the Commission; Summit Communications Group, Inc.

[File No. 951–0024]

In this matter, the Commission has alleged that the respondents, Summit and Wometco, which were competing providers of cable television service, entered into a market allocation agreement. Such an agreement is *per se* illegal and, in this case, deprived cable television subscribers of a competitive marketplace.

The two respondents were Georgia-based firms, each of which offered cable television services in some or all of fourteen Georgia counties. Subsequent to the alleged illegal conduct, Wometco was acquired by U.S. West, and after commencement of the Commission's investigation, Summit was acquired by Time-Warner. Thus, both Summit and Wometco are under the active control of major cable television firms whose managements were not implicated by the allegations of the Commission's complaint.

The proposed order prevents these respondents from engaging in similar conduct in the fourteen counties in Georgia where either of the two firms had operations, a far broader area than the small area in one county where the parties had cable systems capable of competing for business. Under the unique circumstances of this proceeding, the Commission has concluded that relief may be limited in this fashion.

The Commission's policy is that where *per se* illegal conduct is found, it will seek the broadest possible relief, without geographic limitation. *Boulder Ridge Cable TV,* Docket No. C–3537 (Oct. 19, 1994). Only in extraordinary cases, such as this one, will it be appropriate to limit the scope of relief.

Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part; Summit Communications Group, Inc.

[File No. 951–0024]

I concur in the Commission decision to issue a complaint alleging that the respondents conspired to allocate the market for cable television services. Market allocation agreements, including this one, are *per se* unlawful. *Addyston Pipe and Steel Co.* v. *United States,* 175 U.S. 211 (1899).

I dissent from the decision to limit the cease and desist order against Summit Communications Group, Inc. (Summit) and the seven named Wometco cable systems to a small geographic area surrounding Atlanta, Georgia. Summit operates cable television systems outside the fourteen Georgia counties that are included in the geographic

coverage of the order, and the order does nothing to prevent future violations at those systems. If, after the order is issued, Summit enters an identical market allocation agreement at a cable system outside these fourteen counties, the Commission's only recourse will be to initiate an administrative proceeding to obtain still another order.

Market allocation, like price fixing, has long been deemed *per se* unlawful, and no proof of market power is necessary to condemn the conduct. Nothing about the fourteen Georgia counties renders them uniquely susceptible to market allocation schemes. Since market allocation is unlawful whenever and wherever it occurs, I see no reason to limit the prohibition in the order to a tiny geographic region.

The complaint and order set forth no rationale for drawing a line around these fourteen counties as the geographic metes and bounds of the order's coverage. The actual agreements alleged in paragraphs six through eleven of the complaint relate to the provision of cable television service to the Asbury Village apartment complex and specific housing subdivisions. As alleged in paragraph thirteen of the complaint, the restraint of trade had its anticompetitive effect only in these unincorporated areas of Cobb County, Georgia. The absence of any apparent rationale is troubling. In future cases, it opens the door to unguided negotiations regarding the geographic scope of conduct orders.

This is the second consent agreement involving allegations of market allocation in which the Commission has limited the coverage of the order to a narrow geographic area In *B & J School Bus Service, Inc.*, Docket No. C–3425 (April 22, 1993), I dissented from the limitation on the geographic coverage of the order on the ground that in the rare case in which the Commission uncovers a flagrant *per se* violation such as bid rigging, price fixing or market allocation, it should take strong action to prohibit the participants in conspiracy from repeating the violation. I expressed concern that the Commission was signalling a new leniency toward *per se* antitrust violations. In accepting this second order with such a weak and limited remedy, the Commission appears to eliminate the possibility that the school bus order can be disregarded as an aberration.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–18956 Filed 8–1–95; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Public Information Collection Requirements Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS), is publishing the following summaries of proposed collections for public comment.

1. *Type of Information Collection Request:* Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Peer Review Organization (PRO) Reporting Forms; *Form Nos.:* HCFA 613–627; *Use:* PROs are authorized to review inpatient and outpatient services for quality of care provided and to eliminate unreasonable, unnecessary, and inappropriate care provided to Medicare beneficiaries. The PROs are required to report the results of the review to HCFA. *Frequency:* Monthly, quarterly; *Affected Public:* Business or other for profit; *Number of Respondents:* 53; *Total Annual Hours:* 10,759.

2. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Evaluation of the Oregon Medicaid Reform Demonstration, Baseline Survey; *Form No.:* HCFA R–179; *Use:* The baseline survey is one component in the evaluation of the Oregon Medicaid Reform Demonstration (OMRD), a demonstration authorized under section 115 of the Social Security Act. The purpose of the survey is to gather information on the health status, past utilization, and level of satisfaction of a sample of newly enrolled OMRD recipients, in a way that allows followup contact, and maximizes the likelihood of preenrollment recall. *Frequency:* Annually; *Affected Public:* Individuals or households; *Number of Respondents:* 2,667; *Total Annual Hours:* 500.

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Information Collection Requirements in HSQ 108–F, Assumption of Responsibilities; *Form No.:* HCFA R–71; *Use:* Rule establishes the review functions to be performed by the PRO and outlines the relationships among PROs, providers, practitioners, beneficiaries, fiscal intermediaries, and carriers. *Frequency:* Monthly, quarterly; *Affected Public:* Business or other for profit; *Number of Respondents:* 53; *Total Annual Hours:* 46,653.

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medical Records Review Under Prospective Payment System (PPS); *Form No.:* HCFA R–50; *Use:* PROs are authorized to conduct medical review activities under the PPS. In order to conduct medical review activities, we depend upon hospitals to make available specific records. *Frequency:* Annually; *Affected Public:* Business or other for profit; *Number of Respondents:* 6,412; *Total Annual Hours:* 22,400.

5. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Evaluation of the Medicare Cataract Surgery Alternate Payment Demonstration; *Form No.:* HCFA–R–177; *Use:* To test the feasibility of a negotiated bundled payment for the entire episode of cataract surgery with an intraocular lens implant and, provide insight into appropriateness indicators and effective quality assurance and utilization review mechanisms for cataract surgery. *Frequency:* Annually; *Affected Public:* Business or other for profit institutions; *Number of Respondents:* 1,686; *Total Annual Hours:* 506.

6. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Home Health Agency Survey and Deficiencies Report, Home Health Functional Assessment Instrument; *Form Nos.:* HCFA–1572, HCFA–1515; *Use:* In order to participate in the Medicare program as a home health agency (HHA) provider, the HHA must meet Federal standards. These forms are used to record information about patients' health and provider compliance with requirement and report information to the Federal Government. *Frequency:* Annually; *Affected Public:* Business or other for profit; *Number of Respondents:* 8,622; *Total Annual Hours:* 129,330.

7. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Survey Team Composition and Workload Report; *Form No.:* HCFA–670; *Use:* This form will provide information on resource utilization applicable to survey activity in the Medicare/Medicaid provider/supplier types and Clinical Laboratory Improvement Amendment (CLIA) laboratories. This information will assist HCFA in determining Federal reimbursement for surveys conducted. *Frequency:* Annually; *Affected Public:* State, local, or tribal governments; *Number of Respondents:* 53; *Total Annual Hours:* 71,667.

8. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Field Testing of the Uniform Needs Assessment Instrument; *Form No.:* HCFA-R–180; *Use:* The validity, reliability, and administrative feasibility of the Uniform Needs Assessment instrument will be

tested in a small-scale trial. Also, a high risk screener will be developed to identify hospital patients in need of extensive discharge planning. Testing will be done in two phases approximately 1 year apart. Each phase will involve 12 provider sites, 420 patients, and 840 total assessments. *Frequency:* Annually; *Affected Public:* Individuals or households, business or other for profit, and not-for-profit institutions; *Number of Respondents:* 420; *Total Annual Hours:* 1,050.

To request copies of the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: John Burke, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 24, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–18942 Filed 8–1–95; 8:45 am]

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Statement of Organization, Functions, and Delegations of Authority; Update of Regional Office Division Level Functional Statements

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 59, No. 60, pp. 14658–14659, dated Tuesday, March 29, 1994) is being amended to reflect changes to the functional statements to the Division level components within the HCFA Regional Offices (ROs). Eight of the ROs propose to streamline their organizational structure in accordance with HCFA's Strategic Plan (SP) and the recommendations contained in the National Performance Review. Seattle plans to streamline as a demonstration project to last up to 18 months. Seattle will establish seven organizations, called Clusters, that will report to the Office of the Regional Administrator (ORA). The other ROs will retain the basic three division structure, including the Division of Health Standards and Quality (DHSQ), the Division of Medicaid, and the Division of Medicare, in each of the ROs affected by this proposal. The changes to the functional statements at the division level are minor and can best be characterized as updates and clarifications of functional responsibilities. The primary changes occur at the branch level where the ROs propose to realign components to improve services to beneficiaries, streamline their functions, to reduce the number of supervisory positions, enhance employee empowerment and meet the goals of the HCFA SP. The functional responsibilities of the Division of Medicare and the Division of Medicaid are the same in all regions, except Seattle, with minor variations indicated in the functional statements.

The functional statements for DHSQ and the Divisions of Medicaid and Medicare in Denver and San Francisco are being republished. The functional statements for these two ROs will remain operational until revised by a proposal later in the year. There are thus four distinct functional statements for the DHSQ due to variations caused by the concentration of primary responsibility for medical review activities in three regions (Boston, Dallas, and Kansas City). The other ROs will continue to have responsibility for some aspects of medical review but will not have the primary responsibility for the function. The first statement applies to those ROs (New York, Philadelphia, Atlanta, and Chicago) that do not have primary responsibility for the medical review function. The second statement applies to two of the ROs that have primary medical review responsibility, Boston and Dallas. In both of these regions, the medical review function will be assigned to DHSQ. The third DHSQ statement applies to Kansas City, where the medical review function will be assigned to the immediate ORA rather than DHSQ. The fourth statement applies to the Denver and San Francisco which retain the current DHSQ functional responsibility until revised by a streamlining proposal later this year.

The functional statements for DHSQ and the Division of Medicaid and the Division of Medicare in Denver and San Francisco are being republished to avoid confusion.

The specific amendments to Part F. are as follows:

• Section F.10.D.6 (Organization) is amended to read as follows:

6. Office of the Regional Administrator

a1. Division of Health Standards and Quality (FLD(2–5)A)
a2. Division of Health Standards and Quality (FLD(1,6)A)
a3. Division of Health Standards and Quality (FLD(7)A)
a4. Division of Health Standards and Quality (FLD(8,9)A)
b1. Division of Medicaid (FLD(1–4, 6–7)B)
b2. Division of Medicaid and Managed Care (FLD(5)B)
b3. Division of Medicaid (FLD(8–9)B)
c1. Division of Medicare (FLD(1–7)C)
c2. Division of Medicare (FLD(8–9)C)
d1. Medicare Operations and Policy Cluster (FLDXD)
d2. Medicaid Operations and Policy Cluster (FLDXE)
d3. Program Fiscal Integrity Cluster (FLDXF)
d4. Consumer Services and Information Cluster (FLDXG)
d5. Managed Care Operations Cluster (FLDXH)
d6. Health Care Quality Improvement Cluster (FLSXJ)
d7. Certification Improvement Cluster (FLDXK)

Section F.20.D.6.a (Functions) is amended to read as follows:

a1. Division of Health Standards and Quality (FLD(2–5)A)

• Assures that health care services provided under the Medicare, Medicaid, and CLIA programs are furnished in the most effective and efficient manner consistent with recognized professional standards of care.

• Interprets and implements health safety standards and evaluates their impact on utilization and quality of health care services.

• Determines approval and denial of all provider and supplier certification actions under the Medicare program.

• Initiates and implements remedial actions, including termination of agreements or alternative sanctions against health care facilities not in compliance with Medicare requirements.

• Makes final determination on all initial and supplemental budget requests submitted by State survey agencies.

• Monitors and evaluates State activities related to Medicare and Medicaid survey and certification.

• Oversees and monitors joint State survey agency/ESRD Network activities.

• Authorizes investigation of complaints received from the public, the Congress, the media, and other sources which allege deficiencies in the quality of care rendered by certified health care providers.

• Coordinates State survey agency activities related to COBRA dumping, sanctions and civil money penalties.

• Actively participates in and takes a lead role in training, outreach and

collaborative activities involving providers, provider groups, and State survey agencies, relating to quality of health care services.

• Provides leadership in the development, implementation and continuation of Continuous Quality Improvement activities for the State survey agencies and providers.

• Directs RO activities in support of HCFA's National Managed Care Program.

a2. Division of Health Standards and Quality (FLD(1,6)A)

• Oversees, monitors, coordinates, and evaluates the State Survey agencies, Peer Review Organizations (PROs), and ESRD Networks.

• Assures that health care provided under the Medicare, Medicaid, and CLIA programs are appropriate, of high quality, and meet recognized professional standards of care.

• Improves the quality of care provided to Medicare beneficiaries by administration of the PROs and ESRD Network programs, hereafter referred to as Quality Improvement Programs (QIPs). Under the Health Care Quality Improvement Program (HCQIP), QIPs collaborate with providers to identify and act upon opportunities for the quality of health care services.

• Oversees the negotiation and award of contracts for QIPs.

• Interprets and implements health and safety standards and evaluates, through surveillance, and surveys, their impact on the utilization and quality of health care services.

• Evaluates services to ensure protection of beneficiaries receiving health care services under the Medicare, Medicaid, and CLIA programs.

• Provides leadership and direction in beneficiary information and outreach activities concerning health care services, including information to enable beneficiaries to make informed health care choices.

• Determines program eligibility for all providers and suppliers under the Medicare program, and executes required agreements.

• Initiates, implements, and coordinates State related adverse actions and alternative remedies, including civil money penalties, and Federal activities against health care facilities not in compliance with Medicare or CLIA requirements.

• Makes final determination on all budget request submitted by State survey agencies.

• Establishes and maintains an extensive data and information gathering system involving all aspects of the certification program, CLIA, and QIPs.

• Authorizes investigation of complaints received from beneficiaries, the public, the Congress, the media, and other sources which allege deficiencies in the quality of care rendered by certified health care providers.

• Actively participates in and takes a lead role in training, outreach and collaborative activities involving providers, provider groups, health care professionals, professional reorganizations, consumer groups, and State survey agencies, relating to quality of health care services.

• Provides leadership in the development, implementation and continuation of continuous Quality Improvement activities for the State survey agencies and providers.

• Provides leadership in the quality improvement aspects of HCFA's National Managed Care Program.

• Develops and conducts training programs for the State survey agencies.

• Provides clinical assistance and technical direction to QIPs in the selection and evaluation of project, and develops, executes and measures HCFA directed cooperative clinical projects.

a3. Division of Health Standards and Quality (FLD(7)A)

• Oversees, monitors, and evaluates the State survey agencies and Medicaid State agencies.

• Assures that health care services provided under the Medicare, Medicaid, and CLIA programs are furnished in the most effective manner consistent with recognized professional standards of care.

• Interprets and implements health and safety standards and evaluates, through surveillance, assessments and surveys, their impact on the utilization and quality of health care services.

• Determines approval, denial, or termination of all provider and supplier certification actions under the Medicare program.

• Implements and coordinates State, Contractor, and carrier activities related to adverse sanctions and alternative remedies.

• Makes final determination on all budget requests submitted by State survey agencies.

• Establishes and maintains an extensive data and information gathering system involving all aspects of the certification.

• Authorizes investigation of complaints received from the public, the Congress, the media, and other sources which allege deficiencies in the quality of care rendered by certified health care providers.

• Actively participates in and takes a lead role in training, outreach and collaborative activities involving providers, provider groups, and State survey agencies, relating to quality of health care services.

• Provides leadership in the development, implementation and continuation of continuous Quality Improvement activities for the State survey agencies and providers.

a4. Division of Health Standards and Quality (FLD(8,9)A)

• Assures that health care services provided under the Medicare and Medicaid programs are furnished in the most effective and efficient manner consistent with recognized professional standards of care.

• Interprets and implements health safety standards and evaluates their impact on utilization and quality of health care services.

• Determines approval and denial of all provider and supplier certification actions under the Medicare program.

• Initiates and implements remedial actions, including termination of agreements against health care facilities not in compliance with Medicare requirements.

• Makes final determination on all initial and supplemental budget requests submitted by State survey agencies.

• Monitors and evaluates State activities related to Medicare and Medicaid survey and certification.

• Oversees, monitors, and evaluates Peer Review Organizations (PROs), including recommendations for contract renewal, extension, and modification.

• Recommends approval or withholding of monthly voucher payments to PROs.

• Authorizes investigation of complaints received from the public, the Congress, the media, and other sources which allege deficiencies in the quality of care rendered by certified health care providers.

• Coordinates State survey agency activities related to sanctions and civil money penalties.

b1. Division of Medicaid (FLD(1–4,6–7)B)

• Plans, manages and provides Federal leadership to State agencies in program development, implementation, maintenance, and the regulatory review of State Medicaid program management activities under title XIX of the Social Security Act.

• Plans, directs, coordinates, and approves Medicaid State agency data processing systems (including MMIS)), proposals, modifications, operations,

contracts, and reviews. Assists Medicaid State agencies in developing innovative automated data processing health care systems. Assures the propriety of Federal expenditures.

• Reviews, evaluates, and determines acceptability of audit findings and recommendations and takes necessary clearance and closure actions.

• Maintains day-to-day liaison with State agencies and monitors their Medicaid program activities and practices by conducting periodic program management and financial reviews to assure State adherence to Federal law and regulations.

• Reviews, approves, recommends disapproval, and maintains official State plans and plan amendments for medical assistance.

• Reviews, approves, and monitors State payment systems and determines the allowablity of claims for Federal financial participation. Takes action to disallow claims when expenditures are not in accordance with Federal requirements and defends such action before the Departmental Appeals Board and in court. Defers payment action on questionable State claims for allowability.

• Reviews States' Medicaid quarterly estimates and statement of expenditures and recommends the amount to be estimated and allowed in the quarterly grants.

• Implements title XIX special initiatives and special or experimental programs such as Maternal and Child Health, Acquired Immune Deficiency Syndrome, statewide 1115 waivers, Freedom of Choice Waivers (1915(b), Home and Community Based Services Waivers (1915c), and operations of major management initiatives.

• Provides consistent guidance, technical assistance, and policy interpretation to States on Medicaid program and financial issues.

• Responds to beneficiary, Congressional, provider, and public inquiries concerning Medicaid issues, including Freedom of Information Act requests.

• Conducts customer outreach and service initiatives.

• Reviews and approves managed care contracts and prepaid health plans.

b2. Division of Medicaid and Managed Care (FLD(5)B)

• Provides Federal leadership to State agencies in program implementation, maintenance, and regulatory review of State Medicaid program management activities under Title XIX of the Social Security Act.

• Assures the propriety of Federal Medicaid expenditures and, where appropriate, takes action to disallow claims.

• Consults with and provides guidance to States on appropriate matters including the interpretation of Federal requirements, options available to States under these requirements, and information on practices in other States.

• Provides consistent policy guidance to States on Medicaid program administration and the amount, duration, scope, and payment for health services under the State program.

• Monitors State agency Medicaid activities by conducting periodic program management and financial reviews to assure State adherence to Federal laws and regulations.

• Reviews, approves, and maintains official State plans and State plan amendments for medical assistance.

• Directs activities in support of the Medicare managed care program including technical support and oversight of these plans.

• Reviews, approves or recommends for disapproval, and monitors State institutional payment plans and systems (after CO concurrence for hospitals and long term care facilities).

• Reviews States' quarterly statements of expenditures and recommends appropriate action on amounts claimed.

• Defers payment action on questionable State claims for allowability.

• Issues orders suspending Federal financial participation on unallowable State Title XIX payments and defends disallowance actions at Departmental Appeals Board.

• Plans, directs, and coordinates the review and approval of Medicaid State agency data processing systems, proposals, modifications, operations, and contracts.

• Implements Title XIX special initiatives, such as maternal and child health, Acquired Immune Deficiency Syndrome, managed care plans, health maintenance organization contracts, and other special or experimental programs and operations of major management initiatives.

• Performs Medicaid eligibility quality control reviews over State Medicaid eligibility and inspection of care practices to assure their ongoing compliance with Medicaid laws and regulations.

b3. Division of Medicaid (FLD(8–9)B)

• Provides Federal leadership to State agencies in program implementation, maintenance, and regulatory review of State Medicaid program management activities under Title XIX of the Social Security Act.

• Assures the propriety of Federal Medicaid expenditures and, where appropriate, takes action to disallow claims.

• Consults with and provides guidance to States on appropriate matters including the interpretation of Federal requirements, options available to States under these requirements, and information on practices in other States.

• Provides consistent policy guidance to States on Medicaid program administration and the amount, duration, scope, and payment for health services under the State program.

• Monitors State agency Medicaid activities by conducting periodic program management and financial reviews to assure State adherence to Federal laws and regulations.

• Reviews, approves, and maintains official State plans and State plan amendments for medical assistance.

• Reviews, approves or recommends for disapproval, and monitors State institutional payment plans and systems (after CO concurrence for hospitals and long term care facilities).

• Reviews States' quarterly statements of expenditures and recommends appropriate action on amounts claimed.

• Defers payment action on questionable State claims for allowability.

• Issues orders suspending Federal financial participation on unallowable State Title XIX payments and defends disallowance actions at Departmental Appeals Board.

• Plans, directs, and coordinates the review and approval of Medicaid State agency data processing systems, proposals, modifications, operations, and contracts.

• Implements Title XIX special initiatives, such as Maternal and Child Health, Acquired Immune Deficiency Syndrome, prepaid health plans, health maintenance organization contracts, and other special or experimental programs and operations of major management initiatives.

• Performs Medicaid eligibility quality control reviews over State Medicaid eligibility and inspection of care practices to assure their ongoing compliance with Medicaid laws and regulations.

c1. Division of Medicare (FLD(1–7)C)

• Directs Medicare program administration through working relationship with contractors, providers, physicians, beneficiaries, the Social Security Administration district offices, the Administration on Aging, the Office of Inspector General, and other Federal agencies, as well as local and national

organizations and individuals, as required.

• Directs the review and revaluation of the effectiveness of the Medicare program.

• Directs activities in support of the Managed Care Program including technical support and oversight of Health Maintenance Organizations, and other prepaid contractors.

• Monitor all aspects of contractor performance including claims/bills processing; coverage decisions; Medical Review; the detection of fraud, abuse, and waste in the Medicare Program; overpayment identification and collection; Medicare Secondary Payer (MSP); provider payment and audit; payment to physicians and suppliers; and electronic media claims.

• Coordinates on-going contractor fiscal management activities, including subcontracting, cash management activities, and compliance with the Chief Financial Officers Act.

• Negotiates and approves Medicare contractor budget and budget modifications.

• Directs and coordinates Medicare contractor system and workload transaction activities. Provides advice in the development of the Medicare Transaction System (MTS).

• Evaluates Medicare contractor performance and prepares annual Report of Contractor Performance.

• Manages beneficiary, provider, and public information programs.

• Recommends renewals, non-renewals, rescissions, and terminations of Medicare contracts.

• Coordinates the ESRD program.

c2. Division of Medicare (FLD(8, 9)C)

• Directs Medicare program administration through working relationship with contractors, providers, physicians, the Social Security Administration regional offices, the Administration on Aging, the Office of Inspector General, and other local and national organizations and individuals, as required.

• Directs the review and evaluation of the effectiveness of the Medicare program.

• Directs activities in support of the Managed Care Program including technical support and oversight of health maintenance organizations, and other prepaid contractors.

• Monitors all aspects of contractor performance including claims processing, coverage decisions, overpayment identification and collection, Medicare secondary payor, provider payment and audit, payment to physicians and suppliers, and electronic media claims.

• Coordinates ongoing contractor fiscal management activities, including subcontracting.

• Negotiates and approves Medicare contractor budget modifications.

• Evaluates Medicare contractor performance and prepares annual contractor evaluation report.

• Manages beneficiary, provider, and public information programs.

• Recommends renewals, non-renewals, recessions, and terminations of Medicare contracts.

d1. Medicare Operations and Policy Cluster (FLDXD)

• Directs and coordinates the assessment of Medicare fiscal intermediary contractor performance to ensure compliance with their Medicare contracts. Oversees corrective action and resolution of operational problems.

• Integrates program integrity considerations into all aspects of contractor operations to manage trust fund and general fund expenditures in a responsible manner, referring potential fraud cases for development and action to the Program Fiscal Integrity Cluster.

• Applies data analysis to assess risk and/or vulnerability of payment policies to ensure appropriateness of program expenditures and recommends policy and procedure changes to CO as needed.

• Monitors, evaluates, and assesses Medicare contractors' performance.

• Recommends renewals, non-renewals, rescissions, and terminations of Medicare contracts.

• Monitors the Medicare Common Working File host contractor's performance and oversees the operations and interfaces of the host and satellites.

• Provides specialized technical support and expertise to Medicare contractors and other HCFA components in such areas as ESRD, rural health clinics, Part B payment, medical review, coverage, and coding issues.

• Oversees and evaluates Part B payment changes and Part A and Part B medical review activities.

• Directs the review of Medicare contractor data processing systems, proposals, and modifications.

• Reviews, negotiates, and recommends approval of contractor budgets, modifications to budget allotments, and final settlement of contractor costs.

• Monitors Medicare contractor banking activities and recommends approval of contractor banking agreements.

• Maintains letter of credit and allotment controls on Medicare contractors to monitor funds drawn for administrative purposes.

• Provides technical assistance to Medicare contractors in implementing corrective actions, resolving operational problems, improving their contract performance, and in implementing special HCFA initiatives.

• Conducts special studies of contractor's performance and identifies opportunities for improving contractor's effectiveness.

• Coordinates and provides guidance to Medicare contractors and providers/suppliers in resolving billing, payment, coverage, claims processing, and customer service issues.

• Evaluates proposed regulatory and policy changes to the Medicare program and makes recommendations for CO consideration.

• Provides specialized technical support and oversight in such areas as Part A and Part B appeals.

d2. Medicaid Operations and Policy Cluster (FLDXE)

• Directs and coordinates the assessment of Medicaid State agencies compliance with the Medicaid State plans, with the exception of institutional payment State plans.

• Provides specialized technical support and expertise to Medicaid State agencies and other HCFA components including those related to non-institutional payment; early and periodic screening, diagnosis, and treatment; third-party liability; eligibility, entitlement, and coverage of health services; the Vaccines for Children program, and maternal and infant health.

• Provides technical assistance to State agencies in implementing corrective actions, resolving problems, and improving the effectiveness of their performance.

• Negotiates compliance issues and other problems with State agency management.

• Reviews and approves Medicaid State plan amendments, except for institutional payment State plans.

• Oversees, coordinates, and assesses the operation of State Medicaid Home and Community-Based Services Waivers.

• Provides highly specialized technical direction and assistance to States regarding computer systems applications, particularly for the Medicaid Management Information System (MMIS) and the Family Assistance Management Information System procurement, development, and installations.

d3. Program Fiscal Integrity Cluster (FLDXF)

- Conducts annual System Performance Reviews on MMIS computer systems to validate their compliance with Federal specifications as well as to confirm their ongoing eligibility for enhanced Federal funding.
- Oversees fiscal operations of the Medicare and Medicaid programs.
- Provides leadership and technical assistance to Medicaid State agencies in the development and maintenance of their Medicaid financial management activities, including the recovery of Medicaid overpayments, Medicaid utilization control; and inspection of care reviews.
- Conducts periodic comprehensive on-site financial reviews to assure State adherence to Federal laws, regulations, and State plans. Provides technical expertise and guidance in the financial system and cost allocation areas.
- Reviews State quarterly statements of expenditures and recommends appropriate actions (including acceptance, deferral or disallowance) on amounts claimed; and in a case of disallowance, prepares HCFA position for Departmental Appeals Board.
- Reviews State Medicaid budget estimates projecting future Federal funding requirements and recommends appropriate State funding levels to CO.
- Reviews, approves, or recommends disapproval, and monitors State institutional payment plans and systems for hospitals and nursing facilities, and determines the allowability or nonallowability of claims for Federal financial participation (FFP); and where State expenditures have not been made in accordance with an approved plan or Federal requirements, takes action to disallow such claims.
- Reviews the effectiveness of specific Medicaid program areas operated by State agencies, using data analysis techniques to assess whether the State program meets intent.
- Together with State agency staff, develops studies to help the State assess its own effectiveness.
- Participates with CO components in the development and design of quality measurements of the Medicaid program's effectiveness.
- Evaluates Medicare contractor's activities involving Medicare Secondary Payor (MSP) performance and negotiates MSP subrogation cases.
- Monitors and negotiates the settlement and resolution of audit findings pertaining to the Medicare or Medicaid programs which originate from HHS' Office of Inspector General or the General Accounting Office.
- Conducts quality assurance reviews of Medicare contractor claims payment operations.
- Monitors Medicare contractor overpayment identification and collection activities, pursues collection of overpayments referred to the RO, authorizes extended repayment schedules, assists regional counsel in bankruptcy cases; prepares overpayment cases for offset against Medicaid payments and Internal Revenue Service refunds; and refers cases to the Department of Justice for possible litigation as appropriate.
- Provides technical assistance to Medicare contractors, Medicaid State agencies, and other HCFA components in the area of Medicare and Medicaid payment and fiscal administration.
- Performs special studies of Medicare institutional payment practices and recommends corrective action to close loopholes identified.
- Conducts the Medicare cost report evaluation program.
- Recommends approval or disapproval of common audit agreements, rural referral centers, and sole community provider exemption requests.
- Performs reviews of allowability of costs claimed by Medicare contractors on the Final Administrative Cost Reports.
- Monitors and reviews Medicare contractors compliance with the Chief Financial Officer's Act.
- Directs the region's efforts to develop and refer cases of suspected fraud in Medicare and Medicaid, maintaining close contact with OIG, Medicaid fraud units at State Agencies, and the Department of Justice.
- Coordinates fraud and abuse activities with other HCFA ROs, Medicare contractors, other third party payers, and CO.
- Reviews the effectiveness of specific Medicaid program areas operated by State agencies, using data analysis techniques to assess whether the State program meets intent.

d4. Consumer Services and Information Cluster (FLDXG)

- Ensures that Medicare and Medicaid beneficiaries are informed of HCFA program benefits, rights, and responsibilities through a comprehensive marketing strategy to varied audiences.
- Monitors, evaluates, and assesses the performance of Medicare contractors in their beneficiary outreach and service organizations.
- Coordinates the operation of a public information and outreach programs directed at beneficiary groups, professional organizations, advocacy organizations, other health care entities, and the media.
- Directs the implementation of HCFA beneficiary services initiatives, such as the Medigap, Retired Senior Volunteer Programs, Information Counseling Assistance grants, and Qualified Medicare Beneficiary (QMB) programs.
- Provides direction, technical assistance, and training to the Social Security Administration district offices concerning Medicare entitlement, post-entitlement, and beneficiary education functions, and monitors the performance of these functions.
- Coordinates and controls the processing of responses to all beneficiary, provider, and Congressional inquiries.
- Provides specialized technical support and oversight in such areas as QMB and buy in.
- Works closely with local congressional and Governor's offices to provide a full array of constituent services and support.

d5. Managed Care Operations Cluster (FLDXH)

- Conducts a broad range of activities to oversee the operation of Medicare and Medicaid managed care plans to protect access to care and to enhance access to care, especially in rural or other undeserved areas.
- Provides leadership and oversight of health care delivery systems in Medicare and Medicaid that depart from the traditional fee-for-service model.
- Provides technical advice to health care plans that want to enter into risk and cost contracts for Medicare.
- Evaluates applications from managed care plans to become Medicare risk or cost contractors and/or expand operations to assure compliance with applicable laws and regulations; recommends approval or denial of such applications.
- Reviews and approves managed care plan marketing materials to assure adherence to laws and regulations and to assure that Medicare beneficiaries receive appropriate and clear information about the plans' benefit package and consumer protection.
- Assures contract compliance through periodic monitoring of plan performance.
- In cases of non-compliance, approves corrective action plan from the managed care plans and monitors adherence to the corrective action plan.
- Maintains ongoing relations with managed care plans in the region and works with central office to resolve problems plans have with HCFA policy

or procedures; recommends changes to CO in policy and procedures as appropriate.

• Operates a program of beneficiary services that includes direct contact with the Medicare beneficiary to resolve problems with particular plans, contract through congressional offices concerning beneficiary problems, and contact plans to resolve beneficiary problems.

• Resolves systems problems that affect beneficiary eligibility/entitlement under a particular managed care plan.

• Receives and evaluates complaints from beneficiaries concerning quality of care and refers such complaints to PROS for further investigation as appropriate.

• Conducts data analysis of plan performance indicators to determine whether plans need technical assistance or corrective action.

• Through ongoing information gathering in the health care marketplace, provides early warning to CO on polices that might impede the risk contracting in Medicare as commercial/public member limits and rate setting.

• Provides leadership and technical support to States in designing and implementing Medicaid managed care programs.

• Evaluates requests for freedom of choice waivers for Medicaid managed care plans to assure that access to care is maintained or enhanced and that projected costs comply with applicable law and regulation.

• Reviews and approves contracts between States and providers to assure compliance with Federal law and regulation.

• Provides early technical assistance to States that plan to apply for Section 1115 waivers to implement Statewide health care reform.

• Works closely with CO to evaluate requests for Section 1115 waivers, assuming a lead role when the waiver is approved and implementation begins.

• Provides ongoing technical assistance to States with active statewide Section 1115 waivers to assure that conditions of the waiver are adhered to and that access to care is adequate.

• Provides technical assistance to States in finding creative and new methods of delivering Medicaid services through a variety of managed care arrangements.

d6. Health Care Quality Improvement Cluster (FLDXJ)

• Assures that medical care, paid for by Federal Medicare funds, is medically necessary and meets recognized professional standards and quality of care through funding and the monitoring of Peer Review Organizations (PROs) and ESRD Networks in a multi-regional geographic area.

• Provides leadership to PROs and networks to design projects that will improve care to Medicare beneficiaries.

• Maintains knowledge of HCFA data bases, as well as other large health related data bases, and uses these to evaluate care provided to the Medicare population.

• Oversees the PROs' development of local quality studies to assure scientific merit and program relevance.

• Encourages PROs and ESRD networks to work with providers to use the results of local quality studies to fashion interventions to improve care.

• Conducts special regionwide studies to evaluate care provided to Medicare beneficiaries, including beneficiary groups which may have special health care needs, and works through PROs to help providers design interventions to improve care.

• Disseminates useful information to providers and to beneficiaries to improve quality of care.

• Convenes groups at the local level to collaborate on studies involving the quality of care provided to the Medicare, Medicaid, and managed care populations; this includes bringing together variously funded sources such as universities, foundations, and State offices with similar interests in quality of care.

• Participates in the negotiation and award of contracts to PROs.

• Prepares technical and budget evaluations of contract proposals received from PROs, and makes judgments to commit Federal funds for program implementation.

• Monitors and assesses the overall quality performance of PROs including success in using local projects to improve care for Medicare beneficiaries.

d7. Certification Improvement Cluster (FLDXK)

• Manages the State agency evaluation program and assesses the performance of the State survey agency in their survey and certification review process for compliance with performance standards.

• Works with the States to design internal quality assurance programs.

• Negotiates State agency agreements and issues substantive regional guidelines containing policy and procedural interpretations relating to certification activities.

• Evaluates complaints from the public, media, Congress, and others alleging deficient standards in provider facilities, and instructs State agencies to investigate, as appropriate.

• Makes final recommendations on all initial budget and supplemental budget requests submitted by State agencies.

• Takes adverse actions against non-complying Medicare facilities.

• Establishes and maintains a data and information gathering system involving all aspects of the certification program.

• Conducts Federal surveys of providers and suppliers of health services to ensure that State monitoring is satisfactory.

• Performs or authorizes validation surveys in accredited institutions to determine their compliance with Federal standards.

• Conducts surveillance and assessment of State agency operations regarding quality of care, and assists them in developing the capability to provide direct assistance to providers and suppliers of health services in the improvement of their performance.

• Conducts studies, pilot projects, and experimental programs and assists in implementing techniques designed to improve the survey and certification process and peer review systems.

• Conducts training of State surveyors as needed and indicated by Federal monitoring.

Dated: July 19, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–18977 Filed 8–1–95; 8:45 am]

BILLING CODE 4120–01–P

Substance Abuse and Mental Health Services Administration

Cooperative Agreement With the State of Hawaii

AGENCY: Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice of planned cooperative agreement award to the State of Hawaii to serve a rural area in the Hawaiian Islands with a focus on substance abuse among Native Hawaiians and other residents of rural Hawaii.

SUMMARY: The Center for Substance Abuse Treatment (CSAT), SAMHSA, is publishing this notice to provide information to the public of a planned single source cooperative agreement award to the State of Hawaii for the development and evaluation of systems of substance abuse and/or dependence intervention, treatment and recovery

services among rural Native Hawaiians. Other residents of rural Hawaii residing in the particular services area may also be provided services. The anticipated project period is three years and the estimated FY 1995 award is $500,000. An award will be made based on an acceptable application that is approved by a peer review committee and the CSAT National Advisory Council.

AUTHORITY/JUSTIFICATION: A cooperative agreement award will be made under the authority of section 510(b)(1) of the Public Health Service (PHS) Act, as amended (42 U.S.C. 290bb–3).

The Catalog of Federal Domestic Assistance number for this program is 93.122.

The State of Hawaii has been selected for an award because of the special substance abuse problems of Native Hawaiians. Hawaii also has the highest percentage of chronic drinkers in the Nation. Among Native Hawaiians who self reported drinking patterns from the age of 18 to 34, 90 percent of males and 67 percent of females identified themselves as heavy drinkers and/or substance abuse users. Almost one-fifth of the adult drinking population meet the screening criteria for alcoholism and over 10 percent of pregnant women tested in a four-month period had positive drug urine results at the time of delivery.

In addition, rural remote areas of Hawaii, such as the Neighbor Islands of Kauai, Maui, Molokai, Lanai and the Big Island of Hawaii, are very isolated and have limited substance abuse treatment and related services. Lack of transportation and communication are common problems, thus, access to the very limited substance abuse and related health care services is difficult, if not impossible.

The availability of treatment services for Native Hawaiians and other neighboring residents of rural areas is inadequate to meet the extensive needs for treatment and related services. For example, there are only 32 licensed residential treatment beds in Maui, 30 on the Big Island and 6 on Kauai. None exist on Lanai or Molokai. The Neighbor Islands have virtually no methadone services, either for methadone detoxification or maintenance. The Big Island has just begun to provide methadone maintenance to 30 of those in need. Three hundred and fifteen individuals are currently on the Big Island waiting list for these services. In view of these considerations and in order to assure that specific attention is focused on rural Native Hawaiians and their neighbors, it has been determined that $500,000 should be reserved for the exclusive purpose of providing services to this population in need.

The proposed project will focus on improving the availability and accessibility of substance abuse treatment services for Native Hawaiians and other neighboring residents of rural Hawaii. No non-native Hawaiian residing in the service area will be denied services based on their status as non-native Hawaiians. Further, the required evaluation component of the program will provide information useful in the future design of rural substance abuse treatment programs.

Since the only sizable number of Native Hawaiians are found in Hawaii, and consistent with CSAT's goals to coordinate Federal, State and local treatment planning and coordination provision of other health care services, and data collection efforts, and to work in partnership with the single State agencies (SSAs) to administer discretionary funds to the maximum extent practical, eligibility is being limited to the State of Hawaii. The Hawaii Department of Health, as the SSA for alcohol and drug abuse, is uniquely qualified to carry out the proposed project because it has mechanisms in place for securing pertinent information from public and private nonprofit agencies for service planning, management, evaluation and data collection. It also has the unique ability to coordinate health services, oversight and maximize the long-term benefit of the award. It is anticipated that the high degree of interdisciplinary State involvement will facilitate planning and integration of services, as well as State support of systemic improvements after Federal support is no longer available.

The cooperative agreement mechanism is being used for this award in order to facilitate the coordination of this project with the five projects funded under this program in September 1993, as well as with other SAMHSA, PHS, HHS, and Departments of Justice, Housing and Labor programs.

FOR FURTHER INFORMATION CONTACT: Clifton D. Mitchell, CSAT/SAMHSA, Rockwall II, Room 740, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–8802.

Dated: July 26, 1995.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–18880 Filed 8–1–95; 8:45 am]

BILLING CODE 4162–20–P

Center for Mental Health Services; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Center for Mental Health Services (CMHS) National Advisory Council in September 1995.

The meeting of the CMHS National Advisory Council will include a discussion of the mission and programs of the Center, administrative announcements and program developments. It will focus on managed care initiatives across the country and CMHS's leadership role in providing consultative services to states pursuing managed care activities. The Council will also be performing review of applications for Federal assistance and individual contract proposals; therefore, portions of this meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(3), (4) and (6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and/or a roster of Council members may be obtained from: Gloria Yockelson, Committee Management Officer, CMHS, Room 18C–07, Parklawn Building, Rockville, Maryland 20857, Telephone: (301) 443–7919.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Mental Health Services, National Advisory Council.

Meeting dates: September 11–12, 1995.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Closed: September 11, 8:30 a.m.–10:30 a.m.

Open: September 11, 10:30 a.m.–5 p.m.

Open: September 12, 9 a.m.–adjournment.

Contact: Anne Mathews-Younes, Ed.D., Room 11C–26, Parklawn Building, Telephone: (301) 443–3606.

Dated: July 25, 1995.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–18887 Filed 8–1–95; 8:45 am]

BILLING CODE 4162–20–P

National Advisory Council; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in September 1995.

The September 1 teleconference meeting will include the review, discussion and evaluation of contract proposals. Therefore, a portion of the

meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552 b(c) (3), (4) and (6) and 5 U.S.C. app. 2 10(d).

A portion of the meeting will be open in order to allow public participation. Attendance by the public will be limited to space available.

A summary of the meeting and a roster of Council members may be obtained from: Ms. Susan E. Day, Program Assistant, SAMHSA National Advisory Council, 5600 Fishers Lane, Room 12C–15, Rockville, Maryland 20857. Telephone: (301) 443–4640.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Substance Abuse and Mental Health Services Administration, National Advisory Council.

Meeting Date: September 1, 1995.

Place: Substance Abuse and Mental Health Services Administration—Parklawn Building, Conference Rm. 12–94, 5600 Fishers Lane, Rockville, MD 20857.

Open: September 1, 1994 1 p.m. to 1:30 p.m.

Closed: September 1, 1995, 1:30 p.m. to 3:30 p.m.

Contact: Toian Vaughn, Room 12C–15, Parklawn Building, Telephone: (301) 443–4640 and FAX: (301) 443–1450.

The September 11 meeting of the SAMHSA National Advisory Council will include discussions of SAMHSA's reauthorization, budget issues, and status of SAMHSA's Strategic Plan. There will also be discussions on the services research activities and research dissemination efforts of the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism and the National Institute on Drug Abuse. In addition, there will be status reports by the Council's workgroups on Health Care Reform, Children's Services, and Co-Occurring Mental Illness and Substance Use Disorders.

The meeting will be open and attendance by the public will be limited to space available.

A summary of the meeting and a roster of Council members may be obtained from: Ms. Susan E. Day, Program Assistant, SAMHSA National Advisory Council, 5600 Fishers Lane, Room 12C–15, Rockville, Maryland 20857. Telephone: (301) 443–4640.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Substance Abuse and Mental Health Services Administration, National Advisory Council.

Meeting Date: September 11, 1995.

Place: Omni-Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Open: September 11, 1995, 9 a.m. to 6 p.m.

Contact: Toian Vaughn, Room 12C–15, Parklawn Building, Telephone: (301) 443–4640 and FAX: (301) 443–1450.

Dated: July 25, 1995.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–18879 Filed 8–1–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. FR–3647–N–06]

Notice of 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 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).

Date: July 20, 1995.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Annual Contributions for Operating Subsidies—Performance Funding System: Determination of Operating Subsidy, Vacancy Rule (FR–3647).

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: The information is used by Public Housing Authorities/Indian Housing Authorities (PHAs/IHAs) for inclusion in budget submissions which are reviewed and approved by Field Offices as the basis for obligating operating subsidies. The information is necessary in order to calculate the eligibility for operating subsidies under the Performance Funding System.

Form Number: HUD–52728–A.

Respondents: State, Local or Tribal Government.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–52728–A	3,100		1		2		6,200

Total Estimated Burden Hours: 6,200.
Status: Reinstatement with changes.
Contact: Stephen H. Sprague, HUD, (202) 708–1872; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: July 20, 1995.

[FR Doc. 95–18878 Filed 8–1–95; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–95–1610–00]

Red Rock Canyon National Conservation Area; Preparation of the Final General Management Plan/ Environmental Impact Statement

Dated: July 18, 1995.

AGENCY: Bureau of Land Management, Interior.

ACTION: Preparation of the Final General Management Plan/Environmental Impact Statement (GMP/EIS) for Red Rock Canyon National Conservation Area (RRCNCA).

SUMMARY: Pursuant to Public Law 103–621 (11/2/94) which expanded the boundaries of RRCNCA as designated in the Red Rock Canyon National Conservation Establishment Act Public Law 101–621 (11/16/90) and amends portions of the Act, the Las Vegas District, BLM, is initiating preparation of a Final General Management Plan/ Environmental Impact Statement (GMP/ EIS) for the NCA as expanded. An Interim GMP (IGMP) based on a Draft GMP for the RRCNCA as originally designated has been completed and will be in effect until completion of the Final GMP.

Public scoping meetings will be held in September to receive public comment on issues related to the lands added to the NCA as well as revisit issues from the planning process to date. Written comments and discussions from past meetings will continue to be considered in the process of developing the final GMP. The meeting dates and locations are as follows:

Wednesday, September 6, 1995—7:00 pm to 9:00 pm
Saturday, September 9, 1995—7:00 pm to 9:00 pm

The above meetings will be held at the BLM District Office located at 4765 Vegas Drive, Las Vegas, Nevada, 89108. Written comments may be mailed to the same address to the attention of Gene Arnesen or Dave Wolf.

For additional information call Gene Arnesen at 647–5068 or Dave Wolf at 647–5074.

Dated: July 18, 1995.

Michael F. Dwyer,
District Manager.

[FR Doc. 95–19017 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–HC–M

[AZ–040–05–1040–00]

Meeting for the Gila Box Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR 1780 that a meeting of the Gila Box Riparian National Conservation Area (NCA) Advisory Committee will be held.

DATES: Friday August 25, 1995, 10 a.m.–4 p.m., Safford District Office. Saturday, September 9, 1995, 10 a.m.–4 p.m., Safford District Office.

ADDRESSES: BLM Safford District Office, 711 14th Ave., Safford, Arizona.

SUPPLEMENTARY INFORMATION: The NCA Advisory Committee was established by the Arizona Desert Wilderness Act of 1990 to provide input to the Safford District on management of the Gila Box Riparian National Conservation Area (NCA). The Committee is continuing work on the Gila Box Interdisciplinary Activity Plan, which will be completed by December 1995.

At these meetings the committee will (1) continue to refine management actions and (2) finalize preferred alternative.

All meetings are open to the public. Interested persons may make oral statements to the Committee (from 10:30–11 a.m.) or may file written statements for consideration by the Committee. Anyone wishing to make an oral statement must contact the BLM Gila Resource Area Manager at least two working days prior to the meeting. Written statements are also accepted at any time during preparation of the draft plan; and will be reviewed by the committee.

States should be mailed to Elmer Walls, Team Leader, Gila Resource Area, 711 14th Ave., Safford, Arizona 85546.

Summary minutes of the meeting will be maintained in the Safford District Office and will be available for public inspection (during regular business hours) within 30 days after each meeting.

FOR FURTHER INFORMATION: Meg Jensen, Gila Resource Area Manager, or Elmer Walls, Team Leader, 711 14th Ave., Safford Arizona 85546, Telephone (520) 428–4040.

Dated: July 25, 1995.

Melanie J. Rohrer,
Acting District Manager.

[FR Doc. 95–18883 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–32–M

[NV–030–1430–01; CAS 2404]

Termination of Classification of Public Lands for Multiple-Use Management and Opening Order; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates a classification of public land for multiple-use management (CAS 2404). The land will be opened to the operation of the public lands laws including the mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. The land has been and remains open to the operation of the mineral leasing laws.

EFFECTIVE DATE: Termination of the classification is effective on August 2, 1995. The land will be open to entry at 10 a.m. on September 1, 1995.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2800 Cottage Way, Room E–2845, Sacramento, California 95825–1889; telephone number 916–979–2858, or Steep Weiss, BLM Walker Resource Area Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706–0638; telephone number 702–885–6134.

SUPPLEMENTARY INFORMATION: On March 27, 1969, approximately 38,815 acres of public lands were classified for multiple-use management under the Act of September 19, 1964 (43 U.S.C. 1411–18). The land was segregated from appropriation under the public lands laws and the general mining laws. The classification decision was published in the **Federal Register**, on April 4, 1969 (34 FR 6124). On September 14, 1984, that classification was terminated for all but 2,120 acres, which are described below. The decision to terminate the classification in part was published in the **Federal Register** on September 21, 1984 (49 FR 37183).

Pursuant to the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.), and the regulations contained in 43 CFR 2091.7–1(b)(3) and 2461.5(c)(2), the Classification of Public Lands for Multiple-Use Management , CAS 2404, is hereby terminated in its entirety and

the segregation for the following described land is hereby terminated:

Mount Diablo Meridian

T. 10 N., R. 20 E.,
Sec. 3, lots 2 and 3, W½ lot 9, W½E½ lot 9, lots 10 to 14, inclusive, W½SW¼, and W½E½SW¼;
Sec. 4, lots 5 to 8, inclusive, E½ lot 9, E½ lot 10, E½ lot 11, lots 17 and 18, and S½SE¼;
Sec. 8, NE diagonal ½ of SE¼;
Sec. 9, SW¼;
Sec. 10, E½SE¼SE¼;
Sec. 11, W½NW¼NE¼, NE¼NW¼, E½NW¼NW¼, E½SW¼NW¼, W½SE¼NW¼, W½NE¼SW¼, E½NW¼SW¼, SW¼SW¼, and W½SE¼SW¼;
Sec. 14, W½NW¼NW¼;
Sec. 15, NE¼NE¼ and E½NE¼SW¼;
Sec. 22, SW¼SE¼;
Sec. 26, NW¼NW¼;
Sec. 27, N½NE¼.
T. 11 N., R. 20 E.,
Sec. 32, W½SW¼.

Aggregating approximately 2,120 acres in Alpine County. The classification no longer serves a needed purpose as to the land described above and is hereby terminated.

At 10 a.m. on September 1, 1995, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirement of applicable law. All valid applications received at or prior to 10 a.m. on September 1, 1995 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on September 1, 1995, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: July 13, 1995.

Ed Hastey,

State Director.

[FR Doc. 95–18944 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–40–P

[WY–920–41–5700; WYW103178]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

July 24, 1995.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW103178 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW103178 effective March 1, 1995, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 95–18943 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–22–M

[NM–010–05–1220–00/G010–G5–0009]

Establishment of Supplementary Rules for Designated Recreation Sites, Special Recreation Management Areas, and Other Public Lands in Albuquerque District, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Proposed supplementary rules; request for comment.

SUMMARY: These proposed rules, published for a 30-day comment period, are needed for managing actions, activities, and use on public lands, including lands that have been acquired or conveyed to the BLM. These rules would establish criteria for individual conduct to protect persons, property, and public lands and resources, and would supplement those established under 43 CFR Subparts 8365.1 and 8365.2. They would apply to all public lands under the jurisdiction of the BLM's Albuquerque District, New Mexico. Supplementary rulemaking is provided for under Title 43 CFR, Subpart 8365.

The users of public lands are expected to follow certain rules designed to protect the lands and its natural resources, to mitigate use conflicts, to implement management plans, and for the protection, comfort and well-being of other users of the public lands. These rules will also provide for the protection of persons and resources in the interest and spirit of cooperation with local, state and other federal agencies. Except as otherwise provided for by federal law or regulations, state and local laws and ordinances shall apply and be enforced by the appropriate state and local authorities.

This notice supersedes previous notices published in the **Federal Register** on August 17, 1989 (Vol. 54, No. 158), and February 1, 1991 (Vol. 56, No. 28), which established Supplementary Rules for Designated Recreation Sites, Special Recreation Management Areas and Other Public Lands in the Albuquerque District, New Mexico.

Definitions: As used in these supplementary rules, the term:

—*Abandonment* means the voluntary relinquishment of control of property for longer than a period specified with no intent to retain possession.

—*Administrative activities* are those activities conducted under the authority of the BLM in accordance with applicable laws, regulations and policies.

—*Authorized Officer* means any employee of the BLM who has been delegated the authority to perform the duties in 43 CFR, Part 8360.

—*Boat launching/taking out* means the transfer of a boat from or to a vehicle or trailer, to or from the water to begin or end a floatboat trip.

—*Campfire* means a controlled fire occurring outdoors for cooking, branding, personal warmth, lighting, ceremonial or aesthetic purposes.

—*Camping* means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or the parking of a motor vehicle, motor home or trailer for the apparent purpose of overnight occupancy. Occupying a developed campsite or an approved location within developed recreation areas and sites during the established night period of 10 p.m. to 6 a.m. will be considered

overnight camping for fee collection and enforcement purposes.

—*Developed recreation sites and areas* are those that contain structures or capital improvements primarily used for recreation purposes by the public. Development may vary from limited improvements for protecting the resources and the safety of users, to distinctly defined sites where developed facilities are provided for concentrated public recreation use. Such sites meet criteria of the Land and Water Conservation Fund Act of 1965 (as amended) for fee collection sites.

—*Disorderly conduct* is engaging in fighting; addressing any offensive, derisive, or annoying communication to any other person who is lawfully present when such communication has a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed; or making statements or other actions directed toward inciting or producing imminent lawless action and likely to incite or produce such action.

—*Historic or prehistoric structure or ruin site* is any location that meets the standards for inclusion on the National Register of Historic Places as defined in 36 CFR 60.4, without regard to whether the site has been nominated or accepted.

—*Occupancy* means the taking or holding possession of a campsite or residence on public land.

—*Pet* means a dog, cat or any animal that has been domesticated.

—*Public lands* are any lands, interest in lands, or related waters owned by the United States and administered by the BLM. Related waters are those that lie directly over or adjacent to public lands and that require some management control to protect federally administered resources or to provide for enhanced visitor safety and other recreation experiences.

—*Public nudity* means appearing nude on public lands when such activity is within view of unaffiliated persons. Nudity is defined as the failure to cover the rectal area, pubic area, or genitals. A female is also nude if she fails to cover at least the areola portions of both breasts. Each such covering must be fully opaque. No person under the age of 10 years shall be considered publicly nude.

—*Reasonable quantities* for piñon nuts are 25 pounds per year; for seeds are 1 cubic foot per year per species; for other edible plants or plant parts mean personal consumption on site; for woody material are only enough to burn in authorized campfires; for plant materials (or plant parts) are 1 cubic foot per species per year; and for specimens and samples of rocks and minerals are small amounts of non-renewable resources used for hobby purposes, not to exceed 250 pounds per year and not to include common mineral materials.

—*Special Recreation Management Area (SRMA)* means an area where special or more intensive types of resource and user management are needed.

—*Stove fire* means a fire built inside an enclosed stove or grill, a portable brazier, or a pressurized liquid or gas stove, including space-heating devices.

—*Vehicle* means any motorized or mechanized device, not including bicycles or wheelchairs, that is propelled or pulled by any living or other energy source, and capable of travel by any means over ground or water.

—*Weapon* means a firearm, compressed gas or spring-powered pistol or rifle, bow and arrow, crossbow, blowgun, speargun, slingshot, irritant gas device, explosive device, or any other implement designed to discharge missiles or projectiles; hand-thrown spear, edged weapon, nun-chucks, clubs, billy-clubs, and any device modified for use or designed for use as a striking instrument; to include any weapon the possession of which is prohibited under New Mexico law.

Supplementary Rules—All Public Lands

In addition to regulations contained in 43 CFR 8365.1, the following supplementary rules apply to all public lands in the Albuquerque District, including those lands acquired or conveyed to the BLM, and related waters. Unless authorized by written permission, no person shall:

Sanitation

• Construct or maintain any pit toilet facility, other than shallow holes or trench toilets developed for use by backcountry visitors for stays lasting 14 days or less. All holes, trenches or pits must be a minimum of 100 feet from any permanent water source.

• Dump or dispose of sewage or sewage treatment chemicals from self-contained or containerized toilets except at facilities provided for that purpose.

Occupancy and Use

• Camp or occupy any site on public lands for a period longer than 14 days within any period of 28 consecutive days. Exceptions, which will be posted, include areas closed to camping and areas or sites with other designated camping stay limits. The 28-day period begins when a camper initially occupies a specific location on public land. The 14-day limit may be reached either through a number of separate visits or through 14 days of continuous occupation. After the 14th day of occupation, campers must move beyond a 25-mile radius from the previous location, and must not return to a location within this radius for 30 days or longer.

• Park any motor vehicle for longer than 30 minutes or camp within 300 yards of any spring, manmade water hole, water well, or watering tank used by wildlife or domestic stock.

• Dispose of any burning or smoldering material except at sites or facilities provided for that purpose.

• Violate the terms, stipulations, or conditions of any permit or use authorization.

• Fail to show a permit or use authorization to any Bureau of Land Management employee upon request.

• Camp or occupy, or build any fire on or in any historic or prehistoric structure or ruin site.

Vehicles

• Operate an off-road vehicle without full-time use of an approved spark arrester and muffler.

• Operate, park or leave a motorized vehicle in violation of posted restrictions or in such a manner or location as to:

1. Create a safety hazard,
2. Interfere with other authorized users or uses,
3. Obstruct or impede normal or emergency traffic movement,
4. Interfere with or impede administrative activities,
5. Interfere with the parking of other vehicles,
6. Park more than 300 feet from an existing or designated route, subject to any superseding requirements for such use along designated or existing routes, or

• Operate a vehicle in violation of state motor vehicle laws or regulations.

Public Health and Safety

• Possess or use fireworks.

• Sell or make a gift of an alcoholic beverage to a person under 21 years of age.

• Possess an alcoholic beverage if under 21 years of age.

• Ignite or burn any material containing or producing toxic or hazardous material.

• Carry concealed weapons in violation of state law.

• Discharge a firearm or any other implement capable of taking human life, causing injury, or damaging property:

1. In or within 150 yards of a dwelling, building, campsite or occupied area, or

2. On, from or across a developed road; from within a fenced right-of-way; within 40 feet of a road if no fence exists; across a body of water adjacent thereto; or in any manner or place whereby any person or property is exposed to injury or damage as a result of such discharge.

• Conduct themselves in a disorderly fashion.

• Fail to prevent a pet from harassing, molesting, injuring, or killing humans, domesticated animals, wildlife or livestock.

• Fail to comply with all applicable State of New Mexico regulations for boating safety, equipment, and registration.

• Enter a cave without each person wearing a safety helmet (hard hat) with chin strap and carrying at least three sources of light.

Property and Resources

• Cut, remove or transport woody materials including (but not limited to):

1. Any type or variety of vegetation,

2. Fuelwood or firewood (either green or standing deadwood), and

3. Live plants,

except as authorized by 43 CFR 8365.1–5 (b) and (c) (which allow the collection of commonly available renewable resources such as flowers, berries, nuts, seeds, cones and leaves; and the collection of forest products for use in campfires on the public lands).

• Remove or transport any mineral resources, including, but not limited to, rock, sand, gravel, other mineral materials, or decorative landscaping materials on or from public lands without written consent, proof of purchase, or a valid permit.

• Annoy or disturb bats, raptors, reptiles or other protected species, including nesting sites or areas.

Supplementary Rules—Developed Recreation Sites/Areas, Special Recreation Management Areas

In addition to the regulations contained in 43 CFR 8365.1, 8365.2 and those listed above, the following rules will be applied in accordance with 43 CFR 8365.2. Unless authorized by written permit, no person shall:

Occupancy and Use

• Reserve camping space, except at group facilities. Camping space is available on a first-come, first-served basis.

• Camp at one area or site within a developed campground for longer than 7 days in any 28-consecutive-day period unless extended by the authorized officer. After the 7th day, campers must move to a public land site at least 25 miles from the previous location and must not return to the previous location for 30 days or longer.

• Park more than 2 motorized vehicles at any approved site and/or cause that site to be occupied by more than 15 individuals, unless the site is posted otherwise or designated for group use. (Groups exceeding these limits may occupy additional sites and/or additional designated parking areas.)

• Camp or occupy, between 10:00 pm and 6:00 am, the Black Rock Spring, County Line, John Dunn Bridge, Lover's Lane, Manby Spring, Quartzite, La Ventana Natural Arch, Tent Rocks, Bluewater Canyon, Cañon Tapia, Guadalupe Ruin and Community, and Ward Ranch Recreation Areas/Sites; Wild Rivers Recreation Area's Bear Crossing and Chawalauna Overlooks; or Orilla Verde Recreation Area's Gauging Station picnic site.

• Engage in non-commercial floatboating without the following items in each group, unless otherwise indicated by permit or registration requirements:

1. A first-aid kit,

2. An approved U.S. Coast Guard Type I, III or V life preserver for each individual (which must be worn at all times while on the rivers),

3. An extra life preserver for each boating party, excluding kayaks and canoes,

4. A bailing bucket of at least 2-gallon capacity aboard each non-self-bailing watercraft, excluding kayaks and canoes,

5. A length of rope at least equal to the length of the boat,

6. A throw line of at least 60 feet for each boat, excluding kayaks,

7. Patching and repair equipment,

8. An air pump for inflatable watercraft, and

9. An extra oar or pair of paddles for each oar- or paddle- powered watercraft, excluding kayaks.

• Engage in noncommercial floatboating within the boundaries of the Rio Grande Wild and Scenic River without completing a BLM boating registration form for each day, or for each trip if a multi-day trip.

• Build, tend, or use a campfire except in a stove, grill, fireplace or ring provided for such purpose in developed recreations areas or sites.

• Ride a horse or a bicycle in areas or on trails posted as closed to such use.

• Launch or take out boats at sites not designated for such use on the Rio Grande between John Dunn Bridge Recreation Site and the Velarde Diversion Dam (T. 23 N., R. 9 E., sec. 34). All sites not designated for such use are closed to boat launching/takeout.

Vehicles

• Use a motorized craft, including inboard or outboard motors, jet skis or hovercraft on the Rio Grande Wild and Scenic River, and the Lower Gorge Special Recreation Management area between the County Line Recreation Site and the Velarde Diversion Dam; and on the Rio Chama Wild and Scenic River.

• Operate non-street-legal motorized vehicles within the boundaries of all recreation areas or sites.

• Operate motor vehicles within the Ignacio Chavez Grant or Elk Springs during seasonal closures.

• Operate motor vehicles within the San Ysidro Trials Limited Area except as authorized by special use permit.

• Park a vehicle other than in areas established for such use; or further than 25 feet from designated roads, subject to any superseding requirements of such use along wilderness area boundaries, or to restrictions that may be in place along designated roads.

Property and Resources

• Cut or gather green trees or their parts, or remove down or standing dead wood for any purpose, including use in campfires.

• Climb or walk on the ''tent rock'' formations in the Tent Rocks Recreation Area.

• Participate in technical rock climbing within the La Ventana Natural Arch area.

• Use mechanized equipment or create bank disturbance in association with recreational gold panning. Panning with hand tools below the water line is allowed.

Public Health, Safety and Comfort

• Fail to immediately remove and dispose of in a sanitary manner, all pet fecal material, trash, garbage or waste created.

• Bring a pet on any nature or interpretive trails, caves, and freshwater springs that are signed as prohibited to pets. Animals trained to assist handicapped persons are exempt from this rule.

• Fail to maintain quiet between the hours of 10:00 p.m. to 6:00 a.m., or other hours as posted. During this period no person shall create noise that disturbs other visitors.

• Post or distribute any signs, posters, printed material or commercial advertisements without written approval by the authorized officer.

• Use, display or carry weapons within developed campsites or picnic areas.

• Bring equine stock, llamas, cattle or other livestock within campgrounds or picnic areas unless facilities have been specifically provided for such use.

• Discharge firearms or other weapons, or hunt and trap within a developed recreation area or within 150 yards of a developed recreation site.

• Be publicly nude at Wild Rivers, Orilla Verde or Santa Cruz Lake Recreation Areas; Lower Gorge Special Recreation Management Area; or John Dunn Bridge Recreation Site.

• Shower or bathe at any improved or developed water source, outdoor hydrant pump, faucet, or fountain, or restroom water faucet, unless such water source is designated for that purpose.

List of Developed Recreation Sites/ Areas and Special Recreation Management Areas In

Rio Puerco Resource Area

1. Tent Rocks
   T. 16 N., R. 5 E., secs. 3, 4, 5
   T. 17 N., R. 5 E., secs. 27–31
2. El Malpais National Conservation Area
   a. La Ventana Natural Arch Special Management Area
   T. 8 N., R. 10 W., secs. 33, 34
   T. 7 N., R. 10 W., secs. 3, 4
   b. South Narrows Recreation Area
   T. 7 N., R. 10 W., sec. 17
   c. El Malpais Ranger Station
   T. 9 N., R. 9 W., sec. 32
3. Elk Springs
   T. 18 N., R. 1 W., secs. 1–4
   T. 19 N., R. 1 W., secs. 10, 11, 14, 15, 21–23, 26–29, 33–35
4. Pronoun Cave Complex
   T. 6 N., R. 5 W., secs. 10, 14
5. Guadalupe Ruin and Community
   T. 15 N., R. 3 W., secs. 14, 15, 22, 23
6. Cañon Tapia (applies only to lands within the canyon)
   T. 15 N., R. 3 W., sec. 20, 21, 22, 29, 31
7. Ignacio Chavez Grant
   T. 15 N., R. 3 W.
   T. 15 N., R. 4 W.
   T. 15 N., R. 5 W.
   T. 15 N., R. 6 W.
   T. 16 N., R. 4 W., secs. 19, 20, 21, 22, 27, 28, 29, 30
   T. 16 N., R. 5 W., secs. 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30
   T. 16 N., R. 6 W.
8. San Ysidro Trials Area
   T. 15 N., R. 1 E., secs. 3, 4, 9, 10
   T. 16 N., R. 1 E.
9. Bluewater Canyon
   a. Canyon Entrance
   T. 12 N., R. 11 W., sec. 5
   b. Lands Within Canyon
   T. 12 N., R. 11 W., secs. 5, 6

Taos Resource Area

1. Lower Gorge Special Recreation Management Area
   T. 26 N., R. 11 E., sec. 31, river section to T. 23 N., R. 9 E., sec. 34, including:
   a. Quartzite Recreation Site T. 24 N., R. 11 E., sec. 32
   b. County Line Recreation Site T. 23 N., R. 11 E., secs. 14, 15
   c. Lover's Lane Recreation Site T. 23 N., R. 10 E., sec. 20
2. Orilla Verde Recreation Area
   T. 24 N., R. 11 E., secs. 2, 10, 11, 14–16, 20–22, 28, 29
3a. Rio Chama Wild and Scenic River
   T. 24 N., R. 2 E., sec. 1; T. 24 N., R. 3 E., secs. 5, 6, 8–10, 13–15; T. 25 N., R. 2 E., secs. 2, 3, 11, 13, 14, 23, 24, 25, 36; T. 25 N., R. 3 E., sec. 31; T. 26 N., R. 2 E., secs. 3, 4, 9, 10, 15, 16, 21, 22, 26, 27, 34; T. 27 N., R. 2 E., secs. 9, 10, 15, 16, 21, 22, 27, 28, 33, 34
3b. Ward Ranch Recreation Site
   T. 27 N., R. 2 E., sec. 27
4. Rio Grande Wild and Scenic River
   T. 23 N., R. 10 E., secs. 1, 11–16, 22; T. 23 N., R. 11 E., secs. 5–7; T. 24 N., R. 11 E., secs. 2, 10, 11, 15, 16, 20, 21, 28, 29, 31–33; T. 25 N., R. 11 E., secs. 1, 12, 13, 23–26, 35, 36; T. 26 N., R. 11 E., secs. 1, 12–14, 23–26, 35, 36; T. 27 N., R. 11 E., sec. 36; T. 27 N., R. 12 E., secs. 5, 7, 8, 17–19, 30, 31; T. 28 N., R. 12 E., secs. 5–10, 16–20, 29–30; T. 29 N., R. 12 E., secs. 4, 5, 8, 9, 16, 17, 20, 29–32; T. 30 N., R. 12 E., secs. 6, 7, 17–20, 29, 30, 32; T. 31 N., R. 11 E., secs. 1, 2, 11, 14, 23–26; T. 31 N., R. 12 E., secs. 30, 31; and T. 32 N., R. 11 E., secs. 24, 25, 36.
   a. John Dunn Bridge Recreation Site T. 27 N., R. 12 E., sec. 31
   b. Manby Spring Recreation Site T. 26 N., R. 11 E., sec. 12
   c. Black Rock Spring Recreation Site T. 26 N., R. 11 E., sec. 1
5. Santa Cruz Lake Recreation Area
   T. 20 N., R. 10 E., secs. 7, 18
6. Wild Rivers Recreation Area
   T. 29 N., R. 12 E., secs. 16, 17, 20, 29, 31, 32
   T. 28 N., R. 12 E., secs. 4, 5, 6, 8, 9, 16, 17

DATES: Comments on the proposed rules will be accepted until September 1, 1995. Comments received or postmarked after the above date may not be considered in the decision-making process on the final rulemaking.

ADDRESSES: Comments should be sent to: District Manager (014), BLM, 435 Montaño NE, Albuquerque, New Mexico 87107. All written comments made pursuant to this action will be made available for public inspection during normal business hours (7:45 a.m. to 4:15 p.m., MDT) at the above address.

FOR FURTHER INFORMATION CONTACT: John Bristol, Outdoor Recreation Planner, BLM, Albuquerque District Office, 435 Montaño NE, Albuquerque, New Mexico 87107, Telephone: (505) 761–8755.

SUPPLEMENTARY INFORMATION: The New Mexico State Director is establishing these supplementary rules for the Albuquerque District.

They are necessary to protect persons, property and public lands and resources currently under BLM administration, and those lands acquired for inclusion within the administrative jurisdiction of the district as provided for in 43 CFR 8365.1–6. These supplementary rules apply to all persons using public lands. Violations of these rules are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Exceptions to these proposed supplementary rules may be permitted by the authorized officer, subject to the limits and restrictions of controlling federal and state law. Persons granted use exemptions must possess written authorization from the BLM office having jurisdiction over the area. Users must further comply with the zoning, permitting, rules or regulatory requirements of other agencies, where applicable.

Dated: July 17, 1995.

Gilbert J. Lucero,

Associate State Director, New Mexico.

[FR Doc. 95–18945 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–FB–P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–805140

Applicant: Vincent dePaul Kelly, Alexandria, VA

The applicant has requested a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) from the captive herd maintained by Contour, National Nature Conservation and Tourism Board, South Africa, for the purpose of enhancement of the species.

PRT–805134

Applicant: Kimberly Whitman, Villanova Univ., Villanova, PA

The applicant requests a permit to import up to 30 - 1ml blood samples collected in the wild from Rodrigues fruit bats (*Pteropus rodricensis*) on Rodrigues Island, Mascarene Islands, Mauritius, for the purpose of scientific research to determine genetic diversity.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director

within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 28, 1995.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–18995 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a Timber Harvest Operation by Pine Belt Regional Solid Waste Management Authority in Perry County, Mississippi

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice.

SUMMARY: Pine Belt Regional Solid Waste Management Authority (Applicant) is seeking an incidental take permit from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act), as amended. The permit would authorize the take of the gopher tortoise (*Gopherus polyphemus*), a threatened species, in Perry County, Mississippi for a period of 20 years. The proposed taking is incidental to the construction and operation of a solid waste landfill within a 340-acre tract located approximately 2 miles north of Runnelstown in Sections 8 and 9, Township 5 North, Range 11 West. The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. The Service prepared the EA and the HCP was developed by the Applicant. Copies of the EA and HCP may be obtained by making a request to the Regional Office address below. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA, and HCP should be received on or before September 1, 1995.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Requests must be in writing to be processed. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, or the Jackson, Mississippi, Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–*804406* in such comments.

Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7280).

Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213, (telephone 601/965–4900, fax 601/965–4340).

FOR FURTHER INFORMATION CONTACT: Will MacDearman at the Jackson, Mississippi Field Office, or Rick G. Gooch at the Atlanta, Georgia Regional Office.

SUPPLEMENTARY INFORMATION: The gopher tortoise, *Gopherus polyphemus,* is listed as a threatened species in the western part of its range, from the Tombigbee and Mobile Rivers in Alabama west to southeastern Louisiana. As a native burrowing species of the fire-maintained longleaf pine ecosystem, typical gopher tortoise habitat consists of frequently burned longleaf pine or longleaf pine/scrub oak uplands on moderately well-drained to xeric soils. About 80 percent of the original habitat for gopher tortoises has been lost due to urbanization and agriculture. Certain forest management practices in remaining upland pine habitats have also adversely affected the gopher tortoise. Silvicultural systems using intensive site preparation, dense plantations and stands of loblolly pine or slash pine, and infrequent fire have reduced or eliminated the open forest and sunny forest floor of grasses and forbs where gopher tortoises burrow, nest, and feed. Though gopher tortoises are widely distributed in south Mississippi, most populations are fragmented, small in size, and functionally non-viable.

Section 9 of the Act, and implementing regulations, prohibits taking the gopher tortoise. Taking, in part, is defined as an activity that kills, injures, harms, or harasses a listed endangered or threatened species. Section 10(a)(1)(B) of the Act provides an exemption, under certain circumstances, to the Section 9 prohibition if the taking is incidental to, and not the purpose of otherwise lawful activities.

Gopher tortoise surveys conducted by the Applicant have identified at least one tortoise and six other burrows in the landfill operations area. Two of these burrows exhibited signs of recent gopher tortoise use within the past year. This area will consist of four waste disposal cells and sites for the excavation and stocking of soil to be used to cover solid wastes. Tortoises within the area would be expected to be taken as an incidental consequence of landfill construction and operation. Heavy equipment operations can directly kill or injure tortoises as a result of their becoming crushed or entombed in burrows. The HCP describes measures the Applicant will take to avoid and mitigate such taking. Prior to landfill construction, the Applicant will survey the operations area to identify, trap, and relocate gopher tortoises to an adjacent site designated as a permanent gopher tortoise habitat conservation area. The conservation area, owned by the Applicant, consists predominately of suitable habitat, a longleaf pine/blackjack oak upland, that is partially occupied by other gopher tortoises. The Applicant will manage the conservation area using a program of prescribed fire and tree thinning to maintain and improve habitat conditions for the gopher tortoise. Without such active management, particularly the use of prescribed fire, gopher tortoise habitat would deteriorate as a natural consequence of ecological succession.

Also, a temporary conservation area will be managed using the same methods as in the permanent conservation area. About one-half of the temporary area contains solid waste cells that are forecast to be used about 20 years from now. No tortoises currently occupy this portion, though habitat is suitable. The remaining portion of the temporary area, which is occupied by tortoises, may be used within 5–10 years to provide soil for waste overfill. Tortoises in this remaining portion will be relocated to the permanent conservation area prior to landfill operations.

The EA considers the environmental consequences of two alternatives; issue the requested permit as conditioned by the HCP, or take no action (deny permit). The Service has made a preliminary determination that the Applicant has satisfactorily complied with the statutory and regulatory criteria for permit issuance. The Service's proposed alternative is to issue the requested incidental take permit. The principal environmental consequence of

permit issuance, in the Service's assessment, is to the gopher tortoise. Permits authorizing the disposal and management of solid wastes at the landfill are otherwise administered according to Federal and State statutory/regulatory standards by the Environmental Protection Agency, the Mississippi Department of Environmental Quality, and the Mississippi Permit Board.

Dated: July 26, 1995.

Garland B. Pardue,

Acting Regional Director.

[FR Doc. 95–18980 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–55–M

Availability of an Environmental Assessment and Receipt of an Application Submitted by Jack Primus Partners, L.P. for an Incidental Take Permit for Red-cockaded Woodpeckers in Association With the Sale and Development of a Property in Berkeley County, South Carolina

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice.

SUMMARY: Jack Primus Partners, L.P. (Applicant) has applied to the Fish and Wildlife Service for an incidental take permit pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed permit would authorize for a period of 99 years the incidental take of a federally endangered species, the red-cockaded woodpecker *Picoides borealis* (RCW) known to occur on a property owned by the Applicant in Berkeley County, South Carolina. The Applicant proposes to sell the 996-acre property located on the Cainhoy Peninsula, 5 miles northeast of North Charleston, for development purposes. The proposed permit would authorize incidental take of RCWs on this property in exchange for mitigation elsewhere as described further in the Supplementary Information Section below.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making a request to the Regional Office address below. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA and HCP should be sent to the Regional Permit Coordinator in Atlanta, Georgia, at the address below and should be received on or before September 1, 1995.

ADDRESSES: Persons wishing to review the application, HCP, or EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office; or the Asheville, North Carolina, Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit number PRT–*804465* in such comments.

Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7280).

Field Supervisor, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801, (telephone 704/258–3939).

FOR FURTHER INFORMATION CONTACT: Ms. Janice Nicholls at the Asheville, North Carolina, Field Office, or Mr. Rick G. Gooch at the Atlanta, Georgia, Regional Office.

SUPPLEMENTARY INFORMATION: The red-cockaded woodpecker is a territorial, non-migratory cooperative breeding bird species. RCWs live in social units called groups which generally consist of a breeding pair, the current year's offspring, and one or more helpers (normally adult male offspring of the breeding pair from previous years). Groups maintain year-round territories near their roost and nest trees. The RCW is unique among North American woodpeckers in that it is the only woodpecker that excavates its roost and nest cavities in living pine trees. Each group member has its own cavity, although there may be multiple cavities in a single pine tree. The aggregate of cavity trees used by a breeding group is called a cluster. RCWs forage almost exclusively on pine trees and they generally prefer pines greater than 10 inches diameter at breast height. Foraging habitat is contiguous with the cluster. The number of acres required to supply adequate foraging habitat depends on the quantity and quality of the pine stems available.

The RCW is endemic to the pine forests of the Southeastern United States and was once widely distributed across 16 States. The species evolved in a mature, fire-maintained, ecosystem. The RCW has declined primarily due to the conversion of mature pine forests to young pine plantations, agricultural fields, residential and commercial developments, and to hardwood encroachment in existing pine forests due to fire suppression. The species is still widely distributed (presently occurs in 13 southeastern States), but remaining populations are highly fragmented and isolated. Presently, the largest populations occur on federally owned lands such as military installations and national forests.

In South Carolina there are an estimated 681 active RCW clusters as of 1994; 67 percent are on Federal lands, 6 percent are on State lands, and 27 percent are on private lands. The populations on public lands are generally stable, and in some cases are increasing. The overall population trend on private lands in South Carolina, on the other hand, is downward. Most RCW populations on private lands are relatively small and isolated.

The Applicant's land in Berkeley County hosts a small and isolated population of RCWs. As of 1993, there were two active RCW clusters; one breeding group and one solitary adult male. The nearest known RCW groups occur on private lands approximately 1 to 2 miles to the north of the Jack Primus Tract. The nearest known population occurs several miles away on the Francis Marion National Forest to the northeast, and on the privately owned Medway Plantation located opposite the Cooper River from the Jack Primus Tract. The Applicant proposes to sell the Jack Primus Tract for development. Development of the tract may result in death of, or harm to, any remaining RCWs through the loss of nesting and foraging habitat.

The EA considers the environmental consequences of three alternatives, including the proposed action. The proposed action alternative is issuance of the incidental take permit and implementation of the HCP as submitted by the Applicant. The HCP will provide for the provisioning of six clusters with artificial starts and cavities on suitable habitat on the Medway Plantation. The Medway Plantation is under a long-term conservation easement with the primary objective of perpetuating and conserving the natural values of the property, which includes managing a portion of the property to perpetuate a mature

longleaf pine ecosystem. The HCP will also involve the implementation of a population monitoring program for a specified time period at Medway Plantation to determine success of the provisioning efforts. The HCP provides a funding source for these mitigation measures.

Dated: July 26, 1995.

Garland B. Pardue,

Acting Regional Director.

[FR Doc. 95–18985 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Draft Facility Development Plan Shenandoah National Park, Virginia; Availability of Draft Plan and Environmental Impact Statement

ACTION: Notice of release.

SUMMARY: The National Park Service, Shenandoah National Park, Virginia, has prepared a draft Facility Development Plan/Environmental Impact Statement for the park. This plan provides the analysis necessary to determine the needs for employee housing, office spaces, maintenance areas, and emergency facilities for the park. In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service is required to prepare an environmental impact statement to assess the impacts of the proposed action. The National Park Service is the responsible federal agency.

Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service (NPS) announces the release of the Draft Facility Development Plan/Environmental Impact Statement for Shenandoah National Park, Virginia.

DATES: The Draft Facility Development Plan/Environmental Impact Statement will be on public review from August 1, 1995 to October 1, 1995. Three public meetings will be held on:

Tuesday, August 8, 1995, from 7 p.m. to 9 p.m. at the Page County Board of Supervisors Room, Department of Social Services building, South Court Street, Luray, VA.

Wednesday, August 9, 1995 from 7 p.m. to 9 p.m. at the Rappahannock County Library, U.S. Highway 211, Little Washington, VA.

Thursday, August 10, 1995 from 7 p.m. to 9 p.m. at the Rockingham County Administration Center, 20 East Gay Street, Harrisonburg, VA.

The purpose of these meetings is to discuss the draft plan and its environmental impact statement. Verbal and written comments on the plan/EIS will be accepted at the meeting or by mail until October 1, 1995.

ADDRESSES: Shenandoah National Park, Route 4, Box 348, Luray, Virginia 22835.

FOR FURTHER INFORMATION CONTACT: Assistant Superintendent, Vaughn Baker, Shenandoah National Park, Route 4, Box 348, Luray, Virginia 22835. Telephone (703) 999–3400.

SUPPLEMENTARY INFORMATION: A range of issues and preliminary alternatives for the Facility Development Plan were developed and analyzed. Preliminary alternatives for consideration include the no action alternative; development of facilities and housing in accordance with the park's *General Management Plan*; moving all housing and development out of the park; and mixing the housing within the park, in a park community at headquarters, and through leases in adjacent towns.

For copies of the Draft Facility Development Plan/Environmental Impact Statement for Shenandoah National Park please contact the Assistant Superintendent at the above address.

Dated: July 20, 1995.

Chrysandra Walter,

Deputy Field Director, Northeast Field Area.

[FR Doc. 95–18884 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation 332–364]

Certain Miscellaneous Products: Probable Effect of Certain Modifications to the North American Free Trade Agreement Rules of Origin

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: July 24, 1995.

SUMMARY: Following receipt on July 17, 1995, of a request from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–364, Certain Miscellaneous Products: Probable Effect of Certain Modifications to the North American Free Trade Agreement Rules of Origin, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Information may be obtained from David Lundy, Office of Industries (202–205–3439) or Donita Marakovits, Office of Industries (202–205–3430); and on legal aspects, from William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of Public Affairs (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal (202–205–1810).

BACKGROUND: Chapter 4 and Annex 401 of the North American Free Trade Agreement (NAFTA), which entered into force on January 1, 1994, contain the rules of origin for application of the tariff provisions of the NAFTA to trade in goods.

Section 202(q) of the North American Free Trade Agreement Implementation Act (the Act) authorizes the President, subject to the consultation and layover requirements of section 103 of the Act, to proclaim such modifications to the rules as may from time to time be agreed to by the NAFTA countries. One of the requirements set out in section 103 of the Act is that the President obtain advice, regarding any proposed modification in the Rules contained in Annex 401 of the Act, from the United States International Trade Commission.

In its report the Commission will, as requested by the USTR in his letter received on July 17, 1995, provide advice on the probable effect of the proposed modifications to the rules of origin that are attached to the letter. As requested, the Commission will provide such advice by September 15, 1995. Copies of the proposed revised rules, which cover certain goods described in Chapters 1 through 97 of the Harmonized Tariff Schedule of the United States, will be available from the Office of the Secretary at the Commission or from the Commission's Internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

In a previous request dated May 5, 1995, the USTR requested the Commission to provide advice on the probable effect of modifications to the NAFTA rules of origin pertaining to certain chemicals and chemical products. In response, the Commission instituted investigation No. 332–363, Chemicals and Chemical Products: Probable Effect of Certain Modifications to North American Free Trade Agreement Rules of Origin Pertaining to Such Products; the Commission's report on that investigation will be provided to the USTR by September 5, 1995.

PUBLIC HEARING: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on August 16, 1995. All persons shall

have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m. on August 7, 1995. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., August 9, 1995; the deadline for filing post-hearing briefs or statements is 5:15 p.m., August 21, 1995. In the event that, as of the close of business on August 7, 1995, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–2000) after August 7, 1995, to determine whether the hearing will be held.

WRITTEN SUBMISSIONS: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on August 21, 1995. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: July 25, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–18996 Filed 8–1–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32740]

Burlington Northern Railroad Company—Trackage Rights Exemption—Union Pacific Railroad Company

The Union Pacific Railroad Company (UP) has agreed to grant approximately 7.9 miles of local trackage rights to Burlington Northern Railroad Company (BN).[1] The trackage rights extend from milepost 0.0 at East Olympia to milepost 7.24 at Olympia, WA, together with the following connections: approximately 1,428 feet of the east leg of the wye track at East Olympia; former Track No. 8 extension of branch trackage between milepost 7.24 and milepost 7.29; Track No. 29 between milepost 6.93 and milepost 7.22; and between the point of switch in Track No. 29, opposite branch track at milepost 7.15, and milepost 7.20. The trackage rights were to become effective on July 31, 1995.[2]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Michael E. Roper, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: July 25, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–18969 Filed 8–1–95; 8:45 am]

BILLING CODE 7035–01–P

[1] This trackage rights agreement expands on an earlier agreement where UP granted overhead trackage rights to BN between these points as part of a joint relocation project. *Burlington Northern Railroad Company and Oregon-Washington Railroad & Navigation Company—Joint Project for Relocation of a Line of Railroad,* Finance Docket No. 30932 (ICC served Dec. 5, 1986).

[2] The effective date is calculated from July 24, 1995, the filing date for additional information necessary to clarify the transaction.

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States; Advisory Committee on Rules of Appellate Procedures.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a three-day meeting. The meeting will be open to public observation but not participation and will start each day at 8:30 a.m.

DATES: October 19–21, 1995.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: July 26, 1995.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 95–18971 Filed 8–1–95; 8:45 am]

BILLING CODE 2210–01–M

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judical Conference of the United States; Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation and will be held each day from 8:30 to 4:00 p.m..

DATES: September 7–8, 1995.

ADDRESSES: Portland Marriott Hotel, 1401 S.W., Front Avenue, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: July 26, 1995.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 95–18972 Filed 8–1–95; 8:45 am]

BILLING CODE 2210–01–M

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States; Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a three-day meeting. The meeting will be open to public observation but not participation and will start each day at 8:30 a.m.

DATE: November 9–11, 1995.

ADDRESSES: University of Alabama School of Law, Hayes Conference Room 344, 101 Paul Bryant Drive, Tuscaloosa, Alabama.

FOR FURTHER INFORMATION CONTACT:

John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: July 26, 1995.

John K. Rabiej,

Chief, Rules of Committee Support Office.

[FR Doc. 95–18973 Filed 8–1–95; 8:45 am]

BILLING CODE 2210–01–M

Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States; Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation and will start each day at 8:30 a.m.

DATE: October 16–17, 1995.

ADDRESSES: The Equinox Hotel, Historic Route 7A, Manchester Village, Vermont.

FOR FURTHER INFORMATION CONTACT:

John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: July 26, 1995.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 95–18974 Filed 8–1–95; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. American Bar Association; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *American Bar Association*, Civil Action No. 95–1211.

The Complaint in this case alleges that the defendant conspired to violate Section 1 of the Sherman Act, 15 U.S.C. § 1, allowing the law school accreditation process to be captured by those with a direct interest in its outcome. Among other things, the ABA adopted and enforced law school accreditation Standards, Interpretations, and Rules that unreasonably raised salaries paid to law school faculty, deans, and other professional personnel.

The proposed Final Judgment enjoins the defendant from adopting or enforcing any Standard, Interpretation, or Rule that conditions accreditation on salaries and other benefits paid to law school professional personnel and from using compensation data in connection with the accreditation of a law school. It also enjoins the defendant from refusing to accredit proprietary law schools and from prohibiting ABA–accredited law schools from accepting transfer credits from state-accredited law schools.

The proposed Final Judgment requires that the defendant establish a commission to review accreditation standards regarding student/faculty ratios, teaching loads, sabbaticals, and bar preparation courses. It further requires changes in the composition of the defendant's accrediting committees.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. The comments and responses to them will be published in the **Federal Register** and filed with the Court. Comments should be directed to John F. Greaney, Chief, Computers and Finance Section, Room 9903, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., Washington, DC 20001 (telephone: 202/307–6122).

Rebecca P. Dick,

Deputy Director of Operations Antitrust Division.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. American Bar Association, Defendant.

Stipulation

The undersigned parties, by their respective attorneys, stipulate that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Columbia;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court; and

3. Pending approval of the Final Judgment by the Court, defendant agrees to be bound by the provisions of the proposed Final Judgment and to be subject to the jurisdiction of this Court. If plaintiff withdraws it consent, or if the proposed Final Judgment is not entered pursuant to the terms of the Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any proceeding.

For Plaintiff United States:

Anne K. Bingaman,
Assistant Attorney General.

Joel I. Klein,
Deputy Asst. Attorney General.

Rebecca P. Dick,
Asst. Director of Operations.

John F. Greaney,
Chief, Computers & Finance Section.

Scott N. Sacks,
Asst. Chief, Computers & Finance Section.

Antitrust Division, U.S. Department of Justice,

D. Bruce Pearson,

Molly L. Debusschere,

Jessica N. Cohen,

James J. Tierney,

Attorneys, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., Room 9901, Washington, DC 20001, Tel: 202/307–0809, Fax: 202/616–5980.

For Defendant American Bar Association:

Darryl L. DePriest,
General Counsel.
American Bar Association, 541 N. Fairbanks Court, Chicago, Illinois 60611, Tel: 312/988–5215, Fax: 312/988–5217.

Certificate of Service

On June 27, 1995, I caused a copy of the foregoing Stipulation to be served by facsimile and first-class mail upon:

David T. Pritikin, **Esquire Sidley & Austin, One First National Plaza, Chicago, Illinois 60603.**

Jessica N. Cohen

Final Judgment

Plaintiff, United States of America, filed its Complaint on June 27, 1995. Plaintiff and defendant American Bar Association (''ABA''), by their attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence or admission by any party with respect to any issue of fact or law. Therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby Ordered, Adjudged And Decreed:

I

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against the ABA under Section 1 of the Sherman Act, 15 U.S.C. 1.

II

Definitions

As used in this Final Judgment:

(A) ''ABA'' means the American Bar Association and all of its components.

(B) ''Accreditation Committee'' means the Accreditation Committee of the Section of Legal Education and Admissions to the Bar of the ABA.

(C) ''Board'' means the ABA Board of Governors.

(D) ''Council'' means the Council of the Section of Legal Education and Admissions to the Bar of the ABA.

(E) ''Faculty'' means all persons who teach classes (except adjunct professors), including administrators who teach, *emeritus* of senior faculty, visiting professors, joint-appointed faculty, clinical instructors, and instructors holding short-term appointments.

(F) ''Section'' means the ABA's Section of Legal Education and Admissions to the Bar.

(G) ''Standards,'' ''Interpretations'' and ''Rules'' mean the Standards for Approval of Law Schools and Interpretations and Rules of Procedure for Approval of Law Schools and Polices of the Council of the Section and its Accreditation Committee.

III

Applicability

This Final Judgment shall apply to the ABA and its governors, officers, employees, and full-time consultants involved in law school accreditation.

IV

Prohibited Conduct

The ABA is enjoined and restrained from:

(A) adopting or enforcing any Standard, Interpretation or Rule, or taking any action that has the purpose or effect of imposing requirements as to the base salary, stipends, fringe benefits, or other compensation paid law school deans, associate deans, assistant deans, faculty, library directors, librarians, or other law school employees, or in any way conditioning the accreditation of any law school on the compensation paid law school deans, associate deans, assistant deans, faculty, library directors, librarians, or other law school employees;

(B) collecting from or disseminating to any law school data concerning compensation paid or to be paid to deans, administrators, faculty, librarians, or other employees;

(C) using law school compensation data in connection with the accreditation or review of any law school; and

(D) adopting or enforcing any Standard, Interpretation or Rule, or taking any action that has the purpose or effect of prohibiting a law school from:

(1) enrolling a member of the bar or graduate of a state-accredited law school in an LL.M. program or other post-J.D. program;

(2) offering transfer credits for any course successfully completed at a state-accredited law school, except that the ABA may require that two-thirds of the credits required for graduation must be successfully completed at an ABA-approved law school; or

(3) being an institution organized as a for-profit entity.

V

Permitted Conduct

Nothing herein shall be construed to prohibit the ABA from: (1) adopting or applying such other reasonable Standards, Interpretations or Rules, consistent with all other provisions of this Final Judgment, as are necessary to attract and retain a competent faculty; (2) investigating or reporting on whether a law school is in compliance with such Standards, Interpretations or Rules, or the cause of non-compliance; or (3) requiring that a law school take remedical action to comply with such Standards, Interpretations or Rules as a condition of obtaining or maintaining ABA approval.

VI

Additional Relief

The ABA shall:

(A) require that all Interpretations and Rules be subjected to the same public comment and review process and approval procedures that apply to proposed Standards;

(B) permit appeals from Accreditation Committee Action Letters to the Council;

(C) revise the Council's membership as follows:

(1) for a period of five years, all elections shall be subject to Board approval;

(2) members shall serve staggered three-year terms, with a two-term limit; however, officers may serve as officers for an additional term beyond the six-year limit; and

(3) no more than 50% of the members shall be law school deans or faculty;

(D) revise the Accreditation Committee's membership as follows:

(1) for a period of five years, all appointments shall be subject to Board approval;

(2) all members shall serve staggered three-year terms, with a two-term limit; and

(3) no more than 50% of the members shall be law school deans or faculty;

(E) revise the Standards Review Committee's membership as follows:

(1) for a period of five years, all appointments shall be subject to Board approval;

(2) members shall serve one three-year term; and

(3) no more than 50% of the members shall be law school deans or faculty;

(F) require that no more than 40% of the members of the Nominating Committee for officers of the Section shall be law school deans or faculty;

(G) require that each site evaluation team include, to the extent reasonably feasible, at least:

(1) one university administrator who is not a law school dean or faculty member; and

(2) one practicing lawyer, judge or public member;

(H) require the Accreditation Committee after each meeting to send a

written report to the Council, that may be done on a confidential basis if necessary, identifying all actions taken by it, including a list identifying all law schools on report or under review, and for each law school, identifying the areas of actual or apparent non-compliance and the length of time the law school has been on report or under review;

(I) require the Council to send an annual report to the Board, that may be done on a confidential basis if necessary, on its accreditation activities during the preceding year, including a list identifying all law schools on report or under review, and for each law school, identifying the areas of actual or apparent non-compliance and the length of time the law school has been on report or under review;

(J) require Council approval and Board receipt of annual and site inspection questionnaires before they are sent to law schools;

(K) publish annually in *The ABA Journal* and the Section's *Review of Legal Education in the United States:*

(1) all proposed Standards, Interpretations, Rules, and Policies, and the name(s) of the sponsors of each; and

(2) the date, place, and names of the evaluators for each law school and foreign program inspected; and

(L) hire, by October 31, 1995, an outside independent consultant who is an expert on education and accreditation and who is not a legal educator, to assist in validating all Standards and Interpretations, as required by the Department of Education, and develop a plan for validation by December 31, 1995.

VII

Special Commission

The ABA shall:

(A) establish a Special Commission to Review the Substance and Process of the ABA's Accreditation of American Law Schools to determine whether the Standards, Interpretations, and Rules, and their enforcement governing the following subjects should be revised:

(1) faculty teaching-hours;

(2) leaves of absence, compensated or otherwise, for faculty and other staff;

(3) the calculation of the faculty component of student-faculty ratios;

(4) physical facilities;

(5) the allocation of resources to a law school by the law school or its parent university; and

(6) the treatment of bar preparation courses;

(B) require that the Special Commission complete its review no later than February 29, 1996. The Special Commission shall file its report with the Board. Upon completing its review, the Board shall file its report with the Court and the United States setting out its analysis and any proposed revisions; and

(C) allow the Untied States 90 days in which to review the Special Commission's report and determine whether to challenge any of the proposals. The United States may challenge any such proposal and, if the ABA chooses to defend it, the challenge will be decided by this Court applying a Rule of Reason antitrust analysis.

VIII

Compliance Program

The ABA is ordered to maintain an antitrust compliance program which shall include designating, within 30 days of the entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of the ABA's law school accrediting activities to ensure that they comply with this Final Judgment. The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

(A) reviewing the ABA's Standards, Interpretations, Rules, and practices, and identifying and recommending the elimination of any provisions or activities that violate or are inconsistent with Sections IV or VI above to the Board or to the ABA's House of Delegates within 90 days of entry of this Final Judgment;

(B) distributing a copy of this Final Judgment within 30 days of entry to:

(1) all members of the Board and officers of the ABA, the Section and the Law Student Division;

(2) all members of the Council, Accreditation Committee and Standards Review Committee;

(3) all university presidents with ABA-approved law schools, the deans of all ABA-approved law schools, the Chief Justices or Judges of the highest Courts of the States and other admitting jurisdictions, and to make a best effort to notify the deans of all state-accredited law schools; and

(4) all persons serving on site inspection teams during the term of this Final Judgment;

(C) causing this Final Judgment to be published in the next issue of *The ABA Journal* and the *Student Lawyer* following the entry of the Final Judgment;

(D) providing the United States, during the term of the Final Judgment, a copy of all proposed changes to these Standards, Interpretations and Rules before they are acted on by the House of Delegates, and a copy of all Standards, Interpretations and Rules adopted by the House;

(E) briefing annually the Section's Officers, all members of the Council, Committee and Standards Review Committee, the Consultant and the Consultant's staff, and all participants at site inspectors' workshops on the meaning and requirements of this Final Judgment;

(F) obtaining from all Section officers, all members of the Council, Accreditation committee and Standards Review Committee, and the Consultant and the Consultant's staff an annual written certification that they: (1) have read, understand, and agree to abide by the terms of this Final Judgment; and (2) are not aware of any violation of this Final Judgment that they have not reported to the Antitrust Compliance Officer; and

(G) obtaining from the Executive Director of The ABA, the Consultant and the Consultant's staff, an annual written certification that they have been advised and understand that their failure to comply with the Final Judgment may result in conviction for contempt of court.

IX

Certification

(A) Within 90 days after the entry of this Final Judgment, the ABA shall certify to the United States whether it has designated an Antitrust Compliance Officer and has distributed the Final Judgment in accordance with Section VIII above.

(B) For 10 years after the entry of this Final Judgment, on or before its anniversary date, the Antitrust Compliance Officer shall certify annually to the Court and the United States whether the ABA has complied with the provisions of Section VIII.

(C) At any time, if the Antitrust Compliance Office learns of any past, current or anticipated violation of Sections IV or VI of this Final Judgment, the ABA shall, within 45 days after such knowledge is obtained, take action, or where appropriate initiate action, to terminate or modify the activity so as to comply with this Final Judgment.

X

Plaintiff Access

(A) To determine or secure compliance with this Final Judgment, duly authorized representatives of the

United States shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the ABA, be permitted:

(1) access during the ABA's office hours to inspect and copy all records and documents in its possession or control relating to any matters contained in this Final Judgment; and

(2) to interview the ABA's officers, employees, or agents,who may have counsel present, regarding such matters. The interviews shall be subject to the ABA's reasonable convenience and without restraint or interference by the ABA.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, the ABA shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this Section X shall be divulged by the United States to any person other than a duly-authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XI

Further Elements of Decree

(A) This Final Judgment shall expire 10 years from the date of entry.

(B) Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

(C) Entry of this Final Judgment is in the public interest.

DATE: _____

_____

UNITED STATES DISTRICT JUDGE

Certificate of Service

On June 27, 1995, I caused a copy of the foregoing Proposed Final Judgment to be served by facsimile and first-class mail upon:

David T. Pritikin,

Esqurie Sidley & Austin One First National Plaza Chicago, Illinois 60603.

Jessica N. Cohen

United States of America, Plaintiff, v. American Bar Association, Defendant.

Civil Action NO. 95–1211 (CR)
Filed: June 27, 1995

Competititve Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of defendant American Bar Association (''ABA'') in this civil antitrust action.

I

Nature and Purpose of the Proceeding

A. The Complaint

On June 27, 1995, the United States filed a civil antitrust suit alleging that the ABA violated Section 1 of the Sherman Act in its accreditation of law schools. The Complaint alleges that the ABA restrained competition among professional personnel at ABA-approved law schools by fixing their compensation levels and working conditions, and by limiting competition from non-ABA-approved schools. The Complaint also alleges that the ABA allowed its law school accreditation process to be captured by those with a direct interest in its outcome. Consequently, rather than setting minimum standards for law school quality and thus providing valuable information to consumers, the legitimate purposes of accreditation, the ABA at times acted as a guild that protected the interests of professional law school personnel.

The United States and the ABA have agreed that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the Final Judgment will terminate this civil action, except that the Court will retain jurisdiction for further proceedings that may be required to enforce or modify the Judgment, or to punish violations of any of its provisions.

B. Law School Accreditation

The Section of Legal Education and Admissions to the Bar (''Section of Legal Education'') administers law school accreditation. It was created in 1883 as the first Section of the ABA and assumed the role of an accrediting agency in 1921.

ABA approval is critical to the successful operation of a law school. The bar admission rules in over 40 States require graduation from an ABA-approved law school in order to satisfy the legal education requirement for taking the bar examination. In addition, the ABA is the only agency recognized by the United States Department of Education as a law school accrediting agency.

In 1973, the ABA adopted its current Standards for the Approval of Law Schools (''Standards''), setting forth the minimum requirements for legal education that must be met to obtain and maintain ABA approval. Law schools were required to be in full compliance with the Standards commencing with the 1975–76 academic year. The Standards and their Interpretations covered many aspects of the operation of a law school, including its salary structure, student-faculty ratios, faculty leave policies, faculty workloads, and physical facilities.

The Section of Legal Education is governed by its Council, which has supervisory authority on all accreditation matters. The Council has established a Standards Review Committee that reviews the Standards and their ''Interpretations'' and recommends changes to the Council. The Council has also established an Accreditation Committee, which closely oversees the inspection of new law schools and the sabbatical reinspections of previously approved law schools, and make the initial recommendations regarding ABA approval.

The Accreditation Committee enforces the Standards through extensive on-site inspections of law schools. Provisionally approved law schools are inspected every year until receiving full approval, and fully approved law schools are inspected every seven years, except for an initial visit three years after first gaining full approval. Site inspection teams prepare detailed reports for the Accreditation Committee. The Accreditation Committee may ''continue'' the accreditation of an approved law school, require additional information from a law school in actual or apparent non-compliance with the Standards or about whom the Accreditation Committee has ''concerns,'' or require a show cause hearing for law schools in apparent non-compliance with the Standards or their Interpretations.

The day-to-day operation of the ABA's accreditation process is directed by the ABA's Consultant on Legal Education. The Consultant prepares ''Action Letters'' that inform the law school deans and university presidents of the Accreditation Committee's findings and conclusions.

II

Description of the Practices Involved in the Alleged Sherman Act Violation

At trial, the United States would have proved the following:

A. Anticompetitive Standards And Practices

1. Capture Of The Accreditation Process. Legal educators, including current and former law school dean, faculty, and librarians, control and dominate the ABA's law school accreditation process. Approximately 90% of the Section of Legal Education's members are legal educators. In substantial part, this is because of the Section of Legal Education's Faculty Group Membership Program, under which ABA-approved law schools may obtain a group discount on dues for their faculty. Many law schools pay their faculty's dues and the faculties of about 145 of the 1774 ABA-approved law schools hold ABA membership through the Faculty Group Membership Program.

All current members of the Standards Review Committee and a majority of the current members of the Accreditation Committee are legal educators. The typical site inspection team has 5–7 members, all or nearly all of whom are legal educators. The Consultant's position has traditionally been held by a legal educator. The incumbent has served as Consultant for over 20 years and is a former dean and a current law school faculty member.

2. *Professional Staff Compensation.* ABA Accreditation Standard 405(a) required that faculty compensation be comparable with that of other ABA-approved schools. In practice, this Standard was extended to cover deans' and professional librarians' salaries. The ABA collected extensive, detailed salary information, among other data collected, in annual questionnaires that ABA-approved law schools were required to complete. Often, the comparable schools consisted of a ''peer group'' of schools chosen by the professional staff of the inspected school. The ''peer group'' could be and at times was manipulated to include higher-rated law schools or law schools located in higher-cost areas. Law schools also at times were placed on report under Standard 405(a) by the Accreditation Committee because of unfavorable salary structure comparisons, not because of poor faculty quality.

3. *Boycotts of non-ABA-approved schools.* The ABA prohibited an ABA-approved school from granting any transfer credits for courses successfully completed at state-accredited or unaccredited law schools, but permitted a law school, under certain conditions, to allow credits for courses taken at a foreign law school (Standard 308 and its Interpretation). The ABA also prohibited ABA-approved law schools from matriculating graduates of state-accredited or unaccredited law schools, but permitted, under certain circumstances, the matriculation of graduates of foreign law schools (Interpretation 3 of Standard 307). The ABA rejected a 1979 amendment that would have allowed law schools the discretion to admit any bar members to their graduate programs. In practice, the ABA permits only the law school, and not the affected individual, to apply for a waiver of the Interpretation, and such applications have been denied. Standard 202 prohibited the accreditation of proprietary law schools. The ABA has never approved a proprietary law school and the Accreditation Committee twice recommended against approval of one proprietary law school.

These Standards, Interpretations, and their application have unreasonably restricted competition in the market for the services of professional law school personnel. The salary Standard and its application had the effect of ratcheting up law school salaries. The Standard relating to proprietary law schools erected an unnecessary barrier to competition from these schools, which often provide their professional staff with lower salaries and fewer amenities than do ABA-approved schools. The restrictions on enrolling graduates of non-ABA-approved schools, and on offering transfer credits for course work completed at those schools, were unreasonable restraints of trade aimed at deterring effective competition from law schools that are likely to pay less in salaries and benefits to their professional staffs.

B. Other Accreditation Standards And Practices

4. Student-To-Faculty Ratios. In its Interpretations of Standards 201 and 401–405, the ABA declared that a student-to-faculty ratio of 20:1 or less is presumably in compliance with its accreditation standards but that a faculty ratio of 30:1 or more is not. While the Interpretation counts a part-time student as two-thirds the equivalent of a full-time student, the ABA has counted only full-time, tenure-track professors as ''faculty,'' thereby excluding from the count administrators who teach, *emeritus* or senior faculty who teach, some visiting professors, joint-appointed faculty (faculty holding appointments in two departments in a university) who teach, adjunct professors, clinical and other instructors holding short-term contracts, and tenured faculty teaching part-time because of family responsibilities. Although part of the policy supporting reduced student-faculty ratios is the desirability of smaller classes and increased student-faculty contact, the ABA did not measure actual class size or effectively measure actual student-faculty contacts. The growth of full-time faculty at ABA-approved law schools substantially exceeded the growth of student enrollment at such schools in the past 10 years.

5. Teaching Loads. Standard 404 sets a maximum 8-hour-per-week teaching load or, if a course is duplicated, a 10-hour load. In practice, an hour was defined as 50 minutes.

6. Compensated Leaves Of Absence. Standard 405(b) required that faculty members be afforded a ''reasonable opportunity for leaves of absence and for scholarly research.'' In some instances, this Standard has been applied in practice to require paid sabbaticals, summer stipends, and other forms of research compensation.

7. Bar Preparation. While Standard 301 requires a law school to maintain an educational program designed to qualify its students for admission to the bar, Standard 302(b) prohibits a law school from offering a bar preparation course for credit or requiring one for graduation, even for students identified as being at risk of failing the bar examination. A bar preparation course cannot be offered as a required course, even when a law school meets the ABA minimum credit requirements without counting the bar preparation course.

8. Facilities. Standard 701 requires an ''adequate'' physical plant. Nearly all ABA-approved law schools occupy new facilities or have made substantial renovations to existing facilities since the new Standards were adopted in 1973. Despite this, over one-third of all ABA-approved schools were put on report for ''inadequate facilities'' by the Accreditation Committee in 1994, including law schools of recognized distinction.

9. Resources. Standard 201 requires that a law school have the necessary resources to provide a sound legal education, and Standard 209 requires adequate resources to sustain a sound educational program. These Standards have been applied at times by the Accreditation Committee to place law schools on report for alleged shortcomings. In 1994, about 50 law schools, including many of recognized high quality, were on report for

allocating inadequate resources to their law school program.

Some of the Standards, Interpretations, and other factors described in paragraphs 4 through 9 may reflect relevant considerations in assessing the quality of a law school's educational program. At times, however, they too have been applied inappropriately to restrict competition in the law school labor market.

III

Explanation of the Proposed Final Judgment

Prohibited Conduct. The proposed Final Judgment prohibits the recurrence of conduct that is plainly anticompetitive. Specifically, the Final Judgment will eliminate the adoption or enforcement of any Standard, Interpretation or Rule, or the taking of any action that imposes requirements as to the base salary, stipends, fringe benefits, or other compensation paid to law school faculty, administrators or other law school employees. The Final Judgment also will eliminate the collection or dissemination of compensation data for deans, administrators, faculty, librarians, or other employees, and the use of compensation data in connection with the accreditation of any law school. In addition, the Final Judgment eliminates any Standard, Interpretation or Rule prohibiting the enrollment of a member of a bar or a graduate of a state-accredited law school in a post-J.D. program, or the acceptance of any transfer credits from state-accredited law schools. The ABA is also prohibited from accrediting only law schools organized as not-for-profit institutions.

Additional Relief. The proposed Final Judgment also contains structural provisions to ensure that the law school accreditation process is governed by persons other than those with a direct economic interest in its outcome and that the process is brought more into public view. As the Complaint states, it is the view of the United States that during the past 20 years, the law school accreditation process has been captured by legal educators who have a direct interest in the outcome of the process. Most of the process, as it applied to individual law schools, was carried out by the Accreditation Committee and the Consultant's office and was kept from public view and the supervision of the ABA's Board of Governors and House of Delegates. In addition, the individuals who serve on the Accreditation Committee and in the Consultant's office had been in these positions for many years. Finally, the Interpretations of the accreditation Standards were in some cases more plainly anticompetitive than the Standards themselves, yet their adoption was not subject to the same public comment and hearings requirements as amendments to the Standards.

Accreditation matters for individual law schools often remained before the Accreditation Committee because it required repeated reports from law schools under review, thereby lengthening the accreditation process. At one point in 1994, 56% of ABA-approved law schools were under continuing Accreditation Committee review and 16% more were undergoing sabbatical reinspections that school year.

As remedies, the proposed Final Judgment provides:

1. Proposed Interpretations will be subject to the same public comment and hearings requirements as proposed Standards. All proposed Interpretations, Standards, Rules, and Policies must be published annually in the ABA Journal and the Review of Legal Education in the United States.

2. Law schools may take immediate appeals to the Council from adverse Accreditation Committee Action Letters. The Accreditation Committee must also report to the Council following each meeting all accreditation actions that it took during the meeting.

3. Elections to the Council will be subject to the Board of Governors' approval, no more than 50% of the Council membership may be law school deans or faculty, and members will be subject to a two-term limit. Only 40% of the members of the Nominating Committee may be law school deans or faculty.

4. Appointments to the Accreditation Committee will be subject to Board approval. No more than 50% of the Accreditation Committee may be law school deans or faculty, and members will be subject to a two-term limit. The same requirements apply to the Standards Review Committee, except that its members are limited to one term.

5. To the extent reasonably feasible, accreditation site inspection teams will include at least one practicing lawyer, judge or public member, and one non-law school university administrator. The ABA will annually publish the names of those who participated in domestic and foreign site inspections and the schools they inspected.

6. The Council must annual report to the Board on its accreditation activities, including identifying all schools under accreditation review and the reasons the law schools are under review.

7. The Council must approve, and the Board review, all annual and site inspection questionnaires sent to law schools.

8. By October 31, 1995, the ABA will hire an outside independent consultant, who is not a legal educator, to assist in evaluating the ABA's accreditation Standards and Interpretations and develop a plan for their validation by December 31, 1995.

Special Commission. The ABA has established a Special Commission To Review The Substance And Process Of The ABA's Accreditation Of American Law Schools. A number of subjects of the accreditation process raise legitimate educational policy issues, but were applied at times to achieve anticompetitive, guild objectives, as discussed in Section II above. These subjects are: Faculty teaching-hour requirements; compensated and other required leaves of absence for faculty and other staff; the manner in which the ABA calculated the faculty component in calculating student-faculty ratios; physical facilities; the allocation of resources to the law school, and bar preparation courses. The Special Commission will review these subjects and report to the Board of Governors no later than February 29, 1996. Upon completing its review, the Board will file its report with the United States and the Court. The United States may challenge any proposal in the report within 90 days of the Commission's report. Any such challenge will be decided by the Court applying an antitrust analysis. This is novel relief in a government antitrust case, resulting from a recognition that some accreditation practices implicate both antitrust and educational policy concerns. Since the ABA had initiated the Special Commission in response to academic criticism of its accreditation process and its perception of possible antitrust problems, the United States has agreed that the ABA may first attempt to reconcile antitrust and educational concerns through its Special Commission.

IV

Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of

the Clayton Act, 15 U.S.C. § 16(a), the Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against the defendant in this case.

V

Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to John F. Greaney, Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, N.W., Room 9903, Washington, D.C. 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for modification, interpretation, or enforcement of the Final Judgment.

VI

Determinative Materials/Documents

No materials or documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were considered in formulating the proposed Final Judgment.

VII

Alternatives to the Proposed Final Judgment

The United States considered other relief in addition to the remedies contained in the proposed Final Judgment. In particular, early in the investigation, the United States proposed injunctive relief eliminating: the ABA's prohibition of credits for a bar review course: the ABA's practice of attributing no value to teachers other than full-time tenure-track faculty in calculating student-faculty ratios; the maximum teaching hour limits; the faculty leave of absence requirements; and the requirement that substantially all first-year courses be taught by full-time faculty. Later the United States proposed other relief, all of which is included in the proposed Final Judgment. The United States made these proposals during the negotiating process as its investigation proceeded and as it learned more about the ABA's practices and their competitive effects.

The United States eventually concluded, on the basis of the evidence it had gathered, that mere amendment of the ABA's Standards and practices would not provide adequate or permanent relief and that reform of the entire accreditation process was needed. While a prohibition of some of the rules was warranted, as is accomplished by the proposed Final Judgment, the larger and more fundamental problem of regulatory capture also had to be addressed.

Moreover, a number of the Standards, Interpretations and practices at issue, although sometimes misapplied to further guild interests in the past, concern matters of legitimate educational concern. The United States concluded that appraisal of whether the provisions and practices listed in Section IV.D of the Complaint are anticompetitive or set a procompetitive minimum educational standard for law school programs should be made in the first instance by the ABA itself, subject to subsequent review. The United States agreed to submit the first four of the practices initially of most concern to it, along with others about which it had developed concern, to review by the ABA's Special Commission. (In the case of first-year teaching requirements, on the basis of evidence it subsequently gathered the United States abandoned its initial opposition). If the Special Commission fails to consider adequately the antitrust implications of continuing the ABA's past practices in these areas, the Final Judgment permits the United States to challenge the Special Commission's proposals and seek further injunctive relief from the Court.

The United States had also earlier proposed that the ABA's Special Commission be separately constituted as an antitrust review committee whose membership would be one-third practitioners, judges, and public members; one-third non-law school university administrators; and one-third law school administrators and faculty. Although the Government recognized that a number of members of the Special Commission had participated in the accreditation process in the past, it also considered that the Special Commission was already constituted and had progressed in its work, that ABA leadership was now familiar with and sensitive to antitrust concerns, and that the Commission report was subject to challenge by the United States and review by the Court.

Another alternative to the proposed Final Judgment is a full trial of the case. A trial would involve substantial cost both to the United States and to the defendant, and is not warranted since the Final Judgment provides all substantial relief the Government would likely obtain following a successful trial.

Dated: July 14, 1995.

Respectfully submitted,

D. Bruce Pearson

James J. Tierney

Jessica N. Cohen

Molly L. DeBusschere

Attorneys, U.S. Department of Justice, Antitrust Division, 555 4th Street, N.W., Room 9903, Washington, D.C. 20001, Tel: 202/307–0809, Fax: 202/616–8544.

Certificate of Service

On July 14, 1995, I caused a copy of the United States' Competitive Impact Statement to be served by facsimile and first-class mail upon:

Ronald S. Flagg, Esquire, Sidley & Austin, 1722 Eye Street, N.W., Washington, D.C. 20006, fax: (202) 736–8711

David T. Pritikin, Esquire, Sidley & Austin, One First National Plaza, Chicago, Illinois 60603, fax: 312/853–7036

and

Darryl L. DePriest, 541 N. Fairbanks Court, Chicago, Illinois 60611, fax: 312/988–5217.

James J. Tierney

[FR Doc. 95–18946 Filed 8–1–95; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Jonathan L. Wilson, D.V.M.; Denial of Application

On June 2, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jonathan L. Wilson, of Kennett, Missouri (Respondent), proposing to deny his application for a DEA Certificate of Registration as a practitioner. The statutory basis for the Order to Show Cause was that Respondent was not authorized to handle controlled substances in the State of Missouri. 21 U.S.C. 823(f).

The Order to Show Cause was sent to Respondent by certified mail, return receipt requested. DEA received a receipt, signed by ''J.L. Wilson'' and dated June 8, 1995. Respondent did not request a hearing on the matter, nor forward any response to the Order to Show Cause to DEA, within the thirty days provided in 21 CFR 1301.54. Pursuant to 21 CFR 1301.57, the Deputy

Administrator hereby enters his final order based upon the investigative file.

By letter dated July 27, 1992, the Missouri Department of Health denied Respondent's application for a Missouri Controlled Substances Registration effective June 24, 1992. The Missouri Department of Health's decision was based on the following: (1) Respondent's inability to accept responsibility for diverting Demerol (a Schedule II controlled substance) for personal use and abuse; and (2) Respondent's having provided false or misleading information on his application by failing to disclose the revocation of his Mississippi Veterinary License in September of 1976.

The DEA has consistently held that it does not have statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized to dispense controlled substances by the state in which he proposes to practice. *See Lawrence R. Alexander, M.D.*, 57 FR 22256 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988); *Robert F. Witek, D.D.S.*, 52 FR 4770 (1987). Because Respondent is not authorized to handle controlled substances in the State of Missouri, the Deputy Administrator cannot permit him to obtain a DEA Certificate of Registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that any pending applications for a DEA Certificate of Registration as a practitioner on behalf of Jonathan L. Wilson, be, and they hereby are denied. This order is effective September 1, 1995.

Dated: July 27, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–18978 Filed 8–1–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

July 27, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (P.L. 96–511). Copies may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ({202} 219–5095). Comments and questions about the ICRs listed below should be directed to Ms. O'Malley, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10325, Washington, DC 20503 ({202} 395–7316).

Individuals who use a telecommunications device for the deaf (TTY/TDD) may call {202} 219–4720 between 1:00 p.m. and 4:00 p.m. Western time, Monday through Friday.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Examinations and Tests of Electrical Equipment.

OMB Number: 1219–0067.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 2,231,536.

Estimated Time Per Respondent: .77 hours.

Total Burden Hours: 1,726,992.

Description: Requires coal mine operators to frequently examine, test, and properly maintain all electric equipment and to keep records of the results of the examinations and tests.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Approval Requirements for Electric Motor Assemblies.

OMB Number: 1219–0115.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 89.

Estimated Time Per Respondent: 3.0224 hours.

Total Burden Hours: 269.

Description: Establishes specific requirements for MSHA approval of certain explosion-proof electric motor assemblies intended for use in approved equipment in underground mines.

Type of Review: Revision.

Agency: Bureau of Labor Statistics/Employment and Training Administration.

Title: February 1996 CPS Displaced Worker, Job Tenure, and Occupational Mobility Supplement.

OMB Number: 1220–0104.

Agency Number: CPS–1.

Frequency: One-time survey.

Affected Public: Individuals or households.

Number of Respondents: 55,000.

Estimated Time Per Respondent: .15 hours.

Total Burden Hours: 8,250.

Description: The information collected in this supplement will be used to determine the size and nature of the population affected by job displacement and, hence, the needs and scope of the Job Training Partnership Act Programs (or subsequent consolidated programs serving adult displaced workers). The information collected also will be used to assess employment stability by determining the length of time workers have been with their current employer and estimating the incidence of occupational change over the course of a year. In addition, data on job tenure for all workers are needed to calculate displacement rates among various worker groups so that comparison can be made over time and among different affected groups. Combining the questions on displacement, tenure, and occupational change will enable analysts to obtain a more complete picture of employment stability.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 95–18979 Filed 8–1–95; 8:45 am]

BILLING CODE 4510–43–M

Mine Safety and Health Administration

Petitions for Modification

This notice amends an affirmative decision issued by the Administrator of Metal and Nonmetal Mine Safety and Health on a petition for modification of the application of a mandatory safety standard to correct the word ''shop'' in a document published in the **Federal Register** on June 20, 1995 (60 FR 32180) to read ''shot''.

Docket No.: M–94–38–M

FR Notice: 59 FR 50008

Petitioner: Independent Aggregates

Reg Affected: 30 CFR 56.6306(b)

Summary of Findings: Petitioner's proposal to continue drilling the shot pattern while loading is in progress by completing a drill hole and immediately loading the hole while continuing to drill a new hole considered acceptable alternative method. Granted with conditions.

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Consolidation Coal Company

[Docket No. M–95–92–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1002 to its Loveridge No. 22 Mine (I.D. No. 46–01433) located in Marion County, West Virginia. The petitioner proposes to use high-voltage (4,160 volts) cables inby the last open crosscut to supply power to longwall equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Costain Coal, Inc.

[Docket No. M–95–93–C]

Costain Coal, Inc., P.O. Box 289, Sturgis, Kentucky 42459–0289 has filed a petition to modify the application of 30 CFR 75.364(b)(4) to its Wheatcroft Mine (I.D. No. 15–13920) located in Webster County, Kentucky. Due to deteriorating roof conditions in the Main North and 1st North Panel and the approaches to the No. 10 seals, traveling the area would be unsafe. The petitioner proposes to establish evaluation points to determine the direction and quantity of air going into the affected area and to examine these points on a weekly basis. The petitioner states that application of the standard would result in a diminution of safety to the persons making weekly examinations. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Western Mingo Coal Company

[Docket No. M–95–94–C]

Western Mingo Coal Company, P.O. Box 119, Naugatuck, West Virginia 25685 has filed a petition to modify the application of 30 CFR 75.350 to its Northern Mingo No. 2 Mine (I.D. No. 46–08369) located in Mingo County, West Virginia. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used as intake air courses. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. CONSOL of Kentucky, Inc.

[Docket No. M–95–95–C]

CONSOL of Kentucky, Inc., Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1101–8 to its 9AB - H4 Mine (I.D. No. 15–17667) located in Floyd County, Kentucky. The petitioner requests a modification of the standard to permit the use of a single line of automatic sprinklers for its fire protection system on main and secondary belt conveyors. The petitioner proposes to use a single overhead pipe system with 1/2-inch orifice automatic sprinklers located on 10-foot centers to cover 50 feet of fire-resistant belt or 150 feet of nonfire-resistant belt with actuation temperatures between 200 and 230 degrees fahrenheit and with water pressure equal to or greater than 10 psi; to have automatic sprinklers located not more than 10 feet apart in order for the discharge of water to extend over the belt drive, belt take-up, electrical control, and gear reducing unit; and to conduct annual functional tests of each water sprinkler system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Cyprus Cumberland Resources Corporation

[Docket No. M–95–96–C]

Cyprus Cumberland Resources Corporation, 9100 East Mineral Circle, Englewood, Colorado 80112 has filed a petition to modify the application of 30 CFR 75.507 to its Cumberland Mine (I.D. No. 36–05018) located in Green County, Pennsylvania. The petitioner proposes to use nonpermissible submersible pumps to dewater bleeder sumps or bleeder entries in order to provide unrestricted airflow into the return air shaft or through the return entries. The petitioner states that these pumps are designed to cease operation when the water level is 3 feet above the level of the pump motor and would operate on a 480-volt three-phase alternating current electrical power circuit with a resistor grounded wye transformer protected by a line power ground-fault, pilot combination unit; that proposed revisions for their training plan would be implemented and given to the District Manager for the area in which the pump and pump electrical controls are located; and that the training plan would specify task training for all selected mine electricians who will perform electrical work on the pumps. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Cyprus Empire Corporation

[Docket No. M–95–97–C]

Cyprus Empire Corporation (previously Empire Energy Corporation), P.O. Box 68, Craig, Colorado 81626 has filed a petition to modify the application of 30 CFR 75.1002 to its Eagle No. 5 Mine (I.D. No. 05–01370) located in Moffat County, Colorado. The petitioner requests that Item 10 of MSHA's Proposed Decision and Order granting petition for modification, docket number M–84–263–C be amended. The petitioner states that it is imperative that as products meet flame resistance and other MSHA specifications, they become available for use instead of obsolete products; and that the request to amend the presently approved petition addresses this specific issue.

7. Mt. Top Coal Company

[Docket No. M–95–98–C]

Mt. Top Coal Company, 104 E. Grand Avenue, Tower City, Pennsylvania 17980 has filed a petition to modify the application of 30 CFR 75.335 to its Buck Mt. Slope (I.D. No. 36–07359) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of seal construction using wooden materials of moderate size and weight due to difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criterion in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Key West Mining, Inc.

[Docket No. M–95–99–C]

Key West Mining, Inc., P.O. Box 768, Grundy, Virginia 24614 has filed a petition to modify the application of 30 CFR 75.360 to its Mine No. 3 (I.D. No. 44–03264) located in Buchanan County, Virginia. The petitioner requests relief from the standard requiring preshift examinations of underground conveyor belts in its entirety. The petitioner states that the area cannot be traveled safely due to deteriorating roof conditions in the No. 1 conveyor belt entry starting at a location approximately 170 feet from the surface and extending for a distance of approximately 90 feet. As an alternative, the petitioner proposes to visually examine the 90 feet area affected from both the inby and outby ends. The petitioner states that

application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Performance Coal Company

[Docket No. M–95–100–C]

Performance Coal Company, P.O. Box 69, Naoma, West Virginia 25140 has filed a petition to modify the application of 30 CFR 75.350 to its Upper Big Branch South Mine (I.D. No. 46–08436) located in Raleigh County, West Virginia. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used as intake air courses. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Performance Coal Company

[Docket No. M–95–101–C]

Performance Coal Company, P.O. Box 69, Naoma, West Virginia 25140 has filed a petition to modify the application of 30 CFR 75.1700 to its Upper Big Branch South Mine (I.D. No. 46–08436) located in Raleigh County, West Virginia. The petitioner proposes to plug and mine through oil and gas wells. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. C.L.D., Inc.

[Docket No. M–95–10–M]

C.L.D., Inc., 2765 East 500 South, Vernal, Utah 84078 has filed a petition to modify the application of 30 CFR 57.4760(a) to its Cowboy No. 1 and 2 Mine (I.D. No. 42–02096) located in Uintah County, Utah. The petitioner requests a variance from the mandatory safety standard because the mining methods used at its gilsonite mines do not provide a physical means to comply with the standard. The petitioner states that a gilsonite mine uses an open-trench method of mining and that the mines are connected to other mines and are self-ventilating. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 1, 1995. Copies of these petitions are available for inspection at that address.

Dated: July 25, 1995.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 95–18947 Filed 8–1–95; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 7, 1995, through July 21, 1995. The last biweekly notice was published on Wednesday, July 19, 1996 (60 FR 37084).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By September 1, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be

filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: July 3, 1995

Description of amendments request: The proposed Technical Specification (TS) amendment temporarily adds new ACTION Statements 3.8.1.1.f and 3.8.1.1.g to TS 3.8.1.1, ''A.C. Sources - Operating,'' to provide a method of responding to sustained degraded switchyard voltage. Bases 3/4.8.1, ''A.C. Sources,'' 3/4.8.2, ''D.C. Sources,'' and 3/4.8.3, ''Onsite Distribution Systems,'' are also being revised to provide guidance on how and why degraded offsite power voltage and the number of startup transformers in service affect compliance with GDC 17 and to give the basis for the additional ACTION statements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not significantly increase the probability of an accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR). The safety function of the Electrical Distribution System (EDS) is to provide sufficient capacity and capability to assure that 1) specified acceptable fuel design limits and design conditions of the reactor coolant pressure

boundary are not exceeded as a result of anticipated operational occurrences and 2) the core is cooled and containment integrity and other vital functions are maintained in the event of postulated accidents. In addition, it shall have sufficient independence, redundancy, and testability to perform its safety function assuming a single failure. The proposed ACTIONs will restore the EDS to conformance with General Design Criterion (GDC) 17 of Appendix A to 10 CFR 50. Once in conformance with GDC 17, the system will be capable of performing its safety function as analyzed in Chapters 6 and 15 of the UFSAR. The proposed temporary change has no effect on the probability of accident initiation, therefore, the probability of an accident previously evaluated has not been significantly increased.

The consequences of an accident previously evaluated in the UFSAR will not be significantly increased. Restoring one train to OPERABLE, by blocking Fast Bus Transfer (FBT), within one hour is consistent with the response time of Technical Specification (TS) ACTION 3.0.3. The second train will be restored to OPERABLE by having its Emergency Diesel Generator (EDG) started, loaded, and separated from offsite power within two hours or FBT will be blocked within two hours. Action within two hours is consistent with the plant—s TS since TS ACTION 3.8.2.1.a, ''D. C. Sources - Operating,'' would be the most limiting requirement with one train of inoperable electric power. In a degraded voltage event, the ability of the Class 1E 125VDC battery chargers to perform their function is indeterminate, therefore, the Class 1E 125VDC batteries must be assumed to provide the 125VDC control power to the Class 1E Engineered Safety Features (ESF) circuit breakers for both of their sequences. The battery capacity calculations assume only one sequence. Once one train is restored to OPERABLE and the other train—s EDG demonstrated to be OPERABLE by loading and separating from the grid, ACTION 3.8.1.1.a, for one INOPERABLE offsite power supply, allows operation to continue for up to seventy-two hours. If both trains are blocked, then both trains are OPERABLE.

The proposed change will ensure that the train that blocks FBT will be in conformance with GDC 17 should a subsequent accident occur. As such, that train of ESF equipment will be supplied Class 1E preferred and standby power in the manner assumed by Chapters 6 and 15 analyses. Starting, loading, and separating the other train—s EDG from offsite power ensures that the second train of ESF equipment is prepared to respond to any subsequent accident. This configuration presents one OPERABLE offsite circuit and two OPERABLE EDGs to any subsequent accident, and would be capable of withstanding the single failures in the UFSAR Table 15.0-0, ''Single Failures.'' Optionally, with both trains blocked, both are OPERABLE and would be capable of withstanding the single failures in the UFSAR Table 15.0-0, ''Single Failures.''

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Given the current licensing basis, the proposed temporary TS change does not create the possibility of an accident of a new or different kind. The plant is currently licensed to have both trains of FBT blocked when low switchyard voltages exist in order to prevent the loss of power generated by the nuclear power unit from causing the loss of the preferred power circuits. The proposed temporary TS ACTIONs 3.8.1.1.f and 3.8.1.1.g are being added as ACTIONs to prevent a double sequencing event from occurring. The train that is blocked is consistent with previous UFSAR Chapter 6 and Chapter 15 safety analyses since it will conform to GDC 17 prior to the onset of the accident. Under this condition it will be able to contribute to the mitigation of an accident and withstand the effects of any single failure equal to its ability when initially analyzed and licensed. The EDG which is loaded and isolated from offsite power also contributes to GDC 17 compliance since the entire system can withstand a Loss of Offsite Power (LOP) and a single failure of an EDG. With both trains blocked, the EDS is in compliance with GDC 17 and is analyzed.

It is understood that an accident of a different kind will exist if a degraded voltage condition occurs coincident with an accident (e.g., LOCA [versus the analyzed LOP + LOCA]). Should such an accident occur, the manual action described in the proposed ACTION statements could not be credited to protect the plant. However, the purpose of proposed ACTIONs 3.8.1.1.f and 3.8.1.1.g is to provide an appropriate response to degraded voltage prior to an accident by eliminating the malfunction of a different type (double sequencing) and an accident of a different type (e.g., degraded voltage + LOCA) for one train within one hour and for the second train within two hours. This duration of response is consistent with the required responses currently in the TSs 3.0.3, 3.8.2.1.a, and 3.8.1.1.a.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety has not been reduced in that the train which has FBT blocked prior to the onset of an accident will be in conformance with GDC 17 (which is the basis to TS 3/4.8.1). Since the blocked train is in conformance with GDC 17 prior to the onset of an accident, it will support the single failure analyses and the safety analyses to the extent previously analyzed and licensed. The train not blocked will have its EDG started, loaded, and separated from offsite power prior to the end of the second hour. Action within two hours is consistent with TS 3.8.2.1.a. The proposed action recovers one train of A.C. sources in one hour and places the plant in a configuration of one less power source than is required by LCO 3.8.1.1 within two hours. Currently, TS ACTION 3.8.1.1.a (one power source inoperable) has a duration of seventy-two hours. The proposed ACTION requires responses within time frames consistent with TSs 3.0.3, 3.8.2.1.a, and 3.8.1.1.a, and therefore, does not reduce the margin of safety. Optionally, restoration of the second train by blocking FBT within two hours is also consistent with response times required by TS 3.0.3 and 3.8.2.1.a and therefore, also does not reduce the margin of safety. TS 3.8.1.1.a would not be required with both trains of FBT blocked as all four AC power sources would then be OPERABLE.

Regulatory Guide 1.93, ''Availability of Electric Power Sources,'' Revision 0, December 1974 recognizes that under certain conditions it may be safer to continue operation at full or reduced power for a limited time than to effect an immediate shutdown based on the loss of some of the required electric power sources. In an effort to minimize the risk to the health and safety of the public, the proposed ACTIONs 3.8.1.1.f and 3.8.1.1.g balance the risk of a forced shutdown against the risk of remaining at power with a degraded switchyard voltage.

Probabilistic Risk Analysis (PRA) has compared the probability of a core melt event for 1) blocking fast bus transfer in one train after one hour for the next seventy-one hours, and in the second train after two hours for the next seventy hours; 2) blocking fast bus transfer in one train after the first hour for the next seventy-one hours, and supplying power to the other train from the EDG after the second hour for seventy hours; and 3) a normal shutdown assuming the plant is in a normal configuration and no other transients or accidents except an uncomplicated reactor trip occurs during the shutdown process. Seventy-two hours was chosen for comparison purposes as the proposed ACTIONs would allow operation for up to seventy-two hours with one offsite circuit INOPERABLE.

The PRA has shown that the probability of a core melt event during power operation with FBT blocked in one train after one hour for the next seventy-one hours, and in the second train after two hours for the next seventy hours is approximately 1.91E-6. The probability of a core melt event during power operation with FBT blocked in one train after one hour for the next seventy-one hours and the EDG powering the opposite train after the second hour for the next seventy hours (the proposed configuration) is between approximately 1.91E-6 and 1.93E-6. A range is provided because the current PRA model can only model blocking both trains or the EDGs supplying both trains. The risk lies somewhere between the two values. The probability of a core melt event due to a normal shutdown assuming the plant is in a normal configuration and no other transients or accidents except an uncomplicated reactor trip occurs during the shutdown process is 2.4E-6. The risk can not be calculated for a forced shutdown with degraded switchyard voltage present but it is expected to be higher. Therefore, the analysis provided is conservative.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: William H. Bateman

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: July 14, 1995

Description of amendment request: The proposed amendment would change the scram insertion times, Section 3.3.C, Minimum Critical Power Ratio section, Section 4.11.C and the associated bases in Section 2.1.1 and 3/4.3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Section 2.1 Bases - Safety Limits

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because equivalent fuel cladding protection (99.9 percent of all fuel rods do not experience transition boiling following a design basis transient) is provided.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not affect the function of any structure, system or component.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety because the utilization of current General Electric fuel designs provides an equivalent margin of safety. As stated previously, equivalent fuel cladding protection is provided and ensures that 99.9 percent of all fuel rods will not experience transition boiling following a design basis transient.

Section 3.3.C - Scram Insertion Times

1. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability of consequences of an accident previously evaluated. The correlation of the scram insertion times with the actual notch position will simplify the surveillance procedure while maintaining the accuracy of the test.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated because no physical modifications are associated with the proposed change and it does not affect the function of any structure, system or component.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety. The notch positions were chosen to coincide with the relative insertion values specified in the Technical Specifications. Use of the proposed combination of notch positions and scram insertion times will maintain the existing margins of safety that 99.9 percent of all fuel rods will not experience transition boiling following a design basis transient.

Section 4.11.C - Minimum Critical Power Ratio (MCPR) Calculation Method

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the method used to calculate the measured scram speed distribution is consistent with the PNPS [Pilgrim Nuclear Power Station] licensing basis.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not affect the function of any structure, system or component.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in the margin of safety because the proposed changes provide equivalent fuel cladding protection which ensures that 99.9 percent of all fuel rods will not experience transition boiling following a design basis transient.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Ledyard B. Marsh

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment requests: September 17, 1993, as supplemented July 20, 1995

Description of amendment requests: As a result of findings by a Diagnostic Evaluation Team inspection performed by the NRC staff at the Dresden Nuclear Power Station in 1987, Commonwealth Edison Company (ComEd, the licensee) made a decision that both the Dresden Nuclear Power Station and sister site Quad Cities Nuclear Power Station needed attention focused on the existing custom Technical Specifications (TS) used.

The licensee made the decision to initiate a Technical Specification Upgrade Program (TSUP) for both Dresden and Quad Cities. The licensee evaluated the current TS for both Dresden and Quad Cities against the Standard Technical Specifications (STS) contained in NUREG-0123, ''Standard Technical Specifications General Electric Plants BWR/4.'' The licensee's evaluation identified numerous potential improvements such as clarifying requirements, changing TS to make them more understandable and to eliminate interpretation, and deleting requirements that are no longer considered current with industry practice. As a result of the evaluation, ComEd has elected to upgrade both the Dresden and Quad Cities TS to the STS contained in NUREG-0123.

The TSUP for Dresden and Quad Cities is not a complete adaption of the STS. The TSUP focuses on (1) integrating additional information such as equipment operability requirements during shutdown conditions, (2) clarifying requirements such as limiting conditions for operation and action statements utilizing STS terminology, (3) deleting superseded requirements and modifications to the TS based on the licensee's responses to Generic Letters (GL), and (4) relocating specific items to more appropriate TS locations.

The September 17, 1993, and July 20, 1995, applications proposed to upgrade only Section 3/4.7 (Containment Systems) of the Dresden and Quad Cities TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Implementation of these changes will provide increased reliability of equipment assumed to operate in the current safety analysis, or provide continued assurance that specified parameters remain within their acceptance limits, and as such, will not significantly increase the probability or consequences of a previously evaluated accident.

Some of the proposed changes represent minor curtailments of the current

requirements which are based on generic guidance or previously approved provisions for other stations. The proposed amendment for Dresden and Quad Cities Station's Technical Specification Section 3/4.7 is based on STS guidelines or later operating BWR plants' NRC accepted changes. Any deviations from STS requirements do not significantly increase the probability or consequences of any previously evaluated accidents for Dresden or Quad Cities Stations. The proposed amendment is consistent with the current safety analyses and has been previously determined to represent sufficient requirements for the assurance and reliability of equipment assumed to operate in the safety analysis, or provide continued assurance that specified parameters remain within their acceptance limits. As such, these changes will not significantly increase the probability or consequences of a previously evaluated accident.

The associated systems that make up the Containment Systems are not assumed in any safety analysis to initiate any accident sequence for Dresden or Quad Cities Stations; therefore, the probability of any accident previously evaluated is not increased by the proposed amendment. In addition, the proposed surveillance requirements for the proposed amendments to these systems are generally more prescriptive than the current requirements specified within the Technical Specifications. The additional surveillance requirements improve the reliability and availability of all affected systems and, therefore, reduce the consequences of any accident previously evaluated, as the probability of the systems outlined within Section 3/4.7 of the proposed Technical Specifications performing their intended function is increased by the additional surveillances.

Create the possibility of a new or different kind of accident from any previously evaluated because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Other changes represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. These changes do not involve revisions to the design of the station. Some of the changes may involve revision in the operation of the station; however, these provide additional restrictions which are in accordance with the current safety analysis, or are to provide for additional testing or surveillances which will not introduce new failure mechanisms beyond those already considered in the current safety analyses.

The proposed amendment for Dresden and Quad Cities Station's Technical Specification Section 3/4.7 is based on STS guidelines or later operating BWR plants' NRC accepted changes. The proposed amendment has been reviewed for acceptability at the Dresden or Quad Cities Nuclear Power Stations considering similarity of system or component design versus the STS or later operating BWRs. Any deviations from STS requirements do not create the possibility of a new or different kind of accident previously evaluated for Dresden or Quad Cities Stations. No new modes of operation are introduced by the proposed changes. Surveillance requirements are changed to reflect improvements in technique, frequency of performance or operating experience at later plants. Proposed changes to action statements in many places add requirements that are not in the present technical specifications. The proposed changes maintain at least the present level of operability. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The associated systems that make up the Containment Systems are not assumed in any safety analysis to initiate any accident sequence for Dresden or Quad Cities Stations. In addition, the proposed surveillance requirements for affected systems associated with the Containment Systems are generally more prescriptive than the current requirements specified within the Technical Specifications; therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Involve a significant reduction in the margin of safety because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Other changes represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. Some of the later individual items may introduce minor reductions in the margin of safety when compared to the current requirements. However, other individual changes are the adoption of new requirements which will provide significant enhancement of the reliability of the equipment assumed to operate in the safety analysis, or provide enhanced assurance that specified parameters remain with their acceptance limits. These enhancements compensate for the individual minor reductions, such that taken together, the proposed changes will not significantly reduce the margin of safety.

The proposed amendment to Technical Specification Section 3/4.7 implements present requirements, or the intent of present requirements in accordance with the guidelines set forth in the STS. Any deviations from STS requirements do not significantly reduce the margin of safety for Dresden or Quad Cities Stations. The proposed changes are intended to improve readability, usability, and the understanding of technical specification requirements while maintaining acceptable levels of safe operation. The proposed changes have been evaluated and found to be acceptable for use at Dresden or Quad Cities based on system design, safety analysis requirements and operational performance. Since the proposed changes are based on NRC accepted provisions at other operating plants that are applicable at Dresden or Quad Cities and maintain necessary levels of system or component reliability, the proposed changes do not involve a significant reduction in the margin of safety.

The proposed amendment for Dresden and Quad Cities Stations will not reduce the availability of systems associated with the Containment Systems when required to mitigate accident conditions; therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: for Dresden, Morris Public Library, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Robert A. Capra

Connecticut Yankee Atomic Power Company, and Northeast Nuclear Energy Company, et al., Docket Nos.50-213, 50-245, 50-336, and 50-423 Haddam Neck Plant, and Millstone Nuclear Power Station, Units 1,2, and 3, Middlesex County and New London County, Connecticut

Date of amendment request: June 6, 1995

Description of amendment request: The proposed amendment will modify the size of the Plant Operations Review Committee (PORC) which will collectively have the experience and expertise in various areas of plant operation, and will clarify the composition of the Site Operations Review Committee (SORC).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

These proposed changes do not involve an SHC because the changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The PORC is an oversight group and helps to ensure that the units are operated in a safe manner. To accomplish this the PORCs provide their recommendations on the safety related activities to the Vice President - Haddam Neck Plant for Haddam Neck and to the respective Nuclear Unit Directors for Millstone. Each Millstone

Unit has its own PORC. It is proposed that the members of the

PORC be selected by the respective Nuclear Unit Director based on their knowledge and

expertise in specific key plant functions. The Millstone Station has one SORC. The SORC is also an oversight group whose charter is to advise the Senior Vice President - Millstone Station on all matters related to nuclear safety at the Millstone site. The Haddam Neck Plant, being a single unit site, has one PORC, which advises the Vice President - Haddam Neck Plant. The members of the Haddam Neck Plant PORC will be selected by the Vice President - Haddam Neck Plant based on their knowledge and expertise in specific key plant functions. The PORC and SORC add to the defense-in-depth concept provided by the design, operation, maintenance, and quality oversight by promoting excellence through the conduct of their affairs and by maintaining a diligent watch over their responsibilities.

These administrative changes will revise the composition section of the technical specifications for the PORC members. Millstone Unit individuals will be appointed by the Nuclear Unit Directors if the individual meets one or more of the following areas of expertise: Plant Operations, Engineering, Reactor Engineering, Maintenance, Instrumentation and Controls, Health Physics, Chemistry, Work Planning and Control, and Quality Services. The Haddam Neck Plant, due to its broader scope of review also include[s] an individual experienced in Security and specific experience in Electrical Maintenance and Mechanical Maintenance. The individuals who will serve on PORC shall continue to meet the criteria of ANSI N18.1-1971. This approach is consistent with the standard technical specifications and NUREG 0800, Section 13.4. For SORC at the Millstone Station, the method of identifying who shall serve as Vice Chairperson has been modified for clarity. The Site Services Director position is proposed to be eliminated since this position no longer exists. The functions previously performed by this individual have been assumed by those individuals who currently serve on SORC. Finally, [the TS relating to] the individual who shall represent Quality and Assessment Services shall be modified to allow a qualified member of Quality and Assessment Services to serve on SORC.

The remaining portions of the technical specifications related to PORC and SORC are not being revised.

These modifications broaden the unit committee participation and reflect current organizational positions and will not increase the probability of occurrence or the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed administrative enhancements to the composition of the PORC and Millstone Station SORC will not affect the way in which the units are physically operated. These administrative changes to PORC and SORC continue to meet the guidelines of ANSI N18.7-1976. The modifications to PORC and SORC continue to allow these groups to provide a thorough review of activities at the units.

The proposed modification does not impact any initiating events, and, therefore, cannot create the possibility of any new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

These proposed administrative changes will not impact the margin of safety provided by PORC and SORC. The PORC and SORC will continue to be staffed by qualified individuals experienced in the operation of the plants. These administrative changes will modify how the composition of the PORC and SORC members are presented in the technical specifications, but will not adversely impact their ability to review and comment on operations at the units.

These changes do not impact any protective boundaries nor do they impact the safety limits for the protective boundaries. These proposed changes are administrative in nature. Therefore, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street Middletown, Copnnecticut 06457, for the Haddam Neck Plant, and the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, for Millstone 1, 2, and 3.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: July 5, 1995

Description of amendment request: The proposed amendment would change the Administrative Controls section of the Palisades Technical Specifications. The changes involve deleting training requirements in the Administrative Controls section, revising the Plant Review Committee composition, and revising the function and composition of the plant safety and licensing staff review requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This change does not affect the probability or consequences of an accident. The changes are administrative, deleting an unnecessary specification on staff training requirements, eliminating the specific references to the Nuclear Engineering and Construction Organization (NECO) staff, and requiring that the Plant Review Committee (PRC) chairman, alternate chairman, and members be designated in administrative procedures by the Plant General Manager. Further administrative changes clarify the function of the Plant Safety and Licensing organization and eliminate the numerical requirement for five staff members to fulfill the organization function.

The removal of an obsolete staff training requirement does not diminish the regulatory requirement to have an adequately trained staff. The accredited training programs for the plant staff ensure an appropriate level of training is conducted to maintain an appropriate skill and knowledge base for the staff. The requirements of 10CFR55 provide the necessary rules for operator licenses. Since a trained staff will be maintained, there will [be] no increase in the probability or consequences of an accident as a result of this change.

The composition of the PRC will not be affected by this change as it will, at a minimum, be comprised of personnel from the operations, engineering, radiological services and maintenance departments as required by the Technical Specifications. The composition of the Plant Safety and Licensing organization as a whole may change. The function of the organization as it relates to these Technical Specifications, however, will not be affected. These changes have no affect on the plant accident analyses. Qualified personnel will continue to conduct the PRC and Plant Safety and Licensing reviews. Therefore, the changes do not increase the probability or consequences of an accident.

B. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are administrative and do not create the possibility of a new or different kind of accident. Staff training will continue to meet the accreditation requirements of the National Academy for Nuclear Training Accreditation Board and the requirements for the Systematic Approach to Training. Operators' license training will continue to meet the regulatory requirements of 10CFR55. Activities conducted by the Plant Review Committee and the Plant Safety and Licensing staff will continue to be accomplished by a staff which meets the qualification requirements of the Technical Specifications. These administrative changes will not affect the operation of the plant or the safety function of plant equipment nor will it affect the quality of the review activities. Therefore, there will be no possibility that a new or different kind of accident will be created.

C. Involve a significant reduction in a margin of safety.

The changes do not affect installed plant equipment nor do they affect plant

operations. These administrative changes have not affected the probability or consequences of a previously analyzed accident or created the possibility of a new or different kind [of] accident from any previously evaluated. Therefore, they do not involve any reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

NRC Project Director: John N. Hannon

Duquesne Light Company, et al., Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: October 11, 1994, as supplemented June 23, 1995.

Description of amendment request: The proposed amendments would revise Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS-1 and BVPS-2) Technical Specifications (TSs) 1.18, ''Quadrant Power Tilt Ratio,'' 3/4.2.4, ''Quadrant Power Tilt Ratio,'' the Table Notation of TS Table 3.3.-1, ''Reactor Trip System Instrumentation,'' and associated Bases to incorporate the guidance provided in the NRC's Improved Standard Technical Specifications (NUREG-1431) applicable to these TSs. The proposed amendments would clarify the requirements of the subject TSs with regard to the use of excore power range neutron flux detectors to monitor quadrant power tilt ratio when an excore power range neutron flux instrument is inoperable. The proposed change would also make several minor editorial changes in the subject TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The existing quadrant power tilt ratio (QPTR) definition and Surveillance Requirement (SR) 4.2.4.c are inconsistent concerning reactor power limitations when performing QPTR surveillance requirements. The proposed change modifies these and related requirements to improve the understanding and consistency by generally incorporating the Improved Standard Technical Specification (ISTS) requirements of NUREG-1431.

Editorial changes have been incorporated throughout the proposed specifications to address ISTS or plant specific convention and do not affect the accident analyses. The QPTR definition has been modified to reflect the ISTS wording and eliminate the inconsistency with SR 4.2.4.c. This change does not reduce the QPTR testing requirements or affect the accident analyses assumptions. The current action statements require power reduction along with a reduction in power range high neutron flux trip setpoints when the QPTR exceeds the limit. This ensures the core conditions are consistent with the accident analyses assumptions. With the modified action statements and the QPTR exceeding the limit, power reduction is also required along with performing a flux map to verify the peaking factors are within the accident analyses assumptions. In addition, the safety analyses must be re-evaluated to confirm the results remain valid prior to increasing power with an indicated tilt condition. The new action statements provide methods different from the current requirements. However, they satisfy the same objective, to ensure the conditions assumed in the accident analyses are maintained. Therefore, these changes will not involve significant increase in the probability or consequences of an accident previously evaluated.

The current surveillance requirements define the methods and frequencies for verifying the QPTR is within the limit specified in the limiting condition for operation. The proposed SRs include associated notes that allow separation of a power range channel into two portions made-up of the Nuclear Instrumentation System (NIS) and the excore detector portion. If an excore detector portion of a power range channel is inoperable, then the power range channel is inoperable since the detector provides input to the NIS which inputs to the solid state protection system. However, if the excore detector is operable and the NIS is inoperable, then the power range channel is inoperable but the ability to monitor the QPTR is unaffected. When the NIS portion of a channel is inoperable, appropriate actions are applied in accordance with Specification 3.3.1. The new SRs continue to require the same testing and frequencies as the current SRs along with reducing the need to interpret the requirements when special conditions exist. Therefore, the proposed SRs will not affect the accident analyses or significantly increase the probability or consequences of an accident previously evaluated.

Table 3.3-1 Action 2 applies when a power range channel is inoperable. This action has been reformatted to incorporate changes similar to those adopted in the QTPR SR which allow separation of a power range channel into the NIS portion and the excore detector portion. Proposed Action 2.a applies to an inoperable power range high neutron flux channel and Action 2.b applies to ''all other channels'' which includes the Low Setpoint function along with the High Positive and High Negative Rate functions. The new action is modified by Note (3) to allow bypassing the inoperable channel for surveillance testing and setpoint adjustment and by Note (4) that only requires performing SR 4.2.4 when the power range high neutron flux channel input to QPTR is inoperable. The new action does not require reducing the power range neutron flux setpoint like the current action since the proposed action is to perform the QPTR surveillance or shutdown which is more conservative than the current action requirement, otherwise, the new action requires essentially the same steps to be performed as the current action. Therefore, the proposed action will not affect the accident analyses or involve a significant increase in the probability or consequences of an accident previously evaluated.

These changes are proposed to allow flexibility in plant operations by modifying the QPTR action and surveillance requirements to allow separation of a power range channel into the NIS portion and the excore detector portion. The modified action and surveillance requirements continue to provide monitoring of those parameters required to ensure the core is operating safely. Since these changes are not significantly different from the current requirements and no change is being introduced that would affect the accident analyses assumptions, we have concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes incorporate modifications generally consistent with the ISTS QPTR requirements to ensure the core power distribution is adequately monitored. The revised action statements provide for peaking factor verification as a logical compensatory measure to ensure the core is operating within required limits. This is more conservative than the current requirements and provides additional assurance that Specification 3.2.4 will continue to govern the QPTR limitations in a manner consistent with the accident analyses assumptions. The revised SR provides clear and understandable testing requirements to reduce confusion concerning how the QPTR is to be monitored based on plant conditions. The proposed change does not introduce any new mode of plant operation or require any physical modification to the plant, therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The QPTR limit ensures that the gross radial power distribution is maintained within the assumptions used in the safety analyses. The QPTR is one of the variables that is monitored to ensure the core operates within the bounds used in the safety analyses. When the QPTR is maintained below 1.02 it provides an indication that the peaking factors are within the limiting values by preventing and undetected change in the

gross radial power distribution. The proposed changes ensure the required parameters are verified during the applicable conditions and on a consistent basis, therefore, these changes will not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment request: May 19, 1995

Description of amendment request: The proposed amendments revise the specifications to permit the reactor building personnel airlock doors to remain open during fuel handling.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change would allow the containment personnel airlock doors to remain open during fuel movement and core alterations. These doors are normally closed during this time period in order to prevent the escape of radioactive material in the event of a fuel handling accident. These doors are not initiators of any accident. The probability of a fuel handling accident is unaffected by the position of the containment personnel airlock doors.

The proposed change alters assumptions made in evaluating the radiological consequences of a fuel handling accident inside the reactor containment building. Allowing the containment personnel airlock doors to remain open during fuel movement and core alterations does increase, however not significantly, the consequences of a fuel handling accident inside containment. Previously, the fuel handling accident inside containment was bounded by the fuel handling accident analysis in the spent fuel pool area of the auxiliary building. Part of the dose increase has been offset by the increase in the minimum decay time before irradiated fuel may be moved inside the reactor containment building. Extending the minimum decay time actually decreases the consequences of a fuel handling accident by reducing the radioactive inventory of the irradiated fuel which could possibly be released during a fuel handling accident. The revised fuel handling accident analysis results in maximum offsite doses of 43.4 Rem and 41.8 Rem to the thyroid and 0.616 Rem and 0.598 Rem to the whole body for ANO-1 and ANO-2, respectively. The calculated offsite doses are well within the limits of 10CFR Part 100. Also, the calculated doses are larger than the actual doses which would be expected during a fuel handling accident because the calculation does not incorporate the closing of at least one of the personnel airlock doors following evacuation of containment. The proposed change would significantly reduce the dose to workers in the containment in the event of a fuel handling accident by expediting the containment evacuation process.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change does not involve the addition or modification of any plant equipment. Also, the proposed change would not alter the design, configuration, or method of operation of the plant.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

This proposed change has the potential for an increased dose at the site boundary due to a fuel handling accident; however, the dose remains within acceptable limits. The margin of safety as defined by 10CFR Part 100 has not been significantly reduced. There is an increase in the calculated offsite dose resulting from a fuel handling accident; however, the increase is not significant and is well within the limits specified in 10 CFR Part 100. The overall significance will be offset by the increased minimum decay time, the decreased potential radiation dose to workers, and the increased availability of the personnel airlock door in the event of a fuel handling accident. Closing at least one of the personnel airlock doors following an evacuation of containment, further reduces the offsite doses in the event of a fuel handling accident which partially compensates for the higher offsite doses calculated as a result of this proposed change.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. BecknerEntergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: March 17, 1995

Description of amendment request: The proposed amendment revises requirements associated with channel functional tests of the core protection calculator following a high temperature alarm.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The core protection calculators (CPCs) are not accident initiators, therefore this change does not increase the probability of an accident previously evaluated.

The core protection calculators (CPCs) are dedicated minicomputers that receive key parameters necessary to calculate the departure from nucleate boiling ratio (DNBR) and local power density (LPD) and issue a reactor trip command prior to reaching plant conditions that may damage the fuel in the reactor. Subjecting a computer to elevated temperatures may affect the reliability of the computer calculations. This change in the Arkansas Nuclear One-Unit 2 (ANO-2) Technical Specifications (TS) will require a verification of the CPC operability, by the performance of a channel functional test, in the event a cabinet high temperature switch is actuated. This is a more accurate indication of the operating environment of the CPCs than the current requirement to perform the test based upon room temperature. The ability of the CPCs to monitor DNBR and LPD and issue a trip command when appropriate will not be affected in any way by this change, therefore the consequences of an accident previously evaluated are not increased.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

Because the proposed changes do not alter the design, configuration, or method of operation of the plant, they do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

These proposed changes do not alter the acceptance criteria of any surveillance requirements. The changes do not alter any assumptions used in accident analysis, change any actuation setpoints, nor allow

operations in any configuration not previously analyzed. This change will trigger a verification of affected CPC operability based on cabinet temperature instead of room temperature, which is a more accurate indication of the operating environment of the CPC computer. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: April 4, 1995

Description of amendment request: The proposed amendment revises operating criteria and requirements associated with containment personnel air locks.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the

Probability or Consequences of an Accident Previously Evaluated.

The containment air locks are passive components integral to the containment structure and are not evaluated to be accident initiators, therefore, the proposed amendment does not involve an increase in the probability of an accident previously evaluated.

Each air lock door is rated for and tested to full design pressure of the containment building. If one door were inoperable in each air lock, the remaining door, since required to remain closed and locked, would provide the necessary fission product barrier to prevent an uncontrolled release, therefore the amendment allowance for an inoperable air lock door in each air lock does not increase the consequences of any previously evaluated accident.

During a situation where one containment air lock door is inoperable and the operable door is opened, a breech in containment integrity would essentially exist while the operable door remains open. The time required for a containment air lock door to be open for ingress or egress does not exceed two to three minutes. The amendment provision to allow unlocking and opening an operable air lock door for ingress and egress to facilitate air lock maintenance necessary to restore operability does not increase the consequences of any previously evaluated accident since the time necessary for the door to be open is bounded by the existing one hour time allowance for an actual breech of containment integrity (TS 3.6.1.1.)

The containment air lock interlock functions to prevent simultaneous opening of both air lock doors thereby creating a breech in containment integrity. A dedicated individual stationed at the air lock to administratively control door operations, or locking closed an operable door will adequately assure containment integrity. The addition of this technical specification action statement, therefore, does not increase the consequences of any previously evaluated accident.

Performance of the overall air lock leakage test requires opening the outer air lock door for installation of the mechanical dogging devices on the inner door. The current technical specifications make no provisions for this entry and thus would require a plant shutdown if the inner door was inoperable in an air lock. The proposed amendment removes the requirement to shut down when the barrel leak rate is due. The time required for the containment air lock doors to be opened for dog installation would be the same as for ingress and egress as discussed above, therefore this change does not increase the consequences of any previously evaluated accident.

10 CFR 50, Appendix J contains containment leakage testing requirements, including specific requirements for containment building air locks. Changing the TS surveillance requirements to refer to 10 CFR 50, Appendix J for these test requirements will not degrade these tests, therefore this change does not increase the consequences of any previously evaluated accident.

The air lock door seal pressure test is performed any time the air lock is used for containment access during modes of operation when containment integrity is required. The door seal test is intended to be a gross test to verify that the door seals were not damaged during the opening and closing cycle(s). This test does not replace the required overall barrel leakage test. Based on information provided by the air lock vendor, a test pressure of 10 psig is sufficient to perform this gross seal verification. A change in the allowable leakage rate is requested to remove a specific numerical value from the TS surveillance requirements section and replace it with a fraction of L_{aG}. This new acceptable leakage rate remains relatively insignificant and is bounded by the overall air lock leakage rate. Based on these facts this change in test pressure and associated acceptance criteria does not increase the consequences of any previously evaluated accident.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

Because the proposed changes do not change the design, configuration, or method of operation of the plant, they do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed changes to ANO-2 TS involve allowing brief breaches in containment integrity for the purpose of repairing inoperable air lock components or performing surveillances required by 10 CFR 50, Appendix J. These cases are adequately bounded by the one hour allowable outage time afforded by TS 3.6.1.1.

The addition of a specific action statement addressing an inoperable air lock interlock provides those actions necessary to assure the maintenance of containment integrity. This is achieved by locking an operable door in the affected air lock when not in use and stationing a dedicated individual at the air lock, during periods of ingress and egress, whose sole responsibility is to insure only one air lock door is opened at a time thereby duplicating the function of the mechanical interlock.

The proposed changes also consist of administrative changes removing an outdated exemption to 10 CFR 50, Appendix J and removing specific surveillance requirements from the specifications, instead referring to the controlling requirements of 10 CFR 50, Appendix J. This is consistent with the provisions of NUREG 1432 ''Revised Standard Technical Specifications for Combustion Engineering Plants,'' Rev. 0.

None of the proposed changes increase the allowable overall air lock leakage rate, nor affect the acceptance criteria of the overall integrated containment leakage rate. All of the changes are bounded by existing analyses for all evaluated accidents and do not create any situations that alter the assumptions used in these analyses. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 19, 1995

Description of amendment request: The proposed amendment adds criteria to address optional inspections of steam generator tubes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

Steam generator tubes are inspected on a periodic basis to reduce the probability of a steam generator tube rupture or tube leakage. Five special interest groups are being added for optional inspections in addition to the general tube inspections currently required by the technical specifications. These special interest groups define areas of tubes where known or potential degradation mechanisms may exist for which additional inspection, above that currently required in the technical specifications, may be beneficial. Inspection of these special interest groups may utilize probes which more readily detect indications which may be found in the special interest areas. The increased detection capability will reduce the probability that a structurally significant flaw will go undetected during an inspection. The minimum sample size and expansion criteria (should a flaw be found) for inspections of special interest groups are based on percentages of tubes potentially affected by the specific degradation mechanisms for which the special inspection is being performed. The percentages used are the same as used for the current general tube inspections. The expansion criteria allow expansion within the area of interest without affecting the expansions of any general tube inspection. By expanding within the area of interest, a more complete inspection for the defects caused by a specific degradation mechanism can be performed than if the expansion were conducted in tubes not necessarily affected by the degradation mechanism, which is possible with the current technical specifications. Therefore, this change does not involve a significant increase in the probability of an accident previously considered.

The proposed change does not increase the amount of radioactive material available for release or modify any systems used for mitigation of such releases during accident conditions. The steam generator tubing will continue to be examined on the frequency currently specified in the technical specifications. This change will allow steam generator examinations to focus on known areas of interest without requiring unnecessary expansion. The integrity of the steam generators will continue to be assured at an equivalent level. Therefore, the change does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

Special inspections such as the ones being added to the technical specifications have been conducted in the past at ANO-2. The method of inspection, pushing or pulling a probe through the steam generator tubes from the primary side, is the same method employed for the current technical specification required inspections. Inspection methodology is not being changed by incorporation of these special interest groups into the technical specifications. No design or operational characteristics of the plant are changed by the proposed amendment.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed amendment adds special interest groups for optional inspection into the technical specifications. These inspections concentrate on areas of interest using inspection methodology that is equivalent or better at finding specific types of flaws than the methodology used for the currently required general tube inspections. If the special interest groups are not inspected, the existing technical specification requirements for inspection still apply.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 19, 1995

Description of amendment request: The proposed amendment increases the allowed outage time for an emergency diesel generator from 72 hours to seven days. Additionally, the amendment authorizes one, ten-day diesel generator maintenance outage every fuel cycle.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The emergency diesel generators (EDGs) are backup alternating current power sources designed to power essential safety systems in the event of a loss of offsite power. EDGs are not an accident initiator in any accident previously evaluated. Therefore, this change does not involve an increase in the probability of an accident previously evaluated.

The EDGs provide backup power to components that mitigate the consequences of accidents. The proposed changes to allowed outage times (AOTs) do not affect any of the assumptions used in deterministic safety analysis.

In order to fully evaluate the EDG AOT extension, probabilistic safety analysis methods were utilized. The results of these analyses indicate no significant increase in the consequences of an accident previously evaluated. These analyses are detailed in CE NPSD-996, Combustion Engineering Owners Group ''Joint Applications Report for Emergency Diesel Generators AOT Extension.''

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

This proposed change does not alter the design, configuration, or method of operation of the plant. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed changes do not affect the technical specification limiting conditions for operation or their bases which support the deterministic analyses used to establish the margin of safety. Evaluations used to support the requested technical specification changes have been demonstrated to be either risk neutral or risk beneficial. These evaluations are detailed in CE NPSD-996.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 19, 1995

Description of amendment request: The proposed amendment increases the allowed outage time for an inoperable

Safety Injection Tank (SIT) from one hour to 24 hours. Additionally, the amendment limits power operation to 72 hours when certain SIT related instrument functions are inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The Safety Injection Tanks (SITs) are passive components in the Emergency Core Cooling System. The SITs are not accident initiators in any accident previously evaluated. Therefore, this change does not involve an increase in the probability of an accident previously evaluated.

SITs were designed to mitigate the consequences of Loss of Coolant Accidents (LOCA). These proposed changes do not affect any of the assumptions used in deterministic LOCA analysis. Therefore, the consequences of accidents previously evaluated do not change.

In order to fully evaluate the effect of the SIT Allowable Outage Time (AOT) extension, probabilistic safety analysis (PSA) methods were utilized. The results of these analyses show no significant increase in the core damage frequency. As a result, there would be no significant increase in the consequences of an accident previously evaluated. These analyses are detailed in CE NPSD-994, Combustion Engineering Owners Group ''Joint Applications Report for Safety Injection Tank AOT/STI Extension.''

The change pertaining to SIT inoperability based solely on instrumentation malfunction does not involve a significant increase in the consequences of an accident as evaluated and endorsed by the NRC in NUREG-1366, ''Improvements to Technical Specifications Surveillance Requirements.''

Therefore, this change does not involve an increase in the probability or a significant increase in the consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

This proposed change does not change the design, configuration, or method of operation of the plant. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed changes do not affect the limiting conditions for operation or their bases that are used in the deterministic analyses to establish the margin of safety. PSA evaluations were used to evaluate these changes. These evaluations demonstrated that the changes are either risk neutral or risk beneficial. These evaluations are detailed in CE NPSD-994.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 19, 1995

Description of amendment request: The proposed amendment increases the allowed outage time for one train of low pressure safety injection from 72 hours to seven days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The low pressure safety injection system (LPSI) is part of the Emergency Core Cooling System subsystem. Inoperable LPSI components are not considered to be accident initiators. Therefore, this change does not involve an increase in the probability of an accident previously evaluated.

The LPSI system was designed to mitigate the consequences of a large loss of coolant accident (LOCA). These proposed changes do not affect any of the assumptions used in deterministic LOCA analysis.

In order to fully evaluate the LPSI AOT extension, probabilistic safety analysis methods were utilized. The results of these analyses indicate no significant increase in the consequences of an accident previously evaluated. These analyses are detailed in CE NPSD-995, Combustion Engineering Owners Group ''Joint Applications Report for Low Pressure Safety Injection System AOT Extension.''

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

This proposed change does not change the design, configuration, or method of operation of the plant. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed changes do not affect the technical specification limiting conditions for operation or their bases which support the deterministic analyses used to establish the margin of safety. Probabilistic evaluations used to support the requested technical specification changes have been demonstrated to be either risk neutral or risk beneficial. These evaluations are detailed in CE NPSD-995.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: June 26, 1995

Description of amendment request: The amendment revises the snubber visual inspection intervals to match the schedule developed by the NRC staff for use with a 24 month refueling interval. This schedule was documented in Generic Letter 90-09. The licensee has made wording changes not contained in Generic Letter 90-09. These changes are as follows:

a) Section 4.5.Q.1 - GL 90-09 wording ''...performance of the following augmented inservice inspection program in addition to the requirements of Section 4.0.5.''

Proposed Technical Specification wording ''...performance of the following inspection program.''

b) Section 4.5.Q.1.a - GL 90-09 wording ''...based on the criteria of Table 4.7.2 and the first inspection interval determined using the criteria shall be based upon the previous inspection interval established by the requirements in effect before Amendment (*). ''Proposed Technical Specification wording ''...based on the criteria provided in Table 4.5.1.''

c) Section 4.5.Q.1.b - GL 90-09 wording ''...All snubbers found connected to an inoperable common hydraulic fluid reservoir shall be

counted as unacceptable for determining the next inspection interval.''

Proposed Technical Specification deletes this sentence.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment would revise the basis for the snubber visual inspection to be consistent with the bases described in Generic Letter 90-09.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not affect the probability of occurrence nor does it affect the consequences of an accident previously evaluated as the requested visual inspection interval has been determined generically to be a safe and acceptable alternative to the existing visual inspection requirements as documented by the NRC in Generic Letter 90-09. With the completion of over 25 years of operating experience and only detecting one visual inspection failure, GPU Nuclear agrees that the existing intervals are overly conservative and can be extended to those described in the generic letter.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

As the requested change deals only with the frequency of visual inspection and not with the content, scope, or acceptance criteria of the inspection, no new or different type of accident has been created.

3. Involve a significant reduction in the margin of safety.

The margin of safety as defined in the bases of the Technical Specifications is not reduced as the requested requirements provide the same degree of confidence in snubber operability at the existing requirements.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Phillip F. McKee

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 31, 1995

Description of amendment request: The proposed amendment would modify (by relocation to the Technical Requirements Manual) Technical Specification (TS) 3/4.1.2.1, Boration Systems/Flow Paths - Shutdown, TS 3/4.1.2.2, Boration Systems/Flow Paths - Operating, TS 3/4.1.2.3, Charging Pumps - Shutdown, TS 3/4.1.2.4, Charging Pumps - Operating, TS 3/4.1.2.5, Borated Water Sources - Shutdown, TS 3/4.1.2.6, Borated Water Sources - Operating, TS 3/4.4.2.1, Safety Valves - Shutdown, and the associated Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to the subject Technical Specifications is of an administrative nature in that the subject Technical Specifications and Bases will be relocated in their entirety to the Technical Requirements Manual. Future changes to the relocated requirements will be in accordance with 10CFR50.59 and approved station procedures.

Whether the listed Technical Specifications and Bases are located in Technical Specifications or the Technical Requirements Manual has no effect on the probability or consequences of an accident previously evaluated.

The proposed change does not alter the assumptions previously made in the listed Technical Specifications. The proposed change allows the Commission and the South Texas Project more effective use of personnel resources to control requirements that meet the four Criteria in the Final Policy Statement. The proposed change will not change the dose to workers.

Since the probability of an accident is unaffected by administratively relocating the subject Technical Specification, and the doses are not affected and do not exceed acceptance limits, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change to the subject Technical Specifications is of an administrative nature in that the subject Technical Specifications and Bases will be relocated in their entirety to the Technical Requirements Manual. Future changes to the relocated requirements will be in accordance with 10CFR 50.59 and approved station procedures. Whether the listed Technical Specifications and Bases are located in Technical Specifications or the Technical Requirements Manual has no effect on any previously evaluated accident. It does not represent a change in the configuration or operation of the plant and, therefore, does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

The proposed change to the subject Technical Specifications is of an administrative nature in that the subject Technical Specifications and Bases will be relocated in their entirety to the Technical Requirements Manual. Future changes to the relocated requirements will be in accordance with 10CFR50.59 and approved station procedures. The margin of safety is not reduced when the requirements are relocated to a Licensee-controlled document because the requirements to change a License Basis Document via the 10CFR50.59 process ensure the same questions concerning the margin of safety required for license amendments are asked. Therefore, this proposed change does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: William D. Beckner

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 28, 1995

Description of amendment request: The proposed amendment would revise technical specifications related to the standby liquid control (SLC) system. The proposed changes include increasing the required reactor pressure vessel boron concentration and modifying the SLC pump operability testing surveillance frequency from monthly to quarterly.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The current analysis requires the SLC system to be capable of bringing the reactor 3% delta - k subcritical assuming a cold xenon free condition. The increase in SLC storage tank boron concentration limits will ensure this capability is maintained for future reload cores using the same 3% delta - k shutdown reactivity margin without imposing restrictions in cycle exposure for current and future anticipated core configurations. The change in the surveillance frequency for SLC pump operability testing to once each three months is in agreement with the ASME Code. The relaxation of the testing interval for the SLC pumps decreases pump degradation, and eliminates an unnecessary burden on personnel resources without compromising plant safety. In addition, the administrative changes only correct typographical and editorial errors.

Since these proposed changes do not affect precursors for any accident or transient analyzed in Chapter 14 of the USAR, there is no increase in the probability of any accident previously evaluated. Furthermore, since these changes will ensure the ability of the SLC system to mitigate the consequences of an accident for future anticipated core designs, they do not involve a significant increase in the consequences of any accident previously evaluated.

2. The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. The change in the SLC storage tank boron concentration limits will ensure that a cold xenon-free reload core can be brought to a subcritical condition as previously analyzed. The change in the frequency of the SLC pump operability testing to once each three months is in agreement with the ASME Code. The relaxation in the testing interval for the SLC pumps decreases pump degradation, and eliminates an unnecessary burden on personnel resources without compromising plant safety. In addition, the administrative changes only correct typographical and editorial errors.

These proposed changes do not affect the design, function, or operation of the SLC or any other system. Also, these changes do not introduce any new modes of operation or modify existing equipment design. Therefore, they do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes will not create a significant reduction in the margin of safety. The proposed increase in the required boron concentration in the reactor pressure vessel will ensure the SLC system will be capable of bringing a cold xenon-free reload core subcritical while maintaining the 3% delta - k shutdown reactivity margin as specified in the previous operating cycle. The change in the frequency of SLC pump operability testing to once each three months is in agreement with the ASME Code. The relaxation in the testing interval for the SLC pumps decreases pump degradation, and eliminates an unnecessary burden on personnel resources without compromising plant safety. In fact, it increases SLC system availability. In addition, the administrative changes only correct typographical and editorial errors. Therefore, it is concluded that the requested changes do not create a significant reduction in the existing margin of safety as defined in the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: William D. Beckner North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: June 16, 1995

Description of amendment request: The proposed amendment would change the minimum boron concentration specified for the refueling water storage tank (RWST) in Limiting Condition for Operation (LCO) in Technical Specification (TS) 3.1.2.5 and would replace the minimum specified concentration for boron with an acceptable range of boron concentration for the RWST and the accumulators in the LCOs for TS 3.1.2.6, 3.5.1.1, and 3.5.4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the changes are proposed to assure that the post-event shutdown margin required by the Technical Specifications will continue to be met and the consequences of a boron dilution event will remain as previously evaluated. The changes do not affect the design or manner of operation of any structure, system, or component important to safety.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the manner by which the facility is operated and do not involve a change to any structure, system, or component important to safety. The proposed changes merely assure that station will be operated within original design limits.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes merely assure that the station will continue to be operated within the original design limits. Therefore, the acceptance criteria for previously evaluated accidents will continue to be met.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston MA 02110-2624.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company (NNECO), Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: July 11, 1995

Description of amendment request: The proposed amendment modifies Technical Specification 3.5.F.7 to also allow the use of pull-to-lock switches to defeat the automatic initiation of the emergency core cooling system (ECCS) while in the refuel condition. The proposed amendment also makes administrative changes and makes changes to the associated Bases section.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed change in accordance with 10 CFR 50.92 and concluded that the change does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed change does not

involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

This change to LCO [Limiting Condition for Operation] 3.5.F.7(e) will allow an alternative means of de-energizing power to the selected ECCS pump motors during refueling. The current

technical specification already allows these motors to be de-energized. Use of the pull-to-lock switches provides a safer method of achieving this condition. The pull-to-lock condition of the switches is annunciated in the control room. Therefore, the switches will not be inadvertently left in the pull-to-lock position.

Deletion of the statement that the 4160 volt supply breakers are racked in does not affect the requirement of LCO 3.5.F.7 to ensure the specified ECCS subsystems are OPERABLE.

Therefore, there is no change in the probability or consequences of an accident previously analyzed due to this change.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The use of an alternative means of de-energizing power from the selected ECCS pump motors does not create a possibility of a new or different kind of accident. Using the control room pull-to-lock switch to disable the pump motor circuit breaker has the same effect on the ECCS pump as the removal of the circuit breaker from the switchgear.

Deletion of the statement that the 4160 volt supply breakers are racked in does not affect the requirement of LCO 3.5.F.7 to ensure the specified ECCS subsystems are OPERABLE.

3. Involve a significant reduction in the margin of safety.

The proposed change to the Millstone Unit No. 1 Technical Specifications does not reduce the margin of safety. By using the control room pull-to-lock switches to disable the ECCS pump motors, instead of racking out the pump motor circuit breakers, it is possible to reenergize the ECCS pumps more quickly in an emergency, should one occur. The time savings can be translated into added safety margin from a shutdown risk perspective. The ability to disable and enable the pumps from the control room, instead of the switchgear area, also contributes to this added safety margin.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company (NNECO), Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: July 18, 1995

Description of amendment request: The proposed amendment request will add operability and surveillance requirements for reactor pressure vessel (RPV) overfill protection instrumentation. The proposed amendment will also add the associated Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed change in accordance with 10 CFR 50.92 and concluded that the change does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed change does not involve an SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The new LCO [Limiting Condition for Operation] and surveillance requirements ensure that the reactor high water level feedwater pump trip instrumentation is available. This technical specification change does not involve the addition of new equipment or logic. This change does not add new surveillance requirements for the instrumentation. This change simply establishes requirements for the operation and surveillance of

reactor high water level feedwater pump trip instrumentation in the technical specifications. The implementation of this technical specification change will decrease the likelihood of an RPV overfill. No other postulated event is affected by the addition of this instrumentation to the technical specifications.

Thus, adding the proposed requirements to the technical specifications will not increase the probability or consequences of any previously evaluated transients or accidents.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

No new failure modes are introduced by the addition of the reactor high water level feedwater pump trip instrumentation LCO and surveillance requirements. Modifying the technical specifications to formally add surveillance requirements already being performed in accordance with plant procedures will not modify plant response to any operational or transient event. Increasing the surveillance interval of the LITS [level indicating transmitter switches] from annual to once per operating cycle will not significantly affect reliability. Ensuring the operability of installed instrumentation does not add new or different kinds of accidents.

Therefore, the new LCO and surveillance requirements do not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The surveillance requirements being added in this change are consistent with current surveillances being performed for this instrumentation, with the exception that the LITS are currently calibrated on an annual rather than operating cycle basis. These surveillance and shutdown requirements ensure that protection from RPV overfill is maintained as assumed in the safety analyses.

Therefore, there is no impact on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: July 7, 1995

Description of amendment request: The proposed change to technical specification 3/4.7.6 is being made to: 1) increase the allowable control room air conditioning (CRAC) system in-leakage from 100 cubic feet per minute (cfm) to 130 cfm; 2) provide a more conservative value for the maximum differential pressure across the high efficiency particulate air (HEPA) filters and charcoal adsorbers; 3) clarify that when the CRAC system is shifted to ''recirculation,'' this will be performed from the normal mode; and 4) modify the corresponding basis to reflect the above changes and to note that there are certain infrequent situations during which the control room emergency ventilation system (CREVS) will not automatically operate.

Basis for proposed no significant hazards consideration determination: As

required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

...The proposed changes do not involve an SHC because the changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The CRAC system in the recirculation mode is used to mitigate the effects of an accident. Surveillance Requirement 4.7.6.1.e.2 has been modified to clarify that the system will automatically switch from the normal mode into a recirculation mode. This change and the proposed modifications to the acceptance criterion for the differential pressure across the HEPA filters and charcoal adsorbers and the increase in the control room in-leakage have no [e]ffect on the probability of an accident previously evaluated. The consequences of the accidents that have been previously evaluated have been reviewed to determine the impact of these proposed modifications. The increase in the in-leakage will affect the results of previously generated accident analysis. The accidents evaluated, namely the Millstone Unit No. 1 MSLB [main steam line break] and LOCA [loss-of-coolant accident], Millstone Unit No. 2 LOCA, both high and low wind speed case, and Millstone Unit No. 3 LOCA have been reviewed. The Millstone Unit No. 1 LOCA doses to the Millstone Unit No. 2 control room were qualitatively determined to be bounded by the Millstone Unit No. 2 LOCA cases. Therefore the Millstone Unit No. 1 LOCA was not performed. The remaining accidents were performed. The resultant doses are nearly identical to the existing doses found in the Millstone Unit No. 2 Final Safety Analysis Report and are all within the regulatory limits. To perform these revised control room dose calculations, NNECO used certain new assumptions which NNECO believes better model the control room and the effects the accident will have on the control room. The most significant change with the assumptions is the use of ICRP 30 in lieu of Regulatory Guide 1.109, Revision 1 for iodine dose conversion factors. The NRC has used ICRP 30 over the past 5 years for other applications and its use in this instance is appropriate.

The change in the acceptance criterion for the differential pressure across the HEPA filter and charcoal adsorbers is a conservative modification in that the value given is a plant specific value and will be more indicative of blocked or clogged filters in actual plant conditions. These proposed changes do not have any negative impact on the consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed modifications to Surveillance Requirement 4.7.6.1 will clarify a portion of a surveillance requirement and will modify the differential pressure across the HEPA filters and the charcoal adsorbers. These changes will not create the possibility of a new or different kind of accident from any previously evaluated. The increase in the allowable control room in-leakage value from it[s] current level of 100 cfm to its new value of 130 cfm also does not create the possibility of a new or different kind of accident. The CRAC system is used to mitigate the consequences of an accident.

3.Involve a significant reduction in the margin of safety.

The proposed modifications do not decrease the margin of safety provided. Using the new accident assumptions, the limiting accidents were re-calculated to determine the impact on the Millstone Unit No. 2 control room. These values are similar to the values found in the Millstone Unit No. 2 Final Safety Analysis Report and the Millstone Unit No. 2 Safety Evaluation Report and are within the regulatory limits established for the control room operators. Since the re-calculated doses have been shown to be within limits, it has been concluded that there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: June 8, 1995

Description of amendment request: The Millstone Unit No. 3 Technical Specification Section 3/4.8.4.3 requires removal of electrical power to the safety injection accumulator isolation valves in Modes 1, 2, 3, and 4 in order to protect the containment electrical penetrations and penetration conductors. Bases Section 3/4.8.4 states that containment electrical penetrations and penetration conductors are protected by either deenergizing circuits not required during normal plant operation (Modes 1 through 4) or by demonstrating the operability of primary and backup overcurrent protection circuit breakers during performance of periodic surveillances. It is proposed that Section 3/4.8.4.3 will be deleted since the containment electrical penetration and penetration conductors for these circuits are protected by primary and backup penetration circuit breakers which are demonstrated to be operable by periodic surveillance testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The revised Technical Specification Section 3.5.1 requirements will provide guidance to ensure that power to the accumulator isolation valves is removed when the accumulators are required to be operable and will clarify these requirements.

Removal of the electrical penetration protection requirements of Section 3/4.8.4.3 is justified since Section 3/4.8.4.1 (Containment Penetration Conductor Overcurrent Protective Devices) will provide guidance to ensure that two breakers in series protect the electrical penetrations and penetration conductors against an overcurrent condition and the single failure of a circuit breaker. The two breakers in series also protect the Class 1E buses against a variety of overcurrent conditions including electrical faults which may be introduced due to the possible submergence of the accumulator isolation valves during a LOCA [loss-of-coolant accident].

Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The amended Technical Specification Section 3.5.1 requirements will provide guidance to ensure that the accumulator isolation valves are deenergized when the accumulators are required to be operable. Deletion of the Technical Specifications Section 3.5.1 requires that electrical power to the safety injection accumulator isolation valves (3SIL*MV8808A, B, C, D) be removed for the accumulators to be operable. This requirement prevents the inadvertent closure of these isolation valves which would block the safety function of the accumulators. Section 4.5.1.c requires demonstrating accumulator operability by ''At least once per 31 days when the RCS [reactor coolant system] pressure is above 1000 psig by verifying that power to the isolation valve operator is disconnected by removal of the breaker from the circuit.'' The surveillance requirements for verifying removal of power to the accumulator isolation valves for Section 4.5.1.c will be changed to ''At least once per 31 days when the RCS pressure is above 1000 psig by verifying that the associated circuit breakers are locked in a deenergized position or removed.''

The proposed change will clarify requirements for securing these breakers in

the off (tripped) position in the applicable modes. In addition, index page xi has been revised to reflect the deletion of Section 3/4.8.4.3. Attachments 1 and 2 provide the mark-up and retyped pages of the Millstone Unit No. 3 Technical Specifications, respectively and reflect the currently issued version of the pages.

Millstone Unit No. 3 Technical Specifications Section 3/4.8.4.3 will not create the possibility of a new or different kind of accident from any accident previously evaluated since two breakers in series protect against an overcurrent condition and a single failure of a circuit breaker. The proposed amendment will not result in physical plant changes and there are no new credible failure modes. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The revised Technical Specification Section 3.5.1 will require that the accumulator isolation valves have their power deenergized when the accumulators are required to be operable. This requirement will maintain accumulator operability by assuring the accumulator isolation valves remain open.

The removal of the Millstone Unit No. 3 Technical Specification Section 3/4.8.4.3 is safe since redundant circuit breakers in series for the accumulator isolation valves will provide assurance that the electrical penetration and penetration conductors are protected against overcurrent conditions. This will provide assurance that the containment boundary is intact.

The proposed amendment will not adversely impact the physical protective boundaries (fuel matrix/cladding, RCS pressure boundary and containment) and therefore will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: June 9, 1995

Description of amendment request: The proposed amendment relocates Surveillance Requirement 4.6.6.1.d.3 for attaining a negative pressure in the secondary containment to Specification 3.6.6.2, Secondary Containment. The Action Statement of Section 3.6.6.1 is revised to decouple Sections 3.6.6.1 and 3.6.6.2. In addition, Definition 1.12, ''Secondary Containment Boundary'' is deleted and included in the Bases Section 3/4.6.6, Secondary Containment. Bases Section 3/4.6.6.2, Secondary Containment is expanded using the guidance of the improved standard technical specifications (STS) for Westinghouse plants (NUREG-1431).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to LCO [limiting condition for operation] 3.6.1.2, LCO 3.6.6.1 and LCO 3.6.6.2 Action Statements, relocation of Surveillance Requirement 4.6.6.1.d.3 to Specification 3.6.6.2, changes to Bases Section 3/4.6.6.1, 3/4.6.6.2, and 3/4.6.6.3, and deletion of Definition 1.12 will resolve the conflict that currently exists between Specifications 3.6.6.1 and 3.6.6.2. Specifically, the requirement to establish and maintain a negative pressure in the secondary containment boundary included in Specification 3.6.6.1 belongs to Specification 3.6.6.2. In the event Secondary Containment operability is not maintained, the Action Statement for LCO 3.6.6.2 requires that Secondary Containment operability must be restored within 24 hours. Twenty-four hours is a reasonable completion time considering the limited leakage design of containment and the low probability of a DBA [design basis accident] occurring during this time period. Therefore, it is considered that there exists no loss of safety function. The proposed changes do not modify the LCO or surveillance acceptance criterion, nor do they change the frequency of the surveillances. The proposed changes do not involve any physical changes to the plant, do not alter the way any structure, system, or component functions. Therefore, the structures, systems, or components will perform their intended function when called upon. The proposed changes do not affect the probability of any previously evaluated accident. Additionally, the proposed changes are consistent with the new, improved STS for Westinghouse plants (NUREG-1431).

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not make any physical or operational changes to existing plant structures, systems, or components. The proposed changes do not introduce any new failure modes. The proposed changes simply resolve a conflict which currently exists between Specifications 3.6.6.1 and 3.6.6.2. Thus, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not have any adverse impact on the accident analyses. Also, the proposed changes resolve a conflict which currently exists between Specifications 3.6.6.1 and 3.6.6.2. The structures, systems, or components covered under Specifications 3.6.6.1 and 3.6.6.2 will performed [sic] their intended safety function when called upon.

Based on the above, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: June 20, 1995

Description of amendment request: The proposed amendment relocates the applicable requirements of Specification 3.6.3 for the main steam line isolation valves (MSIVs) to Specification 3.7.1.5, ''Main Steam Line Isolation Valves.'' In addition, the Applicability section of Specification 3.7.1.5 is revised to indicate that Specification 3.7.1.5 is applicable in Mode 1 and in Modes 2, 3 and 4, except where all MSIVs are closed and deactivated (i.e., in Modes 2, 3, and 4, Specification 3.7.1.5 is applicable only if the MSIVs are open). Also, the Action Statement for the Limiting Condition for Operation (LCO) 3.7.1.5 has been revised using the guidance of the improved standard technical specifications (STS) for Westinghouse plants (NUREG-1431).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Applicability section, Action Statements, and Surveillance Requirements of Specification 3.7.1.5 and the proposed changes to Specification 3.6.3 preserve the assumptions in the existing safety analysis. The proposed changes to the Applicability Section of Specification 3.7.1.5 will require the MSIVs to be operable in Mode 1 and in Modes 2, 3, and 4, except when closed and deactivated. The closure of the MSIVs in Modes 2, 3, or 4 is acceptable because when they are closed, they are already performing their safety function. Since the MSIV closure time has not been changed, there is no adverse impact on the accidents previously evaluated.

The proposed changes do not involve any physical changes to the plant, and do not alter the way any structure, system, or component functions. Therefore, the proposed changes do not affect the probability of any previously evaluated accident. Additionally, the proposed changes are consistent with the new, improved STS for Westinghouse plants (NUREG-1431).

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not make any physical changes to existing plant structures, systems, or components. When the MSIVs are closed and deactivated, they are already in the safe position; therefore, the proposed changes do not introduce a new failure mode. Additionally, the MSIV closure time (i.e., surveillance acceptance criterion) is not changed. The purpose of the surveillance is to ensure that the MSIVs can perform their safety function, and this requirement is preserved.

Thus, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not revise the closure time of the MSIVs. This provides assurance that the MSIVs will perform their design safety function to mitigate the consequences of an accident. In addition, when they are closed in Modes 2, 3, and 4, they are already performing their safety function. Therefore, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station,Unit No. 1, Washington County, Nebraska

Date of amendment request: June 26, 1995

Description of amendment request: This proposed amendment would revise Technical Specification 2.3 to extend the allowed outage time (AOT) from 24 hours to 7 days for an inoperable low-pressure safety injection pump. This amendment request is a collaborative effort of participating Combustion Engineering Owners Group members and is based on an integrated assessment of plant operations and deterministic and probabilistic analyses.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The low pressure safety injection (LPSI) system is part of the emergency core cooling system. Inoperable LPSI components are not accident initiators in any accident previously evaluated. Therefore, these changes do not involve an increase in the probability of an accident previously evaluated.

The LPSI system is primarily designed to mitigate the consequences of a large loss of coolant accident (LOCA). These proposed changes do not affect any of the assumptions in the deterministic LOCA analysis. Hence the consequences of accidents previously evaluated do not change.

In order to fully evaluate the LPSI allowed outage time (AOT) extension, probabilistic safety analysis (PSA) methods were utilized. The results of these analyses show no significant increase in the core damage frequency. As a result, there would be no significant increase in the consequences of an accident previously evaluated. These analyses are detailed in CE NPSD-995, ''Combustion Engineering Owners Group Joint Applications Report for Low Pressure Safety Injection System AOT Extension.''

The CEOG report reviewed the risk factors that are impacted by extending the AOT for a single LPSI pump from 24 hours to seven (7) days, and demonstrates that the increase in risk is negligible. In order to perform a more complete assessment of the overall change in risk, an accounting for avoided risks associated with reducing power and going to hot or cold shutdown was also considered. This ''transition risk'' is important in understanding the trade-off between the risk of shutting down the plant compared with restoring a LPSI pump to operability while at power.

In assessing overall plant risk, the risk avoided based on LPSI system maintenance while in cold shutdown must also be considered. Every time the plant is placed in cold shutdown, the LPSI system is required for decay heat removal when in the shutdown cooling mode of operation. Maintenance performed on the LPSI system during shutdown cooling operations may add to the risk of a loss of shutdown cooling event. Therefore, performing LPSI system maintenance with the unit on-line, when the LPSI system is not normally in demand, represents a decrease in shutdown risk.

The CE study concluded that the change in core damage frequency due to increasing the LPSI AOT from 24 hours to seven (7) days is insignificant. Additionally, when the reduction in transition and shutdown risks are considered, it can be shown that there is an overall reduction in plant risk. Thus, it is the conclusion of the study that the overall plant impact will either be risk beneficial or risk neutral.

Therefore, the proposed changes would not increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There will be no physical alterations to the plant configuration, changes to setpoint values, or changes to the implementation of setpoints or limits as a result of the proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

These proposed changes do not affect the limiting conditions for operation or their bases used in the deterministic analyses to establish the margin of safety. PSA evaluations were used to evaluate this change. These evaluations demonstrate that the changes are either risk neutral or risk beneficial. These evaluations are detailed in CE NPSD-995. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215

South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: James R. Curtiss, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William H. Bateman

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station,Unit No. 1, Washington County, Nebraska

Date of amendment request: June 27, 1995

Description of amendment request: This proposed amendment would revise Technical Specification 2.2 on the chemical and volume control system to reformat, clarify the requirements, and be more consistent with Combustion Engineering Standard Technical Specifications (STS) as presented in NUREG-0212, Revision 2.

*Basis for proposed no significant hazards consideration determination:*As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes incorporate required actions, restrictions, and surveillance requirements for the Chemical and Volume Control System (CVCS) similar to Combustion Engineering Standard Technical Specifications (NUREG-0212 Revision 2).

Technical Specification (TS) 2.2(1) specifies the requirements for borated water sources and flow paths when the reactor is subcritical and fuel is in the reactor. In order for a flow path to be operable, a charging or high pressure safety injection pump is required to be operable to inject the boric acid solution into the Reactor Coolant System. Currently this specification does not state any operability requirements for boric acid transfer pumps, charging pumps or high pressure safety injection pumps. In addition, this specification does not state any required actions to be taken if the borated water source or flow path is not operable.

Therefore, the proposed changes incorporate requirements for the CVCS during shutdown into separate Limiting Conditions for Operations (LCOs) that will address the requirements for borated water sources, boric acid flow paths, charging pumps, and boric acid transfer pumps.

The proposed changes delete operability and surveillance requirements for level instrumentation on the boric acid storage tanks. Level instrumentation by itself does not fulfill a safety function. The proposed changes will still require verification of tank level.

Additionally, level instrumentation on the boric acid storage tanks does not meet any of the four criteria for inclusion into Technical Specifications as presented in the Final Policy Statement on Technical Specifications Improvements. This instrumentation is not installed instrumentation used to detect a significant degradation of the RCS boundary, a design feature or operating restriction that is an initial condition of a Design Basis Accident, a component that is part of the primary success path or actuates to mitigate a DBA, nor is it a component that has been shown to be significant to public health and safety. Therefore, testing and maintenance of the level instrumentation will be controlled outside of the TS.

TS 2.2(3) specifies the Modifications of Minimum Requirements that are allowed during Power Operation. This specification is inconsistent with TS 2.2(2) which states the minimum requirements and is incomplete as it does not address components during Modes 3, 4, and 5. The proposed changes incorporates consistent allowed outage times for the various components, and additional required actions for component inoperability during Modes 4 and 5 when fuel is in the reactor.

The proposed changes incorporate additional operability requirements for the CVCS and required actions to be taken for CVCS component inoperability during Modes 4 and 5 when fuel is in the reactor. The proposed changes delete inconsistencies and clarify operability requirements for the CVCS whenever the reactor coolant temperature (T_{cold}) is greater than or equal to 210 degrees F, and ensures that operation of the system is consistent with its design bases. The proposed changes also revise the allowed outage time for CVCS components from 24 hours to 72 hours based on Standard Technical Specifications. This change is insignificant based on the FCS plant specific probabilistic risk assessment. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There will be no physical alterations to the plant configuration, changes to setpoint values, or changes to the implementation of setpoints or limits as a result of this proposed change. No new modes of operation are proposed. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes incorporate additional operability requirements, delete inconsistencies, and clarify operability requirements for the CVCS to ensure that operation of the system is consistent with its design bases. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: James R. Curtiss, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William H. Bateman

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station,Unit No. 1, Washington County, Nebraska

Date of amendment request: July 11, 1995

Description of amendment request: The proposed amendment would allow up to 24 hours to restore Safety Injection Tank (SIT) operability if the SIT is inoperable due to level and/or pressure outside prescribed limits or if the associated isolation valve is in other than the full open position. The proposed change would also allow up to 72 hours to restore SIT operability if the SIT is inoperable due to boron concentration outside prescribed limits.

*Basis for proposed no significant hazards consideration determination:*As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The safety injection tanks (SITs) are passive components in the emergency core cooling system. The SITs are not an accident initiator in any accident previously evaluated. Therefore, this change does not involve an increase in the probability of an accident previously evaluated.

SITs were designed to mitigate the consequences of a loss of coolant accident (LOCA). These proposed changes do not affect any of the assumptions used in deterministic LOCA analysis. Hence the consequences of accidents previously evaluated do not change.

In order to fully evaluate the affect of the SIT allowable outage time (AOT) extension, probabilistic safety analysis (PSA) methods were utilized. The results of these analyses show no significant increase in the core damage frequency. As a result, there would be no significant increase in the consequences of an accident previously evaluated. These analyses are detailed in CE NPSD-994, ''Combustion Engineering Owners Group Joint Applications Report for Safety Injection Tank AOT/STI Extension.''

The AOT extension based upon boron concentration outside the prescribed limits

does not involve a significant increase in the consequences of an accident as evaluated and approved by the NRC in NUREG-1432, ''Standard Technical Specifications for Combustion Engineering Plants.'' This proposed change is applicable to FCS.

Therefore, the proposed changes would not increase the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There will be no physical alterations to the plant configuration, changes to setpoint values, or changes to the implementation of setpoints or limits as a result of these proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not affect the limiting conditions for operation or their bases that are used in the deterministic analyses to establish the margin of safety. PSA evaluations were used to evaluate these changes. These evaluations demonstrated that the changes are either risk neutral or risk beneficial. These evaluations are detailed in CE NPSD-994. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: James R. Curtiss, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William H. Bateman

Philadelphia Electric Company, Docket No. 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of amendment request: June 23, 1995

Description of amendment request: This Technical Specifications (TS) Change Request involves a one-time (i.e., temporary) change affecting the Allowed Outage Time (AOT) for the Emergency Service Water (ESW) System; Residual Heat Removal Service Water (RHRSW) System; the Suppression Pool Cooling, the Suppression Pool Spray, and Low Pressure Coolant Injection (LPCI) modes of the Residual Heat Removal (RHR) System; and Core Spray System to be extended from 3 and 7 days to 14 days during the Limerick Generating Station (LGS), Unit 1, sixth refueling outage scheduled to begin January, 1996. This proposed extended AOT will allow adequate time to install isolation valves and cross-ties on the ESW and RHRSW Systems to facilitate future inspections or maintenance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed one-time TS changes will not increase the probability of an accident since it will only extend the time period that the 'A' ESW and RHRSW loops and the affected equipment can be out-of-service. The extension of the time duration that certain equipment is out-of-service has no direct physical impact on the plant. The proposed inoperable systems are normally in a standby mode while the unit is in OPCON 1 or 2 and are not directly supporting plant operation. Therefore, they can have no impact on the plant that would make an accident more likely to occur due to their inoperability.

During transients or events which require these systems to be operating, there is sufficient capacity in the operable loops to support plant operation or shutdown, in-so-much that failures that are accident initiators will not occur more frequently than previously postulated.

In addition, the consequences of an accident previously evaluated in the SAR [Safety Analysis Report] will not be increased. With the 'A' loops of ESW and RHRSW inoperable, a known quantity of equipment is either inoperable or the equipment is not fully capable of fulfilling its design function under all design conditions due to certain support systems not being operable. Based on the support functions of the ESW and RHRSW systems, a review of the plant was performed to determine the impacts that the inoperable ESW and RHRSW 'A' loops would have on other systems. The impacts were identified for each system, as discussed in the preceding Safety Assessment, and it was determined whether there were any adverse affects on the systems. It was then determined how the adverse affects would impact each system's design basis and overall plant safety. The consequences of any postulated accidents occurring on Unit 2 during this AOT extension was found to be bounded by the previous analyses as described in the SAR.

The existing AOTs limit the amount of time that the plant can operate with certain equipment inoperable, where single failure criteria is still met. The minimum equipment required to mitigate the consequences of an accident and/or safely shutdown the plant will be operable or the plant will be shutdown. Therefore, by extending certain AOTs and extending the assumptions concerning the combinations of events and single failures for the longer duration of each extended AOT, we conclude, based on the evaluations above, that at least the minimum equipment required to mitigate the consequences of an accident and/or safely shutdown the plant will still be operable during the extended AOT. Therefore, the consequences of an accident previously evaluated in the SAR will not be increased.

Therefore, these proposed one-time TS changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed one-time TS changes will not create the possibility of a different type of accident since it will only extend the time period that the 'A' ESW and RHRSW loops and the affected equipment can be out-of-service. The extension of the time duration that certain equipment is out-of-service has no direct physical impact on the plant and does not create any new accident initiators. The systems involved are either accident mitigation systems, safe shutdown systems or systems that support plant operation. All of the possible impacts that the inoperable equipment may have on its supported systems were previously analyzed in the SAR and are the basis for the present TS ACTION statements and AOTs. The impact of inoperable support systems for a given time duration was previously evaluated and any accident initiators created by the inoperable systems was evaluated. The lengthening of the time duration does not create any additional accident initiators for the plant.

Therefore, the proposed one-time TS changes will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The ESW and RHRSW systems and their supported systems are designed with sufficient independence and redundancy such that the removal from service of a component/subsystem will not prevent the systems from performing their required safety functions. Since removal of an ESW and a RHRSW loop from service with one unit in operation and the other unit in a refueling outage is allowed by the current Technical Specifications, then the concern is the reduced margin of safety incurred by extending the affected AOTs.

The present ESW and RHRSW AOT limits were set to ensure that sufficient safety-related equipment is available for response to all accident conditions and that sufficient decay heat removal capability is available for a LOCA/LOOP [Loss-of-Coolant Accident/ Loss-of-Offsite Power] on one unit and simultaneous safe shutdown of the other unit. A slight reduction in the margin of safety is incurred during the proposed extended AOT due to the increased risk that an event could occur in a fourteen day period versus a three or seven day period. This increased risk is judged to be minimal due to the low probability of an event occurring

during the extended AOT and based on the following discussion of minimum ECCS [Emergency Core Cooling System]/decay heat removal requirements.

The reduction in the margin of safety is not significant since the remaining operable ECCS equipment is adequate to mitigate the consequences of any accident. This conclusion is based on the information contained in the UFSAR [Updated Final SAR] reference documents NEDO-24708A and NEDC-30936-A. These documents describe the minimum requirements to successfully terminate a transient or LOCA initiating event (with scram), assuming multiple failures with realistic conditions were used to justify certain TS AOTs per UFSAR sections 6.3.1.1.2.o and 6.3.3.1. The minimum requirements for short term response to an accident would be either one LPCI pump or one Core Spray loop in conjunction with ADS [Automatic Depressurization System], which would be adequate to re-flood the vessel and maintain core cooling sufficient to preclude fuel damage. For long term response, the minimum requirements would be one loop of RHR for decay heat removal, along with another low pressure ECCS loop. These minimum requirements will be met since implementation of the proposed TS changes will require the operability of HPCI [High Pressure Coolant Injection], ADS, two LPCI subsystems (or one LPCI subsystem and one RHR subsystem during decay heat removal) and one Core Spray subsystem be maintained during the 14 day period. A Special Procedure will be written to ensure the operability of specified components and that other appropriate compensatory measures are implemented.

Compensatory measures will be taken prior to or during the proposed extended AOT for those fire regions that rely on one or more safe shutdown methods which would all be unable to safely shutdown the plant with inoperable loops of the ESW and RHRSW systems or the inoperable systems that ESW or RHRSW support. These compensatory measures will offset the increased risk of a fire event occurring in the vulnerable areas, during the fourteen day versus three day AOT period. Therefore, the proposed extended AOT does not adversely affect the approved level of fire protection as described in UFSAR Appendix 9A (Fire Protection Evaluation Report).

A Special Procedure will be written to administratively control the requirement to maintain the operability of specified components and implementation of any appropriate compensatory measures which are deemed necessary during the proposed AOT. In addition, operations personnel are fully qualified by normal periodic training to respond to and mitigate a Design Basis Accident, including the actions needed to ensure decay heat removal while LGS Unit 1 and Unit 2 are in the operational configurations described within this submittal. Accordingly, procedures are already in place that cover safe plant shutdown and decay heat removal for situations applicable to those in the proposed AOTs.

A Probabilistic Safety Assessment (PSA) Study was performed for an ESW and RHRSW loop being out-of-service for 14 days on an operating unit. The Core Damage Frequency (CDF) increased by 3.14×10^{-6}, from 5.11×10^{-6} /reactor-year to 8.25×10^{-6}/reactor-year. In absolute terms, this is not a significant increase in risk. In addition, the modifications to be installed during this proposed extended AOT will allow for future maintenance and inspections to be performed on the ESW and RHRSW loops without removing an entire loop from service, which will reduce risk in the future. For example, if the ESW loop unavailability, due to testing or maintenance, is reduced by half, the CDF will decrease by more than four percent. It will also minimize the potential need for future AOT extensions on these systems.

Therefore, the implementation of the proposed one-time TS changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: John F Stolz

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: September 29, 1994

Description of amendment request: The proposed Technical Specification changes represent revisions to Sections 3/4.3.7.2 ''Seismic Monitoring Instrumentation'' and 3/4.3.7.3 ''Meteorological Instrumentation.'' The proposed revisions remove the requirements from the Technical Specifications and relocates the appropriate descriptive information and testing requirements to the Hope Creek Updated Final Safety Analysis Report (UFSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve no hardware changes, no changes to the operation of any systems or components, and no changes to existing structures. Neither the relocation of the seismic/meteorological specifications to the UFSAR nor the elimination of the Special Report requirements represent changes that affect plant safety or alter existing accident analyses.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are procedural in nature concerning the operability and surveillance of instrumentation that are not safety related and will not impact the operation of any plant safety related component or equipment. Therefore, these changes will not create a new or unevaluated accident or operating condition.

3. Will not involve a significant reduction in a margin of safety.

In accordance with the guidance provided by the NRC regarding the improvement of Technical Specifications, SECY-93-067, the proposed changes relocate the seismic and meteorological instrumentation portions of the Technical Specifications, with the exception of the Special Report requirements, to the UFSAR. These instruments are not safety related and do not have any associated safety margins which could be affected by this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: November 23, 1994

Description of amendment request: The proposed changes to the Technical Specifications (TSs) would revise TS 4.8.2.1, ''Electrical Power Systems D. C. Sources, Surveillance Requirements,'' and associated Bases Section B 3/4.8.2. The proposed changes would (1) increase the terminal voltage acceptance criteria for the battery discharge test from 106 to 108 VDC, (2) delete a ''one time only'' test that is no longer applicable, (3) delete the battery load profile from the TS, and (4) revise TS Table 4.8.2.1-1, ''Battery Surveillance Requirements,'' to agree more closely

with the BWR4 Standard Technical Specification format.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

....will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes restore the conservatism to the battery voltage requirements by raising the minimum acceptable terminal voltage for the 125 VDC system in order to support proper operation of the connected loads. This change will cause no change in the probability of any accident and will, by providing increased support for connected loads, provide assurance [that] the consequences of previously evaluated accidents remain within limits. Removal of the load profile table does not affect the surveillance test loading which is contained in the station procedures. The (*) footnote deletion is purely editorial and has no safety bearing. Table changes agree with the format and wording of the improved BWR4 Standard Technical Specifications.

2....will not create the possibility of a new or different kind of accident from any previously evaluated.

The revision of the battery sizing calculations did not change the design base requirement to supply the designed load for a duty cycle of 4-hours. The proposed change to the minimum acceptable battery terminal voltage for the 125 VDC system ensures proper voltages at the battery loads. No other changes to the physical plant or to the manner in which it is operated are caused by the proposed amendment; therefore, there is no new or different kind of accident created by this change.

3....will not involve a significant reduction in a margin of safety.

The revision of the battery sizing calculations did not change the design base requirement to supply the designed load for a duty cycle of 4-hours; however, battery capacity sizing parameter of end cell voltage was changed to a more conservative value to account for minimum load voltage requirements. Load profiles for these batteries were slightly modified to incorporate more precise yet conservative load current values. These batteries were evaluated using a 25% additional capacity margin for aging as required by IEEE-450. In addition, the batteries have a design margin of 5 to 10% for load growth and/or less than optimum operating condition of the battery; thereby, maintaining safety margins. Additionally, changes are comparable to the format and ACTIONS of the improved BWR4 STS. Permitting 31 days to restore a battery to within CATEGORY A and/or B limits per the improved BWR4 STS does not involve a reduction in any margin of safety since the battery, in Category C, remains operable, as discussed in the BASES.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: November 28, 1994

Description of amendment request: The proposed Technical Specification (TS) revisions provide as follows: (1) The setpoints and allowable values for the Average Power Range Monitor (APRM) flow-biased upscale scram/control rod block would be modified to improve operating margin in the Extended Load Line Limit Analysis (ELLLA) region; (2) The proposed changes to the Rod Block Monitor (RBM) trip function would transfer control of the setpoint and allowable value for the RBM - upscale rod block to the Core Operating Limits Report (COLR); (3) For the Reactor Coolant System (RCS) recirculation flow upscale trip function, the proposed changes would revise the trip setpoint and allowable value to reflect 105% of rated core flow.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

A. Changes to APRM Flow-Biased Scram/Control Rod Block

The proposed changes to the Average Power Range Monitor (APRM) flow-biased scram/control rod block setpoints and allowable values were evaluated using NRC approved procedures and methods. The results of this evaluation are demonstrated in NEDC-31487. Application of this change in APRM flow-biased scram/control rod block setpoints and allowable values to Reload 5/Cycle 6 is confirmed in General Electric Document No. 23A7219.

Analysis presented in NEDC-31487 demonstrate that performance in the ELLLA region is within design limits for overpressure protection, stability, loss-of-coolant, containment, reactor internals, flow-induced vibration, and reactor internal pressure difference. Impact of ELLLA operation on anticipated transients without scram is evaluated in Section 7.6.1.7.2 of the UFSAR. Application of ELLLA region extension to Reload 5/Cycle 6 has been confirmed in GE Document No. 23A7219.

Because operation with the APRM flow-biased scram/control rod block setpoints and allowable values is within the bases reviewed and approved by the NRC in the UFSAR [Updated Final Safety Analysis Report], this change does not significantly increase the possibility or consequences of an accident previously evaluated.

B. Transfer of RBM Setpoint Control to the COLR

The proposed changes would transfer control of the setpoint and allowable value for the rod block monitor (RBM) - Upscale rod block to the Core Operating Limits Report (COLR). Technical Specification 6.9.1.9, ''Core Operating Limits Report,'' requires that the analytical methods used to determine core operating limits be those previously reviewed and approved by the NRC and that the core operating limits be determined such that all applicable limits of the safety analysis are met.

The setpoint and allowable value incorporate a controlling value which will be specified in the COLR and noted as such by reference in the Technical Specifications. Therefore, the setpoint and allowable value would continue to be controlled in a manner that would ensure that safety analysis limits are met and implementation of the proposed changes would not reduce the level of assurance provided by the existing Technical Specifications. Based upon the above information, we conclude that implementation of the proposed change would not significantly increase the probability or consequences of an accident previously evaluated.

C. RCS Recirculation Flow Revisions

The original analysis used to support operation up to 105% of rated core flow is contained in NEDC-31487. NEDC-31487 addresses the full range of transient and accident events associated with operation up to 105% of rated core flow. The affects of operation with the revised RCS recirculation flow upscale trip setpoint and allowable value are bounded by the analysis presented in NEDC-31487.

In addition, cycle specific analysis performed for Reload 5/Cycle 6, have incorporated the assumption of operation up to 105% of rated core flow and have confirmed that operation is within allowable design limits.

Based on the above information, we conclude that the proposed change would not significantly increase the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different kind of accident from any accident previously evaluated.

A. Changes to APRM Flow-Biased Scram/Control Rod Block

The proposed changes to the APRM flow-biased scram/control rod block setpoints and allowable values would not alter the function of the APRM system nor involve any type of

plant modification. In addition, operation with the revised APRM flow-biased scram/control rod block setpoints and allowable values would not create any new operating modes, accident scenarios, equipment failure modes, or fission product release paths. Based upon the above information, we conclude that the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

B. Transfer of RBM Setpoint Control to the COLR

The proposed transfer of control of the RBM setpoint and allowable value to the COLR would not alter the function of the RBM system nor involve any type of plant modification. In addition, operation with the revised setpoint and allowable value would not create any new operating modes, accident scenarios, equipment failure modes, or fission product release paths. Based upon the above information, we conclude that the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. RCS Recirculation Flow Revisions

The proposed changes would not alter the function of the RCS recirculation flow upscale trip function nor involve any type of plant modification. In addition, operation with the revised RCS recirculation flow upscale trip setpoint and allowable value would not create any new operating modes, accident scenarios, equipment failure modes, or fission product release paths. Based upon the above information, we conclude that the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

A. Changes to APRM Flow-Biased Scram/Control Rod Block

The Bases for Hope Creek Technical Specification 2.2.1 state that the APRM setpoints were selected to provide adequate margin for the safety limits while allowing operating margins that reduce the possibility of unnecessary shutdowns.

The proposed changes would ensure that these objectives are met. The Minimum Critical Power Ratio (MCPR) operating limit specified in the Hope Creek COLR was determined using the APRM flow-biased scram/control rod block setpoints and allowable values proposed in this amendment application and has been chosen to ensure that the cladding safety limit would not be violated during normal plant operations and anticipated transients. Since the operating limit MCPR is chosen such that the cladding safety limit is maintained, adequate margins for the safety limits are ensured. The proposed changes would also serve to ensure that the objective of avoiding unnecessary shutdowns is met by furnishing greater margin between the operating envelope and the setpoint at lower flows.

Based on the above information, we conclude that the proposed changes would not significantly reduce a margin of safety.

B. Transfer of RBM Setpoint Control to the COLR

The proposed transfer of control of the RBM setpoint and allowable value to the COLR would not affect the methodology for establishing the core operating limits. The setpoint and allowable value are modified to incorporate a controlling value which will be included in the COLR and indicated as such by reference in the Technical Specifications. Therefore, the setpoint and allowable value would continue to be controlled in a manner that would ensure that safety analysis limits are met. We conclude that implementation of the proposed changes would not significantly reduce a margin of safety.

C. RCS Recirculation Flow Revisions

The HCGS was licensed to operate up to 105% of rated core flow as part of Amendment 15. The analysis used to justify operation up to 105% of rated core flow is contained in NEDC-31487. NEDC-31487 addresses the full range of transient and accident events associated with operation up to 105% of rated core flow. The affects of operation with the revised RCS recirculation flow upscale trip setpoint and allowable value are bounded by the analysis presented in NEDC-31487.

In addition, cycle specific analysis performed for Reload 5/Cycle 6, have incorporated the assumptions of operation up to 105% of rated core flow and have confirmed that operation is within allowable design limits.

Based on the above information, we conclude that the proposed changes would not significantly reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library,190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: January 11, 1995

Description of amendment request: The proposed Technical Specification (TS) revision provides changes to TS Section 3/4.3.8 ''Turbine Overspeed Protection System.'' The proposed revision removes these requirements from the TS and relocates the Bases to the Hope Creek Updated Final Safety Analysis Report (UFSAR) and the Surveillance Requirements to the applicable surveillance procedures. The Limiting Conditions for Operation (LCOs) would be eliminated.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve no hardware changes, no changes to existing structures, and no changes to the operation of any systems or components. Specifically, the deletion of the LCO's by this submittal will not alter established turbine overspeed protection system operation. Procedural guidance will be provided in the event of an inoperable control, stop, or intermediate valve to place the system in a safe condition. The relocation of this specification to the UFSAR and surveillance procedures will continue to ensure that the probability of unacceptable damage to safety-related structures, systems, and components from turbine missiles remains acceptably low. Relocation of this specification's Bases and Surveillance Requirements to the UFSAR and surveillance procedures, respectively, and the deletion of the LCO's represents changes that do not affect plant safety and do not alter existing accident analyses.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are procedural in nature concerning the location of the descriptive information and surveillance requirements for the turbine overspeed protection system. Removing these specifications from the Technical Specifications and placing them in the UFSAR and surveillance procedures will not alter the operation of the turbine overspeed protection system or its ability to perform its intended function. Procedural guidance will be provided to assist in placing the system in a safe condition while maintenance and testing of this system will continue in accordance with the turbine manufacturers recommendations taking into consideration plant operating experience and ASME guidance. Therefore, these changes will not create a new or unevaluated accident or operating condition.

3. Will not involve a significant reduction in a margin of safety.

The proposed changes relocate the Turbine Overspeed Protection System portion of the Technical Specifications to the UFSAR and surveillance procedures in accordance with guidance provided by the NRC Final Policy Statement regarding the improvement of Technical Specifications. The requirements that will reside in the UFSAR for the turbine overspeed protection system will ensure that the system remains capable of protecting against excessive turbine overspeed. Therefore, the proposed changes will not involve a significant reduction in any margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: January 20, 1995

Description of amendment request: The proposed Technical Specification (TS) revision represents changes to TS Section 3/4.11.2.6 ''Explosive Gas Mixture,'' TS Table 3.3.7.11-1 ''Radioactive Gaseous Effluent Monitoring Instrumentation,'' and TS Table 4.3.7.11-1 ''Radioactive Gaseous Effluent Monitoring Instrumentation Surveillance Requirements.'' The proposed revision would remove these TS from the Technical Specifications and relocate the Bases to the Hope Creek Updated Final Safety Analysis Report (UFSAR) and the Surveillance Requirements to the applicable surveillance procedures. The Limiting Conditions for Operation (LCOs) would be eliminated.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve no hardware changes, no changes to the operation of any systems or components, and no changes to existing structures. The relocation of this specification to the UFSAR and surveillance procedures will continue to ensure that the entrainment of hydrogen in the main condenser is monitored and controlled. Relocation of this specification's Bases and Surveillance Requirements to the UFSAR and surveillance procedures, respectively, and the deletion of the LCO's represent changes that do not affect plant safety and do not alter existing accident analyses.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are procedural in nature concerning the location of the descriptive information and surveillance requirements for the explosive gas mixture monitoring instrumentation. Removing these specifications from the Technical Specifications and placing them in the UFSAR and surveillance procedures will not alter the operation of the explosive gas monitors or their ability to perform intended functions. Maintenance and testing of these monitors will continue based upon the manufacturers' recommendations taking into consideration plant operating experience. Therefore, these changes will not create a new or unevaluated accident or operating condition.

3. Will not involve a significant reduction in a margin of safety.

The proposed changes relocate the Explosive Gas Mixture specifications from the Technical Specifications to the UFSAR and surveillance procedures in accordance with guidance provided by the NRC Final Policy Statement regarding the improvement of Technical Specifications. The requirements that will reside in the UFSAR and surveillance procedures for the explosive gas mixture monitoring instrumentation will ensure that the ability to determine main condenser hydrogen concentrations is properly maintained. Therefore, the proposed changes will not involve a significant reduction in any margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: January 20, 1995

Description of amendment request: The proposed change to the Technical Specifications (TS) would revise TS 4.1.3.1.2.b, ''Control Rods - Surveillance Requirement'' to change the required action to be taken when a control rod becomes immovable due to excessive friction or mechanical interference from ''at least once per'' 24 hours to ''within'' 24 hours. The other control rods would be tested within 24 hours and every 7 days thereafter, as opposed to the current requirement of testing every 24 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves no hardware changes, no changes to the operation of any systems or components, and no changes to existing structures. The revision of the control rod movement test frequency represents a change that does not affect plant safety and does not alter existing accident analyses.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change is procedural in nature concerning the frequency of control rod movement tests for all withdrawn control rods after a control rod has been determined to be immovable due to excessive friction or mechanical interference. The methodology for determining additional immovable control rods remain unchanged. The proposed change while slightly increasing the possibility of an undetected immovable control rod will not create a new or unevaluated accident or operating condition.

3. Will not involve a significant reduction in a margin of safety.

The proposed change is in accordance with recommendations provided by the NRC regarding the improvement of Technical Specifications. This change will result in the perpetuation of current safety margins while reducing regulatory burden and decreasing equipment degradation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: John F. Stolz

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: June 1, 1995

Description of amendment request: The proposed change would revise the Technical Specifications to make them more restrictive regarding control rod drive (CRD) scram time testing. CRD scram time testing would be required following maintenance prior to considering the CRD operable, and could be performed at any reactor

pressure. Additional testing would be required when reactor coolant pressure is greater than or equal to 950 psig and prior to 40 percent rated thermal power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change provides more stringent requirements for operation of the facility. These more stringent requirements do not result in operation that will increase the probability of initiating an analyzed event and do not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements continue to ensure process variables, structures, systems and components are maintained consistent with the safety analysis and licensing basis. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. The proposed change does impose different requirements. However, these changes are consistent with assumptions made in the safety analysis and licensing basis. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The imposition of more restrictive requirements either has no impact on or increase in the margin of plant safety. As provided in the discussion of the change, each change in this category is by definition providing additional restrictions to enhance plant safety. The change maintains requirements within safety analyses and licensing bases. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: April 10, 1995

Description of amendment request: The proposed amendment would revise the following Technical Specifications (TS) and their associated Bases: TS 3/4.7.1.2, ''Auxiliary Feedwater System,'' to clarify Action ''a'' by inserting ''or both'' steam generator≥s'' and to remove references to pressure indicators and specific pressure readings and adding performance based requirements; TS 3/4.7.1.3, ''Condensate Storage Tanks,'' to modify the Limiting Condition for Operation (LCO) to more closely conform to standard TS; and TS 3/4.7.1.7, ''Motor Driven Feedwater Pump System,'' to consolidate the requirements of 2 current surveillance requirements and clarify the operability requirements when local manual valves are realigned for testing purposes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that asignificant hazards consideration does not exist because operation of the Davis-besse Nuclear Power Station, Unit Number 1, in accordance with these changes would:

a. Not involve a significant increase in the probability of an accident previously evaluated because no change is being made to any accident initiator. No previous analyzed accident scenario is changed, and initiating conditions and assumptions remain as previously analyzed. The proposed changes are clarifications and the incorporations of the guidance provided by NUREG-1430. Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not affect accident conditions or assumptions used in evaluating the radiological consequences of an accident. The proposed changes do not alter the source term, containment isolation or allowable radiological releases.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not change the way the plant is operated and, no new or different failure modes have been defined for any plant system or component important to safety, nor has any limiting single failure been identified as a result of the proposed changes. No new or different types of failures or accident initiators are introduced by the proposed changes.

3. Not involve a significant reduction in a margin of safety because the proposed changes are clarifications and the incorporations of the guidance provided by NUREG-1430, and continue to ensure the availability and capability of the Auxiliary Feedwater System, Service Water System and the Motor Driven Feedwater Pump System when called upon to perform their functions. The proposed changes will not adversely impact any safety analysis assumptions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: June 1, 1995

Description of amendment request: The proposed amendment would change the allowed outage time from 72 hours to 7 days for one unavailable emergency diesel generator (EDG) as detailed in Technical Specification 3.8.1.1, ''AC Power Sources, Operating,'' and its associated Bases 3.0.5.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed change and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station (DBNPS), Unit No. 1, in accordance with this change would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because the proposed change to increase the allowed outage time for one emergency diesel generator from three (3) days to seven (7) days does not make a change to any accident initiator, initiating condition or assumption. The accident previously evaluated in the DBNPS Updated Safety Analysis Report (USAR) Section 15.2.9, Loss of All AC Power to the Station

Auxiliaries (Station Blackout), is not affected by this proposed change. The proposed change does not involve a significant change to the plant design or operation, only to the allowed outage time, and based on a review of the available alternate A.C. power sources, the effect on probabilistic risk at power, the effect on shutdown risk, and maintenance planning and scheduling, this change has been determined to be acceptable.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed change does not invalidate assumptions used in evaluating the radiological consequences of an accident, does not alter the source term or containment isolation and does not provide a new radiation release path or alter potential radiological releases.

2. Not create the possibility of a new or different kind of accident from any previously evaluated because the proposed change does not introduce a new or different accident initiator or introduce a new or different equipment failure mode or mechanism.

3. Not involve a significant reduction in the margin of safety because the proposed change does not significantly reduce the margin to safety which exists in the present Technical Specification action statements. The DBNPS USAR Section 15.2.9 evaluates the acceptability of the loss of all A.C. power to the station, including the loss of both EDGs, and the margin of safety in this analysis is not affected by the proposed change. in addition, since the issuance of the original DBNPS Operating License Technical Specifications Toledo Edison has installed a Station Blackout Diesel Generator (SBODG), comparable in continuous rating to the EDGs and capable of providing emergency A.C. power in the event all three offsite 345 kV transmission lines and the two EDGs are unavailable. This has positive effect on maintaining the margin to safety which exists in the Technical Specifications with a three day allowed outage time, which was established prior to installation of the SBODG.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: June 7, 1995

Description of amendment request: The proposed amendment would revise Technical Specification 3/4.9.4, Refueling Operations - Containment Penetrations, and associated Bases 3/4.9.4, Containment Penetrations. The proposed changes include revising the Limiting Condition for Operation (LCO) 3.9.4.b to allow both doors of the containment personnel airlock to be open during core alterations or movement of irradiated fuel within the containment, provided that certain specified conditions are meet. Additional changes are proposed to revise or clarify TS LCO 3.9.4.c, TS Action 3.9.4.a, and TS Surveillance Requirement 4.9.4, and modify the Bases to reflect the requested changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Plant (DBNPS), Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no Updated Safety Analysis Report (USAR) accident initiators are affected by the proposed changes.

The proposed change to TS LCO 3.9.4.b would allow both doors of the containment personnel air lock to be open during core alterations or movement of irradiated fuel within the containment, provided that certain specified conditions are met. The containment personnel air lock is not an initiator to any accident. Whether the containment personnel air lock doors are open or closed during fuel movement and core alterations has no effect on the probability of any accident previously evaluated.

The proposed clarification of TS LCO 3.9.4.c, changing the term ''outside atmosphere'' to ''atmosphere outside containment,'' and the proposed change to TS LCO 3.9.4.c.1, confirming that, in addition to a manual or automatic isolation valve, or a blind flange, equivalent means may be used to close a containment penetration, have no bearing on the probability of an accident previously evaluated.

The proposed changes to TS Action 3.9.4.a, TS Surveillance Requirement (SR) 4.9.4, and TS Bases 3/4.9.4 are administrative changes and have no bearing on the probability of an accident previously evaluated.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not invalidate accident conditions or assumptions used in evaluating the radiological consequences of any accident.

he analysis results for a fuel handling accident inside containment, as presented in Section 15.4.7.3 of the DBNPS USAR, are well within the 10 CFR 100 guideline values. Since the analysis does not take credit for containment isolation, the status of the personnel air lock has no impact on the acceptability of the results. In the event of a fuel handling accident, release of radioactive material will continue to be minimized since the air lock door will remain capable of being closed. Further, the proposed change could significantly reduce the dose to workers in the containment in the event of a fuel handling accident by speeding the containment evacuation process.

Since an engineering evaluation described in proposed Bases 3/4.9.4 will ensure that a particular containment penetration closure technique is capable of restricting the release of radioactive material from a fuel handling accident, the proposed change to TS LCO 3.9.4.c.1, confirming that an equivalent means may be used to close a containment penetration, has no adverse effect on the consequences of an accident previously evaluated.

The proposed clarification of TS LCO 3.9.4.c, and the proposed changes to TS Action 3.9.4.a, TS SR 4.9.4, and TS Bases 3/4,9.4 are administrative changes and have no effect on the consequences of an accident previously evaluated.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because there are no new failure modes or mechanisms associated with the proposed changes, nor do the proposed changes involve any modification of plant equipment or changes in plant operational limits.

As described above, the analysis results for a fuel handling accident inside containment does not take credit for containment isolation. Thus the proposed change to TS LCO 3.9.4.b to allow both doors of the containment personnel air lock to be open during core alterations or movement of irradiated fuel within the containment could affect the release path for radioactive material released during a fuel handling accident, however no new or different kind of accident will result.

3. Not involve a significant reduction in the margin of safety.

The analysis results for a fuel handling accident inside containment, as presented in [Section 15.4.7.3 of] the DBNPS USAR, are well within the 10 CFR 100 guideline values. Since the analysis does not take credit for containment isolation, the status of the personnel air lock has no impact on the acceptability of the results.

The proposed change to TS LCO 3.9.4.c.1 regarding the use of equivalent means of containment penetration closure has no adverse impact on the margin of safety since an equivalent containment penetration

closure technique will provide the same assurance of containment closure during core alterations or movement of irradiated fuel inside containment.

The various administrative changes and clarifications proposed will not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: June 23, 1995

Description of amendment request: The proposed amendment would relocate Technical Specifications (TS) 3/4.3.3.3 - Seismic Instrumentation, TS 3/4.3.3.4 - Meteorological Instrumentation, and TS 3/4.4.11 - Reactor Coolant System Vents and associated Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no change is being made to any accident initiator. No previous analyzed accident scenario is changed, and initiating conditions and assumptions remain as previously analyzed.

The proposed changes are deletions and relocations of specifications that do not meet the NRC Final Policy Statement [58 FR 39132, dated July 22, 1993] criteria for inclusion in TS. Furthermore, these relocations and deletions are consistent with the NRC guidance for TS provided by the "Improved Standard Technical Specifications for Babcock and Wilcox Plants," NUREG-1430, Revision 0. Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not affect accident conditions or assumptions used in evaluating the radiological consequences of an accident. The proposed changes do not alter the source term, containment isolation or allowable radiological releases.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not change the way the plant is operated, and no new or different failure modes have been defined for any plant system or component important to safety, nor has any limiting single failure been identified as a result of the proposed changes. No new or different types of failures or accident initiators are introduced by the proposed changes.

3. Not involve a significant reduction in a margin of safety because Seismic Instrumentation, Meteorological Instrumentation, and Reactor Coolant System Vents are not inputs in the calculation of any safety margin with regard to TS Safety Limits, Limiting Safety System Settings, other TS Limiting Conditions for Operation, or other previously defined margins for any structure, system, or component important to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: July 14, 1995

Description of amendment request: The proposed Technical Specifications (TS) changes would provide a two-hour allowed outage time (AOT) for one residual heat removal (RHR) pump to accommodate plant safety and emergency power systems surveillance testing and permit depressurizing safety injection (SI) accumulators in lieu of accumulator isolation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of the Surry Power Station in accordance with the proposed change will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Surveillance and testing requirements are necessary to assure that RHR and interfacing systems' reliability is maintained. Existing analyses demonstrate that adequate shutdown cooling will be maintained with one train of RHR Operable and in service. Analyses also demonstrate that alternate shutdown cooling modes remain available with adequate decay heat removal capability. Furthermore, the opposite train of RHR remains available while in the two hour surveillance AOT. The response time and operator actions required to place the available RHR train in service are consistent with similar operator response times and actions

required to place alternate shutdown cooling modes in service. The administrative controls and procedures in place assure adequate shutdown cooling capability is maintained as supported by existing analyses.

The existing safety analyses demonstrate that Reactor Coolant System [RCS] integrity will be maintained when SI accumulator pressure is below the pressurizer PORV [power operated relief valve] LTOPS [low temperature overpressure system] setpoint. Therefore, SI accumulator isolation is not required to ensure Reactor Coolant System integrity. With RCS temperature below the LTOPS enabling temperature, automatic actuation of the pressurizer PORVs or other TS specified relief paths ensure the assumed design basis reactor vessel beltline flaw will not propagate under design basis low temperature overpressurization accident conditions. System design and configuration adequately mitigate an LTOPS actuation due to an SI accumulator discharge with no negative consequences regarding RCS structural integrity or SBLOCA [small break loss-of-coolant accidents] concerns.

Therefore, the proposed Allowed Outage Time for an inoperable RHR loop and the ability to depressurize the SI accumulator in lieu of SI accumulator isolation do not increase the probability or consequence of any previously analyzed accidents.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed two hour AOT for one train of the RHR System will preclude the possibility of a Technical Specification violation for conditions where a train of RHR is out of service for surveillance testing. Calculations by Westinghouse with evaluations and supporting analyses performed by Virginia Power, confirm the adequacy of decay heat removal with one RHR train in service, and multiple alternate shutdown cooling modes remain available. There are no plant modifications required by this proposed TS change. Further, the proposed change does not invalidate any

component design criteria or the assumptions of the UFSAR [updated final safety analysis report] accident analyses. The RHR System is being operated in a manner consistent with the design basis and configuration of the system and is supported by existing analyses and procedural controls.

There are no new failure modes or mechanisms associated with the proposed change to allow the depressurizing of a SI accumulator to a pressure value below the LTOPS setpoint. The LTOPS enabling temperature remains unchanged. No operating limits or setpoints are added or deleted by the proposed change. Reactor Coolant System pressure relief paths are not affected.

Therefore, the possibility of a new or different kind of accident is not being created by the proposed Allowed Outage Time for an inoperable RHR loop and the ability to depressurize the SI accumulator in lieu of SI accumulator isolation.

(3) Involve a significant reduction in margin of safety.

The proposed Technical Specifications change does not involve a reduction in a margin of safety. The existing safety analyses demonstrate that adequate shutdown cooling will be maintained when a train of RHR is out of service for up to two hours for plant system surveillance testing, while the operable train of RHR is operating. Supporting analyses determined that the RHR System meets the design cooldown requirements for a reactor core rating of 2546 MWth [megawatt thermal] with either one or both trains of RHR in service. Additionally, an evaluation of the technical basis for shutdown operations for the proposed Surry core uprating to 2546 MWth determined that the administrative controls and Abnormal Procedures in place at Surry ensure adequate decay heat removal capability during shutdown conditions. The administrative controls and procedure revisions are supported by a detailed series of thermal-hydraulic calculations for various loss of RHR scenarios. There is no reduction in shutdown cooling capability due to the proposed TS change, and no reduction in the capability to mitigate a loss of decay heat removal event since the RHR train affected by the testing is available and can be restored in a comparable time period to that required to restore RHR to service in the event of loss of station power or loss of the operating train of RHR. Consequently, system design, plant configuration, and administrative controls remain available to adequately mitigate a loss of RHR event with a single train of RHR out of service for up to two hours during plant system surveillance testing. It may be concluded that there is no reduction in the margin of safety due to the proposed Technical Specification change.

Existing safety analyses also demonstrate that Reactor Coolant system integrity will be maintained in the event of an inadvertent SI accumulator discharge when SI accumulator pressure is below the pressurizer PORV LTOPS setpoint. Sufficient administrative controls are maintained to ensure LTOPS is ''Enabled'' and SI accumulators are isolated at the appropriate RCS conditions to minimize the possibility of challenging RCS integrity. Technical Specifications administrative controls that prevent inadvertent charging pump operation, maintain adequate relief paths, and restrict Steam Generator primary to secondary temperature differential remain in place. Consequently, the Technical Specifications change ensures that an inadvertent SI accumulator discharge cannot challenge RCS structural integrity during LTOPS conditions when SI accumulator pressure is below the pressurizer PORV LTOPS setpoint.

Therefore, the proposed Allowed Outage Time for an inoperable RHR loop and the ability to depressurize the SI accumulator in lieu of SI accumulator isolation does not reduce any margin of safety as defined in the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: David B. Matthews

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 14, 1995, as supplemented by letter dated July 13, 1995.

Description of amendment request: This amendment request proposes to revise Technical Specification (TS) 3.2.3, ''Nuclear Enthalpy Rise Hot Channel Factor,'' TS 6.9.1.9, ''Core Operating Limits Report,'' and the associated Bases sections. The revisions are needed to incorporate changes associated with the planned implementation of advanced nuclear and core thermal-hydraulic design methodologies licensed from Westinghouse Electric Corporation for core reload design, starting with Cycle 9.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence and the consequences of an accident evaluated previously in the Updated Safety Analysis Report (USAR) are not increased due to the proposed technical specification changes. The Technical Specification changes being requested are to reflect revised calculational methods to be used for core reload design, starting with Cycle 9. There are no changes being made to any licensed design parameters from previous cycles. Thus, it is concluded that the probability and consequences of the accidents previously evaluated in the USAR are not increased.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There is no new type of accident or malfunction being created. The proposed changes only provide revised analysis methodologies to support core reload design, starting with Cycle 9. The requested changes do not change the method and manner of plant operation. The safety design bases in the USAR have not been altered. Thus, the requested changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not change the plant configuration in a way that introduces a new potential hazard to the plant and do not involve a significant reduction in the margin of safety. The analyses and evaluations discussed in the safety evaluation (Attachment I) [Attached to Wolf Creek Nuclear Operating Corporation's letter number ET 95-0051, dated June 14, 1995] demonstrates that all applicable design criteria continue to be met for the changes. Therefore, it is concluded that the margin of safety, as described in the bases to any technical specification, is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, D.C. 20037

NRC Project Director: William H. Bateman

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the

same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: February 23, 1995

Description of amendment request: The amendment relates to Commonwealth Edison Company's (ComEd) request to reflect the merger between IIGEC, MidAmerican, Midwest Power Systems Inc., and Midwest Resources, Inc. By letter dated November 21, 1994, Iowa-Illinois Gas and Electric Company (IIGEC) requested approval, pursuant to Section 50.80 of Title 10 of the Code of Federal Regulations, of the transfer of its ownership share of 25 percent of Quad Cities Nuclear Power Station, Units 1 and 2, to MidAmerican Energy Company (MidAmerican).

Date of publication of individual notice in **Federal Register:** July 5, 1995 (60 FR 35054)

Expiration date of individual notice: August 4, 1995

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: March 31, 1995

Description of amendment request: The proposed amendment will delete Technical Specification (TS) Sections 1.38 and 1.39, ''Definitions, Fuel Assembly Types,'' revise TS Sections 3/4.9.3, ''Refueling Operations, Decay Time'' and TS 3/4.9.14, ''Refueling Operations, Spent Fuel Pool - Reactivity Condition,'' replace TS Sections 5.6.1.1, ''Spent Fuel,'' and TS 5.6.3, ''Capacity,'' and add a new TS Section 3/4.9.15, ''Refueling Operations, Spent Fuel Pool Cooling.'' These changes would support a rerack of the spent fuel pool to expand the spent fuel pool's storage capacity from 1168 assemblies to 1480 assemblies so as to accommodate a full-core-discharge through the current validity date of the Haddam Neck operating license (2007).

Date of publication of individual notice in **Federal Register:** May 12, 1995 (60 FR 25746)

Expiration date of individual notice: June 12, 1995

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, CT 06457.

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: June 14, 1995

Brief description of amendments: The amendments revise the requirement to perform an emergency diesel generator (EDG) automatic start and sequence loading test immediately following the 24 hour EDG endurance test.

Date of issuance: July 18, 1995

Effective date: July 18, 1995

Amendment Nos.: 166 and 154

Facility Operating License Nos. DPR-39 and DPR-48: The amendments revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration determination: Yes (60 FR 34308). This notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by July 31, 1995, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendments, finding of exigent circumstances and final no significant hazards consideration determination is contained in a Safety Evaluation dated July 18, 1995.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: March 31, 1995

Brief description of amendments: The amendments revise Technical Specification section 3.9.4 to allow, under certain conditions, both containment personnel airlocks to be open during core alterations.

Date of issuance: July 12, 1995

Effective date: July 12, 1995

Amendment Nos.: 197 and 182

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 6, 1995 (60 FR 29879)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 12, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station,Nemaha County, Nebraska

Date of amendment request: May 2, 1995

Brief description of amendment: The amendment revised Surveillance Requirement 4.7.A.2.f.1 to allow a one-time extension for the performance of Type B local leak rate testing of the drywell head and manport from July 17, 1995, until startup from Refueling Outage 16, scheduled to commence on October 13, 1995.

Date of issuance: July 11, 1995

Effective date: July 11, 1995

Amendment No.: 170

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 6, 1995 (60 FR 29879)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 11, 1995No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, NE 68305.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, MillstoneNuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: January 10, 1995

Brief description of amendment: The amendment revises the Technical Specifications to delete the power range negative flux trip from Tables 2.2-1, 3.3-1, and 4.3-1, and delete the associated Bases Section 2.0.

Date of issuance: July 11, 1995

Effective date: As of the date of issuance to be implemented within30 days.

Amendment No.: 116

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 1, 1995 (60 FR 11135)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 11, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, MillstoneNuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: March 29, 1995

Brief description of amendment: The amendment revises Technical Specification 3.10.5 to allow more than one control bank to be fully withdrawn from the core simultaneously in order to conduct rod drop time response testing.

Date of issuance: July 11, 1995

Effective date: As of the date of issuance to be implemented within60 days.

Amendment No.: 117

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 6, 1995 (60 FR 29880) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 11, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Northern States Power Company, Docket No. 50-263, Monticello NuclearGenerating Plant, Wright County, Minnesota

Date of application for amendment: February 12, 1993, as supplemented by letters dated March 22, 1993, and August 25, 1994

Brief description of amendment: The amendment increases the minimum core spray pump flow to more conservatively account for emergency core cooling systems bypass leakage paths. The amendment also makes various typographical, editorial and administrative corrections and changes.

Date of issuance: July 12, 1995

Effective date: July 12, 1995

Amendment No.: 93

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41508). The August 25, 1994 letter provided clarifying information within the scope of the original submittal and did not change the staff's initial proposed no significant hazards considerations determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 12, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station,Unit No. 1, Washington County, Nebraska

Date of amendment request: November 11, 1994, as supplemented by letters dated April 7, 1995, and June 26, 1995

Brief description of amendment: The amendment implements administrative changes to TS 5.2 and 5.5. These changes reflect organizational changes in OPPD senior management, delete specific titles of personnel on the Plant Review Committee (PRC), revise the makeup of the PRC quorum, revise the membership of the Senior Audit and Review Committee (SARC), delete SARC audit frequencies and add minor clarifications to the descriptions of SARC reviews and audits.

Date of issuance: July 21, 1995

Effective date: July 21, 1995

Amendment No.: 168

Facility Operating License No. DPR-40. Amendment revised the TechnicalSpecifications.

Date of initial notice in **Federal Register:** December 21, 1994 (59 FR 65819). The April 7, 1995, and June 26, 1995, letters provided clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 21, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station,Unit No. 1, Washington County, Nebraska

Date of amendment request: March 1, 1995

Brief description of amendment: The amendment revises TS 2.5, 2.8, 2.11, 3.2, and 3.10 and relocates administrative controls for the emergency and security plans from TS 5.5 and 5.8 to the plans. The relocation is in accordance with Generic Letter (GL) 93-07, ''Modification of the Technical Specification Administrative Control Requirements for Emergency and Security Plans.''

Date of issuance: July 21, 1995

Effective date: July 21, 1995

Amendment No.: 169

Facility Operating License No. DPR-40: The amendment revised the TechnicalSpecifications.

Date of initial notice in **Federal Register:** April 12, 1995 (60 FR 18627) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 21, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Pacific Gas and Electric Company, Docket No. 50-133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of application for amendment: April 10, 1995

Brief description of amendment: This amendment revised License No. DPR-7, to permit the provisions of 10 CFR 50.59 to be applied with respect to changes to the facility or procedures described in the Decommissioning Plan or changes to the Decommissioning Plan, and the conduct of tests or experiments not described in the Decommissioning Plan.

Date of issuance: July 7, 1995

Effective date: This license amendment is effective as of the date of its issuance and must be fully implemented no later than 30 days from the date of issuance.

Amendment No.: 29Facility License No. DPR-7: This amendment revised License No. DPR-7

Date of initial notice in **Federal Register:** June 6, 1995 (60 FR 29885)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Humboldt County Library, 636 F Street, Eureka, California 95501.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-278, Peach Bottom Atomic Power Station, Unit No. 3, York County, Pennsylvania

Date of application for amendment: November 21, 1994

Brief description of amendment: This amendment changes the technical specifications (TS) by allowing the third Type A Containment Integrated Leakage Rate Test in the second 10-year service period to be conducted during refueling outage 11 scheduled for September 1997. This TS change is consistent with a one-time exemption from Appendix J to 10 CFR Part 50 that extends the 10-year service period and allows the three type A tests to be performed at intervals that are not approximately equal.

Date of issuance: July 10, 1995

Effective date: July 10, 1995

Amendment No.: 210

Facility Operating License No. DPR-56: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 23, 1995 (60 FR 27340)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 10, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

PECO Energy Company, Public Service Electric and Gas Company,Delmarva Power and Light Company, and Atlantic City Electric Company,Docket No. 50-278, Peach Bottom Atomic Power Station,Unit No. 3, York County, Pennsylvania

Date of application for amendment: June 23, 1993, as supplemented by letters dated April 5, May 2, June 6, June 8, July 6 (two letters), July 7, July 20, July 28 (two letters), September 16, September 30, and October 14, 1994 and June 22, 1995.

Brief description of amendment: The amendment raises the authorized maximum power level from 3293 MWt to a new limit of 3458 MWt. The amendment also approves changes to the Technical Specifications to implement operation at the increased power limit.

Date of issuance: July 18, 1995

Effective date: As of date of issuance and is to be implemented prior to startup in Cycle 11, currently scheduled for October 1995.

Amendment No.: 211

Facility Operating License No. DPR-56: Amendment revised the License and the Technical Specifications.

Date of initial notice in **Federal Register:** August 29, 1994 (59 FR 44432)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 18, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: April 10, 1995

Brief description of amendments: Remove the response time limit Tables 3.3.1-2, 3.3.2-3, and 3.3.3-3 from the Technical Specifications, and add the information to the Final Safety Analysis Report in accordance with Generic Letter 93-08.

Date of issuance: July 11, 1995

Effective date: July 11, 1995

Amendment Nos.: 148 and 118

Facility Operating License Nos. NPF-14 and NPF-22. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 6, 1995 (60FR 29887)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 11, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: November 21, 1994, as supplemented April 6, and July 3, 1995

Brief description of amendments: These amendments make changes affecting the Administrative Controls Section of the Technical Specifications. The areas changed are Nuclear Effectiveness and Efficiency Design Study (NEEDS) Organization Title Changes; Minimum Shift Crew Composition; delete Independent Technical Review Section from TS; delete Nuclear Review Board (NRB) Review Section from TS; and delete NRB Audit Section from TS.

Date of issuance: July 18, 1995

Effective date: Units 1 and 2, as of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 96 and 60

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 10, 1995 (60 FR 24914)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: August 31, 1994, as supplemented July 3, 1995

Brief description of amendments: These amendments modify TS Sections 3.4.9.1, 3.4.9.2, 3.9.11.1, 3.9.11.2, and the associated Bases Sections 3/4.4.9 and 3/4.4.11, to permit the use of either an ''analytical approach'' (i.e., calculation) or ''demonstrations'' to ensure the operability of an alternate decay heat removal method, rather than the existing TS requirement which stipulates that operability of the alternate decay removal method be demonstrated.

Date of issuance: July 18, 1995

Effective date: Units 1 and 2, as of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 97 and 61

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 9, 1994 (59 FR 55884)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: August 22, 1994, as supplemented July 3, 1995

Brief description of amendments: These amendments revise Technical Specification Surveillance Requirement 4.1.3.1.4a to delete the requirement that the Scram Discharge Volume (SDV) be determined operable by testing the SDV vent and drain valves from a configuration of less than or equal to 50% rod density.

Date of issuance: July 18, 1995

Effective date: Units 1 and 2, effective as of date of issuance and shall be implemented within 30 days.

Amendment Nos.: 98 and 62

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 9, 1994 (59 FR 55881)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: August 22, 1994, as supplemented by letter dated July 3, 1995

Brief description of amendments: The amendments revise the Technical Specifications surveillance requirements for scram insertion times and revise the TS surveillance requirements for control rod block and source range monitoring instrumentation.

Date of issuance: July 18, 1995

Effective date: Units 1 and 2, effective as of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 99 and 63

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 9, 1994 (59 FR 55881)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station (FSV), Unit No. 1, Platteville, Colorado

Date of application for amendment: Amendment No. 88, April 14, 1995.

Brief description of amendment: This amendment would revise the FSV Decommissioning Technical Specifications (DTS) by: revising the FSV DTS to reflect recent organizational changes resulting from corporate restructuring to prepare for repowering the site with natural gas-power turbines and to incorporate editorial changes. The staff has determined that the proposed amendment does not require a significant hazard consideration, pursuant to 10 CFR 50.92.Possession-Only License No. DPR-34: Amendment revises the DTS.

Local Public Document Room location: Weld Library District - Downtown Branch, 919 7th Street, Greeley, CO 80631.

Sacramento Municipal Utility District, Docket No. 312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: February 28, 1995

Brief description of amendment: This amendment relocates the quality assurance audit frequencies from the technical specifications to the Rancho Seco Quality Manual and changes the reporting frequency of the Radioactive Effluent Release Report from semi-annual to annual.

Date of issuance: July 19, 1995

Effective date: July 19, 1995

Amendment No.: 122

Facility Operating License No. NPF-1: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 29, 1995 (60 FR 16200)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 19, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Central Library, Government Documents, 828 I Street, Sacramento, California 95814.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: September 15, 1993, as supplemented by letter dated September 6, 1994.

Brief description of amendments: The amendments revised Technical Specification (TS) Table 2.2-1, ''Reactor Protective Instrumentation Trip Setpoint Limits,'' Table 3.3-1, ''Reactor Protective Instrumentation,'' Table 3.3-3, ''Engineered Safety Feature Actuation System Instrumentation,'' and Table 3.3-4, ''Engineered Safety Feature Actuation System Instrumentation Trip Values,'' and the associated Bases. The revisions to the notes in these tables change the pressure at which the low pressurizer pressure trip bypass shall be automatically removed to a consistent value of ''before pressurizer pressure exceeds 500 psia (the corresponding bistable allowable value is less than or equal to 472 psia).'' In addition, the wording of the notes is revised to make the notes more consistent with each other.

Date of issuance: July 14, 1995

Effective date: July 14, 1995, to be implemented within 30 days of the date of issuance.

Amendment Nos.: Unit 2 - Amendment No. 120; Unit 3 - Amendment No. 109

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 29, 1993 (58 FR 50975). The September 6, 1994, supplemental letter provided additional clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 14, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Main Library, University of California, P.O. Box 19557,Irvine, California 92713.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: September 3, 1992

Brief description of amendments: These amendments revise TS 3/4.4.8 ''Pressure/Temperature Limits - Reactor Coolant System,'' and their associated Bases, following NRC guidance provided in Generic Letter 91-01, ''Removal of the Schedule for Withdrawal of Reactor Vessel Material Specimens from Technical Specifications.'' This generic letter allows licensees to remove the reactor vessel material surveillance capsule withdrawal schedules from the TS because they are a duplication of the requirements of 10 CFR Part 50 Appendix H.

Date of issuance: July 17, 1995

Effective date: July 17, 1995, to be implemented within 30 days of issuance

Amendment Nos.: Unit 2 - Amendment No. 121; Unit 3 - Amendment No. 110

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 17, 1993 (58 FR 8781)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 17, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: April 30, 1993, as supplemented by letters dated July 6, 1994 (separate letters for each unit), and letter dated January 27, 1995.

Brief description of amendments: These amendments revise TS 3/4.4.8.1, ''Pressure-Temperature Limits,'' TS 3.4.8.3.1, ''Overpressure Protection Systems-RCS Temperature less than or equal to °F [for Unit 2, less than or equal to 246°F for Unit 3],'' TS 3.4.8.3.2, ''Overpressure Protection Systems-RCS Temperature ≤256°F [for Unit 2, ≤246°F for Unit 3],'' and the associated TS Bases. The proposed change (1) revises the reactor coolant system (RCS) pressure-temperature (P-T) limits and the low temperature overpressure protection (LTOP) enable temperatures to be effective until 20 effective full power years (EFPY) of operation and (2) makes minor editorial changes.

Date of issuance: July 18, 1995

Effective date: July 18, 1995, to be implemented within 30 days of issuance

Amendment Nos.: Unit 2 - Amendment No. 122; Unit 3 - Amendment No. 111

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** Unit 2 - July 7, 1993 (58 FR 36445); Unit 3 - June 23, 1993 (58 FR 34094). The two supplemental letters dated July 6, 1994, and the January 27, 1995, supplemental letter provided clarifying information and did not change the initial no significant hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260, and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: March 30, 1994

Brief description of amendment: The amendments implement an analog transmitter/trip system on BFN Unit 3, revise the reactor vessel water level safety limit and limiting safety system setting for BFN Units 1 and 3, add instrument identifiers and revise calibration frequencies and functional test requirements for BFN Unit 2, revise the calibration frequency for instrumentation actuating the suppression chamber-reactor building vacuum breakers, and provide editorial changes.

Date of issuance: July 17, 1995

Effective date: July 17, 1995

Amendment Nos.: 222, 237, 196

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1994(59 FR 49435) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 17, 1995.No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public library, South Street, Athens, Alabama 356114.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: January 30, 1995

Brief description of amendment: The proposed amendment revises reactor coolant system pressure-temperature curves, changes bases for Technical Specification 3/4.4.9, Pressure Temperature Limits, and revises License Condition 2.C(3)(d) to reflect a change from 10 effective full power years (EFPY) to 21 EFPY.

Date of issuance: July 20, 1995

Effective date: July 20, 1995

Amendment No.: 199

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 15, 1995 (60 FR 14029)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 20, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: September 8, 1994

Brief description of amendment: The amendment revises Technical Specifications (TS) 4.2.2.2, 4.2.2.4, and 6.9.19. The changes address

incorporating a penalty in the Core Operating Limits Report (COLR) to account for heat flux (F_Q) increases greater than 2 percent between measurements.

Date of issuance: July 20, 1995

Effective date: July 20, 1995

Amendment No.: 101

Facility Operating License No. NPF-30. Amendment revises the Technical Specification Surveillance Requirements and Administrative Controls.

Date of initial notice in **Federal Register:** December 21, 1994 (59 FR 65823). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 20, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendments: November 22, 1994

Brief description of amendments: The amendments revised the Technical Specifications to delete unnecessary descriptive phrases regarding the number of cells in the station and emergency diesel generator batteries.

Date of issuance: July 11, 1995

Effective date: July 11, 1995

Amendment Nos.: 201 and 201

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 12, 1995 (60 FR 18630)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 11, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 2nd day of August, 1995.

For the Nuclear Regulatory Commission

Jack W. Roe, 4Director, Division of Reactor Projects - III/IV, Office of Nuclear Reactor Regulation

[Doc. 95–18810 Filed 8–1–95; 8:45 am]

BILLING CODE 7590–01–F

[Docket No. 50–255]

Consumers Power Company; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has partially denied a request by Consumers Power Company, (licensee) for an amendment to Facility Operating License No DRP–20 issued to the licensee for operation of Palisades, located in Covert Township, Van Buren County, Michigan. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on May 25, 1994 (59 FR 27053).

The purpose of the licensee's amendment request was to relocate certain Technical Specifications (TS) containing fuel cycle-specific parameter limits that can change with core reloads to a Core Operating Limits Report. Several of the TS bases have also been revised to refer to limits relocated to the COLR.

The NRC staff has concluded that the licensee's request cannot be fully granted. The removal of the power distribution measurement uncertainty factors in Table 3.23.3 and the addition of certain references to TS 6.9.1.f are denied. The licensee was notified of the Commission's denial of the proposed change by a letter dated July 26, 1995.

By September 1, 1995, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC by the above date.

A copy of any petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

For further details with respect to this action, see (1) the application for amendment dated April 7, 1994, as supplemented April 27, 1995, and (2) the Commission's letter to the licensee dated July 26, 1995.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, 20555 and at the Van Wylen Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 26th day of July 1995.

For the Nuclear Regulatory Commission.

Marsha Gamberoni,

Project Manager, Project Directorate III–I, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–18929 Filed 8–1–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–206, 50–361, 50–362]

In the Matter of Southern California Edison Company (San Onofre Nuclear Generating Station, Units 1, 2, and 3).

Southern California Edison Co.

Exemption

I

Southern California Edison Company (SCE or the licensee) is the holder of Facility Operating License No. DPR–13, which authorizes possession and maintenance of the San Onofre Nuclear Generating Station, Unit 1 (SONGS 1) and Facility Operating License Nos. NPF–10 and NPF–15, which authorizes operation of San Onofre Nuclear Generating Station, Units 2 and 3 (SONGS 2 and 3), respectively. The licenses provide, among other things, that the SONGS units are subject to all rules, regulations, and orders of the Commission now or hereafter in effect. The facilities consist of three pressurized water reactors at the SCE site located in San Diego County, California. SONGS 1 is permanently shut down, while Unites 2 and 3 remain operational.

II

It is stated in 10 CFR 73.55, ''Requirements for physical protection of licensed activities in nuclear power reactors against radological sabotage,'' paragraph (a), that ''The licenses 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.'' It is specified in 10 CFR 73.55(d)(5) that ''A numbered

picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' It further states that individuals not employed by the licensee (e.g., contractors) may be authorized access to protected areas without an escort provided that the individual, ''receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *.''

By letter dated March 13, 1995, the licensee requested an exemption from certain requirements of 10 CFR 73.55(d)(5). Specifically, the requested exemption would allow contractors who have unescorted access to retain possession of their picture badges instead of returning them as they exit the protected area. (The existing regulations allow licensee employees authorized unescorted access to protected areas to retain their badges upon departure from the protected area.) The proposed exemption is a preliminary step towards enabling SCE to revise the SONGS security plan under 10 CFR 50.54(p) to facilitate implementation of an alternative unescorted access system which would eliminate the need for site security personnel to issue and retrieve picture badges at the entrance/exit locations to the protected area and would eventually allow all individuals (contractors and SCE employees) with unescorted access to the protected area to keep their picture badges in their possession when departing the SONGS protected area.

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. The Code of Federal Regulations at 10 CFR 73.55 allows the Commission to authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the proposed measures meet 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.

Currently, unescorted access into the protected area for both employee and contractor personnel into the SONGS plants is controlled through the use of picture badges. Positive identification of personnel who are authorized and request access into the protected area is established by security personnel making a visual comparison of the individual requesting access and that individual's picture badge. In accordance with 10 CFR 73.55(d)(5), contractor personnel are not allowed to take their picture badges offsite. In addition, in accordance with the plant's physical security plan, the licensee's employees are also not allowed to take their picture badges offsite.

The proposed alternative measure, to provide an equivalent level of protection against radiological sabotage, is a system that will require that all individuals with authorized unescorted access have the physical characteristics of their hand (hand geometry) registered with their picture badge number in a computerized access control system. Therefore, all authorized individuals must not only have their picture badge to gain access to the protected area, but must also have their hand geometry confirmed. initially, following revision to the site security plan, individuals with unescorted access will be allowed to retrieve their own badges before entering the protected area and return their badges to storage locations when existing the protected area for retrieval on their next entrance. Eventually, following changes to the security plan conducted under 10 CFR 50.54(p), all individuals, including contractors, who have authorized unescorted access into the protected area may be allowed to keep their picture badges in their possession when departing the SONGS protected area.

All other access processes, including search function capability, will remain the same. A security officer responsible for access control will continue to be positioned within a hardened structure. It should be noted that the proposed system is only for individuals with authorized unescorted access and will not be used for those individuals requiring escorts.

Sandia National Laboratories conducted testing which demonstrated that the hand geometry equipment that SCE proposed to use possesses strong performance characteristic. Details of the testing performed, available in thee Sandia report, ''A performance Evaluation of Biometric Identification Devices,'' SAND91—0276 UC—906 Unlimited Release, June 1991, demonstrated that the hand geometry equipment is capable of meeting a detection probability of 90 percent with a 95 percent confidence level. Based on the Sandia report, the false acceptance rate for the proposed hand geometry system would be at least equivalent to that of the current photo-identification system. The site security plans will be revised in accordance with 10 CFR 50.54(p) to allow implementation of the hand geometry system.

IV

For the foregoing reasons, the Commission has determined that the proposed alternative measure for protection against radiological sabotage meet the same high assurance objective and the general performance requirements of 10 CFR 73.55. In addition, the staff has determined that the overall level of the proposed system's performance will provide protection against radiological sabotage equivalent to that which is provided by the current system in accordance with 10 CFR 73.55.

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 Southern California Edison Company an exemption from those requirements of 10 CFR 73.55(d)(5) relating to the returning of picture badges upon exit from the protected area such that individuals not employed by the licensee, i.e., contractors, who are authorized unescort4ed access into the protected area, can retrieve their own badges before entering the protected area and return their badges to the badge storage location when existing the protected area.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the environment (60 FR 37110 as July 19, 1995).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of July 1995.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Divisions of Project Support, Office of Nuclear Reactor Regulations.

[FR Doc. 95–18926 Filed 8–1–95; 8:45 am]

BILLING CODE 7590–01–M

Status and Notice of Availability of Two Policy Statements Concerning the Agreement State Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Status of policy statements and notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the

status of Commission action on the two policy statements: Statement of Principles and Policy for the Agreement State Program and the Policy Statement on Adequacy and Compatibility of Agreement State Programs. NRC is also announcing the availability of the policy statements to interested parties.

ADDRESSES: Copies of the policy statements may be obtained by calling Vicki Bolling at (301)–415–2326 or by writing to U.S. Nuclear Regulatory Commission, Document Control Desk, P1–37, Washington, DC 20555, Attn: Vicki Bolling, OSP. These documents are available for inspection in the Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC between 7:45 a.m. and 4:15 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Schneider, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)–415–2320.

SUPPLEMENTARY INFORMATION: The Commission has approved, in principle, the Policy Statements entitled ''Statement of Principles and Policy for the Agreement State Program'' and ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' with the stipulations discussed below.

The Commission is going to defer implementation of the policy statements until implementing procedures are developed and approved by the Commission. The NRC staff is to develop the implementing procedures and any necessary changes to the two policy statements and resubmit the policy statements and implementing procedures to the Commission by September 30, 1996. Copies of the two policy statements may be obtained from the address listed in this notice. Until the policy statements and final implementing procedures are approved by the Commission, the NRC staff will continue to use the policy statement on Discontinuance of the NRC Authority and Assumption Thereof by States Through Agreement: Criteria for Guidance of States and NRC, published January 23, 1981 (46 FR 7540), as revised July 21, 1983 (48 FR 33376), for new agreements.

The Office of State Programs B.7 Procedure for compatibility will be utilized in connection with the interim implementation of the Integrated Materials Performance Evaluation Program (IMPEP) to evaluate Agreement State programs until the final implementing procedures for the two policy statements and any revisions to the policy statements are approved by the Commission. NRC plans to issue a **Federal Register** Notice in the near future, which will address how IMPEP will be integrated into the current framework for Agreement State program reviews.

Dated at Rockville, Maryland, this 27th day of July, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–18925 Filed 8–1–95; 8:45 am]

BILLING CODE 7590–01–P

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.
2. The title of the information collection: Simulation Facility Certification.
3. The form number if applicable: NRC Form 474.
4. How often the collection is required: One time requirement for initial certification and quadrennial thereafter.
5. Who will be required or asked to report: All power reactor licensees and applicants for an operating license.
6. An estimate of the number of responses: 20 annually.
7. An estimate of the total number of hours needed annually to complete the requirement or request: 2,400 (approximately 120 hours per response).
8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.
9. Abstract: Licensed power facilities that propose the use of a simulation facility consisting solely of a plant-referenced simulator for the conduct of NRC licensing operating tests are required to submit NRC Form 474.

The information on the form consists of the results of performance testing completed on the subject simulation facility and a schedule for the conduct of performance tests for the subsequent four-year period. NRC uses this information to ascertain the acceptability of simulation facilities for use in the conduct of operating tests for nuclear power plant operator and senior operator candidates and to determine whether to initiate a simulation facility inspection at a specific site due to concerns about their suitability for use in operating tests.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555–0001.

Comments and questions should be directed to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0138), NEOB–10202, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 27th day of July, 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–18930 Filed 8–1–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Company, Iowa-Illinois Gas and Electric Company, Quad Cities Nuclear Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR–29 and DPR–30, issued to Commonwealth Edison Company (ComEd, the licensee), for operation of Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action is in accordance with the licensee's application for an exemption from certain requirements of 10 CFR 73.55, ''Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage.'' The requested exemption would allow the implementation of a hand geometry biometric system of site access control in conjunction with photograph identification badges, and would allow the badges to be taken off site.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55(a), the licensee is required to establish and maintain an onsite physical protection system and security organization.

In 10 CFR 73.55(d), ''Access Requirements,'' it specifies in part that ''The licensee shall control all points of personnel and vehicle access into a protected area.'' In 10 CFR 73.55(d)(5), it specifies in part that ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' It further indicates that an individual not employed by the licensee (e.g., contractors) may be authorized access to protected areas without an escort provided the individual, ''receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area.''

Currently, unescorted access for both employee and contractor personnel into the Quad Cities Station, Units 1 and 2, is controlled through the use of picture badges. Positive identification of personnel who are authorized and request access into the protected area is established by security personnel making a visual comparison of the individual requesting access and that individual's picture badge. The picture badges are issued, stored, and retrieved at the entrance/exit location to the protected area. In accordance with 10 CFR 73.55(d)(5), contractor personnel are not allowed to take their picture badges off site. In addition, in accordance with the plant's physical security plan, the licensee's employees are also not allowed to take their picture badges off site. The licensee proposes to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve picture badges at the entrance/exit location to the protected area. The proposal would also allow contractor who have unescorted access to keep their picture badges in their possession when departing the Quad Cities site. In addition, the site security plans will be revised to allow implementation of the hand geometry system and to allow employees and contractors with unescorted access to keep their picture badges in their possession when leaving the Quad Cities site.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action. In addition to their picture badges, all individuals with authorized unescorted access will have the physical characteristics of their hand (hand geometry) registered with their picture badge number in a computerized access control system. Therefore, all authorized individuals must not only have their picture badges to gain access into the protected area, but must also have their hand geometry confirmed.

All other access processes, including search function capability and access revocation, will remain the same. A security officer responsible for access control will continue to be positioned within a bullet-resistant structure. The proposed system is only for individuals with authorized unescorted access and will not be used for individuals requiring escorts.

The underlying purpose for requiring that individuals not employed by the licensee must receive and return their picture badges at the entrance/exit is to provide reasonable assurance that the access badges could not be compromised or stolen with a resulting risk that an unauthorized individual could potentially enter the protected area. Although the proposed exemption will allow individuals to take their picture badges off site, the proposed measures require not only that the picture badge be provided for access to the protected area, but also that verification of the hand geometry registered with the badge be performed as discussed above. Thus, the proposed system provides an identity verification process that is equivalent to the existing process.

Accordingly, the Commission concludes that the exemption to allow individuals not employed by the licensee to take their picture badges off site will not result in an increase in the risk that an unauthorized individual could potentially enter the protected area. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed action.

The proposed exemption does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the proposed action would be to deny the requested action. Denial of the requested action would not significantly enhance the environment in that the proposed action will result in a process that is equivalent to the existing identification verification process.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Quad Cities Station, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on July 20, 1995, the staff consulted with the Illinois State Official, Mr. Mike Parker, Chief, Reactor Safety Section; Division of Engineering; Illinois Department of Nuclear Safety; regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's letter dated June 21, 1995, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Dated at Rockville, Maryland, this 25th day of July 1995.

For the Nuclear Regulatory Commission.

Robert M. Pulsifer,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–18931 Filed 8–1–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36027; File No. SR–CHX–95–15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Implementation of Modified Versions of the SuperMAX System on a Pilot Basis

July 27, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on June 29, 1995, the Chicago Stock Exchange, Incorporated (''CHX'' 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. On July 21, 1995, the Exchange submitted Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add subsection (e) and subsection (f) to Rule 37 of Article XX relating to the CHX's MAX System. The text of the proposed rule is as follows [new text is italicized]:

Article XX

Rule 37

(e) The Exchange's Enhanced SuperMAX program shall be an automatic execution program within MAX in which a Specialist may voluntarily choose to participate on a stock-by-stock basis. A Specialist shall decide if his or her stock will be eligible for Enhanced SuperMAX treatment. In the event that a stock is eligible for Enhanced SuperMAX treatment (pursuant to paragraph (e) of this Rule) and SuperMAX treatment (pursuant to paragraph (c) of this Rule) at the same time, the size of the order will determine which program will be followed for execution. An order of 599 shares or less will execute according to the SuperMAX program and an order greater than 599 shares will execute according to the Enhanced SuperMAX program. In the event that a Specialist determines that his stock is eligible for Enhanced SuperMAX and voluntarily chooses to participate in Enhanced SuperMAX, agency market orders up to and including 1099 shares (or such greater size specified by a specialist and approved by the Exchange) in that stock may automatically be stopped and executed in MAX, through the Enhanced SuperMAX program, without any specialist intervention based on the following criteria:

(1) Stopping. If an agency market order eligible for Enhanced SuperMAX would create either a double up tick (buy order) or double down tick (sell order) if the order was executed at the consolidated best bid or offer (''NBBO'') the Enhanced SuperMAX program will ''stop'' the order. Once stopped, the order will not receive an execution that is worse than the stop price. Notwithstanding anything in the previous sentence to the contrary, agency market orders in markets quoted with a minimum variation (usually ⅛ spread) will not be stopped. Orders not stopped will be immediately executed based upon the NBBO as the case may be.

(2) Pricing. Buy Orders stopped under (1) above will be executed as follows:

(i) If the next primary market sale is equal to or less than the last sale then the stopped order will be executed at such last sale price (subject, however, to the Exchange's block protection policy as set forth in interpretation and policy .06 of Rule 7 of this Article).

(ii) If the next primary market sale is greater than the last sale then the stopped order will be executed at such next primary market sale price. However, if the next primary market sale is greater than the stop price then the stopped order will be filled at the stopped price (i.e. at the offer).

Sell orders stopped under (1) above will be executed as follows:

(iii) If the next primary market sale is equal to or greater than the last sale then the stopped order will be executed at such last sale price (subject, however, to the Exchange's block protection policy as set forth in interpretation and policy .06 of Rule 7 of this Article).

(iv) If the next primary market sale is less than the last sale then the stopped order will be executed at such primary market sale price. However, if the next primary market sale is less than the stop price then the stopped order will be filled at the stopped price (i.e. at the bid).

(3) Operating Time. Enhanced SuperMAX will operate each day that the Exchange is open for trading from 8:45 a.m. (C.T.) until the close. In unusual trading situations, individual stocks or all stocks may be removed from Enhanced SuperMAX with the approval of two members of the Committee on Floor Procedure.

(4) Timing. Orders entered into Enhanced SuperMAX shall, when due a fill under the Enhanced SuperMAX program, be immediately executed without any delay (i.e. 0 seconds).

(5) Applicability to Odd-Lots. Although an order generated by the Odd-Lot Execution Service (''OLES'') is a professional order (because it is deemed to be for the account of a broker-dealer), it is nonetheless eligible for Enhanced SuperMAX execution if: (i) the issue is on Enhanced SuperMAX, (ii) it is an order for 200 shares or less, and (iii) it is an OLES passively driven, system-generated market order (and not an actively managed order).

(6) Out of Range. Notwithstanding anything in this paragraph (e) to the contrary, Enhanced SuperMAX will not execute an order at the NBBO if such execution would result in an out of range execution.

(7) Other. Any eligible order in a stock included in Enhanced SuperMAX which is manually presented at the Specialist post by a floor broker must also be guaranteed an execution by the Specialist pursuant to the criteria set forth in this paragraph (e). In the event that a contra side order which would better an Enhanced SuperMAX execution is presented at the post, the incoming order which is executed pursuant to the Enhanced SuperMAX criteria must be adjusted to the better price.

(f) The Exchange's Timed Enhanced SuperMAX program shall be an automatic execution program within MAX in which a Specialist may voluntarily choose to participate on the stock-by-stock basis. A Specialist shall decide if his or her stock will be eligible for Timed Enhanced SuperMAX treatment. In the event that a Specialist determines that his or her stock is eligible for Timed Enhanced SuperMAX and voluntarily chooses to participate in Timed Enhanced SuperMAX, agency market orders up to and including 1099 shares (or such greater size as specified by the Specialist and approved by the Exchange) will automatically be executed in MAX, through the Timed Enhanced SuperMAX program, without any Specialist intervention, in accordance with the Enhanced SuperMAX program and rules (as specified in paragraph (e) of this Rule and subparagraphs (1) through (7) thereunder) with the following modification:

(1) Timer. In the event that an order is stopped pursuant to the criteria described in paragraph (e)(1) of this Rule, such order shall be executed at the stopped price if there are no executions in the primary market at the end of the applicable Time Out Period (as defined below). For purposes of this paragraph (f), the Time Out Period shall be the time specified by the specialist on stock-by-stock basis based on the size of the order. Such Time Out Period shall be preselected by a specialist, may be changed by a specialist no more frequently than once a month and may be no less than 30 seconds.

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 III 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

On May 22, 1995, the Commission approved a proposed rule change of CHX that allows specialists on the Exchange, through the Exchange's MAX system, to provide order execution guarantees that are more favorable than those required under CHX Rule 37(a), Article XX.[2] That approval order

[1] *See* letter from David Rusoff, Foley & Lardner, to Glen Barrentine, Senior Counsel, SEC, dated July 21, 1995. In Amendment No. 1, the Exchange requests that the proposed rule change be considered under 19(b)(2) on one-year pilot basis rather than under 19(b)(3)(A) and makes certain clarifying changes to the text of Item I.

[2] *See* Securities Exchange Act Release No. 325753 (May 22, 1995), 60 FR 28007 (May 26, 1995) (File No. SR–CHX–95–08).

contemplated that the CHX would file with the Commission specific modifications to the parameters of MAX that are required to implement various options available under this new rule.

The purpose of the proposed rule change is to set forth two options available under this new rule. One option is merely a reactivation of the Exchange's Enhanced SuperMAX program, a program originally approved by the Commission on a pilot basis in 1991.[3] Unlike the old pilot program, however, the new Enhanced SuperMAX program will be available starting at 8:45 a.m. instead of 9:00 a.m. This program differs from the Exchange's SuperMAX program is that under this program, certain orders are ''stopped'' at the NBBO[4] and are executed with reference to the *next* primary market sale instead of the previous primary market sale.

The other option is a slight variation on the Enhanced SuperMAX program. This other option, the Timed Enhanced SuperMAX program, will execute orders in the same manner as the Enhanced SuperMAX program except that if there are no executions in the primary market after the order has been stopped for a designated time period, the order will be executed at the stopped price at the end of such period. Such period, known as a time out period, will be pre-selected by a specialist on a stock-by-stock basis based on the size of the order, may be changed by a specialist no more frequently than once a month, and may be no less than 30 seconds.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no 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. 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 Exchange. All submissions should refer to File No. SR–CHX–95–15 and should be submitted by August 23, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully CHX's proposed rule change and concludes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Act.[5]

The proposed rule change provides for modified versions of the SuperMAX system[6] (Enhanced SuperMAX and Timed Enhanced SuperMAX). These modified versions will operate as separate systems and will be available to CHX specialists as additions or alternatives to SuperMAX.[7] Participation in Enhanced SuperMAX and Timed Enhanced SuperMAX will be voluntary for specialists and will apply on a stock-by-stock basis for agency market orders of 1,099 shares or fewer in Dual Trading Systems issued.[8]

Under the proposed rule change, Enhanced SuperMAX and Timed Enhanced SuperMAX would automatically stop a market order if its execution at the consolidated best bid or offer (''BBO'') would create either a double up tick or double down tick. If the execution at the BBO would not result in a double up tick or double down tick, then Enhanced SuperMAX and Timed Enhanced SuperMAX would execute the order at the BBO. Once a security chosen by a specialist for Enhanced SuperMAX and Timed Enhanced SuperMAX is stopped, a buy (sell) order is guaranteed at least the offer (bid) price prevailing at the time of the stop (''stop price'').

The stopped Enhanced SuperMAX and Timed Enhanced SuperMAX eligible order would be executed based upon the next sale in the primary market according to the execution criteria. The Enhanced SuperMAX and Timed Enhanced SuperMAX algorithm compares the previous last sale price to the next sale price, and considers the direction of the market by those sales prices, to determine the price at which the stopped market order will be filled. The procedures under Enhanced SuperMAX and Timed Enhanced SuperMAX are identical except the stopped order in Timed Enhanced SuperMAX will be executed at the expiration of a specified time period as designated by a specialist.

Under the proposal, Enhanced SuperMAX and Timed Enhanced SuperMAX would not execute an order at the BBO if such execution would

[3] *See* Securities Exchange Act Release No. 30058 (Dec. 10, 1991), 56 FR 65765 (Dec. 18, 1991) (order approving SR–MSE–91–12). The pilot program was subsequently extended in Securities Exchange Act Release Nos. 30701 (May 14, 1992), 57 FR 21683 (May 21, 1992) (File No. SR–MSE–92–06); 310238 (Aug. 13, 1992), 57 FR 37856 (Aug. 20, 1992) (File No. SR–MSE–92–09); and 31857 (Feb. 12, 1993) 58 FR 9227 (Feb. 19, 1993) (File No. SR–MSE–01).

[4] The term national best bid or best offer is defined under SEC Rule 11Ac1–2 as the highest bid or lowest offer for a reported security made available by any reporting market center pursuant to Rule 11Ac1–1 or the highest bid or lowest offer for a security other than a reported security disseminated by an over-the-counter market maker in Level 2 or 3 of Nasdaq.

[5] 15 U.S.C. 78f(b)(5) (1988 & Supp. V. 1993).

[6] SuperMAX is a system that automatically improves executions of small agency market orders from the consolidated best bid or offer according to certain predefined criteria. In 1990, the Commission first approved SuperMAX on a pilot basis. *See* Securities Exchange Act Release No. 28014 (May 14, 1990), 55 FR 20880 (May 21, 1990) (File No. SR–MSE–90–05). In 1993, the Commission approved SuperMAX on a permanent basis. For more detail regarding SuperMAX, see *infra* note 12 and the accompanying text.

[7] The Exchange will file an amendment to the proposed rule change in the near future to codify the procedures with respect to a specialist's ability to make a security eligible for Enhanced SuperMAX and Time Enhanced SuperMAX. A specialist will be permitted to engage and disengage Enhanced SuperMAX and Timed Enhanced SuperMAX for a given stock only once a month. *See* letter from David Rusoff, Foley & Lardner, to Glen Barretine, Senior Counsel, SEC, dated July 21, 1995.

[8] The Dual Trading System of the Exchange allows the execution of both round-lot and odd-lot orders in certain issues assigned to specialists on the Exchange and listed on either the New York Stock Exchange or the American Stock Exchange.

result in an out-of-range execution.[9] If a specialist chooses the Enhanced SuperMAX and Timed Enhanced SuperMAX, the criteria for the systems must be followed for all eligible stocks. If a specialist chooses to have Enhanced SuperMAX and Timed Enhanced SuperMAX run concurrently with SuperMAX, then the size of the agency market order would determine which method of execution will be followed. An order of 599 shares or fewer will be executed according to SuperMAX rules; an order of 600 shares to 1,099 shares will be executed according to Enhanced SuperMAX and Timed Enhanced SuperMAX rules. An order will never be subject to execution under the rules of both SuperMAX and Enhanced SuperMAX (or Timed Enhanced SuperMAX).

Any eligible order in a stock included in Enhanced SuperMAX or Timed Enhanced SuperMAX that is manually presented at the specialist post by a floor broker also must be guaranteed an execution by the specialist pursuant to the appropriate system criteria. In the unlikely event that a contra side order that would better the Enhanced SuperMAX and Timed Enhanced SuperMAX execution is presented at the post, the specialist must adjust the incoming order that was executed pursuant to the Enhanced SuperMAX or Timed Enhanced SuperMAX criteria. During volatile periods, individual stocks or all stocks may be removed from Enhanced SuperMAX or Timed Enhanced SuperMAX with the approval of two members of the Committee on Floor Procedure.[10]

The Exchange represented that as a result of testing extensively both versions of Enhanced SuperMAX, the Exchange concludes that Enhanced SuperMAX and Timed Enhanced SuperMAX will not have any significant impact upon CHX's systems capacity.[11]

In 1991, the Commission approved on a pilot basis Enhanced SuperMAX to run concurrently with SuperMAX, which was on a pilot at that time.[12] In the initial Enhanced SuperMAX pilot program approval order, the Commission expressed concerns about the possible adverse effects on execution quality of a lack of order exposure.[13] The Commission also acknowledged, however, that increased order exposure may impose certain economic costs in terms of execution delay and interjection of manual processing. Moreover, the Commission recognized that most of the Exchange's automatic execution systems in effect (at this time) provided executions at the quote only.

In approving the Enhanced SuperMAX feature on a pilot basis, the Commission believed that this proposal was less ideal than SuperMAX, but that the Commission would revisit its concerns in the event that the CHX requested permanent approval. In this regard, the Commission stated that any request for permanent approval must be accompanied by a report containing certain data on the Enhanced SuperMAX system.[14]

The Commission believes that pricing and execution procedures of Enhanced SuperMAX and Timed Enhanced SuperMAX are consistent with the maintenance of fair and orderly auction markets on national securities exchanges. Moreover, the Commission believes that the execution criteria of Enhanced SuperMAX and Timed Enhanced SuperMAX should contribute to an orderly market because they help to reduce variations from trade to trade on low volume. Finally, although the proposals will not automatically provide price improvement, they will provide some opportunity for customers to receive a better price. The Enhanced SuperMAX being proposed in this filing is identical to the previous pilot program except that the start up time will be 8:45 a.m. (C.T.). The Timed Enhanced SuperMAX procedures are identical to those of Enhanced SuperMAX except that the stopped order will be executed at the top price after a period of time that has been designated by the specialist but may not be shorter than 30 seconds has expired. This additional feature is intended to allow orders in inactive stocks to be provided with an opportunity for price improvement but to be executed without unduly delay. Therefore, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, perfect the mechanisms of a free and open market, and in general to protect investors and the public interest.

The Commission believes that it would be appropriate to allow the Exchange to implement Enhanced SuperMAX and Timed Enhanced SuperMAX for a one-year period to afford the Exchange and the Commission an opportunity to monitor the operation of the systems and determine their effectiveness. The Exchange should monitor the use of the systems during the one-year pilot period and assure the Commission that there are no adverse effects on the quality of customer order executions. Moreover, the Exchange should examine the use of the systems during the pilot period to determine whether specialists are choosing the appropriate system for each of their stocks.

The Commission, therefore, requests that the Exchange submit a report to the Commission by May 31, 1996, describing its experience with the pilot program. At a minimum, this report should contain the following data gathered during the first 9-month period after the start-up date for Enhanced SuperMAX and Timed Enhanced SuperMAX: (1) The number of orders executed in SuperMAX, Enhanced SuperMAX, and Timed Enhanced SuperMAX; (2) share and dollar volume for all three systems; (3) comparisons of orders executed under SuperMAX, Enhanced SuperMAX, and Timed Enhanced SuperMAX, indicating where orders executed under one system would have received a more favorable execution under another system; (4) the number of specialists using each system, and the number of stocks included in each; (5) the average length of time between receipt of an order and execution under each system; (6) the types of securities being chosen for each system (if a pattern is discernable); (7) a break down of each issue chosen for

[9] The term ''out-of-range'' means either higher or lower than the price range in which the security traded on the primary market during a particular trading day.

[10] When stocks are removed from Enhanced SuperMAX or Timed Enhanced SuperMAX, CHX would broadcast a message through the MAX system indicating that the affected stocks are off Enhanced SuperMAX or Timed Enhanced SuperMAX. Telephone conversation between David Rusoff, Foley & Lardner, and Jennifer Choi, Attorney, Division of Market Regulation, SEC. on July 21, 1995.

[11] *See* letter from David Rusoff, Foley & Lardner, to Glen Barrentine, Senior Counsel, SEC, dated July 21, 1995.

[12] The Exchange sought approval of the Enhanced SuperMAX program to evaluate both Enhanced SuperMAX and SuperMAX systems and determine which system it wanted to implement. In 1993, the Exchange chose to implement SuperMAX rather than Enhanced SuperMAX and sought approval of SuperMAX on a permanent basis. The Commission permanently approved SuperMAX believing that the automated execution feature of SuperMAX would provide a more efficient means of bettering the execution price on a large volume of electronically delivered market orders than through manual processing. The Enhanced SuperMAX pilot expired in 1993 without the Exchange requesting an extension or permanent approval. *See* Securities Exchange Act Release No. 32631 (July 14, 1993), 58 FR 30969 (July 21, 1993) (File No. SR–MSE–93–10) (approving permanently SuperMAX).

[13] *See* Secutiries Exchange Act Release No, 30058 (Dec. 10, 1991), 56 FR 65765 (Dec. 18, 1991) (order approving SR–MSE–91–12).

[14] In the initial pilot approval order, the Commission described its concerns with the program and requested that the Exchange submit a report detailing the use of the pilot. The Exchange, however, did not submit a report because specialists on the Exchange made little or no use of the pilot program. Telephone conversation between David Rusoff, Foley & Lardner, and Glen Barrentine and Jennifer Choi, SEC. on July 18, 1995.

each system during the pilot period, including each date the issue was placed on each system and removed; and (8) whether any distinguishable market condition existed when an issue was placed on or taken off each system. Any requests to modify this pilot program, to extend its effectiveness, or to seek permanent approval for the pilot program also should be submitted to the Commission by May 31, 1996, as a proposed rule change pursuant to Section 19(b) of the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that it is appropriate to approve the proposed rule change on an accelerated basis so that the Exchange can enable public customers to receive the benefits of Enhanced SuperMAX and Timed Enhanced SuperMAX without delay. Moreover, the Enhanced SuperMAX feature previously has been on a pilot program from December 1991 through April 1993, and the Commission is approving CHX's Enhanced SuperMAX and Timed Enhanced SuperMAX only for a one-year pilot period.[15] During that time, the Commission and the Exchange will be able to examine whether these programs are successful at providing for automatic execution of orders at prices consistent with the maintenance of fair and orderly markets and can determine whether to extend the pilots for a further period or make the programs permanent. The Commission, therefore, believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.[16]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–CHX–95–15) is approved on a pilot basis until July 31, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18960 Filed 8–1–95; 8:45 am]

BILLING CODE 8010–01–M

[15] The Enhanced SuperMAX system has been published for comment in the **Federal Register** previously, and there have been no adverse comments on it.

[16] 15 U.S.C. 78f (1988 & Supp. V 1993).

[17] 15 U.S.C. 78s(b)(2) (1988).

[18] 17 CFR 200.30–3a(a)(12) (1994).

DEPARTMENT OF STATE

[Public Notice 2232]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

SUMMARY: The Office of Overseas Schools of the Department of State is responsible for determining that adequate educational opportunities exist at Foreign Service posts for dependents of U.S. Government personnel stationed abroad, and for assisting American-sponsored overseas schools to demonstrate U.S. educational philosophy and practice. The Foreign Assistance Act of 1961, as amended, Mutual Educational and Cultural Affairs Act of 1961, as amended, and the Department of State Basic Authorities Act of 1956, as amended by the Foreign Service Act of 1980, authorize the function of the Office of Overseas Schools. The information gathered enables the Office of Overseas Schools to advise the Department and other foreign affairs agencies regarding current and constantly-changing conditions, and also to make judgments regarding assistance to schools for the improvement of educational opportunities. The following summarizes the information collection proposals submitted to OMB:

1. Type of request—Reinstatement.
   Originating office—Bureau of Administration, Office of Overseas Schools.
   Title of information collection—Overseas Schools Questionnaire.
   Form No.—FS–573, FS–573A, FS–573B.
   Frequency—Annually.
   Respondents—American sponsored schools overseas.
   Estimated number of respondents—190.
   Average number of responses per respondent—1.
   Average hours per response—1 hour.
   Total estimated burden hours—190.
2. Type of request—Reinstatement.
   Originating office—Bureau of Administration, Office of Overseas Schools.
   Title of information collection—Request for Assistance.
   Form No.—FS–574.
   Frequency—Annually.
   Respondents—American sponsored schools overseas.
   Estimated number of respondents—190.
   Average number of responses per respondent—1.
   Average hours per response—.5.
   Total estimated burden hours—95.

Section 3504(h) of Public Law 96–511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Charles S. Cunningham (202) 647–0596. Comments and questions should be directed to (OMB) Jefferson Hill (202) 395–3176.

Dated: June 25, 1995.

Patrick F. Kennedy,

Assistant Secretary for Administration.

[FR Doc. 95–18901 Filed 8–1–95; 8:45 am]

BILLING CODE 4710–24–M

Bureau of Political-Military Affairs

[Public Notice 2211]

Determination Under the Arms Export Control Act

Pursuant to Section 654(c) of the Foreign Assistance Act of 1961, as amended, notice hereby is given that the Under the Secretary of State for Arms Control and International Security Affairs has made a determination pursuant to Section 73 of the Arms Export Control Act and has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: May 15, 1995.

Thomas E. McNamara,

Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 95–18902 Filed 8–1–95; 8:45 am]

BILLING CODE 4710–25–M

[Public Notice 2233]

Privacy Act of 1974; Altered Systems of Records

Notice is hereby given that the Department of State proposes to alter three systems of records, STATE–05, STATE–26 and STATE–39 pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on July 20, 1995.

It is proposed that the current system STATE–05 entitled ''Consular Service and Assistance Records'' be renamed

''Overseas Citizens Services Records.'' The system names for Passport Records (STATE–26) and Visa Records (STATE–39) will not change. It is also proposed that the three system descriptions include revisions and/or additions to each section except ''Systems exempted from certain provisions of the Act.'' The altering of these systems of records will reflect more accurately the Bureau of Consular Affairs' recordkeeping practices, the enlargement of the scope of its mandate, and a reorganization of its activities and operations. It should be noted that the Overseas Citizens Services Records and Passport Records may overlap due to their inter-relationship. Also, records about consular affairs matters will be removed from Overseas Records, STATE–25 and will become part of STATE–05, STATE–26 and/or STATE–39. STATE–25 will be amended and updated in the near future.

Any persons interested in commenting on these altered systems of records may do so by submitting comments in writing to Margaret P. Grafeld; Chief, Privacy, Plans, and Appeals Division; Office of Freedom of Information, Privacy and Classification Review; Room 1239, Department of State, 2201 C Street, NW, Washington, DC 20520–1239. These systems of records will be effective 40 days from the date of publication, unless we receive comments which will result in a contrary determination.

The altered system descriptions, ''Overseas Citizens Services Records, STATE–05,'' ''Passport Records, STATE–26'' and ''Visa Records, STATE–39'' will read as set forth below.

Dated: July 19, 1995.

Patrick F. Kennedy,

Assistant Secretary for the Bureau of Administration.

STATE–05

SYSTEM NAME:

Overseas Citizens Services Records.

SECURITY CLASSIFICATION:

Classified.

SYSTEM LOCATION:

Department of State, 2201 C Street, NW, Washington, DC 20520 and overseas at U.S. embassies, U.S. consulates general and consulates. (A list of overseas posts is available from the Bureau of Consular Affairs, Room 4800, Department of State, Washington, DC 20520–4818.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals assisted by the Office of Overseas Citizens Services or by consular officers overseas including persons, generally U.S. citizens, who:

(a) Seek to establish claims to U.S. citizenship or inquire concerning possible loss of U.S. citizenship;

(b) Apply for U.S. passports or Consular Reports of Birth Abroad;

(c) Register as U.S. citizens living or traveling abroad;

(d) Are evacuated to the United States or a third country as the result of a civil disorder, natural disaster or similar emergency in an overseas locale;

(e) Initiate, or are the subjects of, requests relating to their welfare and whereabouts;

(f) Receive financial assistance or are repatriated;

(g) Receive emergency medical assistance;

(h) Are detained or arrested overseas;

(i) Seek or receive notarial, authentication, or judicial assistance;

(j) Die overseas or are involved in the disposition of a decedent's personal estate;

(k) Assert an interest in property abroad;

(l) Are living overseas and claim or receive federal benefits;

(m) Are involved in an international child custody dispute, possible child abuse case, or child support enforcement proceeding;

(n) Vote in U.S. federal or state elections while living overseas;

(o) Register with the U.S. Selective Service System while living overseas;

(p) Are inquiring concerning an international adoption;

(q) Are American seamen who have inquired about seamen consular services;

(r) Have sought or received benefits by virtue of having been held hostage overseas or by virtue of their relationship with an individual held hostage overseas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(a) 8 U.S.C. 1401 *et seq.* (Adjudication of claim to U.S. citizenship);

(b) 8 U.S.C. 1481, 1501 (Adjudication of possible loss of nationality and preparation of Certificates of Loss of Nationality);

(c) 22 U.S.C. 211a, 212, 213, 217(a), 218 (Passport application and issuance);

(d) 22 U.S.C. 2705 (Preparation of Consular Reports of Birth);

(e) 22 U.S.C. 1731 (Protection of naturalized U.S citizens abroad);

(f) 22 U.S.C. 2671(b)(2)(B) (Repatriation loan for destitute U.S. citizens);

(g) 22 U.S.C. 2670(j) (Provision of emergency medical/dietary assistance);

(h) 22 U.S.C. 2151n–1 (Assistance to arrested citizens) (Repealed, but applicable to past records.);

(i) 22 U.S.C. 4215, 4221 (Administration of oaths, affidavits, and other notarial acts);

(j) 28 U.S.C. 1740, 1741 (Authentication of documents);

(k) 28 U.S.C. 1781–1783 (Judicial assistance to U.S. and foreign courts);

(l) 22 U.S.C. 4196 (Notification of death; inventory of decedents' effects;

(m) 22 U.S.C. 5502–5513 (Secs. 204–215) (Assistance in aviation disasters abroad);

(n) 22 U.S.C. 4195, 4197 (Estates of deceased citizens);

(o) 22 U.S.C. 3904 (Assistance to other agencies);

(p) 42 U.S.C. 402 (Old-age and survivors insurance benefits payments);

(q) 50 App. U.S.C. 453, 454, Presidential Proclamation No. 4771, July 2, 1980 (Selective Service registration);

(r) 42 U.S.C. 1973ff–1973ff–6 (Overseas absentee voting);

(s) 22 U.S.C. 4193, 4194, 4205–4207, 46 U.S.C. 10318 (Assistance to shipping and seamen);

(t) 46 U.S.C. 10701–10705 (Responsibility for deceased seamen and their effects);

(u) 42 U.S.C. 11601–11610, International Child Abduction Remedies Act; Convention on the Civil Aspects of International Child Abduction; E.O. 12648, August 11, 1988, 53 FR 30637);

(v) Sec. 599C of Pub. L. 101–513 as amended (Claims to benefits by virtue of hostage status).

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for passports and registration as U.S. citizens;* Consular Reports of Birth;* Certificates of Loss of Nationality of the United States;* Reports of Death;* emergency medical and dietary loan applications; repatriation loan applications; applications for benefits for hostages; seamen services records; welfare and whereabouts records; federal benefits claims; property claims; arrest cases; estate cases; judicial assistance cases; international adoption cases; and child custody cases, including applications filed under the Hague Convention on International Child Abduction.

These records may also include: registration cards; interview worksheets; fingerprint cards; documents of identity; affidavits of identity; and various related forms not otherwise stated as well as communications from U.S. embassies, U.S. consulates general, consulates, federal, state and local government agencies, members of Congress, officials of foreign

* These records are eventually transferred from Overseas Citizens Services Records, STATE–05, to Passport Records, STATE–26.

governments and courts or organizations such as the Red Cross, subject of the record, attorneys, relatives and other interested parties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in the Overseas Citizens Services Records is used primarily in the adjudication of claims relating to acquisition or loss of U.S. citizenship; the protection and assistance of individuals abroad; the assistance to individuals involved in child custody; adoption and child support enforcement proceedings; and the resolution of property, estate, and benefits claims arising under the pertinent statutes. The routine uses for Passport Records, STATE–26, apply to applications for passports and registration as U.S. citizens, Consular Reports of Birth, Certificates of Loss of Nationality of the United States, Reports of Death, and related documentation. The principal users of this information outside the Department of State are: Social Security Administration; Veterans Administration; Department of Health and Human Services; U.S. Public Health Service; Office of Personnel Management; Railroad Retirement Board; Treasury Department; Department of Labor; Department of Justice; Drug Enforcement Administration; Selective Service; Department of Defense; Federal Aviation Administration; U.S. Maritime Administration; Department of Commerce; Foreign Claims Settlement Commission; Immigration and Naturalization Service; Secret Service; Internal Revenue Service for the current addresses of specifically identified taxpayers in connection with pending actions to collect taxes accrued, examinations, and/or other related tax activities; Foreign and domestic airlines when the information is required for the purpose of notifying next-of-kin of the death, injury or status of the individual to whom it pertains, or in connection with a medical evaluation of the individual to whom it pertains; Funeral homes in connection with the death abroad of citizens of the U.S.; Members of Congress when the information is requested on behalf of the individual to whom access is authorized under these rules; Shipping companies when the information is maintained pursuant to the Department's responsibility under Title 46 of the U.S. Code; Immediate families when the information is required for the benefit of the subject by the individual's immediate family; Private United States citizen ''wardens'' designated by U.S. embassies and U.S. consulates general and consulates to serve, primarily in emergency and evacuation situations, as channels of communication with other Americans in the local community; Attorneys when the individual to whom the information pertains is the client of the attorney making the request, or when the attorney is acting on behalf of some other individual to whom access is authorized under these rules; the Red Cross; State law enforcement agencies; including state prosecutors; Foreign governments, embassies and consulates when the request for information is made pursuant to customary international practice; Private citizens whenever the individual to whom the information pertains has authorized the Department in writing to release such information; INTERPOL; National Center for Missing and Exploited Children; Various central authorities of member countries of the Hague International Child Abduction Convention; Contacts identified by state governments to assist in implementation of the Hague International Child Abduction Convention; Bar associations and legal aid services to assist in facilitating operations under the Hague International Child Abduction Convention; Local police in connection with notification of next-of-kin and child custody disputes; Social service agencies; and Parents involved in Hague International Child Abduction cases. This information may also be released on a need-to-know basis to other government agencies having statutory or other lawful authority to maintain such information; information is made available to routine users only for an established routine use. Also see the ''Routine Uses'' paragraph of the Prefatory Statement published in the **Federal Register**.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media, hard copy.

RETRIEVABILITY:

By individual name, passport number.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation, and contractors have had background investigations in accordance with the scope of their contract. Access to the Department of State and posts abroad is controlled by security guards, and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets or in restricted areas access to which is limited to authorized personnel. Access to computerized data bases is password-protected and under the responsibility of the system manager and persons who report to him or her. The system manager has the capability of printing audit trails of access from the electronic media, thereby permitting regular *ad hoc* monitoring of computer usage.

RETENTION AND DISPOSAL:

Retention of these records varies depending upon the specific kind of record involved. They are retired or destroyed in accordance with published record schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director, Office of Freedom of Information, Privacy, and Classification Review; Room 1239; Department of State; 2201 C Street, NW; Washington, DC 20520–1239.

SYSTEM MANAGER AND ADDRESS:

Deputy Assistant Secretary for Overseas Citizens Services; Room 4800; Department of State; 2201 C Street, NW; Washington, DC 20520–4818. At overseas locations, the on-site system manager is the Chief of the Consular Section or another State Department employee with responsibility for consular services as provided by the post in question.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Office of Overseas Citizens Services might have records pertaining to themselves should write to the Director, Office of Freedom of Information, Privacy and Classification Review; Room 1239; Department of State; 2201 C Street, NW; Washington, DC 20520–1239. The individual must specify that he/she wishes the Overseas Citizens Services Records checked. At a minimum, the individual must include: Name; date and place of birth; current mailing address and zip code; signature; a brief description of the circumstances which may have caused the creation of the record, including the location (city and country); and the approximate dates which give the individual cause to believe that Overseas Citizens Services has records pertaining to him/her. A request to search Overseas Citizens Services Records, STATE–05, will be treated also as a request to search Passport Records, STATE–26, when it pertains to passport, registration,

citizenship, birth or death records transferred from STATE–05 to STATE–26.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of Freedom of Information, Privacy and Classification Review (address above).

RECORDS SOURCE CATEGORIES:

These records contain information obtained primarily from the individual who is the subject of these records; consular officers; relatives; and interested federal, state and local agencies; and officials of foreign governments and courts or organizations such as the Red Cross.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Certain records contained within this system of records are exempted from 5 U.S.C. 522a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f). See Department of State Rules published in the **Federal Register**.

STATE–26

SYSTEM NAME:

Passport Records.

SECURITY CLASSIFICATION:

Classified.

SYSTEM LOCATION:

Department of State, Passport Services, Annex 17, 1111 19th Street, NW, Washington, DC 20522–1705.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals who have applied for the issuance, amendment, extension or renewal of U.S. passports;

(b) Individuals who have been issued U.S. passports or had passports amended, extended, renewed, limited, revoked or denied;

(c) Individuals who have applied to have births overseas reported as births of U.S. citizens overseas;

(d) Individuals for whom Consular Reports of Birth Abroad of U.S. citizens or Certifications of Birth have been issued;

(e) Individuals who have applied at American Diplomatic or Consular posts for registration and have so registered;

(f) Individuals who have been issued Certificates of Identity or Cards of Registration and Identity as U.S. citizens;

(g) Individuals for whom the Department of State has issued Certificates of Loss of Nationality of the United States;

(h) Individuals who have applied at American Diplomatic or Consular Posts for issuance of Certificates of Witness to Marriage, and, individuals who have been issued Certificates of Witness to Marriage;

(i) Deceased individuals for whom a Report of Death of an American Citizen Abroad has been obtained;

(j) Individuals who although U.S. citizens are not or may not be entitled under passport laws and regulations to the issuance or possession of U.S. passports or other documentation or service;

(k) Individuals whose previous passport records must be reviewed before further action can be taken;

(l) Individuals who requested passport records under FOIA or the Privacy Act, whether successful or not;

(m) Individuals who have corresponded with Passport Services concerning various aspects of the issuance or denial of U.S. passports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(a) 8 U.S.C. 1401–1503 (Acquisition and Loss of U.S. Citizenship's use of U.S. Passports);

(b) 18 U.S.C. 911, 1001, 1541 thru 1546

(c) 22 U.S.C. 211a thru 218, 1172 (now repealed), 2658, 2662, 2705: Executive Order 11295, August 5, 1966, 31 FR 10603; (Authority of the Secretary of State in granting and issuing U.S. passports);

(d) 8 U.S.C. 1185 (Travel documentation of Citizens).

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for passports, or applications for amendment, extension or renewal of passports; applications for registration at American Diplomatic and Consular Posts as U.S. citizens or for issuance of Certificates of Identity or Cards of Identity and Registration as U.S. Citizens; Consular Reports of Birth Abroad of United States citizens; Certificates of Witness to Marriage; Certificates of Loss of United States Nationality; Certificates of Expatriation; Oaths of Repatriation; and Reports of Death of an American Citizen Abroad. Names of persons who have applied for, been issued passports or related facilities; and, to the extent not included in the Application for Vital Records or other category of records maintained by this agency; the names of persons who have been issued Consular Reports of Birth; Certificates of Birth; Consular Certificates of Repatriation; Certificates of Witness to Marriage; Certificates of Loss of United States Nationality; Reports of Death of an American Citizen Abroad; or been registered or issued Certificates of Identity or Cards of Identity and Registration as U.S. citizens; Lookout files which identify those persons whose cases require other than routine examination or action; Miscellaneous materials—those documents/records maintained separately, if not in the application, including but not limited to: Investigatory reports compiled in connection with granting or denying passport and related services or prosecuting violations of passport criminal statutes; transcripts and opinions on administrative hearings, appeals and civil actions in federal courts; legal briefs, memoranda, judicial orders and opinions arising from administrative determinations relating to passports and citizenship; birth and baptismal certificates; court orders; arrest warrants; medical, personal and financial reports; affidavits; inter-agency and intra-agency memoranda, telegrams, letters and other miscellaneous correspondence; an electronic index of all passport application records created since 1978 and some passport application records created between 1962 and 1978; a currently expanding electronic index of Department of State Reports of Birth of American Citizens abroad which will eventually include all such documents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information maintained in the Passport Services records is used to establish the U.S. citizenship and identity of persons for a variety of legal purposes including, but not limited to the adjudication of passport applications and requests for related services, social security benefits, employment applications, estate settlements and federal and state law enforcement investigations. The principal users of this information outside the Department of State are: Internal Revenue Service for the current addresses of specifically identified taxpayers in connection with pending actions to collect taxes accrued, examinations, and/or other related tax activities; Foreign governments, to permit such governments to fulfill passport control and immigration duties; Federal, state, local or other agencies having information on an individual's history, nationality or identity; to the extent necessary to obtain information from these agencies relevant to adjudicating an application for a passport or related service or where there is reason to believe that an individual has applied for or is in possession of a U.S. passport

fraudulently or has violated the law; Immediate families when the information is required by the individual's immediate family and may be released consistent with the Privacy Act and/or the Freedom of Information Act; Private U.S. citizen ''wardens'' designated by U.S. embassies and consulates to serve, primarily in emergency and evacuation situations, as channels of communication with other U.S. citizens in the local community; Attorneys when the individual to whom the information pertains is the client of the attorney making the request; Members of Congress when the information is requested on behalf of the individual to whom access is authorized under these rules. This information may also be released on a need-to-know basis to other government agencies having statutory or other lawful authority to maintain such information; information is made available to routine users only for an established routine use. Also see the ''Routine Uses'' paragraph of the Prefatory Statement published in the **Federal Register**.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy, electronic media.

RETRIEVABILITY:

By individual name or passport number.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation and contractors have background investigations in accordance with their contracts. Access to the Department of State and its annexes is controlled by security guards, and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. Access to passport office annexes have security access controls (code entrances) and/or security alarm systems. All records containing personal information are maintained in secured file cabinets or in restricted areas access to which is limited to authorized personnel. Access to computerized data bases is password-protected and under the responsibility of the system manager and persons who report to him or her. The system manager has the capability of printing audit trails of access from the electronic media, thereby permitting regular *ad hoc* monitoring of computer usage.

RETENTION AND DISPOSAL:

Retention of these records varies depending upon the specific record involved. They are retired or destroyed in accordance with published record schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director, Office of Freedom of Information, Privacy and Classification Review; Room 1239; Department of State; 2201 C Street, NW., Washington, DC 20520–1239.

SYSTEM MANAGER AND ADDRESS:

Deputy Assistant Secretary of State for Passport Services, Room 5807; Department of State; 2201 C Street, NW., Washington, DC 20520–4818.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that Passport Services might have records pertaining to themselves should write to the Director, Office of Freedom of Information, Privacy and Classification Review; Room 1239; Department of State; 2201 C Street, NW., Washington, DC 20520–1239. The individual must specify that he/she wishes the Passport Services records checked. At a minimum, the individual must include: Name, date and place of birth, current mailing address, zip code, signature and passport number if known. A request to search Passport Records, STATE–26, will be treated also as a request to search Overseas Citizens Services Records, STATE–05, when it pertains to passport, registration, citizenship, birth or death records transferred from STATE–05 to STATE–26.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of Freedom of Information, Privacy and Classification Review (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained primarily from the individual who is the subject of these records; law enforcement agencies; investigative intelligence sources, investigative security sources and officials of foreign governments.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Certain records contained within this system of records are exempted from 5 U.S.C. 552(a), (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f). See Department of State Rules published in the **Federal Register**.

STATE–39

SYSTEM NAME:

Visa records.

SECURITY CLASSIFICATION:

Classified.

SYSTEM LOCATION:

Visa Office, Department of State, Annex 1, 2401 E Street NW, Washington, DC 20522–0113; Department of State, 2201 C Street NW, Washington, DC 20520–4818; National Visa Center, 32 Rochester Avenue, Portsmouth, NH 63801; U.S. embassies, consulates general and consulates.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for visas; aliens who may be ineligible to receive visas including certain dual national U.S. nationals who aside from their U.S. nationality may otherwise be ineligible to receive visas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1101–1503 (Immigration and Nationality Act of 1952, as amended).

CATEGORIES OF RECORDS IN THE SYSTEM:

Visa applications and related forms; fingerprints; birth, marriage, death and divorce certificates; documents of identity; interview worksheets; biographic information sheets; affidavits of relationship; medical examinations and immunization reports; police records; educational and employment records; bank statements; communications between the Visa Office, the National Visa Center and U.S. embassies, U.S. consulates general and U.S. consulates, other U.S. government agencies, international organizations, foreign missions, members of Congress, attorneys, relatives of visa applicants and other interested parties; and internal Department of State correspondence relating to visa adjudication.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in this system is used to assist consular officers in the Department and overseas in dealing with problems of a legal, technical or procedural nature that may arise in considering an application for a U.S. visa. The principal users of this information outside the Department of State (and its embassies, consulates general and consulates) are: the Immigration and Naturalization Service of the Department of Justice, to coordinate the approval of petitions and the issuance of visas; the Department of

Justice including the Federal Bureau of Investigation (and its National Crime Information Center) and the Drug Enforcement Administration; Department of the Treasury, including the Customs Service; Department of Labor; Central Intelligence Agency; Department of Defense; and Congress. Limited unclassified information is released to interested persons inquiring as to the status of a particular visa case. The information may also be released to other government agencies having statutory or other lawful authority to use such information. It is used to produce statistical information for management purposes and to compile reports required by statute. Also see the ''Routine Uses'' paragraph of the Prefatory Statement published in the **Federal Register**.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media, hard copy, microfilm.

RETRIEVABILITY:

Individual name, case number.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation and contractors have had background investigations in accordance with the scope of their contract. Access to the Department and its annexes is controlled by security guards, and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel and authorized contractors of the Department of State. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and *ad hoc* monitoring of computer usage.

RETENTION AND DISPOSAL:

Retention of these records varies depending upon the specific kind of record involved. Files of closed cases are retired or destroyed in accordance with published record schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director, Office of Freedom of Information, Privacy, and Classification Review; Room 1239; Department of State; 2201 C Street NW; Washington, DC 20520–1239.

SYSTEM MANAGER AND ADDRESS:

Deputy Assistant Secretary for Visa Services, Room 6811, Department of State, 2201 C Street, NW, Washington, DC 20520–4818; Director, National Visa Center, 32 Rochester Avenue, Portsmouth, NH 63801. At specific overseas locations the one-site manager is the consular officer responsible for visa processing.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe the Department of State might have visa records pertaining to themselves should write to the Director, Office of Freedom of Information, Privacy and Classification Review; Room 1239; Department of State; 2201 C Street NW; Washington, DC 20520–1239. The individual must specify that he/she wishes the visa records for his/her application at a specific post/posts or in the United States to be checked. At a minimum, the individual must include: Name (and any aliases); date and place of birth; date and place of application; current mailing address and zip code; and signature.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of Freedom of Information, Privacy and Classification Review (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained directly from the individual who is the subject of these records; from attorneys/agents representing these individuals; and from relatives; sponsors; members of Congress; U.S. government agencies; international organizations; and local sources at posts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Certain records contained within this system of records are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). See Department of State Rules published in the **Federal Register**.

[FR Doc. 95–18903 Filed 8–1–95; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–063]

New York Port Oil Pollution Minimization Demonstration

AGENCY: Coast Guard, DOT.

ACTION: Notice of Port Demonstration; request for proposals to participate.

SUMMARY: The Interagency Coordinating Committee on Oil Pollution Research invites interested parties to participate in the New York Port Oil Pollution Minimization Demonstration (Port Demonstration). The purpose of this demonstration, which is mandated by the Oil Pollution Act of 1990 (OPA 90), is to showcase recently developed innovative technologies from oil pollution research and development programs since the passage of OPA 90. These technologies are used in spill prevention, response, mitigation, fate and effects, and restoration. Interested parties are requested to submit proposals for demonstration their technologies. Federal, State, and local government officials, as well as research institutions, colleges, and universities, will receive written invitations to participate and observe. The Port Demonstration will be open to the public.

DATES: The Port Demonstration will be held October 26 through 28, 1995. Proposals for presentations must be received by September 1, 1995.

ADDRESSES: The Port Demonstration will be held at the United States Merchant Marine Academy (USMMA), Kings Point, NY. Proposals for demonstrating technology should be sent to the USCG Research and Development Center (Environmental Safety Branch), 1082 Shennecossett Road, Groton, CT 06340.

FOR FURTHER INFORMATION CONTACT: LTJG Dan Frank, USCG Research and Development Center, 1082 Shennecossett Road, Groton, CT 06340, telephone (203) 441–2761, facsimile (203) 441–2792.

SUPPLEMENTARY INFORMATION: All technologies proposed for demonstration must have been researched and developed since August 1990. Technology presentation proposals will be accepted in any of the following areas:

(1) Improved designs and operational practices for vessels, pipelines, and facilities;

(2) Improved designs to prevent or mitigate tanker and barge spills;

(3) Improved systems for mechanical recovery including containment,

skimming, separation, storage, and collection;

(4) Improved systems for chemical and biological cleanup;

(5) Improved spill management and information systems;

(6) Technologies to protect public and responder safety and health;

(7) Technologies to monitor exposure to oil and oil by-products;

(8) Improved training for responders;

(9) Methods to restore or rehabilitate natural resources;

(10) Innovations in bioremediation technology;

(11) Innovations in Vessel Traffic Systems;

(12) Predictive models for fate, transport and effects of oil discharges;

(13) Methods to assess natural resource damages;

(14) Ecologically sensitive area assessment, monitoring and evaluation;

(15) Collection of environmental baseline data;

(16) Monitoring and evaluation of long-term oil discharge effects;

(17) Application of geographic and vessel simulation models for contingency plan development and evaluation, and personnel training;

(18) Oil pollution risk assessment;

(19) Improved methods for aerial surveillance, sensor analysis, and data transmission to responders;

(20) Casual relationship of human factors to accidents;

(21) Oil spill response expert systems;

(22) Waterways management techniques;

(23) Alternative countermeasures (e.g., in situ burning);

(24) Vessel inspection and salvage;

(25) Spilled oil behavioral studies (e.g., fate and effects); and

(26) Improved oil spill response management practices and systems approaches.

Each technology presentation proposal must include the following information:

(1) Submitter's name, address, and organization or company;

(2) A brief description of the technology to be demonstrated, including the dates the technology was researched and developed and placed into service or may be placed into service;

(3) Identification of which of the topical areas relates to the demonstration. If your technology supports more than one topical area, the primary area should be identified and comments made as to secondary areas the technology addresses; and

(4) Type of demonstration (e.g., exhibit booth, outdoor static equipment display or on-water demonstration) and an estimate of the amount of space needed for the exhibit; booth-type exhibits are limited to an area of 10 feet (wide), 10 feet (deep) and 8 feet (high). If your technology requires an on-water demonstration, or more detailed information is needed, please contact LTJG Frank for requirements.

If your organization has several technologies, and the technologies relate to different topic areas, then a separate proposal is required for each technology. Presentation proposals that are not in one of the listed topical areas will be considered on a case-by-case basis.

The Interagency Subcommittee for Port Demonstrations will review each proposal and select parties to participate in the demonstration. The Interagency Subcommittee for Port Demonstrations reserves the right of selection of exhibits and their decisions will be final. Parties whose proposals are accepted will be notified in writing. Upon acceptance, a one-time fee of $600 is required for each accepted proposal. This fee is required by the USMMA Continuing Education Department and must be received by them no later than 1 October 1995.

Dated: July 27, 1995.

Joseph J. Angelo,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–19009 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD 95–065]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Towing Safety Advisory Committee (TSAC) and its working groups will meet to discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. The agenda will include working group reports, discussion of various Coast Guard programs such as Prevention Through People and Casualty Investigation and introduction of the new Executive Director. The meeting will be open to the Public.

DATES: Meetings of the TSAC working groups will be held on Tuesday, August 29, 1995. These meetings are scheduled to run from 9 a.m. to 4:30 p.m. The TSAC meeting will be held on Wednesday, August 30, 1995, from 9 a.m. to 1 p.m. Written material should be submitted by August 16, 1995, and persons wishing to make oral presentations should notify the Assistant Executive Director not later than August 23, 1995.

ADDRESSES: The TSAC working groups and Committee will meet in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: Assistant Executive Director, LTJG Patrick J. DeShon, Commandant (G–MTH–4), U.S. Coast Guard, 2100 Second Street, S.W., Washington, DC 20593, telephone (202) 267–2997.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 1 et seq. The agenda for the Committee meeting includes the following.

Work Group Reports

(1) Licensing of towing vessel operators;

(2) Radar training for towing vessel operators;

(3) Prevention Through People;

(4) Towing gear standard for vessels pushing ahead/towing alongside;

(5) Distinguishing the marine assistance and commercial towing industries;

(6) Casualty Investigation QAT results; New Issues

(1) Adequacy of tug/barge navigation lights;

(2) Revision of Title Code of Federal Regulations, marine investigation regulations.

With advance notice, and at the discretion of the Chair, members of the public may present oral statements during the meeting. Persons wishing to make oral representations should notify the TSAC Assistant Executive Director at (202) 267–2997 no later than August 23, 1995. Written materials may be submitted for presentation to the Committee any time; however, to ensure distribution to each Committee member, 20 copies of the written material should be submitted to the Assistant Executive Director at the address listed in **FOR FURTHER INFORMATION CONTACT** by August 16, 1995

Dated: July 27, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–19008 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–14–M

Office of Commercial Space Transportation

[Docket 50324]

Commercial Space Transportation; Grant of Petition for Waiver of Safety Criterion for METEOR Reentry Vehicle System

AGENCY: Office of the Secretary; Office of Commercial Space Transportation, DOT.

ACTION: Notice.

SUMMARY: Pursuant to 49 U.S.C. Subtitle IX, ch. 701, formerly the Commercial Space Launch Act of 1984, as amended, and the Department of Transportation licensing regulations, the Department of Transportation (the Department) has been evaluating a proposed commercial reentry vehicle system as part of the first application for a license to place a reentry vehicle into space. EER Systems Corporation, the operator of the proposed reentry vehicle system, has petitioned the Department for relief from the first of three safety criteria against which its vehicle is being assessed. The Department has determined to waive the accuracy and reliability criterion in light of the applicant's proposed operations and that doing so will not jeopardize public safety. This notice sets forth the basis for the Department's determination to grant the petition.

FOR FURTHER INFORMATION CONTACT: Ronald K. Gress, Deputy Associate Director for Licensing and Safety, Office of Commercial Space Transportation, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 (202) 366–2929.

SUPPLEMENTARY INFORMATION:

Background

The Department of Transportation's (the Department) Office of Commercial Space Transportation (Office) is evaluating the first commercial reentry vehicle system, known as METEOR (Multiple Experiment to Earth Orbit and Return), to determine whether it may be launched into space. The Office is conducting its review as part of the Department's responsibility to license and otherwise regulate commercial space launch activities under 49 U.S.C. Subtitle IX, ch. 701—''Commercial Space Launch Activities,'' formerly the Commercial Space Launch Act of 1984, as amended. Under 49 U.S.C. Subtitle IX, ch. 701, the Department has broad authority to determine whether the launch of an otherwise unlicensed payload, such as a reentry vehicle system, should be prevented because the launch would jeopardize public health and safety, safety of property, or any national security or foreign policy interest of the United States (49 U.S.C. 70104(c)). The Office is the Secretary's designee for carrying out the Department's mandate under the statute.

OCST's Payload Determination Process

The Office's approach to evaluating the first commercial reentry vehicle system is described in two Notices previously published in the **Federal Register** (57 FR 10213–10216, published March 24, 1992; and 57 FR 55021, published November 23, 1992). Under that approach, the applicant or operator of the reentry vehicle system is required to apply for and obtain a favorable payload determination, consisting of: (i) A vehicle safety approval (VSA), whereby the applicant demonstrates that its integrated system is capable of being operated safely, and (ii) an operations review approval (ORA), whereby the operator demonstrates its capability to operate the system safely. Both approvals (VSA and ORA) are necessary to obtain a favorable payload determination.

The first Notice set forth the three criteria against which the COMET (COMmercial Experiment Transporter) reentry vehicle system would be assessed for purposes of obtaining a VSA. The latter Notice set forth the Office's intent to issue a single license authorizing the launch into space of the COMET reentry vehicle system, subject to, among other things, a favorable payload determination for the reentry vehicle system. Although the three criteria enumerated by the Office in the first Notice were developed in response to the COMET Program, which has since been discontinued, they are equally applicable to the pending application for METEOR.[1]

EER Systems Corporation (EER) is proposing to operate and reenter the METEOR reentry vehicle system and has applied to the Office for a payload determination. By letter dated May 1, 1995, EER petitioned the Office requesting relief from the probability of accuracy criterion (Criterion 1) enumerated in the March 24, 1992 Notice.

The METEOR Program

Under the METEOR Program, EER is proposing to launch the METEOR reentry vehicle system to low earth orbit using its newly-developed Conestoga launch vehicle. The Conestoga will be launched from NASA's Wallops Flight Facility, Virginia. EER is currently authorized to launch the Conestoga launch vehicle under License No. LLS 94–030. The authorization to launch is conditional upon issuance by the Office of final mission approval, including a favorable payload determination, for the METEOR reentry vehicle system.

The METEOR Program is similar to COMET. EER is proposing to launch METEOR to a 40.5 degree inclination low earth orbit (approximately 250 nautical miles) where it will remain on orbit for approximately 30 days for long duration microgravity experiments. Upon command from EER ground personnel, the reentering portion of the system (the reentry vehicle) will separate from the service module, its retromotor will activate, and the reentry vehicle will reenter along a ballistic trajectory to a designated landing site on earth. The reentry vehicle is smaller than the Mercury capsules used to return astronauts to earth in the early years of the manned space program, weighs about 730 pounds and is roughly three feet high by 52 inches in diameter at its widest point. The reentry vehicle is unguided; however, its ability to land within the designated site is affected by several factors determined immediately preceding initiation of reentry, including pointing accuracy, timing of the retroburn, and duration of the retroburn. Upon descent, a parachute is released to assure a soft landing. The service module will remain on orbit and continue to support microgravity experiments for approximately 130 days or more. The service module's orbit will eventually decay and it will reenter the earth's atmosphere, burning up during reentry and presenting no greater risk to public safety than other reentering orbital debris.

In a significant departure from the COMET Program, EER's proposal designates an oceanic landing site, whereas the COMET proposal had designated the Utah Test and Training Range, a 24 x 51 mile U.S. Government facility located in a sparsely populated area of Utah. EER is proposing to reenter the METEOR reentry vehicle in the Atlantic Ocean and has designated as its landing site an area that is 18.4 nautical miles wide and 87.1 nautical miles long, centered around a targeted mid-point

[1] The COMET Program, as originally administered, was suspended in May 1994, when NASA determined not to augment a grant to the Center for Space Transportation and Applied Research (CSTAR), which was responsible for procuring the COMET mission. Nearly a year later, EER Systems Corporation (EER), one of the original participants in the COMET Program, advised the Office that it had taken over the COMET Program and would be responsible for the entire program, including the reentry. The spacecraft, originally developed by Space Industries, Inc., as part of the COMET Program, has been renamed METEOR.

approximately 85 miles off the coast of Virginia.

Vehicle Safety Approval Criteria

The three criteria enumerated in the March 24, 1992 Notice for the first COMET mission, and now METEOR, all of which would have to be satisfied under the Notice, are as follows:

1. The probability of the reentry vehicle landing outside the designated landing site shall not be greater than three in one thousand missions.

2. The additional risks to the public in the immediate vicinity of the landing site (i.e., the area within 100 miles of the designated landing site) shall not exceed the normal background risks to which those individuals would ordinarily be exposed but for the reentry missions. This normal background risk is characterized as: the probability of any casualty occurring within the 100-mile zone shall not exceed one in a million on an annual basis. In addition, the probability of any casualty occurring within the zone shall not exceed one in a million for a single mission.

3. The additional risks to the general public beyond the 100-mile zone around the designated landing site, and to property on orbit, shall not exceed normal background risks to which the public would ordinarily be exposed but for the reentry missions. This normal background risk is characterized as: the probability of any casualty occurring shall not exceed one in a million on an annual basis. In addition, the probability of any casualty occurring in the area that is both outside of the designated landing site and the 100-mile zone around the site shall not exceed one in a million for a single mission.

The March 24, 1992 Notice also provides supporting rationale for the criteria and explains their separate but interrelated safety objectives generally as follows:

- Criterion 1 is intended to assure reliable, accurate, incident-free reentry operations in order to foster public acceptance of commercial space transportation and minimize public exposure to risk. Criterion 1 assumes nominal pre-reentry operations conditions and addresses factors that affect accuracy after reentry is initiated. In its petition, EER has requested that OCST waive this criterion.
- Criterion 2 is intended to limit risks to the population that believes it may be more exposed to hazards resulting from commercial reentry operations because of their proximity to the designated landing site and to ensure they face no greater risk from commercial reentry operations than ordinary background risk. Criterion 2 becomes most relevant in the event of a system error or failure that causes a deviation from the vehicle's planned trajectory.
- Criterion 3 is intended to limit risks to the general public to ensure it, too, faces no additional risk beyond ordinary background risk as a result of commercial reentry activities. Criterion 3 addresses the risks posed by an essentially random reentry as a result of a major system failure during the reentry process.
- As stated in the March 24, 1992 Notice, the criteria acknowledge that some hazards, and therefore risks accompany the proposed reentry activity. The criteria reflect those hazards reduced to acceptable levels of risk. Through the criteria, the Office has established a level of acceptability comparable to that employed in other safety regulatory regimes, such as those administered by the Environmental Protection Agency, and consistent with risk thresholds utilized by Federal launch ranges as part of range safety.

Since early 1992, when the criteria addressing the COMET Program proposal were established, the design of the reentry vehicle system and the proposal to reenter it have evolved and matured. These developments have allowed the Office to assess specific aspects of reentry risks and their impact on public safety with greater clarity.

The three criteria are intended to address the risks to public safety that result from a human-induced reentry. For the majority of its mission, the risks presented by the METEOR reentry vehicle system are the same as those presented by other space payloads. It is the fact that the METEOR reentry vehicle is operated so as to land at a designated landing site and designed to withstand the stress of reentry that raises the potential of risk to public safety. Accordingly, in evaluating whether METEOR satisfies the criteria, the Office considers only human-induced or intentional reentries. The Office has determined that a human-induced reentry occurs when reentry is intentionally initiated upon command from ground personnel and the vehicle returns to earth within one orbit. The Office believes that there should be a direct relationship between initiating reentry and the reentry event itself for it to be considered human-induced or intentional. If the vehicle does not reenter upon command within one orbit, the direct relationship is broken and the vehicle remains on orbit as any other payload. A malfunctioning vehicle that remains on orbit and then reenters the atmosphere as a result of orbital decay or other intervening events has not completed a human-induced or intentional reentry and the criteria do not apply.[2] Thus, the Office considers only those system failures or nominal system variations that may occur during the course of a ''human-induced'' or intentional reentry in assessing METEOR's ability to meet Criteria 1, 2 and 3.

Petition to Waive Criterion 1

EER's petition requesting relief from Criterion 1 is based, in part, on its misunderstanding of performance-based criteria. In establishing performance-based criteria for COMET, the Office stated its belief that, unlike design standards, ''performance-based criteria allow the maximum flexibility in developing a safe and cost-effective product. The Office further believes that performance-based criteria enhance the public interest by encouraging innovation and technology development. This environment promotes safe space transportation services at lower cost and helps assure that customers' needs are addressed.'' (57 FR 10213, 10215)

In its petition, EER asserts, among other things, the difficulty of using performance-based standards to demonstrate reliability in the absence of flight performance history. EER further maintains that satisfying Criteria 2 and 3, without Criterion 1, would be sufficient to ensure that public safety is not compromised. EER suggests that Criterion 1 affords no additional protection to the public beyond that provided by satisfying Criteria 2 and 3.

Although the Office disagrees with EER's characterization of performance-based standards, the Office has evaluated whether Criterion 1 may be waived for the METEOR reentry mission without jeopardizing public safety. The Office undertook this evaluation because it is consistent with the Department's statutory mandate to issue a favorable payload determination allowing METEOR to be launched for its intended reentry mission if the Office finds that the proposed mission can be conducted without jeopardizing public safety and U.S. national interests.

[2] Even if an operator attempts an intentional reentry, it may fail for a number of reasons. METEOR includes a number of built-in fail-safe systems that automatically terminate the reentry sequence if certain conditions that would cause an inaccurate or otherwise unsafe reentry are detected. In addition, a system required for reentry to proceed could fail, leaving the reentry vehicle on orbit for more than one orbit. In both instances, there has not been a human-induced reentry and the spacecraft assumes a status essentially equivalent to other objects left in space. In the Office's assessment of the vehicle, neither of these failure scenarios are considered in determining whether the criteria have been met.

In conducting its evaluation, the Office considered the relationship between accuracy (Criterion 1) and public safety. While accuracy contributes significantly to assuring public safety and is important to developing public and consumer confidence, the Office considered whether there are circumstances in which intentional reentry can occur and public safety is assured without the demonstrated level of accuracy required by Criterion 1. Next, the Office considered whether these circumstances would, in fact, occur in carrying out the METEOR reentry mission. Finally, the Office considered whether, if Criterion 1 is waived, additional measures are appropriate to ensure that public safety is protected.

The Office has determined that there are circumstances in which the relationship of reentry vehicle accuracy to public safety becomes less significant. The three criteria were developed to have a mutually reinforcing effect on public safety. Although their objectives are interrelated, they were designed so that Criterion 1 can compensate if the ability of the reentry vehicle system to meet Criteria 2 and 3 is marginal, and vice versa. Stated another way, the probability of a casualty is, among other things, a function of the probability of missing the landing site. Other contributing factors include the size and mass of the vehicle upon impact, its contents, and the population distribution in the area where the vehicle could impact if it missed the designated landing site. For example, if a reentry vehicle is extremely small and contains no hazardous materials, the probability of a casualty during a reentry would be quite low, even if the vehicle had little probability of landing in the designated site. However, the probability of a casualty could be high if that vehicle were quite large, contained explosives or hazardous materials, or if the vehicle was likely to impact in a densely populated area if it missed the designated landing site. Thus, under certain conditions, it may be possible to relax or eliminate an accuracy criterion if the risk to public safety remains within acceptable levels. They are as follows:

- If it can be shown that there are well-defined areas within which the vehicle is most likely to land if it misses the designated landing site, and that the risk to the population within these areas is within acceptable limits;
- If it can be shown that the vehicle, if it misses the designated landing site, is unlikely to survive rentry or is likely to reenter in a condition that presents little risk to exposed populations because it contains little mass, no hazardous materials, or both; or
- If it can be shown that risk mitigation measures (e.g., public notices or warnings, emergency response plans) can be implemented to limit the risk to exposed populations to acceptable levels in the event the vehicle misses the designated landing site.

To determine whether any of these circumstances will exist for METEOR, the Office analyzed a broad range of failure scenarios that may occur when a human-induced or intentional reentry occurs. In conducting risk scenario analyses, the Office used a conservative approach in that it did not consider the mitigating effects of a parachute system built into the reentry vehicle to soften landing impacts.

In the event of a minor system error or failure, such as one that alters the aerodynamic characteristics of the vehicle as it descends, the Office determined that the dispersion area or ''footprint'' within which the vehicle would be expected to land would most likely be enlarged, shifted, or both. The vehicle would still land in the general vicinity of the landing site, that is, within the 100-mile zone. Given EER's designated landing site in the Atlantic Ocean, the 100-mile zone around the designated landing site is principally ocean area or some sparsely populated land areas. Based on dispersion, vehicle break-up and other risk analyses, the Office determined that risk to public safety would remain well within the threshold of normal background risk identified in Criterion 2.

In the event of a major system failure which causes a random reentry, such as severe misalignment of the vehicle during retroburn resulting in insufficient thrust to deorbit along the desired trajectory, the Office determined that the only population placed at risk would be those persons residing along the orbital path, or ground trace, of the final orbit. This area occupies a swath approximately 20 miles wide and extending approximately 3,000 miles beyond the designated landing site. The area is so limited because of the limited cross-range capability of the vehicle. Because of the inclination of the orbit and the designated landing site, most of this ground trace is over uninhabited broad ocean. The effect of alignment or burn errors increases very rapidly with the magnitude of the error, so that if the METEOR reentry vehicle travels beyond 3,000 miles from the intended landing site it will remain in space for more than one orbit. Although the ground trace includes some areas of the United States, the likelihood of landing on land is small, given that most of the ground trace is over ocean. Moreover, the areas of the United States in which the reentry vehicle could land are relatively sparsely populated and, based on dispersion, vehicle break-up and other risk analyses, the Office found that risk to public safety would remain within the threshold of normal background risk identified in Criterion 3.

A gross failure that causes the vehicle to remain on orbit for more than one orbit after the intended reentry need not be considered under the vehicle safety criteria. Nevertheless, the Office evaluated the risks associated with a gross failure and determined that risk to public safety still would remain well within the threshold of normal background risk identified in Criterion 3. In fact, the Office determined that an intact reentry module that impacted on earth or the reentering debris from the reentry of the entire vehicle system (the reentry vehicle joined to the service module) would be smaller than, and therefore pose less risk than, the debris believed to survive the reentry of large abandoned satellites or spent upper stages of Titan, Atlas, and Delta launch vehicles.

Accordingly, the Office has determined that there are circumstances in which intentional reentry of METEOR can occur and public safety will be assured without the demonstrated level of accuracy required under Criterion 1, and that these circumstances do, in fact, exist for METEOR. There are well-defined areas within which the reentry vehicle is most likely to land if it misses the designated landing site. The risk to the population within these areas falls within acceptable limits. The small size and mass of the reentry vehicle and the lack of hazardous materials on the vehicle would minimize the potential risk to public safety if it misses the designated landing site. Moreover, under certain failure scenarios, the reentry vehicle would break up and reenter in small bits of debris, much of which would likely burn up as it passes through the atmosphere.

The Office has concluded that, in light of the performance characteristics of the METEOR reentry vehicle, the proposed mission including an oceanic landing, the small size of the reentry vehicle and the absence of hazardous materials on the reentry vehicle, public safety and U.S. national interests would not be jeopardized if the landing accuracy (Criterion 1) is waived. However, as a condition of the waiver, the Office is requiring that EER implement a public information communications plan under which the affected public would be informed of

the reentry activity, including the estimated time and location. EER must also have in place an emergency response plan whereby local officials may be notified in the event of an off-site landing and vehicle recovery can be conducted effectively.

In addition, NASA's Wallops Flight Facility has agreed to provide range safety support for the reentry which includes coordination, through appropriate Federal agencies, of notices to air and marine traffic in the vicinity of the designated landing site to minimize risks during the reentry.

Accordingly, the Office has determined that, for METEOR, Criterion 1 may be waived and the relief requested in EER's petition is granted.[3]

Issued in Washington, DC, this 28th day of July, 1995.

Frank C. Weaver,

Director, Office of Commercial Space Transportation.

[FR Doc. 95–18997 Filed 7–28–95; 3:05 pm]

BILLING CODE 4910–62–U

[3] At the time the COMET Program was suspended, a petition submitted by Space Industries, Inc., as applicant for a payload determination, was pending. No final action was taken in light of the decision to discontinue the COMET Program. In granting the petition for METEOR, the Office has made no determination as to whether doing so would have been appropriate for COMET or any other reentry vehicle system or mission.

Office of the Secretary

Minority Business Resource Center Advisoty Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Minority Business Resource Center Advisory Committee to be held Monday, September 11, 1995, from 2:00–4:00 p.m. at the Department of Transportation, 400 7th Street, S.W., Conference Room 8236–8240, Washington, D.C. 20590. The agenda for the meeting is as follows:

—Financial Programs
—Outreach
—Certification
—Procurement Opportunities
—Affirmative Action Issues

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify the Office of Small and Disadvantaged Business Utilization, Minority Business Resource Center by 4:00 p.m. on Thursday, September 7, 1995. Information pertaining to the meeting may be obtained from Mrs. Marie A. Hendricks, Office of Small and Disadvantaged Business Utilization, 400 7th Street, S.W., Washington, D.C. 20590, telephone (202) 366–1930 or (800) 532–1169. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C. on July 27, 1995.

Luz A. Hopewell

Director Office of Small and Disadvantaged Business Utilization.

[FR Doc. 95–18910 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Proposed Advisory Circular 20–XX, Commercial Assistance During Construction of Amateur-Built Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 20–XX, Commercial Assistance During Construction of Amateur-Built Aircraft, for review and comments. The proposed AC 20–XX provides information and guidelines developed by the FAA, the Experimental Aircraft Association (EAA), and industry regarding the applicability of commercial assistance in the construction or partial construction of amateur-built aircraft, with emphasis on kit aircraft.

DATE: Comments submitted must identify the proposed AC 20–XX, project number, 95–005, and be received by September 1, 1995.

ADDRESSES: Copies of the proposed AC 20–XX can be obtained from and comments may be returned to the following: Federal Aviation Administration, Aircraft Certification Service, Production and Airworthiness Certification Division, AIR–200, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: George McNeill, AIR–230, Production and Airworthiness Certification Division, Room 815, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, (202) 267–8361.

SUPPLEMENTARY INFORMATION:

Background

The proposed AC 20–XX provides information and guidance to persons involved in the construction of amateur-built aircraft, the manufacturer of kits designed to be assembled into aircraft by amateur-builders, builders of aircraft fabricated from plans for certification as amateur-built, and persons providing assistance to amateur-builders.

Comments Invited

Interested persons are invited to comment on the proposed AC 20–XX listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned specified address. All communications received on or before the closing date for comments specified above will considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 20–XX may be examined before and after the comment closing date in Room 815, FAA headquarters building (FOB–10A), 800 Independence Avenue SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on July 27, 1995.

Michael Gallagher,

Manager, Production & Airworthiness Certification Division.

[FR Doc. 95–18916 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Watertown Regional Airport Watertown, South Dakota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of closing.

SUMMARY: Notice is hereby given that on or about July 10, 1995, the Flight Service Station (FSS) at Watertown, South Dakota will be permanently closed. Services to the aviation public in the Watertown flight plan area, formerly provided by Watertown FSS, are being provided by the Automated Flight Service Station (AFSS) at Huron, South Dakota. This information will be reflected in the FAA organization statement the next time it is reissued. (Sec. 313 (a), 72 Stat. 752; 49 U.S.C. 1354.)

William C. Withycombe,

Acting Regional Administration, Great Lakes Region.

[FR Doc. 95–18912 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Aviation Administration RTCA, Inc.; Technical Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Technical Management Committee meeting to be held August 21, 1995, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Chairman's Remarks; (2) Review and Approval of Summary of the Previous Meeting; (3) Action on Open Items from Previous Meetings: Report of Ad Hoc Group for Systems Issues; Plan for Better Coordination in the Aviation Community Among RTCA, ICAO, EUROCAE, and Other Activities; Recommendations to Resolve Data Link Air Traffic Services Communication (ATSC) Recording Requirements Issues; Ohio University Letter Regarding Certification of GPS-Based Systems; (4) Other Business; and (5) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on July 27, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–18913 Filed 8–1–95; 8:45 am]

BILLING CODE 4810–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Applicable Rate of Interest on Nonqualified Withdrawals From a Capital Construction Fund

Under the authority in Section 607(h)(4)(B) of the Merchant Marine Act, 1936, as amended (the Act, 46 U.S.C. 1177(h)(4)(B)), we hereby determine and announce that the applicable rate of interest on the amount of additional tax attributable to any nonqualified withdrawals from a Capital Construction Fund established under Section 607 of the Act shall be 7.18 percent, with respect to nonqualified withdrawals made in the taxable year beginning in 1995. The determination of the applicable rate of interest with respect to nonqualified withdrawals was computed, according to the joint regulations issued under the Act (46 CFR 391.7(e)(2)(ii)), by multiplying eight percent by the ratio which (a) the average yield on 5-year Treasury securities for the calendar year immediately preceding the beginning of such taxable year bears to (b) the average yield on 5-year Treasury securities for the calendar year 1970. The applicable rate so determined was computed to the nearest one-hundredth of one percent.

So Ordered By: Maritime Administrator, Maritime Administration; Administrator, National Oceanic and Atmospheric Administration; Assistant Secretary for Tax Policy, Department of the Treasury.

Dated: July 27, 1995.

A.J. Herberger,

Maritime Administrator.

D. James Baker,

Administrator, National Oceanic and Atmospheric Administration.

Leslie Samuals,

Assistant Secretary for Tax Policy.

[FR Doc. 95–19026 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Nissan

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of Nissan North America, Inc., (Nissan) for an exemption of a high-theft line (whose nameplate is confidential) from the parts-marking requirements of the vehicle theft prevention standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

DATES: The exemption granted by this notice is effective beginning with the (confidential) model year.

FOR FURTHER INFORMATION CONTACT: Ms Barbara Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. Ms Gray's telephone number is (202) 366–1740. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: In a letter dated April 28, 1995, Nissan North America, Inc., an American subsidiary of Nissan Motor Company, Ltd., a Japanese corporation, requested exemption from the parts-marking requirements of the theft prevention standard for a motor vehicle line. The nameplate of the line and the model year of introduction are confidential. The letter requested an exemption from parts-marking pursuant to 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard*, based on the installation of an antitheft device as standard equipment for the entire line. In a May 8, 1995, telephone conversation with NHTSA officials, Nissan clarified the scope of its petition.

Nissan's April 28 letter and information provided in the May 8 telephone conversation, together constitute a complete petition, as required by 49 CFR Part 543.7, in that it met the general requirements contained in § 543.5 and the specific content requirements of § 543.6. In a letter dated May 24, 1995, to Nissan, the agency granted the petitioner's request for confidential treatment of most aspects of its petition, including the nameplate of the line and the model year of its introduction.

In its petition, Nissan provided a detailed description and diagrams of the identity, design, and location of the components of the antitheft device for the new line. This antitheft device includes an engine starter interrupt function and an alarm function. The antitheft device is activated by removing the ignition key and locking the doors with it. The alarm monitors the doors, hood, battery terminals and circuitry, and engine starter circuit.

In order to ensure the reliability and durability of the device, Nissan stated that it conducted tests, based on its own specified standards. Nissan provided a detailed list of the tests conducted. Nissan stated its belief that the device is reliable and durable since the device complied with Nissan's specified requirements for each test.

Nissan compared the device proposed for its new line with devices which NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would

compliance with the parts-marking requirements.

Nissan has concluded that the antitheft device proposed for its new line is no less effective than those devices in the lines for which NHTSA has already granted exemptions from the parts-marking requirements. Nissan bases its belief on reduced theft rates of the 300ZX, Maxima, and Infiniti Q45 car lines. Nissan stated that the 300ZX has been equipped with an antitheft device since the model designation was changed from 280ZX in July 1983. The company asserts that the thefts of the 300ZX has dropped significantly for that line, resulting in a 51 percent decrease for the MY 1984 theft rates and a 42 percent drop for the MY 1985 rates as compared to the MY 1983 rates (thefts per 1,000 produced). Nissan believes that the reduction of theft rates for the 300ZX are primarily attributable to the antitheft systems installed. Since the vehicle line that is the subject of this petition will be equipped with a similar system as the 300ZX, Nissan expects that the antitheft system of the vehicle line for which it now seeks an exemption will also be as effective in reducing and deterring theft.

Additionally, Nissan provided theft experience for the Maxima and Q45 vehicle lines. The 1985 through 1994 MY Nissan Maxima has been equipped with a device similar to that which is planned for the line that is the subject of this petition. The antitheft device has been installed on the Maxima since it was revised from the Model 810 Sedan in October 1984. Nissan's petition indicated that a 47% decrease in theft occurred for the 1985 Maxima as compared to the MY 1984 Model 810 Sedan. Nissan also stated that the Infiniti Model Q45 theft rates indicates that the system's design is effective. Based on the 1990–91 MY theft data, the Infiniti Model Q45 theft rate is 2.1522 per 1,000 vehicles, which Nissan asserts is significantly below the median rate for those calendar years.

Based on the evidence submitted by Nissan, the agency believes that the antitheft device for the new Nissan line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standards (49 CFR Part 541).

The agency believes that the device will provide the types of performance listed in 49 CFR Part 543.6(a)(3): Promoting activation; attracting attention to unauthorized entries; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR Part 543.6 (a)(4) and (5), the agency finds that Nissan has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Nissan provided about its device, much of which is confidential. This confidential information included a description of reliability and functional tests conducted by Nissan for the antitheft device and its components.

For the foregoing reasons, the agency hereby grants in full Nissan's petition for exemption for the line from the parts-marking requirements of 49 CFR Part 541.

If Nissan decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Nissan wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.'' The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself.

The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50

Issued on: July 22, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–19023 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 95–44; Notice 2]

Decision That Nonconforming 1989 Honda Civic DX Hatchback Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1989 Honda Civic DX Hatchback passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1989 Honda Civic DX Hatchback passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1989 Honda Civic DX Hatchback), and they are capable of being readily altered to conform to the standards.

DATE: This decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period,

NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors, Inc. of Kingsville, Maryland (Registered Importer R–90–006) petitioned NHTSA to decide whether 1989 Honda Civic DX Hatchback passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on May 30, 1995 (60 FR 28201) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–128 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1989 Honda Civic DX Hatchback not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1989 Honda Civic DX Hatchback originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 27, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–19019 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–46; Notice 2]

Decision That Nonconforming 1972 Through 1976 Bristol VRT Buses Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1972 through 1976 Bristol VRT buses are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1972 through 1976 Bristol VRT buses are not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATE: The decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.—certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) (formerly section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. 1397(c)(3)(A)(i)(II)) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Double Decker Bus Company of Denver, Colorado (Registered Importer No. R–93–015) petitioned NHTSA to decide whether 1972 through 1976 Bristol VRT buses are eligible for importation into the United States. NHTSA published notice of the petition on June 1, 1995 (60 FR 28648) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VCP–10 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1972 through 1976 Bristol VRT buses are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 27, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–19020 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–60; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1994 and 1995 BMW 730i Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994 and 1995 BMW 730i passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition

for a decision that 1994 and 1995 BMW 730i passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is September 1, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (''G&K'') (Registered Imported 90–007) has petitioned NHTSA to decide whether 1994 and 1995 BMW 730i passenger cars are eligible for importation into the United States. The vehicles which G&K believes are substantially similar are 1994 and 1995 BMW 740i passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren-Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared 1994 and 1995 BMW 730i passenger cars to 1994 and 1995 BMW 740i passenger cars, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that 1994 and 1995 BMW 730i passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their 1994 and 1995 BMW 740i passenger cars, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that 1994 and 1995 BMW 730i passenger cars are identical to 1994 and 1995 BMW 740i passenger cars with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems, 106 Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that 1994 and 1995 BMW 730i passenger cars are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a)(substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of the appropriate symbol on the seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 109 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies and front sidemakers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning buzzer. The petitioner states that in conformity with the standard, some of the subject vehicles manufactured before September 1993 may be equipped with only driver's side air bags and knee bolsters, but that all such vehicles manufactured after September 1993 are so equipped on both the driver's and the passenger's side. The petitioner also states that the vehicles are equipped with Type 2 seat belts in the front and rear outboard seating positions, and with a Type 1 seat belt in the rear center seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on 1994 and 1995 BMW 730i passenger cars must be reinforced to comply with the Bumper Standard found in 49 CFR Part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested

but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 27, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–19021 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–59; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 passenger cars that are not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is September 1, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (''G&K'') (Registered Importer 90–007) has petitioned NHTSA to decide whether 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 (Model ID 129.076) passenger cars are eligible for importation into the United States. The vehicles which G&K believes are substantially similar are the 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Daimler-Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that non-U.S. certified 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surface,s* 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshiled Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials.*

Petitioner also contends that non-U.S. certified 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 passenger cars are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of the appropriate symbol on the seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side

rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning buzzer. The petitioner states that in conformity with the standard, some of the subject vehicles manufactured before September 1993 may be equipped with only driver's side air bags and knee bolsters, but that all such vehicles manufactured after September 1993 are so equipped on both the driver's and the passenger's side. The petitioner also states that the vehicles are equipped with Type 2 seat belts in both front outboard seating positions.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on non-U.S. certified 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 passenger cars must be reinforced to comply with the Bumper Standard found in 49 CFR Part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 27, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–19022 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Performance Review Board

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: This notice lists the membership to the Departmental Offices' Performance Review Board (PRB) and supersedes the list published in 59 FR 142 dated July 26, 1994, in accordance with 5 U.S.C. 4314(c)(4). The purpose of the PRB is to review the performance of members of the Senior Executive Service and make recommendations regarding performance ratings, performance awards, and other personnel actions.

The names and title of the PRB members are as follows:

Joan Affleck-Smith—Director, Office of Financial Institutions Policy
John J. Auten—Director, Office of Financial Analysis
William E. Barreda—Deputy Assistant Secretary (Trade and Investment Policy)
Ralph L. Bayrer—Director, Office of Synthetic Fuels
Cynthia Beerbower—Deputy Assistant Secretary (Tax Policy)
Darcy E. Bradbury—Deputy Assistant Secretary for Federal Finance
Richard S. Carnell—Assistant Secretary (Financial Institutions)
Joyce H. Carrier—Deputy Executive Secretary (Public Liaison)
Mary E. Chaves—Director, Office of International Debt Policy
Wushow Chou—Deputy Assistant Secretary (Information Systems)
Anna Dickey—Director, Office of Enforcement Budget Policy
Lowell Dworin—Director, Office of Tax Analysis
James H. Fall, III—Deputy Assistant Secretary (Developing Nations)
James J. Flyzik—Director, Office of Telecommunications Management
Jon M. Gaaserud—Director, U.S. Saudi Arabian Joint Commission Program Office
Geraldine A. Gerardi—Director for Business Taxation
William H. Gillers—Director, Office of Management Advisory Services
Robert F. Gillingham—Deputy Assistant Secretary (Policy Coordination)
W. Scott Gould—Deputy Assistant Secretary Departmental Finance and Management
John D. Hawke—Under Secretary for Domestic Finance
Edward S. Knight—General Counsel
David Lipton—Deputy Assistant Secretary (Eastern European and Former Soviet Union Policy)
Joan Logue-Kinder—Assistant Secretary (Public Affairs)
Fe Morales Marks—Deputy Assistant Secretary (Financial Institutions Policy)
George Muñoz—Assistant Secretary (Management and Chief Financial Officer)
Gerald Murphy—Fiscal Assistant Secretary
Ronald K. Noble—Under Secretary (Enforcement)
Jill K. Ouseley—Director, Office of Market Finance
Linda Robertson—Assistant Secretary (Legislative Affairs)
Alex Rodriguez—Deputy Assistant Secretary (Administration)
Victor Rojas—Deputy Assistant Secretary for Legislative Affairs (Banking & Finance)
Leslie Samuels—Assistant Secretary (Tax Policy)
Howard Schloss—Deputy Assistant Secretary for Public Affairs
Charles Schotta—Deputy Assistant Secretary (Middle East & Energy Policy)
G. Dale Seward—Director, Automated Systems Division
Jeffrey Shafer—Assistant Secretary (International Affairs)
Sylvia Mathews—Chief of Staff
Jane L. Sullivan—Director, Office of Information Resources Management
Lawrence H. Summers—Under Secretary for International Affairs
Mozelle Thompson—Deputy Assistant Secretary (Government Financial Policy)
Edwin A. Verburg—Director, Financial Services Directorate
Robert Welch—Director, Office of Procurement

FOR FURTHER INFORMATION CONTACT: Rosemary Downing, Executive Secretary, PRB, Room 1318, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Telephone: (202) 622–1440. This notice does not meet the Department's criteria for significant regulations.

George Muñoz,

Assistant Secretary of the Treasury (Management).

[FR Doc. 95–18948 Filed 8–1–95; 8:45 am]

BILLING CODE 4810–25–Mfy

Sunshine Act Meetings

Federal Register

Vol. 60, No. 148

Wednesday, August 2, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 4, 1995.

PLACE: 2033 K St. N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–19082 Filed 7–31–95; 11:07 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 18, 1995.

PLACE: 2033 K St. NW., Washington, DC 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A.Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–19084 Filed 7–31–95; 11:07 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 11, 1995.

PLACE: 2033 K St. NW., Washington, DC 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–19083 Filed 7–31–95; 11:07 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 25, 1995.

PLACE: 2033 K St. NW., Washington, DC 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–19085 Filed 7–31–95; 11:07 am]

BILLING CODE 6351–01–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9 a.m., Wednesday, August 9, 1995.

PLACE: Board Room Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: Part of this meeting will be closed to the public. The rest of the meeting will be open to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC: The Board will consider the following:

1. Federal Home Loan Bank Resales with Members.
2. Adoption of Final Rule Regarding Procedures for FHLBank Access to Nonpublic Information of Federal Financial Regulatory Agencies.
3. Federal Home Loan Bank of San Francisco's Request for Additional AHP Funds for Neighborhood Housing Services.
4. FHLBank Presidents' Compensation Plan.
5. Transfer of Membership and Sale of Advances.
6. Membership.
7. Interpretation of Financial Management Policy.
8. Federal Home Loan Bank of Dallas' Special Investment Authority.

PORTIONS CLOSED TO THE PUBLIC: The Board will consider the following:

1. Federal Home Loan Bank of Dallas: Affordable Housing Program Project, Tunica Courts, L.P., Tunica, Mississippi.
2. Ineligible Use of AHP Funds—Federal Home Loan Bank of New York.

The above matter is exempt under section 552b(c)8 of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 95–19069 Filed 7–28–95; 5:00 pm]

BILLING CODE 6725–01–M

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 37499, July 20, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., Thursday, July 27, 1995.

CHANGE IN THE MEETING: The following topic was added to the agenda during the open meeting.

- Revised 1995 Affordable Housing Program Priority for the Federal Home Loan Bank of Atlanta.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 95–19052 Filed 7–28–95; 5:00 pm]

BILLING CODE 6725–01–M

federal register

Wednesday
August 2, 1995

Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 3

Federal Reserve System

12 CFR Part 208

Federal Deposit Insurance Corporation

12 CFR Part 325

Risk-Based Capital Standards; Interest Rate Risk; Final Rule and Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 95–17]

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R–0802]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB22

Risk-Based Capital Standards: Interest Rate Risk

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The OCC, the Board, and the FDIC (collectively referred to as the banking agencies) are issuing this final rule to implement the portion of Section 305 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) that requires the banking agencies to revise their risk-based capital standards to ensure that those standards take adequate account of interest rate risk. This final rule amends the capital standards to specify that the banking agencies will include, in their evaluations of a bank's capital adequacy, an assessment of the exposure to declines in the economic value of the bank's capital due to changes in interest rates.

Concurrent with the publication of this final rule, the banking agencies are issuing for comment, a joint policy statement that describes the process the banking agencies will use to measure and assess the exposure of a bank's net economic value to changes in interest rates. After the banking agencies and banking industry gain sufficient experience with the proposed measurement process, the banking agencies intend, through a subsequent rulemaking process, to issue a proposed rule that would establish an explicit capital charge for interest rate risk that will be based upon the level of a bank's measured interest rate risk exposure.

EFFECTIVE DATE: September 1, 1995.

FOR FURTHER INFORMATION CONTACT:

OCC: Christina Benson, Capital Markets Specialist, or Lisa Lintecum, National Bank Examiner (202/874–5070), Office of the Chief National Bank Examiner; Michael Carhill, Financial Economist, Risk Analysis Division (202/874–5700); and Ronald Shimabukuro, Senior Attorney, Legislative and Regulatory Activities Division (202/874–5090), Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

Board of Governors: James Houpt, Assistant Director (202/452–3358), William F. Treacy, Supervisory Financial Analyst (202/452–3859), Division of Banking Supervision and Regulation; Gregory Baer, Managing Senior Counsel (202/452–3236), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

FDIC: William A. Stark, Assistant Director (202/898–6972) or Phillip J. Bond, Senior Capital Markets Specialist (202/898–3519), Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Interest rate risk is the exposure of a bank's current and future earnings and equity capital arising from adverse movements in interest rates. This risk results from the possibility that changes in interest rates may have an adverse impact on a bank's earnings and its underlying economic value. Changes in interest rates affect a bank's earnings by changing its net interest income and the level of other interest-sensitive income and operating expenses. The underlying economic value of the bank's assets, liabilities, and off-balance sheet items also are affected by changes in interest rates. These changes occur because the present value of future cash flows, and in some cases the cash flows themselves, change when interest rates change. The combined effects of the changes in these present values reflect the change in the underlying economic value of the bank's capital as well as provide an indicator of the expected change in the bank's future earnings arising from the change in interest rates.

Interest rate risk is inherent in the role of banks as financial intermediaries. Interest rate risk, however, introduces volatility to bank earnings and to the economic value of the bank. A bank that has an excessive level of interest rate risk can face diminished future earnings, impaired liquidity and capital positions, and, ultimately, may jeopardize its solvency.

Section 305 of FDICIA, Pub. L. 102–242 (12 U.S.C. 1828 note), requires the banking agencies to revise their risk-based capital guidelines to take adequate account of interest rate risk. Section 305 of FDICIA also requires the banking agencies to publish final implementing regulations by June 19, 1993, and to establish transition rules to facilitate compliance with those regulations.

The banking agencies have not met the June 19, 1993, statutory date for publishing a final rule for this section of FDICIA. This delay reflects the difficult tradeoffs the banking agencies have faced in developing and implementing a rule that provides a sufficiently accurate basis for estimating banks' interest rate risk exposures and their need for capital, yet maintains enough transparency and simplicity to allow bank management to readily determine their regulatory capital requirements. The banking agencies also are mindful of the need to avoid unnecessary regulatory burdens associated with this rule, consistent with Section 335 of the Reigle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325 (12 U.S.C. 1828 note).

II. September 1993 Proposal

A. Proposal

In September 1993, the banking agencies issued a proposed rule that solicited comments on a framework for measuring banks' interest rate risk exposures and determining the amount of capital needed by a bank to account for interest rate risk. See 58 FR 48206 (September 14, 1993).

The framework outlined by the banking agencies in the September 1993 proposed rule incorporated the use of a three-level measurement process to evaluate banks' interest rate risk exposures. The first measure was a quantitative screen, based on existing Consolidated Report of Condition and Income (Call Report) information, that would exempt potential low risk banks from additional reporting requirements. The exemption screen was based on two criteria: (1) the amount of a bank's off-balance sheet interest rate contracts in relation to its total assets, and (2) the relation between a bank's fixed- and floating-rate loans and securities that mature or reprice beyond five years and its total capital.

Banks not meeting the proposed exemption test would have been required to calculate their economic exposure by either: (1) a supervisory

model that measured the change in the economic value of the bank for a specified change in interest rates; or (2) the bank's own interest rate risk model, provided that the model was deemed adequate by examiners for the nature and scope of the bank's activities and that it measured the bank's economic exposure using the interest rate scenarios specified by the banking agencies.

The September 1993 proposed rule also sought comment on two alternative methods for determining the amount of capital a bank may need for interest rate risk. Both approaches proposed to focus supervisory attention and need for capital on those banks whose measured exposure exceeded a proposed supervisory threshold level.[1] One method (Minimum Capital Standard) proposed to establish an explicit minimum capital standard for interest rate risk. This approach would have relied on the results of either the supervisory model or banks' own models and would have required banks to have capital sufficient to cover the amount by which their measured exposure exceeded a supervisory threshold level. The second approach (Risk Assessment) proposed to use model results as one of several factors that examiners would consider when determining a bank's capital needs for interest rate risk. Under this approach, a bank's need for capital would be determined on a case-by-case basis as part of each banking agency's examination process. In determining the need for capital, examiners would consider the quality of the bank's interest rate risk management, internal controls and the overall financial condition of the bank. Banks that had measured exposures in excess of the supervisory threshold and weak interest rate risk management systems would generally be required to hold additional capital for interest rate risk.

B. Comments

The banking agencies collectively received a total of 133 comments on the September 1993 proposed rule. The majority of commenters were banks. Thrifts, trade associations, bank consultants, other government-sponsored agencies and other regulators also commented. The majority of commenters responded favorably to modifications that the banking agencies made from the earlier advance notice of proposed rulemaking published in the **Federal Register** on August 10, 1992. *See* 57 FR 35507 (August 10, 1992). In particular, most commenters expressed strong support for using the results of banks' own interest rate risk models to determine their levels of exposure and corresponding need for capital. Commenters noted the potential inaccuracies of standardized regulatory models, such as the proposed supervisory model, as one reason for allowing the use of internal models. Internal models, they believed, would better capture the unique characteristics of individual bank portfolios. Many commenters also stated that permitting the use of internal models would provide banks with incentives to improve their internal risk measurement systems.

The vast majority of commenters also urged the banking agencies to adopt a ''Risk Assessment'' approach for determining capital adequacy. Among the reasons cited for this approach were concerns about the accuracy of the proposed supervisory model and the need to consider qualitative factors, such as the quality of a bank's risk management process and its ability to respond to changing market conditions, in evaluating capital. Many commenters believed that by considering such factors, the banking agencies would reward banks that have superior risk management capabilities.

Some commenters believed that the banking agencies' primary focus when evaluating the level of a bank's interest rate risk exposure should be on the exposure of the bank's near-term (one- to two-year) reported earnings, rather than on its exposure to economic value. While recognizing the importance of understanding the degree to which a bank's reported earnings are vulnerable to changing interest rates, the banking agencies have concluded that the economic value perspective more effectively identifies the risks that the bank's current business activities pose to its financial condition, its longer-term earnings and solvency, and hence the adequacy of its capital levels. Economic value measures the effect of a change in interest rates on the value of *all* future cash flows generated by a bank's current financial instruments, not just those that affect earnings over the next few months or quarters. Indeed, an earnings analysis provides information only on positions repricing within the forecast horizon, and thus would not take account of the full magnitude of risk. As a result, the effect of embedded and explicit options can be significantly understated by such an analysis. In contrast, an economic value perspective captures the effect of changing interest rates for all time periods, and offers a superior vehicle for assessing the effect of those rate changes on positions that have option characteristics. In addition, an economic value perspective offers important insights into the effect of changing interest rates on the liquidity of a bank's assets.

Many commenters also raised common concerns about various elements of the measurement process outlined in the September 1993 proposed rule. Most commenters believe that the proposed treatment of non-maturity deposits understate their effective maturity. Others raised concerns about the accuracy of the proposed supervisory model and the appropriateness of the proposed exemption test criteria. The measurement system, proposed in today's joint policy statement, includes a discussion of these comments and incorporates a number of changes to the September 1993 proposed rule in response to commenters' concerns.

III. Final Rule and Two-Step Process for Establishing Minimum Capital Standards

After careful consideration of all the comments, the banking agencies have decided to implement minimum capital standards for interest rate risk exposures in a two-step process.

This final rule implements the first step of that process by revising the capital standards of the banking agencies to explicitly include a bank's exposure to declines in the economic value of its capital due to changes in interest rates as a factor that the banking agencies will consider in evaluating a bank's capital adequacy.[2] This final rule does not codify a measurement framework for assessing the level of a bank's interest rate risk exposure. The information and exposure estimates collected through a new proposed supervisory measurement process, described in the banking agencies' joint policy statement on interest rate risk, would be one quantitative factor used by examiners to determine the adequacy of an individual bank's capital for interest rate risk. The focus of that proposed process is on a bank's economic value exposure. Other quantitative factors that examiners will consider include the bank's historical financial performance and its earnings exposure to interest rate movements. Examiners also will consider qualitative

[1] A threshold level representing a decline in economic value equal to 1.0 percent of assets was proposed by the banking agencies.

[2] The exposure of a bank's economic value is generally the change in the present value of its assets, less the change in the present value of its liabilities, plus the change in the value of its interest rate off-balance-sheet contracts. It represents the change in the underlying economic value of the bank's capital.

factors, including the adequacy of the bank's internal interest rate risk management. Consistent with each banking agency's safety and soundness guidelines, the banking agencies expect a bank to properly manage all of its risks, including its interest rate risk, in a manner commensurate with its risk profile. Nothing in this rule is intended to diminish the importance or need for a bank to have an effective risk management system.

This final rule represents the banking agencies' adoption of the Risk Assessment approach described in the September 1993 proposed rule with the exception that, unlike that proposed rule, this final rule does not establish an explicit supervisory threshold that defines whether a bank had an above ''normal'' level of interest rate risk exposure. The banking agencies have concluded that it is appropriate to first collect industry data and to evaluate the level of interest rate risk exposure in the banking industry before establishing an explicit supervisory threshold above which capital would be required. It is important to note, however, that the banking agencies intend for this case-by-case approach for assessing a bank's capital adequacy for interest rate risk to be a transitional arrangement.

The second step of the banking agencies' process will be to issue a proposed rule that would establish an explicit minimum capital charge for interest rate risk, based on the level of bank's measured interest rate risk exposure. The banking agencies anticipate that the proposed policy statement on the supervisory assessment of interest rate risk will provide the foundation for the proposed rule that would propose the establishment of an explicit minimum capital requirement. The banking agencies will implement this second step at some future date, through a subsequent and separate proposed rule after the banking agencies and the banking industry have gained more experience with the proposed supervisory measurement and assessment process.

During the transitional period before the second rulemaking process is initiated, the banking agencies will work with the industry to determine what, if any, further modifications to the proposed measurement process are warranted. Such modifications may include further refinements to the supervisory model and to other criteria used by examiners to evaluate the adequacy of banks' internal models. The transition period also allows the banking agencies to collect and monitor more rigorous and consistent information on the level of banks' interest rate risk exposures. This experience and information will assist the banking agencies in formulating a proposed rule for explicit minimum capital standards for interest rate risk.

Second 305(b)(2) of FDICIA requires the banking agencies to discuss the development of comparable standards with members of the supervisory committee of the Bank for International Settlements (BIS). The Basle Committee on Banking Supervision, under the auspices of the BIS, has been working on ways to incorporate interest rate risk into the Basle Accord on risk-based capital standards. *See* International Convergence of Capital Measurement and Capital Standards (July 1988). The banking agencies are participating actively in that international effort. However, the timing of any international standard for monitoring and assessing capital for interest rate risk is uncertain. Given the importance of interest rate risk to the safety and soundness of the banking industry and the mandate of section 305 of FDICIA, the banking agencies have concluded that they should not delay the implementation of this rule and measurement process until an international standard is achieved. The banking agencies will continue to work with international organizations to develop consistent international capital standards. At the time that an international agreement emerges on either a measurement system or explicit minimum capital standard, the banking agencies will revisit their rules in light of the international standard.

IV. Regulatory Flexibility Act Statement

Each banking agency has concluded after reviewing the final regulations that the regulations, if adopted, will not impose a significant economic hardship on small institutions. The final rules do not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers in order to comply with the regulation. Each banking agency therefore hereby certifies pursuant to section 605b of the Regulatory Flexibility Act (5 U.S.C. 605b) that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

V. Executive Order 12866

The Comptroller of the Currency has determined that this final rule is not a significant regulatory action under Executive Order 12866.

VI. OCC Response to Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) (signed into law on 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 final rule 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 final rule will clarify the authority of the OCC to require additional capital for any significant exposure to declines in the economic value due to changes in interest rates. Under the proposed joint policy statement, the supervisory model and internal bank models will serve as supervisory tools to assist examiners in assessing capital adequacy. Any decision to require additional capital will be made on a case-by-case basis as prescribed under the current capital procedures.

List of Subjects

OCC

12 CFR Part 3

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

Board

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

FDIC

12 CFR Part 325

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

Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

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

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. Section 3.10 is revised to read as follows:

§ 3.10 Applicability.

The OCC may require higher minimum capital ratios for an individual bank in view of its circumstances. For example, higher capital ratios may be appropriate for:

(a) A newly chartered bank;

(b) A bank receiving special supervisory attention;

(c) A bank that has, or is expected to have, losses resulting in capital inadequacy;

(d) A bank with significant exposure due to the risks from concentrations of credit, certain risks arising from nontraditional activities, or management's overall inability to monitor and control financial and operating risks presented by concentrations of credit and nontraditional activities;

(e) A bank with significant exposure to declines in the economic value of its capital due to changes in interest rates;

(f) A bank with significant exposure due to fiduciary or operational risk;

(g) A bank exposed to a high degree of asset depreciation, or a low level of liquid assets in relation to short term liabilities;

(h) A bank exposed to a high volume or, or particularly severe, problem loans;

(i) A bank that is growing rapidly, either internally or through acquisitions; or

(j) A bank that may be adversely affected by the activities or condition of its holding company, affiliate(s), or other persons or institutions including chain banking organizations, with which it has significant business relationships.

3. In appendix A to part 3, section 1, paragraph (b)(1) is revised to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

* * * * *

Section 1 * * * (b) * * * (1) The risk-based capital ratio derived from these guidelines is an important factor in the OCC's evaluation of a bank's capital adequacy. However, since this measure addresses only credit risk, the 8% minimum ratio should not be viewed as the level to be targeted, but rather as a floor. The final supervisory judgment on a bank's capital adequacy is based on an individualized assessment of numerous factors, including those listed in 12 CFR 3.10. With respect to the consideration of these factors, the OCC will give particular attention to any bank with significant exposure to declines in the economic value of its capital due to changes in interest rates. As a result, it may differ from the conclusion drawn from an isolated comparison of a bank's risk-based capital ration to the 8% minimum specified in these guidelines. In addition to the standards established by these risk-based capital guidelines, all national banks must maintain a minimum capital-to-total assets ratio in accordance with the provisions of 12 CFR part 3.

* * * * *

Office of the Comptroller of the Currency

Dated: June 29, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, part 208 of chapter II of title 12 of the Code of Federal Regulations is 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 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 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318.

2. Appendix A to part 208 is amended by revising the fifth and sixth paragraphs under ''*I. Overview*'' to read as follows:

Appendix A to Part 1208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

I. Overview

* * * * *

The risk-based capital ratio focuses principally on broad categories of credit risk, although the framework for assigning assets and off-balance-sheet items to risk categories does incorporate elements of transfer risk, as well as limited instances of interest rate and market risk. The framework incorporates risks arising from traditional banking activities as well as risks arising from nontraditional activities. The risk-based ratio does not, however, incorporate other factors that can affect an institution's financial condition. These factors include overall interest-rate exposure; liquidity, funding and market risks; the quality and level of earnings; investment, loan portfolio, and other concentrations of credit; certain risks arising from nontraditional activities; the quality of loans and investments; the effectiveness of loan and investment policies; and management's overall ability to monitor and control financial and operating risks, including the risks presented by concentrations of credit and nontraditional activities.

In addition to evaluating capital ratios, an overall assessment of capital adequacy must take account of those factors, including, in particular, the level and severity of problem and classified assets as well as a bank's exposure to declines in the economic value of its capital due to changes in interest rates. For this reason, the final supervisory judgment on a bank's capital adequacy may differ significantly from conclusions that might be drawn solely from the level of its risk-based capital ratio.

* * * * *

By Order of the Board of Governors of the Federal Reserve System.

Dated: July 7, 1995.

William W. Wiles,

Secretary of Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, part 325 of chapter III of title 12 of the Code of Federal Regulations is amended as set forth below:

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. In appendix A to part 325, the fifth undesignated paragraph of the introductory text is revised to read as follows:

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

* * * * *

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

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

By order of the Board of Directors.

Dated at Washington, D.C. this 27th day of June, 1995.

Federal deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–18098 Filed 8–1–95; 8:45 am]

BILLING CODES 4810–33–M, 6210–01–M, 6714–01–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 95–17]

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R–0802]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

Joint Agency Policy Statement: Supervisory Policy Statement Concerning a Supervisory Framework for Measuring and Assessing Banks' Interest Rate Risk Exposure

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Policy statement; request for comment.

SUMMARY: The OCC, the Board, and the FDIC (collectively, ''the agencies'') seek comment on a proposed interagency Supervisory Policy to establish a uniform supervisory framework for measuring banks' interest rate risk (IRR) exposures. The proposed policy establishes a framework that the agencies would use to measure and monitor the level of IRR at individual banks. The measurement process proposed and described in this policy statement is intended to facilitate the agencies' assessment of a bank's IRR exposure and its capital adequacy. The results of the supervisory and internal models would be one factor used by the agencies in their assessments' of a bank's capital adequacy for IRR. Other factors that the agencies will consider include the quality of the bank's IRR risk management process, the overall financial condition of the bank, and the level of other risks at the bank for which capital is needed. Pursuant to the final rule banks may be required to hold additional capital.

The proposed supervisory framework provides measures of the change in a bank's economic value for a given change in interest rates using a supervisory model. The framework also considers the results of a bank's internal model results when that model provides a measure of the change in a bank's economic value. Banks not specifically exempted from detailed IRR reporting would submit new IRR Call Report schedules indicating the maturity, repricing, or price sensitivity of their various on- and off-balance sheet instruments. A bank also would have the option of reporting its internal model estimates of the price sensitivity of its major portfolios and its economic value.

Concurrent with the publication of this proposed Supervisory Policy statement, the agencies have issued a final rule that amends their capital guidelines for IRR. Those amendments indicate that the agencies will consider in their evaluation of a bank's capital adequacy, the exposure of a bank's capital and economic value to changes in interest rates. The amendments are in response to section 305 of the FDIC Improvement Act of 1991 (FDICIA) which requires the agencies to amend their risk-based capital standards to take adequate account of interest rate risk.

As noted in the discussion of the final rule on IRR, the agencies intend, at a subsequent date, to incorporate explicit minimum requirements for IRR into their risk-based capital standards. The agencies anticipate that the measurement framework described in this proposed policy, will be the basis for such a capital requirement. Toward that end, the agencies intend to work with the industry to evaluate the reliability and accuracy of the results from the supervisory model and bank internal models. Any explicit minimum capital charge would be implemented through the agencies' rulemaking process and would provide the opportunity for public comment before a final rule is adopted.

DATES: Comments must be received by October 2, 1995.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments will be shared among the agencies.

OCC: Written comments should be submitted to Docket No. 95–17, Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219, Attention: Karen Carter. Comments will be available for inspection and photocopying at that address.

Board of Governors: Comments, which should refer to Docket No. R–0802, may be mailed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in Room B–1122 between 9:00 a.m. and 5:00 p.m., except as provided in 261.8 of the Board's ''Rules Regarding Availability of Information,'' 12 CFR 261.8.

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 5:00 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 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: Christina Benson, Capital Markets Specialist, or Lisa Lintecum, National Bank Examiner (202/874–5070), Office of the Chief National Bank Examiner; Michael Carhill, Financial Economist, Risk Analysis Division (202/874–5700); and Ronald Shimabukuro, Senior Attorney, Bank Operations and Assets Division (202/874–4460), Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219.

Board of Governors: James Houpt, Assistant Director (202/452–3358), William F. Treacy, Supervisory Financial Analyst (202/452–3859), Division of Banking Supervision and Regulation; Gregory Baer, Managing Senior Counsel (202/452–3236), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

FDIC: William A. Stark, Assistant Director (202/898–6972) or Phillip J. Bond, Senior Capital Markets Specialist (202/898–3519), Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Introduction

Interest rate risk is the risk that changes in market interest rates will have an adverse effect on a bank's

earnings and its underlying economic value. Changes in interest rates affect a bank's reported earnings by changing its net interest income and the level of other interest-sensitive income and operating expenses. The underlying economic value of the bank's assets, liabilities, and off-balance sheet instruments also is affected by changes in interest rates. These changes occur because the present value of future cash flows and in some cases, the cash flows themselves, are affected when interest rates change. The combined effects of the changes in these present values reflect the change in the bank's underlying economic value.

Interest rate risk is inherent in the role of banks as financial intermediaries. However, a bank that has an excessive level of interest rate risk can face diminished future earnings, impaired liquidity and capital positions, and, ultimately, may jeopardize its solvency.

The agencies believe that safety and soundness requires effective management and measurement of interest rate risk, and each agency has provided supervisory guidance to banks and examiners on this subject. In addition, the agencies believe that a bank's capital adequacy should be assessed in the context of the risks it faces, including interest rate risk. Section 305 of FDICIA Pub. L. 102–242 (12 U.S.C. 1828 note), on which a final rule is being issued at the same time as this statement, specifically requires the agencies to take account of interest rate risk in assessing capital adequacy. Both of these aspects of interest rate risk depend on, among other things, a meaningful measurement of the bank's risk exposure.

The agencies believe that a bank should have an IRR measurement system that is commensurate with the nature and scope of its IRR exposures. Among the difficulties in performing a supervisory evaluation of interest rate risk, however, is that measurement systems and management philosophies can differ significantly from one bank to another. As a result, although two banks may each be well-managed, their measured exposure may not be directly comparable. This difficulty has been magnified by the rapid pace of change in financial markets and instruments themselves.

In implementing Section 305 of FDICIA, and in light of the rapid evolution in financial instruments and practices, the agencies believe there is a need for a more formal supervisory assessment of banks' interest rate risk exposures. To support that effort, the agencies propose a measurement framework that includes a supervisory measurement system (''supervisory model'') that will, on a standardized basis, measure the risk of all banks not exempted from reporting additional information on their IRR exposures. In addition, banks will be encouraged to report, through a voluntary and confidential supplemental Call Report schedule, the results of their internal IRR measurement systems. These measured results would then serve as an additional source of information for an examiner's assessment of the bank's risk management and capital adequacy. The results also would provide information on industry trends and patterns that will better inform both present and future supervisory efforts related to interest rate risk.

The measurement framework described in this policy statement focuses on the exposure to a bank's underlying economic value from movements in market interest rates. The exposure to a bank's economic value, as used in this policy statement, is defined as the change in the present value of its assets, minus the change in the present value of its liabilities, plus the change in the present value of its off-balance sheet interest-rate positions. The agencies haven chosen this focus because they believe that changes in a bank's economic value best reflect the potential impact of embedded options and the potential exposure that the bank's current business activities pose to the bank's future earnings stream, and hence, its ability to sustain adequate capital levels. Changes in economic value measure the effect that a change in interest rates will have on the value of all of the future cash flows generated by a bank's current financial positions, not just those cash flows which affect earnings over the few months or quarters. Thus, changes in economic value provide a more comprehensive measure of risk than measures which focus solely on the exposure to a bank's near-term earnings. It is for this reason that the agencies have amended their capital standards to identify explicitly a bank's exposure to declines in economic value from changes in interest rates as an important factor to consider in evaluating a bank's capital adequacy.

II. Summary of Approach

In assessing the sensitivity of a bank's economic value to changes in interest rates, the agencies are proposing to use the results of a supervisory model and, for those electing to provide such analysis, the results of banks' own internal models. These assessments will rely on data reported in regulatory Call Reports. Recognizing that the burden for reporting IRR exposures would fall most heavily on smaller organizations with limited resources, the policy statement makes provisions for smaller, well-managed institutions that are less likely to be significantly exposed to IRR to be exempt from additional reporting. As described in further detail in the policy statement, the agencies propose that banks with (i) assets under $300 million, (ii) composite supervisory CAMEL ratings of 1 or 2 and, (iii) moderate or low holdings of assets with intermediate and long term maturity or repricing characteristics, be exempted from expanded reporting requirements for IRR.

Banks that are not specifically exempted by the proposed policy statement will submit additional Call Report information on the repricing and maturity of their portfolios. The proposed supervisory model applies a series of IRR risk-weights to a bank's reported repricing and maturity balances. These weights estimate the price sensitivity of a bank's reported balances to a 200 basis point increase and decrease in interest rates. The summation of these balances, along with certain price sensitivity information that a bank may be required to self-report, results in a net risk-weighted exposure for the bank. That exposure represents the estimated change in the bank's economic value to the specified rate change.

The proposed supervisory model represents a refinement of the model presented in the September 1993 notice of proposed rulemaking (September NPR) [58 FR 48206, September 14, 1993]. The September NPR solicited comments on a framework for measuring banks' exposure to IRR for capital purposes pursuant to Section 305 of FDICIA. The final rule for Section 305 does not incorporate an explicit measurement framework for IRR into the agencies' risk-based capital standards. The agencies have concluded that it is appropriate to first collect industry data and evaluate the performance of the measurement framework before explicitly incorporating the results of that framework into their risk-based capital standards. The data collected by the agencies will assist current supervisory efforts and will facilitate the development of a measurement framework that could be explicitly incorporated into capital standards in the future. This proposed policy statement would implement that supervisory measurement framework. The proposed framework is broadly consistent with the one discussed in the September NPR. The agencies, however, have made several refinements to the

supervisory model to improve its accuracy while still endeavoring to limit the burden of the expanded reporting and maintain model transparency. The refinements to the September NPR model include:

(1) Separate risk-weights and reporting for residential adjustable-rate mortgages;

(2) Separate risk-weights and reporting for residential fixed-rate mortgages and all other amortizing assets;

(3) Self-reporting by banks of price sensitivities of instruments with complex and/or non-standardized cash flow characteristics such as structured notes, collateralized mortgage obligations (CMOs), and mortgage servicing rights;

(4) Supplemental reporting for banks with concentrations in adjustable- and fixed-rate mortgage loans.

(5) Greater flexibility in reporting deposits without stated maturity or repricing dates;

(6) Separate reporting and treatment in the baseline schedule for residential mortgage loans which are held by the bank for sale and delivery to a secondary market participant under terms of a binding commitment.

A summary of the public comments and agency analysis that led to these refinements are included in section IV of this document and the refinements themselves are described in detail in the policy statement and accompanying reporting instructions.

For a bank choosing also to report the results of its internal IRR model, the agencies are proposing to collect the dollar change in value of the bank's major portfolios and the net change in the bank's economic value using the same rate scenario incorporated in the supervisory model. To the extent specific details concerning a bank's financial instruments are incorporated in an internal model with adequate integrity and reasonable assumptions, those results should provide the agencies with an improved understanding of a bank's IRR profile. For a bank reporting internal model results, an examiner would have the benefit of weighing the results of both measures in assessing a bank's overall IRR exposure for capital adequacy purposes. Moreover, comparisons between the results of the supervisory model and internal models are expected to aid the agencies in determining what, if any, refinements should be made to the proposed measurement framework before incorporating it into a minimum capital charge for IRR.

III. CDFI Section 335 Considerations

On September 23, 1994 the Reigle Community Development and Regulatory Improvement Act of 1994 (''CDFI'') (Pub. L. 103–325) was enacted. Section 335 of CDFI amended section 305 of FDICIA by instructing the agencies to be sure that steps taken to implement Section 305 ''take into account the size and activities of the institutions and do not cause undue reporting burdens.'' The agencies believe that the Congressional mandate to avoid undue reporting burdens is also applicable and desirable for purposes of implementing the proposed policy statement. Consequently, as already noted, the agencies have formulated a reporting exemption test that takes into account the size and activities of an institution. In addition, the reporting requirements for the supervisory model also considers the nature and scope of a bank's activities. Banks holding certain types of financial instruments that often have complex or nonstandardized cash flow characteristics will be expected to have the ability to calculate on their own, or obtain from reliable sources, estimates of those instruments' market value sensitivity. Banks with holdings of fixed- and adjustable-rate residential mortgage loans and securities that exceed certain levels would be required to report additional information on those portfolios to better assess the embedded option risks associated with those products.

IV. September 1993 Notice of Proposed Rulemaking

A. Description of September NPR

In September 1993, the Banking Agencies issued a notice of proposed rulemaking (September NPR) [58 FR 48206, September 14, 1993] that solicited comments on a framework for measuring a bank's IRR exposure and determining the amount of capital the bank needed for IRR.

The framework outlined in the September NPR incorporated the use of a three-level measurement process to evaluate banks' IRR exposures. The first measure was a quantitative screen, based on existing Call Report information, that exempted potential low risk banks from additional reporting requirements. The exemption screen used two criteria: (1) The amount of a bank's off-balance-sheet interest rate contracts in relation to its total assets; and (2) the relation between a bank's fixed- and floating-rate loans and securities that mature or reprice beyond five years and its total capital.

Banks not meeting the proposed exemption test were required to calculate their economic exposure by either: (1) A supervisory model that measured the change in the economic value of bank for a specified change in interest rates; or (2) the bank's own IRR model, provided that the model was deemed adequate by examiners for the nature and scope of the bank's activities and that it measured the bank's economic exposure using the interest rate scenarios specified by the agencies.

B. Comments on the September NPR Measurement Framework

The agencies collectively received a total of 133 comments on the September NPR. The majority of commenters were banks. Thrift, trade associations, bank consultants, and other government-sponsored agencies and regulators also commented. The majority of commenters responded favorably to modifications that the agencies made from an earlier, advanced notice of proposed rulemaking (ANPR) [57 FR 35507, August 10, 1992]. In particular, most commenters expressed strong support for using the results of a bank's own IRR model to determine its level of exposure and corresponding need for capital. Commenters noted the potential inaccuracies of standardized regulatory models as one reason for allowing the use of internal models. Internal models, they believed, would better capture the unique characteristics of individual bank portfolios. Many commenters also stated that permitting the use of internal models would provide banks with incentives to improve their internal risk measurement systems.

Many commenters raised concerns about various elements of the measurement framework outlined in the September NPR. Most commenters believed that the proposed treatment of non-maturity deposits understated their effective maturity. Others questioned the accuracy of the proposed supervisory model and the appropriateness of the proposed exemption test criteria.

C. Agencies' Responses to Comments

The agencies have carefully considered the concerns raised by commenters regarding the structure and elements of the proposed measurement framework and the accuracy of the proposed supervisory model. Although the agencies have decided to retain many of the principles and structures outlined in the September NPR framework, the agencies are also proposing several modifications and refinements to that framework. These modifications include changes to the proposed exemption criteria, the structure of the supervisory model, and the treatment of certain types of assets and non-maturity deposits. These modifications are discussed in greater detail in the sections that follow.

1. Exemption Criteria

The September NPR included criteria that would exempt a bank from additional measurement and reporting requirements. The proposal set forth the following two criteria that a bank would have to meet to qualify for an exemption:

(1) The total notional principal amount of all of the bank's off-balance-sheet interest rate contracts must not exceed 10 percent of its assets; and

(2) 15 percent of the sum of the bank's fixed- and floating-rate loans and securities that mature or reprice beyond 5 years must be less than 30 percent of its total capital.

There was general support among commenters for some type of exemption. The majority of commenters addressing this issue, however, voiced concerns with the proposed test. Many commenters believed that a 10 percent threshold for off-balance sheet contracts would discourage the use of such instruments in managing and reducing IRR exposures. Commenters also expressed concerns that the maturity test, incorporated in the second criterion, used contractual maturities rather than expected average lives and would overstate the risk associated with amortizing loans and securities, such as mortgage-related products. Several commenters suggested modifying the criterion to use bank management's estimates of average lives, rather than contractual maturities.

Several commenters questioned whether the proposed exemption criteria provided sufficient safeguards against exempting banks that may pose significant risks to the Bank Insurance Fund due to their potential IRR exposures. A few commenters noted the potential for material intermediate-term maturity (e.g., 1- to 5-years) mismatches. A minority of commenters question the need for, or efficacy of, any exemption test.

The agencies continue to believe that an exemption is desirable and that section 335 of CDFI Bill reinforces the need to consider ways of minimizing burdens associated with this policy statement. The agencies also believe that there is a need to ensure sufficient safeguards against exempting banks that may pose significant systemic risks or costs to the Bank Insurance Fund. Consequently, the agencies propose to modify the exemption test to focus on three considerations: the size of the bank; the quality of its overall condition and management, as measured by its composite CAMEL rating; and the level of its potential repricing exposure as measured by its intermediate and longer-term assets. Specifically, to be exempted, a bank would have to meet the all of the following three conditions:

(1) The bank must have total assets of less than $300 million; and

(2) Have a ''1'' or ''2'' composite CAMEL [1] rating from its primary supervisor; and

(3) The sum of:

(a) 30 percent of its loans and securities with contractual maturity or repricing dates between one and five years, and

(b) 100 percent of its loans and securities with contractual maturity or repricing dates beyond five years must be less than 30 percent of the bank's total assets.

Banks that meet this proposed exemption test could elect to submit the proposed IRR Call Report schedules on a voluntary basis. The agencies encourage such voluntary reporting.

The exemption test does not alleviate the need for an exempted bank to employ sound IRR measurement and management practices and to have sufficient capital for its risk exposure. Exempted banks will continue to be subject to safety and soundness IRR examinations that the agencies may conduct. As a result of such examinations, a bank that is exempt from this policy statement may be directed by their primary supervisor to improve its IRR measurement and management practices, or to hold additional capital for IRR. In addition, the agencies would retain the right to require any bank to comply with the provisions of this policy statement and any subsequent rulemakings regarding IRR.

2. Interest Rate Scenarios

The September NPR outlined a number of factors that should be considered in selecting an appropriate interest scenario for measuring banks' IRR exposures and evaluating capital adequacy. These factors included:

(1) The time horizon over which banks and supervisors could reasonably be expected to identify risk and implement mitigating responses;

(2) The likelihood of occurrence, as reflected by historical rate volatility; and

(3) The appropriate historical sample period used to determine the likelihood of a given rate movement.

The agencies sought comment on several alternative methodologies for developing appropriate interest rate scenarios, including both parallel and non-parallel changes in interest rates. Among the non-parallel methods, the interest rate scenario could be based upon observed nominal changes in interest rates, or upon observed proportional changes in interest rates. As an alternative, the agencies also sought comment on using a simple parallel shift in interest rates across the entire maturity spectrum (''parallel rate shocks'').

The agencies received a range of comments on the selection and determination of the appropriate interest rate scenarios. Commenters were divided on whether a short or long historical sample was most appropriate for determining the potential range of interest rate movements. Those favoring a shorter sample period believed such a period best reflected current and likely probabilities of rate changes. Others favored a longer sample period, primarily to minimize the impact of any one rate cycle. Opinions were also divided on whether a monthly, quarterly, or annual time horizon was most appropriate for analyzing potential rate scenarios. The majority of commenters favored either a monthly or quarterly horizon, on the grounds that such time frames represented the time bank management would need to implement risk mitigating actions in response to an adverse movement in interest rates. Others, however, disagreed and favored the use of an annual time horizon.

Commenters also expressed diverse views on whether the proposed rate scenarios should be based on nominal or proportional changes in historical rates, or on the basis of a simple parallel rate shock. A majority of commenters argued against the use of parallel rate shocks, on the grounds that such scenarios were not realistic of probable future interest rate changes. Of these commenters, most favored scenarios that would be based on proportional rate changes, such that the size of the rate change used to measure exposures would depend upon, and vary with, the current level of market interest rates. Other commenters, however, favored the use of parallel rate shocks, primarily on the grounds of simplicity and ease of understanding.

The agencies propose to use a simple 200 basis point, instantaneous parallel upward and downward shift in interest rates for measuring and evaluating

[1] CAMEL refers to the Uniform Financial Institution's Rating System that the agencies have adopted. Each bank is assigned a uniform composite rating based on an evaluation of pertinent financial and operational standards, criteria and principles. This overall rating is expressed through use of a numerical scale of ''1'' through ''5'' with ''1'' indicating the highest rating and ''5'' the lowest. The composite rating assess five key performance dimensions that are commonly identified by the acronym ''CAMEL'': Capital adequacy, Asset quality, Management, Earnings and Liquidity.

banks' exposures for purposes of assessing capital adequacy. The agencies believe that such rate movements are realistically conservative given the movements in interest rates experienced in 1994. They also believe that such rate scenarios are sufficiently transparent and easy to understand that they can be easily incorporated into either a bank's own IRR model or the supervisory model. The scenarios are incorporated into the proposed supervisory model via the proposed risk-weights that are applied to a bank's reported maturity and repricing balances.

The agencies stress that their adoption of these rate scenarios does not replace the need for a bank to evaluate its IRR exposure over a wider range of possible rate changes for its own risk management purposes. Such rate changes may include non-parallel yield curve shifts and gradual, as well as immediate, rate changes. To ensure greater consistency, however, in the agencies' assessments of banks' exposures and their need for capital, banks are encouraged to include the proposed instantaneous and parallel 200 basis point rate scenarios into their internal IRR measurement processes.

3. Structure of Supervisory Model

The supervisory model in the September NPR grouped assets, liabilities, and off-balance-sheet positions by various categories, based on their general cash flow and product characteristics. Each category and time band was assigned risk-weights corresponding to a rising rate scenario and a declining-rate scenario. The risk-weights were constructed by the agencies, using hypothetical market instruments that were representative of the category being measured. For amortizing instruments, the risk-weights incorporated assumptions about prepayments.

A number of commenters expressed concerns regarding the accuracy of the model proposed in the September NPR. Frequently cited concerns included: the use of hypothetical, rather than bank-specific, instruments to derive risk weights; the level of data aggregation; the use of standardized prepayment assumptions; and the treatment of interest rate protection agreements (caps and floors). A number of commenters voiced concerns about the treatment of residential mortgage-related products. In general, these commenters believed that additional detail on mortgage holdings, such as coupon information on fixed-rate mortgages, and more explicit information on periodic and lifetime interest caps for adjustable-rate products, would improve the model's accuracy.

The agencies sought comment in the September NPR on whether commercial banks with portfolios that are similar to thrift should be required to use the Net Portfolio Value model used by the Office of Thrift Supervision (OTS) for federally-supervised thrift institutions. Most commenters believed that such a requirement would impose substantially greater reporting burdens without necessarily improving the accuracy of the measure and might create incentives for banks to substitute such a model for the judgment of bank management. A minority of commenters disagreed and stated that the approach and data used by the OTS were superior and more accurate than what the banking agencies had proposed.

The agencies have carefully considered commenters' concerns about the proposed supervisory model's accuracy. The agencies believe it is critical to have a supervisory model that can identify banks with significant IRR exposures. They also are attentive to the risk that model measurement errors could lead to undesirable incentives or incorrect assessments regarding the risk and complexity of products, activities, or banks. At the same time, the agencies recognize the need to balance the desire for increased accuracy against the potential costs of greater reporting detail and model complexity. The agencies are particularly concerned that the supervisory model retain sufficient transparency so that bankers can understand its methodology and anticipate and compute their bank's measured exposure and that it not replace the role or need for sound internal interest rate risk management systems.

The agencies intend to make five modifications to the structure of the supervisory model to improve its accuracy and which are described below. The first four changes modify the basic supervisory model outlined in the September NPR. This revised basic model will be the baseline model for non-exempted banks. The last modification creates supplemental modules for banks that have concentrations in residential mortgage-related instruments. The agencies are mindful that the supplemental schedules will impose additional reporting requirements for some banks. Nonetheless, the agencies are concerned that the baseline model may not be sufficiently accurate to capture the risk at banks with significant holdings of mortgage loans or mortgage pass-through securities, and therefore propose to require additional reporting for those banks. A detailed description of the model, the risk weights, and information requirements are discussed in the policy statement. Schedule 1, provided in the attached policy statement, illustrates the type of information that will be used in the baseline supervisory model, while Schedules 2–4 illustrate the information used for the supplemental modules.

a. *Adjustable-rate residential mortgages.* The first modification that the agencies have made is to treat adjustable-rate residential mortgage loans and securities (ARMs) separately from fixed-rate residential mortgage assets. As modified, information on ARMs will be reported by a bank on the basis of the reset frequency of the ARM's pricing index, rather than by the ARM's next date to repricing. In addition, a bank will report ARMs that are currently within 200 basis points of their lifetime cap separately from those ARMs that are further away from their lifetime caps. The agencies believe that this stratification of ARM products will provide a better reflection of their potential price sensitivity to changes in market interest rates than the treatment described in the September NPR.

b. *Fixed-rate residential mortgages and other amortizing assets.* The second modification the agencies made is to treat fixed-rate residential mortgage assets separately from other amortizing assets. In the September NPR, these assets had been combined into a single category. As a result of this combination, the same prepayment assumptions were applied to all amortizing assests. By separating these two categories, the agencies propose to apply different prepayment assumptions to the two categories.

c. *Self-reporting of market value sensitivities.* The third modification will require a bank that holds certain types of financial instruments to provide in its Call Report submissions, estimates of changes in market value sensitivities of those instruments for the specified 200 basis point interest rate scenarios. These estimates may be obtained from the bank's own internal risk measurement systems or from reliable third-party sources, provided that the bank knows, understands, and documents the assumptions underlying those estimates. All estimates and supporting documentation will be subject to examiner review. The September NPR used this approach for certain mortgage derivatives securities. The agencies propose to extend this treatment to other products. The products for which banks would be required to self-report market value sensitivities generally have complex options or cash flow

characteristics. These characteristics make it difficult to adequately measure these products in a standardized model without collecting detailed transaction-oriented data.

Self-reporting of market value sensitivities generally would be required for the following products or portfolios:

(1) All mortgage-backed derivative securities that meet the FFIEC's definition of ''high-risk.''[2]

(2) All structured notes, as defined in the Call Report instructions;

(3) Non-high-risk mortgage derivative securities when those holdings represent 10 percent or more of a bank's assets.

(4) Mortgage servicing rights that are capitalized and reported on the bank's balance sheet;

(5) Off-balance-sheet interest rate options, caps, and floors, including interest rate swaps with embedded option characteristics.

The agencies believe that given the potential price sensitivity of these products or portfolios to interest rate changes, it is reasonable to expect banks to be able to calculate or obtain reliable estimates of their market value sensitivities. Industry comments on the availability of such information are especially welcomed.

d. *Trading account portfolios.* The agencies also propose to change the manner in which trading account positions are treated in the supervisory model. These changes are in response to commenters concerns regarding the burden associated with distributing trading positions into the maturity ladder and applying a 200 basis point rate shock to those positions.

As modified, banks will be asked to self report the change in the economic value of all of their trading account positions for a 100 basis point parallel increase or decrease in interest rates. This rate change, smaller than the 200 basis point change used for the rest of the bank's holdings, reflects the shorter holding period typical for trading account positions. It also is similar to the 100 basis point scenario used by the Basle Committee on Banking Supervision (Basle Committee) in its April 1995 proposal on capital requirements for the market risks of traded debt securities.[3]

The agencies believe the self-reporting treatment for trading accounts is consistent with supervisory guidance issued by each of the agencies that directs banks with significant trading activities to have internal risk measurement and limit systems commensurate with the size and complexity of their activities.

As previously noted, the Basle Committee has recently released for comment a proposal to incorporate the market risks of trading activities into the Basle Accord risk-based capital standards.[4] The agencies published in the **Federal Register** on July 25, 1995 (60 FR 38082) a notice of proposed rulemaking on the Basle market risk proposal. If the agencies adopt a final rule to implement the Basle market risk proposal for banks with a large concentration of trading activities, the agencies anticipate that modifications to this policy statement will be required to ensure that IRR exposures arising from those activities are not ''double-counted.'' One approach that the agencies are considering is to exclude trading activities from this proposed policy statement and IRR measure for those banks that are subject to the market risk proposal. If such an approach is adopted, those banks would be exempted from having to report the changes in the market value of their trading portfolios for the IRR measure. If, however, a bank's trading portfolio offsets the exposure from other components of the bank's balance sheet, this treatment would overstate the bank's total IRR exposure.

e. *Supplemental modules.* The final modification made by the agencies to the supervisory model structure is the development of supplemental modules for fixed-rate and adjustable-rate residential mortgage loans and pass-through securities. A bank whose holdings of these products exceeds certain threshold levels will be required to report additional information on those holdings in their Call Report submissions. The agencies will apply expanded tables of risk-weights to those portfolios. The supplemental module for fixed-rate residential mortgages requires a bank to stratify its balances into eight coupon ranges. The agencies have developed separate risk-weights for each coupon range which reflect the differences in expected prepayment speeds that are associated with the underlying coupon rates. To develop these risk-weights, the agencies have used the September 30, 1994 pricing tables generated by the Office of Thrift Supervision's Net Portfolio Value Model.[5] The agencies will apply this supplemental module and associated risk-weights when a bank's holdings of fixed-rate residential mortgage loans and pass-through securities represent 20 percent or more of its total assets. Schedule 2 in the attached policy statement illustrates the information that will be used in the supplemental module for fixed-rate residential mortgages. This expanded module will be optional for a bank whose holdings of these instruments are less than 20 percent of its assets.

Two levels of supplemental modules have been developed by the agencies for adjustable-rate residential mortgages. The first level, illustrated by Schedule 3 in the attached policy statement, requires information on ARMs to be stratified by reset frequency (as in the baseline model), periodic caps, and the ARMs' distances from lifetime caps. This module will be used by the agencies when a bank's ARM holdings are greater than 10 but less than 25 percent of its assets. The second level, illustrated by Schedule 4 in the attached policy statement, requires that ARM balances be further stratified by the underlying rate index of the ARM. This module will apply to banks whose holdings equal or exceed 25 percent of their total assets. The agencies have developed risk-weights that correspond with each various reset frequency, lifetime cap, periodic cap, and, index combination, again using pricing tables generated from the OTS Net Portfolio Value Model.

The agencies are mindful that many commenters to the September NPR raised concerns about tradeoffs between attempts to improve the supervisory model accuracy and associated reporting burdens, especially with regards to the use of the OTS model. Nonetheless, the agencies believe the distribution of coupons for fixed-rate mortgage portfolios and the interaction of the parameters illustrated in Schedules 3 and 4 significantly affect the price sensitivity of mortgage loans and securities. The agencies believe that by explicitly considering these parameters, the supplemental modules will enhance the accuracy of the supervisory model. The agencies believe that this increased accuracy is

[2] Effective February 10, 1992, the agencies and the Office of Thrift Supervision adopted revised supervisory policies on securities activities that were developed under the auspices of the FFIEC. The revised policies established a framework for identifying ''high-risk mortgage derivative products.''

[3] The Basle Committee on Banking Supervision is a committee of banking supervisory authorities which was established by the central-bank Governors of the Group of Ten countries in 1975.

[4] The Committee's proposal is described in a consultative paper, entitled ''Planned Supplement to the Capital Accord to Incorporate Market Risks,'' issued in Basle, Switzerland on April 12, 1995. Copies of that paper may be obtained by contacting: The OCC's Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219. A copy of the paper also is available at the FDIC Reading Room, 550 North 17th Street, NW, Washington, D.C.

[5] Appendix 4 of the policy statement provides a description of the derivation of the risk-weights for the baseline supervisory model and supplemental modules.

warranted due to the increased holdings of mortgage products among commercial and savings banks. They also note the flexibility that many banks exercise in their ability to tailor the various pricing combinations of their ARM products. As banks expand their activities in these products, the agencies are particularly concerned that banks not ignore the potential impact and interaction of these pricing parameters.

Draft instructions for completing the supplemental modules and a technical description of the risk-weights used in the modules are provided in the appendices 2 and 4 to the proposed policy statement.

4. *Non-maturity deposit assumptions.* The September NPR established limits on the maximum maturities that a bank could attribute to its non-maturity deposits when measuring its IRR exposures for capital adequacy. Non-maturity deposits were defined to be those instruments without a specific maturity or repricing date and included demand deposits (DDA), negotiable order of withdrawal (NOW), savings, and money market deposit (MMDA) accounts. In the September NPR, banks were subject to the following constraints in distributing these deposits across time bands:

(1) A bank could distribute its DDA and MMDA accounts across any of the first three time bands, with a maximum of 40 percent of those balances in the 1 to 3 year time band;

(2) A bank could distribute its savings and NOW account balances across any of the first four time bands, with a maximum of 40 percent of the total of those balances in the 3 to 5 year time band.

The treatment of non-maturity deposits was one of the most commented upon aspects of the September NPR. Most commenters stated that the proposed treatment could, in many cases, understate the effective maturity of these deposits and urged the agencies to adopt a more flexible approach or extend the permissible maturities. Commenters expressed concern that the adoption of the proposed rules could lead to incorrect assessments of risk exposures or inappropriate incentives to shorten asset maturities.

The agencies recognize that the treatment of non-maturity deposits will be, for many banks, the single most important assumption in measuring their IRR exposures. The agencies also agree that many banks historically have been able to exercise considerable flexibility in the timing and magnitude of pricing changes for these accounts. It is for this reason that the agencies had proposed to allow banks some flexibility in the treatment of these deposits. Nonetheless, the agencies believe that there are risks associated with assuming that a bank has sufficient flexibility in its management of these deposits so as to offset any IRR position it may have. While these deposits can, in many circumstances, help to mitigate a bank's IRR exposure, historical experience suggests that an institution can incur significant levels of IRR though it may have sizeable holdings of non-maturity deposits. The agencies also are concerned that increased competitive pressures and changing customer demographics may, over time, make these deposits more rate sensitive or prone to migration into other investment vehicles.

Given these considerations, the agencies believe it is appropriate to extend, but not eliminate, the maximum permissible maturities for non-maturity deposits. Within these maturity ranges, a bank would have the flexibility to distribute its balances based on its own assumptions and experience. The agencies will expect that bank management will be able to document to examiners the rationale for the treatment they have chosen.

In addition to extending permissible maturities, the agencies believe that demand deposit balances held by businesses should be treated differently than demand balances held by other entities. In particular, the agencies believe that a shorter maturity is appropriate for commercial demand deposit accounts since many of these accounts are in the form of compensating balances.[6] The implicit earnings from these compensating balances are often used to offset service charges incurred by the customer, and the level of these implicit earnings attributed to the deposits is generally dependent upon the level of current market rates. As such, these balances behave very much like interest-sensitive balances. As market rates increase, the level of balances drops due to a higher earnings credit, while as rates decline, the level of balances will generally increase.

The agencies propose to extend the range of permissible maturities for non-maturity deposits by revising the distribution rules for those deposits. As proposed, a bank may distribute its deposits across time bands according to its individual assumptions and experience, subject to the following constraints:

(1) Commercial Demand Deposits: A bank would report 50 percent of it's commercial demand deposits in the 0–3 month time band. The remaining balances may be distributed across the first four time bands, with a maximum of 20 percent of total balances in the 3–5 year time band.

(2) Retail DDA, Savings, and NOW Accounts: A bank may distribute the balances in these accounts across any of the first five time bands, with a maximum of 20 percent in the 5–10 year time band and no more than 40 percent combined in the 3–5 and 5–10 year bands.

(3) MMDA Accounts: A bank may distribute the balances in these accounts across any of the first three time bands, with a maximum of 50 percent in the 1–3 year band.

Table A summarizes the distribution that would result if a bank reported its balances so as to maximize its allowable maturities.

TABLE A.—MATURITY DISTRIBUTION LIMITS FOR NON-MATURITY DEPOSITS

	0–3 months (percent)	3–12 months (percent)	1–3 years (percent)	3–5 years (percent)	5–10 years (percent)
Commercial DDA	50	0	30	20	.....
Retail DDA	0	0	60	20	20
MMDA	0	50	50	.....	.....
Savings	0	0	60	20	20
NOW	0	0	60	20	20

[6] For purposes of this policy statement, the term ''commercial'' is used to mean ''nonpersonal'' as that term is defined under the Board of Governor of the Federal Reserve System's Regulation D dealing with reserve requirements.

The agencies believe that these maturity limits provide appropriate guidelines for the purpose of standardized IRR measurement across the banking industry. These limits are not intended to replace the need for banks to evaluate and consider the sensitivity of their individual deposit bases when managing their IRR exposures. Examiners will consider a bank's assessment of its deposit base and how those assessments may differ from those used in the standardized supervisory model during the examination process when evaluating a bank's capital adequacy for IRR. The agencies do not propose to require banks to incorporate these assumptions into their internal IRR models when submitting internal model results to the agencies. Rather, through the examination process, examiners will consider whether the treatment used in the bank's model is appropriate, based on the analysis the bank provides.

5. Use of a Bank's Internal IRR Model

The September NPR permitted a bank to use the results of its internal IRR model, as an alternative to the supervisory model, when assessing its need for capital for IRR, provided that its model was deemed adequate by the appropriate supervisor. Most commenters expressed strong support for using the results of a bank's internal model and believed that such a model would provide a more accurate assessment of risk than the proposed supervisory model.

The proposed policy statement provides for the consideration of a bank's internal model results in the assessment of that bank's level of IRR exposure and its need for capital. The results and quality of a bank's IRR measurement process will be one factor that examiners will consider in assessing a bank's need for capital. Among the factors that an examiner will consider when evaluating the quality of a bank's internal model is whether the risk profile it generates is an adequate measure of the bank's risk position, taking account of the types of instruments held or offered by the bank, the integrity and completeness of the data used in the model, and whether the assumptions and relationships underlying the model are reasonable. When assessing the exposure of a bank's economic value to changes in interest rates, examiners generally will place greater reliance on the results of a bank's internal model, rather than the supervisory model, provided that the bank's own model:

(1) Measures IRR from an economic perspective, as defined in this proposal;

(2) Uses the proposed supervisory scenario of an instantaneous and parallel 200 basis point movement in interest rates; and

(3) Is deemed by the examiner to provide a more accurate assessment of the bank's IRR risk profile than the supervisory model and meets the criteria discussed in Section VII of the proposed policy statement.

Reacting to the September NPR, some commenters requested the agencies to provide more explicit guidelines on the criteria that examiners will use to evaluate the adequacy of a bank's model. Other commenters cautioned the agencies against creating checklists of acceptable assumptions or measurement techniques. Such lists, they believed, would be incomplete given the diverse nature of banks and would stifle innovation in both risk measurement and product development. Some commenters also expressed concern that the assumptions and results of the supervisory model would be used as an explicit benchmark against which internal models would be judged and compared. These commenters were concerned that examiners would require the bank to conduct detailed and ongoing reconciliations between the bank's internal model and the supervisory model results. Such requirements, they believed, imposed unnecessary burdens and lessened the incentives for banks to use their own IRR models. Commenters raising these concerns generally urged the agencies to refrain from imposing supervisory model assumptions on bank models and from requiring banks that have their own internal model to report the information required for the supervisory model.

A key issue for the agencies, and one reason for delaying the implementation of explicit minimum capital standards for IRR, is the degree of specification the agencies need to establish when internal models are used for assessing regulatory capital adequacy. The agencies are aware that there are a variety of measurement systems and assumptions in use by the industry to measure exposures. While such variation may be appropriate given the diverse nature of commercial banks, it may lead to different assessments of risk and hence, capital requirements, for institutions that have similar risk profiles. More explicit guidance from the agencies on acceptable techniques and assumptions could help to lessen this variation and the risk that different amounts of capital may be required for banks with similar portfolios. Such guidance also would help reduce inconsistencies among examiners and agencies in evaluating internal models. Efforts to devise more explicit guidance could, however, result in standards which are inappropriate for some institutions and may impede the industry's continued innovation of more sophisticated risk measurement techniques. The agencies welcome industry comments and suggestions on criteria and standards that they should establish for accepting internal model results.

With regard to reporting, the agencies propose that internal model results be reported on voluntary basis in a supplemental Call Report schedule like that portrayed in Schedule A. In response to the concerns of many commenters, the agencies propose that such reporting be on a confidential basis. Although many commenters to the September NPR requested that banks submitting internal model results not be required to also report the data required for the supervisory model, the agencies propose the data for the supervisory model be collected from all non-exempt banks. While recognizing the reporting burden that this imposes, the agencies believe that collecting data for both internal and the proposed supervisory model results will be important for effective supervision. Moreover, such data also will help the agencies evaluate the use of both the supervisory model and internal models as the basis for ultimately establishing minimum capital charges for IRR. By monitoring the maturity and repricing data collected for the supervisory model, the agencies will be able to assess whether supervisory and internal models results capture major shifts in portfolio compositions. Such monitoring may help identify key model assumptions that should be highlighted for examiner review and common strengths or weaknesses of internal measures when compared to the supervisory model. This information will help the agencies to provide better guidance to examiners and bankers on acceptable risk measurement techniques. It will also assist the agencies in determining what, if any, improvements could be made to the proposed supervisory model before explicit minimum capital charges are implemented.

V. Reporting Requirements

The implementation of this policy statement relies on changes to the Call Report. The examples of Call Report schedules shown in this proposal and the accompanying draft reporting instructions for those schedules are provided to assist the reader in analyzing the full implications of the proposal. Once comments are received on the measurement framework and any

modifications that the agencies believe are appropriate are made, the proposed Call Report schedules would also be amended to reflect those changes. At that time, the Call Report schedules would be submitted to FFIEC's Reports Task Force for inclusion in the comment document for March 1996 Call Report changes. The FFIEC will submit any Call Report changes to OMB for review as required under the Paperwork Reduction Act 44 U.S.C. 3501. Opportunity for public comment is always provided in relation to such a submission. Nevertheless, the agencies invite comments regarding the paperwork implications of this proposed policy statement, and will carefully consider any comments received in the development of the policy, as well as in recommending to the FFIEC proposed revisions to the Call Report.

VI. Implementation Schedule

The agencies propose to require any additional reporting by non-exempt banks beginning with the March 1996 Call Reports. Full implementation of this policy statement for assessing the adequacy of bank capital would be effective December 31, 1996.

VII. Requests for Comments

Comments are requested on all aspects of the proposed policy statement, including the suggested implementation schedule. The agencies particularly request comments on the following issues:

1. Exemption for Small Banks

The agencies propose to exempt certain small banks from the proposed policy statement and associated reporting requirements in order to lessen regulatory burdens on small, well-managed banks. The criteria for exemption considers the size of the bank, its overall CAMEL rating and the proportion of assets in intermediate and longer-term maturities.

a. Are the three criteria used for the exemption appropriate and reasonable?

b. Does the use of a bank's confidential CAMEL rating as one of the exemption criteria raise concerns that it may allow public users of Call Reports to discern a bank's CAMEL rating?

c. Does the proposed exemption criteria provide adequate safeguards against exempting banks that pose significant risks to the deposit insurance fund due to IRR?

2. Baseline Supervisory Model

The agencies are proposing that all non-exempted banks provide information for a baseline supervisory model, the results of which, would be one factor that an examiner would use to assess a bank's level of IRR exposure and its need for capital. The baseline model uses seven time bands and applies a series of risk-weights to a bank's reported repricing and maturities balances in each of those time bands. For certain types of instruments or activities, a bank would be required to provide their own estimate of the change in value (self-report) of the instruments or activities for the specified interest rate scenario.

a. Does the proposed baseline supervisory model provide a reasonable basis for measuring a bank's IRR exposure? If not, what changes should be made to the model?

b. Are the amount and type of data proposed to be collected for the model appropriate and reasonable? If not, what changes could be made either to improve the usefulness of the data collected and/or reduce the burden of the proposal?

c. Do banks have the ability to calculate or obtain reasonable estimates of changes in market values for the items where self-reporting would be required? If not, how should such items be incorporated into the model? What factors should examiners consider in reviewing and assessing the reliability of bank's self-reported estimates?

d. Are the risk-weights proposed for the baseline model appropriate for an immediate and parallel 200 basis change in interest rates?

e. What portion, if any, of the proposed Call Report interest rate risk data and output from the proposed supervisory measurement system should be made available to the public through Call Report disclosures and the Uniform Bank Performance Report?

3. Treatment of Non-Maturity Deposits

The agencies propose limits on how a bank could distribute deposits without specified maturities (DDA, NOW, MMDA and savings) among the time bands for the supervisory model. In setting these limits, the agencies propose to treat commercial DDA balances separately from other DDA balances. As proposed, these limits only apply to the standardized supervisory model. The proposal would give an examiner the latitude to use a bank's own non-maturity deposit assumptions when evaluating the bank's capital adequacy for IRR provided that the bank can demonstrate and support those assumptions.

a. Is it appropriate to treat commercial DDA balances separately from other DDA balances?

b. Are the proposed maturity limits reasonable for a standardized reporting and measurement framework?

c. Is it appropriate to give examiners latitude to use a bank's own non-maturity deposit assumptions? If so, should the agencies specify minimum standards of analysis that will be acceptable for banks that wish to use their own assumptions? What types of analyses or factors should be incorporated into such standards?

4. Supplemental Modules for Mortgage Holdings

The agencies have proposed supplemental reporting and expanded risk-weight tables that would apply to banks that have concentrations in either fixed- or adjustable-rate residential mortgage products. These supplemental modules are designed to improve the supervisory model's accuracy by incorporating more fully, the parameters which may affect a mortgage's price sensitivity. The agencies propose to derive the risk-weights for the supplemental modules from pricing tables generated by the OTS's Net Portfolio Value Model (OTS model).

a. Is the information that would be collected for the supplemental modules appropriate and meaningful? If not, what changes should be made?

b. Are the thresholds proposed for requiring a bank to use the supplemental modules appropriate? If not, what threshold would be appropriate?

c. Do the supplemental modules and risk-weights sufficiently address concerns about the supervisory model's accuracy for banks with significant holdings of residential mortgage products? Will their use lessen the possibility of different regulatory treatment for institutions subject to the OTS model and those subject to this policy statement?

d. Will the use of the supplemental modules and the associated risk-weights used in those modules provide appropriate incentives for bank decision-making? Will their use discourage the development of a bank's own measurement capabilities?

e. Is the OTS model a reasonable source for developing the risk-weights used in this module? If not, are there other sources that would be more better?

f. The agencies believe the supplemental schedules related to mortgages are necessary because the price sensitivity of these products may vary substantially depending upon their coupon and cap characteristics. Are the proposed supplemental schedules appropriate and is the level of precision sought by the agencies reasonable?

5. Frequency of Updating Risk-Weights

In the interest of minimizing regulatory burden and providing greater transparency and certainty for the supervisory model, the agencies propose to update the risk weights for the baseline and supplemental schedules only in the event of a significant movement in market rates or other market factors that materially change the accuracy of the derived price sensitivities and associated risk weights. The OTS, in contrast, recalculates the price sensitivities for its model each quarter in order to achieve the precision it believes necessary to distinguish among different coupon rates of mortgage and other products.

a. Does the agencies' intention to limit the updating of risk-weights represent an appropriate balance among the objectives of minimizing regulatory burden, providing transparency and certainty, and providing sufficient measurement accuracy? If not, what other approaches would be appropriate?

b. Does this limitation on updating risk weights materially reduce the benefits and accuracy that the supplemental schedules for mortgages are designed to provide?

c. The supplemental reporting schedule for fixed-rate mortgages proposes to collect balance information by set coupon ranges. An alternative that the agencies have considered is to collect balances on the basis of their distance from prevailing current market coupons. Such a treatment would allow the risk weight applied to any given mortgage coupon to vary as its spread to current mortgage rates varies. Would such a treatment be an improvement over the approach currently proposed by the agencies? What, if any, difficulties would be encountered in reporting balances on the basis of their spread to current mortgage coupons?

6. Use of Carrying Values

In the interest of simplicity, the agencies propose to apply the risk weights, including those derived from the OTS price sensitivities, to the carrying value of a bank's instruments. To the extent that the carrying and market values differ, this introduces an error in the estimated price sensitivity of an instrument. The price sensitivity of instruments whose market values exceed their carrying values will be understated whereas the price sensitivity of instruments whose market values are below carrying values will be overstated.

a. Is the use of carrying values an appropriate simplification and does the use of carrying values for both assets and liabilities sufficiently mitigate the materiality of such errors? If not, what other approach(es) would be appropriate?

7. Use of Internal Models

a. Does the proposed policy statement provide appropriate incentives for the use of banks' internal models and for banks to enhance their internal risk measurement systems?

b. Are the criteria described for assessing a bank's internal model appropriate? What other factors or criteria should examiners consider in assessing and reviewing a bank's internal model results?

c. Should the agencies provide additional guidelines on acceptable parameters, assumptions, and methodologies for internal models? What types of guidance would be most useful?

d. Is the proposed voluntary schedule for reporting internal model results appropriate? Are there sufficient incentives for banks to provide this information on a voluntary basis?

8. Treatment of Trading Account

The agencies propose that banks ''self-report'' the change in value of their trading account activities for a 100 basis point change in interest rates. The agencies also are considering whether trading account activities should be excluded from this policy statement and IRR measure if a bank is subject to the market risk capital requirements as proposed by the Basle Committee.

a. Is the 100 basis point interest rate scenario that the agencies propose to use when measuring the IRR exposure in a bank's trading portfolio appropriate? If not, what scenario would be appropriate?

b. What modifications, if any, should be made to this proposal for banks that may be subject to the Basle Committee's proposed capital standards for market risk in trading activities? What, if any, operational problems would be created if such banks were simply exempted from including and reporting their trading activities for purposes of this policy statement? What, if any, competitive issues would such a treatment present?

The text of the proposed policy statement follows. The first two appendices to the proposed policy statement provide proposed reporting schedules and accompanying instructions for those schedules that are under consideration by the agencies as part of this proposed policy statement. The third appendix provides the risk weights that would be used in the proposed supervisory model. The fourth appendix provides technical descriptions of the derivation of the model's risk weights and the supplemental modules for residential mortgage-related products.

Proposed Policy Statement

I. Purpose

This supervisory policy statement is adopted by 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), collectively, the ''agencies.'' The statement establishes a supervisory framework that the agencies will use to assess and measure the interest rate risk (IRR) exposures of insured commercial and FDIC supervised savings banks. The results of this measurement framework will be used by the agencies in their evaluation of a bank's IRR exposure and whether it needs capital for IRR. Each agency has additional guidance and policies on the measurement and management of IRR. Those policies and guidelines set forth each agency's expectations regarding safe and sound banking practices for IRR management. This policy statement does not replace or supersede those issuances. The adoption of this policy statement by the agencies does not replace the agencies' expectations that all insured depository institutions have internal IRR measurement and management processes that are commensurate with the nature and level of their IRR exposures.

II. Background

Interest rate risk is the adverse effect that changes in market interest rates have on a bank's earnings and its underlying economic value. Changes in interest rates affect a bank's earnings by changing its net interest income and the level of other interest-sensitive income and operating expenses. The underlying economic value of the bank's assets, liabilities, and off-balance sheet instruments also are affected by changes in interest rates. These changes occur because the present value of future cash flows and in some cases, the cash flows themselves, change when interest rates change. The combined effects of the changes in these present values reflect the change in the bank's underlying economic value.

Interest rate risk is inherent in the role of banks as financial intermediaries. Interest rate risk, however, introduces volatility to bank earnings and to the economic value of the bank. A bank that has an excessive level of IRR can diminish its future earnings, impair its

liquidity and capital positions, and, ultimately, jeopardize its solvency.

The agencies believe that safety and soundness requires effective management and measurement of IRR, and each agency has provided supervisory guidance to banks and examiners on this subject. In addition, the agencies believe that a bank's capital adequacy should be assessed in the context of the risks it faces, including interest rate risk. Both of these aspects of IRR depend, among other things, on a meaningful measurement of the bank's risk exposure.

The agencies believe that a bank should have an IRR measurement system that is commensurate with the nature and scope of its IRR exposures. Among the difficulties in performing a supervisory evaluation of interest rate risk, however, is that measurement systems and management philosophies can differ significantly from one bank to another. As a result, although two banks may each be well-managed, their measured exposure may not be directly comparable. This difficulty has been magnified by the rapid pace of change in financial markets and instruments themselves. In light of the rapid evolution in financial instruments and practices, the agencies believe there is a need for the more formal assessment of banks' IRR exposures that this policy statement establishes.

The measurement framework described in this policy statement focuses on the exposure to a bank's underlying economic value from movements in market interest rates. The exposure to a bank's economic value, as used in this policy statement, is defined as the change in the present value of its assets, minus the change in the present value of its liabilities, plus the change in the present value of its interest-rate related off-balance sheet positions. The agencies have chosen this focus because they believe that changes in a bank's economic value best reflect the potential effect of embedded options and the potential exposure that the bank's current business activities pose to the bank's future earnings stream, and hence, its ability to sustain adequate capital levels. Changes in economic value measure the effect that a change in interest rates will have on the value of all of the future cash flows generated by a bank's current financial positions, not just those cash flows which affect earnings over the few months or quarters. Thus, changes in economic value provide a more comprehensive measure of risk than measures which focus solely on the exposure to a bank's near-term earnings.

III. Definitions and Applicability

A. Definitions

For the purpose of this policy statement, the following definitions apply:

(1) Interest Rate Risk Exposure means the estimated dollar decline in the economic value of the bank in response to a potential change in market interest rates under the specified interest rate scenarios, as measured by either the supervisory measure or, where applicable, a bank's internal model.

(2) Economic value of the bank means the net present value of its assets, minus the net present value of its liabilities, plus the net present value of its off-balance-sheet instruments.

(3) Interest rate scenarios means the specified changes in market interest rates used in calculating a bank's IRR exposure.

(4) Mortgage derivative products means interest-only and principal-only stripped mortgage-backed securities (IOs and POs), tranches of collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICS), CMO and REMIC residual securities, and other instruments having the same characteristics as these securities.

(5) Net risk-weighted position means the sum of all risk-weighted positions of a bank's assets, liabilities and off-balance sheet items, plus the estimated change in market values for any self-reported items. For the purposes of the supervisory measure, this number represents the amount by which the economic value of the bank is estimated to change in response to a potential change in market interest rates under the specified interest rate scenarios.

(6) Non-maturity deposits mean demand deposit accounts (DDAs), money market deposit accounts (MMDAs), savings accounts, and negotiable order of withdrawal accounts (NOWs).

(7) Notional principal amount means the total dollar amount upon which payments on a contract are based.

(8) Structured notes mean those instruments identified as structured notes for Call Report purposes.

(9) Commercial demand deposits mean ''nonpersonal'' demand deposits as that term is defined under the Board of Governors of the Federal Reserve System's Regulation D.

B. Applicability and Exemption for Small Banks With Low Risk

All banks will be subject to the provisions of this policy statement and will be expected to provide information for the supervisory model, unless:

(1) The total assets of the bank are less than $300 million, and;

(2) The bank's primary supervisor has assigned it a composite CAMEL rating of either ''1'' or ''2''; and

(3) The sum of:

(a) 30% of the bank's fixed- and floating-rate loans and securities that have contractual maturity or repricing dates between 1 and 5 years, and

(b) 100% of the bank's fixed- and floating-rate loans and securities that have contractual maturity or repricing dates beyond 5 years,

is less than or equal to 30% of the bank's total assets.

Notwithstanding this exemption, the appropriate bank supervisor may apply any or all provisions of this policy statement to a bank if the supervisor deems such application is necessary to ensure the capital adequacy of the bank. This means that a bank which otherwise meets the exemption criteria may be required by the agencies to provide maturity and repricing data needed for the supervisory model. The agencies would intend to invoke this requirement only in circumstances where a bank appears to have excessive IRR levels and lacks sufficient internal risk measures such that a determination of its need for capital cannot be adequately assessed by the agencies. Banks that are exempted from the provisions of this policy statement would continue to be subject to safety and soundness IRR examinations and, as a result of such exams, could be directed by their supervisor to improve or strengthen their risk management practices, or hold additional capital for IRR.

If a previously exempted bank fails to meet the exemption criteria as of the June reporting date, it would be required to report the necessary data in the Reports of Condition and Income beginning in March of the next year regardless of its exemption status for the remainder of the current year. The one exception to this requirement is a bank that is involved in business combinations (pooling of interest, purchase acquisitions, or reorganizations) that would result in a change in their exemption status. In those instances, the bank will be subject to any new reporting requirements beginning with the first quarterly report date following the effective date of the business combination involving the bank and one or more depository institutions.

C. Specified Interest Rate Scenarios

For the purpose of measuring a bank's level of IRR exposure for capital adequacy, under either the supervisory model or a bank's internal model, the

agencies will consider both a rising and falling interest rate scenario based on an instantaneous uniform 200 basis point parallel change in market interest rates at all maturities. The agencies may, from time to time, modify the specified interest rate scenarios as appropriate, considering historical and current interest rate levels, interest rate volatilities and other relevant market and supervisory considerations.

IV. Description of the Supervisory Model

A. Overview

The intent of the supervisory model is to provide the agencies with a measure that estimates the sensitivity of a bank's economic value to a specified change in interest rates with sufficient accuracy so as to allow the agencies to identify banks that have high IRR exposures. The model applies a series of IRR risk weights to a bank's reported repricing and maturity balances. These weights estimate price sensitivity of a bank's reported balances to a 200 basis point change in interest rates. The summation of these weighted balances, along with certain price sensitivity information that a bank may be required to self-report, results in a net risk-weighted exposure for the bank. This net risk-weighted exposure is an estimate of the sensitivity of the bank's economic value to the specified change in interest rates.

The maturity and repricing information contained in the Call Report that all non-exempted banks are required to file, along with the IRR risk weights that are applied to that information, form the baseline supervisory model. Banks with concentrations in fixed- or adjustable-rate residential mortgage products are required to submit additional information on those holdings through supplemental Call Report schedules. Supplemental IRR risk weights are applied to this information. These supplemental reporting schedules and IRR risk weights are referred to as supplemental modules to the baseline supervisory model.

B. Supervisory Model Calculations

The structure and format of the supervisory model is designed to allow a bank manager to be able to calculate the IRR exposure of his or her bank so as to not be dependent upon the agencies for obtaining model results. The calculation of a bank's IRR exposure using the supervisory model generally requires the following steps

(1) The bank's assets, liabilities, and off-balance sheet contracts must be assigned to the appropriate balance sheet categories based on the instrument's cash flow characteristics.

(2) Within each balance sheet category, each asset, liability or off-balance sheet contract must be assigned to the appropriate time band generally based on each instrument's remaining maturity or next repricing date.

(3) Balances within each time band must be multiplied by the appropriate risk weight to produce a risk-weighted position for each interest rate scenario.

(4) All risk-weighted positions must be summed to produce a net risk-weighted position for each interest rate scenario which is the basis for determining the bank's measured exposure to interest rate risk.

A bank performs the first two steps in its compilation and submission of the IRR Call Report schedules. Those schedules and accompanying instructions are contained in the Appendices 1 and 2 to this policy statement. The risk-weights required for step three are contained in the tables in Appendix 3 to this policy statement.

C. Information Requirements of the Supervisory Model

Use of the supervisory model requires information on the maturity and repricing characteristics of a bank's assets, liabilities and off-balance-sheet positions. This information is collected by the agencies through the quarterly Call Report submissions filed by non-exempted banks and illustrated by Schedule 1.[7] This reporting schedule requires a bank to report its assets, liabilities and off-balance-sheet items across seven maturity ranges (time bands) based on the instrument's time remaining to maturity or next repricing date. The time bands used:

(1) Less than or equal to 3 months;

(2) Greater than 3 months and less than or equal to 12 months;

(3) Greater than 1 year and less than or equal to 3 years;

(4) Greater than 3 years and less than or equal to 5 years;

(5) Greater than 5 years and less than or equal to 10 years;

(6) Greater than 10 years and less than or equal to 20 years;

(7) Greater than 20 years.

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[7] The agencies have not yet recommended to the Federal Financial Examination Council (FFIEC), Call Report changes for IRR. The schedules and associated reporting requirements and instructions that are discussed in this proposed policy statement and appendix are under consideration by the agencies. These items are included in this policy statement to provide commenters with a fuller understanding of the proposal and to give them opportunities to comment on items under consideration by the agencies. The agencies plan to forward to the FFIEC recommended Call Report changes for IRR. Once final recommendations are made by the agencies, the FFIEC will publish the proposed changes for public comment.

Proposed Interest Rate Risk Schedule

BASELINE

Schedule 1

(to be completed by non-exempt institutions only)

Maturity and repricing data:
Please break out the following items according to their remaining term to maturity or time to repricing:

Dollar Amounts in Thousands	(Column A) Total	(Column B) Up to 3 months	(Column C) > 3 months and <= 1 year	(Column D) > 1 year and <= 3 years	(Column E) > 3 years and <= 5 years	(Column F) > 5 years and <= 10 years	(Column G) > 10 years and <= 20 years	(Column H) > 20 years
	Bil Mil Thou	Bil Mil Thou	Bil Mil Thou	Bil Mil Thou	Bil Mil Thou	Bil Mil Thou	Bil Mil Thou	Bil Mil Thou
1. Debt Securities (exclude self reported items):								
a. ARM securities (use Memoranda below)	RCFD XXXX							
b. Fixed rate mortgage securities	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
c. All other amortizing securities	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
d. Non-amortizing securities	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
e. Zero or low coupon securities	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
2. Loans and Leases:								
a. ARM loans (use Memoranda below)	RCFD XXXX							
b. Fixed rate mortgage loans	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
c. Mtg. loans held for sale w/ firm commitments	RCFD XXXX							
d. Other amortizing loans	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
e. All other loans	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
3. All other int-bearing assets (Bal. due, Fed Funds)	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
4. Liabilities:								
a. Time deposits	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
b. All other int. bearing nondeposit liabilities	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
c. Commercial DDAs - rising rates	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
d. MMDAs - rising rates	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
e. NOWs, savings & other DDAs - rising rates	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
f. Commercial DDAs - declining rates	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
g. MMDAs - declining rates	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
h. NOWs, savings & other DDAs - decl. rates	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
5. Off-balance sheet positions:								
a. Non-amortizing	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
b. Amortizing	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX

Self Reported Items:	(Column A) Carrying Value	(Column B) Market Value	(Column C) Rising Rates	(Column D) Declining Rates
	Bil Mil Thou	Bil Mil Thou	Bil Mil Thou	Bil Mil Thou
6. High risk mortgage securities	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
7. Non-high-risk CMOs	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
8. Structured notes	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
9. Mortgage servicing rights	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
10. Interest rate swaps w/ embedded options		RCFD XXXX	RCFD XXXX	RCFD XXXX
11. Interest rate options		RCFD XXXX	RCFD XXXX	RCFD XXXX
12. Trading account	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX

Memoranda	Reset Frequency (Column A) 0 to 6 Months	(Column B) 6 Months to 1 Year	(Column C) Greater Than 1 Year
	Bil Mil Thou	Bil Mil Thou	Bil Mil Thou
1. ARM Securities	RCFD XXXX	RCFD XXXX	RCFD XXXX
2. ARM Loans	RCFD XXXX	RCFD XXXX	RCFD XXXX

	Near Lifetime Cap
	Bil Mil Thou
3. ARM Securities	RCFD XXXX
4. ARM Loans	RCFD XXXX

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In the interest of minimizing reporting burdens, no coupon or yield data are collected for the baseline supervisory model. Rather, the model applies general assumptions regarding coupon rates and other characteristics of the underlying assets, liabilities, and off-balance-sheet instruments in developing the interest rate sensitivity weights. Banks with concentrations in fixed-rate or adjustable-rate residential mortgages are required to provide additional information on those holdings. For fixed-rate mortgages, this information includes data on the underlying coupons of the mortgage assets. For adjustable-rate mortgages, the information includes data on lifetime and periodic caps. These supplemental modules for fixed- and adjustable-rate mortgages are discussed in Section E of this policy statement.

A brief description of how various types of assets, liabilities, and interest-rate related off-balance sheet instruments are reported is provided below. Instructions for completing the schedules required for the supervisory model are provided in the Call Report package issued by the FFIEC.[8]

a. *Reporting for assets.* The price sensitivity of a financial instrument is determined by the instrument's cash flow characteristics. Accordingly, maturity and repricing data on most assets are collected in one of five categories that reflect different types of cash flows:

(1) *Adjustable-rate 1–4 family mortgage instruments,* including adjustable-rate mortgage loans and adjustable-rate, pass-through mortgage securities. This category would not include home-equity loans; those loans would be reported with other amortizing loans based on their remaining maturity or next repricing date;

(2) *Fixed-rate 1–4 family mortgages,* including both fixed-rate mortgage loans and pass-through, fixed-rate mortgage-backed securities, again excluding home-equity loans;

(3) *Other amortizing loans and securities,* including asset-backed securities, consumer loans and other easily identifiable instruments that involve scheduled periodic amortization of principal more frequently than once a year;

(4) *Zero- or low-coupon securities,* including securities with coupons of less than 3 percent that do not involve scheduled periodic payments of principal; and

(5) *All other loans and securities,* including loans and securities that involve only periodic payments of interest, with payment of principal at maturity.

Banks holding certain types of assets are required to self-report the current market value and estimates of the change in market value of these instruments for the specified interest rate scenarios. Banks can use either their internal estimates or estimates obtained from a reliable third-party source, provided that the bank knows, understands, and documents the assumptions and methodologies used to calculate the estimated market value sensitivities. Assumptions, pricing methodologies and all other documentation must be reasonable and available for examiner review. Self-reporting is used for the following assets:

(1) *All mortgage-backed derivative securities that meet the FFIEC's definition of ''high-risk.''*[9]

(2) *All structured notes,* as defined in the Call Report instructions;

(3) *Non-high risk mortgage derivative securities* when those holdings represent 10 percent or more of a bank's assets. Banks whose holdings are less than 10 percent of assets have the option of either self-reporting or reporting those instruments as non-amortizing securities based on bank management's estimate of the instrument's current average life.

(4) *Trading account portfolios.* A bank should report the change in the economic value of all of their trading account positions for a 100 basis point parallel increase and decrease in interest rates.[10]

(5) *Mortgage servicing rights* that are capitalized and reported on the bank's balance sheet.

b. *Reporting for Liabilities.* The majority of bank liabilities repay principal only at maturity. Hence, the supervisory model applies the same set of risk-weights to all of a bank's interest-sensitive liabilities. Bank liabilities differ, however, in the certainty of their maturity. In particular, many bank liabilities have uncertain or indeterminate contractual maturities. Given these differences, liabilities with contractual maturities are reported separately from those with indeterminate contractual maturities.

The agencies have adopted uniform rules for distributing non-maturity deposits accounts across the time bands. These rules specify the longest time band that can be used for each type of deposit and the maximum percentage amount that can be reported into that time band. In its reporting of these deposits, a bank may distribute such deposits across the time bands according to the bank's own assumptions and experience, subject to the following constraints:

(1) *Commercial Demand Deposits:* A bank should report 50 percent of its commercial demand deposits in the 0–3 month time band. The remaining balances may be distributed across the first four time bands, with a maximum of 20 percent of total balances in the 3–5 year time band.

(2) *Retail DDA, Savings, and NOW Accounts:* A bank may distribute the balances in these accounts across any of the first five time bands, with a maximum of 20 percent in the 5–10 year time band and no more than 40 percent combined in the 3–5 and 5–10 year bands.

(3) *MMDA Accounts:* A bank may distribute these balances across any of the first three time bands, with a maximum of 50 percent in the 1–3 year band.

Within these deposit reporting parameters, a bank is permitted to use different distributions of these deposits for the rising and falling rate scenarios. This flexibility is designed to reflect the embedded optionality associated with these products.

c. *Reporting for Off-Balance-Sheet Positions.* Off-balance-sheet contracts that represent a firm obligation for both parties are reported within the maturity ladder framework using a two-entry approach to reflect how the contract alters the timing of cash flows. For interest rate swaps, the first entry would be reported in the time band corresponding to the next repricing date of the contract, and the second entry would be reported in the time band corresponding to the maturity of the instrument. For futures, forwards, and FRAs, the first entry would be reported in the time band corresponding to

[8] Draft reporting instructions for the schedules under consideration by the agencies are provided in Appendix 2 of this policy statement. As previously noted, the schedules and associated reporting requirements and instructions discussed in this proposed policy statement have not been finalized and submitted to the FFIEC.

[9] Effective February 10, 1992 agencies and the Office of Thrift Supervision adopted revised supervisory policies on securities activities that were developed under the auspices of the FFIEC. The revised policies established a framework for identifying ''high-risk mortgage derivative products.''

[10] The agencies expect banks to have prudential internal risk limits and effective risk measurement systems for their trading activities. For banks with significant trading operations, the adequacy and results of those systems will be closely reviewed by examiners and would be incorporated into their assessment of the bank's overall risk position. The Basle Committee on Bank Supervision is also considering methods of evaluating IRR in trading accounts and determining appropriate capital requirements. This process could lead to an international agreement which would affect the treatment of trading activities for U.S. banks.

settlement date of the contract, and the second entry would be reported in the time band corresponding to the settlement date *plus* the maturity of the instrument underlying the contract.

Contracts that are based on non-amortizing instruments are reported separately from those based on amortizing principal amounts or on underlying instruments that amortize. Examples of ''non-amortizing'' contracts include futures, forward-rate agreements, swaps on which the notional principal amount of the contract does not amortize, securitization of credit card receivables under a spread account approach, and firm commitments to buy or sell non-mortgage loans or securities. Examples of ''amortizing'' contracts are commitments to buy and sell mortgages and commitments to originate mortgage loans.

Self Reporting for Options

Option-related contracts are not distributed and reported within the time bands of the maturity ladder schedule. A bank that holds such contracts is required to ''self-report'' the market value sensitivities of those positions.[11]

[11] This differs from earlier proposals where the agencies proposed that options-related contracts be reported on the basis of their delta-equivalent values. The agencies have made this change in the treatment of option-related contracts due to their concerns that delta-equivalent values may be difficult to compute for longer-dated caps and floors, and the limitations of using delta as a proxy for market value sensitivities when evaluating effect of large rate movements.

D. IRR Risk Weights

Under the supervisory model, a bank's IRR exposure is calculated by multiplying its reported repricing and maturity positions by IRR risk weights. These risk weighted positions, when summed and added to the sensitivities of any self-reported items, form the bank's net risk-weighted position.

Each risk weight is constructed to approximate the percentage change in value of the reported position that would result from a 200 basis point, instantaneous and uniform movement in market interest rates. Separate risk weights are used for the rising and falling interest rate scenarios to account for the asymmetrical price behavior of various bank assets, liabilities and off-balance-sheet instruments.

The set of risk weights used in the baseline supervisory model for each scenario consists of:

(1) Four ''ARM'' risk weights for adjustable-rate residential mortgage loans and securities. There is one risk weight for each of the three reset frequency categories, plus one risk-weight for those ARMs that are within 200 basis points of their lifetime cap;

(2) Seven ''Fixed-Rate Residential Mortgage'' risk weights (i.e., one for each time band) for fixed-rate residential mortgage loans and pass-through mortgage securities;

(3) Seven ''Other Amortizing'' risk weights for asset-backed securities, consumer loans and amortizing off-balance-sheet instruments;

(4) Seven ''Zero or Low Coupon'' asset risk weights for instruments with a coupon of 3 percent or less;

(5) Seven ''All Other'' asset risk weights for non-amortizing instruments; and,

(6) Seven liability risk weights for all liability instruments.

The risk weights used in the baseline supervisory model are provided in Table 1 and also in Appendix 3 of the policy statement. The agencies propose to limit the frequency of revisions to the risk-weights such that revisions would not be made until such time as market rates have moved sufficiently as to prompt a revision of all the risk weights. Such changes may occur only once every several years.

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Table 1

Derivation of Risk Weights (excluding 1-4 yr. family mortgages)

				Scenario 1 200 basis point rise		Scenario 2 200 basis point decline	
Time Band	Maturity*	Coupon	Price (% OF PAR)	Price (% OF PAR)	% Change in Present Value (Risk Weights)	Price (% OF PAR)	% Change in Present Value (Risk Weights)
Amortizing Instruments							
0-3 Months	1.5 Mo.	7.5	100.00%	99.75%	-0.25%	100.25%	0.25%
3-12 Months	7.5 Mo.	7.5	100.00%	99.25%	-0.75%	100.75%	0.75%
1-3 Years	2 Years	7.5	100.00%	98.00%	-2.00%	102.00%	2.00%
3-5 Years	4 Years	7.5	100.00%	96.30%	-3.70%	103.90%	3.90%
5-10 Years	7.5 Years	7.5	100.00%	93.50%	-6.50%	107.20%	7.20%
10-20 Years	15 Years	7.5	100.00%	88.90%	-11.10%	113.30%	13.30%
Over 20 Years	25 Years	7.5	100.00%	84.90%	-15.10%	120.00%	20.00%
All Other Instruments							
0-3 Months	1.5 Mo.	7.5	100.00% **	99.75%	-0.25%	100.25%	0.25%
3-12 Months	7.5 Mo.	7.5	100.00% **	98.80%	-1.20%	101.30%	1.30%
1-3 Years	2 Years	7.5	100.00%	96.40%	-3.60%	103.80%	3.80%
3-5 Years	4 Years	7.5	100.00%	93.40%	-6.60%	107.10%	7.10%
5-10 Years	7.5 Years	7.5	100.00%	89.40%	-10.60%	112.20%	12.20%
10-20 Years	15 Years	7.5	100.00%	84.10%	-15.90%	120.30%	20.30%
Over 20 Years	25 Years	7.5	100.00%	81.00%	-19.00%	127.00%	27.00%
Liabilities							
0-3 Months	1.5 Mo.	3.75	100.00% **	99.75%	0.25%	100.25%	-0.25%
3-12 Months	7.5 Mo.	3.75	100.00% **	98.80%	1.20%	101.20%	-1.20%
1-3 Years	2 Years	3.75	100.00%	96.30%	3.70%	103.90%	-3.90%
3-5 Years	4 Years	3.75	100.00%	93.00%	7.00%	107.60%	-7.60%
5-10 Years	7.5 Years	3.75	100.00%	88.00%	12.00%	114.00%	-14.00%
10-20 Years	15 Years	3.75	100.00%	80.10%	19.90%	126.20%	-26.20%
Over 20 Years	25 Years	3.75	100.00%	73.70%	26.30%	140.30%	-40.30%
Zero or Low Coupon Securities							
0-3 Months	1.5 Mo.	0	99.08%	98.83%	-0.25%	99.32%	0.25%
3-12 Months	7.5 Mo.	0	95.51%	94.37%	-1.20%	96.67%	1.30%
1-3 Years	2 Years	0	86.31%	83.06%	-3.80%	89.72%	4.00%
3-5 Years	4 Years	0	74.49%	68.99%	-7.40%	80.49%	8.10%
5-10 Years	7.5 Years	0	57.57%	49.85%	-13.40%	66.57%	15.70%
10-20 Years	15 Years	0	33.14%	24.85%	-25.00%	44.31%	33.80%
Over 20 Years	25 Years	0	15.87%	9.82%	-38.10%	25.76%	62.30%

* No prepayments are assumed for these hypothetical instruments
** Actual initial price is slightly less than par

Table 1(con't)

Derivation of Risk Weights for 1-4 yr. family mortgages

Fixed-Rate Mortgages

				Scenario 1 200 basis point rise		Scenario 2 200 basis point decline	
Time Band	Maturity*	Coupon	Price (% OF PAR)	Price (% OF PAR)	% Change in Present Value (Risk Weights)	Price (% OF PAR)	% Change in Present Value (Risk Weights)
0-3 Months	1.5 Mo.	7.50%	100.00%	99.77%	-0.20%	100.23%	0.20%
3-12 Months	7.5 Mo.	7.50%	100.00%	99.30%	-0.70%	100.71%	0.70%
1-3 Years	2 Years	7.50%	100.00%	98.08%	-2.00%	101.98%	2.00%
3-5 Years	4 Years	7.50%	98.76%	93.10%	-5.70%	103.17%	4.50%
5-10 Years	7.5 Years	7.50%	97.57%	90.19%	-7.60%	103.25%	5.80%
10-20 Years	15 Years	7.50%	95.55%	87.40%	-8.50%	102.74%	7.50%
Over 20 Years	25 Years	7.50%	92.07%	81.46%	-11.50%	101.87%	10.60%

Adjustable-Rate Mortgages

Reset Frequency	Maturity*	Coupon	Price (% OF PAR)		Price (% OF PAR)	% Change in Present Value (Risk Weights)	Price (% OF PAR)	% Change in Present Value (Risk Weights)
0 to 6 Months	6 mo CMT	7.50%	101.31%	(a)	97.03%	-4.20%	102.93%	1.60%
6 Months to 1 Year	12 mo CMT	7.50%	102.12%	(b)	97.60%	-4.40%	104.04%	1.90%
Greater than 1 Year	3 yr CMT	7.50%	99.58%	(c)	92.99%	-6.60%	104.62%	5.10%
Near Lifetime Cap	12 mo CMT	7.50%	99.10%	(d)	92.13%	-7.00%	103.42%	4.40%

* No prepayments are assumed for these hypothetical instruments

(a) 6 mos CMT, 100 bp periodic cap, 275 bp margin, 500 bp from lifetime cap
(b) 12 mo. CMT, 200 bp periodic cap, 275 bp margin, 500 bp from lifetime cap
(c) 3 yr. CMT, 200 bp periodic cap, 275 bp margin, 500 bp from lifetime cap
(d) 12 mo. CMT, no periodic cap, 275 bp margin, 200 bp from lifetime cap

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The agencies constructed the risk weights shown in Table 1 by using hypothetical market instruments that are representative of the category being measured. The risk weights are based on the percentage change in the present value of the benchmark instruments for the specified interest rate scenario. Risk weights for adjustable- and fixed-rate residential mortgage loans and securities were derived from data provided by the *OTS (Office of Thrift Supervision) Net Portfolio Value Model* as of September 30, 1994 for use in the *OTS Asset and Liability Pricing Tables* published by the OTS. The mortgage risk weights directly incorporate convexity for the rate scenario and prepayment assumptions for mortgage loans and securities.[12] A complete description of the instruments and methodologies used by the agencies to construct the risk weights for each category is contained in Appendix 4 of this policy statement.

E. Description of Supplemental Modules

Residential mortgage products have option features that make the value of the instrument more sensitive to interest rate changes than many other types of financial instruments. To more accurately measure the sensitivity of these products, a bank that has holdings of these instruments in excess of specified levels is required to provide additional information on those holdings in its Call Report submissions. The agencies will apply expanded tables of risk weights to those portfolios when estimating the bank's IRR exposure. Both one-to-four family residential mortgage loans and pass-through securities are considered mortgage holdings for these supplemental modules. Mortgage loans that a bank has funded but holds for sale do not need to be reported in the supplemental modules or included in the calculation of a bank's holdings of mortgage products provided that the bank has a firm and binding commitment from a third party to purchase the loan. Loans with such binding commitments are reported separately in Schedule 1 and receive a risk-weight commensurate with short-term (three months or less) non-amortizing instruments. A bank, however, may elect to report these loans in the supplemental reporting schedules.

1. Fixed-Rate Residential Mortgages: A bank with fixed-rate residential mortgage holdings that exceeds 20% of its total assets will report as part of its quarterly Call Report submissions, additional information on those holdings based upon their time remaining to maturity and coupon rate (Schedule 2). The term ''coupon rate'' for fixed-rate mortgage loans refers to the loan's stated coupon rate, while for pass-through securities, it refers to the weighted average coupon (WAC) of the underlying mortgages. For each maturity and coupon range, the agencies have developed and will apply risk weights which reflect the differences in expected price sensitivities that are associated with each coupon range.

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[12] Convexity refers to the non-linear price/yield relationship of fixed-rate financial instruments. Instruments without option features, such as Treasury notes, have positive convexity, meaning that as the price of the instrument falls, its yield will increase by a proportionately greater amount. Other instruments, such as certain mortgage-backed securities, have negative convexity.

SCHEDULE 2
FIXED-RATE MORTGAGES
To be completed by banks with fixed-rate mortgage holdings greater than 20% of total assets

1. Test for determining whether Schedule 2 should be completed.

Indicate in the appropriate box at the right whether the bank has "total adjusted fixed-rate mortgage holdings" greater than 20 percent of total assets as of the report date.....

Yes	No

Balances with Coupons of:	Remaining Time to Maturity			
	(Column A) 5 Years or Less	(Column B) Over 5 Years Through 10 Years	(Column C) Over 10 Years Through 20 Years	(Column D) Over 20 Years
2. <6.75%				
3. 6.76% - ≤7.25%				
4. 7.26% - ≤7.75%				
5. 7.76% - ≤8.25%				
6. 8.26% - ≤8.75%				
7. 8.76% - ≤9.25%				
8. 9.26% - ≤9.75%				
9. > 9.75%				

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2. Adjustable-Rate Residential Mortgages: Adjustable-rate mortgage loans and securities have price sensitivities that are substantially different than fixed-rate mortgage assets primarily due to their coupon reset features. The coupon adjustments are generally limited by caps and floors both for the life of the mortgage and also at their rest period. These caps are known as lifetime and period caps. In general, there are three factors that most influence the price sensitivity of an ARM: the reset frequency, the periodic cap, and the lifetime cap. The relationship between the periodic and lifetime caps and the effect of that relationship on ARM prices is complex and varies based upon the likelihood that either cap will become binding. Consequently, information on both the periodic cap and the lifetime cap will be collected from banks with significant ARM holdings.

A bank with ARM holdings greater than 10% but less than 25% of its total assets will through its Call Report submissions, provide additional information on those holdings (Schedule 3). The bank will report its ARM balances by the ARM's reset frequency, the nature of its periodic cap, and the distance to its lifetime cap. ARM balances will be reported for the three reset frequencies (6 months or less, over 6 months but less than or equal to 1 year, and over 1 year). The three reset frequencies are divided by whether or not the ARM carries a periodic cap, and in the over 6 months to 1 year column, by the size of the periodic cap. The distance to the lifetime cap is stratified into four groups:

(1) ARMs that are within 200 basis points of their lifetime caps;

(2) ARMs that are 201 to 400 basis points from their lifetime caps;

(3) ARMs that are 401 to 600 basis points from their lifetime caps;

(4) ARMs that are more than 600 basis points from their lifetime caps.

A bank whose ARM holdings exceed 25% of its total assets will provide further information on its ARM balances, including information on the ARM's index type and weighted average coupon, as illustrated by Schedule 4.

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SCHEDULE 3
ADJUSTABLE-RATE MORTGAGES

To be completed by banks with ARM holdings greater than or equal to 10% but less than 25% of total assets

1. Test for determining whether Schedule 3 should be completed.

Indicate in the appropriate box at the right whether the bank has "total adjusted adjustable-rate mortgage holdings" greater than or equal to 10 percent but less than 25 percent of total assets as of the report date.....

Yes	No

	Reset Frequency						
	6 Months or Less		Over 6 Months through 1 Year			Over 1 Year	
	(Column A) No periodic cap	(Column B) Periodic cap	(Column C) No periodic cap	(Column D) Periodic cap 150bp or less	(Column E) Periodic cap more than 150bp	(Column F) No periodic cap	(Column G) Periodic Cap
Instruments 200 basis points or less from the lifetime cap							
2. Balance							
Instruments 201 to 400 basis points from the lifetime cap							
3. Balance							
Instruments 401 to 600 basis points from the lifetime cap							
4. Balance							
Instruments more than 600 basis points from the lifetime cap and/or with no lifetime cap							
5. Balance							

SCHEDULE 4
ADJUSTABLE-RATE MORTGAGES
To be completed by banks with ARM holdings greater than or equal to 25% of assets

1. Test for determining whether Schedule 4 should be completed.

Indicate in the appropriate box at the right whether the bank has "total adjusted adjustable-rate mortgage holdings" greater than or equal to 25 percent of total assets as of the report date.....

Yes	No

	Current Market Index By Reset Frequency							Lagging Market Index by Reset Frequency	
	6 Months or Less		Over 6 Months to 1 Year			Over 1 Year		(Col. H) 1 Month or Less	(Col. I) Over 1 Month
	(Col. A) No periodic cap	(Col. B) Periodic Cap	(Col. C) No periodic cap	(Col. D) Periodic Cap of 150 bp or less	(Col. E) Periodic Cap more than 150bp	(Col. F) No periodic cap	(Col. G) Periodic cap		
Instruments 200 basis points or less from the lifetime cap									
2. Balance									
3. WAC									
Instruments 201 to 400 basis points from the lifetime cap									
4. Balance									
5. WAC									
Instruments 401 to 600 basis points from the lifetime cap									
6. Balance									
7. WAC									
Instruments more than 600 basis points from the lifetime cap and/or with no lifetime cap									
8. Balance									
9. WAC									

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V. Calculation of IRR Exposure

A bank's IRR exposure is calculated for both the rising and declining interest rate scenarios. The exposures derived for each scenario may differ in magnitude due to asymmetries in the price sensitivity of financial instruments as interest rates change (e.g., convexity). For each scenario, the first step in computing a bank's IRR exposure is to multiply each reported repricing or maturity position (as reported in Schedules 1, 2, 3 or 4) by the appropriate risk weight. This product, referred to as the ''risk weighted position,'' represents the estimated dollar change in the present value of that position for the 200 basis point rate scenario. The next step is to sum all of the risk weighted positions and add to these positions the sensitivities of any self-reported items. This result, referred to as the ''net risk weighted position,'' represents the estimated change in the economic value of the bank and is the bank's IRR exposure for the that rate scenario.

Appendix 1 provides example worksheets and IRR calculations for hypothetical banks subject to the baseline and supplemental modules.

VI. Use of a Bank's Internal IRR Model Results

The supervisory model set forth in this policy statement is one tool that examiners will use to assess a bank's level of IRR exposure and its need for capital. Examiners also will consider the IRR exposures that are indicated by the bank's internal IRR model. The agencies recognize that many banks have sophisticated internal models for measuring IRR that take account of complexities that are not captured by the supervisory model and that are tailored to the products, activities, and circumstances of each bank. In cases where the bank's internal model provides a more accurate assessment of the bank's IRR exposure, the results of that model will be the primary basis for an examiner's conclusion about the bank's level of IRR exposure.

Factors that examiners will consider in determining whether a bank's internal model provides a more accurate assessment of the bank's IRR profile than the supervisory model include:

(1) Whether the bank's internal model is appropriate to the nature, scope, and complexities of the bank and its activities;

(2) Whether the model includes all material IRR positions of the bank;

(3) Whether the model provides a more precise measurement of the changes in the economic value to the bank than the supervisory model;

(4) Whether the model considers all relevant repricing data, including information on contractual maturities and repricing dates, contractual interest rate floors and/or ceilings;

(5) Whether the model measures the bank's IRR exposure over a probable range of potential interest rate changes, including but not limited to, the rate scenarios established in this policy statement;

(6) Whether the assumptions and structure of the model are reasonable, documented and periodically reviewed and validated by an appropriate level of senior management that has sufficient independence from units that take or create IRR exposures;

(7) Whether the results of the model are communicated to and reviewed by senior management and the institution's Board of Directors on at least a quarterly basis.

VII. Use of Measurement Process Results

The results of the measurement process established by this policy statement will be one factor that an examiner will use when evaluating a bank's capital adequacy with regards to IRR. In reviewing a bank's capital adequacy, an examiner will consider the exposure of the bank's capital and economic value to changes in interest rates, as measured by the supervisory model and, where applicable, the bank's internal model. Other factors that an examiner will consider include the quality of a bank's IRR management, internal controls, and the overall financial condition of the bank, including its earnings capacity, capital base, and the level of other risks which may impair future earnings or capital. When assessing the adequacy of the bank's IRR management process, an examiner will consider:

(1) The adequacy and effectiveness of senior management and Board oversight;

(2) The adequacy of and compliance with the bank's policies, procedures and internal controls;

(3) The existence of and adherence to specific risk limits relating to loss of capital;

(4) Management's knowledge and ability to identify and manage sources of IRR effectively; and

(5) The adequacy of internal risk measurement and monitoring systems.

At the completion of each safety and soundness examination, examiners will form and document conclusions as to the adequacy of a bank's capital and risk management process with regard to interest rate risk. An examiner's conclusions about both the level of risk and the adequacy of the risk management process will play an integral role in determining a bank's need for capital for IRR. Banks with high levels of measured exposure or weak management systems generally will need to hold capital for IRR. The specific amount of capital that may be needed will be determined on a case-by-case basis by the examiner and the appropriate supervisory agency. This determination and the examiner's overall conclusions regarding IRR will be discussed with bank management at the close of each examination.

During the intervals between examinations, the agencies will use the supervisory model to help monitor changes in a bank's IRR exposure. Significant changes in reported exposures or in a bank's overall financial condition will be analyzed by the bank's primary supervisor to determine whether additional supervisory actions are warranted. Such actions may include additional discussions with bank management, requests for additional information, on-site reviews of the bank, and reevaluation of the bank's capital adequacy.

Appendix 1—Proposed Call Report Schedules and Supervisory Model Worksheets

This appendix contains sample call report schedules and worksheets that would be used for the proposed supervisory model. As noted in the proposed policy statement, the schedules shown in this appendix are under consideration by the agencies but have not yet been submitted to the FFIEC for approval. These schedules and worksheets are included in this document to provide readers and commenters a better understanding of the proposed supervisory risk measurement system.

I. Sample Call Report Schedules

Schedule 1 illustrates the information that would be collected from all banks that do not meet the reporting exemption criteria. This information would be used for the baseline supervisory model. Schedules 2–4 illustrate the information that would be collected from non- exempt banks that have concentrations in fixed- or adjustable-rate residential mortgage loans or pass-through securities. This information would be used in lieu of the items for these portfolios on Schedule 1. The balances reported in the supplemental schedules would be subjected to the expanded set of risk weights shown in Appendix 3. Draft reporting instructions for Schedules 1–4 are provided in Appendix 2.

Schedule 5 illustrates the information on a bank's internal IRR model results that the agencies propose to collect on a voluntary and confidential basis. A bank that has an internal IRR model that measures the bank's economic exposure for a 200 basis point parallel rate shock would provide summary information on the estimated change in value for various asset, liability, and off-balance-sheet categories.

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Proposed Interest Rate Risk Schedule

(to be completed by non-exempt institutions only)

BASELINE

Schedule 1

Maturity and repricing data:

Please break out the following items according to their remaining term to maturity or time to repricing:

Dollar Amounts in Thousands	(Column A) Total	(Column B) Up to 3 months	(Column C) > 3 months and <= 1 year	(Column D) > 1 year and <= 3 years	(Column E) > 3 years and <= 5 years	(Column F) > 5 years and <= 10 years	(Column G) > 10 years and <= 20 years	(Column H) > 20 years
	Bil Mil Thou	Bil Mil Thou	Bil Mil Thou	Bil Mil Thou	Bil Mil Thou	Bil Mil Thou	Bil Mil Thou	Bil Mil Thou
1. Debt Securities (exclude self reported items):								
a. ARM securities (use Memoranda below)	RCFD XXXX							
b. Fixed rate mortgage securities	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
c. All other amortizing securities	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
d. Non-amortizing securities	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
e. Zero or low coupon securities	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
2. Loans and Leases:								
a. ARM loans (use Memoranda below)	RCFD XXXX							
b. Fixed rate mortgage loans	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
c. Mtg.loans held for sale w/ firm commitments	RCFD XXXX							
d. Other amortizing loans	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
e. All other loans	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
3. All other int-bearing assets (Bal. due, Fed Funds)	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
4. Liabilities:								
a. Time deposits	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
b. All other int. bearing nondeposit liabilities	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
c. Commercial DDAs - rising rates	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
d. MMDAs - rising rates	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
e. NOWs, savings & other DDAs - rising rates	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
f. Commercial DDAs - declining rates	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
g. MMDAs - declining rates	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
h. NOWs, savings & other DDAs - decl. rates	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
5. Off-balance sheet positions:								
a. Non-amortizing	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
b. Amortizing	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX

Self Reported Items:	(Column A) Carrying Value	(Column B) Market Value	(Column C) Rising Rates	(Column D) Declining Rates
	Bil Mil Thou	Bil Mil Thou	Bil Mil Thou	Bil Mil Thou
6. High risk mortgage securities	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
7. Non-high-risk CMOs	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
8. Structured notes	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
9. Mortgage servicing rights	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
10. Interest rate swaps w/ embedded options		RCFD XXXX	RCFD XXXX	RCFD XXXX
11. Interest rate options		RCFD XXXX	RCFD XXXX	RCFD XXXX
12. Trading account	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX

Memoranda	Reset Frequency: (Column A) 0 to 6 Months	(Column B) 6 Months to 1 Year	(Column C) Greater Than 1 Year
	Bil Mil Thou	Bil Mil Thou	Bil Mil Thou
1. ARM Securities	RCFD XXXX	RCFD XXXX	RCFD XXXX
2. ARM Loans	RCFD XXXX	RCFD XXXX	RCFD XXXX

	Near Lifetime Cap
	Bil Mil Thou
3. ARM Securities	RCFD XXXX
4. ARM Loans	RCFD XXXX

SCHEDULE 2
FIXED-RATE MORTGAGES
To be completed by banks with fixed-rate mortgage holdings greater than 20% of total assets

1. Test for determining whether Schedule 2 should be completed.

Indicate in the appropriate box at the right whether the bank has "total adjusted fixed-rate mortgage holdings" greater than 20 percent of total assets as of the report date.....

Yes		No

Balances with Coupons of:	Remaining Time to Maturity			
	(Column A) 5 Years or Less	(Column B) Over 5 Years Through 10 Years	(Column C) Over 10 Years Through 20 Years	(Column D) Over 20 Years
2. <6.75%				
3. 6.76% - ≤7.25%				
4. 7.26% - ≤7.75%				
5. 7.76% - ≤8.25%				
6. 8.26% - ≤8.75%				
7. 8.76% - ≤9.25%				
8. 9.26% - ≤9.75%				
9. > 9.75%				

SCHEDULE 3
ADJUSTABLE-RATE MORTGAGES

To be completed by banks with ARM holdings greater than or equal to 10% but less than 25% of total assets

1. Test for determining whether Schedule 3 should be completed.

Indicate in the appropriate box at the right whether the bank has "total adjusted adjustable-rate mortgage holdings" greater than or equal to 10 percent but less than 25 percent of total assets as of the report date.....

Yes	No

	Reset Frequency						
	6 Months or Less		Over 6 Months through 1 Year			Over 1 Year	
	(Column A) No periodic cap	(Column B) Periodic cap	(Column C) No periodic cap	(Column D) Periodic cap 150bp or less	(Column E) Periodic cap more than 150bp	(Column F) No periodic cap	(Column G) Periodic Cap
Instruments 200 basis points or less from the lifetime cap							
2. Balance							
Instruments 201 to 400 basis points from the lifetime cap							
3. Balance							
Instruments 401 to 600 basis points from the lifetime cap							
4. Balance							
Instruments more than 600 basis points from the lifetime cap and/or with no lifetime cap							
5. Balance							

SCHEDULE 4
ADJUSTABLE-RATE MORTGAGES
To be completed by banks with ARM holdings greater than or equal to 25% of assets

1. Test for determining whether Schedule 4 should be completed.

Indicate in the appropriate box at the right whether the bank has "total adjusted adjustable-rate mortgage holdings" greater than or equal to 25 percent of total assets as of the report date.....

Yes	No

	Current Market Index By Reset Frequency							Lagging Market Index by Reset Frequency	
	6 Months or Less		Over 6 Months to 1 Year			Over 1 Year		(Col. H) 1 Month or Less	(Col. I) Over 1 Month
	(Col. A) No periodic cap	(Col. B) Periodic Cap	(Col. C) No periodic cap	(Col. D) Periodic Cap of 150 bp or less	(Col. E) Periodic Cap more than 150bp	(Col. F) No periodic cap	(Col. G) Periodic cap		
Instruments 200 basis points or less from the lifetime cap									
2. Balance									
3. WAC									
Instruments 201 to 400 basis points from the lifetime cap									
4. Balance									
5. WAC									
Instruments 401 to 600 basis points from the lifetime cap									
6. Balance									
7. WAC									
Instruments more than 600 basis points from the lifetime cap and/or with no lifetime cap									
8. Balance									
9. WAC									

Schedule 5
Results of Internal IRR Measurement System

To be filed by intitutions that use an internal interest rate risk measurement system.

Dollar Amounts in Thousands	Rising Rates				Declining Rates			
		Bil	Mil	Thou		Bil	Mil	Thou
Interest Rate Risk Sensitivity Analysis - Estimated Change in Economic Value								
1. Debt securities:								
a. ARM securities	RCFD XXXX				RCFD XXXX			
b. Fixed rate mortgage securities	RCFD XXXX				RCFD XXXX			
c. All other amortizing securities	RCFD XXXX				RCFD XXXX			
d. Non-amortizing securities	RCFD XXXX				RCFD XXXX			
e. Zero or low coupon securities	RCFD XXXX				RCFD XXXX			
2. Loan and Leases								
a. ARM loans	RCFD XXXX				RCFD XXXX			
b. Fixed rate mortgage loans	RCFD XXXX				RCFD XXXX			
c. Other amortizing loans	RCFD XXXX				RCFD XXXX			
d. All other loans	RCFD XXXX				RCFD XXXX			
3. Mortgage servicing rights	RCFD XXXX				RCFD XXXX			
4. Trading account (on and off-balance sheet)	RCFD XXXX				RCFD XXXX			
5. All other interest-bearing assets (Bal. due, Fed funds)	RCFD XXXX				RCFD XXXX			
6. Total Liabilities:								
a. Non-maturity deposits (MMDAs, DDAs, NOWs, savings)	RCFD XXXX				RCFD XXXX			
b. Time deposits	RCFD XXXX				RCFD XXXX			
c. All other interest-bearing non-deposit liabilities	RCFD XXXX				RCFD XXXX			
7. Off-balance sheet contracts (nontrading account)								
a. Non-amortizing and amortizing	RCFD XXXX				RCFD XXXX			
b. Interest rate options	RCFD XXXX				RCFD XXXX			
8. Total Assets - Total Liabilities +/- off-balance sheet	RCFD XXXX				RCFD XXXX			

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II. Baseline Supervisory Model Worksheet

To illustrate how a bank's IRR exposure would be calculated under the baseline supervisory model, the following worksheets are provided for a hypothetical bank (Bank A) that is not exempted from reporting (see policy statement) and has filed the proposed Schedule 1. Since Bank A's fixed-rate residential mortgage loan and security holdings are less than 20% of its total assets and its adjustable-rate holdings are less than 10% of total assets, it is not subject to any the supplemental reporting schedules. Schedule 1A shows the completed Schedule 1 for Bank A. Tables 1A and 2A are the baseline model worksheets for the rising and falling rate scenarios, respectively for Bank A.

Column A in Tables 1A and 2A combine and transcribe the balance information that Bank A reported. For example, Bank A reported $4.126 million of fixed-rate mortgage securities and $5.432 million of fixed-rate mortgage loans that had maturities of 10- to 20-years. These balances have been combined and reported in Item 1(f) in Tables 1A and 2A.

Column B in Tables 1A and 2A shows the supervisory model risk weights for each instrument type and maturity category. The risk weights represent the estimated percentage change in the value of the reported balances for a 200 basis point rise (Table 1A) and decline (Table 2A) in interest rates. For example, the value of a 3- to 5-year non-amortizing loan or security, as shown in Item 6(d) is estimated to decline by 6.60% if interest rates increase by 200 basis points and increase in value by 7.10% if rates decline by 200 basis points. The risk weights shown in Column B are established by the agencies and published in Appendix 3 to this policy statement. Because liabilities represent future obligations of the bank, the risk-weights used for liabilities are shown as positive numbers for the rising rate scenario (representing a benefit to the bank) and negative numbers for the declining rate scenario.

Column C in Tables 1A and 2A represents the estimated dollar change in the present value of each reported balance. These values are obtained by multiplying the reported balance in Column A by the corresponding risk weight in Column B. For example, Bank A has $3.458 million in ARMs that are near their lifetime caps (line 2(d) in Tables 1A and 2A). The agencies have estimated that the value of such ARMs will decline by approximately 7.00% if rates increase by 200 basis points. Thus, the estimated decline in value for Bank A's reported ARM balances near lifetime caps is approximately $242 thousand ($3.458 million times −7.00%). Note that for self-reported items, no multiplication is needed. Rather, the estimated dollar change in value reported by the bank in Schedule 1A is incorporated directly into the exposure estimate.

Bank A's net IRR exposure is calculated by summing the individual risk-weighted positions and self-reported change amounts shown in Column C. The sum of the risk-weighted asset positions plus self-reported items for Bank A indicates a decline in value for these portfolios of approximately $17.560 million under the rising rate scenario. This decline is partially offset by $11.093 million and $0.266 million increases in value for liabilities and other off-balance sheet items, respectively. Bank A's net risk-weighted position is the sum of these items and indicates that the economic value of Bank A is expected to decline by $6.201 million under the rising rate scenario. Conversely, under the declining rate scenario, the economic value of Bank A is expected to increase by $10.103 million.

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Proposed Interest Rate Risk Schedule

(to be completed by non-exempt institutions only)

Schedule 1A
Bank A

Maturity and repricing data:

Please break out the following items according to their remaining term to maturity or time to repricing:

Dollar Amounts in Thousands

	(Column A) Total			(Column B) Up to 3 months			(Column C) <= 1 year			(ColumnD) <= 3 years			(Column E) <= 5 years			(Column F) <= 10 years			(Column G) <= 20 years			(Column H) > 20 years		
	Bil	Mil	Thou	Bil	Mil	Thou	Bil	Mil	Thou	Bil	Mil	Thou	Bil	Mil	Thou	Bil	Mil	Thou	Bil	Mil	Thou	Bil	Mil	Thou
1. Debt Securities (exclude self reported items):																								
a. ARM securities (use Memoranda below)	RCFD XXXX	10	943																					
b. Fixed rate mortgage securities	RCFD XXXX	18	699	RCFD XXXX		0	RCFD XXXX		564	RCFD XXXX		834	RCFD XXXX	1	118	RCFD XXXX	2	234	RCFD XXXX	4	126	RCFD XXXX	9	823
c. All other amortizing securities	RCFD XXXX	15	173	RCFD XXXX		654	RCFD XXXX	1	661	RCFD XXXX	3	322	RCFD XXXX	4	429	RCFD XXXX	4	553	RCFD XXXX		554	RCFD XXXX		0
d. Non-amortizing securities	RCFD XXXX	74	234	RCFD XXXX	15	626	RCFD XXXX	12	440	RCFD XXXX	5	176	RCFD XXXX	7	813	RCFD XXXX	12	141	RCFD XXXX	19	675	RCFD XXXX	1	363
e. Zero or low coupon securities	RCFD XXXX	9	356	RCFD XXXX	3	264	RCFD XXXX	3	106	RCFD XXXX	2	986	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0
2. Loan and Leases:																								
a. ARM loans (use Memoranda below)	RCFD XXXX	15	842																					
b. Fixed rate mortgage loans	RCFD XXXX	35	849	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX	1	234	RCFD XXXX	1	312	RCFD XXXX	4	234	RCFD XXXX	5	432	RCFD XXXX	23	637
c. Fixed & adjustable rate mortgage loans with firm commitments to sell	RCFD XXXX	1	652																					
d. Other amortizing loans	RCFD XXXX	16	710	RCFD XXXX		334	RCFD XXXX	1	121	RCFD XXXX	1	884	RCFD XXXX	1	993	RCFD XXXX	2	634	RCFD XXXX	3	761	RCFD XXXX	4	983
e. All other loans	RCFD XXXX	102	201	RCFD XXXX	46	231	RCFD XXXX	19	418	RCFD XXXX	15	770	RCFD XXXX	10	442	RCFD XXXX	10	340	RCFD XXXX		0	RCFD XXXX		0
3. All other int-bearing assets (Bal. due, Fed Funds)	RCFD XXXX	4	433	RCFD XXXX	3	100	RCFD XXXX	1	333	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0
4. Liabilities:																								
a. Time deposits	RCFD XXXX	72	121	RCFD XXXX	36	306	RCFD XXXX	32	559	RCFD XXXX	1	323	RCFD XXXX	1	933	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0
b. All other interest-bearing non-deposit liabilities	RCFD XXXX	18	839	RCFD XXXX	2	237	RCFD XXXX	8	387	RCFD XXXX	8	215	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0
c. Commercial DDAs - rising rates	RCFD XXXX	26	209	RCFD XXXX	13	136	RCFD XXXX		0	RCFD XXXX	7	844	RCFD XXXX	5	229	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0
d. MMDAs - rising rates	RCFD XXXX	28	312	RCFD XXXX		0	RCFD XXXX	14	156	RCFD XXXX	14	156	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0
e. NOWs, savings, & other DDAs - rising rates	RCFD XXXX	143	393	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX	85	915	RCFD XXXX	28	839	RCFD XXXX	28	639	RCFD XXXX		0	RCFD XXXX		0
f. Commercial DDAs - declining rates	RCFD XXXX	26	209	RCFD XXXX	18	928	RCFD XXXX	7	281	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0
g. MMDAs - declining rates	RCFD XXXX	28	312	RCFD XXXX	3	386	RCFD XXXX	16	756	RCFD XXXX	8	170	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0
h. NOWs, savings, & other DDAs - declining rates	RCFD XXXX	143	393	RCFD XXXX	2	200	RCFD XXXX	60	141	RCFD XXXX	61	273	RCFD XXXX	10	145	RCFD XXXX	9	634	RCFD XXXX		0	RCFD XXXX		0
5. Off-Balance Sheet Swaps, Futures, FRAs, Commitments, etc.																								
a. Nonamortizing (excluding trading account)	RCFD XXXX		0	RCFD XXXX	3	200	RCFD XXXX		400	RCFD XXXX	-3	100	RCFD XXXX		-500	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0
b. Amortizing (excluding trading account)	RCFD XXXX		0	RCFD XXXX		900	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		-900

Self Reported Items:	(Column A) Carrying Value			(Column B) Market Value			(Column C) Rising Rates			(Column D) Declining Rates		
6 High Risk Mortgage Securities	RCFD XXXX	5	234	RCFD XXXX	5	403	RCFD XXXX	4	930	RCFD XXXX	5	885
7. Non-High-Risk CMOs	RCFD XXXX	1	199	RCFD XXXX	1	864	RCFD XXXX	1	743	RCFD XXXX	1	996
8. Structured Notes	RCFD XXXX	2	349	RCFD XXXX	2	694	RCFD XXXX	2	464	RCFD XXXX	2	943
9. Mortgage Servicing Rights	RCFD XXXX	1	462	RCFD XXXX	1	835	RCFD XXXX	1	988	RCFD XXXX	1	673
10. Interest Rate Swaps with Embedded Options				RCFD XXXX	1	230	RCFD XXXX		-520	RCFD XXXX		385
11. Interest-Rate Options				RCFD XXXX	1	520	RCFD XXXX	2	320	RCFD XXXX		855
12. Trading Account	RCFD XXXX	3	943	RCFD XXXX	4	763	RCFD XXXX	4	520	RCFD XXXX	5	124

Memoranda:	Reset Frequency: 0 to 6 Months			6 Months to 1 Year			Greater Than 1 Year		
1. ARM Securities	RCFD XXXX	3	275	RCFD XXXX	2	733	RCFD XXXX	3	754
2. ARM Loans	RCFD XXXX	5	963	RCFD XXXX	6	471	RCFD XXXX	1	131
	Near Lifetime Cap								
3. ARM Securities	RCFD XXXX	1	181						
4. ARM Loans	RCFD XXXX	2	277						

Interest Rate Risk Worksheet (200 Basis Point Rising Rate Scenario)

Table 1A
Bank A

Reporting Institution: Sample Bank A (Baseline Schedule Only)

$ THOUSANDS	(A) TOTAL	(B) Risk Weights	(C) Risk Weighted Position	(D) Total Risk Weighted Position
I. INTEREST - SENSITITVE ASSETS				
1. FRM's				
(a) Up to 3 months	$0	-0.20%	$0	
(b) 3 to 12 months	$564	-0.70%	($4)	
(c) 1 to 3 years	$2,068	-2.00%	($41)	
(d) 3 to 5 years	$2,430	-5.70%	($139)	
(e) 5 to 10 years	$5,466	-7.60%	($482)	
(f) 10 to 20 years	$9,556	-8.50%	($812)	
(g) Greater than 20 years	$33,460	-11.50%	($3,848)	
2. ARM's				
(a) 0 to 6 months	$9,238	-4.20%	($388)	
(b) 6 months to 1 year	$9,204	-4.40%	($405)	
(c) Greater than 1 year	$4,885	-6.60%	($322)	
(d) Near Lifetime Cap	$3,458	-7.00%	($242)	
3. FRM's and ARM's with Binding Commitments	$1,652	-0.25%	($4)	
4. Other Amortizing Loans & Securities				
(a) Up to 3 months	$998	-0.20%	($2)	
(b) 3 to 12 months	$2,782	-0.70%	($19)	
(c) 1 to 3 years	$5,206	-2.00%	($104)	
(d) 3 to 5 years	$6,422	-3.70%	($238)	
(e) 5 to 10 years	$7,187	-6.50%	($467)	
(f) 10 to 20 years	$4,315	-11.10%	($479)	
(g) Greater than 20 years	$4,983	-15.10%	($752)	
5. Zero or low coupon securities				
(a) Up to 3 months	$3,264	-0.25%	($8)	
(b) 3 to 12 months	$3,106	-1.20%	($37)	
(c) 1 to 3 years	$2,966	-3.80%	($113)	
(d) 3 to 5 years	$0	-7.40%	$0	
(e) 5 to 10 years	$0	-13.40%	$0	
(f) 10 to 20 years	$0	-25.00%	$0	
(g) Greater than 20 years	$0	-38.10%	$0	
6. All other securities and loans				
(a) Up to 3 months	$61,857	-0.25%	($155)	
(b) 3 to 12 months	$31,858	-1.20%	($382)	
(c) 1 to 3 years	$20,946	-3.60%	($754)	
(d) 3 to 5 years	$18,256	-6.60%	($1,205)	
(e) 5 to 10 years	$22,481	-10.60%	($2,383)	
(f) 10 to 20 years	$19,675	-15.90%	($3,128)	
(g) Greater than 20 years	$1,363	-19.00%	($259)	
7. Self Reporting Items				
(a) High risk mortgage securities	$5,403		($475)	
(b) Non-high risk CMO's	$1,984		($121)	
(c) Structured notes	$2,694		($230)	
(d) Mortgage servicing rights	$1,835		$153	
(e) Swaps with embedded options	$1,230		($1,750)	
(f) Options, caps, floors, etc.	$1,520		$800	
(g) Trading account	$4,763		($243)	
8. Total Interest-Sensitive Assets	$319,968		($17,580)	($17,580)
II. ALL OTHER ASSETS	$8,000			
III. TOTAL ASSETS	$327,968			
IV. INTEREST-SENSITIVE LIABILITIES				
1. Non-maturity deposits, time deposits and "all other"				
(a) Up to 3 months	$51,879	0.25%	$129	
(b) 3 to 12 months	$55,102	1.20%	$661	
(c) 1 to 3 years	$117,453	3.70%	$4,348	
(d) 3 to 5 years	$36,001	7.00%	$2,520	
(e) 5 to 10 years	$28,639	12.00%	$3,437	
(f) 10 to 20 years	$0	19.90%	$0	
(g) Greater than 20 years	$0	26.30%	$0	
2. Total Interest-Sensitive Liabilities	$288,874		$11,093	
V. NONINTEREST-SENSITIVE LIABILITIES	$1,123			
VI. TOTAL LIABILITIES	$289,997		$11,093	$11,093
VII. EQUITY CAPITAL	$37,971			
VIII. OFF-BALANCE SHEET POSITIONS				
1. Interest rate futures, forwards, and swaps				
(a) Up to 3 months	$3,200	-0.25%	($8)	
(b) 3 to 12 months	$400	-1.20%	($5)	
(c) 1 to 3 years	($3,100)	-3.60%	$112	
(d) 3 to 5 years	($500)	-6.60%	$33	
(e) 5 to 10 years	$0	-10.60%	$0	
(f) 10 to 20 years	$0	-15.90%	$0	
(g) Greater than 20 years	$0	-19.00%	$0	
2. Mortgage and other amortizing contracts				
(a) Up to 3 months	$900	-0.20%	($2)	
(b) 3 to 12 months	$0	-0.70%	$0	
(c) 1 to 3 years	$0	-2.00%	$0	
(d) 3 to 5 years	$0	-3.70%	$0	
(e) 5 to 10 years	$0	-6.50%	$0	
(f) 10 to 20 years	$0	-11.10%	$0	
(g) Greater than 20 years	($900)	-15.10%	$136	
3. Total Off-Balance-Sheet Positions	$0		$266	$266
Net Risk Weighted Positions				($6,201)
Net Position/ Assets				-1.89%

Interest Rate Risk Worksheet (200 Basis Point Declining Rate Scenario)

Table 2A
Bank A

Reporting Institution: Sample Bank A (Baseline Schedule Only)

$ THOUSANDS	(A) TOTAL	(B) Risk Weights	(C) Risk Weighted Position	(D) Total Risk Weighted Position
I. INTEREST - SENSITITVE ASSETS				
1. FRM's				
(a) Up to 3 months	$0	0.20%	$0	
(b) 3 to 12 months	$564	0.70%	$4	
(c) 1 to 3 years	$2,068	2.00%	$41	
(d) 3 to 5 years	$2,430	4.50%	$109	
(e) 5 to 10 years	$6,468	5.80%	$375	
(f) 10 to 20 years	$9,558	7.50%	$717	
(g) Greater than 20 years	$33,460	10.60%	$3,547	
2. ARM's				
(a) 0 to 6 months	$8,036	1.60%	$129	
(b) 6 months to 1 year	$12,053	1.90%	$229	
(c) Greater than 1 year	$4,018	5.10%	$205	
(d) Near Lifetime Cap	$2,679	4.40%	$118	
3. FRM's and ARM's with Binding Commitments	$1,652	0.25%	$4	
4. Other Amortizing Loans & Securities				
(a) Up to 3 months	$968	0.20%	$2	
(b) 3 to 12 months	$2,782	0.70%	$19	
(c) 1 to 3 years	$5,206	2.00%	$104	
(d) 3 to 5 years	$6,422	3.90%	$250	
(e) 5 to 10 years	$7,187	7.20%	$517	
(f) 10 to 20 years	$4,315	13.30%	$574	
(g) Greater than 20 years	$4,983	20.00%	$997	
5. Zero or low coupon securities				
(a) Up to 3 months	$3,264	0.25%	$8	
(b) 3 to 12 months	$3,106	1.30%	$40	
(c) 1 to 3 years	$2,986	4.00%	$119	
(d) 3 to 5 years	$0	8.10%	$0	
(e) 5 to 10 years	$0	15.70%	$0	
(f) 10 to 20 years	$0	33.80%	$0	
(g) Greater than 20 years	$0	62.30%	$0	
6. All other securities and loans				
(a) Up to 3 months	$61,857	0.25%	$155	
(b) 3 to 12 months	$31,858	1.30%	$414	
(c) 1 to 3 years	$20,946	3.80%	$796	
(d) 3 to 5 years	$18,255	7.10%	$1,296	
(e) 5 to 10 years	$22,481	12.20%	$2,743	
(f) 10 to 20 years	$19,675	20.30%	$3,994	
(g) Greater than 20 years	$1,363	27.00%	$368	
7. Self Reporting Items				
(a) High risk mortgage securities	$5,403		$482	
(b) Non-high risk CMO's	$1,864		$132	
(c) Structured notes	$2,694		$249	
(d) Mortgage servicing rights	$1,835		($162)	
(e) Swaps with embedded options	$1,230		($845)	
(f) Options, caps, floors, etc.	$1,520		($665)	
(g) Trading account	$4,763		$361	
8. Total Interest-Sensitive Assets	$319,968		$17,427	$17,427
II. ALL OTHER ASSETS	$8,000			
III. TOTAL ASSETS	$327,968			
IV. INTEREST-SENSITIVE LIABILITIES				
1. Non-maturity deposits, time deposits and "all other"				
(a) Up to 3 months	$63,057	-0.25%	($158)	
(b) 3 to 12 months	$125,124	-1.20%	($1,501)	
(c) 1 to 3 years	$78,981	-3.90%	($3,080)	
(d) 3 to 5 years	$12,078	-7.60%	($918)	
(e) 5 to 10 years	$9,634	-14.00%	($1,349)	
(f) 10 to 20 years	$0	-26.20%	$0	
(g) Greater than 20 years	$0	-40.30%	$0	
2. Total Interest-Sensitive Liabilities	$288,874		($7,006)	
V. NONINTEREST-SENSITIVE LIABILITIES	$1,123			
VI. TOTAL LIABILITIES	$289,997		($7,006)	($7,006)
VII. EQUITY CAPITAL	$37,971			
VIII. OFF-BALANCE SHEET POSITIONS				
1. Interest rate futures, forwards, and swaps				
(a) Up to 3 months	$3,200	0.25%	$8	
(b) 3 to 12 months	$400	1.30%	$5	
(c) 1 to 3 years	($3,100	3.80%	($118)	
(d) 3 to 5 years	($500	7.10%	($36)	
(e) 5 to 10 years	$0	12.20%	$0	
(f) 10 to 20 years	$0	20.30%	$0	
(g) Greater than 20 years	$0	27.00%	$0	
2. Mortgage and other amortizing contracts				
(a) Up to 3 months	$900	0.20%	$2	
(b) 3 to 12 months	$0	0.70%	$0	
(c) 1 to 3 years	$0	2.00%	$0	
(d) 3 to 5 years	$0	3.90%	$0	
(e) 5 to 10 years	$0	7.20%	$0	
(f) 10 to 20 years	$0	13.30%	$0	
(g) Greater than 20 years	($900	20.00%	($180)	
3. Total Off-Balance-Sheet Positions	$0		($318)	($318)
Net Risk Weighted Positions				$10,103
Net Position/ Assets				3.08%

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III. Supplemental Module Worksheets

The calculation of net IRR exposure for a bank using the supplemental schedules is similar to the process described for the baseline model. The primary difference is that the risk-weighted positions for the applicable residential mortgage portfolios are derived from the supplemental schedules and expanded risk-weight tables rather than from baseline schedules.

To illustrate the calculation, worksheets are provided for a hypothetical bank (Bank B) that has filed supplemental Schedule 2 (fixed-rate mortgages) and Schedule 4 (adjustable-rate mortgages). Bank B uses these schedules because both its fixed-rate and adjustable-rate residential mortgage loans and pass-through securities holdings exceed 25% of its total assets. Schedules 1B, 2B and 4B (corresponding to the proposed Schedules 1, 2 and 4) show the data that Bank B has reported. Table 1B is the worksheet used to calculate Bank B's IRR exposure for the rising rate scenario. This worksheet is similar to the worksheets used for the baseline model. Column A combines and transcribes the balance information that Bank B reported in Schedules 1B, 2B and 4B. Column B shows the applicable risk-weights for each instrument and maturity category. Column C reflects the estimated dollar change in value for each portfolio. The only difference in this worksheet and the one used for the baseline model is that risk-weighted positions in Column C for the fixed- and adjustable-rate mortgages are obtained by applying the expanded set of risk-weights (provided in Appendix 3) to the balances reported in Schedules 2B and 4B.

BILLING CODE 6714–01–P

Proposed Interest Rate Risk Schedule

(to be completed by non-exempt institutions only)

Schedule 1B
Bank B

Maturity and repricing data:
Please break out the following items according to their remaining term to maturity or time to repricing:

Dollar Amounts in Thousands

	(Column A) Total			(Column B) Up to 3 months			(Column C) <= 1 year			(ColumnD) <= 3 years			(Column E) <= 5 years			(Column F) <= 10 years			(Column G) <= 20 years			(Column H) > 20 years		
	Bil	Mil	Thou	Bil	Mil	Thou	Bil	Mil	Thou	Bil	Mil	Thou	Bil	Mil	Thou	Bil	Mil	Thou	Bil	Mil	Thou	Bil	Mil	Thou
1. Debt Securities (exclude self reported items):																								
a. ARM securities (use Memoranda below)	RCFD XXXX	61	803																					
b. Fixed rate mortgage securities	RCFD XXXX	89	277	RCFD XXXX		0	RCFD XXXX		443	RCFD XXXX	1	103	RCFD XXXX	1	434	RCFD XXXX	7	635	RCFD XXXX	9	286	RCFD XXXX	69	376
c. All other amortizing securities	RCFD XXXX	15	173	RCFD XXXX		654	RCFD XXXX	1	661	RCFD XXXX	3	322	RCFD XXXX	4	429	RCFD XXXX	4	553	RCFD XXXX		554	RCFD XXXX		0
d. Non-amortizing securities	RCFD XXXX	74	234	RCFD XXXX	15	626	RCFD XXXX	12	440	RCFD XXXX	5	176	RCFD XXXX	7	813	RCFD XXXX	12	141	RCFD XXXX	19	675	RCFD XXXX	1	363
e. Zero or low coupon securities	RCFD XXXX	9	356	RCFD XXXX	3	264	RCFD XXXX	3	106	RCFD XXXX	2	986	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0
2. Loan and Leases:																								
a. ARM loans (use Memoranda below)	RCFD XXXX	92	713																					
b. Fixed rate mortgage loans	RCFD XXXX	54	968	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		419	RCFD XXXX	1	169	RCFD XXXX	3	154	RCFD XXXX	5	722	RCFD XXXX	44	504
c. Fixed & adjustable rate mortgage loans with firm commitments to sell	RCFD XXXX	1	652																					
d. Other amortizing loans	RCFD XXXX	16	710	RCFD XXXX		334	RCFD XXXX	1	121	RCFD XXXX	1	884	RCFD XXXX	1	993	RCFD XXXX	2	634	RCFD XXXX	3	761	RCFD XXXX	4	983
e. All other loans	RCFD XXXX	102	201	RCFD XXXX	46	231	RCFD XXXX	19	418	RCFD XXXX	15	770	RCFD XXXX	10	442	RCFD XXXX	10	340	RCFD XXXX		0	RCFD XXXX		0
3. All other int-bearing assets (Bal. due, Fed Funds)	RCFD XXXX	4	433	RCFD XXXX	3	100	RCFD XXXX	1	333	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0
4. Liabilities:																								
a. Time deposits	RCFD XXXX	261	221	RCFD XXXX	78	506	RCFD XXXX	117	459	RCFD XXXX	31	323	RCFD XXXX	33	933	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0
b. All other interest-bearing non-deposit liabilities	RCFD XXXX	18	839	RCFD XXXX	2	237	RCFD XXXX	8	387	RCFD XXXX	8	215	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0
c. Commercial DDAs - rising rates	RCFD XXXX	26	209	RCFD XXXX	13	136	RCFD XXXX		0	RCFD XXXX	7	844	RCFD XXXX	5	229	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0
d. MMDAs - rising rates	RCFD XXXX	28	312	RCFD XXXX		0	RCFD XXXX	14	156	RCFD XXXX	14	156	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0
e. NOWs, savings, & other DDAs - rising rates	RCFD XXXX	143	393	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX	85	915	RCFD XXXX	28	839	RCFD XXXX	28	639	RCFD XXXX		0	RCFD XXXX		0
f. Commercial DDAs - declining rates	RCFD XXXX	26	209	RCFD XXXX	18	928	RCFD XXXX	7	281	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0
g. MMDAs - declining rates	RCFD XXXX	28	312	RCFD XXXX	3	386	RCFD XXXX	16	756	RCFD XXXX	8	170	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0
h. NOWs, savings, & other DDAs - declining rates	RCFD XXXX	143	393	RCFD XXXX	2	200	RCFD XXXX	60	141	RCFD XXXX	61	273	RCFD XXXX	10	145	RCFD XXXX	9	634	RCFD XXXX		0	RCFD XXXX		0
5. Off-Balance Sheet Swaps, Futures, FRAs, Commitments, etc.																								
a. Nonamortizing (excluding trading account)	RCFD XXXX		0	RCFD XXXX	3	200	RCFD XXXX		400	RCFD XXXX	-3	100	RCFD XXXX		-500	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0
b. Amortizing (excluding trading account)	RCFD XXXX		0	RCFD XXXX		900	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		0	RCFD XXXX		-900

Self Reported Items:	(Column A) Carrying Value			(Column B) Market Value			(Column C) Rising Rates			(Column D) Declining Rates		
6. High Risk Mortgage Securities	RCFD XXXX	5	234	RCFD XXXX	5	403	RCFD XXXX	4	930	RCFD XXXX	5	885
7. Non-High-Risk CMOs	RCFD XXXX	1	199	RCFD XXXX	1	864	RCFD XXXX	1	743	RCFD XXXX	1	996
8. Structured Notes	RCFD XXXX	2	349	RCFD XXXX	2	694	RCFD XXXX	2	464	RCFD XXXX	2	943
9. Mortgage Servicing Rights	RCFD XXXX	1	462	RCFD XXXX	1	835	RCFD XXXX	1	988	RCFD XXXX	1	673
10 Interest Rate Swaps with Embedded Options				RCFD XXXX	1	230	RCFD XXXX		-520	RCFD XXXX		385
11 Interest-Rate Options				RCFD XXXX	1	520	RCFD XXXX	2	320	RCFD XXXX		855
12 Trading Account	RCFD XXXX	3	943	RCFD XXXX	4	763	RCFD XXXX	4	520	RCFD XXXX	5	124

Memoranda:	Reset Frequency: 0 to 6 Months			6 Months to 1 Year			Greater Than 1 Year		
1. ARM Securities	RCFD XXXX	17	135	RCFD XXXX	17	733	RCFD XXXX	20	754
2. ARM Loans	RCFD XXXX	25	705	RCFD XXXX	26	600	RCFD XXXX	31	131
	Near Lifetime Cap								
3. ARM Loans	RCFD XXXX	6	181						
4. ARM Securities	RCFD XXXX	9	277						

Interest Rate Risk Worksheet (200 Basis Point Rising Rate Scenario)

Table 1B
Bank B

Reporting Institution: Sample Bank B with Supplemental Schedules

$ THOUSANDS	(A) TOTAL	(B) Risk Weights	(C) Risk Weighted Position	(D) Total Risk Weighted Position
I. INTEREST - SENSITITVE ASSETS				
1. FRM's				
(a) Result from Table 2B	$144,245		($13,796)	
2. ARM's				
(a) 6 mo. Current Market Index (Table 3B)	$32,758		($2,372)	
(b) 6 mo. to 1 yr. Current Market Index (Table 4B)	$34,411		($2,051)	
(c) Over 1 yr. Current Market Index (Table 5B)	$42,802		($3,379)	
(d) Lagging Market Index (Table 6B)	$44,545		($2,814)	
3. FRM's and ARM's with Binding Commitments	$1,652	-0.25%	($4)	
4. Other Amortizing Loans & Securities				
(a) Up to 3 months	$988	-0.20%	($2)	
(b) 3 to 12 months	$2,782	-0.70%	($19)	
(c) 1 to 3 years	$5,206	-2.00%	($104)	
(d) 3 to 5 years	$6,422	-3.70%	($238)	
(e) 5 to 10 years	$7,187	-6.50%	($467)	
(f) 10 to 20 years	$4,315	-11.10%	($479)	
(g) Greater than 20 years	$4,983	-15.10%	($752)	
5. Zero or low coupon securities				
(a) Up to 3 months	$3,264	-0.25%	($8)	
(b) 3 to 12 months	$3,106	-1.20%	($37)	
(c) 1 to 3 years	$2,986	-3.80%	($113)	
(d) 3 to 5 years	$0	-7.40%	$0	
(e) 5 to 10 years	$0	-13.40%	$0	
(f) 10 to 20 years	$0	-25.00%	$0	
(g) Greater than 20 years	$0	-38.10%	$0	
6. All other securities and loans				
(a) Up to 3 months	$61,857	-0.25%	($155)	
(b) 3 to 12 months	$31,858	-1.20%	($382)	
(c) 1 to 3 years	$20,946	-3.60%	($754)	
(d) 3 to 5 years	$18,255	-6.60%	($1,205)	
(e) 5 to 10 years	$22,481	-10.60%	($2,383)	
(f) 10 to 20 years	$19,675	-15.90%	($3,128)	
(g) Greater than 20 years	$1,363	-19.00%	($259)	
7. Self Reporting Items				
(a) High risk mortgage securities	$5,403		($473)	
(b) Non-high risk CMO's	$1,864		($121)	
(c) Structured notes	$2,694		($230)	
(d) Mortgage servicing rights	$1,835		$153	
(e) Swaps with embedded options	$1,230		($1,750)	
(f) Options, caps, floors, etc.	$1,520		$800	
(g) Trading account	$4,763		($243)	
8. Total Interest-Sensitive Assets	$537,396		($36,767)	($36,767)
II. ALL OTHER ASSETS	$4,000			
III. TOTAL ASSETS	$541,396			
IV. INTEREST-SENSITIVE LIABILITIES				
1. Non-maturity deposits, time deposits and "all other"				
(a) Up to 3 months	$93,879	0.25%	$235	
(b) 3 to 12 months	$140,002	1.20%	$1,680	
(c) 1 to 3 years	$147,453	3.70%	$5,456	
(d) 3 to 5 years	$68,001	7.00%	$4,760	
(e) 5 to 10 years	$28,639	12.00%	$3,437	
(f) 10 to 20 years	$0	19.90%	$0	
(g) Greater than 20 years	$0	26.30%	$0	
2. Total Interest-Sensitive Liabilities	$477,974		$15,567	
V. NONINTEREST-SENSITIVE LIABILITIES	$1,123			
VI. TOTAL LIABILITIES	$479,097		$15,567	$15,567
VII. EQUITY CAPITAL	$62,299			
VIII. OFF-BALANCE SHEET POSITIONS				
1. Interest rate futures, forwards, and swaps				
(a) Up to 3 months	$3,200	-0.25%	($8)	
(b) 3 to 12 months	$400	-1.20%	($5)	
(c) 1 to 3 years	($3,100)	-3.60%	$112	
(d) 3 to 5 years	($500)	-6.60%	$33	
(e) 5 to 10 years	$0	-10.60%	$0	
(f) 10 to 20 years	$0	-15.90%	$0	
(g) Greater than 20 years	$0	-19.00%	$0	
2. Mortgage and other amortizing contracts				
(a) Up to 3 months	$900	-0.20%	($2)	
(b) 3 to 12 months	$0	-0.70%	$0	
(c) 1 to 3 years	$0	-2.00%	$0	
(d) 3 to 5 years	$0	-3.70%	$0	
(e) 5 to 10 years	$0	-6.50%	$0	
(f) 10 to 20 years	$0	-11.10%	$0	
(g) Greater than 20 years	($900)	-15.10%	$136	
3. Total Off-Balance-Sheet Positions	$0		$266	$266
Net Risk Weighted Positions				($20,934)
Net Position/ Assets				-3.87%

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Table 2B illustrates how the change in value for Bank B's fixed-rate mortgage portfolio is calculated. The first block of information in Table 2B is the balances that Bank B reported in Schedule 2B. Note that the total balance shown in the right-hand corner of Table 2B, $144.245 million, corresponds to the total balance shown in Column A for line 1 in Table 1B. The second block of information reproduces the risk-weights shown in Appendix 3 for Schedule 2. The last block of information shows the net risk-weighted position for each coupon and maturity category and is derived by multiplying the balances shown in the first block by the corresponding risk-weight in the second block. For example, Bank B has $1.008 million of fixed-rate balances with a maturity of 5–10 years and coupons between 6.76 and 7.25 percent. The agencies have estimated the present value of such balances will decline by 7.80% if interest rates increase by 200 basis points. Thus, the estimated decline in the value of these balances is $79 thousand, the product of $1.008 million times −7.80%. The change in value for each maturity and coupon category are summed to produce a net change in Bank B's fixed-rate mortgage portfolio of −$13.796 million. This amount is transcribed to Column C in line 1 for the worksheet shown in Table 1B.

SCHEDULE 2B.—BANK B—FIXED-RATE MORTGAGES

[Supplemental Reporting Schedule]

[To be completed by banks with FRM holdings > 20% of total assets]

Balance with coupons of:	Remaining time to maturity			
	(Column A) 5 years or less	(Column B) over 5 years through 10 years	(Column C) over 10 years through 20 years	(Column D) over 20 years
2. <=6.75%	$149	$246	$1,284	$9,362
3. 6.76%−7.25%	793	1,0008	2,451	10,041
4. 7.26%−7.75%	726	1,095	2,068	13,498
5. 7.76%−8.25%	833	1,163	1,984	15.984
6. 8.26%−8.75%	623	1,994	2,201	16,498
7. 8.76%−9.25%	511	2,541	2,468	27,375
8. 9.26%−9.75%	336	2,006	1,604	19,230
9. >=9.75%	597	736	948	1,892

TABLE 2B.—BANK B—FIXED-RATE MORTGAGES

[Supplemental Reporting Worksheet]

Balance from Schedule 2B

Balance with coupons of:	Remaining time to maturity				Total
	(Column A) 5 years or less	(Column B) over 5 years through 10 years	(Column C) over 10 years through 20 years	(Column D) over 20 years	
2.<=6.75%	$149	$246	$1,284	$9,362	$11,041
3. 6.76%–7.25%	793	1,008	2,451	10,041	14,293
4. 7.26%–7.75%	726	1,095	2,068	13,498	17,387
5. 7.76%–8.25%	833	1,163	1,984	15,984	19,964
6. 8.26%–8.75%	623	1,994	2,201	16,498	21,316
7. 8.76%–9.25%	511	2,541	2,468	27,375	32,895
8. 9.26%–9.75%	336	2,006	1,604	19,230	23,176
9. >9.75%	597	736	948	1,892	4,173
Total	4,568	10,789	15,008	113,880	144,245

Risk Weights—Rising Rates

Balance with coupons of:	Remaining time to maturity			
	(Column A) 5 years or less (percent)	(Column B) over 5 years through 10 years (percent)	(Column C) over 10 years through 20 years (percent)	(Column D) over 20 years (percent)
<=6.75%	−6.00	−7.90	−8.90	−12.30
6.76%–7.25%	−5.90	−7.80	−8.80	−11.90
7.26%–7.75%	−5.70	−7.60	−8.50	−11.50
7.76%–8.25%	−5.50	−7.20	−8.20	−11.00

Risk Weights—Rising Rates

Balance with coupons of:	Remaining time to maturity			
	(Column A) 5 years or less (percent)	(Column B) over 5 years through 10 years (percent)	(Column C) over 10 years through 20 years (percent)	(Column D) over 20 years (percent)
8.26%–8.75%	−5.20	−6.80	−7.70	−10.30
8.76%–9.25%	−4.70	−6.10	−7.10	−9.50
9.26%–9.75%	−4.10	−5.40	−6.40	−8.50
>=9.75%	−3.00	−3.90	−4.90	−6.30

Net Position (Balance × Risk Weight) ($)

Balance with coupons of:	Remaining time to maturity				Total
	(Column A) 5 years or less	(Column B) over 5 years through 10 years	(Column C) over 10 years through 20 years	(Column D) over 20 years	
<=6.75%	($9)	($19)	($114)	($1,152)	($1,294)
6.76%–7.25	(47)	(79)	(216)	(1,195)	(1,536)
7.26%–7.75%	(41)	(83)	(176)	(1,552)	1,853)
7.76%–8.25%	(46)	(84)	(163)	(1,758)	(2,050)
8.26%–8.75%	(32)	(136)	(169)	(1,699)	(2,037)
8.76%–9.25%	(24)	(155)	(175)	(2,601)	(2,955)
9.26%–9.75%	(14)	(108)	(103)	(1,635)	(1,859)
>=9.75%	(18)	(29)	46)	(119)	(212)
Total	(231)	(693)	(1,162)	(11,711)	(13,796)

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Schedule 4B
BANK B
ADJUSTABLE RATE MORTGAGES
(SUPPLEMENTAL REPORTING SCHEDULE)
(To be completed by banks with ARM holdings greater than 25% of total assets)

		Current Market Index Reset Frequency							Lagging Market Index by Reset Frequency	
		6 Months or Less		Over 6 Months to 1 Year			Over 1 Year		1 Month or Less	Over 1 Month
		(Col. A) No Periodic Cap	(Col. B) Periodic Cap	(Col. C) No Periodic Cap	(Col. D) Periodic Cap of 150 bp or Less	(Col. E) Periodic Cap More Than 150 bp	(Col. F) No Periodic Cap	(Col. G) Periodic Cap		
	Instruments 200 basis points or less from the lifetime cap									
2.	Balance	$203	$3,023	$425	$1,265	$1,789	$493	$4,063	$1,693	$2,849
3.	WAC	7.80%	5.60%	7.50%	8.10%	9.20%	8.30%	7.40%	7.50%	8.20%
	Instruments 201 to 400 basis points from the lifetime cap									
4.	Balance	$756	$5,361	$1,816	$1,932	$2,695	$803	$7,723	$3,649	$5,113
5.	WAC	6.50%	4.65%	6.30%	7.50%	8.00%	7.50%	6.80%	6.20%	7.30%
	Instruments 401 to 600 basis points from the lifetime cap									
6.	Balance	$864	$9,123	$1,069	$3,016	$6,432	$1,236	$11,189	$6,183	$6,934
7.	WAC	6.10%	4.83%	5.30%	6.60%	7.00%	7.30%	6.40%	4.80%	5.60%
	Instruments more than 600 basis points from the lifetime cap									
8.	Balance	$864	$12,564	$2,312	$3,765	$7,895	$1,432	$15,863	$8,931	$9,193
9.	WAC	8.00%	3.20%	3.90%	4.60%	5.80%	5.80%	4.70%	4.20%	4.90%

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Tables 3B–6B illustrate how the change in value for Bank B's ARM holdings is calculated. Table 3B shows the calculation for the Bank B's ARMs that are priced off of the current market index and have heset frequencies or 6 months or less. Table 4B shows the similar calculation for the current market-indexed ARMs with reset frequencies of 6 months to 1 year while Table 5B is for the current market-indexed ARMs with reset frequencies over 1 year. Table 6B is for Bank B's lagging market-indexed ARMs. The steps for calculating the change in value for each of these sub-portfolios is identical so only Table 3B is described.

The first block of information on Table 3B is the balance and coupon data that Bank B reported for this category of ARMs on Schedule 4B. The second block of information reproduces the applicable risk weights for this product in the rising rate scenario from Appendix 3. The highlighted risk weights represent the risk weights applied to the balances and coupon data reported by Bank B in Schedule 4B. The third block of information is the net position for each category of ARMs, representing the estimated decline in value for a 200 basis increase in interest rates. The net position is derived by multiplying the balance shown in the first block by the corresponding risk-weight in the second block. For example, Bank B has $3.023 million of current market-indexed ARMs that have a reset frequency of 6 months or less that are currently within 200 basis points of their lifetime cap and that also have a periodic cap. These balances have a weighted average coupon of 5.60%. The applicable risk-weight for these mortgages is the one shown for ARMs with these characteristics and a weighted average coupon between 4.76 and 6.25 percent, or —8.70%. The decline in value for these mortgage loan balances is $263 thousand, the product of the balance ($3.023 million) times the applicable risk weight (−8.70%). Similar calculations are used to for the remaining balances reported in Tables 3B–6B. The total amounts are then summed ($2.372 million) and reported in Column C of the worksheet in Table 1B.

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Table 3B
BANK B
ADJUSTABLE RATE MORTGAGES

Current Market Index - 6 Month or Less Reset Frequency

Balance from Schedule 4B

	Distance from The Lifetime Cap								
	200 basis points or less		201 to 400 basis poi		401 to 600 basis po		Over 600 basis points		Total
	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	
Balance	$203	$3,023	$756	$5,361	$864	$9,123	$864	$12,564	$32,758
WAC	7.80%	5.60%	6.50%	4.65%	6.10%	4.83%	8.00%	3.20%	

Risk Weights - Rising Rates

		Distance from The Lifetime Cap							
		200 basis points or less		201 to 400 basis poi		401 to 600 basis po		Over 600 basis points	
		No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap
Weighted Average Coupon Range	4.75% and under	-9.20%	-9.20%	-8.80%	-9.00%	-7.20%	-8.20%	-4.40%	-7.10%
	4.76% to 6.25%	-8.70%	-8.70%	-7.70%	-8.20%	-5.20%	-6.90%	-2.40%	-5.60%
	6.26% to 7.75%	-7.40%	-7.60%	-5.80%	-6.70%	-3.00%	-5.00%	-1.20%	-3.90%
	Over 7.75%	-5.10%	-5.30%	-3.60%	-4.20%	-1.50%	-2.70%	-0.70%	-2.10%

Net Position (Balance x Risk Weights)

	Distance from The Lifetime Cap								
	200 basis points or less		201 to 400 basis points		401 to 600 basis point		Over 600 basis points		Total
	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	
Net Position	($10)	($263)	($44)	($482)	($45)	($629)	($6)	($892)	($2,372)

Table 4B
BANK B
ADJUSTABLE RATE MORTGAGES

Current Market Index - 6 Months to 1 Year Reset Frequency

Balance from Schedule 4B

	Distance from The Lifetime Cap												
	200 basis points or less			201 to 400 basis points			401 to 600 basis points			Over 600 basis points			Total
	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	
Balance	$425	$1,265	$1,789	$1,816	$1,932	$2,695	$1,069	$3,016	$6,432	$2,312	$3,765	$7,895	$34,411
WAC	7.50%	8.10%	9.20%	6.30%	7.50%	8.00%	5.30%	6.60%	7.00%	3.90%	4.60%	5.80%	

Risk Weights - Rising Rates

		Distance from The Lifetime Cap											
		200 basis points or less			201 to 400 basis points			401 to 600 basis points			Over 600 basis points		
		No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp
Weighted Average Coupon Range	4.75% and under	-9.20%	-9.30%	-9.20%	-8.90%	-9.10%	-9.00%	-7.60%	-8.70%	-8.20%	-5.10%	-8.20%	-7.10%
	4.76% to 6.25%	-8.70%	-8.80%	-8.70%	-8.00%	-8.40%	-8.20%	-5.80%	-7.70%	-6.90%	-3.00%	-7.20%	-5.60%
	6.26% to 7.75%	-7.70%	-7.80%	-7.70%	-6.40%	-7.30%	-6.80%	-3.60%	-6.40%	-5.10%	-1.60%	-5.90%	-4.00%
	Over 7.75%	-5.80%	-6.20%	-5.80%	-4.20%	-5.50%	-4.70%	-1.90%	-4.60%	-3.10%	-1.00%	-4.30%	-2.50%

Net Position (Balance x Net Position)

	Distance from The Lifetime Cap												
	200 basis points or less			201 to 400 basis points			401 to 600 basis points			Over 600 basis points			Total
	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	
Net Position	($33)	($78)	($104)	($116)	($141)	($127)	($62)	($193)	($328)	($118)	($309)	($442)	($2,051)

Table 5B
BANK B
ADJUSTABLE RATE MORTGAGES

Current Market Index - Over 1 Year Reset Frequency

Balance from Schedule 4B

	Distance from The Lifetime Cap								
	200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points		Total
	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	
Balance	$493	$4,063	$803	$7,723	$1,236	$11,189	$1,432	$15,863	$42,802
WAC	8.30%	7.40%	7.50%	6.80%	7.30%	6.40%	5.80%	4.70%	

Risk Weights - Rising Rates

		Distance from The Lifetime Cap							
		200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points	
		No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap
Weighted Average Coupon Range	5.50% and under	-9.20%	-9.20%	-8.90%	-9.00%	-7.90%	-8.80%	-6.30%	-8.60%
	5.51% to 8.00%	-8.20%	-8.20%	-7.60%	-8.00%	-6.10%	-7.50%	-4.20%	-7.40%
	8.01% to 10.50%	-5.60%	-5.60%	-4.60%	-5.30%	-3.10%	-4.90%	-2.30%	-4.80%
	Over 10.50%	-3.30%	-3.30%	-2.80%	-3.10%	-2.10%	-2.80%	-2.10%	-2.80%

Net Position (Balance x Risk Weights)

	Distance from The Lifetime Cap								
	200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points		Total
	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	
Net Position	($28)	($333)	($61)	($618)	($75)	($839)	($60)	($1,364)	($3,379)

Table 6B
BANK B
ADJUSTABLE RATE MORTGAGES

Lagging Market Index - Reset Frequencies (RF)

Balance from Schedule 4B

	Distance from The Lifetime Cap								
	200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points		Total
	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	
Balance	$1,693	$2,849	$3,649	$5,113	$6,183	$6,934	$8,931	$9,193	$44,545
WAC	7.50%	8.20%	6.20%	7.30%	4.80%	5.60%	4.20%	4.90%	

Risk Weights - Rising Rates

		Distance from The Lifetime Cap							
		200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points	
		1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF
Weighted	5% and under	-9.30%	-9.20%	-9.00%	-9.00%	-7.50%	-8.20%	-5.00%	-7.00%
Average	5.01% to 6.50%	-8.40%	-8.10%	-7.40%	-7.30%	-4.90%	-5.70%	-2.80%	-4.30%
Coupon	6.51% to 8%	-7.50%	-7.20%	-6.20%	-6.20%	-3.70%	-4.50%	-2.20%	-3.50%
Range	Over 8%	-4.80%	-5.30%	-3.70%	-4.50%	-2.20%	-3.50%	-1.70%	-3.20%

Net Position (Balance x Risk Weights)

	Distance from The Lifetime Cap								
	200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points		Total
	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	
Net Position	($127)	($151)	($270)	($317)	($464)	($395)	($447)	($644)	($2,814)

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Tables 7B–12B show the calculations for Bank B's IRR exposure for the declining rate scenario.

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Interest Rate Risk Worksheet (200 Basis Point Declining Rate Scenario)

Table 7B
BANK B

Reporting Institution: Sample Bank B with Supplemental Schedules

$ THOUSANDS	(A) TOTAL	(B) Risk Weights	(C) Risk Weighted Position	(D) Total Risk Weighted Position
I. INTEREST - SENSITITVE ASSETS				
1. FRM's				
(a) Result from FRM Table 8B	$144,245		$10,886	
2. ARM's				
(a) 6 mo. Current Market Index (Table 9B)	$32,758		$1,865	
(b) 6 mo. to 1 yr. Current Market Index (Table 10B)	$34,411		$1,224	
(c) Over 1 yr. Current Market Index (Table 11B)	$42,802		$3,045	
(d) Lagging Market Index (Table 12B)	$44,545		$1,852	
3. FRM's and ARM's with Binding Commitments	$1,652	0.25%	$4	
4. Other Amortizing Loans & Securities				
(a) Up to 3 months	$988	0.20%	$2	
(b) 3 to 12 months	$2,782	0.70%	$19	
(c) 1 to 3 years	$5,206	2.00%	$104	
(d) 3 to 5 years	$6,422	3.90%	$250	
(e) 5 to 10 years	$7,187	7.20%	$517	
(f) 10 to 20 years	$4,315	13.30%	$574	
(g) Greater than 20 years	$4,983	20.00%	$997	
5. Zero or low coupon securities				
(a) Up to 3 months	$3,264	0.25%	$8	
(b) 3 to 12 months	$3,106	1.30%	$40	
(c) 1 to 3 years	$2,986	4.00%	$119	
(d) 3 to 5 years	$0	8.10%	$0	
(e) 5 to 10 years	$0	15.70%	$0	
(f) 10 to 20 years	$0	33.80%	$0	
(g) Greater than 20 years	$0	62.30%	$0	
6. All other securities and loans				
(a) Up to 3 months	$61,857	0.25%	$155	
(b) 3 to 12 months	$31,858	1.30%	$414	
(c) 1 to 3 years	$20,946	3.80%	$796	
(d) 3 to 5 years	$18,255	7.10%	$1,296	
(e) 5 to 10 years	$22,481	12.20%	$2,743	
(f) 10 to 20 years	$19,675	20.30%	$3,994	
(g) Greater than 20 years	$1,363	27.00%	$368	
7. Self Reporting Items				
(a) High risk mortgage securities	$5,403		($473)	
(b) Non-high risk CMO's	$1,864		($121)	
(c) Structured notes	$2,694		($230)	
(d) Mortgage servicing rights	$1,835		$153	
(e) Swaps with embedded options	$1,230		($1,750)	
(f) Options, caps, floors, etc.	$1,520		$800	
(g) Trading account	$4,763		($243)	
8. Total Interest-Sensitive Assets	$537,396		$29,409	$29,409
II. ALL OTHER ASSETS	$4,000			
III. TOTAL ASSETS	$541,396			
IV. INTEREST-SENSITIVE LIABILITIES				
1. Non-maturity deposits, time deposits and "all other"				
(a) Up to 3 months	$105,257	-0.25%	($263)	
(b) 3 to 12 months	$210,024	-1.20%	($2,520)	
(c) 1 to 3 years	$108,981	-3.90%	($4,250)	
(d) 3 to 5 years	$44,078	-7.60%	($3,350)	
(e) 5 to 10 years	$9,634	-14.00%	($1,349)	
(f) 10 to 20 years	$0	-26.20%	$0	
(g) Greater than 20 years	$0	-40.30%	$0	
2. Total Interest-Sensitive Liabilities	$477,974		($11,732)	
V. NONINTEREST-SENSITIVE LIABILITIES	$1,123			
VI. TOTAL LIABILITIES	$479,097		($11,732)	($11,732)
VII. EQUITY CAPITAL	$62,299			
VIII. OFF-BALANCE SHEET POSITIONS				
1. Interest rate futures, forwards, and swaps				
(a) Up to 3 months	$3,200	0.25%	$8	
(b) 3 to 12 months	$400	1.30%	$5	
(c) 1 to 3 years	($3,100)	3.80%	($118)	
(d) 3 to 5 years	($500)	7.10%	($36)	
(e) 5 to 10 years	$0	12.20%	$0	
(f) 10 to 20 years	$0	20.30%	$0	
(g) Greater than 20 years	$0	27.00%	$0	
2. Mortgage and other amortizing contracts				
(a) Up to 3 months	$900	0.20%	$2	
(b) 3 to 12 months	$0	0.70%	$0	
(c) 1 to 3 years	$0	2.00%	$0	
(d) 3 to 5 years	$0	3.90%	$0	
(e) 5 to 10 years	$0	7.20%	$0	
(f) 10 to 20 years	$0	13.30%	$0	
(g) Greater than 20 years	($900)	20.00%	($180)	
3. Total Off-Balance-Sheet Positions	$0		($318)	($318)
Net Risk Weighted Positions				$17,358
Net Position/ Assets				3.21%

6714–01–C

TABLE 8B.—BANK B—FIXED-RATE MORTGAGES

[Supplemental Reporting Worksheet]

Balance from Schedule 2B

Balance with coupons of:	Remaining time to maturity				Total
	(Column A) 5 years or less	(Column B) over 5 years through 10 years	(Column C) over 10 years through 20 years	(Column D) over 20 years	
2. <=6.75%	$149	$246	$1,284	$9,362	$11,041
3. 6.76%–7.25%	793	1,008	2,451	10,041	14,293
4. 7.26%–7.75%	726	1,095	2,068	13,498	17,387
5. 7.76%–8.25%	833	1,163	1,984	15,984	19,964
6. 8.26%–8.75%	623	1,994	2,201	16,498	21,316
7. 8.76%–9.25%	511	2,541	2,468	27,375	32,895
8. 9.26%–9.75%	336	2,006	1,604	19,230	23,176
9. >9.75%	597	736	948	1,892	4,173
Total	4,568	10,789	15,008	113,880	144,245

Risk Weights—Declining Rates

Balance with coupons of:	Remaining time to maturity			
	(Column A) 5 years or less (percent)	(Column B) over 5 years through 10 years (percent)	(Column C) over 10 years through 20 years (percent)	(Column D) over 20 years (percent)
<=6.75%	5.80	7.80	9.30	13.40
6.76%–7.25%	5.20	6.90	8.50	12.10
7.26%–7.75%	4.50	5.80	7.50	10.60
7.76%–8.25%	3.70	4.80	6.50	9.10
8.26%–8.75%	3.10	3.80	5.50	7.60
8.76%–9.25%	2.60	3.10	4.50	6.20
9.26%–9.75%	2.30	2.70	3.80	5.10
>=9.75%	2.10	2.40	2.90	3.50

Net Position (Balance x Risk Weight) ($)

Balance with coupons of:	Remaining time to maturity				Total
	(Column A) 5 years or less (percent)	(Column B) over 5 years through 10 years (percent)	(Column C) over 10 years through 20 years (percent)	(Column D) over 20 years (percent)	
<=6.75%	$9	$19	$119	$1,255	$1.402
6.76%–7.25%	41	70	208	1,215	1,534
7.26%–7.75%	33	64	155	1,431	1,682
7.76%–8.25%	31	56	129	1,455	1,670
8.26%–8.75%	19	76	121	1,254	1,470
8.76%–9.25%	13	79	111	1,697	1,900
9.26%–9.75%	8	54	61	981	1,104
>=9.75%	13	18	27	66	124
Total	166	434	932	9,353	10,886

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Table 9B
BANK B
ADJUSTABLE RATE MORTGAGES

Current Market Index - 6 Month or Less Reset Frequency

Balance from Schedule 4B

	Distance from The Lifetime Cap								
	200 basis points or less		201 to 400 basis poi		401 to 600 basis po		Over 600 basis points		Total
	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	
Balance	$203	$3,023	$756	$5,361	$864	$9,123	$864	$12,564	$32,758
WAC	7.80%	5.60%	6.50%	4.65%	6.10%	4.83%	8.00%	3.20%	

Risk Weights - Declining Rates

		Distance from The Lifetime Cap							
		200 basis points or less		201 to 400 basis poi		401 to 600 basis po		Over 600 basis points	
		No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap
Weighted Average Coupon Range	4.75% and under	10.30%	10.40%	8.50%	9.30%	4.70%	7.10%	1.80%	5.30%
	4.76% to 6.25%	7.90%	8.20%	5.70%	6.70%	2.30%	4.40%	0.80%	3.20%
	6.26% to 7.75%	4.50%	4.80%	3.00%	3.50%	1.00%	1.90%	0.50%	1.40%
	Over 7.75%	2.00%	2.40%	1.30%	1.80%	0.60%	1.10%	0.50%	1.00%

Net Position (Balance x Risk Weights)

	Distance from The Lifetime Cap								
	200 basis points or less		201 to 400 basis points		401 to 600 basis point		Over 600 basis points		Total
	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	
Net Position	$4	$248	$23	$499	$20	$401	$4	$666	$1,865

Table 10B
BANK B
ADJUSTABLE RATE MORTGAGES

Current Market Index - 6 Months to 1 Year Reset Frequency

Balance from Schedule 4B

	Distance from The Lifetime Cap												
	200 basis points or less			201 to 400 basis points			401 to 600 basis points			Over 600 basis points			Total
	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	
Balance	$425	$1,265	$1,789	$1,816	$1,932	$2,695	$1,069	$3,016	$6,432	$2,312	$3,765	$7,895	$34,411
WAC	7.50%	8.10%	9.20%	6.30%	7.50%	8.00%	5.30%	6.60%	7.00%	3.90%	4.60%	5.80%	

Risk Weights - Declining Rates

		Distance from The Lifetime Cap											
		200 basis points or less			201 to 400 basis points			401 to 600 basis points			Over 600 basis points		
		No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp
Weighted	4.75% and under	10.40%	10.40%	10.40%	8.90%	9.70%	9.30%	5.50%	8.40%	7.10%	2.30%	7.60%	5.30%
Average	4.76% to 6.25%	8.40%	8.70%	8.40%	6.30%	7.80%	6.90%	2.90%	6.40%	4.60%	1.20%	5.80%	3.40%
Coupon	6.26% to 7.75%	5.30%	5.90%	5.30%	3.60%	5.10%	4.00%	1.40%	4.00%	2.30%	0.80%	3.70%	1.80%
Range	Over 7.75%	2.50%	2.90%	2.50%	1.70%	2.40%	1.80%	0.90%	1.90%	1.00%	0.70%	1.80%	0.90%

Net Position (Balance x Net Position)

	Distance from The Lifetime Cap												
	200 basis points or less			201 to 400 basis points			401 to 600 basis points			Over 600 basis points			Total
	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	
Net Position	$23	$37	$45	$65	$99	$49	$31	$121	$148	$53	$286	$268	$1,224

Table 11B
BANK B
ADJUSTABLE RATE MORTGAGES

Current Market Index - Over 1 Year Reset Frequency

Balance from Schedule 4B

	Distance from The Lifetime Cap								
	200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points		Total
	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	
Balance	$493	$4,063	$803	$7,723	$1,236	$11,189	$1,432	$15,863	*******
WAC	8.30%	7.40%	7.50%	6.80%	7.30%	6.40%	5.80%	4.70%	

Risk Weights - Declining Rates

		Distance from The Lifetime Cap							
		200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points	
		No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap
Weighted Average Coupon Range	5.50% and under	10.00%	10.00%	9.00%	9.50%	6.70%	8.70%	4.30%	8.40%
	5.51% to 8.00%	7.50%	7.50%	6.20%	7.00%	3.90%	6.40%	2.60%	6.20%
	8.01% to 10.50%	3.20%	3.20%	2.60%	2.90%	2.00%	2.70%	1.90%	2.60%
	Over 10.50%	2.10%	2.30%	2.00%	2.20%	1.90%	2.20%	1.90%	2.20%

Net Position (Balance x Risk Weights)

	Distance from The Lifetime Cap								
	200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points		Total
	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	
Net Position	$16	$305	$50	$541	$48	$716	$37	$1,332	$3,045

Table 12B
BANK B
ADJUSTABLE RATE MORTGAGES

Lagging Market Index - Reset Frequencies (RF)

Balance from Schedule 4

	Distance from The Lifetime Cap								
	200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points		Total
	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	
Balance	$1,693	$2,849	$3,649	$5,113	$6,183	$6,934	$8,931	$9,193	$44,545
WAC	7.50%	8.20%	6.20%	7.30%	4.80%	5.60%	4.20%	4.90%	

Risk Weights - Declining Rates

		Distance from The Lifetime Cap							
		200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points	
		1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF
Weighted Average Coupon Range	5% and under	10.60%	10.50%	9.00%	9.30%	5.50%	6.70%	2.70%	4.80%
	5.01% to 6.50%	7.30%	7.20%	5.40%	5.60%	2.70%	3.40%	1.80%	2.60%
	6.51% to 8%	5.20%	5.40%	3.80%	4.20%	2.00%	2.70%	1.60%	2.40%
	Over 8%	2.40%	3.30%	2.00%	3.00%	1.60%	2.70%	1.60%	2.60%

Net Position (Balance x Risk Weights)

	Distance from The Lifetime Cap								
	200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points		Total
	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	
Net Position	$88	$94	$197	$215	$340	$236	$241	$441	$1,852

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Appendix 2—Draft Reporting Instructions

General Instructions

I. Interest Rate Risk Reporting Requirements

A. Schedule 1

Schedule 1 must be completed by those commercial banks and FDIC-supervised savings banks which do not meet all of the following exemption criteria:

(1) The institution's total assets are less than $300 million, and

(2) The bank's primary federal supervisor has assigned the institution a composite CAMEL rating of either ''1'' or ''2''; and

(3) The sum of:

a. 30% of the institution's fixed- and floating-rate loans and securities with contractual maturity or repricing dates between 1 and 5 years, and

b. 100% of the institution's fixed- and floating-rate loans and securities with contractual maturity or repricing dates beyond 5 years,

is less than 30% of the institution's total assets as of the report date.

Exempted institutions may file Schedule 1 on a voluntary basis. Institutions that file Schedule 1 should report ''N/A'' in Schedule RC–B, Memorandum Item 2; Schedule RC–C, Part I, Memorandum Item 2 on FFIEC 034; Schedule RC–C, Part I, Memorandum Item 3 on FFIEC 031, 032, and 033; and Schedule RC–E, Memorandum Items 5 and 6. FDIC-supervised savings banks which file Schedule 1 should report ''N/A'' in Schedule RC–J.

All shifts in reporting status, with one exception, are to begin with the March Reports for Condition and Income. Such a shift will take place only if the reporting bank's condition fails to meet the exemption criteria, as previously noted, as of the June reporting date. Banks involved with business combinations (pooling of interests, purchase acquisitions, or reorganizations) will be subject to new reporting requirements, if any, beginning with the first quarterly report date following the effective date of a business combination involving a bank and one or more depository institutions.

II. Criteria for Required Completion of Supplemental Schedules 2–4

These schedules are applicable only to banks that answered ''yes'' to the reporting requirement for Schedule 1. This section identifies which of the supplemental interest rate risk reporting schedules, if any, must be completed based on the reporting bank's level of mortgage holdings as a percent of total assets as of the report date.

A. Schedule 2

If ''total adjusted fixed-rate mortgage holdings'' divided by total assets (on an unrounded basis) is greater than 20 percent of total assets, then the bank should place an ''X'' in the box marked ''Yes''. Otherwise, indicate ''No'' in Item 1. If the box marked ''Yes'' is checked, then the bank must complete Schedule 2. Banks completing Schedule 2 should only report the total amount of fixed-rate mortgage holdings on Schedule 1, Items 1(b) and 2(b), in Column A; the distribution of these instruments across Columns B through H is not required.

For purposes of this item, ''total adjusted fixed-rate mortgage holdings'' equals the sum of the bank's permanent loans secured by first liens on 1–4 family residential mortgages, which have fixed interest rates; and the bank's mortgage-backed pass-through securities not held for trading, which have fixed interest rates less any of those loans held for sale and delivery to secondary market participants such as FNMA or FHLMC under terms of a binding commitment.

B. Schedule 3

If ''total adjusted adjustable-rate mortgage holdings'' divided by total assets (on an unrounded basis) is equal to or greater than 10 percent but less than 25 percent of total assets, then the bank should place an ''X'' in the box marked ''Yes'' in Item No. 1. Otherwise, indicate ''No'' in Item No. 1. If the box marked ''Yes'' is checked, then the bank must complete Schedule 3. Banks completing Schedule 3 are exempt from completing Schedule 4 and the memoranda section of Schedule 1.

C. Schedule 4

If ''total adjusted adjustable-rate mortgage holdings'' divided by total assets (on an unrounded basis) is greater than or equal to 25 percent of total assets, then the bank should place an ''X'' in the box marked ''Yes'' in Item No. 1. Otherwise, indicate ''No'' in Item No. 1. If the box marked ''Yes'' is checked, then the bank must complete Schedule 4. Banks completing Schedule 4 are exempt from completing Schedule 3 and the memoranda section of Schedule 1.

For purposes of Schedules 3 and 4, ''total adjusted adjustable-rate mortgage holdings'' equals the sum of the bank's permanent loans secured by first liens on 1–4 family residential mortgages which have adjustable interest rates and the bank's mortgage pass-through securities not held for trading which have adjustable interest rates less any of those loans held for sale and delivery to secondary market participants such as FNMA or FHLMC under terms of a binding commitment.

Institutions that are not required to complete the supplemental schedules may elect to do so on a voluntary basis.

III. Reporting Instructions—Schedule 1

The information required in Schedule 1 primarily represents the distribution across Columns B through H of maturity and repricing data for selected assets, liabilities and off- balance sheet items that are outstanding as of the report date. These distributed dollar amounts must equal the total dollar amounts reported in Column A. Assets in nonaccrual status are excluded from this schedule. Additionally, a self-reporting section is to be completed by those banks holding particular types and/or concentrations of interest rate sensitive assets and off-balance sheet contracts. This section requests information concerning the carrying value of these items as well as estimates of market value changes for the 200 basis point rising and falling interest rate scenarios. The carrying value of the bank's trading account holdings is requested separately in the self-reported section, along with market value changes given 100 basis point rising and falling interest rate scenarios. Estimates for self-reported items may be obtained from a reliable third party source or from the institution's internal risk measurement system. Schedule 1 also contains a memoranda section for the reporting of adjustable-rate mortgage holdings by reset frequency for those banks with less than 10% of total assets in adjustable-rate mortgages.

Definitions

A fixed interest rate is a rate that is specified at the origination of the transaction, is fixed and invariable during the term of the asset or liability, and is known to both the borrower and the lender. Also treated as a fixed interest rate is any rate that changes during the term of the asset or liability on a predetermined basis, with the exact rate of interest over the life of the instrument known with certainty to both the borrower and the lender at origination or when the instrument is acquired.

The remaining maturity is the amount of time remaining from the report date until the final contractual maturity of an asset or liability.

A floating or adjustable rate is a rate that varies, or can vary, in relation to an index, to some other interest rate such as the rate on certain U.S. Government

securities or the bank's ''prime rate,'' or to some other variable criterion the exact value of which cannot be known in advance.

The reset or repricing frequency is how often the contract permits the interest rate on an instrument to be changed (e.g., daily, monthly, quarterly, semiannually, annually) without regard to the length of time between the report date and the date the rate can next change.

The next repricing date is the amount of time remaining from the report date until the instrument's contract permits the rate of interest to change.

Distribution of Securities, Loans and Leases, and Other Interest-Bearing Assets

Banks must distribute the carrying value of selected securities, loans and leases and other interest-bearing assets in the specified balance sheet categories of this schedule in accordance with the procedures set forth in the item instructions below.

All permanent loans secured by first liens on 1–4 family residential mortgages and 1–4 family residential mortgage pass-through securities should be reported on the following basis:

(1) The entire carrying value of each asset with a fixed rate of interest should be reported on the basis of the asset's remaining contractual maturity, and

(2) The entire carrying value of each asset with a floating or adjustable rate of interest should be reported on the basis of its reset frequency.

The bank's own estimates of expected cash flows associated with these mortgage products should not be used in this schedule. Loans held for sale and delivery to secondary market participants under terms of binding commitments are reported separately in Item No. 2(c) without regard to maturity or repricing.

The carrying value of other debt securities, all other loans and leases, and all other interest-bearing assets should be reported on the following basis:

(1) Assets which carry a fixed rate of interest should be spread among the Columns according to their remaining maturity (as defined below), and

(2) Assets which carry a floating or adjustable rate of interest should be reported on the basis of the time remaining until the next repricing date.

Distribution of Time Deposits, Non-Maturity Deposits, and All Other Interest-Bearing Liabilities

All time deposits and other interest-bearing nondeposit liabilities should be distributed across Columns B through H according to remaining contractual maturity for fixed-rate liabilities and according to next repricing date for adjustable-rate liabilities. The maturity and repricing for all non-maturity deposits (DDAs, MMDAs, NOW accounts, and other savings deposits) is determined by bank management based on its own assumptions and experience and must be reported in both rising and falling interest rate scenarios in accordance with the parameters described in the item instructions below.

Distribution of Off-Balance Sheet Positions

Institutions are required to distribute selected off-balance sheet contracts that are not held for trading among the time bands (Columns) of Schedule 1. The off-balance sheet items include interest rate forward contracts, interest rate futures contracts, interest rate swaps without embedded options, and commitments to originate, buy, and sell loans and securities. Such commitments should exclude unused lines of credit and commitments to sell 1–4 family mortgage loans that the bank holds for sale and delivery to secondary market participants.

Off-balance sheet contracts should be reported as either amortizing or non-amortizing contracts depending on whether the notional value of the contract amortizes over time.

The selected off-balance sheet items must be reported using two entries to reflect the timing of the cash flows. The notional amounts of the contracts are offsetting: one entry is positive and the other is an offsetting negative entry. This reporting method reflects the way in which the off-balance sheet instruments affect the institution's balance sheet. In general, if the outstanding contract serves to lengthen an asset's maturity (i.e., long futures) then the first entry is negative and the second entry is positive. If the outstanding contract serves to shorten an asset's maturity (i.e., pay-fixed swap) then the first entry is positive and the second entry is negative. Reporting instructions for particular types of off-balance sheet contracts are provided in sections that follow.

Excluded from this section are: (1) Interest rate option contracts, including caps, floors, collars, corridors, and swaptions, and (2) interest rate swaps with embedded options, such as index amortizing swaps. These items are included in the self-reported section below.

Self-Reported Items

This self-reported section requests information regarding certain assets and off- balance sheet contracts. Institutions are required to provide estimates of changes in market values for each instrument given both a 200 basis point rise and decline in interest rates. These estimates may be obtained from reliable third party sources or from the institution's internal risk measurement system.

Item Instructions

The total amount reported in Column A must equal the sum of Columns B through H.

Item 1, Debt Securities (exclude self reported items): The sum of Items 1(a) and 1(b), Column A for this item plus the amount of nonaccrual pass-through securities included in Schedule RC-N, Column C, must equal the sum of Schedule RC-B, Items 4(a)(1) through 4(a)(3), Columns A and D.

Fixed-rate debt securities should be reported without regard to their call date unless the security has actually been called. When fixed-rate debt securities have been called, they should be reported on the basis of the time remaining until the call date. Adjustable-rate debt securities should be reported on the basis of their reset frequency without regard to their call date even if the security has actually been called.

Fixed-rate debt securities that the reporting bank has the option to redeem prior to maturity (''put bonds'') should be reported on the basis of the time remaining until the earliest ''put'' date. Adjustable-rate ''put bonds'' should be reported on the basis of reset frequency without regard to ''put'' dates.

The information requested in Items 1(c), 1(d), and 1(e) applies to both fixed-rate and adjustable-rate instruments.

Item 1(a), ARM Securities (use Memoranda section below): Report the total carrying value [13] of all adjustable-rate mortgage-backed pass-through certificates, such as those guaranteed by the Government National Mortgage Association (GNMA) and those issued by the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and others (e.g., other depository institutions or insurance companies)

[13] For purposes of this schedule, available-for-sale debt securities are to be reported on the basis of their fair value, while held-to-maturity debt securities are to be reported on the basis of their amortized cost. Therefore, throughout the instructions to this schedule, references to the carrying value should be read as such.

which are included in Schedule RC–B, Items 4(a)(1) through 4(a)(3).

The reporting of these adjustable-rate pass-through securities by reset frequency depends upon the institution's asset concentration level and is requested in the Memoranda Section of this schedule as well as in Schedules 3 and 4.

Item 1(b), Fixed-Rate Mortgage Securities: Report the carrying value of all fixed-rate mortgage-backed pass-through certificates, such as those guaranteed by the Government National Mortgage Association (GNMA) and those issued by the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and others (e.g., other depository institutions or insurance companies) which are included in Schedule RC–B, Items 4(a)(1) through 4(a)(3).

Item 1(c), All Other Amortizing Securities: Report the carrying value of all other debt securities (not reported in Items 1(a) and 1(b) above) which have regularly scheduled principal amortization more frequently than on an annual basis, exclude amortizing securities which require a balloon payment of 25 percent or more of the original principal at maturity. This may include:

(1) U.S. Government agency and corporation obligations reported in Schedule RC–B, Item 2(a) and 2(b).

(2) Securities issued by states and political subdivisions in the U.S. reported in Schedule RC–B, Items 3(a) through 3(c).

(3) Other debt securities reported in Schedule RC–B, Item 5, including home equity loan-backed securities (and the appropriate subitems on the FFIEC 031, 032, and 033 report forms).

Exclude from all other amortizing securities:

(1) All equity securities reported in Schedule RC–B, Items 6(a) through 6(c).

(2) Zero- or low-coupon (3 percent or less) securities (report in Item 1(e) below).

(3) All debt securities which are on nonaccrual status.

(4) All structured notes (include in Item 8 of the self-reported items below).

(5) All ''high-risk'' mortgage securities (include in Item 6 of the self-reported items below.)

(6) CMO and REMIC holdings. If CMO and REMIC holdings exceed 10% of total assets, they must be included in Items 6 or 7 of the self-reporting section below. For holdings of 10% or less of assets, an institution may elect to report these balances in the non-amortizing section based on bank management's estimate of the instrument's current average life.

Item 1(d), Non-Amortizing Securities: Report all debt securities with coupons greater than 3 percent that have either: (1) regularly scheduled principal payments less frequently than on an annual basis, or (2) full repayment of principal at maturity. Also reported in this item are amortizing securities which require a balloon payment of 75 percent or more of the original principal at maturity. Non-amortizing securities may include:

(1) U.S. Treasury securities reported in Schedule RC–B, Item 1.

(2) U.S. Government agency and corporation obligations reported in Schedule RC–B, Items 2(a) and 2(b).

(3) Securities issued by states and political subdivisions in the U.S. reported in Schedule RC–B, Items 3(a) through 3(c).

(4) CMOs and REMICs reported in Schedule RC–B, Items 4(b)(1) through 4(b)(3) if the institution is not required or does not elect to self-report the estimated changes in the market values of these instruments for a 200 basis point increase and decrease in interest rates. Institutions should not report CMO and REMIC holdings in this item if these exceed 10% of total assets. If CMOs and REMIC holdings exceed 10% of total assets, they must be included in the self-reporting section below.

(5) Other debt securities reported in Schedule RC–B, Item 5 (and the appropriate subitems on the FFIEC 031, 032, and 033 report forms).

Exclude from non-amortizing securities:

(1) All equity securities reported in Schedule RC–B, Items 6(a) through 6(c).

(2) Zero- or low-coupon (3 percent or less) securities (report in Item 1(e) below).

(3) All debt securities which are on nonaccrual status.

(4) All structured notes (include in Item 8 of the self-reported items below).

(5) All ''high-risk'' mortgage securities (include in Item 6 of the self-reported items below).

(6) Non-high-risk mortgage securities that are included in the self-reported items below.

Item 1(e), Zero- or Low-Coupon Securities Report: On the basis of final maturity, all holdings of debt securities with coupon rates of 3 percent or less. Such holdings may include:

(1) U.S. Treasury securities reported in Schedule RC–B, Item 1, including all U.S. Treasury bills issued on a discount basis.

(2) U.S. Government agency and corporation obligations reported in Schedule RC–B, Items 2(a) and 2(b).

(3) Securities issued by states and political subdivisions in the U.S. reported in Schedule RC–B, Items 3(a) through 3(c).

(4) Other debt securities reported in Schedule RC–B, Item 5 (and the appropriate subitems on the FFIEC 031, 032, and 033 report forms).

Exclude from zero- or low-coupon securities:

(1) All equity securities reported in Schedule RC–B, Items 6(a) through 6(c).

(2) All debt securities which are on nonaccrual status.

(3) All structured notes (include in Item 8 of the self-reported items below).

(4) All ''high-risk'' mortgage securities (include in Item 6 of the self-reported items below).

Item 2, Loans and Leases: Loan amounts should be reported net of unearned income to the extent that they have been reported net of unearned income in Schedule RC–C.

The sum of Items 2(a), 2(b) and 2(c), Column A of this schedule, plus the amount of permanent loans secured by first liens on 1–4 family residential mortgages in nonaccrual status reported in Schedule RC–N, Column C, Memorandum Item 4(c)(2) on FFIEC 033 and 034, and Memorandum Item 3(c)(2) on FFIEC 031 and 032 must equal RC–C, Item 1(c)(2)(a).

Included in Items 2(c), 2(d) and 2(e) is information regarding both fixed- and adjustable-rate instruments.

Item 2(a), ARM Loans (use Memorandum section below): Report the total amount of permanent loans secured by first liens on 1–4 family residential mortgages that are included in RC–C, Item 1(c)(2)(a), which are subject to a floating or adjustable interest rate. Exclude from this item any loans in nonaccrual. Also exclude loans held for sale with firm commitments (report in Item 2(c) below).

The reporting of these items according to reset frequency depends on the institution's asset concentration level and is requested in the Memoranda section of this schedule as well as Schedules 3 and 4.

Item 2(b), Fixed-Rate Mortgage Loans: Report all permanent loans secured by first liens on 1–4 family residential mortgages included in RC–C, Item 1(c)(2)(a) that are subject to a fixed or predetermined interest rate on the basis of time remaining until their final contractual maturity. Exclude any loans in nonaccrual status. Also exclude loans held for sale with firm commitments (report in Item 2(c) below).

Item 2(c), Mortgage Loans Held for Sale with Firm Commitments: Report in this item the total amount of all outstanding loans secured by first liens

on 1–4 family residential mortgages which are held by the bank for sale and delivery to a secondary market participant under the terms of a binding commitment.

Item 2(d), Other Amortizing Loans: Report all other loans and leases with regularly scheduled principal amortization (more frequently than annually), which are not included above in Items 2(a), 2(b) and 2(c).

Include in this item all revolving lines of credit and credit card receivables. The reporting of adjustable-rate revolving credit should be according to the next repricing date, while fixed-rate revolving credit should be reported based on management determination of the likely repayment horizon. Relevant considerations in assigning a repayment period should include, at a minimum: (1) Required minimum monthly payments, (2) the effect of ''payment holidays,'' (3) historical repayment patterns, (4) the effect of credit card accounts used strictly for transactions purposes, and (5) the effect of pricing incentives such as tiered rates linked to the amount outstanding.

Exclude amortizing loans which require a balloon payment of 75 percent or more of the original principal at maturity. For this schedule, such loans are considered to be non-amortizing and are included in Item 2(d), ''All other loans'', below. Also exclude any loans in nonaccrual status.

Item 2(e), All Other Loans: Report all other loans and leases with no scheduled principal amortization or with principal amortization scheduled annually or less frequently that are not included above in Items 2(a) through 2(c). Also include loans which require a balloon payment of 25 percent or more of the original principal at maturity. Exclude any loans in nonaccrual status.

Item 3, All Other Interest-Bearing Assets: Report all interest-earning assets, other than loans and securities. The sum of the amount reported in Column A for this item must equal the sum of Schedule RC, Item 1(b), ''Interest-bearing balances due from depository institutions,'' Item 3(a), ''Federal funds sold,'' and Item 3(b) ''Securities purchased under agreements to resell,'' less any amount reported in nonaccrual status.

Item 4, Liabilities: For purposes of this schedule, report all fixed-rate time deposits and interest-bearing nondeposit liabilities on the basis of their remaining maturity, and adjustable-rate time deposits and nondeposit interest-bearing liabilities on the basis of their next repricing date. Non-maturity deposits include: (1) Commercial demand deposit accounts; (2) money market deposit accounts (MMDAs); and (3) NOW accounts, all other savings deposits, and all other retail demand deposit accounts. The distribution of these non-maturity deposits across the time bands will be based on management determination within defined constraints.

The term ''commercial'' for purposes of this schedule refers to all demand deposit accounts in which the beneficial interest is held by a depositor that is not an individual or sole proprietorship. Such accounts include, but are not limited to, demand deposits held by: corporations, partnerships, and other associations; the U.S. and foreign governments; states and political subdivision in the U.S.; U.S. and foreign banks. Only those commercial accounts which are noninterest-bearing demand deposit accounts are differentiated for reporting purposes; all other commercial deposits (i.e., NOW accounts, MMDAs and other savings deposits) are not differentiated for purposes of this schedule.

The term ''retail'' for purposes of this report refers to all demand deposit accounts in which the beneficial interest is held by a depositor that is an individual or sole proprietorship.

Institutions must report all non-maturity deposits across the time bands each quarter according to management's own assumptions and experience in both a rising rate and a declining rate scenario in accordance with the following parameters:

(1) Commercial Demand Deposit Accounts: A minimum of 50 percent of an institution's commercial demand deposit accounts is required to be reported in Column B, ''Up to 3 months.'' The remaining balances can be distributed across Columns B through E (''Up to 3 months,'' ''Greater than 3 months–1 year,'' ''1–3 years,'' and ''3–5 years'') with a maximum of 20 percent of the total balance in Column E, ''3–5 years.''

(2) MMDA Accounts: These deposit accounts may be distributed across Columns B through D (''Up to 3 months,'' ''Greater than 3 months–1 year,'' and ''1–3 years'') with a maximum of 50 percent reported in the Column D, ''1–3 years.''

(3) NOW Accounts, Other Savings Deposits and Retail Demand Deposit Accounts: These deposit accounts may be distributed across Columns B through F (''Up to 3 months,'' ''Greater than 3 months–1 year,'' ''1–3 years,'' ''3–5 years,'' and ''5–10 years'') under the following constraints: a maximum of 20 percent in Column F, ''5–10 years,'' and a maximum of 20 percent combined in Columns E and F, ''3–5 years'' and ''5–10 years.''

Item 4(a), Time Deposits: Report the total amount of all time deposits, regardless of amount. This item includes both time certificates of deposit and open-account time deposits. The amount in Column A must equal the sum of Schedule RC–E, Memorandum Items 2(b), 2(c), and 2(d). For purposes of this schedule, time deposits with ''step up'' features should be reported on the basis of remaining maturity.

Item 4(b), All Other Interest-Bearing Nondeposit Liabilities: The amount reported in this item must equal the sum of the following items from Schedule RC: Item 14(a), ''Federal funds purchased;'' Item 14(b), Securities sold under agreements to repurchase;'' Item 15(a), ''Demand notes issued to the U.S. Treasury;'' Item 16(a), ''Other borrowed money with original maturity of one year or less;'' Item 16(b), ''Other borrowed money with original maturity of more than one year;'' Item 17, ''Mortgage indebtedness and obligations under capitalized leases;'' Item 19, ''Subordinated notes and debentures;'' and Item 22, ''Limited-life preferred stock and related surplus.''

Item 4(c), Commercial Demand Deposits—Rising Rates: Report the total amount of all demand deposit accounts (included in Schedule RC–E, Columns A and B) representing funds in which any beneficial interest is held by a depositor which is not an individual or sole proprietorship.

Item 4(d), MMDAs—Rising Rates: Report the total amount of all MMDAs as reported on Schedule RC–E, Memorandum Item 2(a)(1).

Item 4(e), NOW Accounts, Other Savings Deposits, and Other Demand Deposits—Rising Rates: Report the total amount of all NOW accounts that are included in Schedule RC–E, Memorandum Item 3, all other savings deposits as reported on Schedule RC–E, Memorandum Item 2(a)(2), and all demand deposits representing funds in which any beneficial interest is held by an individual or sole proprietorship included in Schedule RC–E, Item 1, Columns A and B.

Item 4(f), Commercial Demand Deposits—Declining Rates: Report the total amount of all demand deposit accounts (included in Schedule RC–E, Columns A and B) representing funds in which any beneficial interest is held by a depositor which is not an individual or sole proprietorship.

Item 4(g), MMDAs—Declining Rates: Report the total amount of all MMDAs as reported on Schedule RC–E, Memorandum Item 2(a)(1).

Item 4(h), NOW Accounts, Other Savings Deposits, and Other Demand Deposits—Declining Rates: Report in this item the total amount of all NOW accounts that are included in Schedule RC–E, Memorandum Item 3, all other savings deposits as reported on Schedule RC–E, Memorandum Item 2(a)(2), and all demand deposits representing funds in which any beneficial interest is held by an individual or sole proprietorship included in Schedule RC–E, Item 1, Columns A and B.

Item 5, Off-Balance Sheet Positions: In this section, respondents must report selected off-balance sheet contracts using two entries. Each contract has two offsetting entries (one is positive, one is negative) which reflect the timing of the cash flows. This reporting method reflects the way in which the off-balance sheet instruments affect the institution's economic value.

Item 5(a), Non-Amortizing Contracts: Report the notional amounts of the following contracts that are not held for trading: (1) Futures contracts whose predominant risk characteristic is interest rate risk as reported in Schedule RC–L, Item 14(a), ''Futures contracts, Column A, ''Interest Rate Contracts;'' (2) forward contracts whose predominant risk characteristic is interest rate risk reported in Schedule RC–L, Item 14(b), ''Forward contracts,'' Column A, ''Interest Rate Contracts;'' and (3) interest rate swaps, excluding basis swaps, reported in Schedule RC–L, Item 14(e), ''Swaps,'' Column A, ''Interest Rate Contracts.'' Also included in this item are commitments to originate, buy, and sell non-amortizing loans and securities. Exclude all unused lines of credit.

Exclude from this item all exchange-traded option contracts and over-the-counter option contracts and any swaps with embedded options. Swaptions, i.e., options to enter into a swap contract, and contracts known as caps, floors, collars and corridors should be reported as options and are included in Item 11 of the self-reported section below. Also exclude all contracts held for trading (report in Item 12 of the self-reporting section below.)

Futures contracts and interest rate forwards must be reported in Columns B through H on the following basis: The first entry corresponds to the settlement date of the contract, and the offsetting entry corresponds to the settlement date plus the maturity of the instrument underlying the contract.

Long positions in futures contracts and forward rate agreements represent commitments to purchase specified financial instruments at a specified future date at a specified price or yield. For outstanding long positions, the first entry corresponding to the contract settlement date must be negative. The offsetting positive entry must be reported according to the settlement date plus the maturity of the instrument underlying the contract.

Short positions in futures contracts and forward rate agreements represent commitments to sell specified financial instruments at a specified future date at a specified price or yield. For an outstanding short position, the first entry corresponding to the contract settlement date must be positive. The offsetting negative entry must be reported according to the settlement date plus the maturity of the instrument underlying the contract.

Interest rate swaps must be reported in Columns B through H on the following basis: The first entry corresponds to the next repricing date of the adjustable-rate coupon, and the offsetting entry corresponds to the maturity of the swap.

For swaps in which the reporting bank pays an adjustable rate and receives a fixed rate, the first entry corresponding to the next repricing date of the floating rate coupon must be negative. The offsetting positive entry must be reported according to the maturity of the swap.

For swaps in which the reporting bank pays a fixed rate and receives an adjustable rate, the first entry corresponding to the next repricing date of the floating rate coupon must be positive. The offsetting negative entry must be reported according to the maturity of the swap.

Securitized credit cards where the credit card holders pay a fixed rate and the security has an adjustable-rate coupon are treated similarly to interest rate swaps. Like swaps, the first entry corresponds to the repricing date of the adjustable-rate coupon that is paid to the holder of the security. However, the offsetting entry in these transactions corresponds to the expected maturity of the security. Exclude securitized credit cards where the cards and the security are both fixed rate or both variable rate.

Firm commitments to originate, buy or sell non-amortizing loans or securities must be reported in Columns B through H on the following basis: The first entry corresponds to the settlement date of the commitment contract. The offsetting entry corresponds to the settlement date plus the maturity of the underlying instrument if the underlying instrument carries a fixed rate, or to the settlement date plus the time until the next repricing date of the underlying instrument if the underlying instrument carries an adjustable rate.

For commitments to originate or buy non-amortizing loans or securities, the first entry corresponding to the contract settlement date must be negative. The offsetting positive entry must be reported according to the settlement date plus the maturity of the underlying instrument if the underlying instrument carries a fixed rate, or to the settlement date plus the time until the next repricing date if the underlying instrument carries an adjustable rate.

For commitments to sell non-amortizing loans or securities, the first entry corresponding to the contract settlement date must be positive. The offsetting negative entry must be reported according to the settlement date plus the maturity of the underlying instrument if the underlying instrument carries a fixed rate, or to the settlement date plus the time until the next repricing date of the underlying instrument if the underlying instrument carries an adjustable rate.

Item 5(b) Amortizing Contracts: Report all outstanding commitments to originate, buy and sell mortgages and other amortizing loans and securities. Include only those commitments for which interest rates have already been locked in, either on a fixed-rate or adjustable-rate basis. Also include all other interest rate contracts whose notional value amortizes over time.

Commitments to originate, buy or sell mortgages and other amortizing loans or securities must be reported in Columns B through H on the following basis: The first entry corresponds to the settlement date of the commitment contract. The offsetting entry corresponds to the settlement date plus the maturity of the underlying instrument if the underlying instrument carries a fixed rate, or to the settlement date plus the time until the next repricing date of the underlying instrument if the underlying instrument carries an adjustable rate. All commitments should be reported on a gross basis, using a zero percent fallout factor.

For commitments to originate or buy mortgages and other amortizing loans or securities, the first entry corresponding to the contract settlement date must be negative. The offsetting positive entry must be reported according to the settlement date plus the maturity of the underlying instrument if the underlying instrument carries a fixed rate, or to the settlement date plus the time until the next repricing date of the underlying instrument if the underlying instrument carries an adjustable rate.

For commitments to sell mortgages and other amortizing loans or securities,

the first entry corresponding to the contract settlement date must be positive. The offsetting negative entry must be reported according to the settlement date plus the maturity if the underlying instruments carry a fixed rate, or to the settlement date plus the time until the next repricing date if the underlying instruments carry an adjustable rate.

Self-Reported Items

Maturity and repricing information is not requested in this section. However, banks must report the carrying value of on-balance sheet instruments in Column A and the market value of all instruments in Column B. In addition banks must report in Columns C and D, respectively, each instrument's estimated change in market value given a 200 basis point instantaneous and parallel rise and decline in interest rates. These estimates may be obtained from a reliable third party source or from the institution's internal risk measurement system. Item 7 in this section requests estimated market value changes of the institution's trading account holdings given 100 basis point instantaneous and parallel rise and decline in interest rates.

Item 6, High-Risk Mortgage Securities: Report all high-risk mortgage securities included in Schedule RC–B, Memorandum Item 8. This item includes all mortgage derivative products (stripped mortgage-backed securities, CMOs, REMICs, and CMO and REMIC residuals) that meet the definition of a high-risk mortgage security under the FFIEC's Supervisory Policy Statement on Securities Activities.

Item 7, Nonhigh-Risk Mortgage Securities: Non-high risk mortgage securities are those mortgage derivative products which did not meet the definition of a high-risk mortgage security under the FFIEC's Supervisory Policy Statement on Securities Activities as of their most recent testing date. Institutions with greater than 10% of total assets in nonhigh-risk mortgage derivative securities as of the report date must report information about such instruments in this item. Institutions that are not required to complete this item may elect to do so on a voluntary basis.

Item 8, Structured Notes: Report all structured notes included in Schedule RC–B, Memorandum Item 9. Structured notes are debt securities whose cash flow characteristics are dependent upon one or more indices and/or have embedded forwards or options. Included below is a list of common structures. For further information concerning these products, refer to the instructions for Schedule RC–B, Memorandum Item 9.

(1) Step-up Bonds
(2) Index Amortizing Notes (IANs)
(3) Dual Index Notes
(4) De-leveraged Bonds
(5) Range Bonds
(6) Inverse Floaters

Item 9, Mortgage Servicing Rights: Report the unamortized portion of excess residential mortgage servicing fees receivable included in Schedule RC–F, Item 3. Also report the unamortized amount (carrying value) of mortgage servicing rights included in Schedule RC–M, Item 7(a) on FFIEC 034; Item 5(a) on FFIEC 033; and Item 6(a) on FFIEC 031 and 032.

Item 10, Interest Rate Swaps with Embedded Options: Report all interest rate swaps with embedded options. Exclude all interest rate swaps held for trading.

Item 11, Interest Rate Options: Report interest rate option contracts not held in trading accounts, including options to purchase/sell interest-bearing financial instruments and whose predominant risk characteristic is interest rate risk as well as contracts known as caps, floors, collars, corridors and swaptions. Include all exchange-traded and over-the-counter interest rate contracts as reported on Schedule RC–L, Items 14(c), Column A, and Item 14(d), Column A.

Item 12, Trading Account: Report in this item the carrying value of all trading account assets, liabilities and off-balance sheet contracts. Also report the market value changes of these holdings given both a 100 basis point instantaneous and parallel rise and decline in interest rates. The carrying value of these items are included in Schedule RC, Items 5 and 15(b), and Schedule RC–L, Item 15, Column A on FFIEC 033 and 034; and Schedule RC–D, Items 12 and 15, and Schedule RC–L, Item 15, Column A on FFIEC 031 and 032.

Memoranda Section

This memoranda section is to be completed only by those banks whose ARM holdings are less than 10% of total assets as of the report date and have checked an ''X'' in the ''No'' boxes on Item 1 of both Schedules 3 and 4.

Memoranda Items 1–4 divide total ARM securities and loans included in Schedule 1, Items 1(a) and 2(a) above into two categories, those adjustable-rate instruments whose rates are greater than or equal to 200 basis points (bp) away from their lifetime interest rate cap, and those whose rates are less than 200 bp from their lifetime interest rate cap. The lifetime interest rate cap is the upper limit on the mortgage rate that can be charged over the life of a loan. Report in Memorandum Items 1 and 2 the entire amount of those instruments whose rates are greater than or equal to 200 bp away from their lifetime interest rate cap according to the frequency with which the interest rate on the mortgage may contractually reset. Report in Memorandum Items 3 and 4 the total amount of adjustable ARM securities and loans whose rates are less than 200 bp from their lifetime interest rate cap.

With respect to the relationship of this memoranda section to the main body of this schedule, the sum of Memorandum Items 1, Columns A through C, and Memorandum Item 3 must equal Schedule 1, Item 1(a).

The sum of Memoranda Item 2, Columns A through C, and Memorandum Item 4 must equal Schedule 1, Item 2(a).

Memoranda

Item 1, ARM Securities: Report the carrying value of all adjustable-rate, mortgage-backed pass-through securities on the basis of their reset frequency. Exclude any securities in nonaccrual status. Also exclude those pass-through securities whose rates are less than 200 bp of their lifetime interest rate cap. For this memoranda section, such securities are to be reported in Memorandum Item 3.

Column A, 0 to 6 Months: Report the dollar amount of the bank's adjustable-rate pass-through securities whose rates may reset semiannually or more frequently (e.g., semiannually, quarterly, monthly, weekly, daily).

Column B, 6 Months to 1 Year: Report the dollar amount of the bank's adjustable-rate, pass-through securities whose rates reset annually or more frequently, but less frequently than semiannually.

Column C, Greater than 1 Year: Report the dollar amount of the bank's adjustable-rate, pass-through securities whose rates reset less frequently than annually.

Item 2, ARM Loans: Report all adjustable-rate, permanent loans secured by first liens on 1–4 family residential mortgages on the basis of the reset frequency. Exclude all loans in nonaccrual status. Also exclude those loans whose rates are less than 200 bp from their lifetime interest rate cap. For this memoranda section, such loans are to be reported in Memorandum Item 4.

Column A, 0 to 6 Months: Report the dollar amount of the bank's adjustable-rate, permanent loans secured by first liens on 1–4 family residential mortgages whose rates reset

semiannually or more frequently (e.g. semiannually, quarterly, monthly, weekly, daily.)

Column B, 6 Months to 1 Year: Report the dollar amount of the bank's adjustable-rate, permanent loans secured by first liens on 1–4 family residential mortgages whose rates reset annually or more frequently, but less frequently than semiannually.

Column C, Greater than 1 Year: Report the dollar amount of the bank's adjustable-rate, permanent loans secured by 1–4 family residential mortgages whose rates reset less frequently than annually.

Near Lifetime Cap

Item 3, ARM Securities: Report the total amount of the bank's adjustable-rate, pass-through securities whose rates are less than 200 bp from their lifetime interest rate cap.

Item 4, ARM Loans: Report the total amount of the bank's adjustable-rate, permanent loans secured by 1–4 family residential mortgages whose rates are less than 200 bp from their lifetime interest rate cap.

IV. Reporting Instructions—Schedule 2

General Instructions

Institutions which complete Schedule 2 should only report the total amount of fixed-rate mortgage holdings on Schedule 1, Items 1(b) and 2(b), Column A. The distribution of these instruments across Columns B through H is not required.

The information required in this supplemental schedule represents the distribution of individual fixed-rate mortgages holding balances by maturity and coupon rate. In the distribution of Schedule 2 items, the entire carrying value of all fixed-rate mortgage holdings should be reported on the basis of final maturities. The bank's own estimate of expected cash flows is not reported on this schedule.

Items 2 through 9 of Schedule 2 list eight coupon rate ranges, beginning with a rate of less than or equal to 6.75% proceeding in 50 bp increments, to a rate of greater than 9.75%. Columns A through D list four time ranges, which represent the time remaining from the report date until the final maturity of the instrument: 5 years or less, over 5 years through 10 years, over 10 years through 20 years, and greater than 20 years. Respondents must report selected assets by the coupon rate [14] in each of the relevant time bands.

Examples

An 8%, fixed-rate, residential mortgage loan which matures in 15 years would be reported in Item 5, Column C.

An 8.5%, fixed-rate, mortgage pass-through security which matures in three years would be reported in Item 7, Column A. Note that 50 bp added to the 8.5% rate results in a 9% estimated weighted average coupon rate of the underlying collateral.

For purposes of this supplemental schedule the following definitions apply:

A fixed interest rate is a rate that is specified at the origination of the transaction, is fixed and invariable during the term of the loan or security, and is known to both the borrower and the lender. Also treated as a fixed interest rate is a predetermined interest rate which is a rate that changes during the term of the loan or security on a predetermined basis, with the exact rate of interest over the life of the instrument known with certainty to both the borrower and the lender at loan origination or when the debt security is acquired.

Remaining maturity is the amount of time remaining from the report date until the final contractual maturity of a loan or debt security.

The carrying value of a held-to-maturity pass-through security is its amortized cost, while the carrying value of an available-for-sale pass-through security is its fair value.

All loans are to be reported net of unearned income to the extent that the loans have been reported net of unearned income in Schedule RC–C, Item 1(c)(2)(a).

Include as fixed interest rate residential mortgage holdings the following instruments:

(1) All permanent loans secured by first liens on 1–4 family residential mortgages included in Schedule RC–C, Item 1(c)(2)(a), that have fixed interest rates regardless of whether they are current or are reported as ''past due and still accruing'' in Schedule RC–N, Columns A and B.

(2) The carrying value of all pass-through securities which have fixed interest rates and are included in Schedule RC–B, Items 4(a)(1) through 4(a)(3), Columns A and D.

Exclude from this schedule

(1) Fixed-rate residential mortgage loans held for sale and delivery to secondary market participants, such as FNMA and FHLMC, under terms of a binding commitment.

(2) Fixed-rate residential mortgage holdings that are on nonaccrual status.

(3) All collateralized mortgage obligations (CMOs), real estate mortgage investment conduits (REMICs), and stripped mortgage-backed securities.

(4) All pass-through securities held for trading.

Column Instructions

Distribute the carrying value of selected assets in accordance with the procedures described for Columns A through D below.

Report in Column A the entire carrying value of the bank's fixed-rate residential mortgage holdings with remaining maturities of 5 years or less.

Report in Column B the entire carrying value of the bank's fixed-rate residential mortgage holdings with remaining maturities of over 5 years through 10 years.

Report in Column C the entire carrying value of the bank's fixed-rate residential mortgage holdings with remaining maturities of over 10 years through 20 years.

Report in Column D the entire carrying value of the bank's fixed-rate residential mortgage holdings with remaining maturities of over 20 years.

Item Instructions

Item 1: Test for determining whether Schedule 2 should be completed. Either repeat the instruction on page 1 of the General Instructions or cross-reference it. In Items 2 through 9, distribute, in accordance with Column instructions, the carrying value of the bank's fixed-rate residential mortgage holdings.

Item 2: Report the bank's fixed-rate residential mortgage holdings with a coupon rate of less than or equal to 6.75%.

Item 3: Report the bank's fixed-rate residential mortgage holdings with a coupon rate of 6.76% through 7.25%.

Item 4: Report the bank's fixed-rate residential mortgage holdings with a coupon rate of 7.26% through 7.75%.

Item 5: Report the bank's fixed-rate residential mortgage holdings with a coupon rate of 7.76% through 8.25%.

Item 6: Report the bank's fixed-rate residential mortgage holdings with a coupon rate of 8.26% through 8.75%.

Item 7: Report the bank's fixed-rate residential mortgage holdings with a coupon rate of 8.76% through 9.25%.

[14] The term ''coupon rate'' is used in this schedule as a generic term, but for loans and pass-through securities it has two distinct definitions. Whereas loans are to be reported according to each individual loan's coupon or stated interest rate, pass-through securities are to be reported according to the weighted average coupon (WAC) of the underlying collateral. If this rate is not known, it should be estimated by adding 50 bp to the rate the bank receives on each pass-through certificate. The 50 bp represents the deduction of servicing fees and any applicable guarantee fees. As a consequence of these fees, the pass-through rate is lower than the WAC of the underlying of mortgages. Therefore, to estimate the WAC of the mortgage pool, the fees should be added back to the pass-through rate.

Item 8: Report the bank's fixed-rate residential mortgage holdings with a coupon rate of 9.26% through 9.75%.

Item 9: Report the bank's fixed-rate residential mortgage holdings with a coupon rate of greater than or equal to 9.76%.

V. Reporting Instructions—Schedule 3

General Instructions

This supplemental schedule primarily requests information related to the interest rate sensitivity of adjustable-rate mortgage (ARM) holdings. The information required in this supplemental schedule represents the categorization of the reporting bank's ARM holdings according to the distinct characteristics of each loan or security. The defining ARM characteristics requested for this schedule include:

(1) Reset frequency. The reset frequency is how often the contract permits the interest rate on a loan to be changed (e.g., daily, monthly, quarterly, semiannually, annually) without regard to the length of time between the report date and the date the rate can next change.

(2) Lifetime interest rate cap. The lifetime cap is the upper limit on the mortgage rate that can be charged over the life of a loan. This lifetime loan cap is expressed in terms of the initial rate. For example, if the initial mortgage rate is 7% and the lifetime cap is 5%, the maximum interest rate that the bank can charge over the life of the loan is 12%.

(3) Periodic cap. A periodic cap limits the amount that the interest rate may increase at the reset (repricing) date. The periodic cap is expressed in basis points (bp). For example, the bank owns a 7% adjustable-rate mortgage loan. If the periodic cap is 100 bp, then the maximum rate the bank can charge at the next reset date is 8%. If the indexing rate rose by 150 bp, making the fully indexed mortgage rate 8.5%, the bank could only charge 8% at the next reset date.

Schedule 3, Columns A through G, list three reset frequency Columns which are divided by the presence of a periodic cap, and, in the over ''6 months through 1 year'' Column only, by the size of the periodic cap. Items 2 through 5 list four basis point ranges for how far the ARM's current rate is from the instrument's lifetime interest rate cap. In terms of ARM pass-through securities, the information required pertains to the relationship between the current interest rates and caps of the underlying mortgages. If the loans in the mortgage pool are not uniform in terms of periodic caps and lifetime caps, the weighted cap information is required.

In the distribution of Schedule 3 items, the entire carrying value of all ARM holdings should be reported on the basis of the reset frequency.

Examples

An adjustable-rate permanent loan secured by a first lien on a 1–4 family residence whose current rate is 7.5% and that has a lifetime cap of 12% and a periodic cap of 200 bp which reprices annually would be reported to Item 4, Column E.

An adjustable-rate pass-through security whose current coupon is 8% and has a lifetime cap of 10.5% and a periodic cap of 100 bp which reprices semiannually would be reported to Item 3, Column B.

For purposes of this supplemental schedule the following definitions apply:

A floating or adjustable rate is a rate that varies, or can vary, in relation to an index, to some other interest rate such as the rate on certain U.S. Government securities or the bank's ''prime rate,'' or to some other variable criterion the exact value of which cannot be known in advance. Therefore, the exact rate the loan or security carries at any subsequent time cannot be known at the time of origination or acquisition.

All loans are to be reported net of unearned income to the extent that the loans have been reported net of unearned income on RC–C, Item 1(c)(2)(a).

Include as adjustable-rate residential mortgage holdings the following instruments:

(1) All permanent loans secured by first liens on 1–4 family residential mortgages included in Schedule RC–C, Item 1(c)(2)(a), that have adjustable interest rates, regardless of whether they are current or are reported as ''past due and still accruing'' in Schedule RC–N Columns A and B.

(2) The carrying values [15] of all pass-through securities which have adjustable interest rates and are included in RC–B, Items 4(a)(1) through 4(a)(3), Columns A and D.

Exclude from this schedule

(1) Adjustable-rate residential mortgage loans held for sale and delivery to secondary market participants such as FNMA and FHLMC under terms of a binding commitment.

(2) All adjustable-rate mortgage holdings that are on nonaccrual status.

(3) All collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs), and stripped mortgage-backed securities.

(4) All pass-through securities held for trading.

Column Instructions

Distribute the carrying value of selected assets in accordance with the procedures described for Columns A though G below.

Report in Column A the carrying value of the bank's ARM holdings which reprice in 6 months or less and have no periodic cap.

Report in Column B the carrying value of the bank's ARM holdings which reprice in 6 months or less and have a periodic cap.

Report in Column C the carrying value of the bank's ARM holdings which reprice over 6 months through 1 year and have no periodic cap.

Report in Column D the carrying value of the bank's ARM holdings which reprice over 6 months through 1 year and have a periodic cap equal to or less than 150 bp.

Report in Column E the carrying value of the bank's ARM holdings which reprice over 6 months through 1 year and have a periodic cap greater than 150 bp.

Report in Column F the carrying value of the bank's ARM holdings which reprice over 1 year and have no periodic cap.

Report in Column G the carrying value of the bank's ARM holdings which reprice over 1 year and have a periodic cap.

Item Instructions

In Items 2 through 5, distribute, in accordance with column instructions, the carrying value of the bank's ARM holdings.

Item 1: Test for determining whether Schedule 3 should be completed. Either repeat the instruction on page 1 of the General Instructions or cross-reference it.

Item 2: Report the bank's ARM holdings that are within 200 bp of their lifetime cap.

Item 3: Report the bank's ARM holdings that are 201–400 bp from their lifetime cap.

Item 4: Report the bank's ARM holdings that are 401–600 bp from their lifetime cap.

Item 5: Report the bank's ARM holdings that are greater than 600 bp from their lifetime cap.

[15] For purposes of this schedule, available-for-sale debt securities are to be reported on the basis of their fair value, while held-to-maturity debt securities are to be reported on the basis of their amortized cost. Therefore, throughout the instructions to this schedule, references to the carrying value should be read as such.

VIII. Reporting Instructions—Schedule 4

General Instructions

This supplemental schedule primarily requests information related to the interest rate sensitivity of adjustable-rate mortgage (ARM) holdings. The information required in this supplemental schedule represents the categorization of the reporting bank's ARMs according to the distinct characteristics of each loan or security. The characteristics of an ARM include:

(1) Underlying Index. The underlying index of an ARM represents the base or reference point for calculating the mortgage rate of an ARM loan. There are two main categories of indices: (1) those based on a current market index, and (2) those derived from a lagging market index. A current market index is one that adjusts quickly to changes in market interest rates. Examples include rates on Treasury securities, and the London Interbank Offered Rate (LIBOR). A lagging market index is one that adjusts to changes in market interest rates more slowly than the —current market indexes— such as rates on Treasury securities, the London Interbank Offered Rate (LIBOR), etc. Examples of lagging market indexes are the various published FHLB cost-of-funds indexes and the National Average Contract Rate for the Purchase of Previously Occupied Homes.

(2) Lifetime Interest Rate Cap. The lifetime cap is the upper limit on the mortgage rate that can be charged over the life of a loan. This lifetime loan cap is expressed in terms of the initial rate. For example, if the initial mortgage rate is 7% and the lifetime cap is 5%, the maximum interest rate that the bank can charge over the life of the loan is 12%.

(3) Periodic Cap. A periodic cap limits the amount that the interest rate may increase or decrease at the reset (repricing) date. The periodic cap is expressed in basis points (bp). For example, the bank owns a 7% adjustable-rate mortgage loan. If the periodic cap is 100 bp, then the maximum rate the bank can charge at the next reset date is 8%. Even if the indexing rate rose by 150 bp, making the fully indexed mortgage rate 8.5%, the bank could only charge 8% at the next reset date.

(4) Reset Frequency. The reset or repricing frequency is how often the contract permits the interest rate on a loan to be changed (e.g., daily, monthly, quarterly, semiannually, annually) without regard to the length of time between the report date and the date the rate can next change.

Columns A through I on Schedule 4 list the two major indices, current and lagging, each of which is divided by reset frequencies. The current market index columns are further divided by the presence of a periodic cap, and, in the —Over 6 months through 1 year— columns only, by the size of the periodic cap. Items 2 through 9 cover four distance groups, in terms of basis point ranges, of current ARM rates in relation to the instrument—s lifetime interest rate cap. For each distance group, both the ARM balances and the associated weighted average coupon (WAC) rates must be reported. The weighted average coupon rate for this schedule is determined by multiplying the balance of each ARM loan by the applicable annual interest rate (i.e., the annualized rate in effect for the asset as of the report date) and by dividing the sum of all such calculated amounts by the total carrying value of the category. The WAC required for ARM securities in this schedule is that of the underlying mortgages, which should be estimated by adding 75 bp to the bank's pass-through rate. The 75 bp represents the deduction of servicing fees and any applicable guarantee fees. As a consequence of these fees, the coupon rate of the pass-through is lower than that of the WAC of the underlying mortgages. Therefore, to estimate the WAC of the mortgage pool, the fees should be added back to the coupon rate.

Examples

An adjustable-rate permanent loan secured by a first lien on a 1–4 family residence repricing quarterly whose current rate is 7.25% and has a lifetime cap of 10%, no periodic cap, and based on the COFI index would be reported in Items 4 and 5, Column I.

An ARM pass-through security, repricing annually whose current coupon is 7.75% and has a lifetime cap of 14.25%, periodic cap of 200 bp, and based on the Treasury index would be reported in Items 6a and 7, Column E. Note the WAC of the underlying mortgages in this case is estimated to be 8.5%, which is the pass-through rate of 7.75% plus 75 bp.

For purposes of this supplemental schedule the following definitions apply:

A floating or adjustable rate is a rate that varies, or can vary, in relation to an index, to some other interest rate such as the rate on certain U.S. Government securities or the bank's ''prime rate,'' or to some other variable criterion the exact value of which cannot be known in advance. Therefore, the exact rate the loan or security carries at any subsequent time cannot be known at the time of origination or acquisition.

All loans are to be reported net of unearned income to the extent that the loans have been reported net of unearned income on RC-C, Item 1(c)(2)(a).

Adjustable-rate residential mortgage loans that are held by the bank for sale and delivery to a secondary market participant under the terms of a binding contract should be reported according to their repricing frequency regardless of the delivery date specified in the commitment.

Include as adjustable-rate residential mortgage holdings the following instruments:

(1) All permanent loans secured by first liens on 1–4 family residential mortgages included in Schedule RC-C, Item 1(c)(2)(a) that have adjustable interest rates, regardless of whether they are current or are reported as ''past due and still accruing'' in Schedule RC-N, Columns A and B.

(2) The carrying values [16] of all pass-through securities which have adjustable interest rates and are included in RC-B, Items 4(a)(1) through 4(a)(3), Columns A and D.

Exclude from this schedule:

(1) All adjustable-rate mortgage holdings that are on nonaccrual status.

(2) All collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits.

Column Instructions

Distribute the balance of selected assets in accordance with the procedures described for Columns A through I below.

Report in Column A the balance of the bank's ARM holdings which are based on the current market index, reprice 6 months or less, and have no periodic cap.

Report in Column B the balance of the bank's ARM holdings which are based on the current market index, reprice 6 months or less, and have a periodic cap.

Report in Column C the balance of the bank's ARM holdings which are based on the current market index, reprice, over 6 months through 1 year, and have no periodic cap.

Report in Column D the balance of the bank's ARM holdings which are based on the current market index, reprice over 6 months through 1 year,, and have a periodic cap equal to or less than 150 bp.

Report in Column E the balance of the bank's ARM holdings which are based

[16] For purposes of this schedule, available-for-sale debt securities are to be reported on the basis of their fair value, while held-to-maturity debt securities are to be reported on the basis of their amortized cost. Therefore, throughout the instructions to this schedule, references to the carrying value should be read as such.

on the current market index, reprice over 6 months through 1 year, and have a periodic cap greater than 150 bp.

Report in Column F the balance of the bank's ARM holdings which are based on the current market index, reprice over 1 year, and have no periodic cap.

Report in Column G the balance of the bank's ARM holdings which are based on the current market index, reprice over 1 year, and have a periodic cap.

Report in Column H the balance of the bank's ARM holdings which are based on the lagging market index and reprice1 month or less.

Report in Column I the balance of the bank's ARM holdings which are based on the lagging market index and reprice over 1 month.

Item Instructions

In Items 2 through 9, distribute, in accordance with column instructions, the carrying value as well as the weighted average coupon rate of the bank's ARM holdings.

Items 2 and 3: Report the bank's ARM holdings which are within 200 bp of their lifetime cap.

Items 4 and 5: Report the bank's ARM holdings which are 201–400 bp from their lifetime cap.

Items 6 and 7: Report the bank's ARM holdings which are 401–600 bp from their lifetime cap.

Items 8 and 9: Report the bank's ARM holdings which are greater than 600 bp from their lifetime cap.

Appendix 3—Risk Weight Tables

This appendix contains the risk weights that would be used in the proposed supervisory model. Table 1 provides the risk weights used for the baseline module and reporting Schedule 1. Table 2 provides the risk weights used for the fixed-rate mortgage supplemental module and Schedule 2 while Table 3 provides the risk weights used for adjustable-rate mortgages reported in Schedule 3. Table 4 provides the risk weights used for adjustable-rate mortgages reported in Schedule 4.

TABLE 2
FIXED-RATE MORTGAGES RISK WEIGHTS
for
SCHEDULE 2

Risk Weights - Rising Rate

Balances with Coupons of:	Remaining Time to Maturity			
	5 Years or Less	Over 5 Years Through 10 Years	Over 10 Years Through 20 Years	Over 20 Years
≤ 6.75%	(6.0%)	(7.9%)	(8.9%)	(12.3%)
6.76% - ≤7.25%	(5.9%)	(7.8%)	(8.8%)	(11.9%)
7.26% - ≤7.75%	(5.7%)	(7.6%)	(8.5%)	(11.5%)
7.76% - ≤8.25%	(5.5%)	(7.2%)	(8.2%)	(11.0%)
8.26% - ≤ 8.75%	(5.2%)	(6.8%)	(7.7%)	(10.3%)
8.76% - ≤ 9.25%	(4.7%)	(6.1%)	(7.1%)	(9.5%)
9.26% - ≤ 9.75%	(4.1%)	(5.4%)	(6.4%)	(8.5%)
> 9.75%	(3.0%)	(3.9%)	(4.9%)	(6.3%)

Risk Weights - Declining Rate

Balances with Coupons of:	Remaining Time to Maturity			
	0 to 5 Years	5 to 10 Years	10 to 20 Years	> 20 Years
≤ 6.75%	5.8%	7.8%	9.3%	13.4%
6.76% - ≤7.25%	5.2%	6.9%	8.5%	12.1%
7.26% - ≤7.75%	4.5%	5.8%	7.5%	10.6%
7.76% - ≤8.25%	3.7%	4.8%	6.5%	9.1%
8.26% - ≤ 8.75%	3.1%	3.8%	5.5%	7.6%
8.76% - ≤ 9.25%	2.6%	3.1%	4.5%	6.2%
9.26% - ≤ 9.75%	2.3%	2.7%	3.8%	5.1%
> 9.75%	2.1%	2.4%	2.9%	3.5%

Table 1

Derivation of Risk Weights (excluding 1-4 yr. family mortgages)

				Scenario 1 200 basis point rise		Scenario 2 200 basis point decline	
Time Band	Maturity*	Coupon	Price (% OF PAR)	Price (% OF PAR)	% Change in Present Value (Risk Weights)	Price (% OF PAR)	% Change in Present Value (Risk Weights)
Amortizing Instruments							
0-3 Months	1.5 Mo.	7.5	100.00%	99.80%	-0.20%	100.20%	0.20%
3-12 Months	7.5 Mo.	7.5	100.00%	99.30%	-0.70%	100.70%	0.70%
1-3 Years	2 Years	7.5	100.00%	98.00%	-2.00%	102.00%	2.00%
3-5 Years	4 Years	7.5	100.00%	96.30%	-3.70%	103.90%	3.90%
5-10 Years	7.5 Years	7.5	100.00%	93.50%	-6.50%	107.20%	7.20%
10-20 Years	15 Years	7.5	100.00%	88.90%	-11.10%	113.30%	13.30%
Over 20 Years	25 Years	7.5	100.00%	84.90%	-15.10%	120.00%	20.00%
All Other Instruments							
0-3 Months	1.5 Mo.	7.5	100.00% **	99.75%	-0.25%	100.25%	0.25%
3-12 Months	7.5 Mo.	7.5	100.00% **	98.80%	-1.20%	101.30%	1.30%
1-3 Years	2 Years	7.5	100.00%	96.40%	-3.60%	103.80%	3.80%
3-5 Years	4 Years	7.5	100.00%	93.40%	-6.60%	107.10%	7.10%
5-10 Years	7.5 Years	7.5	100.00%	89.40%	-10.60%	112.20%	12.20%
10-20 Years	15 Years	7.5	100.00%	84.10%	-15.90%	120.30%	20.30%
Over 20 Years	25 Years	7.5	100.00%	81.00%	-19.00%	127.00%	27.00%
Liabilities							
0-3 Months	1.5 Mo.	3.75	100.00% **	99.75%	0.25%	100.25%	-0.25%
3-12 Months	7.5 Mo.	3.75	100.00% **	98.80%	1.20%	101.20%	-1.20%
1-3 Years	2 Years	3.75	100.00%	96.30%	3.70%	103.90%	-3.90%
3-5 Years	4 Years	3.75	100.00%	93.00%	7.00%	107.60%	-7.60%
5-10 Years	7.5 Years	3.75	100.00%	88.00%	12.00%	114.00%	-14.00%
10-20 Years	15 Years	3.75	100.00%	80.10%	19.90%	126.20%	-26.20%
Over 20 Years	25 Years	3.75	100.00%	73.70%	26.30%	140.30%	-40.30%
Zero or Low Coupon Securities							
0-3 Months	1.5 Mo.	0	99.08%	98.83%	-0.25%	99.32%	0.25%
3-12 Months	7.5 Mo.	0	95.51%	94.37%	-1.20%	96.67%	1.30%
1-3 Years	2 Years	0	86.31%	83.06%	-3.80%	89.72%	4.00%
3-5 Years	4 Years	0	74.49%	68.99%	-7.40%	80.49%	8.10%
5-10 Years	7.5 Years	0	57.57%	49.85%	-13.40%	66.57%	15.70%
10-20 Years	15 Years	0	33.14%	24.85%	-25.00%	44.31%	33.80%
Over 20 Years	25 Years	0	15.87%	9.82%	-38.10%	25.76%	62.30%

* No prepayments are assumed for these hypothetical instruments
** Actual initial price is slightly less than par

Table 1(con't)

Derivation of Risk Weights for 1-4 yr. family mortgages

Fixed-Rate Mortgages

				Scenario 1 200 basis point rise		Scenario 2 200 basis point decline	
Time Band	Maturity*	Coupon	Price (% OF PAR)	Price (% OF PAR)	% Change in Present Value (Risk Weights)	Price (% OF PAR)	% Change in Present Value (Risk Weights)
0-3 Months	1.5 Mo.	7.50%	100.00%	99.80%	-0.20%	100.20%	0.20%
3-12 Months	7.5 Mo.	7.50%	100.00%	99.30%	-0.70%	100.70%	0.70%
1-3 Years	2 Years	7.50%	100.00%	98.08%	-2.00%	101.98%	2.00%
3-5 Years	4 Years	7.50%	98.76%	93.10%	-5.70%	103.17%	4.50%
5-10 Years	7.5 Years	7.50%	97.57%	90.19%	-7.60%	103.25%	5.80%
10-20 Years	15 Years	7.50%	95.55%	87.40%	-8.50%	102.74%	7.50%
Over 20 Years	25 Years	7.50%	92.07%	81.46%	-11.50%	101.87%	10.60%

Adjustable-Rate Mortgages

Reset Frequency	Maturity*	Coupon	Price (% OF PAR)		Price (% OF PAR)	% Change in Present Value (Risk Weights)	Price (% OF PAR)	% Change in Present Value (Risk Weights)
0 to 6 Months	6 mo CMT	7.50%	101.31%	(a)	97.03%	-4.20%	102.93%	1.60%
6 Months to 1 Year	12 mo CMT	7.50%	102.12%	(b)	97.60%	-4.40%	104.04%	1.90%
Greater than 1 Year	3 yr CMT	7.50%	99.58%	(c)	92.99%	-6.60%	104.62%	5.10%
Near Lifetime Cap	12 mo CMT	7.50%	99.10%	(d)	92.13%	-7.00%	103.42%	4.40%

* No prepayments are assumed for these hypothetical instruments

(a) 6 mos CMT, 100 bp periodic cap, 275 bp margin, 500 bp from lifetime cap
(b) 12 mo. CMT, 200 bp periodic cap, 275 bp margin, 500 bp from lifetime cap
(c) 3 yr. CMT, 200 bp periodic cap, 275 bp margin, 500 bp from lifetime cap
(d) 12 mo. CMT, no periodic cap, 275 bp margin, 200 bp from lifetime cap

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TABLE 2
FIXED-RATE MORTGAGES RISK WEIGHTS
for
SCHEDULE 2

Risk Weights - Rising Rate

Balances with Coupons of:	Remaining Time to Maturity			
	5 Years or Less	Over 5 Years Through 10 Years	Over 10 Years Through 20 Years	Over 20 Years
≤ 6.75%	(6.0%)	(7.9%)	(8.9%)	(12.3%)
6.76% - ≤7.25%	(5.9%)	(7.8%)	(8.8%)	(11.9%)
7.26% - ≤7.75%	(5.7%)	(7.6%)	(8.5%)	(11.5%)
7.76% - ≤8.25%	(5.5%)	(7.2%)	(8.2%)	(11.0%)
8.26% - ≤ 8.75%	(5.2%)	(6.8%)	(7.7%)	(10.3%)
8.76% - ≤ 9.25%	(4.7%)	(6.1%)	(7.1%)	(9.5%)
9.26% - ≤ 9.75%	(4.1%)	(5.4%)	(6.4%)	(8.5%)
> 9.75%	(3.0%)	(3.9%)	(4.9%)	(6.3%)

Risk Weights - Declining Rate

Balances with Coupons of:	Remaining Time to Maturity			
	0 to 5 Years	5 to 10 Years	10 to 20 Years	> 20 Years
≤ 6.75%	5.8%	7.8%	9.3%	13.4%
6.76% - ≤7.25%	5.2%	6.9%	8.5%	12.1%
7.26% - ≤7.75%	4.5%	5.8%	7.5%	10.6%
7.76% - ≤8.25%	3.7%	4.8%	6.5%	9.1%
8.26% - ≤ 8.75%	3.1%	3.8%	5.5%	7.6%
8.76% - ≤ 9.25%	2.6%	3.1%	4.5%	6.2%
9.26% - ≤ 9.75%	2.3%	2.7%	3.8%	5.1%
> 9.75%	2.1%	2.4%	2.9%	3.5%

TABLE 3
ADJUSTABLE-RATE MORTGAGES RISK WEIGHTS
for
SCHEDULE 3

	Reset Frequency						
	6 Months or Less		Over 6 Months to 1 Year			Over 1 Year	
	No periodic cap	Periodic cap	No periodic cap	Periodic Cap less than 150bp	Periodic cap more than 150bp	No periodic cap	Periodic cap
Instruments 200 basis points or less from the lifetime cap							
Rising rates	(6.6)	(6.8)	(7.0)	(7.3)	(7.0)	(7.3)	(7.3)
Declining rates	3.7	4.0	4.4	4.9	4.4	6.0	6.0
Instruments 201 to 400 basis points from the lifetime cap							
Rising rates	(5.1)	(5.9)	(5.6)	(6.7)	(6.1)	(6.6)	(7.0)
Declining rates	2.4	2.9	2.9	4.2	3.3	5.0	5.6
Instruments 401 to 600 basis points from the lifetime cap							
Rising rates	(2.5)	(4.2)	(3.0)	(5.8)	(4.4)	(5.0)	(6.6)
Declining rates	0.9	1.6	1.2	3.2	1.9	3.2	5.1
Instruments more than 600 basis points from the lifetime cap							
Rising rates	(1.1)	(3.3)	(1.4)	(5.4)	(3.5)	(3.6)	(6.5)
Declining rates	0.5	1.3	0.8	3.0	1.5	2.3	4.9

TABLE 4
ADJUSTABLE-RATE MORTGAGES RISK WEIGHTS
for
SCHEDULE 4

(Each of the following tables corresponds to a column on Schedule 4)

Current Market Index - 6 Month or Less Reset Frequency - No Periodic Cap

		Distance From The Lifetime Cap							
		200 Basis Points or Less		201 to 400 Basis Points		401 to 600 Basis Points		Over 600 Basis Points	
		Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates
Weighted Average Coupon Range	4.75% and under	(9.2%)	10.3%	(8.8%)	8.5%	(7.2%)	4.7%	(4.4%)	1.8%
	4.76% to 6.25%	(8.7%)	7.9%	(7.7%)	5.7%	(5.2%)	2.3%	(2.4%)	0.8%
	6.26% to 7.75%	(7.4%)	4.5%	(5.8%)	3.0%	(3.0%)	1.0%	(1.2%)	0.5%
	Over 7.75%	(5.1%)	2.0%	(3.6%)	1.3%	(1.5%)	0.6%	(0.7%)	0.5%

Current Market Index - 6 Month or Less Reset Frequency - With Periodic Cap

		Distance From The Lifetime Cap							
		200 Basis Points or Less		201 to 400 Basis Points		401 to 600 Basis Points		Over 600 Basis Points	
		Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates
Weighted Average Coupon Range	4.75% and under	(9.2%)	10.4%	(9.0%)	9.3%	(8.2%)	7.1%	(7.1%)	5.3%
	4.76% to 6.25%	(8.7%)	8.2%	(8.2%)	6.7%	(6.9%)	4.4%	(5.6%)	3.2%
	6.26% to 7.75%	(7.6%)	4.8%	(6.7%)	3.5%	(5.0%)	1.9%	(3.9%)	1.4%
	Over 7.75%	(5.3%)	2.4%	(4.2%)	1.8%	(2.7%)	1.1%	(2.1%)	1.0%

TABLE 4 (Continued)
ADJUSTABLE-RATE MORTGAGES RISK WEIGHTS

Current Market Index - 6 Months to 1 Year Reset Frequency - No Periodic Cap

		Distance From The Lifetime Cap							
		200 Basis Points or Less		201 to 400 Basis Points		401 to 600 Basis Points		Over 600 Basis Points	
		Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates
Weighted Average Coupon Range	4.75% and under	(9.2%)	10.4%	(8.9%)	8.9%	(7.6%)	5.5%	(5.1%)	2.3%
	4.76% to 6.25%	(8.7%)	8.4%	(8.0%)	6.3%	(5.8%)	2.9%	(3.0%)	1.2%
	6.26% to 7.75%	(7.7%)	5.3%	(6.4%)	3.6%	(3.6%)	1.4%	(1.6%)	0.8%
	Over 7.75%	(5.8%)	2.5%	(4.2%)	1.7%	(1.9%)	0.9%	(1.0%)	0.7%

Current Market Index - 6 Months to 1 Year Reset Frequency
Periodic Cap Less than 150 bp

		Distance From The Lifetime Cap							
		200 Basis Points or Less		201 to 400 Basis Points		401 to 600 Basis Points		Over 600 Basis Points	
		Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates
Weighted Average Coupon Range	4.75% and under	(9.3%)	10.4%	(9.1%)	9.7%	(8.7%)	8.4%	(8.2%)	7.6%
	4.76% to 6.25%	(8.8%)	8.7%	(8.4%)	7.8%	(7.7%)	6.4%	(7.2%)	5.8%
	6.26% to 7.75%	(7.8%)	5.9%	(7.3%)	5.1%	(6.4%)	4.0%	(5.9%)	3.7%
	Over 7.75%	(6.2%)	2.9%	(5.5%)	2.4%	(4.6%)	1.9%	(4.3%)	1.8%

TABLE 4 (Continued)
ADJUSTABLE-RATE MORTGAGES RISK WEIGHTS

Current Market Index - 6 Months to 1 Year Reset Frequency
Periodic Cap Greater than 150 bp

		Distance From The Lifetime Cap							
		200 Basis Points or Less		201 to 400 Basis Points		401 to 600 Basis Points		Over 600 Basis Points	
		Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates
Weighted Average Coupon Range	4.75% and under	(9.2%)	10.4%	(9.0%)	9.3%	(8.2%)	7.1%	(7.1%)	5.3%
	4.76% to 6.25%	(8.7%)	8.4%	(8.2%)	6.9%	(6.9%)	4.6%	(5.6%)	3.4%
	6.26% to 7.75%	(7.7%)	5.3%	(6.8%)	4.0%	(5.1%)	2.3%	(4.0%)	1.8%
	Over 7.75%	(5.8%)	2.5%	(4.7%)	1.8%	(3.1%)	1.0%	(2.5%)	0.9%

Current Market Index - Over 1 Year Reset Frequency - No Periodic Cap

		Distance From The Lifetime Cap							
		200 Basis Points or Less		201 to 400 Basis Points		401 to 600 Basis Points		Over 600 Basis Points	
		Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates
Weighted Average Coupon Range	5.50% and under	(9.2%)	10.0%	(8.9%)	9.0%	(7.9%)	6.7%	(6.3%)	4.3%
	5.51% to 8.00%	(8.2%)	7.5%	(7.6%)	6.2%	(6.1%)	3.9%	(4.2%)	2.6%
	8.01% to 10.50%	(5.6%)	3.2%	(4.6%)	2.6%	(3.1%)	2.0%	(2.3%)	1.9%
	Over 10.50%	(3.3%)	2.1%	(2.8%)	2.0%	(2.1%)	1.9%	(2.0%)	1.9%

TABLE 4 (Continued)
ADJUSTABLE-RATE MORTGAGES RISK WEIGHTS

Current Market Index - Over 1 Year Reset Frequency - With Periodic Cap

		Distance From The Lifetime Cap							
		200 Basis Points or Less		201 to 400 Basis Points		401 to 600 Basis Points		Over 600 Basis Points	
		Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates
Weighted Average Coupon Range	5.50% and under	(9.2%)	10.0%	(9.0%)	9.5%	(8.8%)	8.7%	(8.6%)	8.4%
	5.51% to 8.00%	(8.2%)	7.5%	(8.0%)	7.0%	(7.5%)	6.4%	(7.4%)	6.2%
	8.01% to 10.50%	(5.6%)	3.2%	(5.3%)	2.9%	(4.9%)	2.7%	(4.8%)	2.6%
	Over 10.50%	(3.3%)	2.3%	(3.1%)	2.2%	(2.8%)	2.2%	(2.8%)	2.2%

Lagging Market Index - 1 Month or Less Reset Frequency

		Distance From The Lifetime Cap							
		200 basis points or Less		201 to 400 Basis Points		401 to 600 Basis Points		Over 600 Basis Points	
		Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates
Weighted Average Coupon Range	5% and under	(9.3%)	10.6%	(9.0%)	9.0%	(7.5%)	5.5%	(5.0%)	2.7%
	5.01% to 6.5%	(8.4%)	7.3%	(7.4%)	5.4%	(4.9%)	2.7%	(2.8%)	1.8%
	6.51% to 8%	(7.5%)	5.2%	(6.2%)	3.8%	(3.7%)	2.0%	(2.2%)	1.6%
	Over 8%	(4.8%)	2.4%	(3.7%)	2.0%	(2.2%)	1.6%	(1.7%)	1.6%

TABLE 4 (Continued)
ADJUSTABLE-RATE MORTGAGES RISK WEIGHTS

Lagging Market Index - Over 1 Month Reset Frequency

		Distance From The Lifetime Cap							
		200 Basis Points or Less		201 to 400 Basis Points		401 to 600 Basis Points		Over 600 Basis Points	
		Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates
Weighted Average Coupon Range	5% and under	(9.2%)	10.5%	(9.0%)	9.3%	(8.2%)	6.7%	(7.0%)	4.8%
	5.01% to 6.5%	(8.1%)	7.2%	(7.3%)	5.6%	(5.7%)	3.4%	(4.3%)	2.6%
	6.51% to 8%	(7.2%)	5.4%	(6.2%)	4.2%	(4.5%)	2.7%	(3.5%)	2.4%
	Over 8%	(5.3%)	3.3%	(4.5%)	3.0%	(3.5%)	2.7%	(3.2%)	2.6%

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Appendix 4—Technical Description of Supplemental Modules and Risk Weights

This appendix is intended to provide detailed information on the methods used to derive the risk weights used in the supervisory measurement system. Descriptions of the derivation of non-mortgage risk weights are provided, followed by the descriptions for fixed and adjustable-rate mortgage risk weights. Titles and locations of reference documents are also provided.

I. Non-Mortgage Risk Weights

The non-mortgage risk weights were derived using hypothetical market instruments that are representative of the asset or liability category that is measured. Each weight approximates the percentage change in the price of the benchmark instruments given a 200 basis point, instantaneous and uniform shift in market interest rates. Separate risk weights are constructed for the rising and falling interest rate scenarios for the following categories:

(1) Other amortizing assets;
(2) Zero or low coupon assets;
(3) All other assets;
(4) Liabilities; and
(5) Off-balance sheet.

A. Benchmark Instruments for Non-Mortgage Risk Weights

The benchmark instruments for each category of assets and liabilities, corresponding maturities, coupons and bond-equivalent yields are listed below.

(1) *Other Amortizing Assets:* For other (non-mortgage) amortizing assets, a benchmark monthly amortizing instrument with an original maturity equal to the end point of the specific time band; a remaining maturity equal to the midpoint of the time band; and a coupon and bond-equivalent yield equal to 7.50% was used.[17] No prepayments are assumed for this category of instruments.

(2) *Zero- or Low-Coupon Assets:* The risk weights for zero- or low-coupon instruments were calculated using the percentage change in the price of a zero-coupon instrument with an assumed maturity equal to the mid-point of each time band and a bond-equivalent yield of 7.50%.

(3) *All Other Assets:* The risk weights for the ''All Other'' category were calculated assuming semi-annual interest payments, a maturity equal to the mid-point of each time band, and an assumed coupon and yield equal to 7.50%.

(4) *Liabilities:* The only set of risk weights used for liabilities is represented by the percentage price change for a semi-annual interest-bearing instrument with an assumed coupon and yield equal to 3.75%.[18]

(5) *Off-Balance Sheet Positions:* The risk weights for interest rate futures, forwards and swaps are the same as those applied to the ''All Other'' category. Off-balance sheet positions with amortizing features are assigned the same risk weights as the ''Other Amortizing'' category.

B. Derivation of Non-Mortgage Risk Weights

The prices and risk weights for each rate scenario were calculated in the following manner:

(1) The benchmark instruments were priced at par in the base case, or current interest rate environment. Using the coupon and maturity of the instruments and static discounted cash flow analysis, the bond-equivalent yields were calculated.

(2) Prices for the benchmark instruments were then calculated for the rising and declining rate scenarios by shifting the bond-equivalent yields up and down by 200 basis points. The present values of the expected cash flows in each scenario were then determined to arrive at the new price for each instrument.

(3) The percentage change in the price from the base case price of par represents the risk weight for the benchmark instrument in the corresponding rate scenarios. If the risk weight was determined to be less than 1 percentage point, it was expanded to the nearest 5 basis points interval. If the risk weight was greater than 1 percentage point, it was rounded to the nearest 10 basis points interval.

II. Treatment of Fixed-rate Mortgages and Derivation of Risk Weights

Office of Thrift Supervision Pricing Information

Representative benchmark mortgage instruments used in the calculation of risk weights for Schedules 1 through 4 were based on instruments available in the *Office of Thrift Supervision (OTS) Asset and Liability Price Tables* as of September 30, 1994. Publicly available data on certain coupon ranges and weighted average remaining maturities (WARM) not specifically presented in the *OTS Asset and Liability Price Tables* were obtained from the OTS as part of a separate data request by the agencies.

Representative benchmark fixed-rate mortgage instruments for Schedule 1 were drawn from a combination of hypothetical mortgage pass-through instruments and mortgage pool securities listed in the *OTS Asset and Liability Price Tables.* The mortgage pool security price information contained in the *OTS Asset and Liability Price Tables* were calculated using the OTS Net Portfolio Value Model. A brief overview of the pricing methodology in The *OTS Net Portfolio Value Model Manual,* published in November 1994, states that ''the model uses the options-based approach to determine the market value of 1 to 4 family mortgages. Cash flows consist of scheduled principal payments, interest, and prepaid principal. Prepayments are modeled using a prepayment equation that relates the prepayment rate for a particular period to, among other factors, the difference between the mortgage coupon rate and the current market interest rate. Scheduled principal and interest cash flows are estimated by amortizing the remaining balance in each period over its remaining term. To calculate market values in each of the alternate interest rate scenarios, cash flows for that scenario are discounted by the simulated Treasury rates for that scenario plus the option-adjusted spread.'' For additional detail and model specifications, refer to The *OTS Net Portfolio Value Model,* published by the OTS, Risk Management Division, Washington, District of Columbia. Copies of the aforementioned publication are available for review in the FDIC Reading Room, 550 North 17th Street, N.W., Washington, District of Columbia, and the in the OCC Library at 250 E Street SW., Washington, District of Columbia.

The OTS model projects prices for numerous fixed-rate and adjustable-rate mortgage securities with various weighted average coupons (WAC) and WARM given different interest rate scenarios. Price tables are provided for different types of mortgage pool securities. Each table contains mortgage pool security prices as a percentage of the underlying mortgage balance in the base case (current interest rates) as well as price projections for interest rate movements up and down 400 basis points in 100 basis point increments.

Fixed-rate residential mortgage assets have embedded options that make the value of the instrument more sensitive to interest rate changes than fixed maturity instruments. In order to more effectively analyze the impact of

[17] For the third quarter of 1994, the average effective yield on earning assets at all commercial banks was approximately 7.50% on an annualized basis.

[18] The 3.75% coupon approximates the effective cost of interest-bearing liabilities at all commercial banks for the third quarter of 1994 on an annualized basis.

embedded options on the value of this asset class, additional reporting schedules are required depending on the amount of an institution's mortgage holdings in relation to its total assets. Both one-to-four family residential mortgage loans and pass-through securities are considered mortgage holdings for the purposes of these schedules. CMOs and other mortgage derivative securities are accorded separate treatment as described in the body of the Policy Statement.

A. Benchmark Instruments

Risk weights have been derived from a group of benchmark fixed-rate mortgages with attributes most representative of the mortgage market as of September 30, 1994. Balances reported by banks would be assigned risk weights corresponding to these benchmark instruments. It is believed that the benchmark risk weights will provide reasonable approximations of the price sensitivity of an institution's actual holdings.

1. Benchmark Instruments for Schedule 1

For Schedule 1, outstanding balances would be reported according to their remaining maturity in one of seven time bands represented by Columns B through H of Schedule 1 as shown in Table 1. The balances in each time band would be assigned risk weights equal to the price sensitivity of the benchmark instruments chosen for that specific time band. The benchmark instrument for the first three time bands (Columns B, C, and D) on Schedule 1 are monthly amortizing instruments with original maturities equal to the end point of the specific time band; remaining maturities equal to the midpoint of each time band; and a coupon and bond-equivalent yield equal to 7.50%. No prepayments are assumed for those time bands.

TABLE 1.—FIXED-RATE MORTGAGES RISK WEIGHT DERIVATIONS FOR SCHEDULE 1

Column	B	C 3 Months to 1 year	D	E	F	G	H
	≤ 3 months		1 to 3 years	3 to 5 years	5 to 10 years	10 to 20 years	> 20 years
Source	Discounted Cash Flow.	Discounted Cash Flow.	Discounted Cash Flow.	OTS Data	OTS Data	OTS Data	OTS Data.

The benchmark mortgage instruments for the remaining four time bands are as follows:

(1) Column E (3 to 5 years): 7-year fixed-rate balloon mortgage pool security with a 48-month WARM and a 7.50% WAC;

(2) Column F (over 5 to 10 years): 7-year fixed-rate balloon mortgage pool security with a 72-month WARM and a 7.50% WAC;

(3) Column G (over 10 to 20 years): 15-year fixed-rate mortgage pool security with a 160-month WARM and a 7.50% WAC;

(4) Column H (over 20 years): FHLMC/FNMA 30-year fixed-rate mortgage pool security with a 330-month WARM and a 7.50% WAC.

The coupon rate of 7.50 percent was chosen for consistency with the average effective annualized yield on earning assets at all commercial banks as of September 30, 1994. Consideration was also given to the average dollar amount of outstanding 30 year Federal National Mortgage Association (FNMA) mortgage pass-through securities in September 1994.

2. Benchmark Instruments for Schedule 2

The benchmark instruments used to derive the risk weights for Schedule 2 include the following:

(1) Column A (0–5 years): 7-year fixed-rate balloon mortgage pool security with a 48 month WARM;

(2) Column B (Over 5 to 10 years): 7-year fixed-rate balloon mortgage pool security with a 72 month WARM;

(3) Column C (Over 10 to 20 years): 15-year fixed-rate mortgage pool security with a 160 month WARM;

(4) Column D (Over 20 years): FHLMC/FNMA 30-year fixed-rate mortgage pool security with a 330 month WARM.

The weighted average coupon rates of the benchmark instruments were the midpoints of the coupon ranges with the exception of those coupons equal to or less than 6.75 percent and equal to or greater than 9.76 percent. For those coupon ranges, the WACs used were 6.50 percent and 10.50 percent respectively.

B. Derivation of Fixed-rate Mortgage Risk Weights

The following examples have been taken directly from the information contained in the OTS Asset and Liability Price Tables as of 9/30/94 as well as data obtained from the OTS in a separate request by the agencies. As previously noted, the OTS price tables present prices of mortgage pool securities based on bond-equivalent yields, given an increase and decrease in interest rates from 100 to 400 basis points in 100 basis point increments. The supervisory measurement system risk weights are derived using the 200 basis point increase and decrease scenarios.

Table 2 includes prices for the representative mortgage instrument chosen for the first column of Schedule 2, which is a 7-year fixed-rate balloon with a 48-month WARM. All mortgage holding balances reported in the 0–5 year column would receive a risk weight equal to the percentage change in price for this instrument given ±200 basis point rate shifts. Price changes for each benchmark vary depending on the particular WAC as depicted in the table. The midpoint of each WAC range was selected to determine which benchmark instrument to use from the OTS price table.

TABLE 2.—7–YEAR FIXED-RATE BALLOON WITH A 48–MONTH WARM PRICES AS A PERCENT OF THE UNDERLYING MORTGAGE BALANCE AS OF SEPTEMBER 30, 1994

0–5 Year time band benchmark			
Interest rate scenario			
Coupon	–200 bp	0 bp	+200 bp
≥6.75%	101.57	96.01	90.26

TABLE 2.—7–YEAR FIXED-RATE BALLOON WITH A 48–MONTH WARM PRICES AS A PERCENT OF THE UNDERLYING MORTGAGE BALANCE AS OF SEPTEMBER 30, 1994—Continued

0–5 Year time band benchmark			
Interest rate scenario			
Coupon	–200 bp	0 bp	+200 bp
6.76%–≤7.25%	102.54	97.50	91.77
7.26%–≤7.75%	103.17	98.76	93.10
7.76%–≤8.25%	103.74	100.01	94.49
8.26%–≤8.75%	104.33	101.23	96.00
8.76%–≤9.25%	104.89	102.26	97.47
9.26%–≤9.75%	105.34	102.99	98.74
>9.75%	106.30	104.12	100.98

Example of a Risk Weight Calculation: The risk weights for the 7.26%-7.75% coupon range are calculated as follows: Using 7.50 percent as the midpoint of the coupon range, the base case price as of September 30, 1994, for a 7.50 percent, 7-year fixed-rate balloon mortgage, with a 48 month WARM is 98.76. In the +200 bp scenario, the base price of 98.76 is subtracted from +200 bp price of 93.10: (93.10 − 98.76= − 5.66). The absolute change is − 5.66 representing a percentage decrease in price of − 5.7% (− 5.66/98.76= − 0.057 or − 5.7%.) Negative 5.7% serves as the risk weight for the benchmark mortgage in the +200 bp scenario. As a result, all balances reported on Schedule 2, in the 0–5 year remaining maturity column, and the 7.26%–7.75% coupon row would receive a risk weight of − 5.7 in the rising rate analysis.

In the –200 bp scenario, the base price of 98.76 is subtracted from the –200 bp price of 103.17: (103.17 − 98.76=4.41). The absolute change is 4.41 representing a percentage increase in price of 4.5% (4.41/98.76=0.0446 or 4.5%). The risk weight for this benchmark mortgage becomes 4.5% in the -200 bp scenario. Consequently, all balances in this item receive the 4.5% risk weight in the declining rate analysis. The aforementioned method for calculating the risk weights is used to determine the risk weights for the other mortgage instruments. Tables 3, 4, and 5 are the price tables for the other three fixed-rate benchmark instruments used in the supervisory measurement system.

TABLE 3.—7-YEAR FIXED-RATE BALLOON WITH A 72-MONTH WARM PRICES AS A PERCENT OF THE UNDERLYING MORTGAGE BALANCE AS OF SEPTEMBER 30, 1994

>5–10 year time band benchmark	Coupon		
	Interest rate scenario		
	− 200 bp	0 bp	+200 bp
≤6.75%	101.24	93.90	86.47
6.76% − ≤7.25%	102.48	95.89	88.44
7.26% − ≤7.75%	103.25	97.57	90.19
7.76% − ≤8.25%	103.94	99.211	92.02
8.26% − ≤8.75%	104.63	100.79	93.98
8.76% − ≤9.25%	105.30	102.14	95.89
9.26% − ≤9.75%	105.87	103.10	97.55
≤9.75%	107.09	104.57	100.53

TABLE 4.—15-YEAR FIXED-RATE POOL WITH A 160-MONTH WARM PRICES AS A PERCENT OF THE UNDERLYING MORTGAGE BALANCE AS OF SEPTEMBER 30, 1994

>10–20 year time band benchmark			
Coupon	Interest rate scenario		
	− 200 bp	0 bp	+200 bp
≤6.75%	99.74	91.29	83.12
6.76% − ≤7.25%	101.39	93.48	85.28
7.26% − ≤7.75%	102.74	95.55	87.40
7.76% − ≤8.25%	103.93	97.59	89.59
8.26% − ≤8.75%	105.09	99.64	91.93
8.76% − ≤9.25%	106.31	101.70	94.45
9.26% − ≤9.75%	107.53	103.63	96.99
≤9.75%	109.79	106.72	101.53

TABLE 5 30-YEAR FIXED-RATE POOL WITH A 330-MONTH WARM PRICES AS A PERCENT OF THE UNDERLYING MORTGAGE BALANCE AS OF SEPTEMBER 30, 1994

20 year time band benchmark			
Coupon	Interest rate scenario		
	−200 bp	0 bp	+200 bp
≤6.75%	97.78	86.20	75.61
6.76%−≤7.25%	100.13	89.33	78.66
7.26%−≤7.75%	101.87	92.07	81.46
7.76%−≤8.25%	103.36	94.73	84.33
8.26%−≤8.75%	104.77	97.36	87.33
8.76%−≤9.25%	106.20	99.97	90.52
9.26%−≤9.75%	107.67	102.49	93.80
≤9.75%	110.67	106.91	100.15

III. Treatment of Adjustable-Rate Mortgages and Derivation of Risk Weights

Adjustable-rate mortgage loans and securities (ARMS) have price sensitivities that are substantially different than fixed-rate mortgage assets primarily due to their coupon reset features. The coupon adjustments are generally limited by caps and floors both for the life of the mortgage and also at their reset period. These caps are known as lifetime caps and periodic caps. In general, there are three factors that most influence the price sensitivity of an ARM: the reset frequency, the periodic cap, and the lifetime cap.

A review of ARM price behavior reveals that the relationship between the periodic and lifetime caps and the effect of that relationship on ARM prices is complex and varies based upon the likelihood that either cap will become binding. Consequently, information on both the periodic cap and the lifetime cap would be reported by institutions with significant ARM holdings. Benchmark mortgages representative of the ARM market have been identified and are used to assign risk weights. Supplemental reporting schedules were also developed to capture the effect of these characteristics on the price of ARMs.

A. Benchmark ARM Instruments

The coupon ranges provided in Schedule 4 were chosen to be representative of the ARM securities outstanding. In an effort to maintain consistency with the risk weights applied to the non-mortgage products and FRM holdings in Schedule 1, a 7.5% WAC was selected for all of the benchmark ARM instruments in Schedule 1 as well as for Schedule 3.

1. Benchmark Instruments for Schedule 1

The benchmark instruments for Schedules 1, 3, and 4 represent the characteristics of the ARM mortgages most prevalent in the market place according to reported index, margin, periodic cap, and distance to lifetime cap. Schedules 1 and 3 are based on instruments with 7.5% WACs and share other common characteristics, hence, all of the benchmark instruments and risk weights used for Schedule 1 may be found in Schedule 3. However, the benchmark WACs in Schedule 4 do not necessarily fall precisely on a 7.5 percent WAC. To obtain the 7.5 percent WAC sensitivity for Schedules 1 and 3 an additional interpolation was used. The interpolation used was the following:

(1) for the 6-month and 1-year ARMs: $P_{7.5}=1/3[P_{8.5}-P_{7.0}]+P_{7.0}$;

(2) for the 3-year ARMs: $P_{7.5}=1/3[P_{9.5}-P_{7.5}]+P_{6.5}$.

Where as $P_x=Price_{WAC(X)}$

The benchmark instruments for Schedule 1 are as follows:

(1) Reset Frequency—0 to 6 Months: Six month Constant Maturity Treasury (CMT) index, 275 basis point margin, four month reset period, 100 basis point periodic cap and 500 basis points to the lifetime cap;

(2) Reset Frequency—6 Months to 1 Year: One year CMT, 275 basis point margin, six month reset period, 200 basis point periodic cap and 500 basis points to the lifetime cap;

(3) Reset Frequency—Greater than 1 Year: Three year CMT, 275 basis point margin, 18 month reset period, 200 basis point periodic cap and 500 basis points to the lifetime cap;

(4) Reset Frequency—Near Lifetime Cap: One year CMT, 275 basis point margin, six month reset period, no periodic cap and 200 basis points from the lifetime cap.

2. Benchmark Instruments for Schedule 3

The benchmark instruments for Schedule 3 represent the characteristics of the ARM mortgages most prevalent in the market place according to reported index, margin, periodic cap, and distance to lifetime cap. Banks are required to report their ARM holdings by reset frequency, periodic interest rate cap levels, and distance from the lifetime cap in Schedule 3. The benchmark instruments for each reset frequency and lifetime cap are summarized in Table 6.

TABLE 6.—BENCHMARK INSTRUMENTS FOR SCHEDULE 3

RESET frequency						
6 Months or less: 6 Month treasury 275 margin 330 month WARM 7.50% WAC		Over 6 months to 1 year: 1 Year treasury 275 margin 330 month WARM 7.50% WAC			Over 1 year: 3 Year treasury 275 margin 330 month WARM 7.50% WAC	
No Cap: No periodic cap	Cap: 100 bp periodic cap and floor	No Cap: No periodic cap	Cap <150bp: 100 bp periodic cap and floor	Cap > 150bp: 200 bp periodic cap and floor	No Cap: No periodic cap	Cap: 200 bp periodic cap
DISTANCE FROM LIFETIME CAP						
Instruments 200 basis points or less from lifetime cap: 200 basis points						
Instruments 201 to 400 basis points from lifetime cap: 300 basis points.						
Instruments 401 to 600 basis points from lifetime cap: 500 basis points.						
Instruments more than 600 basis points from lifetime cap: 700 basis points.						

3. Benchmark Instruments for Schedule 4

Schedule 4 collects information on an ARM's rate index, reset frequency, periodic and lifetime caps as shown in Table 7.

TABLE 7.—ADJUSTABLE-RATE MORTGAGE INFORMATION FOR SCHEDULE 4

Current market index by reset frequency							Lagging market index by reset frequency	
6 Months or less		Over 6 months to 1 year			Over 1 year		1 Month or less	Over 1 month
No cap	Cap	No Cap	Cap of 150 bp or less	Cap of more than 150	No Cap	Cap		

Treasury ARM securities were used as the benchmark for the class of mortgages labeled *Current Market Index*. COFI ARM securities were used as the benchmark for the class of mortgages labeled as *Lagging Market Index*. Within each reset frequency and cap range for the *Current Market Index* and *Lagging Market Index* mortgage classes, benchmark instruments were used. The WAC and cap benchmarks for the instruments used for Schedule 4 are as follows:

a. Current Market Index By Reset Frequency

(1) 6 Months or Less, No Cap: 6-month Treasury ARM securities, as published in the OTS price tables as of September 30, 1994, subject to the aforementioned linear interpolation were used for this category. OTS price tables provide price data on 7.00 percent WAC and 8.50 percent WAC 6-Month Treasury ARM securities. The benchmark weighted average coupons for each WAC range are provided in Table 8.

TABLE 8.—BENCHMARK WACS FOR 6 MONTH TREASURY ARMS

Weighted average coupon	Benchmark WAC (percent)
4.75% and under	4.00
4.76% to 6.25%	5.50
6.26% to 7.75%	7.00
Over 7.75%	8.50

(2) 6 Months or Less, Cap: The same benchmark WAC's as those listed in Table 7 were used for the benchmark instruments in this category, subject to a 100 basis point periodic cap and floor.

(3) Over 6 Months to 1 year, No Cap: 12-Month Treasury ARM securities, as published in the OTS price tables as of September 30, 1994, were used for this category. Because the WAC ranges provided in the OTS price tables vary based on the underlying index, the WAC ranges developed for the supervisory measurement system also vary with the underlying index. OTS price tables provide price information on 7.00 percent WAC and 8.50 WAC 12–Month Treasury ARM securities. The benchmark weighted average coupon used for the WAC ranges are provided in Table 9.

TABLE 9.—BENCHMARK WACS FOR 12-MONTH TREASURY ARMS

Weighted average coupon	Benchmark WAC (percent)
4.75% and under	4.00
4.76% to 6.25%	5.50
6.26% to 7.75%	7.00
Over 7.75%	8.50

(4) Over 6 Months to 1 Year, Cap of 150 Basis Points of Less: The same benchmark WAC's as those listed in Table 10 were used for the benchmark instruments in this category, subject to a 100 basis point periodic cap and floor.

(5) Over 6 Months to 1 Year, Cap of More Than 150 Basis Points: The same benchmark WAC's as those listed in Table 10 were used for the benchmark instruments in this category, subject to a 200 basis point periodic cap and floor.

(6) Over 1 Year, No Cap: 36–Month Treasury ARM securities, as published in the OTS price tables as of September 30, 1994, were used for this category. Because the WAC ranges provided in the OTS price tables vary based on the underlying index, the WAC ranges developed for the supervisory measurement system also vary with the underlying index. OTS price tables

provide price information on 6.50 percent WAC and 9.50 WAC 36-Month Treasury ARM securities. The benchmark weighted average coupons used for the WAC ranges are provided in Table 10.

TABLE 10.—BENCHMARK WACS FOR 36 MONTH TREASURY ARMS

Weighted average coupon	Benchmark WAC (percent)
5.50% and under	4.50
5.51% to 8.00%	6.50
8.01% to 10.50%	9.50
Over 10.50%	11.50

(7) Over 1 Year, Cap: The same benchmark WAC's as those listed in Table 11 were used for the benchmark instruments in this category, subject to a 200 basis point periodic cap and floor.

b. Lagging Market Index By Reset Frequency

(1) 1 Month or Less: 1 Month COFI ARM securities, as published in the OTS price tables as of September 30, 1994, were used for this category. Because the WAC ranges provided in the OTS price tables vary based on the underlying index, the WAC ranges developed for the supervisory measurement system also vary with the underlying index. OTS price tables provide price information on 6.00 percent WAC and 7.00 WAC 1 Month COFI ARM securities. No periodic cap or floor were used for the benchmark instrument in this category. Table 11 provides the benchmark weighted average coupons used for each WAC range.

TABLE 11.—BENCHMARK WACS FOR 1 MONTH COFI ARMS

Weighted average coupon	Benchmark WAC (percent)
5.00% and under	4.00
5.01% to 6.50%	6.00
6.51% to 8.00%	7.00
Over 8.00%	9.00

(2) Over 1 Month: The same benchmark WAC's as those listed in Table 12 were used for the benchmark instruments in this category, subject to a 200 basis point periodic cap and floor.

B. Derivation of Benchmark Instrument Prices and Risk Weights

Benchmark ARM instruments used in the calculation of risk weights for Schedules 1,3, and 4 were based on ARM securities available in the OTS Asset and Liability Price Tables as of September 30, 1994 and industry data. The OTS price tables do not contain prices for the benchmark instruments used in the supervisory measurement system.

Using the OTS price tables, a series of linear interpolations was performed to generate prices for the benchmark instruments, using bond-equivalent yields, selected for the supervisory measurement system. Prices were calculated for each WAC underlying a benchmark instrument (e.g., for benchmark instruments tied to the 6-month CMT-based ARM, WACs of 4.00 percent, 5.50 percent, 7.00 percent, 7.50 percent and 8.50 percent were calculated). Prices for the benchmark instruments for each of the selected WACs were interpolated for selected loan characteristics (i.e., margin, lifetime cap, and reset frequency) in each of the three interest rate scenarios used in the supervisory measurement system (i.e., +200 basis points, base case, and −200 basis points). Table 12 presents the OTS price table for a 6 month CMT-based ARM with a 7.0 percent WAC.

TABLE 12.—6-MONTH TREASURY ARM SECURITY PRICES AS OF SEPTEMBER 30, 1994 (WAC 7.00 PERCENT)

ARM parameters			Interest rate scenario		+200 Price
Margin	Lifetime cap (percent)	Months to reset	−200 Price	0 Base	
200 basis points	11.0	2	100.85	99.64	95.13
200 basis points	11.0	6	101.34	99.42	94.03
200 basis points	15.0	2	100.86	100.07	97.58
200 basis points	15.0	6	101.35	99.85	96.32
350 basis points	11.0	2	104.30	101.68	95.29
350 basis points	11.0	6	104.52	100.73	94.18
350 basis points	15.0	2	104.39	103.02	99.02
350 basis points	15.0	6	104.61	102.02	97.60

In addition to the criteria established in the OTS price table presented above, the ARM securities have the following characteristics:

(1) WARM of 330 months;

(2) Lifetime floor 1200 basis points below the lifetime cap; and

(3) Periodic cap and floor of 100 basis points.

The OTS price table provides the data for the linear interpolation process. As stated above, an interpolated price for each property of the benchmark instrument is derived through this process.

For each value of a selected variable, a linear interpolation was performed to generate a particular price of the benchmark instrument. With each layer of interpolation, a new set of prices was produced. At the completion of the requisite number of interpolations needed to generate a price estimate given the set of criterion for the variables underlying a benchmark instrument, the resulting price table was used to calculate the risk weights for that particular instrument. Once the interpolated price table was developed, the risk weights were calculated in the same manner as those for fixed-rate mortgages.

Office of the Comptroller of the Currency

Dated: June 29, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

By Order of the Board of Governors of the Federal Reserve System.

Dated: July 7, 1995.

William Wiles,

Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC this 27th day of June, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–18099 Filed 8–1–95; 8:45 am]

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federal register

Wednesday
August 2, 1995

Part III

Securities and Exchange Commission

17 CFR Parts 270 and 274

Status of Investment Advisory Programs Under the Investment Company Act of 1940; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 274

[Release No. IC–21260; IA–1510; S7–24–95]

RIN 3235–AG07

Status of Investment Advisory Programs Under the Investment Company Act of 1940

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and form; request for comment.

SUMMARY: The Commission is publishing for public comment revised proposed rule 3a–4 under the Investment Company Act of 1940, which would provide a nonexclusive safe harbor from the definition of investment company for certain programs under which investment advisory services are provided to clients. Programs that are organized and operated in a manner consistent with the rule's conditions would not be required to register under the Investment Company Act or to comply with the Act's substantive requirements. The Commission also is proposing Form N–3a4 under the Investment Company Act, which would be filed with the Commission by sponsors of programs intending to rely on rule 3a–4. The rule and form are intended to provide guidance regarding the status of investment advisory programs under the Investment Company Act, and to facilitate Commission examination of persons involved in the operation of these programs. Finally, in connection with the preparation of an interpretive release, the Commission is requesting comment regarding the application of certain provisions of the Investment Advisers Act of 1940 to investment advisers participating in investment advisory programs.

DATES: Comments on the revised proposed rule and the proposed form should be received on or before October 2, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. All comment letters should refer to File No. S7–24–95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Rochelle Kauffman Plesset, Senior Counsel, or Eric C. Freed, Special Counsel, (202) 942–0660, Office of Chief Counsel, Division of Investment Management, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is publishing for comment revised proposed rule 3a–4 [17 CFR 270.3a–4] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (the ''Investment Company Act''). 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''). The Commission also is proposing new Form N–3a4 [17 CFR 274.222] under the Investment Company Act, which would be filed by sponsors of investment advisory programs that intend to rely on rule 3a–4. Finally, the Commission is requesting comment with respect to certain issues that investment advisory programs raise under the Investment Advisers Act of 1940 (the ''Advisers Act'').

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Executive Summary

The Commission is publishing for public comment revised proposed rule 3a–4 under the Investment Company Act to provide a nonexclusive safe harbor from the definition of investment company for certain investment advisory programs. Investment advisory programs typically are designed to provide the same or similar professional portfolio management services on a discretionary basis to a large number of individual clients.

Revised proposed rule 3a–4 would exclude any investment advisory program from the definition of investment company provided that the program is organized and operated in compliance with the rule's conditions.[1] The revised proposed rule would require that: (i) Each client's account be managed on the basis of the client's financial situation, investment objectives, and instructions; (ii) the sponsor of the program obtain information from each client that is necessary to manage the client's account individually; (iii) the sponsor and portfolio manager be reasonably available to consult with clients; (iv) each client have the ability to impose reasonable restrictions on the management of the account; (v) each client be provided with a quarterly statement containing a description of all activity in the client's account; (vi) each client retain the indicia of ownership of all securities and funds in the account; (vii) the sponsor establish and effect written procedures that are reasonably designed to ensure that each of the conditions of rule 3a–4 is met; (viii) if the sponsor designates another person to perform certain obligations under the rule, the sponsor obtain from that person a written agreement to perform those obligations; (ix) the sponsor maintain and preserve the policies, procedures, agreements and other documents relating to the program in the manner set forth in the rule; and (x) the sponsor furnish to the Commission upon demand copies of specified documents. The conditions of the revised proposed rule are based on the conditions of a previously proposed rule, as modified and interpreted in a series of no-action letters issued by the Commission staff over the past thirteen years.

Programs that are organized and operated in a manner consistent with the rule would not be required to register under the Investment Company Act or be subject to that Act's provisions. The rule is intended to be a nonexclusive safe harbor; it is not intended to create any presumption about a program that is not organized and operated in compliance with the rule.

The Commission also is proposing Form N–3a4 under the Investment

[1] If revised proposed rule 3a–4 is adopted, interests in investment advisory programs that are organized and operated in compliance with the conditions of the rule would not require registration under section 5 of the Securities Act of 1933 (15 U.S.C. 77e).

Company Act. Revised proposed rule 3a–4 would require Form N–3a4 to be filed by sponsors of programs intending to rely on the rule.

Finally, the Commission is requesting comment with respect to the application of certain provisions of the Advisers Act to investment advisers participating in investment advisory programs. These comments will be considered in the preparation of an interpretive release dealing with certain issues raised under the Advisers Act by investment advisory programs.

I. Background

In recent years, there has been a proliferation of investment advisory programs that typically are designed to provide professional portfolio management services to a large number of individual clients. These programs have historically been marketed to clients who are investing an amount of money less than the amount otherwise required by portfolio managers but more than the minimum account size of most mutual funds.

Investment advisory programs typically are organized and administered by a sponsor, which provides, or arranges for the provision of, asset allocation advice and administrative services.[2] In some programs, the sponsor or its employees also provide portfolio management services, including the selection of particular securities, to the program's clients. In other programs, the sponsor selects, or provides advice to clients regarding the selection of, a portfolio manager (which may or may not be affiliated with the sponsor).[3] In these programs, the sponsor generally is responsible for continuously monitoring the portfolio manager selected and its management of client accounts. The sponsor, rather than the portfolio manager, often serves as the primary contact for the client in connection with the program.[4] The sponsor and the portfolio managers usually meet the definition of ''investment adviser'' under the Advisers Act[5] and are required to register under that Act,[6] unless they are excepted from the definition of investment adviser[7] or exempted from registration.[8]

Included among these investment advisory programs are those commonly referred to as ''wrap fee programs.'' In a wrap fee program, the client is typically provided with portfolio management, execution of transactions, asset allocation, and administrative services for a single fee based on assets under management.[9] As of year-end 1994, assets in wrap fee programs totaled approximately $116.8 billion, an increase of 42 percent over a two-year period.[10]

Under wrap fee and other investment advisory programs, a client's account typically is managed on a discretionary basis in accordance with pre-selected investment objectives. Clients with similar investment objectives often receive the same investment advice and may hold the same or substantially the same securities in their accounts. In light of this similarity of management, some of these investment advisory programs meet the definition of investment company under the Investment Company Act, and can be deemed to be issuing securities for purposes of the Securities Act of 1933 (''Securities Act'').[11]

Section 3(a)(1) of the Investment Company Act defines the term investment company generally to include any ''issuer'' which is engaged primarily in the business of investing, reinvesting, or trading in securities.[12] The definition of issuer includes any organized group of persons, whether or not incorporated, that issues or proposes to issue any security.[13] An investment advisory program could be considered to be an issuer because the client accounts in the program, taken together, could be considered to be an organized group of persons.[14] Investors in the program could be viewed as purchasing securities in the form of investment contracts.[15] If an investment advisory

[2] The sponsor is often a broker-dealer or mutual fund adviser or, in some instances, a bank or money management firm. See, *e.g.,* Wall Street Preferred Money Managers, Inc. (pub. avail. Apr. 10, 1992) (broker-dealer); Strategic Advisers Inc. (pub. avail. Dec. 13, 1988) (mutual fund adviser); Atlantic Bank of New York (pub. avail. June 7, 1991) (bank). The sponsor also may execute some or all of the transactions in client accounts.

[3] More than one portfolio manager may manage the client's assets, depending on the program, the client's investment objectives, and the size of the client's account. *See, e.g.,* Westfield Consultants Group (pub. avail. Dec. 13, 1991); Rauscher Pierce Refsnes, Inc. (pub. avail. Apr. 10, 1992); Wall Street Preferred Money Managers, Inc., *supra* note .

[4] Some investment advisory programs, however, are marketed by the sponsor through unaffiliated investment advisers, such as small financial planners. In some of these programs, the unaffiliated investment adviser rather than the sponsor may serve as the primary contact for its clients that participate in the program. *See, e.g.,* Westfield Consultants Group, *supra* note .

[5] 15 U.S.C. 80b-1 *et seq.*

[6] Section 203(a) of the Advisers Act (15 U.S.C. 80b–3(a)) requires any person who meets the definition of investment adviser and is not otherwise exempt from registration to register with the Commission. Section 202(a)(11) of the Advisers Act (15 U.S.C. 80b–2(a)(11)) defines ''investment adviser'' as ''any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities . . . .''

[7] See section 202(a)(11)(A)–(F) of the Advisers Act (15 U.S.C. 80b–2(a)(11)(A)–(F)) (persons excepted from the definition of investment adviser). A sponsor of an investment advisory program that is a broker-dealer or a registered representative of a broker-dealer generally cannot rely on the exception from the definition of investment adviser for broker-dealers in section 202(a)(11)(C) of the Advisers Act. *See, e.g.,* National Regulatory Services, Inc. (pub. avail. Dec. 2, 1992). That exception is available only to a broker-dealer that provides investment advice that is ''solely incidental'' to its brokerage business and that does not receive special compensation for the investment advice. Id. The staff is of the view that an investment advisory program generally is not incidental to a sponsor's broker-dealer business and, at least in a wrap fee program, the sponsor's portion of the wrap fee is special compensation. *Id.*

[8] *See* section 203(b) of the Advisers Act (15 U.S.C. 80b-3(b)) (persons exempted from registration). Unlike a person excepted from the definition of investment adviser, a person that meets the definition but is exempted from registration remains subject to the Advisers Act's antifraud provision, section 206 (15 U.S.C. 80b–6). The exemption from registration provided in section 203(b)(3) of the Advisers Act would not be available as a general matter to the sponsor or portfolio manager of an investment advisory program because participation in the program would cause the sponsor or portfolio manager to be holding itself out to the public as an investment adviser. *See, e.g.,* Resource Bank & Trust (pub. avail. Mar. 29, 1991).

[9] *See* paragraph (g)(4) of rule 204–3 under the Advisers Act (17 CFR 275.204–3(g)(4)) (defining wrap fee program for purposes of wrap fee brochure requirement).

[10] The Cerulli Report, The State of the Wrap Account Industry 3 (1995). According to this report, assets in mutual fund wrap programs, also called mutual fund asset allocation programs, represented 11% of total assets in wrap fee programs as of year-end 1994. These programs differ from traditional wrap fee programs, in part, in that a client's assets are allocated only among specified mutual funds.

[11] 15 U.S.C. 77a *et seq.* See In the Matter of Clarke Lanzen Skalla Investment Firm, Inc., Investment Company Act Release No. 21140 (June 16, 1995); *SEC* v. *First National City Bank,* Litigation Release No. 4534 [1969–1970 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 92592 (Feb. 6, 1970).

[12] 15 U.S.C. 80a–3(a)(1).

[13] Section 2(a)(22) of the Investment Company Act defines issuer generally to include any person who issues any security (15 U.S.C. 80a–2(a)(22)). Under section 2(a)(28), a person includes a company, and under section 2(a)(8), a company includes any organized group of persons, whether incorporated or not (15 U.S.C. 80a–2(a)(28), 2(a)(8)).

[14] The accounts managed by a particular portfolio manager also can be considered an organized group of persons under certain circumstances. The legislative history of the Investment Company Act explained that one type of investment company involves ''an agency relationship between the individual contributors to the fund and the management upon whom they confer substantially a power of attorney to act as agent in the investment of the moneys contributed. The group of individual investors is not a legal entity but rather constitutes in essence a combination of distinct individual interests.'' H.R. Doc. No. 707, 75th Cong., 3rd Sess. 24 (1939). In *Prudential Insurance Co. of America* v. *SEC,* the court, citing this legislative history, found that an organized group of persons does not refer only to identifiable business entities. 326 F.2d 383 (3rd Cir.), *cert. denied,* 377 U.S. 953 (1964).

[15] The definition of security in both section 2(a)(36) of the Investment Company Act (15 U.S.C.

Continued

program is deemed to be an ''issuer,'' it also would be deemed to be an investment company because it is engaged in the business of investing, reinvesting, or trading in securities.

The status of investment advisory programs under the Investment Company Act and the Securities Act has been a subject of debate for twenty-five years. In 1972, the Commission established the Advisory Committee on Investment Management Services for Individual Investors (''Advisory Committee'') to assist the Commission in developing policies regarding these programs.[16] The Advisory Committee published a report generally concluding that an investment advisory program should not be required to register under the Investment Company Act as long as the program's clients maintain all indicia of ownership of the securities in their accounts, thereby avoiding the ''pooling'' of client assets.[17]

In 1980, the Commission proposed rule 3a–4 under the Investment Company Act, which would have provided a safe harbor from the definition of investment company for investment advisory programs meeting the conditions of the rule.[18] The proposed rule would have required that: (i) The client receive continuous advice based on its individual needs; (ii) the persons authorized to make investment decisions have significant contact with the client, as described in the rule; (iii) each client maintain all indicia of ownership of the securities in its account; and (iv) each client have the opportunity and authority to instruct the person managing its account to refrain from purchasing particular securities that otherwise might be purchased. The Commission expressed the view that when an investment manager provides each client with individualized treatment, the likelihood of a common enterprise existing among a group of advisory clients is substantially reduced and no investment company is created.[19]

Commenters generally opposed the proposed rule, arguing, among other things, that the rule's conditions were burdensome, would cause unnecessary changes in industry practice, and were too detailed for purposes of a safe harbor rule.[20] In contrast, one commenter argued that the proposed rule would have permitted programs that are *de facto* investment companies to be excluded from regulation under the Investment Company Act merely by meeting ''mechanistic and ritualistic conditions,'' the performance of which is not indicative of individualized investment advice being provided.[21] The proposed rule was never adopted.

Since the proposal of rule 3a–4, the Division of Investment Management (''Division'') has responded to numerous inquiries with respect to the status of wrap fee and other types of investment advisory programs under the Investment Company Act. The Division has issued over 20 letters to persons requesting assurance that the Division would not recommend that the Commission bring enforcement action with respect to investment advisory programs that are not registered under the Investment Company Act (the ''no-action letters'').[22] Each of these letters was conditioned on representations that were based primarily on the terms of proposed rule 3a–4.[23]

II. Discussion

The investment advisory program industry has developed and matured since the original proposal of rule 3a–4 in 1980. During this time period, the Commission has acquired substantial experience with the organization and operation of investment advisory programs. This experience has come from the review of numerous requests for no-action relief, as well as from examinations of sponsors and other registered investment advisers that are involved with operating these programs. For many of these programs, registration and regulation under the Investment Company Act would not appear to be necessary.[24] Nevertheless, that the law in this area has been defined and redefined principally through a series of no-action letters has created some uncertainty regarding the status of these programs under the federal securities laws. While counsel can (and frequently does) offer advice and issue opinions based on the no-action letters, those letters do not provide the same degree of certainty that would be provided by a Commission rule and may not be as readily accessible. The Commission is therefore publishing for comment revised proposed rule 3a–4 to provide a regulatory safe harbor from investment company regulation for programs that satisfy certain conditions. The Commission also is proposing new Form N–3a4, which would be filed with the Commission by sponsors of

80a–2(a)(36)) and section 2(1) of the Securities Act (15 U.S.C. 77b(1)) includes an ''investment contract.'' The Supreme Court, in *SEC* v. *W.J. Howey Co.*, defined an investment contract for purposes of the Securities Act as a scheme that ''involves an investment of money in a common enterprise with profits to come solely from the efforts of others.'' 328 U.S. 293, 301 (1946). The Commission has taken the view that an investment advisory program could satisfy the common enterprise element of the *Howey* test if the accounts are discretionary, the investors receive the same or substantially overlapping investment advice, and the investment advice is not ''individualized.'' *See* Individualized Investment Management Services, Investment Company Act Release No. 11391 (Oct. 10, 1980), 45 FR 69479 (Oct. 21, 1980) (''Release 11391''). *See also* In the Matter of Clarke Lanzen Skalla Investment Firm Inc., *supra* note ; SEC v. First National City Bank, *supra* note.

[16] The Advisory Committee was established after the Commission instituted an enforcement action against an investment adviser and broker-dealer for operating an unregistered investment company in the form of an investment advisory program. While the program was advertised as offering individualized advice, the adviser invested client funds in a virtually identical manner and made investment decisions in a generally uniform manner to all clients. SEC v. First National City Bank, *supra* note . The Division subsequently denied no-action relief to similar investment advisory programs. *See, e.g.*, Wheat & Co., Inc. (pub. avail. July 9, 1971); Finanswer America/Investments, Inc. (pub. avail. Apr. 26, 1971); Jacobs Persinger & Parker (pub. avail. Mar. 8, 1971).

[17] Advisory Committee on Investment Management Services for Individual Investors, Small Account Investment Management Services (Jan. 1973). The Advisory Committee also concluded that the interests in the program (*i.e.*, the client accounts) should not be required to be registered as securities under the Securities Act if the program provides each client with individualized treatment.

[18] See Release 11391, *supra* note . Release 11391 also stated that the Commission's Division of Corporation Finance had indicated that if rule 3a–4 was adopted, that Division would not recommend that the Commission take enforcement action under the Securities Act with respect to the interests in an investment advisory program operated in accordance with the proposed rule's requirements. *Id.* at n.15.

[19] *Id.* at note and accompanying text. Although the statements in the Release 11391 focused on the necessity for each client to be provided with individualized treatment, the proposed rule also would have included conditions designed to avoid the ''pooling'' of client assets.

[20] E.g., Letter from the American Bar Association to George A. Fitzsimmons, Secretary, SEC 1–2, 4 (Jan. 9, 1981), File No. S7–854; Letter from the Investment Counsel Association of America, Inc. to George A. Fitzsimmons, Secretary, SEC 3–4 (Jan. 9, 1981), File No. S7–854; Letter from Neuberger and Berman to George A. Fitzsimmons, Secretary, SEC 2 (Jan. 12, 1981), File No. S7–854.

[21] Letter from the Investment Company Institute to George A. Fitzsimmons, Secretary, SEC 2, 4 (Jan. 9, 1981), File No. S7–854. This commenter also pointed out that the proposed rule would have permitted commercial banks, which are excepted from regulation under the Advisers Act, to sponsor investment advisory programs without being subject to the Advisers Act's prohibitions against conflicts of interest, the Act's brochure requirements, and inspection by Commission staff. Id. at 2.

[22] In each case, the Division of Corporation Finance also has granted no-action relief with respect to registration of interests in the programs under the Securities Act.

[23] *See, e.g.*, Wall Street Preferred Money Managers, Inc., *supra* note ; Rauscher Pierce Refsnes, Inc., supra note .

[24] The Commission, however, recently brought an enforcement action against a sponsor of an investment advisory program that was operating as an unregistered investment company. In the Matter of Clarke Lanzen Skalla Investment Firm, Inc., supra note .

investment advisory programs intending to rely on rule 3a–4.[25]

A. Revised Proposed Rule 3a–4

Revised proposed rule 3a–4 would provide a nonexclusive safe harbor from the definition of investment company for investment advisory programs that are organized and operated in a manner consistent with the rule's conditions.[26] The revised proposed rule would include a number of conditions intended to ensure that clients in programs that rely on the rule receive individualized treatment. While the Commission believes that an investment advisory program that meets the rule's conditions need not be regulated as an investment company, the Commission acknowledges that there may be investment advisory programs that do not comply with all of the rule's conditions and yet also should not be regulated as investment companies. Thus, revised proposed rule 3a–4 is intended to be a nonexclusive safe harbor, and is not intended to create any presumption about a program that is not organized and operated in compliance with the rule's requirements.[27]

1. Role of the Sponsor

Generally, the rule would require the ''sponsor'' of the program or another person designated by the sponsor to perform the duties and responsibilities set forth in the rule. Under paragraph (b), ''sponsor'' would be defined as any person who receives compensation for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program. This definition is the same as the definition of sponsor used in paragraph (f) of rule 204–3 under the Advisers Act, which sets forth a separate brochure requirement for sponsors of wrap fee programs.[28] The definition of sponsor is broad, and, in some investment advisory programs, more than one person performing services for the program may meet the definition. Accordingly, paragraph (b) would provide that if a program has more than one sponsor, the sponsors must designate one person as the principal sponsor, and that person would be responsible for carrying out the sponsor's duties and responsibilities under the rule.[29]

2. Individualized Treatment

Revised proposed rule 3a–4 would contain four provisions that are intended to ensure that clients of investment advisory programs that are organized and operated in reliance on the rule receive individualized treatment. These provisions are based on provisions of rule 3a–4 as originally proposed, as those conditions were applied in the no-action letters.

i. Management of Client Accounts. Paragraph (a)(1) would require that each client's account be managed on the basis of the client's financial situation, investment objectives, and instructions.[30] This paragraph is derived from a provision in the originally proposed rule that would have required each client to be furnished with continuous advice as to the investment of funds on the basis of the client's individual needs.[31]

Paragraph (a)(1) is intended to delineate one of the key differences between clients of investment advisers and investors in investment companies. Each client of an investment adviser typically is provided with individualized advice regarding the management of the client's account that is based on the client's financial situation and investment objectives. The investment adviser of an investment company, on the other hand, need not consider the individual needs of the company's shareholders when making investment decisions regarding the company's portfolio, and has no obligation to ensure that each security purchased for the company's portfolio is an appropriate investment for each shareholder. Thus, the clients of an investment advisory program complying with paragraph (a)(1) would receive individualized advice of a type not typically provided to investment company shareholders.

Unlike the originally proposed rule, paragraph (a)(1) of the revised proposed rule would not require a portfolio manager to make separate determinations regarding the appropriateness of each transaction for each client prior to effecting the transaction.[32] The revised proposed rule also would modify the Commission's prior view that the use of model portfolios is ''presumptively inconsistent with individualized treatment.''[33] The Commission believes that an investment advisory program in which clients with similar investment objectives hold substantially the same securities in their accounts in accordance with the portfolio manager's model does not necessarily indicate that the clients in the program have not received individualized treatment, particularly if the program is operated in a manner consistent with revised proposed rule 3a-4.[34]

[25] The Commission previously has adopted amendments to rule 204–3 (17 CFR 275.204–3) and Form ADV under the Advisers Act to require sponsors of wrap fee programs to provide prospective clients of these programs with specified information. Disclosure by Investment Advisers Act Regarding Wrap Fee Programs, Investment Advisers Release No. 1411 (Apr. 19, 1994), 59 FR 21657 (Apr. 26, 1994).

[26] If revised proposed rule 3a–4 is adopted, interests in investment advisory programs that are organized and operated in compliance with the conditions of the rule would not require registration under the Securities Act. See Preliminary Note to revised proposed rule 3a–4.

[27] *Id*. In addition, adoption of revised proposed rule 3a–4 would not affect the status of no-action letters previously issued by the Division with respect to investment advisory programs. Therefore, investment advisory programs that operate in a manner consistent with these letters would not be required to register under the Investment Company Act. If rule 3a–4 is adopted, the Division as a general matter will not consider requests for no-action or exemptive relief with respect to programs that do not comply with the rule.

[28] The sponsor of an investment advisory program usually is required to register under the Advisers Act and comply with the substantive provisions of that Act and the rules thereunder. *See supra* notes—and accompanying text. Revised proposed rule 3a–4 would be available to any sponsor of investment advisory programs, even if the sponsor is excepted from the definition of investment adviser under the Act (e.g., banks) or is exempt from registration. Persons wishing to rely on the revised proposed rule, however, would be required, among other things, regardless of their status under the Advisers Act, to furnish certain specified records to the Commission upon demand. *See infra* section II.A.4. (Written Procedures and Agreements).

[29] Paragraph (b) would not specify which sponsor must be designated as the principal sponsor. However, the principal sponsor would be responsible for carrying out the duties of the sponsor under the rule, which would include establishing and effecting written procedures and entering into agreements with other persons. *See infra* section II.A.4. (Written Procedures and Agreements). Typically the principal sponsor would be the person or entity that is responsible for the overall organization and operation of the program. The person designated as the principal sponsor would be the person whose name appears on the program's Form N–3a4. *See infra* section II.B. (Form N–3a4).

[30] Under paragraph (a)(1), a sponsor or portfolio manager would have to comply with any instructions given by a client concerning the management of the client's account in an investment advisory program, unless the instructions are so extensive or burdensome to the management of the account as to be unreasonable, or the sponsor or portfolio manager believes that the instructions are inappropriate for the client. *See infra* section II.A.2.iii. (Reasonable Management Restrictions). In these cases, the sponsor or portfolio manager must notify the client that, unless the instructions are modified, the client will not be permitted to participate in the program.

[31] *See* proposed paragraph (a)(1).

[32] See Release 11391, *supra* note 15, at text accompanying n.18.

[33] *See id*., at text following n.18.

[34] The Division has issued no-action letters with respect to programs that allocate client assets in accordance with computerized investment allocation models. *See, e.g.,* Qualivest Capital Management Inc. (pub. avail. July 30, 1990) (sponsor will use computerized investment allocation model to allocate and reallocate client assets among money managers); Atlantic Bank of

Continued

ii. Client Contact—Initial and Ongoing

Paragraph (a)(2) would contain four requirements that generally are intended to ensure that the sponsor has sufficient contact with each client to be able to obtain the information necessary to manage the client's account in accordance with paragraph (a)(1). Paragraph (a)(2)(i) would require that, at the opening of the account, the sponsor or a person designated by the sponsor[35] obtain information from the client concerning the client's financial situation and investment objectives. The client must at that time also be asked to provide specific instructions, if any, concerning the management of the account. The provision permits the sponsor (or its designee) to obtain this information through interviews (either in person or by telephone) and/or through questionnaires that clients must complete and return prior to the opening of the account.[36]

Paragraph (a)(2)(ii) would require that, at least annually, the sponsor or a person designated by the sponsor contact the client to determine whether there have been any changes in the client's financial situation, investment objectives, or instructions. This contact need not be made in any particular way and could be made, for example, in person, by telephone, or by letter requesting the client to provide the information.[37] The provision would require sponsors to request current information about clients of the program that is necessary for the individualized management of a client's account.

Paragraph (a)(2)(iii) would require that, at least quarterly, the sponsor or a person designated by the sponsor notify the client in writing that the sponsor or designated person should be contacted if there have been any changes in the client's financial situation, investment objectives or instructions.[38] The paragraph also requires the sponsor or designated person to provide the client with a means in which such contact is to be made (e.g., by giving a telephone number or an address). Like paragraph (a)(2)(ii), this provision is intended to provide a procedure by which sponsors can obtain current information about clients of the program. However, unlike paragraph (a)(2)(ii), paragraph (a)(2)(iii) would require the sponsor or designated person only to remind the client to contact the sponsor or designated person if any changes have occurred in the client's financial situation, investment objectives, or instructions. The client would be responsible for contacting the sponsor or designated person if changes had occurred.[39]

Paragraphs (a)(2)(i)-(iii) would place the obligations to contact or notify the client on the sponsor or a person designated by the sponsor. In contrast, the originally proposed rule would have required the portfolio manager to contact the client.[40] The revised proposed rule recognizes that, in many investment advisory programs, the sponsor is the person primarily responsible for client contact.[41] The revised proposed rule, however, would permit a person other than the sponsor to fulfill these obligations, so long as the sponsor specifically designated the person to do so.[42]

Regardless of the person responsible for contacting the client and obtaining the information necessary to manage the client's account, the Commission expects that, in most cases, the information obtained would be provided to the client's portfolio manager. If such information is not provided to the portfolio manager, the manager may not be able to manage the client's account on the basis of the client's financial situation, investment objectives, and instructions, as would be required under paragraph (a)(1). The Commission, however, requests comment whether the sponsor or designated person should be explicitly required by rule 3a-4 to convey this information to the portfolio manager.

Paragraph (a)(2)(iv) would require the sponsor and the client's portfolio manager to be reasonably available to consult with the client concerning the management of the client's account. This provision is intended to provide for reasonable client access to the sponsor and the portfolio manager to ask questions or to seek additional information about an investment advisory program. Even if a program's sponsor serves as the primary contact for clients in the program, a procedure must be provided by which the client has reasonable access to the portfolio manager.[43] Individualized treatment would not be provided if a program's procedures do not provide an opportunity for reasonable availability of the portfolio manager.[44]

New York, *supra* note 2 (sponsor's asset allocation recommendation will be based on client's investment needs and sponsor's model portfolios).

[35] *See infra* note 63.

[36] *See, e.g.,* Rauscher Pierce Refsnes, Inc., *supra* note 3 (prospective client will be interviewed and client will complete questionnaire during interview); Strategic Advisers, Inc., *supra* note 2 (prospective client will be interviewed over the telephone); Manning & Napier Advisors, Inc. (Apr. 24, 1990) (prospective client initially will submit written questionnaire followed by interview over telephone).

[37] The Commission recognizes that in some circumstances the sponsor or designated person may be unable to reach the client. The Commission would not take any enforcement action under this provision if the sponsor or designated person is unsuccessful in obtaining this information from the client, provided the sponsor or designated person makes reasonable efforts to contact the client and documents these efforts. Sponsors may wish to include the procedures for contacting clients and documenting these efforts in the procedures enacted pursuant to paragraph (a)(6)(i) of the rule. *See infra* section II.A.4. (Written Procedures and Agreements).

[38] The notice need not be included as a separate piece of paper, but could be included on another mailing sent to the client. For example, the notification could appear in the quarterly statement that would be sent to clients in accordance with proposed paragraph (a)(4). *See infra* section II.A.2.iv. (Quarterly Account Statements). The notice also could be delivered to the client by e-mail or other electronic means consented to by the client.

[39] *See, e.g.,* Scudder, Stevens & Clark Ltd. (pub. avail Aug. 17, 1988) (quarterly statement will include a reminder that client should contract sponsor if client needs or objectives change); Qualivest Capital Management, Inc. *supra* note 34 (client will be sent reminders to notify sponsor of any change in client's financial situation or investment objectives).

[40] Paragraph (b) of proposed rule 3a-4.

[41] *See, e.g.,* Strategic Advisers, Inc., *supra* note (sponsor primarily responsible); Wall Street Preferred Money Managers, Inc., *supra* note (same).

[42] The revised proposed rule would permit persons such as portfolio managers or advisers that refer clients to the program to be primarily responsible for client contact. Paragraph (a)(6)(i) would require the sponsor to obtain from each designated person an agreement in writing to perform these duties. In addition, paragraph (a)(6)(i) would require the sponsor to establish written procedures that are reasonably designed to ensure that each of the conditions of the rule is met. The procedures might, for example, describe in detail the manner in which paragraphs (a)(2)(i)-(iii) are to be effectuated, specify the persons primarily responsible for client contact, and include provisions designed to monitor and record the actions taken by such persons. *See infra* section II.A.4. (Written Procedures and Agreements).

[43] *See, e.g.,* Rauscher Pierce Refsnes, Inc., *supra* note 3 (the portfolio manager, when necessary, will be available to discuss more complex questions regarding the client's account); Westfield Consultants Group, *supra* note 3 (client will be furnished the name and direct telephone number of manager, who will be reasonably available during business hours). In one no-action request, a representation was made that the client would be able to contact an unaffiliated adviser, the sponsor or the portfolio manager to obtain information or assistance during normal business hours, but the client might be charged hourly fees whenever the client requests the services of investment officers to answer specific questions regarding investment strategies with respect to its account. Manning & Napier Advisors, Inc., *supra* note 36. Sponsors of programs complying with revised proposed rule 3a–4 may impose similar procedures, provided the client is informed prior to entering the program that such fees may be charged.

[44] Whether a sponsor or portfolio manager is ''reasonably available'' would depend on an analysis of the facts and circumstances. The procedures required under paragraph (a)(6)(i) may include provisions detailing the manner in which the sponsor and the portfolio manager intend to meet this requirement. Such procedures could, for example, describe the manner in which the sponsor and portfolio manager will be reasonably available to clients while still allowing for time to perform their duties. However, a sponsor or portfolio

iii. Reasonable Management Restrictions

Paragraph (a)(3) would require each client to have the ability to impose reasonable restrictions on the management of its account. These restrictions could include, for example, the designation of particular securities or types of securities that should not be purchased for the client's account.

The originally proposed rule would have required that each client have the ability to instruct its portfolio manager to refrain from purchasing particular securities that otherwise might be purchased.[45] Under the revised proposal, the client must be able to impose reasonable restrictions on the management of its account. The revised proposal specifically states that restrictions may include prohibitions with respect to the purchase or sale of particular securities or types of securities.

Whether a particular restriction is reasonable would depend on an analysis of relevant facts and circumstances, including the nature of the restriction and the portfolio manager's investment strategy.[46] For example, the exclusion of individual stocks, stocks of an industry group, or stocks from a specific country generally would be considered to be reasonable restrictions. A restriction would not be unreasonable simply because it placed administrative burdens on the manager or could affect the performance of the accounts. Nonetheless, a restriction would be unreasonable if it was clearly contradictory to the adviser's investment philosophy or strategies. For example, it may be unreasonable for a client to instruct a portfolio manager whose investment strategy is to achieve long-term capital appreciation through investments in equity securities to purchase only short-term debt securities. Restrictions also may be deemed unreasonable if the client changes the restrictions on the account with such frequency that it interferes with the orderly management of the account. This may be true even if each individual restriction, taken alone, would be reasonable.[47]

The ability of clients of a program to place restrictions is a critical factor in determining whether individualized treatment is provided under that program. This ability is a crucial difference between a client receiving investment advisory services and an investor in an investment company.[48]

iv. Quarterly Account Statements

Paragraph (a)(4) would require that each client be provided, on a quarterly basis, with a statement describing all activity in the client's account during the preceding quarter, including all transactions made on behalf of the account, all contributions and withdrawals made by the client, and all fees and expenses charged to the account. The statement also would be required to include the value of the account at both the beginning and end of the quarter. The originally proposed rule also would have required quarterly statements, but did not specify the information to be included in such statements.[49]

v. Minimum Account Size

Like the proposed rule, the revised proposed rule would not specify a minimum size for client accounts in the program, leaving the account size for each program up to the sponsor of the program.[50] The conditions of the revised proposed rule should be sufficient to ensure individualized treatment. In addition, innovations in computer technology may permit individualized treatment to be provided to clients, including those with relatively small accounts, with greater efficiency and minimal costs. A requirement for a minimum account size also could effectively deny certain investors the opportunity to participate in investment advisory programs that may be appropriate for them. Nonetheless, providing individualized advice to a large number of small accounts may be so costly and time-consuming as to render individualized treatment impracticable.

The Commission requests comment whether a minimum account size should be required. Commenters favoring this requirement should specify the minimum size that they believe that would be most appropriate (*e.g.*, $50,000, $100,000, $200,000), and address whether the minimum amount should be required to be met only at the time the account is opened, or whether the minimum or some lesser amount should be required to be maintained while the client remains in the program. Commenters favoring a requirement that a client maintain a minimum account size while in the program also should comment whether the client should be removed from the program if the account size fell below the initial minimum due to investment loss rather than withdrawal. In addition, commenters favoring a minimum size requirement should address whether the minimum should apply to the client's aggregate investment in the program, or to each account managed by a portfolio manager. Commenters should also address whether any or all of the conditions of the revised proposed rule would be rendered unnecessary by a minimum account size requirement. Finally, commenters should address whether programs with small account minimums should be subject to additional conditions not imposed on programs with larger minimums, and if so, what those conditions should be.

3. Indicia of Ownership

Paragraph (a)(5) would require that a client in an investment advisory program retain certain indicia of ownership of all securities and funds in the client's account. The paragraph lists specific attributes of ownership that the client must retain.

The proposed rule would have required clients to maintain all indicia of ownership of the funds in their accounts, and specified certain requisite attributes of ownership.[51] The revised proposed rule would not require the client to maintain all indicia of ownership, but would require the client

manager would not be ''reasonably available,'' for example, if a client's contact with the sponsor or portfolio manager were limited to viewing or listening to recorded interviews.

[45] Proposed paragraph (d). The no-action letters involving investment advisory programs typically have included representations that were based on the proposed provision. *See, e.g.*, Rauscher Pierce Refsnes, Inc, *supra* note; 3.

[46] The procedures required by paragraph (a)(6)(i) may define what restrictions are considered unreasonable. To the extent that the ''unreasonableness'' of restrictions is a matter of judgment, the procedures, for example, may identify the person or persons responsible for this determination and specify the factors to be considered by those persons. *See infra* section II.A.4. (Written Procedures and Agreements).

[47] If particular restrictions sought to be imposed by a client are found to be unreasonable, the client should be notified and given a chance to restate the restriction more reasonably. If unable or unwilling to do so, the client may be removed from the program.

[48] Under paragraph (a)(2), a sponsor or person designated by the sponsor would be required to ask the client for instructions regarding the management of its account. The request for instructions is intended, in part, to give the client the opportunity to convey any investment restrictions it wishes to impose on the management of its account.

[49] Proposed paragraph (b)(3). A number of the no-action letters have specified the content of the quarterly reports. *See* Westfield Consultants Group, *supra* note 2 (quarterly statements will contain a review and analysis of client account); Strategic Advisers, Inc., *supra* note 2 (quarterly statements will contain a description of investments); Republic National Bank of New York (pub. avail. Aug. 23, 1982) (quarterly statements will show holdings, value and change in value since preceding quarter).

[50] The Division has granted no-action relief to investment advisory programs with varying minimum account sizes. *See, e.g.*, Qualivest Capital Management, Inc., *supra* note 34 ($5 million); Atlantic Bank of New York, *supra* note 2 ($500,000); Wall Street Preferred Money Managers, Inc., *supra* note 2 ($100,000); Strategic Advisers, Inc., *supra* note 2 ($50,000).

[51] Proposed paragraph (c).

to maintain, at a minimum, those indicia listed. The Commission believes that these specific indicia of ownership, which are based on those represented as being retained by clients of programs described in the no-action letters, provide clients with the ability to act as owners of their securities.[52]

i. Ability to Withdraw and Pledge Securities

Paragraph (a)(5)(i) would require that the clients be able to withdraw securities or cash from their accounts. Paragraph (a)(5)(ii) also would specify that clients must be able to pledge the securities in their accounts.[53] Under some circumstances, programs may require a client to withdraw the securities from his or her account before using them as collateral. Such a requirement would be consistent with the rule.

ii. Right to Vote Securities

Paragraph (a)(5)(iii) would require that the client have the right to vote the securities in his or her account. Implicit in this requirement is the requirement that the client receive proxies in sufficient time to permit the client to consider how to vote and to submit the proxy. The provision would permit clients to delegate the authority to vote securities to another person, such as the portfolio manager or other fiduciary.[54] However, the client must be permitted to revoke the delegation at any time.[55]

iii. Right to Receive Confirmations and Other Documents

Paragraph (a)(5)(iv) would provide, in part, that the client must have the right to receive in a timely manner confirmations of securities transactions of the type required by rule 10b–10[56] under the Securities Exchange Act of 1934.[57] Proposed rule 3a–4 would have required clients to receive a ''notification of each security transaction.''[58] In subsequent no-action letters, the Division modified this position, permitting monthly account statements to be provided to clients unless more frequent confirmations were requested.[59]

Under the revised proposal, clients could waive receipt of individual confirmations to the extent the waiver would otherwise be permitted under rule 10b–10. Thus, paragraph (a)(5) effectively would provide a client in an investment advisory program with the option to receive either individual confirmations for each transaction or periodic statements, delivered no less frequently than quarterly, that include the information required by rule 10b–10 with respect to all transactions that occurred within the period covered by the statement.[60]

Paragraph (a)(5)(iv) also would require the client (or the client's agent) to be provided with other documents that the client (or its agent) would receive had the same securities been owned by the client outside the program. These documents may include prospectuses, periodic shareholder reports, proxies, and any other information and disclosure required by applicable laws or regulations.[61]

iv. Rights as Securityholders

Paragraph (a)(5)(v) would require that a client have the right to proceed directly as a securityholder against the issuer of any security in the client's account without having to join any person involved in the operation of the program or any other client of the program as a condition precedent to proceeding against an issuer. This provision, which is based on conditions in several no-action letters,[62] is intended to ensure that the client would have the same rights as any person holding the same securities outside an investment advisory program. The right to proceed against an issuer of securities in a client's account is another important difference between a client of an investment adviser and an investment company shareholder, as the latter generally would not be able to proceed directly against an issuer of securities held by the investment company.

4. Written Procedures and Agreements

Paragraph (a)(6) contains four requirements regarding the establishment of written procedures and agreements covering the operation of the program and the maintenance of records related to these procedures and agreements. These conditions and their purposes are described in more detail below. The Commission, however, is sensitive to imposing undue burdens on sponsors of investment advisory programs. Comment is therefore requested whether any of the conditions discussed below would impose an

[52] The revised proposed rule would not require the client to be the record owner of the securities held in its account. The Division has taken the position that an investment advisory program would not be deemed to be an investment company solely because securities are held in nominee or street name. The Division reasoned that placing securities in nominee or street name is an administrative mechanism used to record and facilitate the transfer of ownership. In addition, requiring securities to be held in the client's name would be inconsistent with Commission policy of encouraging the holding of securities in nominee name to promote the establishment of centralized clearance and settlement systems and the elimination of certificated securities. UMB Bank, n.a. (pub. avail. Jan. 23, 1995) (investment company securities). *See, e.g.,* Manning & Napier Advisors, Inc., *supra* note 36 (non-investment company securities). The recent enforcement action against Clarke Lanzen Skalla Investment Firm, Inc., in which, among other things, securities purchased on behalf of clients were held in nominee name, was not inconsistent with the Division's position in the UMB Bank no-action letter. *See supra* note 11.

[53] The proposed rule would have required that the client maintain the right to ''hypothecate'' securities in its account. That term is not included in the revised proposed rule because it is generally considered to be synonymous with ''pledge.'' *See* **Black's Law Dictionary** 669 (5th ed. 1979).

[54] Any such delegation should be contained in the investment advisory agreement or in another document and retained with the records relating to the program. The procedures for delegation may also be specified in the procedures adopted under the rule.

[55] The procedure for such revocation should be described in the procedures for the program. *See infra* section II.A.4. (Written Procedures and Agreements).

[56] 17 CFR 240.10b–10. If a program is structured so that each client's securities transactions are executed by a registered broker-dealer, rule 10b–10 would govern the delivery of confirmations. If client transactions are executed by an entity that is not subject to rule 10b–10, the revised proposed rule would require the delivery of confirmations in the manner required by rule 10b–10, to the same extent as if the transactions were executed by a registered broker-dealer.

[57] 15 U.S.C. 78a *et seq.*

[58] Proposed paragraph (c)(2).

[59] *See, e.g.,* Westfield Consultants Group, *supra* note; Manning & Napier Advisors, Inc., *supra* note; Jefferies & Company (pub. avail. June 16, 1989).

[60] The Commission has taken the view that, for purposes of complying with rule 10b–10, a broker-dealer may provide a person whose account is managed on a discretionary basis by a fiduciary, such as a client in an investment advisory program, with a periodic statement (delivered no less frequently than quarterly) in lieu of the immediate confirmation for each transaction, if the broker-dealer obtains from the person a written agreement stating that the immediate confirmation will be provided to the fiduciary. The periodic statement the broker-dealer sends to the person must contain the same information that could have been in the immediate confirmation for each transaction. Although the person may waive his or her right to the immediate confirmation, the person may not waive his or her right to the periodic statement. Confirmation of Transactions, Securities Exchange Act Release No. 34962, notes 34–36 and accompanying text (Nov. 10, 1994), 59 FR 59612 (Nov. 17, 1994). By reference to rule 10b–10, the revised proposed rule would incorporate this position.

[61] The Commission recently approved a proposed amendment of a rule of the National Association of Securities Dealers, Inc. to permit beneficial owners of stock to designate a registered investment adviser to receive and vote proxies on their behalf. Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Interpretation of the Board of Governors—Forwarding of Proxy and Other Material Under Article III, Section 1 of the NASD Rules of Fair Practice, Securities Exchange Act Release No. 35681 (May 5, 1995), 60 FR 25749 (May 12, 1995).

[62] *E.g.,* Westfield Consultants Group, *supra* note 3; Manning & Napier Advisors, Inc., *supra* note 36; Jefferies & Company, *supra* note 59; Rauscher Pierce Refsnes, Inc., *supra* note 3.

undue burden on persons relying on the rule, or whether the burden of any condition would outweigh its benefits. Comment is specifically requested whether any of these conditions can be eliminated, consolidated, or otherwise made less burdensome without compromising investor protection.

Paragraph (a)(6)(i) would require the sponsor of the program to establish and effect written policies and procedures that are reasonably designed to ensure that each of the provisions of the rule is implemented. The paragraph also would require that, to the extent that the sponsor designates another person to carry out certain obligations under the rule, the sponsor must obtain from that person an agreement in writing to carry out those obligations. These provisions are designed to require the sponsor to formalize the manner in which it intends to comply with rule 3a–4, and, if the sponsor delegates its responsibilities under the rule, to specifically record the delegation and obtain from the other parties an agreement acknowledging their responsibilities.[63] The requirement that a sponsor establish and effect written procedures detailing compliance with the conditions of rule 3a–4 also is intended to provide the Commission with a readily available source of information regarding the manner in which the rule is being interpreted and applied by the investment advisory industry.

Paragraph (a)(6)(ii)(A) would require the sponsor to maintain and preserve all written policies, procedures and agreements that pertain to the operation of the investment advisory program in its office for as long as it serves as the sponsor of that program.[64] The paragraph also would require the sponsor to maintain and preserve these documents in an easily accessible place for not less than three years after the sponsor ceases to serve as sponsor of the program. Given the importance of these documents, the Commission believes that the documents must be maintained and preserved in the office of the sponsor for as long as the sponsor acts in that capacity, so that they are available for easy reference. These documents also must be retained in an easily accessible place for three years after the sponsor of the program ceases to serve as the sponsor should any questions later arise about the operation of the program.

Paragraph (a)(6)(ii)(B) would require the sponsor or another person designated by the sponsor to maintain and preserve all documents created pursuant to the policies and procedures governing the operation of the program, such as client contracts, client questionnaires, and copies of client statements, in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the document was created. Under this provision, these documents would be required to be maintained and preserved in a manner similar to that required for advisory books and records under paragraph (e)(i) of rule 204–2.[65] Unlike rule 204–2, however, paragraph (a)(6)(ii)(B) would not require the documents to be kept for the first two years in the office of the person creating or receiving the records (i.e., the sponsor). Rather, the paragraph would permit the sponsor to designate another person to maintain and preserve these documents.[66]

Paragraph (a)(6)(iii) would require the sponsor to enter into a written agreement with any person designated to maintain and preserve the books and records pertaining to the program (other than the written policies, procedures and agreements). The paragraph also would require that the agreement include a list of the books and records maintained and preserved by that person and a provision obligating the person maintaining the books and records to provide the sponsor with copies of such books and records within a reasonable time of the sponsor's request.

These requirements are intended to avoid duplicative recordkeeping by allowing the sponsor to designate another person involved in the operation of the investment advisory program to maintain copies of books and records provided that person has a contractual obligation to provide the records to the sponsor upon request. In addition, the requirement that each party's recordkeeping responsibilities be included in the party's agreement with the sponsor would help to ensure that each person is aware of its responsibilities. Finally, since the provision would require that the sponsor be able to request and obtain promptly the books and records maintained by such persons, it effectively would permit the sponsor to monitor more effectively the person's performance of its duties under the contract, and help facilitate Commission examinations.

Paragraph (a)(6)(iv) would require the sponsor to furnish to the Commission upon demand copies of the policies, procedures, all documents created pursuant to the policies and procedures, and the written agreements with other persons involved in the operation of the program. This provision is intended to facilitate Commission examination of investment advisory programs relying on rule 3a–4.

As discussed above, most sponsors of investment advisory programs are required to be registered under the Advisers Act.[67] Thus, these sponsors are already required under section 204 of the Advisers Act to make advisory records available to the Commission upon request.[68] Revised proposed rule 3a–4, however, would be available to all sponsors of investment advisory programs, regardless of their status under the Advisers Act. Accordingly, paragraph (a)(6)(iv) is intended to ensure that the Commission would have access to certain records with respect to investment advisory programs that are sponsored by persons that are not subject to the Advisers Act.

B. Form N–3a4

Paragraph (a)(7) would require any sponsor of an investment advisory program intending to rely on the safe harbor provided in rule 3a–4 to file with the Commission Form N–3a4.[69] Form

[63] In addition, because the procedures would be reasonably designed to ensure that the provisions of the rule are implemented, sponsors may wish to specify in the procedures the persons other than the principal sponsor that are involved in the operation of the program, and each person's duties. The procedures need not, however, specify each individual by name.

[64] Because an adviser may have more than one office, paragraph (a)(6)(ii)(A) would provide that these records should be kept ''in an appropriate office of the sponsor.'' This language is similar to that used in paragraph (e)(i) of rule 204–2 under the Advisers Act (15 CFR 275.204–2), which sets forth the recordkeeping requirements for investment advisers.

[65] See *supra* note 64. Revised proposed rule 3a–4 would not require the creation of any records other than the policies, procedures, and written agreements if the sponsor designates another person to perform obligations under the revised proposed rule or to maintain and preserve certain books and records. Paragraphs (a)(6)(i), (a)(6)(iii). Paragraph (a)(6)(ii)(B), however, would specify how records that are created pursuant to the policies and procedures (whether or not also required by rule 204–2 under the Advisers Act) must be maintained. If records pertaining to the program are required to be created under rule 204–2, but not under the policies or procedures, those records would be required to be maintained in accordance with paragraph (e) of rule 204–2. See National Regulatory Services, Inc., *supra* note (portfolio manager in an investment advisory program must maintain records of brochure delivery at its office, even if sponsor created such records).

[66] However, as discussed below, the sponsor would be required to enter into a written agreement with the designated person that specifies that documents to be maintained by that person and that copies of such documents would be provided to the sponsor upon request.

[67] *See supra* notes 5–8 and accompanying text.

[68] 15 U.S.C. 80b–4.

[69] In addition, in the event that another person had previously served as principal sponsor of, and

Continued

N–3a4 would notify the Commission of investment advisory programs that are intended to be organized and operated in compliance with the rule's requirements.[70] The form would assist the Commission in monitoring the use of rule 3a–4 and facilitate Commission examination of persons involved in investment advisory programs.

C. Advisers Act Issues Raised by Investment Advisory Programs

Wrap fee and other investment advisory programs raise, in addition to the Investment Company Act issues addressed in this release, a number of issues under the Advisers Act. The Commission expects to publish an interpretive release that would address many of these issues.

In particular, the Commission expects that the release will address the suitability obligations of sponsors and portfolio managers to clients of the investment advisory program, including suitability obligations regarding client participation in the program, the selection of portfolio managers, and the selection of investments. The release will discuss how an adviser's obligation to seek best execution applies in the context of wrap fee programs when brokerage commissions are not charged separately for each transaction. In addition, the interpretive release may discuss the application of the restrictions on principal and agency cross transactions in section 206(3) of the Advisers Act to investment advisory programs, including whether these restrictions apply to transactions with a sponsor that is unaffiliated with the portfolio manager recommending the transactions. Finally, the release may address certain issues unique to programs under which client assets are invested in mutual funds, including the disclosure obligations of investment advisers regarding the various fees associated with these programs.[71]

The release will not be issued until after comments have been received on revised proposed rule 3a–4. This timing would allow the interpretive release to reflect, where appropriate, these comments. Such a time schedule will also permit the consideration of comment from members of the investment advisory program industry regarding the issues expected to be addressed in the interpretive release. Commenters are urged to submit such comments on these and any other issues investment advisory programs raise under the Advisers Act. Comment is specifically requested regarding how investment advisers participating in investment advisory programs currently understand and comply with their Advisers Act obligations. Commenters also are urged to suggest specific factual situations that the release should address.

III. Cost/Benefit Analysis

Revised proposed rule 3a–4 under the Investment Company Act would provide a nonexclusive safe harbor from the definition of investment company for investment advisory programs. Programs that are organized and operated in a manner consistent with the rule's conditions would not be required to register under the Investment Company Act or comply with the Act's substantive requirements. The revised proposed rule is intended to provide guidance to persons operating investment advisory programs regarding the status of these programs under the Investment Company Act, and help to ensure that such programs do not operate as investment companies without clients of the programs benefitting from the Act's protections.

Proposed Form N–3a4 would be filed with the Commission by sponsors of programs intending to rely on rule 3a–4. The proposed form would help the Commission in monitoring the use of rule 3a–4 and facilitate Commission examination of persons involved in these programs.

The Commission anticipates that the cost of compliance with revised proposed rule 3a–4 and the proposed form would be small. In addition, the Commission does not believe that compliance with any of the proposed provisions would be unduly burdensome. Comment is requested, however, on the costs and benefits associated with the revised proposed rule and proposed form. Commenters should submit estimates for any costs and benefits perceived, together with any supporting empirical evidence available.

IV. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding revised proposed rule 3a–4 and proposed Form N–3a4. The Analysis notes that the revised proposed rule is intended to provide a nonexclusive safe harbor from the definition of investment company for investment advisory programs organized and operated in compliance with the conditions of the rule, and that the proposed form would be filed with the Commission by sponsors of investment advisory programs intending to rely on the rule. The Analysis explains that the rule is intended to provide guidance regarding the status of investment advisory programs under the Investment Company Act, and that the rule and the form would facilitate Commission examination of persons involved in the operation of a program. The Analysis concludes that the rule would not be overly costly or burdensome to sponsors of investment advisory programs that intend to rely on the safe harbor. A copy of the Initial Regulatory Flexibility Analysis may be obtained from Rochelle Kauffman Plesset, at Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

V. Statutory Authority

The Commission is publishing for public comment revised proposed rule 3a–4 and Form N–3a4 pursuant to the authority set forth in sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), –37(a)].

Text of Revised Proposed Rule and Proposed Form

List of Subjects in 17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. By adding § 270.3a–4 to read as follows:

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submitted Form N–3a4 with respect to, an investment advisory program, the new principal sponsor would be required to submit an amended Form N–3a4 identifying itself as the new sponsor and specifying the name of the prior principal sponsor.

[70] Paragraph (a)(7) also would require sponsors to file with the Commission any amendments to the form. Thus, proposed Form N–3a4 also would be used to change information included in a prior filing, to notify the Commission that the sponsor no longer intends to operate the program in reliance on the safe harbor, or to notify the Commission that a program operating in reliance on the safe harbor will cease operations.

[71] The recently adopted wrap fee disclosure requirements set forth in Schedule H of Form ADV apply only to sponsors of wrap fee programs and not to sponsors of mutual fund wrap programs.

§ 270.3a–4 Status of Investment Advisory Programs.

Note: This section is a nonexclusive safe harbor from the definition of investment company for certain programs that provide investment advisory services to clients. Interests in programs that are organized and operated in compliance with the conditions of § 270.3a–4 also are not required to be registered under section 5 of the Securities Act of 1933 [15 U.S.C. 77e]. The section is not intended, however, to create any presumption about a program that is not organized and operated in compliance with the conditions.

(a) Notwithstanding section 3(a) of the Act [15 U.S.C. 80a–3], any program under which investment advisory services are provided to clients will not be deemed to be an investment company within the meaning of the Act, *provided that:*

(1) Each client's account in the program is managed on the basis of the client's financial situation, investment objectives, and instructions.

(2) (i) At the opening of the account, the sponsor or another person designated by the sponsor obtains information from the client regarding the client's financial situation and investment objectives, and gives the client the opportunity to provide specific instructions concerning the management of the account;

(ii) At least annually, the sponsor or another person designated by the sponsor contacts the client to determine whether there have been any changes in the client's financial situation, investment objectives, or instructions in the preceding year;

(iii) At least quarterly, the sponsor or another person designated by the sponsor notifies the client in writing to contact the sponsor or such other person if there have been any changes in the client's financial situation, investment objectives, or instructions, and provides the client with a means through which such contact is to be made; and

(iv) The sponsor and persons authorized to make investment decisions for the client's account are reasonably available to the client for consultation.

(3) Each client has the ability to impose reasonable restrictions on the management of its account, including the designation of particular securities or types of securities that should not be purchased for the account, or that should be sold if held in the account.

(4) The sponsor or person designated by the sponsor provides each client with a quarterly statement containing a description of all activity in the client's account during the preceding quarter, including all transactions made on behalf of the account, all contributions and withdrawals made by the client, all fees and expenses charged to the account, and the value of the account at the beginning and end of the quarter.

(5) Each client retains indicia of ownership of all securities and funds in the account, including the right to:

(i) Withdraw securities or cash;

(ii) Pledge securities;

(iii) Vote securities, or delegate the authority to vote securities to another person;

(iv) Be provided in a timely manner with confirmations of securities transactions of the type required by § 240.10b–10 of this chapter, and all other documents that would have been provided to the client (or the client's agent) had the client purchased or sold the same securities outside the program; and

(v) Proceed directly as a securityholder against the issuer of any security in the client's account and not be obligated to join any person involved in the operation of the program, or any other client of the program, as a condition precedent to initiating such proceeding.

(6) (i) The sponsor of a program relying on this section must establish and effect written policies and procedures that are reasonably designed to ensure that each of the conditions of this section is met. To the extent that the sponsor designates another person to carry out its obligations under this section, the sponsor must obtain from that person an agreement in writing to carry out those obligations.

(ii) Notwithstanding the requirements of paragraph (e) of § 275.204–2 of this chapter as such requirements would apply to the records set forth in paragraph (a)(6)(ii) of this section:

(A) The sponsor shall maintain and preserve in an appropriate office of the sponsor during the period that it serves as the sponsor of the program, and in an easily accessible place for a period not less than three years after the sponsor ceases to serve in that capacity, all written policies, procedures and agreements required to be established under paragraphs (a)(6)(i) and (a)(6)(iii) of this section; and

(B) The sponsor or another person designated by the sponsor shall maintain and preserve in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the document was created, all documents created pursuant to the policies and procedures (including any client contracts, client questionnaires, and copies of client statements).

(iii) The sponsor shall enter into a written agreement with any person designated by the sponsor to maintain and preserve the books and records pertaining to the program (other than those specified in paragraph (a)(6)(ii)(A) of this section). Such agreement shall include a list of the books and records to be maintained and preserved by that person and a provision that the person will provide the sponsor copies of such books and records within a reasonable time of the sponsor's request.

(iv) The sponsor shall furnish to the Commission upon demand copies of all documents maintained under paragraph (a)(6)(ii) of this section.

(7) The sponsor has filed with the Commission Form N–3a4 [17 CFR 274.222] and any amendments thereto.

(b) As used in this section, the term sponsor refers to any person who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program. If a program has more than one sponsor, one person shall be designated the principal sponsor, and such person shall comply with the provisions of this section relating to the duties and responsibilities of the sponsor.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

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

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29 unless otherwise noted.

4. By adding § 274.222 to subpart C to read as follows:

§ 274.222 Form N–3a4, Notification of reliance on rule 3a–4 under the Investment Company Act.

This form shall be filed with the Commission as required by rule 3a–4 (§ 270.3a–4 of this chapter) by sponsors of investment advisory programs that intend to rely on the safe harbor provided by that rule.

Editorial Note: The text of Form N–3a4 appears in the Appendix to this document and will not appear in the Code of Federal Regulations.

Dated: July 27, 1995.

By the Commission.

Margaret L. McFarland,

Deputy Secretary.

Appendix

Note: The following Appendix will not appear in the Code of Federal Regulations.

OMB APPROVAL

OMB Number:
Expires:
Estimated average burden hours per response:

Form N–3a4

U.S. Securities and Exchange Commission

Washington, D.C. 20549

Notification of Intention to Rely on Safe Harbor Pursuant to Rule 3a–4 [17 CFR 270.3a–4]

[ ] Initial Filing [ ] Amendment [ ] Withdrawal

1. Full name of investment advisory program:

_____

2. Full name of principal sponsor (as defined in rule 3a–4) of investment advisory program:

_____

3. Principal sponsor's status under the Investment Advisers Act

[ ] Principal sponsor is registered under that Act; its SEC Investment Advisers Act file number is: 801

[ ] Principal sponsor is not registered under that Act

4. Address of principal sponsor's principal place of business (number, street, city, state, zip code):

_____

5. Telephone number at this location (include area code):

_____

6. If another person had previously served as principal sponsor of, and filed Form N–3a4 with respect to, the investment advisory program identified in Item 1:

a. Full name of previous principal sponsor:

_____

b. Previous principal sponsor's status under the Investment Advisers Act

[ ] Previous principal sponsor is/was registered under that Act; its SEC Investment Advisers Act file number is/was: 801–

[ ] Previous principal sponsor is/was not registered under that Act

7. The undersigned hereby notifies the Securities and Exchange Commission, in its capacity as principal sponsor, that

[ ] it intends to operate the program in reliance on the safe harbor provided in rule 3a–4 under the Investment Company Act of 1940.

[ ] it no longer intends to operate the program in reliance on the safe harbor provided in rule 3a–4 under the Investment Company Act of 1940.

[ ] the program will cease operating as an investment advisory program as of _____ (insert date in blank).

Signed by: _____

(Name of person signing on behalf of principal sponsor)

_____

(title of person)

Date: _____

Instructions

1. This form is to be used to notify the Commission of the intention of the principal sponsor of an investment advisory program to operate the program in reliance on the safe harbor in rule 3a–4 under the Investment Company Act. This form also is to be used to amend a prior filing, to notify the Commission that the sponsor no longer intends to operate the program in reliance on the safe harbor, or to notify the Commission that a program operating in reliance on the safe harbor will cease operations.

2. This form shall be filed in triplicate with the Commission. One copy shall be manually signed; the other copies may have facsimile or typed signatures.

3. Under Item 1, insert name under which the investment advisory program is marketed to clients. If no such name is used, insert a name used to identify the program in internal documents (e.g. contracts) or any other name that would clearly identify the program.

4. The principal sponsor of an investment advisory program shall file this form promptly after becoming principal sponsor of the program. In the event that the previously submitted form becomes inaccurate, the principal sponsor shall amend the form by submitting an amended form, completed in its entirety, with the appropriate box checked at the top of the form. If a previous principal sponsor of the program had filed a Form N–3a4, the new principal sponsor shall submit an amended form, completed in its entirety including the information requested in Item 6.

5. If the principal sponsor no longer intends to operate the program in reliance on rule 3a–4, or the program is ceasing operations, the principal sponsor shall withdraw its notification on Form N–3a4 by submitting another form, completed in its entirety including the information required in Item 7, and checking the appropriate box at the top of the form.

[FR Doc. 95–18891 Filed 8–1–95; 8:45 am]

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federal register

Wednesday
August 2, 1995

Part IV

Environmental Protection Agency

40 CFR Part 136

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Chlorinated Pesticides and PCBs by Disk Extraction; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–5267–2]

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Chlorinated Pesticides and PCBs by Disk Extraction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This amendment to the Guidelines Establishing Test Procedures approves the use of an additional procedure for the determination of chlorinated pesticides and polychlorinated biphenyls (PCBs) in wastewater by adding appropriate citations to Tables IC and ID and by amending the incorporation by reference section of the regulation accordingly. The method differs from other approved methods in that it incorporates a disk of octadecyl-bonded silica enmeshed in a matrix of inert polytetrafluoroethylene (PTFE) fibrils for extraction of the analytes. The precision and recovery for the chlorinated pesticides and PCBs using this technique are not substantially different from those obtained using the liquid-liquid extraction technique already approved. Use of approved analytical techniques is required whenever the waste constituent specified is required to be measured for: an NPDES permit application; discharge monitoring reports; state certification; and other requests from the permitting authority for quantitative or qualitative effluent data. Use of approved test procedures is also required for the expression of pollutant amounts, characteristics, or properties in effluent limitations guidelines and standards of performance and pretreatment standards, unless otherwise specifically noted or defined.

DATES: This rule shall be effective on September 1, 1995. In accordance with 40 CFR 23.2 (45 FR 26048), these amendments to the regulation shall be considered issued for purposes of judicial review at 1 p.m. eastern time, August 16, 1995.

The incorporation by reference of certain publications listed in the regulation is approved by the Office of the Federal Register as of September 1, 1995.

Under section 509(b)(1) of the Clean Water Act, judicial review of these amendments can be obtained only by filing a petition for review in the United States Court of Appeals within 120 days after they are considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, these amendments may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Longbottom, Environmental Monitoring Systems Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268. Telephone number: (513) 569–7308.

SUPPLEMENTARY INFORMATION:

I. Authority

This regulation is promulgated under authority of sections 301, 304(h) and 501(a) of the Clean Water Act, 33 U.S.C. 1251 *et seq.* (the Federal Water Pollution Control Act Amendments of 1972 as amended) (the ''Act''). Section 301 of the Act prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit, issued under section 402. Section 304(h) of the Act requires the Administrator of the EPA to ''promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit application pursuant to section 402 of this Act''. Section 501(a) of the Act authorizes the Administrator to ''prescribe such regulations as are necessary to carry out his functions under this Act''.

II. Regulatory Background

The CWA establishes two principal bases for effluent limitations. First, existing discharges are required to meet technology-based effluent limitations. New source discharges must meet new source performance standards based on the best available demonstrated control technology. Second, where necessary, additional requirements are imposed to assure attainment and maintenance of water quality standards established by the States under Section 303 of the CWA. In establishing or reviewing NPDES permit limits, EPA must ensure that permitted discharges will not cause or contribute to a violation of water quality standards, including designated water uses.

For use in permit applications, discharge monitoring reports, and state certification and to ensure compliance with effluent limitations, standards of performance, and pretreatment standards, EPA has promulgated regulations providing nationally-approved testing procedures at 40 CFR Part 136. Test procedures have previously been approved for 262 different parameters. Those procedures apply to the analysis of inorganic (metal, non-metal, mineral) and organic chemical, radiological, bacteriological, nutrient, demand, residue, and physical parameters.

Additionally, some particular industries may discharge pollutants for which test procedures have not been proposed and approved under 40 CFR Part 136. Under 40 CFR Part 122.41 permit writers may impose monitoring requirements and establish test methods for pollutants for which no approved Part 136 method exists. 40 CFR 122.41(j)(4). EPA may also approve additional test procedures when establishing industry-wide technology-based effluent limitations guidelines and standards as described at 40 CFR 401.13.

The procedures for approval of alternate test procedures (ATPs) are described at 40 CFR 136.4 and 136.5. Under these procedures the Administrator may approve alternate test procedures for nationwide use which are developed and proposed by any person. 40 CFR 136.4 (a). Dischargers seeking to use such alternate test procedures on a limited basis (e.g., for their own discharge), must apply to the State or Regional EPA permitting office in which the discharge occurs approval under 136.4 (d). As specified below, today's rule approves an optional nationwide alternate procedure for determination of chlorinated pesticides and PCBs in wastewater test samples.

III. The Disk Extraction Test Procedure

The 3M Corporation, in accordance with the regulations published at 40 CFR section 136.5, applied for nationwide approval of their ''Organochlorine Pesticides and PCBs in Wastewater Using Empore Disk''. 3M subsequently presented data to meet the method comparability criteria set forth in the EPA ''Protocol for Approval of Alternate Test Procedures for Inorganic and Organic Analytes in National Pollutant Discharge Elimination System Monitoring'', July 12, 1993.

Extraction and concentration are preparation steps that are required prior to the determination of many organic analytes that are found in wastewater. The disk extraction procedure is proposed as an alternate to the presently approved liquid-liquid extraction procedure.

A. Scope of the Procedure

Method 3M 0222 is designed as an alternate test procedure for currently approved EPA Method 608. The Empore™ disk is used in place of liquid-liquid extraction. This method is being promulgated as an alternative procedure for the determination of nineteen specified organochlorine pesticides and seven PCBs listed below:

Aldrin
alpha-BHC
beta-BHC
Chlordane
delta-BHC
Dieldrin
Endosulfan I
Endosulfan II
Endosulfan sulfate
Endrin
Endrin aldehyde
gamma-BHC PCB-1254
Heptachlor
Heptachlor epoxide
Methoxychlor
Toxaphene
4,4′-DDD
4,4′-DDE
4,4′-DDT
PCB-1016
PCB-1221
PCB-1232
PCB-1242
PCB-1248
PCB-1254
PCB-1260

The parameters listed in the table can be determined by gas chromatography using Method 3M 0222. When the method is used to analyze unfamiliar samples for any or all of the compounds listed, compound identifications should be supported by at least one additional qualitative technique. The method describes analytical conditions for a second gas chromatographic column that can be used to confirm measurements made with the primary column.

B. Summary of the Methods

A measured volume of sample, approximately 1–L, is extracted using a 90 mm Empore™ disk. The disk is eluted with acetone followed by methylene chloride. The eluant is dried by pouring through anhydrous sodium sulfate and exchanged to hexane during concentration to a volume of 10-mL or less. The eluant is separated by gas chromatography and the analytes are then measured with an electron capture detector.

The method provides a Florisil column cleanup procedure and an elemental sulfur removal procedure using activated copper powder to aid in the elimination of interferences that may be encountered.

C. Technical Justification for Approved Procedure

The approval of this procedure is based on Agency review of the supporting information and data submitted by the applicant, 3M Corporation. EPA is approving the method based on the method description in EPA's Environmental Monitoring Management Council format, comparative analyses using the proposed and approved procedures, and EPA's technical and statistical reviews of each data package.

3M Corporation provided test data comparing the proposed procedure with appropriate approved procedure. The results from the proposed alternate method were compared to the approved EPA Method using liquid-liquid extraction/gas chromatography procedures. EPA statisticians and chemists conducted independent reviews of the data. The recovery and precision of all the submitted data for both the approved and proposed methods were also compared to the recovery and precision acceptance criteria derived for EPA Method 608 from Performance Evaluation Studies WP 18 and 23.

The Agency has judged the currently approved Method 608 method to be acceptable in the evaluation of the proposed procedure. EPA's Environmental Monitoring Systems Laboratory in Cincinnati, Ohio (EMSL-Cincinnati) thoroughly reviewed and evaluated the supporting data submitted by the 3M Corporation. The comparability reviews indicated that the analyses afforded comparable recovery and precision in the recommended concentration ranges for the listed organochlorine pesticides and PCBs. EPA proposed approval of the Empore™ disk procedure and sought public comment on the suitability of this method as an alternate procedure for use in the determination of the parameters listed in 59 FR 65878 (December 21, 1994). The administrative record is on file at EMSL-Cincinnati, 26 W. Martin Luther King Dr., Cincinnati, Ohio 45268. The record is available for public inspection. The approved procedure is also available from 3M Corporation, 3M Center Building 220–9E–10, St. Paul, MN 55144–1000.

Based on EMSL-Cincinnati's review, and pursuant to 40 CFR Section 136.5, EPA has approved the 3M Corporation's ''Organochlorine Pesticides and PCBs in Wastewater Using Empore™ Disk'' method as an acceptable alternative procedure for nationwide use. Specifically, the method exhibits sufficient precision and recovery to establish (1) its acceptability under Part 136 and (2) its comparability to the approved procedure for analysis of the specified organochlorine pesticides and PCBs. As an approved alternate test procedure, this procedure is acceptable for use by any person required to test for these parameters.

IV. Public Comments and Response to Most Significant Comments

The Agency requested comments on the proposal to approve the 3M method for pesticides and PCB's. Comments were received from 5 individuals/organizations. All commenters favored approval of disk extraction as an acceptable alternate procedure (ATP). The most significant comments were as follows:

Comment: Other companies produce extraction disks on inert surfaces, so all references in the method to the disk in the 3M method should be generic in nature so that other commercial products can be used by the analyst. Commenter supports feasibility of generic approach by noting the method includes initial quality control demonstrations that can demonstrate applicability of the alternative vender's product, and that EPA used general product description language in the comparable method approved in 40 CFR 141 for drinking water analyses.

Response: EPA's limited resources are not sufficient to fully evaluate all new technologies that may be applicable to monitoring programs under the Clean Water Act. The nationwide alternate test procedure (ATP) program was established 40 CFR Part 136.4 to allow developers of new commercial instruments, product or supplies to demonstrate the efficacy of the measurement technology to measure pollutant concentration levels. The ATP program is expensive for the applicant as applicability to a broad variety of wastewaters must be demonstrated. The Agency does not require this applicant to demonstrate that the extraction technology can be made to work using competitor's products. The use of a competitive product in this method would require additional method development to optimize solvents, flow rates, and other features of the method. After these procedures have been standardized, a suitable demonstration of applicability is required. Because of the diverse nature of wastewaters under this regulation, a general statement of applicability could be made only if a number of different wastewaters are tested. Limited use approval could be obtained on a case-by-case basis by demonstrating applicability to an individual discharger's wastestream.

The quality control tests in the 3M method referenced by the commenter are performed using reagent water and will not demonstrate applicability to wastewater. The Agency actions in Part 141 were based on research on drinking water with commercial products from multiple suppliers. Since drinking waters do not contain the high organic loads and suspended solids that challenge the solid-phase extraction procedures, it is easier to establish general applicability to the matrix.

Comment: Commenter has tried these disks and has encountered some problems with plugging and finds no mention of what to do when this happens. Suggests method be limited to samples with less than 2–5% solids.

Response: In the comparison study performed by 3M, both the approved EPA Method 608 and the alternate 3M method produced lower results for wastewaters with very high suspended solids and the 3M method contains an appropriate caution in this regard. A sample with 2–5% solids is generally classified as a sludge and is beyond the scope of this rulemaking.

Comment: Commenter provided a series of questions for EPA to use in its evalation of the 3M method. The questions addressed technical specifications for the inert and active components of the disk, and possible limitations of the method caused by absorptive capacity, selective absorption or sample pH.

Response: The applicant voluntarily provided EPA with detailed responses to each of the questions, although much of this information would normally be treated by EPA as confidential business information. The applicant's response has been incorporated into the administrative record for this rulemaking. Alternate test procedures are evaluated primarily on the basis of method performance characteristics including accuracy, precision, and sensitivity data quality.

V. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866, EPA must judge whether a regulation is ''major'' and, therefore, requires a regulatory impact analysis. EPA has determined that this regulation is not major as it will not result in an effect on the economy of $100 million or more, a significant increase in cost or prices, or any of the effects described in the Executive Order. This final rule would simply specify an alternative analytical procedure which may be used by laboratories in measuring concentrations of organochlorine pesticides and PCBs using EPA Method 608 and, therefore, would have no adverse economic impacts. This rule is not considered significant under the Executive Order.

B. Regulatory Flexibility Act

This amendment is consistent with the objectives of the Regulatory Flexibility Act (5 U.S.C. 602 et seq.) because it will not have a significant economic impact on a substantial number of small entities. The procedure included in this final rule would give all laboratories the flexibility to use this alternate procedure or not to use it.

C. Paperwork Reduction Act

This rule contains no requests for information activities and, therefore, no information collection request (ICR) was submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, (44 U.S.C. 3501 et seq.).

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a written statement to accompany rules where the estimated costs to State, local, or tribal governments, or to the private sector will be § 100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of such a rule and that is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly and uniquely affected by the rule.

EPA estimates that the costs to State, local or tribal governments, or the private sector, from this rule will be far less than § 100 million. This rule should have minimal impact, if any, on the existing regulatory burden imposed on NPDES permittees required to monitor for regulated pollutants because the rule would merely make additional options available to the laboratory analyst conducting an existing approved test method. EPA has determined that an unfunded mandates statement therefore is unnecessary. Similarly, the method approved today does not establish any regulatory requirements that might significantly or uniquely affect small governments.

List of Subjects in 40 CFR Part 136

Environmental protection, Incorporation by reference, Water pollution control.

Dated: July 25, 1995.

Carol M. Browner,

Administrator.

In consideration of the preceding, EPA amends part 136 of title 40 Chapter I of the Code of Federal Regulations as follows:

PART 136—AMENDED

1. The authority citation for 40 CFR part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Public Law 95–217, Stat. 1566, *et seq.* (33 U.S.C. 1251 *et seq.*)(the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3 is amended as follows:

a. In Table 1C of paragraph (a) by revising entries 76. PCB–1016, 77. PCB–1221, 78. PCB–1232, 79. PCB–1242, 80. PCB–1248, 81. PCB–1254, 82. PCB–1260; and by adding footnote 8.

b. In Table ID of paragraph (a) by revising entries 1. Aldrin, 8. α-BHC, 9. β-BHC, 10. δ-BHC, 11. γ-BHC (Lindane), 15. Chlordane, 18. 4,4′-DDD, 19. 4,4′-DDE, 20. 4,4′-DDT, 28. Dieldrin, 32. Endosulfan I, 33. Endosulfan II, 34. Endosulfan sulfate, 35. Endrin, 36. Endrin aldehyde, 40. Heptachlor, 41. Heptachlor epoxide, 46. Methoxychlor, and 69. Toxaphene; and by adding footnote 8.

§ 136.3 Identification of test procedures.

(a) * * *

TABLE IC.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS

Parameter [1]	EPA method number [2 7]			Standard methods 18th ed.	ASTM	Other
	GC	GC/MS	HPLC			
* *	*		*	*	*	*
76. PCB–1016	608	625		6410 B		Note 3, p. 43; note 8.
77. PCB–1221	608	625		6410 B		Note 3, p. 43; note 8.
78. PCB–1232	608	625		6410 B		Note 3, p. 43; note 8.

TABLE IC.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	EPA method number [2 7]			Standard methods 18th ed.	ASTM	Other
	GC	GC/MS	HPLC			
79. PCB–1242	608	625		6410 B		Note 3, p. 43; note 8.
80. PCB–1248	608	625				Note 3, p. 43; note 8.
81. PCB–1254	608	625		6410 B		Note 3, p. 43; note 8.
82. PCB–1260	608	625		6410 B, 6630 B		Note 3, p. 43; note 8.
* *	*	*	*	*	*	*

Table IC Notes

[1] All parameters are expressed in micrograms per liter (µg/L).

[2] The full text of Methods 601–613, 624, 625, 1624 and 1625, are given at appendix A, ''Test Procedures for Analysis of Organic Pollutants,'' of this part 136. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at appendix B, ''Definition and Procedure for the Determination of the Method Detection Limit'' of this part 136.

[3] ''Methods for Benzidine: Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater,'' U.S. Environmental Protection Agency, September, 1978.

* * * * * * *

[7] Each analyst must make an initial, one-time demonstration of their ability to generate acceptable precision and accuracy with Methods 601–613, 624, 625, 1624 and 1625 (See appendix A of the part 136) in accordance with procedures each in section 8.2 of each of these Methods. Additionally, each laboratory, on and on-going basis must spike and analyze 10% (5% for Methods 624 and 625 and 100% for Methods 1624 land 1625) of all samples to monitor and evaluate laboratory data quality in accordance with sections 8.3 and 8.4 of these Methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect and cannot be reported to demonstrate regulatory compliance.

[8] ''Organochlorine Pesticides and PCBs in Wastewater Using Empore TM Disk'', 3M Corporation Revised 10/28/94.

TABLE ID.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]

Parameter µg/L	Method	EPA [2 7]	Standard methods 18th ed.	ASTM	Other
1. Aldrin	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 4, p. 30; note 8.
	GC/MS	625	6410 B		
* * *	*	*	*	*	*
8. α-BHC	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 8.
	GC/MS	[5] 625	6410 B		
9. β-BHC	GC	608	6630 C	D3086–90	Note 8.
	GC/MS	[5] 625	6410 B		
10. δ-BHC	GC	608	6630 C	D3086–90	Note 8.
	GC/MS	[5] 625	6410 B		
11. λ-BHC (Lindane)	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 4, p. 30; note 8.
	GC/MS	625	6410 B		
* * *	*	*	*	*	*
15. Chlordane	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 8.
	GC/MS	625	6410 B		
* * *	*	*	*	*	*
18. 4,4′–DDD	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 4, p. 30; note 8.
	GC/MS	625	6410 B		
19. 4,4′–DDE	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 4, p. 30; note 8.
	GC/MS	625	6410 B		
20. 4,4′–DDT	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 4, p. 30; note 8.
	GC/MS	625	6410 B		
* * *	*	*	*	*	*
28. Dieldrin	GC	608	6630 B & C		Note 3, p. 7; note 4, p. 30; note 8.
	GC/MS	625	6410 B		
* * *	*	*	*	*	*
32. Endosulfan I	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 8.
	GC/MS	[5] 625	6410 B		
33. Endosulfan II	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 8.
	GC/MS	[5] 625	6410 B		
34. Endosulfan Sulfate	GC	608	6630 C		Note 8.
	GC/MS	625	6410 B		
35. Endrin	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 4, p. 30; note 8.

TABLE ID.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]—Continued

Parameter µg/L	Method	EPA [2 7]	Standard methods 18th ed.	ASTM	Other
	GC/MS	[5] 625	6410 B		
36. Endrin aldehyde	GC	608			Note 8.
	GC/MS	625			
* * *	*		*	*	*
40. Heptachlor	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 4, p. 30; note 8.
	GC/MS	625	6410 B		
41. Heptachlor epoxide	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 4, p. 30; note 6, p. S73; note 8.
	GC/MS	625	6410 B		
* * *	*		*	*	*
46. Methoxychlor	GC	.....	6630 B & C	D3086–90	Note 3, p. 7; note 4, p. 30; note 8.
* * *	*		*	*	*
69. Toxaphene	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 4, p. 30; note 8.
	GC/MS	625	6410 B		
* * *	*		*	*	*

Table ID Notes:

[1] Pesticides are listed in this table by common name for the convenience of the reader. Additional pesticides may be found under Table 1C, where entries are listed by chemical name.

[2] The full text of Methods 608 and 625 are given at Appendix A. ''Test Procedures for Analysis of Organic Pollutants'', of this Part 136. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B. ''Definition and Procedure for the Determination of the Method Detection Limit'', of this Part 136.

[3] ''Methods for Benzidine, Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater'', U. S. Environmental Protection Agency, September, 1978. This EPA publication includes thin-layer chromatography (TLC) methods.

[4] ''Methods for Analysis of Organic Substances in Water and Fluvial Sediments'', Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 5, Chapter A3 (1987).

[5] The method may be extended to include α-BHC, 1T1δ-BHC, endosulfan I, endosulfan II, and endrin. However, when they are known to exist in the sample, Method 608 is the preferred method.

[6] ''Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency''. Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[7] Each analyst must make an initial, one-time, demonstration of their ability to generate acceptable precision and accuracy with Methods 608 and 625 (See Appendix A of this Part 136) in accordance with procedures given in section 8.2 of each of these methods. Additionally, each laboratory, on an on-going basis, must spike and analyze 10% of all samples analyzed with Method 608 or 5% of all samples analyzed with Method 625 to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect and cannot be reported to demonstrate regulatory compliance. These quality control requirements also apply to the Standard Methods, ASTM Methods, and other Methods cited.

[8] ''Organochlorine Pesticides and PCBs in Wastewater Using Empore™ Disk'', 3M Corporation, Revised 10/28/94.

3. In 136.3(b) the list entitled ''References, Sources, Costs, and Table Citations'' is amended by adding paragraph (33) to read as follows:

§ 136.3 Identification of test procedures.

* * * * *

(b) * * *

References, Sources, Costs, and Table citations:

* * * * *

(33) ''Organochlorine Pesticides and PCBs in Wastewater Using Empore ™ Disk'' Test Method 3M 0222, Revised 10/28/94. 3M Corporation, 3M Center Building 220–9E–10, St. Paul, MN 55144–1000. Method available from 3M Corporation. Table IC, Note 8 and Table ID, Note 8.

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Wednesday
August 2, 1995

Part V

Securities and Exchange Commission

17 CFR Part 270

Custody of Investment Company Assets Outside the United States; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release Nos. IC–21259; International Series Release No. 831; File No. S7–23–95]

RIN 3235–AE98

Custody of Investment Company Assets Outside the United States

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments and request for comment.

SUMMARY: The Commission is proposing amendments to the rule under the Investment Company Act of 1940 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. In addition, the amendments would provide investment companies with greater flexibility to address foreign custody arrangements by permitting a company's board of directors to delegate its responsibilities under the rule to evaluate these arrangements. The amendments also would expand the class of foreign banks and securities depositories that could serve as investment company custodians. The proposed amendments are intended to facilitate the use of foreign custody arrangements, consistent with the safekeeping of investment company assets.

DATES: Comments must be received on or before October 6, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549. All comment letters should refer to File No. S7–23–95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Elizabeth R. Krentzman, Assistant Chief, or Kenneth J. Berman, Assistant Director, (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed amendments to rule 17f–5 (17 CFR 270.17f–5) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Act'').

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I. Executive Summary

The Commission is proposing amendments to rule 17f–5 to facilitate the use of foreign custody arrangements by registered management investment companies (''funds''). Among other things, the amendments would revise the findings that must be made in establishing foreign custody arrangements. Under the current rule, a fund's board of directors must find that the fund's arrangements are consistent with the best interests of the fund and its shareholders. This standard may be overbroad since it suggests, for example, that, in considering foreign custody arrangements, a fund's board needs to assess factors other than custodial risks. The amended rule would require findings that the fund's foreign custody arrangements will provide reasonable protection for fund assets. The proposed ''reasonable protection'' standard should facilitate evaluations of foreign custody arrangements by focusing exclusively on safekeeping considerations.

The amendments also would allow fund directors to play a more traditional oversight role with respect to foreign custody arrangements than that required under the current rule. Under the amendments, the board would be permitted to delegate its responsibility under the rule to evaluate foreign custody arrangements to the fund's investment adviser or officers or a U.S. or foreign bank. The amended rule would provide the board with the flexibility to assign different delegates responsibility for addressing different aspects of the fund's arrangements. The amended rule also would provide for general board oversight of a delegate's actions by requiring the delegate to provide the board with periodic reports concerning the fund's arrangements. The board would no longer be required to approve foreign custody arrangements annually.

In addition to updating and refining certain other provisions of rule 17f–5, the amendments would expand the class of foreign banks and depositories that could serve as fund custodians. Foreign banks would no longer have to meet specific capital requirements and foreign depositories would no longer have to operate the only system for the handling of securities in a country. The amended rule would require foreign custodians to be subject to foreign regulation. In addition, in connection with a custodian's selection, the amended rule would require a finding that the custodian will provide reasonable protection for the fund's assets based on all relevant factors, including the custodian's financial strength. This approach seeks to address safekeeping considerations without imposing capital and other requirements that may unnecessarily limit fund use of appropriate foreign custodians.

II. Background

Over the last ten years, the fund industry has become increasingly international in its investment perspective. At the end of 1984, shortly after rule 17f–5 was adopted, only 35 funds invested significant amounts of their assets in foreign securities.[1] By the end of 1994, the number of funds participating in foreign markets had increased almost twentyfold, with over 650 funds investing significant amounts of their assets outside the United States.[2]

[1] Investment Company Institute, The Growth Continues 1993 Perspective on Mutual Fund Activity 7 (Summer 1993); Lipper Analytical Services, Inc. (''Lipper''), Year Over Year Comparison of Growth by Objective of Closed-End Funds (1980–1990) (prepared for the Commission).

[2] Investment Company Institute, Trends in Mutual Fund Activity (Dec. 1994) (ICI News No. ICI–95–05); Lipper, Closed-End Fund Performance Analysis Service (Jan. 31, 1995) (as supplemented by the Commission staff to reflect closed-end funds that liquidated or converted to open-end status during the ten-year period ending December 31, 1994). Based on Commission filings, the Division of Investment Managements estimates that over 2,200

The availability of custodial arrangements in foreign markets where a fund invests is important. Maintaining securities outside of their primary market can add significant costs to investing in that market and may preclude foreign investment.[3]

Section 17(f) of the Act and the rules thereunder govern the safekeeping of fund assets.[4] The legislative history and requirements of section 17(f) indicate that Congress intended fund assets to be kept by financially secure entities that have sufficient safeguards against misappropriation.[5] Under section 17(f), only U.S. banks and their foreign branches, members of a U.S. securities exchange, funds themselves, and U.S. securities depositories may serve as fund custodians.[6] Before rule 17f–5 was adopted, therefore, funds seeking to maintain their assets outside the United States could use only foreign branches of U.S. banks as foreign custodians.[7]

Rule 17f–5 expanded the foreign custody arrangements available to funds.[8] Under the rule, the fund's board of directors must approve each country where the fund's assets will be maintained, each foreign bank or depository that will hold the assets, and the contract governing the arrangement.[9] The rule requires foreign custody contracts to contain certain provisions, and Notes to the rule enumerate factors that the board should consider in placing fund assets in foreign countries and with foreign custodians.[10] In addition, the rule requires the fund's board to monitor foreign custody arrangements and to approve the arrangements at least annually.[11]

Rule 17f–5 limits ''eligible foreign custodians'' to foreign banks and trust companies that either have more than $200 million in shareholders' equity or are majority-owned subsidiaries of U.S. banks or bank holding companies with more than $100 million in shareholders' equity.[12] Foreign depositories that hold fund assets must operate either the only system for a country's handling of securities or a transnational system for the central handling of securities.[13]

The Commission's Division of Investment Management (''Division'') has received extensive submissions urging amendment of rule 17f–5 from the Investment Company Institute (''ICI'') and a group of custodians that provide global custody services to funds (the ''Custodian Group'').[14] These commenters, as well as others, have indicated that rule 17f–5 places inappropriate burdens on fund directors.[15] Commenters have observed that the rule requires directors to ''micro-manage'' foreign custody arrangements, which is inconsistent with the oversight role directors generally perform.[16] Commenters also have indicated that directors usually lack the expertise to make foreign custody determinations, and that, in discharging their responsibilities under the rule, directors rely almost exclusively on the analysis and recommendations of third parties such as the fund's adviser and primary custodian.[17]

Commenters, including the ICI and the Custodian Group, also have indicated that the rule's definition of an eligible foreign custodian is too restrictive.[18] Since rule 17f–5 was adopted, foreign custodial arrangements have evolved significantly. Today, the safekeeping of foreign investments typically is effected through the fund's primary custodian, which uses a global custody network consisting of various foreign custodians with which the primary custodian has established relationships.[19] In addition, many countries have securities depositories, which offer ''paperless'' book-entry systems for the custody of fund assets.[20]

A number of exemptive orders and no-action letters have addressed the

fund portfolios maintained some of their assets in foreign custody arrangements during the past year.

[3] Moving securities away from their primary market may entail additional costs in connection with hiring a servicing agent in the primary locality to collect and disseminate information with respect to the securities, transferring the securities to an eligible custodian and procuring insurance for possible loss in transit, and exchanging coupons for interest or dividends or for new shares in connection with a rights offering. Exemption for Custody of Securities by Foreign Banks and Foreign Securities Depositories, Investment Company Act Release No. 12354 (Apr. 5, 1982), 47 FR 16341, 16342 (hereinafter 1982 Proposing Release). Funds also may be prevented from, or delayed in, selling the securities if they are unable to make timely delivery to prospective purchasers in the primary market. *Id.* In addition, the best price for a foreign security typically may be obtained in its primary market. *Id.*

[4] 15 U.S.C. 80a–17(f).

[5] Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 264 (1940). Cf. 10 SEC Ann. Rep. 169 (1944) (discussing section 17(f) and its protections against theft and embezzlement by affiliated persons).

[6] Bank custodians must be subject to federal or state regulation and have at least $500,000 in aggregate capital, surplus, and undivided profits. Investment Company Act sections 2(a)(5), 15 U.S.C. 80a–2(a)(5) (defining bank), and 26(a)(1), 15 U.S.C. 80a–26(a)(1) (containing the $500,000 capital requirement). *See also* rule 17f–1, 17 CFR 270.17f–1 (custody by members of a U.S. securities exchange), rule 17f–2, 17 CFR 270.17f–2 (custody by funds themselves), and rule 17f–4, 17 CFR 270.17f–4 (custody by U.S. securities depositories). *See* generally Custody of Investment Company Assets with Futures Commission Merchants and Commodity Clearing Organizations, Investment Company Act Release No. 20313 (May 24, 1994), 59 FR 28286 (proposing rule 17f–6, which would permit custody of fund assets by futures commission merchants and commodity clearing organizations).

[7] 1982 Proposing Release, *supra* note 3, at 16342 n.11. Before rule 17f–5 was adopted, several Commission orders under section 17(f) permitted funds to place their assets with certain foreign banks if the fund's U.S. custodian assumed responsibility for the arrangement. *See* Chase Manhattan Bank, Investment Company Act Release Nos. 12002 (Oct. 23, 1981), 46 FR 53567 (Notice of Application) and 12053 (Nov. 20, 1981), 24 SEC Docket 109 (Order).

[8] Exemption for Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 14132 (Sept. 7, 1984), 49 FR 36080 (hereinafter 1984 Adopting Release). Rule 17f–5 was proposed in 1982 and reproposed in 1984. *See* 1982 Proposing Release, *supra* note 3; Exemption for Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 13724 (Jan. 17, 1984), 49 FR 2904 (hereinafter 1984 Reproposing Release). In addition, certain technical amendments were made to the rule after its adoption. Custody of Investment Company Assets Outside of the United States, Investment Company Act Release Nos. 14548 (May 31, 1985), 50 FR 24540 (hereinafter 1985 Release Proposing Amendments), and 14711 (Sept. 11, 1985), 50 FR 37654 (hereinafter 1985 Release Adopting Amendments])

[9] Rule 17f–5(a)(1)(i)–(iii). *See also* ''Discussion—Assets Maintained in Foreign Custody'' below.

[10] Rule 17f–5(a)(1)(iii), Rule 17f–5, Notes 1 and 2.

[11] Rule 17f–5(a)(2) and (3).

[12] Rule 17f–5(c)(2)(i) and (ii). Non-subsidiary foreign bank and trust companies also must be subject to foreign regulation.

[13] Rule 17f–5(c)(2)(iii) and (iv).

[14] Letter from Matthew P. Fink, President, ICI, to Marianne K. Smythe, Division Director, SEC (Jan. 18, 1993) (hereinafter ICI Letter I); Letter from Catherine L. Heron, Vice President (Tax and Pension), ICI, to Barry P. Barbash, Division Director, SEC (Oct. 13, 1993) (hereinafter ICI Letter II); Letter from Stephen K. West, Sullivan & Cromwell, to Barry P. Barbash, Division Director, SEC (Sept. 29, 1994) (hereinafter ICI Letter III); Letter from Daniel L. Goelzer, Baker & Mackenzie (on behalf of Bankers Trust Company, Boston Safe Deposit and Trust Company, Brown Brothers Harriman & Co., Chase Manhattan Bank, Morgan Guaranty Trust Company of New York, Morgan Stanley Trust Company, and State Street Bank and Trust Company), to Barry P. Barbash, Division Director, SEC (Feb. 9, 1994) (hereinafter Custodian Letter I); Letter from Daniel L. Goelzer, Baker & Mackenzie, to Elizabeth R. Krentzman, Special Counsel, SEC (Oct. 20, 1994) (hereinafter Custodian Letter II); Letter from Daniel L. Goelzer, Baker & Mackenzie, to Barry P. Barbash, Division Director, SEC (Nov. 3, 1994) (hereinafter Custodian Letter III). These letters are located in the Commission's Public Reference Room under File No. S7–23–95.

[15] *See* Division of Investment Management, SEC, Protecting Investors: A Half Century of Investment Company Regulation 270 n.78 (1992) (hereinafter Protecting Investors report).

[16] *Id.*

[17] *Id.*

[18] *See, e.g.,* ICI Letter II, *supra* note 14; Custodian Letter I, *supra* note 14.

[19] *See* John Paul Lee & Richard Schwartz, Global Custody: A Guide for the Nineties (1990). Funds also use different custodian networks for different geographical regions. *See* Andrew Sollinger, *Breaking Away,* Institutional Investor 171 (Sept. 1991).

[20] *See* Group of Thirty, Clearance and Settlement Systems in the World's Securities Markets 7, 51–64 (Mar. 1989) (hereinafter Group of Thirty Report).

eligibility of certain foreign banks and depositories to serve as fund custodians.[21] Obtaining administrative relief with respect to a particular custodian, however, may involve significant amounts of time and expense, and may delay or impede investment in some foreign jurisdictions. Exemptive orders and no-action letters also may have the unintended effect of suggesting Commission approval with respect to safekeeping abilities of some custodians, particularly in the case of foreign depositories.

Based on the evolution of foreign markets and related custodial systems, the concerns raised by industry commenters, and the Commission's administrative experience, the Commission is proposing amendments to rule 17f–5. The amendments seek to facilitate the use of foreign custody arrangements, consistent with the safekeeping of fund assets.

III. Discussion

A. Standard for Evaluating Foreign Custody Arrangements

Rule 17f–5 currently requires fund boards of directors to find that the fund's foreign custody arrangements are consistent with the best interests of the fund and its shareholders. This finding must be made with respect to the custody of the fund's assets in a particular country, each foreign custodian that holds the assets, and the foreign custody contract.[22] The Commission believes that the ''best interest'' standard may be overly broad and difficult for directors to apply. The standard and certain Notes to the current rule, for example, suggest that, in considering foreign custody arrangements, a fund's board needs to assess factors other than custodial risks, such as the risk of expropriation.[23]

The Commission believes that the amended rule should require foreign custody arrangements to be evaluated based on the level of safekeeping they will afford fund assets. Thus, the amended rule would require findings that the fund's foreign custody arrangements will provide reasonable protection for fund assets. The proposed ''reasonable protection'' standard is intended to facilitate evaluations of foreign custody arrangements by focusing exclusively on the safekeeping of fund assets.

B. Delegation of Board Responsibilities

1. Appropriate Delegate for Foreign Custody Decisions

The amended rule would permit fund boards to play a role more consistent with their traditional oversight role in connection with a fund's foreign custody arrangements, by allowing the board to delegate its responsibilities under the rule to the fund's investment adviser or officers or a U.S. or foreign bank.[24] The fund's investment adviser or custodian are likely to be in a better position than the fund's board to evaluate the sorts of factors that would be involved in assessing whether a custodial arrangement will afford reasonable protection for fund assets. Under the amended rule, the board could use different delegates for different foreign custody responsibilities.[25] This approach seeks to provide the board with the flexibility to delegate components of foreign custody decisions to the entity it determines is in the best position to evaluate those aspects of the fund's arrangements.[26]

In selecting particular delegates for foreign custody decisions, the board, under the amended rule, would need to find that it is reasonable to rely on the delegate to perform the delegated responsibilities.[27] Factors typically involved in making this determination would include the expertise of the delegate and, if applicable, the delegate's intended use of third party experts in performing its responsibilities.[28] Other relevant factors may include, in the case of foreign delegates, the board's ability to monitor the delegate's performance and the fund's ability to obtain U.S. jurisdiction over the delegate if problems arise in the delegate's performance.

The amended rule would not require the board to approve the fund's foreign custodians or other foreign custody matters on an initial or annual basis.[29] The board also would not be required to pre-approve or ratify actions taken by the delegate, such as the selection of particular foreign custodians or changes in those arrangements.[30] Instead, the amended rule would require the delegate to provide the board with written reports notifying the board of the placement of the fund's assets in a particular country and with a particular custodian.[31] The delegate also would have to provide written reports of any material changes in the fund's arrangements.[32] These reports, which are intended to facilitate the board's oversight of the delegate's performance, would be provided to the board no later than the next regularly scheduled board

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[21] *See* ''Discussion—Eligible Foreign Custodians'' below.

[22] *See* rule 17f–5(a)(1)–(3).

[23] *See* 1984 Reproposing Release, *supra* note 8, at 59608 (in making the required best interest finding, the board should weigh the risks of maintaining the securities in or near a country against the benefits of the arrangement).

[24] The Commission previously considered permitting U.S. custodians to select particular foreign custodians. 1982 Proposing Release, *supra* note 3, at 16345–46; 1984 Reproposing Release, *supra* note 8, at 2910. *See also* Protecting Investors report, *supra* note 15, at 270–71 (recommending that the Commission consider revising rule 17f–5 to make the fund's adviser or primary domestic custodian responsible for foreign custody matters, subject to the board's general oversight; also recommending that the Commission consider requiring indemnification protections from the fund's domestic custodian).

[25] The adviser, for example, could evaluate the risks associated with the custody of the fund's assets in a particular jurisdiction and a U.S. custodian could evaluate the risks of using specific foreign custodians.

[26] Proposed rule 17f–5(b). U.S. bank delegates would have to be subject to federal or state regulation by virtue of the definition of bank in section 2(a)(5) of the Act. Through the definition of ''qualified foreign bank,'' proposed rule 17f–5(d)(6) would require foreign delegates to be regulated as either a foreign banking institution or trust company by the government of the country under whose laws it is organized or any agency thereof.

[27] Proposed rule 17f–5(b)(1).

[28] *See generally* Custodian Letter II, *supra* note 14, at 2 (indicating that U.S. custodians can provide information regarding the nature and operation of a foreign country's custody facilities); Gordon Altman Butowsky Weitzen Shalov & Wein, A Practical Guide to the Investment Company Act 30 (1993) (indicating that, under the current rule, the fund's custodian typically provides the board with information concerning foreign legal restrictions and the qualifications of the foreign custodians used by the fund); Glorianne Stromberg, Regulatory Strategies for the Mid-'90s; Recommendations for Regulating Investment Funds in Canada (prepared for the Canadian Securities Administrators) 242 (Jan. 1995) (suggesting it is unlikely that an individual investment company or its adviser will have the expertise or bargaining power to deal with numerous and varied foreign custodians throughout the world).

[29] *See* rule 17f–5(a)(3) (requiring the board to annually approve foreign custody arrangements). *See also* Revision of Certain Annual Review Requirements of Investment Company Boards of Directors, Investment Company Act Release No. 19719 (Sept. 17, 1993), 58 FR 49919 (rule amendments eliminating certain annual approval requirements).

[30] The amended rule, however, would not preclude a board and its delegate from agreeing that the board's guidance would be sought on a particular matter, such as changing custodians. *See* Custodian Letter II, *supra* note 14, at 16–17 (expressing concerns that, without the board's involvement, responsibility for changing custodians could increase a delegate's liability if, for example, the delegate does not make a custodian change and fund assets are lost as a result of the custodian's insolvency).

[31] Proposed rule 17f–5(b)(2).

[32] *Id.* A material change in the fund's arrangements could include a delegate's decision to remove the fund's assets from a particular jurisdiction or custodian. A material change also could include circumstances that may adversely affect a foreign custodian's financial or operational strength, such as a change in control resulting from the custodian's sale. If appropriate, the delegate's report could discuss the reasons for continuing to maintain the fund's assets in the country or with a particular custodian.

meeting following the delegate's actions.[33]

The Commission requests comment on the proposed approach and possible alternatives. The Commission requests specific comment on the proposed entities to which foreign custody responsibilities could be delegated. In particular, the Commission requests comment whether U.S. and foreign bank delegates should be required to meet specific capital standards. The Commission also requests comment whether custodian delegates should be limited to U.S. banks.[34] Alternatively, should the rule permit the board to use any party that, in the board's judgment, would be qualified to make foreign custody decisions?

The Commission also requests comment whether the amended rule should require the same delegate to evaluate all aspects of the fund's arrangements or tie certain responsibilities to particular delegates.[35] The ICI and the Custodian Group, for example, indicated that the fund's adviser should be the exclusive delegate for considering a county's custodial risks because of the relationship between decisions to invest in the country and maintain the fund's assets in that country.[36] They also suggested that U.S. bank custodians should be the only eligible delegates for selecting the fund's foreign custodians.[37] The ICI suggested that evaluating foreign custodian arrangements is within the expertise of the fund's U.S. custodian and not the fund's adviser.[38] The Custodian Group expressed concerns about advisers being in a position to make a U.S. custodian use a foreign custodian with which the U.S. custodian does not have a pre-existing relationship and whose practices and procedures do not meet the U.S. custodian's standards.[39]

Although these approaches may limit flexibility, they could eliminate potential questions between different delegates concerning their respective roles in foreign custody matters. They also could eliminate the need to attribute various foreign custody risks to the practices of a particular country or foreign custodian.[40]

The Commission also requests comment on the proposed requirements relating to the board's delegation. The Commission requests specific comment on requiring the board to determine that it is reasonable to rely on the delegate to perform the delegated responsibilities and whether another standard would be more appropriate. The Commission also requests comment on requiring delegates to provide the board with periodic reports concerning the fund's arrangements. In particular, does the proposed approach appropriately address the role of the board in foreign custody matters? Should, for example, the rule require the board to establish guidelines and procedures governing a delegate's responsibilities?[41] Should the rule specify particular representations that delegates must make in performing their responsibilities?[42] Should the rule mandate the standard of care to be used by delegates in making custodial decisions?[43]

Finally, the Commission requests comment generally on the relationship between the level of the delegate's role in selecting foreign custodians and the flexibility that a fund should have in using particular custodians. For example, current rule 17f–5 both limits the class of foreign banks that are eligible to hold fund assets (based on, among other things, their shareholder's equity) and requires the fund's board to select an appropriate custodian from that class based on several qualitative factors (such as the bank's reputation). As discussed below, the amended rule would not require foreign custodians to satisfy an objective financial standard.[44] The amended rule instead would require the board's delegate to select foreign custodians based on the qualitative determination that the custodian will provide reasonable protection for the fund's assets.[45]

The Commission requests comment on an alternative approach that would rely exclusively on objective standards to determine those custodians that would be eligible to hold fund assets. Under this approach, having determined that a potential custodian meets the rule's objective standards, a delegate would not be required to evaluate the appropriateness of the foreign custodian based on any qualitative determination. Nor would the delegate be required by the rule to provide the fund's board with specific reports concerning the fund's arrangements.[46] Commenters favoring this approach should recommend specific objective standards that would not unduly limit or preclude the use of qualified foreign custodians.[47] Commenters also should consider whether objective standards, by themselves, would protect fund assets or whether, consistent with the current rule, delegates should be required to consider additional qualitative factors.

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[33] Proposed rule 17f–5(b)(2). *See* ICI Letter I, *supra* note 14, at 6–7; Custodian Letter I, *supra* note 14, at 18 (recommending that delegates provide written year-end reports).

[34] Several exemptive orders relating to rule 17f–5 involve foreign banks and their foreign subsidiaries. *See, e.g.,* Barclays Bank PLC, Investment Company Act Release Nos. 20128 (Mar. 10, 1994), 59 FR 12390 (Notice of Application) and 20192 (Apr. 5, 1994), 56 SEC Docket 1117 (Order).

[35] Requiring the same delegate to evaluate all aspects of foreign custody arrangements could effectively eliminate the potential for U.S. custodians to serve as delegates, since the Custodian Group has suggested that U.S. custodians may be unwilling to evaluate the prevailing custodial risks of a particular country. *See infra* note 36 and accompanying text.

[36] ICI Letter I, *supra* note 14, at 4, n.5; ICI Letter III, *supra* note 14, at 1–3; Custodian Letter I, *supra* note 14, at 6–7; Custodian Letter II, *supra* note 14, at 2. *See also* Custodian Letter III, *supra* note 14, at 2. The Custodian Group indicated that, because decisions relating to a country's prevailing custodial risks may depend on the fund's investment strategies and willingness to accept certain risks, custodians are not in a position to make these assessments. Custodian Letter I, *supra* note 14, at 6–7; Custodian Letter II, *supra* note 14, at 2; Custodian Letter III, *supra* note 14, at 2. The Custodian Group also asserted that requiring U.S. custodians to evaluate prevailing custodial risks would transfer new liabilities to U.S. banks, which could raise bank regulatory concerns. *Id.* at 5–6.

As discussed *infra* notes 62–68 and accompanying text, the ICI and the Custodian Group viewed differently the responsibilities involved in determining whether to maintain custody of fund assets in a particular country.

[37] ICI Letter III, *supra* note 14, at 3 and at 1, 6 (Exhibit A); Custodian Letter I, *supra* note 14, at 8–9 and at 3–4, 7–8 (Exhibit A) (also recommending that boards be permitted to delegate to U.S. custodians the authority to negotiate and approve foreign custody contracts and to monitor the fund's arrangements).

[38] ICI Letter III, *supra* note 14, at 3.

[39] Custodian Letter I, *supra* note 14, at 8.

[40] Under the current rule, for example, the board is responsible for both the decision to place fund assets in a particular country and with a particular custodian. If a country's prevailing custodial risks are not evaluated by the board in deciding to maintain assets in a particular jurisdiction, these risks would be considered in selecting particular custodians in that jurisdiction. *See also infra* notes 49 and 71 and accompanying text.

[41] *See* ICI Letter III, *supra* note 14, at 1–3 (Exhibit A); Custodian Letter I, *supra* note 14, at 3–5 (Exhibit A) (recommending board-approved guidelines and procedures that include factors governing a delegate's selection of foreign custodians). *See also* rules 10f–3, 17a–7, and 17e–1 under the Act, 17 CFR 270.10f–3, –17a–7, –17e–1 (consistent with this approach).

[42] *See* ICI Letter III, *supra* note 14, at 5 (Exhibit A); Custodian Letter I, *supra* note 14, at 7 (Exhibit A) (recommending that delegates make certain representations to the board prior to using a foreign custodian).

[43] *See* ICI Letter III, *supra* note 14, at 3 and at 1, 6 (Exhibit A); Custodian Letter I, *supra* note 14, at 8–9 and at 3–4, 7–8 (Exhibit A) (recommending that, in selecting foreign custodians, U.S. bank delegates be required to act with the degree of care, prudence, and diligence of a reasonable professional custodian under applicable state law).

[44] *See* ''Eligible Foreign Custodians'' below.

[45] *See* ''Selecting Foreign Custodians'' below.

[46] This approach would be consistent with the provisions of section 17(f) governing the custody of fund assets with a domestic bank. *See supra* note 6.

[47] *See* ''Eligible Foreign Custodians'' below.

2. Custody in Foreign Countries

a. Prevailing Custodial Risks

Rule 17f–5 requires a fund's board to approve each country where the fund's assets will be maintained.[48] Because placing fund assets in a particular country may affect the safekeeping of those assets, the amended rule would continue to address the risks associated with custody of a fund's assets in a foreign country.[49]

The amended rule would require a finding that custody of the fund's assets in a particular country can be maintained in a manner that will provide reasonable protection for those assets.[50] Making the proposed determination would not require a finding that fund assets could never be lost in a foreign country.[51] Rather, the proposed determination would require the delegate to consider whether the fund's assets will be maintained in a manner that will provide reasonable *protection* based on all relevant factors and, in particular, the factors specified in the amended rule.[52]

The amended rule would require the delegate to evaluate, among other factors, the prevailing practices in a country for the safekeeping of the fund's assets.[53] Evaluating a country's custodial practices typically would involve, among other things, considering the manner in which securities are maintained (*e.g.*, whether securities are held in physical or uncertificated form), the physical protections available for certificated securities (*e.g.*, the use of vaults or other facilities), the method of keeping custodial records (*e.g.*, the use of computers, microfilm or paper records), custodial communication systems (*e.g.*, the use of electronic media, telex, or telephone), security and data protection practices (*e.g.*, alarm systems and the use of pass codes and back-up procedures for electronically stored information), and the protections provided by governmental or other regulatory oversight.[54] These considerations seek to address the systemic custodial risks of a particular country. Although evaluating a country's custodial practices would require knowledge of foreign custody arrangements, it would not require a finding concerning the protections provided by any specific foreign custodian.[55]

In evaluating the custodial risks of a particular country, the delegate would be required to assess any adverse effects foreign law may have on the safekeeping of fund assets.[56] The delegate specifically would have to consider whether foreign law would restrict (A) the access of the fund's accountants to the custodian's books and records and (B) the fund's ability to recover its assets in the event of a custodian's bankruptcy or a loss of assets in the custodian's control. These factors are derived from the Notes to the current rule.[57] The amended rule would broaden the current rule, however, by requiring consideration of all relevant foreign legal constraints, in addition to those governing the custodian's books, bankruptcy, and loss of assets.[58]

In addition, the amended rule would permit the delegate to consider any special arrangements that mitigate prevailing custodial risks.[59] Such arrangements would include, for example, insurance or guarantee agreements covering the loss of fund assets. Such arrangements also may include instituting special procedures that depart from prevailing practices and are designed to reduce custodial risks. A recent Division no-action position, for example, was based, in part, on the existence of certain contractual protections that would not otherwise have been given in the course of the country's prevailing custody practices.[60]

The Notes to the current rule instruct the fund's board to consider the likelihood of various adverse political events (*e.g.*, the expropriation or freezing of assets) and potential difficulties in converting the fund's cash and cash equivalents to U.S. dollars.[61] The amended rule would not address these risks. Although these risks may affect the safety and liquidity of fund assets, they appear to relate more to the investment risks of a particular country than the custodial risks of that country. Adverse political events and foreign exchange problems, for example, may threaten fund assets regardless of where the assets are held. The Commission believes that these risks should be considered in connection with the determination that a fund should *invest* in a particular country.

The ICI and the Custodian Group recommended different approaches to evaluating a country's prevailing custodial risks. The ICI recommended eliminating country-related risk determinations from the rule.[62] The ICI indicated that, for the most part, the risks of maintaining assets in a particular jurisdiction (*e.g.*, expropriation risks) are independent of the risks associated with using a specific

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[48] See rule 17f–5(a)(1)(i).

[49] *See* Custodian Letter I, *supra* note 14, at 6–7 (indicating that deciding to place assets in a particular country may mean accepting certain risks if custodial protections comparable to those of the United States are not available in the foreign jurisdiction).

The proposed approach also seeks to address circumstances where different delegates assess the custodial risks of a particular country and the risks of using a particular foreign custodian. If, for example, a country's prevailing custodial risks are not evaluated by a delegate in deciding to maintain assets in the country, a different delegate selecting the fund's foreign custodians could determine that the custody of the fund's assets in that country presents unacceptable risks, without regard to the protections provided by any specific custodian. Delegates making the respective country-wide and custodian risk assessments could, in effect, disagree over the appropriateness of maintaining fund assets in the country. Such disputes may have to be resolved by the board, which could undermine the purposes of delegation by re-involving the board in foreign custody decisions.

[50] Proposed rule 17f–5(a)(1). Consistent with the current rule, this finding would have to be made prior to placing the fund's assets in the country. The amended rule would not address the *investment* risks associated with investing in foreign securities, since these risks fall outside the scope of rule 17f–5.

[51] This approach would be consistent with the current rule.

[52] Throughout this release, references are made to a delegate's responsibilities, since the amendments contemplate that the board will use one or more delegates to establish and oversee the fund's foreign custody arrangements. If, however, the board decides to retain decision-making authority for foreign custody matters, these responsibilities would remain with the board. The amended rule uses the term *foreign custody manager* to recognize that a delegate or the board may assume responsibility for the fund's arrangements. *See* proposed rule 17–f(d)(1).

[53] Proposed rule 17f–5(a)(1)(i).

[54] The importance of each of these factors would depend on the particular jurisdiction and related securities market. For example, vault facilities and alarm systems may be less important in markets where securities are primarily held in book-entry form. Similarly, the need for electronic information systems may be more important in markets with a high volume of securities transactions than in markets where trading is less frequent. *See* Custodian Letter II, *supra* note 14, at 4–5.

[55] *See* ''Selecting Foreign Custodians'' below.

[56] Proposed rule 17f–5(a)(1)(ii).

[57] *See* rule 17f–5, Notes 1(a)–(c).

[58] In evaluating any adverse effects foreign law may have on the safekeeping of fund assets, consideration of U.S. legal standards may be relevant. In determining whether custody of fund assets in a particular country will provide reasonable protection for those assets, however, delegates would not be required to find that the protections provided by foreign law are equivalent to U.S. standards.

[59] Proposed rule 17f–5(a)(1)(iii).

[60] Templeton Russia Fund, Inc. (pub. avail. Apr. 18, 1995) (contracts between the fund's foreign custodian and certain registries).

[61] Rule 17f–5, Notes 1(d)–(e).

[62] ICI Letter III, *supra* note 14, at 3–7. The ICI's proposal would require the decision to place assets in a particular jurisdiction to have been made by the board or adviser as a condition precedent to selecting specific foreign custodians. *Id.* at 6–7. The ICI indicated that the board or adviser would consider the custodial risks of a particular jurisdiction in deciding whether to *invest* in the country. ICI Letter I, *supra* note 14, at 4, n.5; ICI Letter III, *supra* note 14, at 6–9.

foreign custodian.[63] The ICI indicated that, as a consequence, assessments of country-related risks are not appropriate considerations for a foreign custody rule.[64] The ICI also expressed concerns that requiring evaluations of a country's prevailing custodial risks would transfer to the country selection process the responsibility to determine whether one or more custodians in a country could provide reasonable protections for the fund's assets.[65]

The Custodian Group recommended that the rule require an evaluation of a country's prevailing custodial risks prior to placing assets in that jurisdiction.[66] As to the factors governing these assessments, the Custodian Group recommended that the Commission consider adding two new factors to the Notes to the current rule.[67] The Custodian Group's new factors would require the board's delegate to evaluate each securities depository in the country and to consider whether the financial systems in the country, including the methods for securities settlement and custody, are sufficient to provide reasonable protection for the fund's assets.[68]

The Commission requests comment on these two approaches. The Commission also requests comment on an alternative approach that would make evaluations of a country's prevailing custodial risks part of the custodian selection process. Such an approach would simplify the rule and should not raise any safekeeping concerns since the factors that relate to a country's prevailing custodial risks would be evaluated in connection with a custodian's selection.[69]

b. Compulsory Depositories

Certain countries have depositories the use of which is unavoidable for the custody of foreign securities purchased by a fund (a ''compulsory depository''). Because the custody of fund assets in a foreign country may necessitate using any compulsory depository in the country, the amended rule would make the selection of compulsory depositories part of the assessment of a country's prevailing custodial risks.[70] The amended rule would require a finding that using a compulsory depository will provide reasonable protection for the fund's assets based on factors specified in the amended rule governing the selection of foreign custodians.[71]

The amended rule would define a compulsory depository as a depository the use of which is mandatory (i) by law or regulation, (ii) because securities cannot be withdrawn from the depository, or (iii) because maintaining securities outside the depository is not consistent with prevailing custodial practices.[72] Part (iii) of the proposed definition is intended to recognize cases when a depository's use is effectively compulsory as a result of prevailing practices even though securities may be held outside of the depository.[73] Determining whether a depository's use is compulsory would depend on the facts and circumstances presented.[74] Factors relevant to making this determination may include whether virtually all securities are maintained in the depository, whether the depository's involvement is required to transfer securities ownership, and whether significant time and expense are associated with keeping securities outside the depository.[75]

The Commission requests comment on requiring compulsory depositories to be evaluated in connection with assessments of a country's prevailing custodial risks.[76] The Commission also requests comment on the proposed definition of compulsory depository.

3. Selecting Foreign Custodians[77]

The amended rule would require a finding that using a particular custodian will provide reasonable protection for the fund's assets.[78] Selecting foreign custodians would not involve reassessments of a country's prevailing custodial risks and the use of any compulsory depositories. Under the amended rule, these matters would be evaluated in determining whether the custody of the fund's assets in the country will provide reasonable protection for those assets.[79]

In selecting foreign custodians, the delegate would not be required to find that assets could never be lost while in the foreign custodian's possession. Instead, the amended rule would focus on the reasonableness of a custodian's protections based on all relevant factors and, in particular, those factors specified in the amended rule.[80] The proposed factors that would govern the selection of foreign custodians are

[63] ICI Letter III, *supra* note 14, at 3–7, 10. As discussed in the text above, the amended rule would not address political and foreign exchange considerations.

[64] ICI Letter III, *supra* note 14, at 6–7, 10.

[65] *Id*. at 3–8 (commenting on the Custodian Group's recommendations). *See supra* 49 and 55 notes and accompanying text (regarding the approach of the amended rule).

[66] Custodian Letter I, *supra* note 14, at 3–7.

[67] *Id*. at 7.

[68] *Id*.

[69] This approach, however, may have potential drawbacks in connection with boards selecting different delegates to evaluate different aspects of the fund's arrangements. *See supra* note 35 and *infra* note 70 and accompanying text.

[70] *See* Custodian Letter I, *supra* note 14, at 4–5, 6–7 and Custodian Letter II, *supra* note 14, at 11–12 (indicating that, once a fund invests in a country with a compulsory depository, the fund's custodian (or any foreign bank custodian in that country) has no choice but to use the compulsory depository). The current rule does not distinguish between compulsory depositories and other foreign custodians or associate the use of any specific foreign custodian with the decision to maintain assets in a particular country.

[71] Proposed rule 17f–5(a)(1) and (a)(1)(iv). *See also* proposed rule 17f–5(a)(2)(i)–(iii), discussed *infra* notes 80–91 and accompanying text. The Commission recognizes that, conceptually, the decision to use a compulsory depository appears to fall within the scope of the rule's provisions governing the selection of foreign custodians (discussed in the text below). The Commission also recognizes that a significant number of foreign depositories may be considered compulsory depositories. Consequently, requiring compulsory depositories to be evaluated in connection with a country's prevailing custodial risks could mean that the majority of depository decisions will not be made by the delegate selecting the fund's other foreign custodians.

[72] Proposed rule 17f–5(d)(4). *See also* proposed rule 17f–2(d)(3)(iv) (defining an eligible foreign custodian to include a compulsory depository). The proposed definition should be construed narrowly. If maintaining assets in a depository or with a foreign bank custodian are feasible alternatives, the Commission believes the decision to use a depository should be made in connection with the custodian selection process. See ''Selecting Foreign Custodians'' below.

[73] *See* ICI Letter III, *supra* note 14, at 10 (Exhibit A); Custodian Letter I, *supra* note 14, at 13 (Exhibit A) (suggesting that a depository should be considered to be compulsory if securities held outside the depository cannot be traded or transferred in accordance with routine clearance and settlement practices).

[74] When different delegates evaluate country-wide and foreign custodian risks and disagree on whether using a depository is compulsory, the depository's status may have to be determined by the board.

[75] *See* Custodian Letter II, *supra* note 14, at 14–15 (discussing these considerations).

[76] *See* ICI Letter III, *supra* note 14, at 10 (recommending that evaluations of compulsory depositories be part of the custodian selection process); Custodian Letter I, supra note 14, at 4–5, 6–7 (consistent with proposed approach).

[77] Any custodian selected by the delegate would have to be an ''eligible foreign custodian'' as defined in proposed rule 17f–5(d)(3). *See* ''Eligible Foreign Custodians'' below.

[78] Proposed rule 17f–5(a)(2). *See also* ICI Letter III, *supra* note 14, at 5 (Exhibit A); Custodian Letter I, *supra* note 14, at 7 (Exhibit A) (recommending that U.S. bank delegates be required to represent to the board that a foreign custodian's internal controls or established procedures are adequate to provide reasonable protection for fund assets).

The proposed approach would be consistent with that governing country-wide custodial risks evaluations. Like the current rule, the proposed finding of reasonable protection would have to be made prior to placing the fund's assets with the foreign custodian.

[79] Proposed rule 17f–5(a)(2). *See* ''Custody in Foreign Countries'' above.

[80] Proposed rule 17f–5(a)(2) (i) through (iii). As indicated in the text accompanying note 71 *supra*, proposed rule 17f–5(a)(1) would require delegates that evaluate the protection afforded fund assets held by a compulsory depository to consider the factors set forth in rule 17f–5(a)(2) (i) through (iii) governing the selection of foreign custodians.

derived from the Notes to the current rule.[81]

The Notes to rule 17f–5 address a foreign custodian's financial strength, its general reputation and standing in the country, and its ability to provide efficiently the custodial services required and the relative costs of those services.[82]

In addition to a custodian's financial strength,[83] the amended rule would address a custodian's reputation and standing generally, rather than in the country where the custodian is located.[84] A custodian's reputation and standing outside of its own country may be relevant, especially in the case of multi-national banks. By no longer tying consideration of a custodian's reputation and standing to the country where the custodian is located, the amended rule seeks to provide delegates with greater flexibility to evaluate a custodian's reputation based on the facts and circumstances relevant to the particular custodian. The amended provision also would require, in the case of a securities depository, consideration of the depository's operating history and number of participants.[85]

In addition, the amended provision would no longer address a custodian's efficiency and relative costs. Weighing a custodian's efficiency against the costs of its services does not appear to be particularly germane to the safety of fund assets in the hands of that custodian. Although these matters would not be addressed under the amended rule, the delegate may appropriately consider custodial efficiency and costs in selecting a foreign custodian.

The Notes to rule 17f–5 also state that the fund's board should consider whether a foreign custodian will provide a level of safeguards not materially different from those of the fund's U.S. custodian.[86] The Commission believes that foreign custodian arrangements, although different from U.S. arrangements, nonetheless may provide reasonable and effective safeguards for fund assets.[87] Accordingly, the amended rule would focus on whether a foreign custodian would provide reasonable protection for fund assets, and would specifically require the delegate to consider the custodian's practices, procedures, and internal controls in making this determination.[88]

The protections provided by custodians within a foreign country may vary widely. Thus, one custodian's practices and internal controls may provide reasonable protections, while those of other custodians may not. In addition, although the rule would not require parity between foreign and U.S. custodian arrangements, reference to U.S. standards may be relevant in determining whether a foreign custodian's practices and internal controls will reasonably protect fund assets.

Finally, the amended rule would require the delegate to assess the likelihood of U.S. jurisdiction over and enforcement of judgments against a foreign custodian.[89] The proposed requirement would broaden the Notes to the current rule, which address whether a foreign custodian has any branch offices in the United States.[90] Under the proposed approach, in addition to considering domestic branches, the delegate could take into account other jurisdictional and enforcement means, such as whether a foreign custodian has appointed an agent for service of process in the United States or consented to U.S. jurisdiction.[91]

The Commission requests comment on the proposed approach and the factors that delegates would be required to consider in selecting foreign custodians.

4. Foreign Custody Contracts

a. Proposed Approach

Rule 17f–5 currently requires the fund's foreign custody arrangements to be governed by a written contract that has been approved by the board.[92] The current rule also enumerates specific provisions that must be included in the contract. The contract generally must provide that: (A) The fund will be indemnified and its assets insured in the event of loss; (B) the fund's assets will not be subject to liens or other claims in favor of the foreign custodian or its creditors; (C) the fund's assets will be freely transferable without the payment of money; (D) records will be kept identifying the fund's assets as belonging to the fund; (E) the fund's independent public accountants will be given access to those records or confirmation of the contents of those records; and (F) the fund will receive periodic reports, including notification of any transfers to or from the fund's account.[93]

The amended rule would retain the requirement of a written foreign custody contract, but would not enumerate specific provisions that must be included in the contract.[94] In proposing this approach, the Commission does not intend to imply that the contract provisions required under the current rule are not important. Rather, the Commission believes that funds should be able to establish contractual arrangements that reflect the particular circumstances presented. Contract provisions other than those currently required may be important in any given foreign market or for a specific foreign custodian. In addition, certain practical problems and interpretive questions have arisen regarding the current contract requirements.[95] As custody practices change, similar issues may

[81] *See* rule 17f–5, Notes 2(a)–(d).

[82] Rule 17f–5, Note 2(a).

[83] In evaluating a custodian's financial strength, the delegate, for example, may consider capitalization, financial history, and any other lines of business undertaken by the custodian and the potential effects of such businesses on the custodian's financial condition and operations.

[84] Proposed rule 17f–5(a)(2)(i).

[85] These matters currently are addressed as a separate Note under rule 17f–5. Rule 17f–5, Note 2(d). Although certain matters (*i.e.*, operating history and number of participants) would specifically apply to depositories, all of the factors set forth in proposed rule 17f–5(a)(2) (i) through (iii) would have to be considered when selecting foreign depositories.

The Custodian Group indicated that information concerning certain depositories may be difficult or impossible to obtain. The ICI and the Custodian Group recommended that the rule address this problem by requiring consideration of a depository's operating history if such information is ''reasonably obtainable.'' ICI Letter III, *supra* note 14, at 2–3 (Exhibit A); Custodian Letter I, *supra* note 14, at 14–16 and at 4 (Exhibit A).

The extent (or absence) of information about a foreign depository may be relevant in determining whether the depository will provide reasonable protection for fund assets. For example, the lack of available information about a depository's operating history may militate against the depository's use. Consequently, the amended rule would not make an exception when information about a depository is not available.

[86] Rule 17f–5, Note 2(b).

[87] *See* Custodian Letter II, *supra* note 14, at 3–6.

[88] Proposed rule 17f–5(a)(2)(ii). *See* ICI Letter III, *supra* note 14, at 2 (Exhibit A); Custodian Letter I, *supra* note 14, at 9–11 and at 4 (Exhibit A) (recommending that the rule focus on the protections provided by foreign custodians rather than the equivalency of those protections to U.S. standards).

When different delegates evaluate country-wide and foreign custodian risks, the delegates may come to different determinations, which are attributable to the different assessments involved. *See* text accompanying note 55 *supra* (regarding evaluations of a country's prevailing custodial risks).

[89] Proposed rule 17f–5(a)(2)(iii).

[90] *See* rule 17f–5, Note 2(c).

[91] The Commission recognizes that U.S. jurisdiction may not be obtainable over certain foreign depositories. As with the other factors under the amended rule, an affirmative finding of U.S. jurisdiction would not be required. Rather, the absence of U.S. jurisdiction would have to be considered in making the overall determination that using the custodian will provide reasonable protection for fund assets.

[92] Rule 17f–5(a)(1)(iii).

[93] Rule 17f–5(a)(1)(iii)(A)–(F).

[94] Proposed rule 17f–5(a)(3).

[95] *See* ''Request for Comment on Specific Contract Provisions'' below.

arise in the future that could delay or preclude certain arrangements.

The amended rule would require a finding that the foreign custody contract will provide reasonable protection for the fund's assets based on all factors relevant to the safekeeping of such assets. Determining whether a contract provides such protection typically would involve consideration of the contract provisions required under the current rule as well as those customarily provided by U.S. custodians and other foreign custodians operating in the country.[96]

In addition, the Commission understands that funds often contract with their primary custodians for foreign custody services; the primary custodian, in turn, enters into separate contracts with the fund's foreign bank custodians. When the fund's contractual relationship with a foreign custodian is indirect, the delegate should consider the fund's rights vis-a-vis both the contracting intermediary custodian and the foreign custodian that holds the fund's assets. The delegate, for example, should consider whether the intermediary custodian has agreed in its contract with the fund to obtain indemnification or other contractual protections from the foreign custodian. The delegate also should consider, among other things, whether the fund would be able to assert claims directly against the foreign custodian in the event of loss.[97]

The Commission also understands that depository arrangements typically are not governed by contract.[98] In addition, a foreign depository's services often are not provided directly to the fund or its primary custodian.[99] Depository services typically are provided through foreign banks that have an established relationship with the depository.[100] The amended rule, like the current rule, would not require foreign depositories to be parties to the fund's foreign custody contract.[101] Instead, the delegate should consider the responsibilities of the bank custodian interacting with the depository, along with the rights of the fund in relation to both the intermediary custodian and depository.

The Commission requests comment on the proposed approach. The Commission requests specific comment whether the amended rule should require specific contract provisions. In particular, would the proposed approach facilitate the use of foreign custody arrangements or create difficulties in obtaining important contractual protections from foreign custodians? For example, codifying specific contract requirements may offer certain advantages to fund shareholders by removing these protections from the items that could be subject to negotiation. The Commission also requests comment whether the amended rule should include specific factors (such as those discussed above) that delegates would have to consider in evaluating the protections provided by a contract.[102]

b. Request for Comment on Specific Contract Provisions

The ICI and the Custodian Group recommended retaining the rule's current contract requirements, with certain modifications.[103] The Commission requests comment on the current provisions and the related recommendations of the ICI and the Custodian Group. In addition, the Custodian Group indicated that the rule's current contract requirements have become industry standards for custodial arrangements involving foreign banks.[104] The Commission requests specific comment whether this is the case.

The ICI and the Custodian Group recommended modifying the current requirement prohibiting liens on the fund's assets.[105] The ICI and the Custodian Group indicated that this requirement should not apply to cash, since, in most jurisdictions, cash may become subject to creditors' claims if a custodian becomes bankrupt.[106]

The ICI and the Custodian Group also recommended modifying the current recordkeeping requirement to specifically recognize the permissibility of ''omnibus accounts.'' [107] These accounts contain the assets of more than one custodial customer, and are established by intermediary custodians with foreign banks and securities depositories.[108] In an omnibus account structure, the intermediary, which is reflected on the foreign custodian's books as the record owner of the assets, is responsible for maintaining records that identify each of its customer's assets.[109]

The ICI and the Custodian Group disagreed on how the rule should address indemnification and insurance.[110] The ICI recommended

[96] The proposed approach would not require a finding that the foreign custody contract provides protections equivalent to U.S. safeguards or that the contract addresses every possible contingency for loss of the fund's assets. Rather, the amended rule would focus on whether the contract would provide reasonable protection for the fund's assets.

[97] *See, e.g.,* Citibank, N.A., Investment Company Act Release Nos. 18710 (May 15, 1992), 57 FR 21835 (Notice of Application) and 18782 (June 12, 1992), 51 SEC Docket 1533 (Order) (contract between the intermediary U.S. custodian and the foreign custodian gives the fund the right to enforce the agreement directly against the foreign custodian).

[98] See Custodian Letter II, *supra* note 14, at 6–8. The ICI and the Custodian Group recommended that any required contract provisions should not apply to depositories. ICI Letter III, *supra* note 14, at 3–5 (Exhibit A); Custodian Letter I, *supra* note 14, at 11–12. The ICI and the Custodian Group recommended requiring the rules or established practices of a depository to provide specific safeguards relating to the free transferability of the fund's assets, the keeping of adequate records, and periodic reporting and notification of asset transfers. ICI Letter III, *supra* note 14, at 3–5 (Exhibit A); Custodian Letter I, *supra* note 14, at 12.

[99] *See* Custodian Letter I, *supra* note 14, at 11–12.

[100] *Id.* (indicating that, from the fund's perspective, a depository typically will be a custodian for a foreign bank custodian, which is itself a subcustodian of the fund's U.S. custodian). *See* also Custodian Letter II, *supra* note 14, at 6–8.

[101] *See* Investment Company Institute 2–3 (pub. avail. Nov. 4, 1987) (hereinafter 1987 Division Letter).

[102] Including specific factors does not appear to be necessary since the Commission understands that foreign custody contracts incorporating important contractual protections are a matter of standard industry practice. *See, e.g.,* Custodian Letter I, discussed *infra* note 103.

[103] ICI Letter I, *supra* note 14, at 5 (indicating that it is appropriate for the rule to require certain essential contract provisions); Custodian Letter I, *supra* note 14, at 11. The ICI and the Custodian Group recommended that the contract requirements apply only to foreign bank custodians. See *supra note* (regarding the ICI and the Custodian Group's recommendations for depository arrangements).

[104] *See* Custodian Letter I, *supra* note 14, at 11

[105] ICI Letter III, *supra* note 14, at 12; Custodian Letter I, *supra* note 14, at 21–22. *See* rule 17f–5(a)(1)(iii)(B).

[106] ICI Letter III, *supra* note 14, at 12; Custodian Letter I, *supra* note 14, at 21–22.

[107] ICI Letter III, *supra* note 14, at 3–4 (Exhibit A); Custodian Letter I, *supra* note 14, at 22–23. See rule 17f–5(a)(1)(iii)(D).

[108] Custodian Letter I, *supra* note 14, at 22–23. The ICI and the Custodian Group also recommended specifically recognizing the role of U.S. intermediary custodians in connection with the current provisions relating to indemnification and insurance, access to the foreign custodian's books, and periodic reporting. ICI Letter III, supra note , at 3–4 (Exhibit A); Custodian Letter III, *supra* note 14, at 5–6 (Exhibit A). This approach may help clarify the rule's requirements, although it does not appear to be necessary.

[109] Although the recommended change may help clarify the rule's requirements, it is not necessary. The current rule does not prescribe a specific manner for keeping custody records. *See* also State Street Bank and Trust Company (pub. avail. Feb. 28, 1995) (regarding the permissibility of omnibus accounts).

[110] By its terms, rule 17f–5 requires foreign custody contracts to provide that the fund will be indemnified *and* its assets insured in the event of loss. Rule 17f–5(a)(1)(iii)(A). Consistent with a prior Division no-action position, the ICI and the Custodian Group recommended requiring either indemnification or insurance. ICI Letter III, *supra* note 14, at 5 (Exhibit A); Custodian Letter III, *supra* note 14, at 4 (Exhibit B). *See also* 1987 Division Letter, *supra* note 101, at 2–3. The ICI and the Custodian Group also recommended requiring fund assets to be protected for losses resulting from a foreign custodian's failure to use reasonable care. ICI Letter III, *supra* note 14, at 5 (Exhibit A);

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that, instead of requiring indemnification or insurance as a contract provision, the rule require the fund's U.S. custodian (acting as the delegate responsible for the foreign custody contract) to represent that the fund's overall contractual arrangements provide indemnification or insurance protections.[111] The ICI indicated that, under its approach, indemnification or insurance protections could appear either in the fund's contract with its U.S. custodian or in the contract between the U.S. custodian and the foreign custodian.[112] The Custodian Group objected to the ICI's approach, arguing that it would make custodian delegates responsible for indemnifying or insuring depository arrangements.[113]

5. Monitoring Custody Arrangements and Withdrawing Assets From Custodians

The amended rule would require the delegate to monitor the continuing appropriateness of the custody of the fund's assets in a country, with a particular custodian, and under the foreign custody contract.[114] This requirement seeks to address the possibility that the fund's arrangements, although consistent with the amended rule's requirements when initially entered into, may later fail to provide reasonable protection for fund assets.[115] The proposed monitoring requirement would involve establishing a means of receiving sufficient and timely information to respond to material changes.[116] Determining appropriate monitoring procedures would depend on the facts and circumstances involved. For example, custodial practices in certain countries or used by certain custodians may require frequent monitoring, while other arrangements require significantly less oversight.[117]

If an arrangement no longer meets the requirements of the amended rule, the fund would have to withdraw its assets from the country or custodian as soon as reasonably practicable. The current rule requires a fund in these circumstances to withdraw its assets from a foreign custodian as soon as reasonably practical, but specifies that, in any event, assets withdrawals must be made within 180 days.[118] The amended rule would eliminate the 180 day provision and focus instead on the importance of taking prompt action based on the circumstances presented. For example, a fund that invests its assets primarily in a single country may require more time to withdraw those assets than a fund that has placed only a small percentage of its assets with a particular custodian or in a particular country.

The Commission requests comment on the proposed monitoring requirement. The Commission requests specific comment whether the amended rule should require asset withdrawals to be effected within a specific time period.[119] Commenters favoring this approach should indicate what the time period should be and whether a period of less than 180 days (*e.g.*, 90 days) would be appropriate. The Commission also requests comment whether, as an alternative or in addition to providing a specific grace period, the rule should require the use of interim arrangements, such as insurance or third-party indemnification agreements, to protect against possible loss of fund assets until alternative arrangements can be made.

C. Eligible Foreign Custodians

1. Banks and Trust Companies

a. Proposed Approach

The amended rule would define an ''eligible foreign custodian'' as foreign banks and trust companies that are subject to foreign bank or trust company regulation.[120] An eligible foreign custodian also would include majority-owned foreign subsidiaries of a qualified U.S. bank or a U.S. bank holding company.[121] The amended rule would not subject foreign bank and trust custodians to specific capital requirements.[122] The amended rule, however, would prohibit foreign bank and trust custodians from being affiliated persons of the fund or affiliated persons of such persons.[123]

Rule 17f–5 currently limits the class of eligible fund custodians to foreign banks and trust companies that have more than $200 million in shareholders' equity and majority-owned foreign subsidiaries of qualified U.S. banks or bank-holding companies that have more than $100 million in shareholders' equity.[124] Although this approach seeks to protect against the risk of loss from a custodian's insolvency,[125] the shareholders' equity requirement has become an inflexible standard that does not address matters, such as credit and market risks, that may affect an institution's financial health.[126]

Custodian Letter III, *supra* note 14, at 4 (Exhibit B). See 1987 Division Letter, *supra* note 14, at 2–3 (indicating that the rule requires indemnification or insurance to cover foreseeable risks of loss).

[111] ICI Letter I, *supra* note 14, at 5 (noting that indemnification provisions often are included in the fund's contract with its U.S. custodian); ICI Letter III, *supra* note 14, at 12 and at 4 (Exhibit A).

[112] ICI Letter III, *supra* note 14, at 12. This approach currently is permitted under rule 17f–5, which does not specify the party that must provide indemnification and insurance protections. *See* rule 17f–5(a)(1)(iii)(A).

[113] Custodian Letter III, *supra* note 14, at 4. The Custodian Group would not require indemnification or insurance with respect to depository arrangements. *Id. See also* Custodian Letter II, *supra* note 14, at 6–7 (indicating that depositories often establish compensation funds for losses attributable to the depository).

[114] Proposed rule 17f–5(a)(4). *See* rule 17f–5(a)(2) (requiring a system to monitor the fund's arrangements to ensure compliance with the conditions of the rule).

[115] The amended rule seeks to clarify the scope of the monitoring requirement by tying monitoring obligations to the reasonable protection findings required to be made in establishing foreign custody arrangements. *See* ICI Letter III, *supra* note 14, at 6 (Exhibit A); Custodian Letter I, *supra* note 14, at 17 (recommending that monitoring responsibilities relate to specific representations that would have to be made when custody arrangements are entered into).

[116] *See* 1984 Reproposing Release, *supra* note 8, at 2910 (consistent with the proposed approach). *See also* 1987 Division Letter, *supra* note 101, at 4 n.5 (indicating that, under the current rule, the board generally may rely on the fund's U.S. custodian or another third-party expert to oversee the fund's arrangements so long as the expert agrees to notify the board of any material changes, and that the board is not required to review periodic reports in the absence of a material change).

[117] The ICI and the Custodian Group recommended allowing delegates to satisfy their monitoring obligations by periodically, but no less frequently than annually, reviewing a foreign custodian's financial position and internal controls. ICI Letter III, *supra* note 14, at 6 (Exhibit A); Custodian Letter I, *supra* note 14, at 17 (also indicating that, in a formal sense, the board or a custodian delegate could not be expected to monitor continuously a foreign custodian's financial position and internal controls).

[118] Rule 17f–5(a)(4). *See generally* 1985 Release Proposing Amendments, *supra* note 8, at 24541 (proposing a 90-day grace period); 1985 Release Adopting Amendments, *supra* note 8, at 37655 (adopting a 180-day grace period to provide sufficient time for funds to negotiate alternative arrangements).

[119] *See* ICI Letter III, *supra* note 14, at 6 (Exhibit A); Custodian Letter I, *supra* note 14, at 8 (Exhibit A) (incorporating the 180-day grace period of the current rule).

[120] Proposed rule 17f–5(d)(3)(i).

[121] A ''qualified U.S. bank'' would be defined in proposed rule 17f–5(d)(5). Under current rule 17f–5, the definition of a qualified U.S. bank mirrors the definition of ''bank'' in section 2(a)(5), except that it requires certain banks and trust companies that receive deposits or exercise fiduciary powers and that are subject to state or federal regulation *to be organized under state or federal law*. *See* 15 U.S.C. 2(a)(5)(C) and rule 17f–5(c)(3)(iii). Proposed rule 17f–5(d)(5) would not change this definition.

[122] The Commission previously considered using this approach. *See* 1982 Proposing Release, *supra* note 3, at 16347.

[123] *See* section 2(a)(3), 15 U.S.C. 80a–2(a)(3) (defining affiliated person).

[124] Rule 17f–5(c)(2) (i) and (ii).

[125] *See* John Downes & Jordan Elliot Goodman, Dictionary of Finance and Investment Terms 377 (2d ed. 1987) (defining shareholders' equity as total assets minus total liabilities of a corporation). *Cf.* 1984 Reproposing Release, *supra* note 8, at 2907 (indicating that the rule's capital requirements seek to address disparities in the protections provided by various foreign regulatory systems).

[126] The shareholders' equity requirement has been the subject of several no-action letters and a number of exemptive orders. *See infra* notes 128, 142, and 144 and accompanying text.

Shareholders' equity also does not provide a uniform assessment of financial strength, since it may be calculated differently depending both on the country where the institution is organized and the institution's accounting practices.[127]

In addition, the shareholders' equity requirement may limit unnecessarily the class of eligible foreign custodians. Certain highly capitalized custodians, such as national banks that maintain substantial government-funded reserves to satisfy their liabilities, do not have shareholders' equity.[128] In addition, in certain emerging and smaller markets, very few or no foreign custodians have sufficient shareholders' equity to meet the $100 million and $200 million standards.[129]

In proposing to eliminate specific capital requirements, the Commission does not intend to imply that a custodian's financial strength is not important to the custodian's ability to serve a fund.[130] The amended rule would require the board's delegate to determine that foreign custodians will provide reasonable protection for the fund's assets based on, among other things, a custodian's financial strength.[131] This approach should sufficiently address the adequacy of a custodian's capital, without imposing specific capital requirements.

The Commission requests comment on the proposed approach. The Commission requests specific comment whether the current shareholders' equity requirement should be retained, with higher or lower standards.[132] For example, the ICI and the Custodian Group recommended lowering the current $100 million and $200 million standards to expand the class of eligible foreign custodians in emerging and smaller markets.[133] In particular, they recommended that a custodian with more than $25 million in shareholders' equity should be eligible to hold fund assets, if it is one of the five largest banks in the country.[134] The Custodian Group indicated that this approach should not present significant risks, given the limited amount of assets likely to be maintained in smaller markets and the other protections of the rule.[135]

The Commission also requests comment whether any additional entities, such as foreign broker-dealers, should be permitted to serve as custodians.[136] Commenters addressing this issue should consider the circumstances under which additional types of entities should be permitted to hold fund assets. For example, should these entities be subject to capital or other special requirements?[137]

Finally, the Commission requests comment on prohibiting affiliated foreign custody arrangements. Custody by fund affiliates raises special investor protection concerns. To guard against potential abuses resulting from control over fund assets by related persons, rule 17f–2 under the Act, the Commission rule applicable to funds that retain custody of their own assets, has been applied to affiliated custody arrangements.[138]

The Commission is aware of only one existing affiliated foreign custody arrangement, and believes that other such arrangements may be best addressed on a case-by-case basis.[139] The Commission recognizes, however, that affiliated arrangements may become more prevalent as global investing and custodian networks continue to grow and as the fund industry continues to consolidate.[140] The Commission, therefore, requests comment whether the proposed prohibition would be unduly restrictive and whether the prohibition should apply only to certain affiliated arrangements, such as when there is a control relationship between the fund's adviser and a foreign custodian.[141] The Commission also requests comment whether there are alternative safeguards that would address the investor protection concerns raised by these arrangements. For example, should fund boards establish and oversee affiliated arrangements without the discretion to delegate this responsibility?

b. Other Alternatives Considered

The Commission considered several other approaches to defining an eligible foreign custodian. These alternatives could be used in lieu of the current shareholders' equity requirement or in conjunction with reduced capital standards. The Commission requests comment on each approach.

The Commission considered using an approach that would focus on a bank or trust company's safekeeping abilities.[142]

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[127] The Commission previously sought to address this problem by proposing that shareholders' equity be calculated according to generally accepted accounting principles. 1985 Release Proposing Amendments, *supra* note 8. The Commission decided to postpone final action on this proposal due to concerns that compliance costs would be excessive. 1985 Release Adopting Amendments, *supra* note 8.

[128] *See* 1984 Adopting Release, *supra* note 8, at 36082. Custodians organized as private banks also may not have shareholders' equity. No-action letters, however, have found the capital of certain private banks to be the equivalent of shareholders' equity. *See* Pictet & Cie (pub. avail. Sept. 8, 1993) (private bank with partners' equity); Union Bank of Norway (pub. avail. Nov. 30, 1992) (private bank found to have the equivalent of paid-in capital and retained earnings).

[129] *See* Custodian Letter I, *supra* note 14, at 18–19.

[130] *See generally Sub-custodian Services Survey,* Euromoney 116 (Jan. 1994) (indicating that U.S. custodians view capitalization and credit rating as the most significant considerations in selecting foreign custodians).

[131] *See* ''Delegation of Board Responsibilities—Selecting Foreign Custodians'' above.

[132] *See* ICI Letter II, *supra* note 14, at 3 (suggesting that the Commission consider whether the current standards are unnecessarily high); Custodian Letter I, *supra* note 14, at 18 (indicating that the shareholders' equity requirement ''has served the Custodian community well in major, established markets'').

[133] ICI Letter III, *supra* note 14, at 7 (Exhibit A); Custodian Letter I, *supra* note 14, at 18–19. *See also* ''Other Alternatives Considered'' below (regarding the ICI's and the Custodian Group's other recommendations).

[134] ICI Letter III, *supra* note 14, at 7 (Exhibit A); Custodian Letter I, *supra* note 14, at 18–19. *See also* 1984 Adopting Release, *supra* note 8, at 36082 (rejecting the use of foreign bank custodians that constitute one of the five largest banks in a country when no bank in that country meets the shareholders' equity requirement).

[135] Custodian Letter I, *supra* note 14, at n.12. The Custodian Group also noted that smaller banks would not become eligible custodians in larger markets, since they would not be one of the five largest banks in the country. *Id.* at 19.

[136] When a foreign entity acts as both a bank and broker-dealer, it would meet the definition of an eligible foreign custodian if the division or part of the entity that has custody of fund assets is regulated under foreign law as a banking institution. *See generally* 1984 Reproposing Release, *supra* note 8, at 2907–08 (not allowing foreign broker-dealers to serve as custodians since funds had not expressed an interest in these arrangements). *See also* Canada Trustco Mortgage Company (pub. avail. Dec. 29, 1989) (loan company with wholly-owned trust subsidiary deemed to be an eligible foreign custodian).

[137] Broker-dealers, for example, could be required to be subject to foreign regulatory requirements relating to their financial responsibility and the segregation and handling of customer securities. *See, e.g.,* rule 206(4)–2(b) under the Investment Advisers Act of 1940, 17 CFR 275.206(4)–2(b). *See also* rule 17f–1 under the Act.

[138] *See, e.g.,* Pegasus Income and Capital Fund, Inc. (pub. avail. Dec. 1, 1977) (custody by U.S. adviser-bank). Rule 17f–2 appears to be unworkable in the foreign custody context because the rule requires, among other things, fund assets to be maintained in a bank that is subject to state or federal regulation; the fund's assets also must be subject to Commission inspection and verified by an independent public accountant. Rule 17f–2(b), (d), and (e). *See* 1984 Reproposing Release, *supra* note 8, at 2907–08.

The Division currently is reviewing rule 17f–2, and may recommend in the future that the Commission propose certain changes in the rule's requirements.

[139] Dean Witter World Wide Investment Trust (pub. avail. Mar. 14, 1988) (affiliation between the fund's sub-adviser and primary custodian deemed sufficiently remote so as not to require the protections of rule 17f–2).

[140] *See* John Waggoner, *Urge to Merge Hits Mutual Funds,* USA Today, Feb. 8, 1995, at 1B. *See also* Timothy L. O'Brien and Steven Lipin, *In the Latest Round of Banking Mergers, Even Big Institutions Become Targets,* Wall St. J., July 14, 1995, at A3.

[141] *See* section 2(a)(3)(C) of the Act.

[142] *See* Permanent Trustee Company Limited, Investment Company Act Release Nos. 17833 (Oct.

Continued

Under this approach, a bank or trust company would be an eligible foreign custodian if it had maintained custody of a substantial amount of assets (*e.g.*, $500 million) over a specified period of time (*e.g.*, the past five years) and had not incurred any material loss of custodial assets during that period. Commenters addressing this alternative should discuss the criteria that should be used to establish a custodian's safekeeping abilities and the feasibility of monitoring compliance with such criteria.[143]

The ICI and the Custodian Group recommended using an approach based on prior exemptive orders.[144] Under this alternative, a foreign bank or trust company would not have to satisfy a shareholders' equity requirement if (i) the bank or trust company is a subsidiary of the fund's primary custodian; (ii) the primary custodian meets certain capital requirements; and (iii) the primary custodian assumes financial responsibility for the bank or trust custodian's use.[145] The Commission requests commenters addressing this alternative to consider the appropriateness of allowing U.S. and foreign banks to serve as both assurance-providers and delegates for foreign custodian selection.[146] The Commission also requests commenters to consider whether assurance arrangements should be limited to parent custodians and their foreign subsidiaries.[147]

In addition, the ICI recommended that the Commission consider using an investment grade rating from a nationally recognized statistical rating agency as a means of determining a foreign bank's eligibility to serve as a fund custodian.[148] The ICI also recommended that the Commission consider using international capital standards, such as those approved by the Basle Committee on Banking Regulations and Supervisory Practices (the ''Basle Accord'').[149]

2. Non-Compulsory Depositories and Transnational Systems [150]

Under the amended rule, an eligible foreign custodian would include a securities depository or clearing agency that operates a system for the central handling of securities or equivalent book-entries that is regulated by a ''foreign financial regulatory authority,'' which would include a foreign government, an agency thereof, or a foreign self-regulatory organization.[151] An eligible foreign custodian also would include a depository or clearing agency that operates a transnational system for the central handling of securities or equivalent book-entries.[152]

Rule 17f–5 currently requires depositories and clearing agencies that are not transnational systems to operate the only system for the handling of securities in a country.[153] This requirement seeks to ensure a country's interest in establishing and maintaining a depository's integrity.[154] The Commission believes, however, that the current provision, which has been the subject of a number of no-action positions, is overly restrictive.[155] With the increased immobilization and dematerialization of securities, the Commission believes that rule 17f–5 should not constrain the use of depository arrangements.[156]

The amended rule would address a country's interest in a depository by requiring the depository to be subject to foreign regulation by the government, an agency thereof, or a self-regulatory organization. The amended rule also would require, among other things, consideration of the depository's operating history and number of participants and whether the depository will provide reasonable protection for the fund's assets.[157] This approach should sufficiently address a depository's custodial integrity, while giving funds the flexibility to use a depository that may not operate an exclusive book-entry system.

The Commission requests comment on the proposed approach. The Commission requests specific comment on requiring regulatory oversight of depository arrangements and on permitting such oversight to be conducted by self-regulatory organizations.[158] The Commission also

31, 1990), 55 FR 46749 (Notice of Application) and 17888 (Nov. 30, 1990), 47 SEC Docket 1627 (Order) (granting exemptive relief from the shareholders' equity requirement based on the applicant's established record as a custodian and certain other factors).

[143] In some foreign countries, for example, the amount of assets in a custodian's safekeeping may be considered proprietary information that would not be available to delegates.

[144] *See, e.g.*, Chase Manhattan Bank, Investment Company Act Release Nos. 18025 (Mar. 4, 1991), 56 FR 10451 (Notice of Application) and 18077 (Apr. 2, 1991), 48 SEC Docket 864 (Order).

[145] ICI Letter III, *supra* note 14, at 8–10 (Exhibit A); Custodian Letter I, *supra* note 14, at 20 and at 10–12 (Exhibit A) (the primary custodian would have to be either a U.S. bank with more than $100 million in shareholders' equity or a foreign bank or trust company with more than $200 million in shareholder's equity; in addition, the primary custodian would have to assume responsibility for any loss arising from the arrangement (including losses attributable to the foreign custodian's bankruptcy or insolvency) to the same extent as if the primary custodian had itself performed the custody services). *See also supra* note 24.

[146] For example, banks serving as both assurance-provider and the board's delegate may be inclined to disregard custodial problems in hopes of delaying or avoiding their indemnification responsibilities. On the other hand, banks serving in both capacities may be more vigilant in establishing and overseeing foreign custody arrangements, since they would be liable for losses associated with the foreign custodian's use.

[147] *See* State Street Bank and Trust Company, Investment Company Act Release Nos. 20519 (Aug. 31, 1994), 59 FR 46463 (Notice of Application) and 20583 (Sept. 27, 1994), 57 SEC Docket 2091 (Order) (custodian providing assurances was not the foreign custodian's parent). *See also* Bank van Haften Labouchere N.V., Investment Company Act Release Nos. 19073 (Nov. 2, 1992), 57 FR 53531 (Notice of Application) and 19135 (Dec. 1, 1992), 52 SEC Docket 2892 (Order) (assurances provided by a foreign company that was not an eligible foreign custodian since it was primarily engaged in the insurance business).

[148] ICI Letter II, *supra* 14, at 3. *See also* Nationally Recognized Statistical Rating Organizations, Securities Act Release No. 7085 (Aug. 31, 1994), 59 FR 46314 (requesting comment on the role of ratings generally in the federal securities laws).

[149] ICI Letter II, *supra* 14, at 3. In general, the Basle Accord seeks to establish minimum standards of capital adequacy for internationally active banks through a ratio that measures an institution's capital in relation to credit risk. *See* Basle Committee on Banking Regulations and Supervisory Practices, International Convergence of Capital Measurement and Capital Standards, Fed. Banking L. Rep. (CCH) ¶ 5403 at 3309 (amended Nov. 6, 1991).

[150] *See also* ''Custody in Foreign Countries—Compulsory Depositories'' above.

[151] Proposed rule 17f–5(d)(3)(ii) (using the definition of foreign financial regulatory authority in section 3(a)(52) of the Securities Act of 1934 [15 U.S.C. 78c(a)(52)). *See* 1984 Reproposing Release, *supra* note 8, at 2908 n.31 (noting that securities depositories may be denominated clearing agencies in some countries).

[152] Proposed rule 17f–5(d)(3)(iii). *See* rule 17f–5(c)(iv) (consistent with the proposed approach).

[153] Rule 17f–5(c)(2)(iii).

[154] *See* 1984 Reproposing Release, *supra* note 8, at 2908.

[155] *See, e.g.*, 1987 Division Letter, *supra note* 101, at 3 (taking a no-action position with respect to certain groups of depositories that are integrated and effectively function as one system within a country); Custody of B Shares Trading on the Shenzhen and Shanghai Securities Exchanges (pub. avail. Apr. 26, 1993) (no-action position with respect to depositories that operate the central system for a particular issue and class of securities). *See generally* Templeton Russia Fund, *supra* note 60 (addressing the unique custodial and settlement arrangements in Russia). *See also* ICI Letter III, *supra* note 14, at 10 (Exhibit A); Custodian Letter I, *supra* note 14, at 21 and at 12–13 (Exhibit A) (recommending expanding the class of eligible foreign depositories by codifying prior no-action positions).

[156] Securities are immobilized by storing stock certificates or other indicia of securities ownership with the depository. Securities are dematerialized by dispensing with physical evidence of securities ownership. Group of Thirty Report, *supra* note 20, at 55–56. *See also* Custodian Letter I, *supra* note 14, at 14 (indicating that depositories generally are subject to strict government regulation and provide a high level of safety for fund assets).

[157] *See* ''Delegation of Board Responsibilities—Selecting Foreign Custodians'' above.

[158] *See* 1984 Reproposing Release, *supra* note 8, at 2908 (not requiring depositories to be regulated by foreign governments or agencies thereof since several principal depositories would not meet the requirement).

requests comment whether transnational depositories should be required to be subject to similar or other requirements.[159]

D. Assets Maintained in Foreign Custody

Rule 17f–5 permits funds to use foreign custody arrangements for their foreign securities, cash, and cash equivalents.[160] Rule 17f–5 defines foreign securities to include those that are issued and sold primarily outside the United States by foreign and U.S. issuers.[161] By restricting the types of securities that may be maintained outside the United States, the rule seeks to establish a nexus between its scope and its purpose, *i.e.*, to give funds the flexibility to keep abroad assets that are purchased or intended to be sold abroad.[162] In addition, rule 17f–5 limits the cash and cash equivalents that funds may maintain outside the United States to amounts that are reasonably necessary to effect the fund's foreign securities transactions.[163]

The amended rule would not change these restrictions, although it would simplify the definition of foreign securities by eliminating references to specific types of issuers.[164] The Commission requests comment whether any other changes should be made. In particular, should the amended rule continue to restrict the types of securities and amounts of cash and cash equivalents that may be maintained outside the United States?

E. Canadian and Other Foreign Funds

Rule 17f–5 contains special provisions governing the foreign custody arrangements of registered Canadian funds.[165] To address jurisdictional concerns, these provisions are more restrictive than those applied to U.S. funds.[166] Rule 17f–5 allows Canadian funds to maintain their assets only in overseas branches of qualified U.S. banks.[167] The rule also places responsibility for the fund's foreign custody arrangements on the fund's board of directors.[168]

Canadian investment companies have not sought to register under the Act for some time, and very few Canadian funds currently offer their shares in the United States.[169] Accordingly, the amended rule would make limited changes in the foreign custody requirements applicable to Canadian funds. The amended rule would revise the current ''best interest'' standard for placing fund assets in a particular country and require instead a finding that such custody will provide reasonable protection for the fund's assets.[170] In addition, the amended rule would eliminate the current requirement that the board of a Canadian fund review and approve foreign custody arrangements at least annually. Under the amended rule, the board instead would be required to monitor the continuing appropriateness of the fund's arrangements.[171] If an arrangement no longer meets the rule's requirements, the fund would be required to withdraw its assets from the country or custodian as soon as reasonably practicable.[172]

The Commission requests comment on the proposed approach. The Commission requests specific comment whether the special provisions applicable to Canadian funds should be eliminated. Under this approach, a Canadian fund's foreign custody arrangements could be considered in connection with the fund's registration under the Act. In evaluating proposed arrangements, the Commission would be able to consider any jurisdictional concerns and the requirements of rule 17f–5 applicable to U.S. funds in effect at that time.

Alternatively, should the amended rule allow Canadian funds to use foreign custody arrangements on the same basis as their U.S. counterparts?[173] Commenters favoring this alternative should consider whether any special requirements should be imposed to address jurisdictional concerns. For example, should Canadian funds be required to consent to U.S. jurisdiction or should limits be placed on the amount of a Canadian fund's assets that could be maintained outside the United States?[174]

F. Disclosure of Custody Risks

The Notes to rule 17f–5 currently instruct the fund's board to consider disclosing in the fund's prospectus material risks, if any, associated with the fund's foreign custody arrangements.[175] The amended rule would not address disclosure issues. The Commission believes that these issues are more appropriately addressed by individual funds in considering their disclosure obligations under the Securities Act of 1933.[176]

G. Unit Investment Trusts

Under the Act, unit investment trusts (''UITs'') are required to maintain their assets in the custody of U.S. banks or their foreign branches.[177] UITs generally are not permitted to use the foreign

[159] The Commission understands that there are very few transnational systems, and is not aware of any problems associated with the current transnational provision.

[160] Rule 17f–5(a).

[161] Rule 17f–5(c)(1).

[162] *See* 1984 Reproposing Release, *supra* note 8, at 2907.

[163] Rule 17f–5(a).

[164] Proposed rule 17f–5(a) and (d)(2).

[165] *See* rule 17f–5(b). Section 7(d) of the Act prohibits foreign investment companies from publicly offering their securities in the United States unless the Commission issues an order permitting registration under the Act. 15 U.S.C. 80a–7(d). Rule 7d–1 sets forth conditions governing applications by Canadian funds that seek Commission orders pursuant to section 7(d). 17 CFR 270.7d–1. Among other conditions, rule 7d–1 provides that the assets of Canadian funds are to be held in the United States by a U.S. bank, except as provided under rule 17f–5. Rule 7d–1(b)(8)(v). Although rule 7d–1 by its terms only applies to Canadian funds, funds organized in other jurisdictions generally have agreed to comply with its conditions as a prerequisite to receiving a section 7(d) order. Protecting Investors report, *supra* note 15, at 193 n.23.

[166] *See* 1984 Reproposing Release, *supra* note 8, at 2906–07; 1984 Adopting Release, *supra* note 8, at 36082.

[167] *See* 1984 Adopting Release, *supra* note 8, at 36082 (indicating that, by restricting custody to *overseas* branches of U.S. banks, Canadian funds may not maintain their assets with Canadian branches of U.S. banks).

[168] *See* rule 17f–5(b)(1)–(3).

[169] Protecting Investors report, *supra* note 15, 193 n.23 (noting that, in 1992, only three Canadian funds were active).

[170] *See* ''Standard for Evaluating Foreign Custody Arrangements'' above.

[171] Proposed rule 17f–5(c)(2).

[172] Proposed rule 17f–5(c)(3). *See* ''Delegation of Board Responsibilities—Monitoring Custody Arrangements and Withdrawing Assets from Custodians'' above.

[173] The ICI and the Custodian Group recommended this approach. ICI Letter I, *supra* note 14, at 4 (also recommending that the foreign custody arrangements of any non-Canadian foreign funds continue to be evaluated on a case-by-case basis); Custodian Letter I, *supra* note 14, at 1 (Exhibit A).

[174] In 1991, a South African fund was allowed to rely on rule 17f–5 as if it were a U.S. fund. ASA Limited, Investment Company Release Nos. 17904 (Dec. 17, 1990) 55 FR 52925 (Notice of Application), and 17945 (Jan. 15, 1991), 47 SEC Docket 1535 (Order). Although the fund's custody arrangements were not restricted to foreign branches of U.S. banks, limits were placed on the amount of the fund's assets that could be held overseas. *Id.*

[175] Rule 17f–5, Note 3.

[176] *See, e.g.,* Forms N–1A, 17 CFR 239.15A (the registration form for open-end funds) and N–2, 17 CFR 274.11a–1 (the registration form for closed-end funds). Item 4(c) of Form N–1A and item 8.3.a of Form N–2 require disclosure in the prospectus of the principal risk factors associated with investing in the fund. Item 13(c) of Form N–1A and item 17.3 of Form N–2 require disclosure in the Statement of Additional Information (''SAI'') of the risks inherent in certain significant investment policies, such as investing in foreign securities. Guide 9 to Form N–2 instructs funds with more than 10% of their assets in foreign securities to discuss in the SAI the fund's foreign custody arrangements. *See generally* Templeton Russia Fund, *supra* note 60 (apprising fund investors of certain custodial risks in Russia).

[177] A UIT is a type of fund that issues redeemable securities representing an undivided interest in a portfolio of specified securities. 15 U.S.C. 80a–4(2). *See* Investment Company Act §§ 2(a)(5) (defining bank) and 26(a)(1) (requiring UIT custodians to have at least $500,000 in capital, surplus and undivided profits).

custodians available to funds under rule 17f–5.[178] The foreign custody arrangements of UITs may raise special concerns, since UITs do not have boards of directors to oversee the arrangements.[179]

The Commission requests comment on the appropriateness of a rule that would expand the foreign custody arrangements available to UITs.[180] The Commission requests specific comment on allowing UIT sponsors, custodian banks or other parties to establish and monitor foreign custody arrangements, without independent oversight. The Commission also requests comment whether special protections should attend UIT foreign custody arrangements by, for example, requiring the sponsor, custodian bank, or other party to assume financial responsibility for a foreign custodian's use.[181] Finally, the Commission requests comment whether foreign custody arrangements and the procedures for changing those arrangements should be required to be set forth in UIT trust indentures.

IV. Cost/Benefit Analysis

The amendments would substantially reduce burdens on fund directors and provide funds with greater flexibility to establish and use foreign custody arrangements, consistent with the protection of fund assets. To facilitate evaluations of foreign custody arrangements, the amendments would revise the findings that currently must be made in establishing these arrangements. The amended rule would require findings that foreign custody arrangements will provide reasonable protection for fund assets.

In addition, the amendments would allow fund boards to play a role more consistent with their traditional oversight role in connection with foreign custody arrangements, by permitting boards to delegate their responsibility under the rule to evaluate foreign custody matters. The amendments also would eliminate the current requirement that boards annually approve foreign custody arrangements.

The proposed delegation provisions may impose certain additional costs since delegates would be required to provide fund boards with written reports regarding certain aspects of the arrangements. These costs, however, are not expected to be significant, and are likely to be much less than the costs associated with providing fund boards with information pertaining to their annual review of foreign custody arrangements. In addition, because the reports would facilitate a board's oversight of the delegate's performance, any additional costs associated with the reports would be outweighed by the benefits provided to funds and their shareholders.

The amendments also would expand the class of foreign banks and securities depositories that could serve as fund custodians. Under the amendments, foreign custodians would no longer have to satisfy specific capital standards or other objective requirements. The amended rule instead would require delegates to select foreign custodians based on the custodian's ability to provide reasonable protection for fund assets. While addressing safekeeping considerations, this approach avoids imposing inflexible standards that may unnecessarily limit the use of foreign custodians. In addition, instead of requiring foreign custody contracts to contain specific provisions (as under the current rule), the amendments would require these contracts to reasonably protect fund assets.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding amendments to rule 17f–5. The analysis notes that the amendments are designed to provide funds with greater flexibility in establishing and using foreign custody arrangements, consistent with the protection of their assets. Cost-benefit information reflected in the ''Cost/Benefit Analysis'' section of this Release also is reflected in the analysis. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Elizabeth R. Krentzman, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 10–6, Washington, DC 20549.

VI. Statutory Authority

The Commission is proposing to amend rule 17f-5 pursuant to the authority set forth in sections 6(c) and 38(a) of the Investment Company Act of 1940 [15 U.S.C. 6(c), 37(a)].

Text of Proposed Rule Amendments

List of subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. By revising § 270.17f-5 to read as follows:

§ 270.17f-5 Custody of investment company assets outside the United States.

(a) A registered management investment company, incorporated or organized under the laws of the United States or of a state, may place and maintain in the care of an Eligible Foreign Custodian the company's Foreign Securities, cash and cash equivalents in amounts reasonably necessary to effect the company's Foreign Securities transactions, *provided that:*

(1) The Foreign Custody Manager shall have determined that custody of the company's assets in a particular country can be maintained in a manner that will provide reasonable protection for the company's assets and that custody of the company's assets with any Compulsory Depository in that country will provide reasonable protection for the company's assets, after considering, in each case, all factors relevant to the safekeeping of such assets, including:

(i) The prevailing practices in the country for the custody of the company's assets;

(ii) Whether the country's laws will affect adversely the safekeeping of the company's assets, such as by restricting:

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[178] Several exemptive orders permit UITs to maintain their assets in certain foreign transnational securities depositories. *See, e.g.*, Merrill Lynch, Pierce, Fenner & Smith, Investment Company Act Release Nos. 15739 (May 14, 1987), 52 FR 19006 (Notice), and 15813 (June 16, 1987), 38 SEC Docket 891 (Order).

[179] UITs do not have corporate-type management structures. Typically, UITs are created by a sponsor or ''depositor'' that accumulates a portfolio of securities and deposits them with a U.S. bank or ''trustee'' under the terms of a trust indenture. A UIT's portfolio generally is unmanaged; thus, UITs do not have investment advisers. A UIT's operations are subject to the terms of the trust indenture, which specifies the ongoing responsibilities of the trustee, the depositor and other third-party service providers. *See generally* Form N–7 for Registration of UITs Under the Securities Act of 1933 and Investment Company Act of 1940, Securities Act Release No. 33–6580 (May 14, 1985), 50 FR 21282.

[180] *See* Letter of Pierre de Saint Phalle, Davis Polk & Wardwell, to Diane C. Blizzard, Assistant Director, SEC (Mar. 14, 1995) (recommending a rule for UIT foreign custody arrangements) (File No. S7–23–95). In addition, certain UITs have sought exemptive relief to use foreign custody arrangements available to management funds. *See* United States Trust Company of New York (*filed July 28, 1992*); Merrill Lynch, Pierce, Fenner & Smith, Inc. (*filed Oct. 27, 1993*) (both seeking exemptive relief from section 26(a)(2)(D) of the Act).

[181] Such financial assurances, for example, could cover the loss of UIT assets attributable to the foreign custodian's failure to exercise reasonable care or bankruptcy or insolvency.

(A) The access of the company's independent public accountants to a custodian's books and records; and

(B) The company's ability to recover its assets in the event of a custodian's bankruptcy or the loss of assets in a custodian's control;

(iii) Whether special arrangements that mitigate the risks of maintaining the company's assets in the country would be used; and

(iv) With respect to any Compulsory Depository, the factors specified in paragraph (a)(2) of this section.

(2) Subject to the decision to place assets in the country and to use any Compulsory Depository in that country under paragraph (a)(1) of this section, the Foreign Custody Manager shall have determined that the foreign custodian will provide reasonable protection for the company's assets, after considering all factors relevant to the safekeeping of such assets, including:

(i) The custodian's financial strength, its general reputation and standing and, additionally, in the case of a securities depository, the depository's operating history and number of participants;

(ii) The custodian's practices, procedures, and internal controls; and

(iii) Whether the company will have jurisdiction over and be able to enforce judgments against the custodian, such as by virtue of the existence of any offices of the custodian in the United States or the custodian's consent to service of process in the United States.

(3) The company's foreign custody arrangements shall be governed by a written contract that the Foreign Custody Manager has determined will provide reasonable protection for the fund's assets, after considering all factors relevant to the safekeeping of such assets.

(4) The Foreign Custody Manager shall have established a system to monitor the appropriateness of maintaining the company's assets in a particular country and using any Compulsory Depository in that country under paragraph (a)(1) of this section, maintaining the company's assets with a particular custodian under paragraph (a)(2) of this section, and the contract governing the company's arrangements under paragraph (a)(3) of this section. If an arrangement no longer meets the requirements of this section, the company shall withdraw its assets from the country or foreign custodian, as the case may be, as soon as reasonably practicable.

(b) The company's board of directors may delegate to the company's investment adviser or officers or to a U.S. bank or to a Qualified Foreign Bank the responsibilities set forth in paragraphs (a)(1), (a)(2), (a)(3), or (a)(4) of this section, *provided that:*

(1) The board shall have determined that it is reasonable to rely on the delegate to perform the delegated responsibilities;

(2) The board shall require the delegate to provide written reports notifying the board of the placement of the company's assets in a country and with a particular custodian (including any Compulsory Depository) and of any material change in the company's arrangements, with such reports to be provided to the board no later than the next regularly scheduled board meeting following such event.

(c) Any management investment company, incorporated or organized under the laws of Canada and registered under the Act pursuant to the conditions of § 270.7d-1, may place and maintain its Foreign Securities, cash and cash equivalents in the care of an overseas branch of a Qualified U.S. Bank, *provided that:*

(1) Prior to placing any assets with such overseas branch, the company's board of directors shall have determined that custody of the assets in the particular country will provide reasonable protection for those assets;

(2) The company's board of directors shall have established a system to monitor such foreign custody arrangements for their continuing appropriateness under this section and to ensure that the amount of cash and cash equivalents maintained in the care of such overseas branch is limited to an amount reasonably necessary to effect the company's Foreign Securities transactions; and

(3) If an arrangement no longer meets the requirements of this section, the company shall withdraw its assets from the country or such overseas branch, as the case may be, as soon as reasonably practicable.

(d) For purposes of this section:

(1) *Foreign Custody Manager* means the company's board of directors or any person serving as the board's delegate under paragraph (b) of this section.

(2) *Foreign Securities* mean securities issued and sold primarily outside the United States.

(3) *Eligible Foreign Custodian* means an entity that is incorporated or organized under the laws of a country other than the United States and that is:

(i) A banking institution or trust company that is regulated as such by the country's government or an agency thereof or a majority-owned direct or indirect subsidiary of a Qualified U.S. Bank or bank-holding company, *provided* that such foreign custodian is not an affiliated person of the company or an affiliated person of such person;

(ii) A securities depository or clearing agency that operates a system for the central handling of securities or equivalent book-entries in the country that is regulated by a foreign financial regulatory authority as defined under section 3(a)(52) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(52));

(iii) A securities depository or clearing agency that operates a transnational system for the central handling of securities or equivalent book-entries in the country; or

(iv) A Compulsory Depository.

(4) *Compulsory Depository* means an eligible foreign custodian under paragraph (d)(2)(ii) of this section, the use of which is mandatory:

(i) By law or regulation;

(ii) Because securities cannot be withdrawn from the depository; or

(iii) Because maintaining securities outside the depository is not consistent with prevailing custodial practices.

(5) *Qualified U.S. Bank* means an entity that has an aggregate of capital, surplus, and undivided profits of a specified minimum amount, which shall not be less than $500,000, and that is:

(i) A banking institution organized under the laws of the United States;

(ii) A member bank of the Federal Reserve System;

(iii) Any other banking institution or trust company organized under the laws of any state or of the United States, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this section: or

(iv) a receiver, conservator, or other liquidating agent of any institution or firm included in paragraphs (d)(5) (i), (ii), or (iii) of this section.

(6) *Qualified Foreign Bank* means a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as such by the country's government or an agency thereof.

Dated: July 27, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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Part VI

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171 and 172
Hazardous Substances; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 172

[Docket No. HM–145K; Amdt Nos. 171–133; 172–141]

RIN 2137–AC71

Hazardous Substances

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule, RSPA is amending the Hazardous Materials Regulations (HMR) by revising the ''List of Hazardous Substances and Reportable Quantities'' which appears in an appendix to the Hazardous Materials Table. This action is necessary to comply with the Superfund Amendments and Reauthorization Act (SARA) of 1986, which amended the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) to mandate that RSPA regulate, under the HMR, all hazardous substances designated by the Environmental Protection Agency (EPA). The intended effect of this action is to enable shippers and carriers to identify CERCLA hazardous substances, thereby enabling them to comply with all applicable HMR requirements and to make the required notifications if a discharge of a hazardous substance occurs. No notice of proposed rulemaking has preceded this final rule because, in light of RSPA's lack of discretion concerning the regulation of hazardous substances under the HMR, RSPA finds that under the Administrative Procedure Act notice would serve no purpose and thus is unnecessary.

DATES: This amendment is effective on February 2, 1996. However, immediate compliance with the regulations as amended herein is authorized.

FOR FURTHER INFORMATION CONTACT: John A. Gale (202) 366–8553, Office of Hazardous Materials Standards, or George Cushmac (202) 366–4545, Office of Hazardous Materials Technology, RSPA, 400 7th Street, SW, Washington, DC 20590. Questions about hazardous substance designations or reportable quantities should be directed to the Environmental Protection Agency (EPA). Call the RCRA/Superfund hotline at (800) 424–9346 or, in Washington, DC, (202) 382–3000.

SUPPLEMENTARY INFORMATION:

I. Background

Section 202 of SARA (Pub. L. 99–499) amended Section 306(a) of CERCLA (Pub. L. 96–510), 42 U.S.C. 9656(a), by requiring the Secretary of Transportation to list and regulate hazardous substances, listed or designated under Section 101(14) of CERCLA, 42 U.S.C. 9601(14), as hazardous materials under the Federal hazardous materials transportation law (49 U.S.C. 5101–5127). RSPA carries out the rulemaking responsibilities of the Secretary of Transportation under the Federal hazardous materials transportation law. 49 CFR 1.53(b). This final rule is necessary to comply with 42 U.S.C. 9656(a) as amended by Section 202 of SARA.

In carrying out that statutory mandate, RSPA has no discretion to determine what is or is not a hazardous substance or the appropriate reportable quantity (RQ) for materials designated as hazardous substances. This authority is vested in EPA. Therefore, under the CERCLA scheme EPA must issue final rules amending the list of CERCLA hazardous substances, including adjusting RQ's, before RSPA can amend its list of hazardous substances. In the preamble to the final rule on this subject issued under Docket HM–145F (51 FR 42174; November 21, 1986), RSPA included the following statement:

> It is RSPA's intention to make changes from time to time to the list of hazardous substances or their RQ's in the Appendix as adjustments are made by EPA.

This document adjusts the ''List of Hazardous Substances and Reportable Quantities'' that appears in Appendix A to § 172.101, based on a final rule EPA published on June 12, 1995 (60 FR 30926) which added 47 hazardous air pollutants, designated by the 1990 Clean Air Act (CAA) Amendments to the list of hazardous substances, and adjusted the RQ's for 8 hazardous wastes codes.

To keep its ''List of Hazardous Substances and Reportable Quantities'' consistent with EPA's list of CERCLA hazardous substances and reportable quantities, RSPA is amending the HMR in accordance with EPA's final rule. In addition, RSPA is making one non-substantive editorial change to the definition of ''Hazardous substance'' in § 171.8 by identifying completely the petroleum exclusion for hazardous substances as defined in 40 CFR 300.5.

This rulemaking will enable shippers and carriers to identify CERCLA hazardous substances and thereby enable them to comply with all applicable HMR requirements and to make the required notifications if a discharge of a hazardous substance occurs. In addition to the reporting requirements of the HMR found in §§ 171.15 and 171.16, a discharge of a hazardous substance is subject to EPA reporting requirements at 40 CFR 302.6 and may be subject to the reporting requirements of the U.S. Coast Guard at 33 CFR 153.203.

II. Regulatory Analyses and Notices

In accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), RSPA has determined that a notice of proposed rulemaking and an opportunity for public comment and review are impracticable and unnecessary. SARA mandates that the Department of Transportation list and regulate, as hazardous materials under 49 CFR Parts 171–180, hazardous substances designated by EPA under CERCLA. EPA is the sole agency authorized to designate hazardous substances and their reportable quantities. Therefore, public comment and review are unnecessary because: (1) The public was afforded time to comment when EPA published its notice of proposed rulemaking concerning that agency's change in the subject RQ's; and (2) RSPA does not have the authority to designate hazardous substances or determine their reportable quantities.

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The economic impact of this final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous materials that cover certain covered subjects and are substantially the same as the Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

This final rule concerns the designation of hazardous materials. This final rule preempts State, local, or Indian tribe requirements in accordance with the standards set forth above. Section 5125(b)(1) of title 49 U.S.C. provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be February 2, 1996. This rule is mandated by CERCLA, and does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule applies to shippers and carriers of hazardous substances, some of which are small entities; however, the economic impact of this rule is minimal.

Paperwork Reduction Act

There are no new information collection requirements in this final rule.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous wastes, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

Issued in Washington, DC on July 25, 1995, under authority delegated in 49 CFR Part 1.

Ana Sol Gutiérrez,

Deputy Administrator, Research and Special Programs Administration .

In consideration of the foregoing, Parts 171 and 172 of Title 49, Code of Federal Regulations, are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.8, in the definition of ''Hazardous substance'', the concluding text following the table is revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Hazardous substance * * *

The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance in Appendix A to § 172.101 of this subchapter, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

3. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

4. In Appendix A to § 172.101, Table 1 is amended by removing, revising and adding in alphabetical order the following entries to read as follows:

Appendix A to § 172.101—List of Hazardous Substances and Reportable Quantities

* * * * *

TABLE 1.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES

Hazardous substance	Synonyms	Reportable quantity (RQ) pounds (kilograms)
[REMOVE]		
Benzene, dimethyl	Xylene (mixed)	1000 (454)
m-Benzene, dimethyl	m-Xylene.	
o-Benzene, dimethyl	o-Xylene.	
p-Benzene, dimethyl	p-Xylene.	
Cresol(s)	Cresylic acid Phenol, methyl-.	1000 (454)
m-Cresol	m-Cresylic acid.	
o-Cresol	o-Cresylic acid.	
p-Cresol	p-Cresylic acid.	
Cresylic acid	Cresols Phenol, methyl-.	1000 (454)
m-Cresol	m-Cresylic acid.	
o-Cresol	o-Cresylic acid.	
p-Cresol	p-Cresylic acid.	
Phenol, methyl	Cresol(s) Cresylic acid.	1000 (454)

TABLE 1.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Synonyms	Reportable quantity (RQ) pounds (kilograms)
m-Cresol	m-Cresylic acid.	
o-Cresol	o-Cresylic acid.	
p-Cresol	p-Cresylic acid.	
Xylene (mixed)	Benzene, dimethyl	1000 (454)
m-Benzene, dimethyl	m-Xylene.	
o-Benzene, dimethyl	o-Xylene.	
p-Benzene, dimethyl	p-Xylene.	
[REVISE]		
* * *	* * *	*
DDE	4,4'-DDE	5000 (2270)
4,4'-DDE	DDE	5000 (2270)
D023 o-Cresol		100 (45.4)
D024 m-Cresol		100 (45.4)
D025 p-Cresol		100 (45.4)
D026 Cresol		100 (45.4)
F004		100 (45.4)
The following spent non-halogenated solvents and the stillbottoms from the recovery of these solvents:		
(a) Cresols/Cresylic acid		1000 (454)
(b) Nitrobenzene		100 (45.4)
K088		10 (4.54)
Spent potliners from primary aluminum reduction.		
K090		10 (4.54)
Emission control dust or sludge from ferrochromiumsilicon production		
K091		10 (4.54)
Emission control dust or sludge from ferrochromium production		
* * *	* * *	*
[ADD]		
* * *	* * *	*
Acetamide		100 (45.4)
4–Aminobiphenyl		1 (0.454)
o-Anisidine		100 (45.4)
Benzene, dimethyl-	Xylene; Xylene (mixed); Xylenes (isomers and mixtures)	100 (45.4)
Benzene, m-dimethyl-	m-Xylene	1000 (454)
Benzene, o-dimethyl-	o-Xylene	1000 (454)
Benzene, p-dimethyl-	p-Xylene	100 (45.4)
Biphenyl		100 (45.4)
1,3–Butadiene		10 (4.54)
Calcium cyanamide		1000 (454)
Caprolactam		5000 (2270)
Carbonyl sulfide		100 (45.4)
Catechol		100 (45.4)
Chloramben		100 (45.4)
Chloroacetic acid		100 (45.4)
2–Chloroacetophenone		100 (45.4)
Chloroprene		100 (45.4)
Cresols (isomers and mixture)	Cresylic acid (isomers and mixture) Phenol, methyl-	100 (45.4)
m-Cresol	m-Cresylic acid	100 (45.4)
o-Cresolo	-Cresylic acid	100 (45.4)
p-Cresol	p-Cresylic acid	100 (45.4)
Cresylic acid (isomers and mixture)	Cresols (isomers and mixture); phenol, methyl-	100 (45.4)
m-Cresylic acid	m-Cresol	100 (45.4)
o-Cresylic acid	o-Cresol	100 (45.4)
p-Cresylic acid	p-Cresol	100 (45.4)
Diazomethane		100 (45.4)
Dibenzofuran		100 (45.4)
Diethanolamine		100 (45.4)
N,N-diethylaniline		1000 (454)
Diethyl sulfate		10 (4.54)
N,N-dimethylaniline		100 (45.4)
Dimethylformamide		100 (45.4)
1,2–Epoxybutane		100 (45.4)
Ethylene glycol		5000 (2270)
Hexamethylene-1,6-diisocyanate		100 (45.4)
Hexamethylphosphoramide		1 (0.454)

TABLE 1.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Synonyms	Reportable quantity (RQ) pounds (kilograms)
Hexane		5000 (2270)
Hydroquinone		100 (45.4)
MDI	Methylene diphenyl diisocyanate	5000 (2270)
4,4'-Methylenedianiline		10 (4.54)
Methylene diphenyl diisocyanate	MDI	5000 (2270)
Methyl tert-butyl ether		1000 (454)
4-nitrobiphenyl		10 (4.54)
n-Nitrosomorpholine		1 (0.454)
Phenol, methyl-	Cresols (isomers and mixture); Cresylic acid (isomers and mixture).	100 (45.4)
p-Phenylenedimine		5000 (2270)
beta-Propioaldehyde		1000 (454)
Propoxur (baygon)		100 (45.4)
Styrene oxide		100 (45.4)
Titanium tetrachloride		1000 (454)
Trifluralin		10 (4.54)
2,2,4–Trimethylpentane		1000 (454)
Vinyl bromide		100 (45.4)
Xylene	Benzene, dimethyl-; Xylene (mixed); Xylenes (isomers and mixture).	100 (45.4)
m-Xylene	Benzene, m-dimethyl-	1000 (454)
o-Xylene	Benzene, o-dimethyl-	1000 (454)
p-Xylene	Benzene, p-dimethyl-	100 (45.4)
Xylene (mixed)	Benzene, dimethyl-; Xylene; Xylenes (isomers and mixture)	100 (45.4)
Xylenes (isomers and mixture)	Benzene, dimethyl-; Xylene; Xylenes (mixed)	100 (45.4)

* * * * * * *

[FR Doc. 95–18679 Filed 8–1–95; 8:45 am]

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federal register

Wednesday
August 2, 1995

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 189

Use of Federal Aviation Administration Communications Systems; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 189

[Docket No. 27778; Amendment No. 189–3]

RIN 2120–AE68

Use of Federal Aviation Administration Communications Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Federal Aviation Regulations (FAR) relating to the use of FAA communications systems by removing outdated fee provisions and services. Due to enhanced commercial communications (i.e., telecommunications, satellites, etc.) the FAA has determined that the need to accept messages (and to charge fees for this service) that address such topics as lost baggage, hotel reservations, crew assignments, and other commercial matters (Class B messages) no longer exists. This action does not affect the FAA's transmission of messages relating to flight safety, flight plans, and weather (Class A messages). Also, this rule will not alter the current practice of relaying messages received from an FAA Flight Service Station (FSS) outside of the 48 contiguous States and the District of Columbia, or received from a foreign station of the Aeronautical Fixed Telecommunications Network (AFTN).

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Ellen E. Crum, Air Traffic Rules Branch, ATP–230, Airspace-Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The predecessor of part 189 (part 612—Aeronautical Fixed Communications, published in the August 25, 1950, **Federal Register**) became effective on September 1, 1950. Part 612 specified that airlines could send certain messages over specific Government circuits. The specific circuits were established between several Pacific Islands. The United States government made this communications network available, at the users expense, to transmit Class B messages since there were few other communication systems established. Subsequent amendments to part 612 accomplished the following: (1) Expanded the service to any station services by the Integrated International Aeronautical Network (now AFTN); (2) defined the specific messages that would be accepted free of charge and those for which fees would be charged; (3) established the priority given to two categories of messages; and (4) limited the Government's liability in the handling of all messages accepted under these provisions.

Concurrent with the evolution of part 612, similar International Civil Aviation Organization (ICAO) procedures were developed. Beginning in 1951, ICAO procedures were implemented whereby each country would: (1) Accept, free of charge, messages that were meant for ''* * * ensuring safety of air navigation and regularity of air traffic between aeronautical fixed stations of the different States * * *;'' (2) accept other messages that did not fall in the above category provided there was an ''* * * absence of rapid commercial telecommunications * * *;'' and (3) determine the acceptability of messages.

Communication systems and the air traffic control system have improved greatly in the last several decades. Consequently, users have elected to transmit Class B messages through communications systems other than the FAA's.

The FAA has previously considered the need for, and removal of, part 189 of the FAR. In 1981, all FAA Regional offices were queried regarding what operational effect, if any, the complete removal of part 189 would have. At that time, only the Alaska region objected to this action. The International Flight Service Station (IFSS) in Anchorage, Alaska, handled a high volume of Class B messages, and the Region felt strongly that complete removal of part 189 would preclude them from continuing this service. In 1992, the Regions were again queried regarding their positions with respect to the proposed amendment to part 189. All of the Regions concurred with this proposal. Since the IFSS in Anchorage, Alaska was decommissioned in 1984, aircraft that had previously utilized its communications services are now using a private communications company; therefore, the prior concerns of the Alaska Region are no longer relevant.

Current Requirements

Part 189 stipulates that domestic FSS's may accept for transmission only messages related to distress and distress traffic, safety of human life, flight safety (including air traffic control messages), weather, aeronautical administration, and Notices to Airmen (NOTAM's) (Class A messages). The acceptance and transmission of these messages is completed without charge. This amendment will not alter that service.

In addition to accepting Class A messages, IFSS's and those FSS's located outside the 48 contiguous States and the District of Columbia, may accept messages originated by and addressed to aircraft operating agencies, or their representatives, that directly bear on the efficient and economic conduct of day to day operations. These messages (Class B messages) include such things as new or revised passenger or cargo rates and train or hotel reservations. The current rule provides for a fee of 25 cents for each group of 10 words. FSS acceptance of these messages is based on the absence of adequate non-USA communication facilities.

In recent years additional means of communication have been developed, including satellites, computer networks, and cellular telephones. Therefore, the need to use the FAA AFTN system for the transmission of Class B messages has been greatly reduced. In January, 1988, a communication network called National Airspace Data Interchange Network (NADIN) was commissioned in the United States. The capability to segregate Class B messages, which required payment from the user, was intentionally omitted from the system because the need for such a capability is negligible. However, part 189 was not amended when NADIN was commissioned; consequently the rule still contains outdated provisions for the collection of fees for the transmission of Class B messages.

Annex 10, an International Civil Aviation Organization (ICAO) document, provides guidance to FSS's for handling the operational aspects of international aeronautical telecommunications. The FAA relays Class A or B messages that were originally accepted for transmission at an FAA FSS outside of the 48 contiguous States and the District of Columbia that were received from a foreign station of the AFTN, and that in normal routing would require transit of the 48 contiguous States or the District of Columbia in order to reach an overseas address.

Discussion of Comments

Interested persons were invited to participate in this rulemaking action by submitting written data, views, or arguments. The comment period closed on September 7, 1994. The FAA received one comment, from the Airline Pilots Association, supporting the

proposal. The FAA specifically requested comments and information on the potential use of this service and on any impact from eliminating the acceptance for transmission of Class B messages. No such comment or information was received.

Except for minor editorial changes, this rule is the same as that proposed in the Notice of Proposed Rulemaking published in the **Federal Register** on June 9, 1994 (59 FR 29934).

The Rule

Elimination of Acceptance for Transmission of Class B Messages

Currently, only FAA IFSS's or FSS's located outside the 48 contiguous States and the District of Columbia may accept for transmission Class B messages when adequate commercial communication systems are not available. These facilities have not received any requests to accept Class B messages for transmission in over 5 years.

Communication systems technology has improved and expanded to include private data networks, private line services, telegrams, satellite communications, and cellular telephones. Therefore, the need to use FAA communications systems for transmission of Class B messages has diminished. This rule will not restrict or deny users from utilizing the FAA communications systems for relay of Class B messages when other adequate communications systems are not available. Additionally, this action will align the regulations with current practices by eliminating the authority of FSS's to accept for transmission Class B messages without adversely affecting the users.

Elimination of Charges for Class B Messages

The current rule requires that fees be charged when Class B messages are accepted for transmission over FAA communication systems. However, current communication systems cannot segregate those kinds of messages that require a charge for transmission. In fact, over the last 5 years, there are no records of fees having been collected for transmission of Class B messages, nor does the FAA propose to resume this practice. This change will remove from the regulation all references to the collection of fees and align the regualtion with current practices.

Economic Summary

This rule will be neither a significant regulatory action under Executive Order 12866 nor a significant rule under the Department of Transportation Regulatory Policies and Procedures. The FAA does not expect the amendment to impose a significant cost on society (aviation industry, public, or government). The rule will not cause any diminution of safety.

This action will delete rule language that allows the transfer of certain data. This data includes messages addressing topics such as: lost baggage, hotel reservations, and crew assignments on international or overseas flights (Class B data). At present, only IFSS's and FSS's located outside the 48 contiguous States and the District of Columbia have the authority and capability to accept such information for transmission. In practice, the FAA has not received requests for this service for several years.

The FAA queried FSS's to determine the consequences of this action. The responses indicated that this action would not affect any air carrier operator. Adequate private communications facilities are available to transmit Class B data and, in the past few years, international and overseas carriers have not chosen to avail themselves of the FAA service. However, the FAA recognizes a remote possibility that a future potential user of this service would not have the chance to do so.

International Trade Impact Analysis

This action will have no effect on the sale of foreign products or services in the United States. The action also does not affect the sale of United States products or services in foreign countries. Hence, all foreign and domestic trade will be equally unaffected by this rule.

Regulatory Flexibility Act Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that government regulations do not needlessly and disproportionately burden small businesses. The RFA requires the FAA to review each rule that may have ''a significant economic impact on a substantial number of small entities.''

The amendment deletes rule language that allows the transfer of certain data because users have not requested this service for several years. Hence, the rule will not impose a significant cost on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this rule.

Federalism Implications

This action will not have substantial 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 action will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization Standards and Recommended Practices (SARP) to the maximum extent practicable. For this action, the FAA has reviewed the SARP of Annex 10. The FAA has determined that this amendment will not present any differences.

Conclusion

For the reasons discussed in the preamble, the FAA has determined that this regulation is not a significant regulatory action under Executive Order 12866. In addition, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This action is not considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations.

List of Subjects in 14 CFR Part 189

Air transportation, Telecommunications.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration revises 14 CFR part 189 to read as follows:

PART 189—USE OF FEDERAL AVIATION ADMINISTRATION COMMUNICATIONS SYSTEM

Sec.
189.1 Scope.
189.3 Kinds of messages accepted or relayed.
189.5 Limitation of liability.

Authority: 49 U.S.C. 106(g), 40101, 40104, 40113, 44502, and 45303; sec. 501, 65 Stat. 290; 31 U.S.C. 9701.

§ 189.1 Scope.

This part describes the kinds of messages that may be transmitted or relayed by FAA Flight Service Stations.

§ 189.3 Kinds of messages accepted or relayed.

(a) Flight Service Stations may accept for transmission over FAA communication systems any messages concerning international or overseas aircraft operations described in paragraphs (a)(1) through (6) of this section. In addition, Flight Service Stations may relay any message described in this section that was originally accepted for transmission at an FAA Flight Service Station outside the 48 contiguous States, or was received from a foreign station of the Aeronautical Fixed Telecommunications Network that, in normal routing, would require transit of the United States to reach an overseas address:

(1) Distress messages and distress traffic.

(2) Messages concerning the safety of human life.

(3) Flight safety messages concerning—

(i) Air traffic control, including—

(A) Messages concerning aircraft in flight or about to depart;

(B) Departure messages;

(C) Flight plan departure messages;

(D) Arrival messages;

(E) Flight plan messages;

(F) Flight notification messages;

(G) Messages concerning flight cancellation; and

(H) Messages concerning delayed departure;

(ii) Position reports from aircraft;

(iii) Messages originated by an aircraft operating agency of immediate concern to an aircraft in flight or about to depart; and

(iv) Meteorological advice of immediate concern to an aircraft in flight or about to depart.

(4) Meteorological messages concerning—

(i) Meteorological forecasts;

(ii) Meteorological observations exclusively; or

(iii) Other meteorological information exchanged between meteorological offices.

(5) Aeronautical administrative messages—

(i) Concerning the operation or maintenance of facilities essential to the safety or regulatory of aircraft operation;

(ii) Essential to efficient functioning of aeronautical telecommunications; or

(iii) Between civil aviation authorities concerning aircraft operation.

(6) Notices to airmen.

(b) The following messages may only be relayed through the FAA communications systems:

(1) Flight regularity messages—

(i) Addressed to the point of intended landing and to not more than two other addressees in the general area of the route segment of the flight to which the message refers, containing information required for weight and balance computation and remarks essential to the rapid unloading of the aircraft;

(ii) Concerning changes, taking effect within 72 hours, in aircraft operating schedules;

(iii) Concerning the servicing of aircraft en route or scheduled to depart within 48 hours;

(iv) Concerning changes in the collective requirements for passengers, crew, or cargo of aircraft en route or about to depart, if the changes are caused by unavoidable deviations from normal operating schedules and are necessary for flight regularity;

(v) Concerning non-routine landings to be made by aircraft en route or about to depart;

(vi) Concerning parts or materials urgently needed to operate aircraft en route or scheduled to depart within 48 hours; or

(vii) Concerning pre-flight arrangement of air navigation services and, in the case of non-scheduled or irregular operations, operational servicing of aircraft scheduled to depart within 48 hours.

(2) Messages originated by and addressed to aircraft operating agencies or their representatives that directly bear on the efficient and economic conduct or day to day operations, if adequate non-United States communications facilities are not available and the messages concern—

(i) Matter described in paragraph (b)(1) of this section, but not meeting the time limitations described in paragraph (b)(1) of this section;

(ii) Aircraft parts, equipment, or supplies, air navigation or communications, or essential ground facilities;

(iii) Train or hotel reservations for passengers or employees;

(iv) Lost baggage or personal effects;

(v) Tickets or cargo shipments and payment therefore;

(vi) Location of passengers and cargo;

(vii) New or revised passenger or cargo rates;

(viii) Crew assignments and similar operations personnel matters taking effect within 7 days;

(ix) Post flight reports for record purposes;

(x) Publicity and special handling regarding dignitaries; or

(xi) Reservations, when originated by aircraft operating agencies to secure space required in transport aircraft.

§ 189.5 Limitation of liability.

The United States is not liable for any omission, error, or delay in transmitting or relaying, or for any failure to transmit or relay, any message accepted for transmission or relayed under this part, even if the omission, error, delay, or failure to transmit or relay is caused by the negligence of an employee of the United States.

Issued in Washington, DC on July 11, 1995.

David R. Hinson,

Administrator.

[FR Doc. 95–18915 Filed 8–1–95; 8:45 am]

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federal register

Wednesday
August 2, 1995

Part VIII

Department of Transportation

Federal Transit Administration

49 CFR Parts 653 and 654

Prevention of Prohibited Drug Use in Transit Operations; Prevention of Alcohol Misuse in Transit Operations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Parts 653 and 654

[Docket No. 92–H or I]

RIN 2132–AA37; 2132–AA38

Prevention of Prohibited Drug Use in Transit Operations; Prevention of Alcohol Misuse in Transit Operations

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Transit Administration (FTA) is amending its drug and alcohol testing rules to exempt volunteers and eliminate the citation requirement in the non-fatal, post-accident testing provision applicable to non-rail vehicles. This rule is intended to ease administrative burdens and clarify certain provisions in the existing rules.

EFFECTIVE DATE: September 1, 1995.

FOR FURTHER INFORMATION CONTACT: For program issues, Judy Meade, Office of Safety and Security, Federal Transit Administration, telephone: 202–366–2896. For legal questions, Nancy Zaczek or Kristin O'Grady, Office of Chief Counsel, Federal Transit Administration, telephone: 202–366–4011 (voice); 202–366–2979 (TDD). Copies of the regulation are available in alternative formats upon request.

SUPPLEMENTARY INFORMATION: On February 6, 1995, FTA published a Notice of Proposed Rulemaking (NPRM) proposing to amend its drug and alcohol testing rules to (1) exempt volunteers and (2) eliminate the citation requirement in the non-fatal, post-accident testing provision applicable to non-rail vehicles. FTA also sought comment on whether an ''accident'' should be defined to include the discharge of a firearm by a transit security officer. FTA received 83 comments over a two-month period.

I. Volunteers

Under FTA's current drug and alcohol rules, 49 CFR Parts 653 and 654, a volunteer who performs a safety-sensitive function generally is subject to testing for prohibited drugs and the misuse of alcohol. Since issuance of the final rules in 1994, however, a number of entities have urged the agency to exempt volunteers from application of the rules.

Comments

On the volunteer issue, FTA received 54 comments from large and small transit operators, one insurance carrier, two U.S. senators, one U.S. representative, and two associations. An overwhelming majority of these commenters (50 of 54) favored exempting volunteers. Only four commenters (two large transit operators, one small transit operator, and one trade organization) opposed exempting volunteers from FTA's drug and alcohol testing rules. The commenters raised a number of key issues:

Volunteers are not likely to be involved in drug or alcohol-caused collisions. Several commenters pointed out that no statistical evidence suggests that volunteer transit drivers have been involved in drug or alcohol-caused collisions. Many small operators stated that they have operated for years without one incident relating to the use of drugs or alcohol. Several operators noted that they already provide a comprehensive screening program that evaluates a volunteer's driving record along with their criminal history. For example, one program requires a medical statement signed by a physician, a vehicle inspection statement signed by a mechanic, proof of insurance, a driver's license print-out, and a code of conduct which includes a statement that the driver will not use mood-altering drugs or alcohol while serving as a volunteer. In addition, this same program requires annual medical and vehicle statements from its existing drivers. Further, commenters claimed that volunteers are generally retired professionals with a heightened level of safety. According to commenters, the majority of volunteers are over 60 years old, community-minded, and not likely to be drug or alcohol users.

People will not volunteer if they must submit to drug and alcohol testing rules. Commenters stated that volunteers consider a drug and alcohol test an invasion of privacy. Since volunteers are not compensated for their services and are not entitled to the benefits that employees receive, volunteers are not likely to submit to drug and alcohol testing requirements. In fact, several commenters stated that some volunteers have indicated that they would not continue to volunteer if they had to submit to a drug or alcohol test. Some commenters claimed that volunteerism is down from last year and argued that required drug and alcohol testing will surely exacerbate this downward trend.

It is costly and impractical for organizations to administer drug and alcohol tests to volunteers. Many volunteers are part-time and serve a variety of functions, e.g. clerical support, in addition to safety-sensitive work. Commenters stated that segregating these functions would cause administrative havoc. According to a number of commenters, volunteers do not perform safety-sensitive work on a regular and consistent basis. As a result, testing would be difficult to administer. Several commenters argued that the cost of administering these tests would be prohibitive. Some claimed that the cost of providing testing would drain operating budgets and drastically reduce the services that are provided. For example, one commenter estimated that the cost of providing drug testing for its volunteers would exceed $43,000 per year. This additional cost would translate into 597 fewer rides per month or 7,164 rides per year. Another dimension of the problem would be the cost of losing the use of volunteers' vehicles. A number of commenters indicated that volunteers often provide transportation with their own vehicles. The potential loss of those drivers would place a tremendous hardship on transit providers in rural areas.

Exempting volunteers compromises rider safety. As mentioned above, four commenters believe that exempting volunteer drivers from drug and alcohol testing is contrary to the spirit of the testing mandates of Congress and in direct conflict with safe practice and common sense. One commenter suggested that the exemption compromises safety and erodes the intent of a drug and alcohol-free workplace.

Discussion

FTA agrees with those commenters that favor exempting volunteers from the drug and alcohol testing requirements. Based on the comments submitted to FTA, the significant cost of subjecting volunteers to drug and alcohol testing far outweighs the safety benefits. Commenters indicated that volunteers often are screened by the operator and are mature citizens with good driving records. Furthermore, the costs related to conducting drug and alcohol testing of volunteers are considerable. First, the operator must divert funds from its transportation functions to pay for drug and alcohol testing. Second, the operator may lose volunteers and their vehicles if drug and alcohol testing is required. Third, the time volunteers are able to donate is always limited and would be further restricted by the time consumed by the testing process. Finally, many of the operators that depend heavily on volunteers are small and cannot easily absorb the extra cost that testing volunteers would involve.

As noted above, a few commenters argued that exempting volunteer drivers

from drug and alcohol testing is contrary to the spirit of the testing mandates of Congress in the Omnibus Employee Testing Act of 1991. However, the legislative history of the drug and alcohol testing requirement does not reflect a specific concern about drug and alcohol testing of volunteers. In fact, the tragic accidents that moved Congress to action involved professional transportation employees, not volunteers. See, for example, Conference Report to Accompany H.R. 2942, Department of Transportation and Related Agencies Appropriation Bill, Fiscal Year 1992, in *Congressional Record*, H7672, October 3, 1991.

FTA recognizes that the term ''volunteer,'' as used in the revised definition of ''covered employee,'' could be construed broadly to include any non-employee. FTA's intention in this final rule, however, is to exempt only non-employee volunteers who perform a service as a charitable act without the expectation of receiving a benefit, whether financial or as part of a program established to relieve an obligation. Other non-employees remain covered by the rule, i.e., those who provide charitable service in return for some benefit, for example, in the context of ''workfare''-type programs that make public assistance or other benefits contingent on the donation of transportation services or community service programs that confer academic credit or provide an alternative to a criminal sentence. This issue was not raised in the NPRM or in the comments to the docket, but we would consider it in the future if appropriate.

II. Post-Accident Testing

FTA received 20 comments from large and small transit operators on FTA's proposal to eliminate the citation requirement in the non-fatal, post-accident testing provision applicable to non-rail transit vehicles. Currently, 49 CFR sections 653.45(a)(2)(i) and 654.33(a)(2)(i) require a post-accident drug and alcohol test after a non-fatal accident if, among other things, the operator of the mass transit vehicle involved in the accident receives a citation from a State or local law enforcement official. Five large and two small transit operators favored retaining the citation requirement. Eight large and five small transit operators commented that the citation requirement should be eliminated.

Comments

Commenters made the following arguments in favor of eliminating the citation requirement:

Police officers rarely issue citations in time for drug and alcohol testing to be useful. The majority of commenters indicated that law enforcement officials rarely issue citations in non-fatal accidents. When a citation is warranted, often too much time has passed for the testing to be useful. One commenter pointed out that unless an officer witnesses the accident, the officer will want to conduct an investigation before issuing a citation, which means that virtually no post-accident tests are conducted for non-fatal accidents.

Local guidelines sometimes already require testing without a citation. Two large commenters indicated that local guidelines provide for a stricter standard that already requires post-accident testing, even without a citation being issued.

Requiring a citation is inconsistent with the Omnibus Employee Testing Act of 1991. One commenter opined that the Omnibus Transportation Employee Testing Act of 1991 requires that FTA mandate testing, without the citation requirement, to insure that the transit industry is free from employees using illegal drugs and misusing alcohol while performing safety-sensitive functions.

FTA's definition of ''accident'' should change. Commenters suggested several changes to FTA's definition of ''accident'' for the purpose of determining when post-accident testing is necessary. It was not FTA's intention to solicit comments on this part of the rule, but rather the part of the rule that currently requires a citation to be issued before post-accident testing occurs.

Commenters made the following arguments in favor of retaining the citation requirement:

The citation requirement is easy to follow. One commenter noted that the citation requirement provides an easily understood benchmark and gives decision-making confidence to supervisors and managers. Another commenter pointed out that the current regulation operates well in that it requires the judgment of law enforcement officials, people who are trained in accident investigation, to assess whether the transit operator's actions contributed to the accident.

The proposed rule would require more testing, which will increase overall costs. One commenter estimated that the proposed rule would require the testing of approximately twenty more individuals a year, adding an additional $3,000 to their estimated $70,000 annual cost of conducting drug and alcohol testing. Another commenter pointed out that elimination of the citation requirement will result in additional unfunded costs that are not in proportion to any expected benefit.

Discussion

FTA agrees with those commenters who favor removing the citation requirement. Because of the delay in issuing a citation in many accidents, the citation requirement renders post-accident alcohol and drug testing virtually ineffective.

Arguments that removing the citation requirement would increase the number of drug and alcohol tests given and increase the cost are not persuasive. The legislative history reveals that Congress intended that post-accident testing of safety-sensitive employees should be required

> In the case of any accident in which occurs a loss of human life, or, as determined by the Secretary, other serious accident involving bodily injury or significant property damage. It is not the Committee's intent that drug and alcohol testing should be required every time there is an accident involving a mass transportation operation. Rather, post-accident testing should be limited to those instances in which there is a loss of human life or other accident of sufficient magnitude in terms of bodily injury or significant property damage for which testing for drugs and alcohol would be warranted. Report of the Senate Committee on Commerce, Science, and Transportation, on S. 676, Omnibus Transportation Employee Testing Act of 1991. 102d Congress, 1st Session, Report 102–54 (1991). (Emphasis added.)

Based upon the comments FTA received, the Agency does not believe that the issuance of a citation is the best measure for whether the accident is of sufficient magnitude to warrant drug and alcohol testing. The issuance of a citation depends on several factors, such as whether the law enforcement officer was physically present at the accident scene. These factors are often completely unrelated to the magnitude of the accident. Moreover, the timing of the issuance of a citation is not driven by the requirements of drug and alcohol testing. As a result, by the time a citation is issued, it is often too late to conduct drug and alcohol testing.

The result of requiring a citation as the trigger for a post-accident drug and alcohol test is that too many accidents have not been properly investigated for drug and alcohol-related causes. This amendment is better tailored to accomplish the Congressional intent that all significant, non-fatal accidents should trigger drug and alcohol testing of appropriate personnel.

III. Definition of Accident—Armed Security Personnel

FTA received only seven responses to our request for comment on whether the

definition of ''accident'' should include the discharge of a firearm by armed security personnel (who are considered safety-sensitive workers subject to the drug and alcohol testing program). Most commenters opposed an amendment to the definition of ''accident'' to include the discharge of a firearm by a covered employee while on duty. Most of these commenters were transit operators who noted that they already have internal policies and procedures for dealing with accidental discharges of firearms. A few commenters favored including the discharge of a firearm in the definition of ''accident,'' mostly for safety reasons. Since there seems to be little interest in amending the definition of accident to include the discharge of firearms, FTA will not take any action at this time.

IV. Regulatory Process Matters

A. Executive Order 12688

The FTA evaluated the costs and benefits of the drug and alcohol testing rules when it issued 49 CFR parts 653 and 654 on February 15, 1994, at 59 FR 7531–7611. It is not anticipated that the change to the post-accident testing provision should significantly alter the costs and benefits of either part 653 or 654. On the other hand, the exclusion of volunteers from coverage under the rules should slightly lower the overall cost of the program.

B. Departmental Significance

Neither rule is a ''significant regulation'' as defined by the Department's Regulatory Policies and Procedures, because it involves only minor changes to parts 653 and 654.

C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the FTA evaluated the effects of parts 653 and 654 on small entities when they were issued in February 1994. These changes will not significantly change that analysis, but should reduce the cost of drug and alcohol testing for small entities.

D. Paperwork Reduction Act

This rules does not include information collection requirements subject to the Paperwork Reduction Act.

E. Executive Order 12612

We reviewed parts 653 and 654 under the requirements of Executive Order 12612 on Federalism. These proposed rules, if adopted, will not change those assessments.

F. National Environmental Policy Act

The agency determined that these regulations had no environmental implications when it issued parts 653 and 654, and there will be none under these amendments.

G. Energy Impact Implications

These amendments do not affect the use of energy.

List of Subjects in 49 CFR Parts 653 and 654

Alcohol testing, Drug testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety and Transportation.

For the reasons set forth in the preamble, the FTA is amending Title 49, Code of Federal Regulations, parts 653 and 654 as follows:

Part 653—PREVENTION OF PROHIBITED DRUG USE IN TRANSIT OPERATIONS

1. The authority citation for part 653 continues to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

2. The definition of ''covered employee'' in section 653.7 is revised to read as follows:

§ 653.7 Definitions

* * * * *

Covered employee means a person, including an applicant or transferee, who performs a safety-sensitive function for an entity subject to this part; however, a volunteer is covered only if operating a vehicle designed to transport sixteen or more passengers, including the driver.

* * * * *

§ 653.45 [Amended]

3. The first sentence of § 653.45(a)(2)(i) is amended by removing ''if that employee has received a citation under State or local law for a moving traffic violation arising from the accident'' and adding ''unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident''.

PART 654—PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS

4. The authority citation for part 654 continues to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

5. The definition of ''covered employee'' in section 654.7 is revised to read as follows:

§ 654.7 Definitions

* * * * *

Covered employee means a person, including an applicant or transferee, who performs a safety-sensitive function for an entity subject to this part; however, a volunteer is covered only if operating a vehicle designed to transport sixteen or more passengers, including the driver.

* * * * *

§ 654.33 [Amended]

6. The first sentence of § 654.33(a)(2)(i) is amended by removing ''if that employee has received a citation under State or local law for a moving traffic violation arising from the accident'' and adding ''unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident''.

Issued on: July 28, 1995.

Gordon J. Linton,

Administrator.

[FR Doc. 95–19025 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–57–P

federal register

Wednesday
August 2, 1995

Part IX

The President

Executive Order 12967—Establishing an Emergency Board To Investigate Disputes Between Metro North Commuter Railroad and Its Employees Represented by Certain Labor Organizations

Federal Register
Vol. 60, No. 148
Wednesday, August 2, 1995

Presidential Documents

Title 3—

The President

Executive Order 12967 of July 31, 1995

Establishing an Emergency Board To Investigate Disputes Between Metro North Commuter Railroad and Its Employees Represented by Certain Labor Organizations

Disputes exist between Metro North Commuter Railroad and certain employees represented by certain labor organizations. The labor organizations involved in these disputes are designated on the attached list, which is made a part of this order.

The disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (45 U.S.C. 151 *et seq.*) (the ''Act'').

Parties empowered by the Act have requested that the President establish a second emergency board pursuant to section 9A of the Act (45 U.S.C. 159a).

Section 9A(e) of the Act provides that the President, upon such request, shall appoint a second emergency board to investigate and report on the disputes.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 9A of the Act, it is hereby ordered as follows:

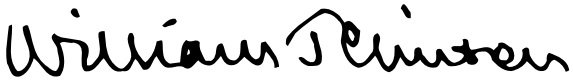
Section 1. *Establishment of the Board.* There is established effective July 31, 1995, a board of three members to be appointed by the President to investigate these disputes. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* Within 30 days after creation of the board, the parties to the disputes shall submit to the board final offers for settlement of the disputes. Within 30 days after submission of final offers for settlement of the disputes, the board shall submit a report to the President setting forth its selection of the most reasonable offer.

Sec. 3. *Maintaining Conditions.* As provided by section 9A(h) of the Act, from the time a request to establish a board is made until 60 days after the board makes its report, no change, except by agreement, shall be made by the parties in the conditions out of which the disputes arose.

Sec. 4. *Records Maintenance.* The records and files of the board are records of the Office of the President and upon the board's termination shall be maintained in the physical custody of the National Mediation Board.

Sec. 5. *Expiration.* The board shall terminate upon submission of the report provided for in section 2 of this order.



THE WHITE HOUSE,
July 31, 1995.

LABOR ORGANIZATIONS

Brotherhood of Locomotive Engineers including the American Train Dispatchers Department

Brotherhood of Railroad Signalmen

International Association of Machinists & Aerospace Workers

International Brotherhood of Boilermakers, Iron Shipbuilders,

Blacksmiths, Forgers and Helpers

International Brotherhood of Electrical Workers

International Brotherhood of Firemen and Oilers

International Brotherhood of Teamsters

Sheet Metal Workers International Union

Transport Workers Union of America

Transportation Communications International Union-ARSA Division

United Transportation Union

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